

## Digital Trade Extracts from Generated Transcript of Senate Finance Committee Hearing on The President's 2024 Trade Policy Agenda

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[1:00:00] You are right with respect to ongoing negotiations around, data flows provisions, data localization provisions, and source code provisions. We have pulled back these long standing proposals that we have made in those negotiations to make adjustments. In large part, because we are connecting the dots. And I would like to I would like to encourage all of us to connect the dots because in addition to being a Senate Finance Committee leader, you've also been a long-time leader on the Senate Judiciary Committee. And I know, for instance, that you are a cosponsor of the American Innovation and Choice Online Act, ICOA, which the Administration has expressed support for. I also know that you are a cosponsor along with many of your colleagues on both sides of the aisle here on Senate Finance of the Kids Online Safety Act, which addresses data security for children's data in the digital economy and in the digital sphere. What I wanted to reflect to you is when you look at those long time, long term developed proposals in the digital trade negotiations on data, that those provisions are still largely based on an understanding that what we're dealing with is data as a facilitator of traditional trade transactions, goods transactions, data as a facilitator of e-commerce, data traveling along with, you know, the information that has to be traded in order for, goods to move across borders.

That was certainly the case 20 years ago. But today in 2024, what we have seen is that data has become the commodity itself, that data has become the powerful thing that has value, that enables more innovation, that it enables, when you accumulate enormous amounts of it, technological innovation like, generative AI. The issue is who can have access to that data, and also where does the data come from? It comes from ordinary Americans. It comes from you, it comes from me, it comes from your constituents, it comes from our kids.

And so with respect to the security of that data, the attempts that we see up here on the hill to assert the rights of ordinary Americans with respect to that data. As a trade matter we feel very strongly that our provisions in our trade negotiations should reflect the debates that are happening here and the legislative efforts you are all making.

[2:26:00] Sen Young: were they supportive of this decision to scale back US advocacy for open digital trade rules?

USTR Tai: So I'm gonna quibble with you on your characterization of what we did because I certainly don't see it as scaling back. I see it as upgrading and, advancing our conversation about, what digital trade means.

When we talk about digital trade, it's really an extension of, talking about e-commerce, which is how we thought about these issues 20 years ago. The world is vastly different. The level of sophistication in the world of technology and frankly in the public policy

debate is completely different now. If you look at the provisions that are in question relating to data flows and data localization, let's just start right there. They're good signaling language around free flows of data and prohibitions on data localization.

The challenge is that, you know, it's kind of defining where the companies and the private sector can have free reign, and it really cabins governmental action, regulatory action, into the confines of some exceptions. One of the serious concerns we have in at USTR, it's because we're also we're trade negotiators, we're also the trade litigators. We bring cases. We also have to defend. That those exceptions make use extremely nervous given the kinds of debate up here, which are asserting the interest of Americans into this framework, which is not reflected in the proposals.

Sen Young: So, what success can you point to that you have had in persuading your counterparties, to adopt rules and to accept those rules in strengthening our digital trade ties and thus, giving influence to the United States of America in this digital economy of the present, but especially of the future?

USTR Tai: Well, an important part of negotiations is also, talking and listening. And in, our negotiations with Europeans through the Trade and Technology Council, certainly with, the Japanese in the bilateral and other formations that we have, including in the Indo Pacific and those partners. What we see is that all of our friends and allies are all in the process of struggling with the same types of questions we are having today around privacy, around where you set the limits for who can do what with people's data. And so the progress that we are making is in advancing towards more updated proposals. And you're right, our proposals might not be the same as the Europeans, but we're all facing the same challenges.

Sen Young: ... We don't have any outcomes yet. I understand that can be the case. Talking and listening has been the outcome. I know that sometimes I would regard that as part of the process before you get an outcome. We're almost at the end of the administration. You've been years in office and I would hope that we would have had an outcome. It's not always realistic. I think that's a fair way to end it.

[2:45:00] Sen Warren: So, corporations have long used secretive trade negotiations as a backdoor cheat to try to undermine regulations and to trigger a global race to the bottom. Now big tech is running this play and one of the demands is blanket protections for the quote "free flow of data", which they want to guarantee big tech companies' right to sell Americans personal information anywhere in the world. In other words, Big Tech wants to keep auctioning off your data to the highest bidder even when that means that your data makes it to the Chinese or Russian government. Now Ambassador Tai, as US Trade Rep, you have stood up to Big Tech's trade agenda and to China's digital authoritarianism. Tech lobbyists would have us believe that their data flows language will persuade China to abandon its surveillance state and to tear down the great firewall. Back when China joined the World Trade Organization, supporters made exactly the same claim arguing that trade would transform China into a liberal democracy. Ambassador Tai, remind me, did that happen? What has been China's

track record on meeting its WTO commitments that it made at the time and moving toward a liberal democracy.

Sen Warren: ... So now Big Tech is making the same claim that if we will just let Big Tech sell off our data wherever they want, China will become a more open democratic country. You know, President Biden has not been fooled by this. In February, he issued an executive order to prevent Big Tech companies from transferring huge swaths of Americans' financial, health, and other data to China and other countries of concern. Ambassador Tai, how would the President's Data Security Executive Order square with Big Tech demand for free data flows in all situations. And let me just ask, is this why you rejected Big Tech demands so that the US government can take actions like the President's order to protect Americans' data from adversaries?

USTR Tai: Senator Warren, the short answer is yes. Both with respect to the administration's executive order safeguarding the security of Americans bulk data, from all flowing into China and and never coming back out, but also with respect to all of the activity that's happening up here in the Congress. We saw a Data Brokers Bill move through the House, and pass on a 414 to 0 basis. We see, the Data Broker Bill, that has been introduced by the Chairman, and Senator Hirono, as well as, a lot of the other legislative efforts up here. Again, to define the rights 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.

Sen Warren: ... I want to hit one more issue and that is the USTR's annual report listing foreign barriers to US trade and investment. Up until now, corporate interests have stacked this report with kind of a laundry list of any other policy from any other country that they think somehow nips into their own profits. But not you. You haven't fallen for this. This year, you refused to label common sense tech policies from the EU, from Canada, and from other allies as trade barriers. And by the way, those are policies that look a lot like the ones we're actively working on here in the United States. Now Big Tech is screaming that you aren't protecting them from these dangerous foreign adversaries like Canada. Ambassador Tai, did you remove China's abusive data and intellectual property, policies from the trade barrier report?

USTR Tai: We did not.

Sen Warren: You did not. So you're still taking on China's abusive digital policies, but Big Tech is throwing a tantrum even though there is a clear difference between our allies' good faith efforts to regulate and China's digital authoritarianism. Look, Big Tech doesn't want to be regulated, period, and it hopes that it can use trade policy to help insulate them from any regulation. I am glad to see that you and President Biden are giving Big Tech's digital trade agenda the boot and instead fighting for the protection and security of Americans' data.