



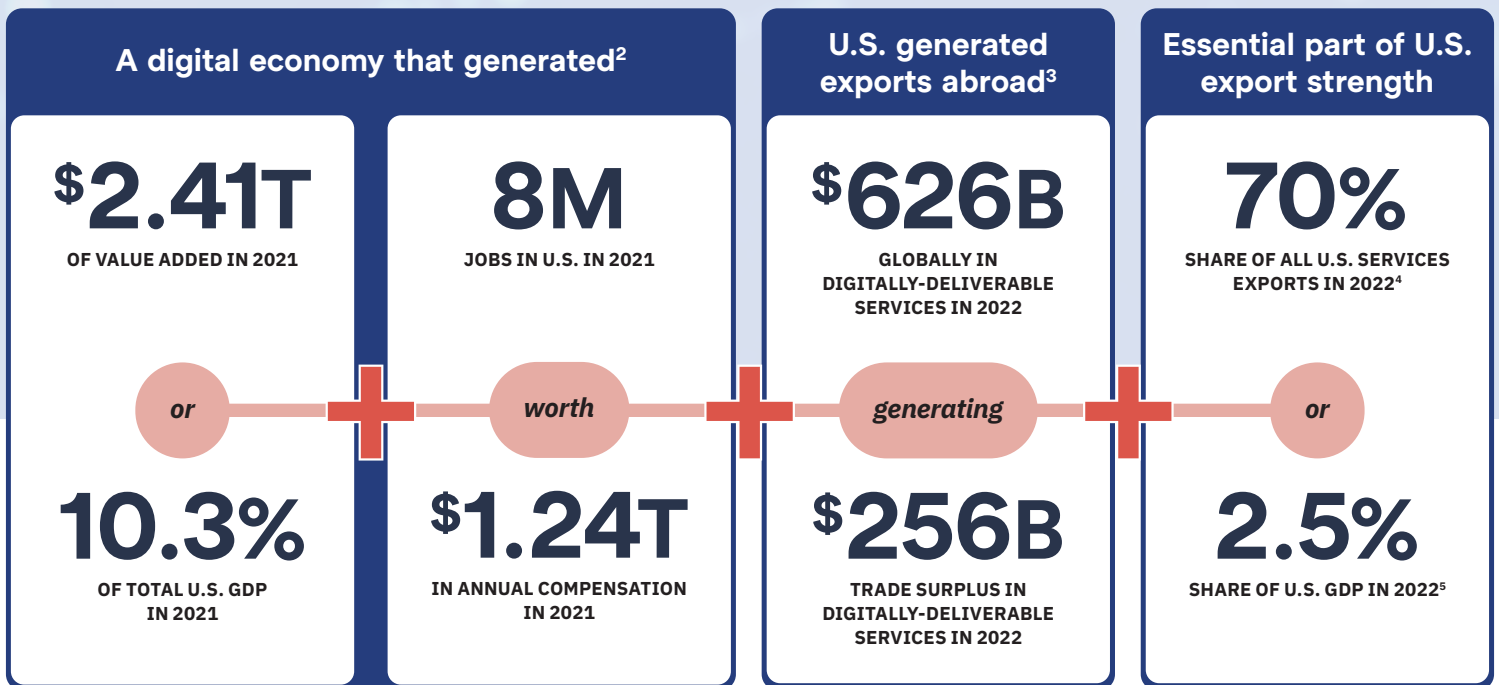
## 2023 Trade Barriers for Digital Exports

# Identifying Threats to U.S. Leadership in Global Digital Trade

Internet-enabled trade in goods and services is a driver for U.S. economic growth, but an ever-growing litany of barriers globally undermine firms' ability to access foreign markets—both through exports and in-country sales. The U.S. should lead in setting rules for digital trade through new and existing international partnerships. Identifying and addressing key threats and leveraging trade partners in this effort is critical to achieve this goal.<sup>1</sup>

## What's At Stake?

Digital trade is driving broad benefits to U.S. companies and domestic workers, resources, and economic value.



<sup>1</sup> This October 2023 summary draws upon the annual submission of CCIA to the Office of the U.S. Trade Representative, as U.S. trade officials prepare the 2024 National Trade Estimate Report: <https://ccianet.org/library/comments-for-the-2024-ustr-national-trade-estimate-report/>

<sup>2</sup> According to U.S. Department of Commerce estimates: <https://www.bea.gov/system/files/2022-11/new-and-revised-statistics-of-the-us-digital-economy-2005-2021.pdf>

<sup>3</sup> According to U.S. Department of Commerce estimates: <https://apps.bea.gov/iTable/?reqid=62&step=9&isuri=1&product=4#eyJhcHBpZCI6NiIsInNOZXBzIjpbMSw5LDZdLCJkYXRhIjpbWyJwcm9kdWN0IiwuNCJdLFsiVGFibGVMaXN0IiwuMzU5I11dfQ==>

<sup>4</sup> According to UNCTAD estimates: <https://unctadstat.unctad.org/datacentre/dataviewer/US.DigitallyDeliverableServices>

<sup>5</sup> According to U.S. Department of Commerce estimates: <https://apps.bea.gov/iTable/?reqid=62&step=9&isuri=1&product=4#eyJhcHBpZCI6NiIsInNOZXBzIjpbMSw5LDZdLCJkYXRhIjpbWyJwcm9kdWN0IiwuNCJdLFsiVGFibGVMaXN0IiwuMzU5I11dfQ==>

# 2023 Key Threats

## Restrictions on Cross-Border Data Flows

- ❖ Cross-border data flows are the sharing of data from one national jurisdiction to another. They underpin digital trade and global commerce. The inability to move data around the world hinders U.S. exporters from expanding into new markets.
- ❖ The U.S. should work with trading partners to both remove and prevent future barriers to cross-border data flows, encouraging partners to model strong commitments on the digital trade chapter in USMCA.
- ❖ Other threats to cross-border data flows include the continuing trend whereby countries pursue data protection laws that often fail to provide for clear rules to enable the transfer of data or impose unnecessarily onerous obligations for data processing and storage.

## Data and Infrastructure Localization Mandates and Restrictions on Cloud Services

- ❖ Increasingly, jurisdictions are seeking to impose onerous and targeted requirements on foreign cloud providers—many of the most prominent representatives of which are from the United States—that limit their ability to operate in these markets. The regulations and policies pursued globally range from preferencing local upstarts at the expense of foreign rivals, to measures seeking greater ability to conduct surveillance over individuals. Governments pursue these goals through data localization policies—which harm all cross-border services suppliers—as well as making market access conditional on protectionist certification or arbitrary security standards.
- ❖ The provision of cloud services globally drives billions of dollars in U.S. economic value, as cloud computing supports a wide range of subsequent industries, applications, and services reliant on cloud infrastructure and suppliers.
- ❖ U.S. cloud service providers are global leaders and represent a remarkable U.S. export success, supporting a trade surplus while sustaining tens of thousands of high-paying jobs for U.S. individuals.

## Forced Payments Between Online Services and Local Incumbents in News Publishing

- ❖ A growing number of governments are pursuing rules to force U.S. online services providers to pay local news corporations through mandatory negotiations to be able to host any form of news content including links, snippets and quotes, whose distribution is guaranteed under international intellectual property law.
- ❖ These frameworks circumvent free market dynamics and the symbiotic relationship between online platforms and news businesses demonstrated by news companies posting on social media services, allowing links to be indexed on search engines, and paying for search engine optimization tools.
- ❖ This relationship brings news outlets referral traffic and subsequent advertising revenue. Instead, these policies seek to implement an obligation for platforms—always targeting a select few U.S. firms—to choose between paying large local media conglomerates or exiting the market.

## Experimental Platform Regulation Based on Ill-Defined Market Analysis

- ❖ A general but ill-defined desire for “platform regulation”, often unsupported by evidence of consumer harm, is spurring digitally-focused ex-ante regulation around the world. In some cases, platform regulation serves as a backdoor for industrial policy dressed up as competition policy and typically employs thresholds designed specifically to target leading U.S. internet services while sparing comparable domestic or third-party services.
- ❖ Such regulatory approaches depart from best practices of seeking general rules of industry-wide application, as opposed to targeting individual companies, absent credible evidence of market failure or consumer harm.
- ❖ Additionally, rather than being developed through highly-prescriptive legislation, best practices also suggest that they be developed pursuant to a transparent rulemaking process that follows global norms.

## Mandatory Payments and Legacy Telecommunications Regulations for Internet-Enabled Services

- ❖ Numerous governments have sought to develop mechanisms to siphon U.S. online services suppliers’ revenue to subsidize local telecommunications incumbents through mandatory payment schemes. Others have sought to impose legacy regulations from the telephony or broadband network space onto internet-enabled services, ignoring fundamental differences in these services.
- ❖ One example is a proposal to force select content and application providers to pay domestic telecommunication service providers for delivering traffic to their internet subscribers, despite no evidence that such payments are justified. Such mandatory payments would hinder U.S. digital services exports and undermine the structure of the open internet that has prevailed for decades.
- ❖ These types of proposals, often dubbed “network usage fees”, have begun to spread globally. Given the targeted nature of these provisions towards U.S. companies and the conditioning of market presence on payments to local industry leaders, these proposals often contravene provisions of trade agreements and WTO rules that are aimed at streamlining foreign investment and liberalizing the free flow of services.
- ❖ Other governments have sought similar outcomes, benefiting legacy providers, by seeking to capture U.S. online services providers’ revenue and impeding market access by imposing licensing requirements or other regulations tailored for telecommunications providers.