## Response to House Ways & Means Committee's "The Biden Administration's 2024 Trade Policy Agenda with United States Trade Representative Katherine Tai"

# CCIA Statement for the Record

The Computer & Communications Industry Association (CCIA)[1] appreciates the opportunity to respond to the House Ways & Means Committee's April 16, 2024, hearing regarding the Biden Administration's trade policy featuring U.S. Trade Representative (USTR) Ambassador Katherine Tai.

Digital trade is crucial to U.S. economic and global security interests. Exports of digitally-enabled services generated $626 billion in 2022, which helped to achieve a $256 billion surplus in the sector.[2] Digitally-enabled services are a critical piece of the overall strength of the United States in the services sector, reflected by the fact that 70% of U.S. services exports were digitally-enabled services in 2022.[3] The digital economy writ large generated $2.6 trillion worth of value added—which represented 10.0% of Total U.S. GDP—in 2022, which supported 8.9 million jobs in the United States with $1.3 trillion provided in annual compensation.[4] The export of digital products and services also promote an interconnected world through a free and open internet, support freedom of expression globally, and strengthen U.S. competitiveness in a critical and emerging industry.

To ensure U.S. digital products and services exporters—and the goods and services exporters that are reliant on digital services to reach foreign consumers—are able to access foreign markets, commitments struck in trade agreements and enforcement of those commitments are critical. USTR has historically performed this function, in line with the directives of the 1974 Trade Act and later iterations of delegated responsibility such as the 2015 Bipartisan Congressional Trade Priorities and Accountability Act. However, as highlighted by a bipartisan group of lawmakers in letters and testimony at these hearings,[5] USTR has reversed course on this longstanding U.S. policy, withdrawing core digital trade proposals from the World Trade Organization (WTO) and the Indo-Pacific Economic Framework and removing references to swaths of digital trade barriers from the Congressionally-mandated National Trade Estimate (NTE) for which USTR is directed to identify significant trade barriers in electronic commerce.[6]

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[1] CCIA is an international nonprofit membership organization representing companies in the computer, internet, information technology, and telecommunications industries. Together, CCIA's members employ nearly half a million workers and generate approximately a quarter of a trillion dollars in annual revenue. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and internet industries. A complete list of CCIA members is available at http://www.ccianet.org/members.

[2] Amir Nasr, "New Data Showcase the Strength of Digital Services Exports to Overall U.S. Economy," Disruptive Competition Project (July 26, 2023) https://www.project-disco.org/uncategorized/strength-of-digital-services-exports-to-u-s-economy/ ("Disruptive Competition Project New Data Post").

[3] Disruptive Competition Project New Data Post.

[4] "How Big is the Digital Economy," U.S. Department of Commerce (last accessed April 22, 2024) Bureau of Economic Analysis (last accessed April 22, 2024) https://www.bea.gov/sites/default/files/2023-12/digital-economy-infographic-2022.pdf.

[5] "What Lawmakers Said at the 2024 USTR Congressional Hearings," Computer & Communications Industry Association (April 23, 2024) https://ccianet.org/library/what-lawmakers-said-at-the-2024-ustr-congressional-hearings/.

[6] 19 U.S.C. § 2241(a)(1)(A)-(B).

Below, we submit a few targeted responses to remarks and claims raised across both the House Ways & Means and Senate Finance Committees' hearings in relation to arguments for why USTR has opted to deprioritize digital trade by ceasing negotiations in multiple fora and scaling back enforcement of existing rules. Attached to this submission is a March 2023 brief[7] that identifies the myths perpetuated by those who argue that the United States should step back from strong digital trade rules globally—myths that should not dictate U.S. trade policy. The broad theme USTR uses to justify its course reversal is a purported need for "policy space" to ensure that that nascent law or regulation can evolve unhindered by binding trade rules. CCIA has written on this false choice in detail[8] as well as about the harms of deprioritizing digital trade barriers in the NTE report.[9] Below are some of CCIA's key findings.

## Rules Promoting Cross-Border Data Flows Were Never Primarily About Facilitating Goods Trade

One of the key reasons cited by Ambassador Tai to defend USTR's digital trade withdrawal is her view that rules promoting cross-border data flows need updating, as they were formed at a time—roughly 30 years ago—as an adjunct to goods trade. Ambassador Tai stated at the House Ways & Means Committee hearing that the rules the U.S. has previously championed on data flows, data localization, and source code were "rooted in our recognition and our understanding 20 years ago that data is just about facilitating traditional trade transactions." In the Senate Finance Committee hearing, Ambassador Tai elaborated on this, stating that these provisions are founded on an "understanding" of data as "a facilitator of traditional trade transactions, goods transactions, data as a facilitator of e-commerce, data traveling along with the information that has to be traded in order for goods to move across borders."

This is simply untrue. The roots of data flow rules extend back to 1994 to the conclusion of the General Agreement on Trade in Services (the GATS) where both for financial services, and services generally, disciplines were introduced to ensure that cross-border services trade would not be impeded through restrictions on data. Thus, both the Financial Services Understanding,[10] and the GATS Annex on Telecommunications,[11] contained specific provisions designed to ensure that governments (or telecommunications suppliers) would not use control over data to "nullify and impair" a service commitment—the ability of a bank, insurance company, travel agency, or computer service supplier to operate globally and serve customers in distant locations. Those concerns remain as valid now as they were then.

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[7] "Myths and Facts about Digital Trade Rules," Computer & Communications Industry Association (Updated March 21, 2023) https://ccianet.org/library/myths-and-facts-about-digital-trade-rules/.

[8] Jonathan McHale, "Friendly Fire: the Saga of Trade Policy at an Impasse," Disruptive Competition Project (Feb. 23, 2024) https://www.project-disco.org/21st-century-trade/friendly-fire-the-saga-of-trade-policy-at-an-impasse/.

[9] Amir Nasr, "Why a USTR Report Represents Another Step Back for Digital Trade," Disruptive Competition Project (April 2, 2024) https://www.project-disco.org/21st-century-trade/why-a-ustr-report-represents-another-step-back-for-digital-trade/.

[10] "Understanding on commitments in financial services" World Trade Organization (last accessed April 22, 2024) https://www.wto.org/english/tratop_e/serv_e/21-fin_e.htm ("WTO Understanding on Commitments in Financial Services").

[11] "Annex on telecommunications," World Trade Organization (last accessed April 22, 2024) https://www.wto.org/english/res_e/publications_e/ai17_e/gats_anntelecommunications_jur.pdf.

Additionally, 30 years ago, trade negotiators recognized the importance of "policy space" by ensuring that commitments were subject to reasonable exceptions, including specifically for privacy. Analogous provisions addressing data flows were included in the first modern Free Trade Agreements (FTAs) struck by the United States, the North American Free Trade Agreement and the subsequent FTA signed by the United States, with Jordan in 2000.[12]

It is further evident from these early FTAs that digital trade was not focused on facilitating traditional goods trade. Consider both the U.S.-Chile FTA and U.S.-Singapore FTAs, which have commitments to refrain from imposing customs duties on electronic transmissions and to not discriminate against digital products from the other Party. Electronic transmissions and digital goods and services were seen as necessary to protect the Parties' broader interests in an emerging new area—digital trade was not seen as a conduit for the trade of goods.

Charlene Barshevsky, the USTR at the end of the Clinton Administration, described the United States digital trade policy goals succinctly in 2000 that are just as valid today:

> *This new initiative will create a lasting set of rules and agreements which help to ensure that the trading system provides for electronic business the same guarantees of freedom, fair competition, respect for intellectual property rights and access to markets that more conventional commerce enjoys.*[13]

## The WTO E-Commerce Moratorium Remains Crucial for U.S. Businesses and Workers; Making it Permanent Should Be a Top Priority for USTR

At the WTO's Ministerial Conference 13th Ministerial Conference in late February, WTO Members renewed a crucial commitment for countries to refrain from imposing customs duties on electronic transmissions (the "e-commerce moratorium"). This was a critical achievement—failure to extend a commitment which has been renewed consistently since it was first agreed to in 1998 would have dealt a major blow to the WTO, and the trade flows that depend on this commitment. The moratorium protects firms from what would be onerous and pernicious customs duties, allowing the digital economy to flourish between WTO member countries.

The importance of the moratorium could not be understated—studies consistently show the agreement brings broad benefits to WTO Member economies and that the commitment lapsing would lead to widespread economic losses,[14] and the past two renewals were far from guaranteed. Recently, Dr. Ngozi Okonjo-Iweala, Director General of the WTO, predicted that the e-commerce moratorium would not be renewed when next scheduled for review–in two years when the current agreement ends–and that companies should prepare for that event.[15]

Despite this near-term threat, Ambassador Tai would not commit to seeking the most obvious solution–making this moratorium permanent. Instead, Ambassador Tai argued that the e-

[12] https://ustr.gov/sites/default/files/Jordan%20FTA.pdf.
[13] https://usinfo.org/usia/usinfo.state.gov/topical/global/ecom/00102301.htm.
[14] Andrea Andrenelli and Javier López González, "Understanding the scope, definition, and impact of the WTO e-commerce moratorium" Vox EU Center for Economic Policy Research (March 26, 2024) https://cepr.org/voxeu/columns/understanding-scope-definition-and-impact-wto-e-commerce-moratorium.
[15] Andy Bounds, "Ecommerce tariffs will kick in from 2026, says WTO chief," Financial Times (March 27, 2024) https://www.ft.com/content/aea64aa4-fde2-46f3-9376-c56b8e94263b.

commerce moratorium was "developed at a time when we talked about electronic transmissions because the relevant transmission was about fax transmissions," and the world currently is "so far advanced," it renders the debate about the moratorium as "stuck in time."

The world is indeed very different from the time the e-commerce moratorium was struck, but it is simply not true that negotiators in 1998 were focused on tariffs on fax transmissions.[16] Rather, they understood perfectly well that physical goods, subject to tariffs, were increasingly being digitized and that this burgeoning trade of e-books, music, videos and software would be significantly impaired if subject to tariffs.[17] Indonesia has set up a framework to do just that,[18] so the threat is no longer hypothetical. A firm, clear U.S. position is a top priority.

## Canada's Digital Services Taxes Warrant USTR Intervention

Ambassador Tai provided a strong commitment to continue pursuing U.S. interests in pushing back on digital services taxes (DSTs) as they spread internationally, stating that USTR is "prepared to use the tools that we have." We appreciate USTR's efforts on this front, particularly as Canada—one of the closest trading partners of the United States—is in the process of passing Bill C-59, a discriminatory DST which may soon become law. USTR should commit to expeditiously addressing the harms presented by Canada's DST, which would cost hundreds of millions of dollars a year for U.S. companies and thousands of jobs for U.S. full-time employees. A commitment to initiate a formal investigation and consider action using existing tools such as Section 301 and USMCA dispute resolution is now fully warranted.

## Discriminatory Streaming Policies Require USTR Engagement

In April 2023, Canada passed the Online Streaming Act, which requires all foreign online content providers to fund arbitrarily-defined "Canadian content" and to "clearly promote" Canadian programming."[19] The law discriminates against U.S. film, television, and music content on streaming services, as it gives preferential treatment to Canadian content, violating Article 19.4 of the U.S.-Mexico-Canada free trade agreement (USMCA).[20] Further, U.S. suppliers are subjected to requirements to fund local competitors in a discriminatory manner that implicates investment commitments in Article 14.10.1 (b) of USMCA.[21]

CCIA appreciates Ambassador Tai's clear commitment to ensure that, as Canada amends its definition of Canadian Content, USTR will advocate for "fair outcomes for U.S. stakeholders." USTR should also consider addressing the underlying discriminatory nature of the law using

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[16] https://one.oecd.org/document/TAD/TC/WP(2023)6/FINAL/en/pdf ("[a] majority of delegations agreed that a majority of electronically transmitted products were indeed services. However, there was still a lack of clarity with regard to the classification under GATT or GATS or certain products which can be delivered both in electronic form and on a physical carrier.").

[17] The GATT had grappled with this issue as early as 1984, when considering the treatment of software delivered over satellite networks. See https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/decisions/wto_val_decision_4_1.pdf?la=en.

[18] https://insightplus.bakermckenzie.com/bm/consumer-goods-retail_1/new-regulation-on-the-import-of-consigned-goods-gives-clarity-and-guidelines-for-e-commerce-transactions.

[19] https://www.parl.ca/legisinfo/en/bill/44-1/c-11.

[20] Computer & Communications Industry Association, "CCIA White Paper on Canada's Online Streaming Act (Bill C-11)" (Jan. 19, 2023) https://ccianet.org/library/ccia-white-paper-on-canadas-online-streaming-act-bill-c-11/ ("CCIA Online Streaming Act White Paper").

[21] *Id.*

the tools available. For example, under USMCA's implementing legislation, USTR is obligated to investigate any discriminatory measures sought under Canada's Cultural Industries exception, and consider subsequent actions to compensate for any harms. USTR should, pursuant to its legislative mandate, proactively address the harms that could cost U.S. businesses, content creators, and workers hundreds of millions of dollars annually.

Further, in line with Ambassador Tai's commitment to protect U.S. content creators and streaming suppliers in Canada, it is important for USTR to remain vigilant regarding similar discriminatory proposals that are being developed in Australia despite clear rules in the U.S.-Australia Free Trade Agreement (AUSFTA) constraining such actions. The proposals, which the Australian Government seeks to have in force by July, would likely violate Article 16.4 of AUSFTA's E-Commerce Chapter—Non-Discriminatory Treatment of Digital Products—and Article 11.9 of AUSFTA's Investment Chapter.[22] As USTR engages with Canada, the agency must monitor, deter, and ultimately investigate and act upon this policy if Australia passes the law to ensure the policy does not spread to other jurisdictions.

## Securing Strong Digital Trade Rules Ensures that U.S. Leadership and Values not those of Adversaries, are Reflected on Global Stage

Finally, a theme emerged from the hearings regarding the harms of the United States withdrawing from digital trade commitments on the global stage and how such a move would benefit the Chinese or Russian view of digital governance. While digital trade rules are criticized as an ineffective mechanism for advancing our values relating to democracy, free expression, and rule of law, such criticism misses the point–no one disputes that. However, if the United States is not leading discussions and advocating for digital trade rules with the values of the free flow of commerce and freedom of expression, China will fill the vacuum and more easily advocate for third party nations to adopt China's vision of digital authoritarianism domestically. A Digital Silk Road, the antithesis to a free and open internet, is not in our interest, but without robust engagement, its reach will only grow.

The spread of China's repressive model of digital oversight has already begun. Both Cambodia and Nepal have in recent years sought to implement "National Internet Gateways" which filter the internet and create a government-owned intranet.[23] Similarly, Vietnam passed its own version of data localization requirements in the mold of China's approach.[24] U.S. leadership in digital can combat the spread of similar efforts in the Indo-Pacific region—a key piece of U.S. diplomatic and security policy objectives—while abandoning the issue could give time for these policies to proliferate widely.

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[22] Amir Nasr, "Australia Pursues Streaming Obligations That Would Harm U.S. Service Suppliers and Workers" Disruptive Competition Project (Dec. 19, 2023) https://www.project-disco.org/21st-century-trade/australia-pursues-streaming-obligations-that-would-harm-u-s-service-suppliers-and-workers/.

[23] Adrian Wan et al., "Internet Impact Brief: Nepal's Proposed National Internet Gateway" Internet Society (Feb. 19, 2024) https://www.internetsociety.org/resources/2024/internet-impact-brief-nepals-proposed-national-internet-gateway/ ("The Cambodian government claims this will bolster national security and help crack down on tax fraud. However, the impact on Cambodian network connections will affect anyone who connects to these networks, which could have serious consequences for social and economic life and endanger privacy and security.").

[24] Justin Sherman, "Vietnam's Internet Control: Following in China's Footsteps?," The Diplomat (Dec. 11, 2019) https://thediplomat.com/2019/12/vietnams-internet-control-following-in-chinas-footsteps/.

CORRECTING THE RECORD

# Myths and Facts about Digital Trade Rules

## Myth: Digital Trade Rules Only Benefit 'Big Tech'.

## Fact: Digital trade rules benefit firms from all sectors of the economy, especially SMEs.

Small and medium-sized enterprises (SMEs) are prime beneficiaries of digital trade rules, which facilitate their ability to reach foreign markets online:

- More than 80% of top grossing apps are made by small companies.
- Over 300,000 companies are active in the mobile app market in the United States, participating in an "app economy" estimated to be worth $1.7 trillion.
- SMEs comprised 70% of the companies using Privacy Shield, a key mechanism allowing U.S.-EU data transfers.

All these firms need to transfer data, and few can afford to invest in computing facilities in every market they serve - issues that trade rules address.

By preventing a range of discriminatory barriers, digital trade rules help small businesses "achieve scale without mass" and expand their footprint with fewer resources. Foreign markets represent a key area for growth for small businesses enabled by digital services—the U.S. Census Bureau has estimated that 97.4% of the more than 277,000 U.S. companies that exported goods in 2021 were SMEs, which in turn contributed 34.6% of the country's $1.5 trillion merchandise exports. These firms typically use digital technologies to access foreign markets and thus distortive foreign policies can have a disproportionate effect on their growth and job-creating potential.

## Myth: Digital Trade Rules Hurt U.S. Workers.

## Fact: Digital trade rules sustain broad-based, high-quality U.S. jobs.

Quality jobs supported by digital trade permeate the U.S. economy, encompassing firms both large and small. Some of the biggest beneficiaries of the digitalization of the economy are traditional sectors—pharmaceutical development, health care, transportation, travel, and agriculture—supporting technology workers whose wages are 125% higher than the median national wage in the U.S. The export potential of digitally-intensive industries, and the employment they support, benefit from a fair and predictable rules-based framework for trade: government data indicates that the digital economy in 2021 generated $3.70 trillion in output, or 10.3% of total U.S. GDP, accounting for 8 million jobs, over $1.24 trillion in total compensation, and a persistent trade surplus (most recently of $300 billion). It is in our national interest to leverage this strength, not constrain it.

### Myth: Digital Trade Rules Undermine Countries' Right to Regulate in the Digital Space.

## Fact: Digital trade rules do not prevent governments from regulating effectively and appropriately.

Governments' right to regulate is explicit in trade agreements, with rules affecting not whether a country can regulate but how. Digital trade rules developed to date in agreements like USMCA (support of data flows, constraints on localization and discriminatory treatment) are narrowly targeted to provide guardrails around only the most unreasonably trade-restrictive practices, leaving most economic activity wholly in the domain of domestic regulation. Such a targeted approach avoids governments pursuing policies that unfairly discriminate in favor of local suppliers, while taking into account national policies and practices. Trade rules include flexibility based on legitimate exceptions (privacy, security, public morals, etc.). In the face of a country invoking such an exception, a trading partner must demonstrate that there is a reasonably available approach that achieves the regulatory goal – goals that a country independently sets. Thus, the key effect of a negotiated trade rule is a level of accountability between trading partners based on shared values and ensures that regulation in narrowly identified areas is developed pursuant to fair and transparent processes.

### Myth: Digital Trade Rules Undermine Consumer Privacy and Consumer Protection.

## Fact: Digital trade rules can enhance consumer protection and privacy rights.

A key innovation in recent U.S. digital trade policy is undertaking binding obligations to protect consumers generally and privacy in particular—putting this goal front and center as not only a legitimate regulatory objective, but one that countries must implement. The USMCA and the U.S.-Japan Digital Trade Agreement each included such provisions, incorporating into trade rules a binding obligation as well as OECD guidance on how to implement an effective privacy regime. In USMCA, the Parties expanded on this by also referencing the U.S.-championed APEC Privacy Framework.

At the heart of the traditional U.S. approach has been the well-established norm that privacy protections do not depend on location, and that protections can, with the right mechanisms, travel with data, minimizing the need for overly restrictive constraints on cross-border data flows. Not only are private sector entities fully capable of instituting mechanisms that can reflect the highest levels of protection different countries may set, but democratic governments have also developed principles governing governmental access to data, such as the OECD Declaration on Government Access to Personal Data Held by Private Sector Entities. Such principles can be incorporated into trade frameworks (e.g., ongoing IPEF negotiations) demonstrating that trade rules can enhance, not undermine privacy.

### Myth: Data Localization Rules are Needed to Protect Privacy and Ensure Government Access.

## Fact: Data localization mandates do not strengthen privacy or security and can actively undermine these goals.

Data localization requirements do not, in and of themselves, enhance data privacy or security. While certain sensitive data (e.g., national security data, health data, and financial information data) merits additional safeguards, such safeguards (e.g., encryption, multi-factor authentication) can be applied irrespective of location and do not require data localization. To the extent that governments need access to data for regulatory or law enforcement purposes, and where the U.S. cannot be ensured such access, identifying specific unacceptable locations would be consistent with the rule. But, a general prohibition on foreign storage is unnecessary.

Data localization requirements in specific markets often have a direct and negative impact on U.S. suppliers: such requirements typically result in superfluous investment, often in countries with less robust cybersecurity practices than performed in the United States. Accordingly, forced localization can demonstrably weaken security, since the proliferation of redundant facilities opens an additional "attack surface" for bad actors.

Apart from the security, the economic impact is obvious. The United States leads the world in data processing and storage capacity, so any requirement to move such capacity to a foreign location to serve that market undermines the clear competitive advantage enjoyed by U.S. exporters of services based on secure processing and storage.

### Myth: Digital Trade Rules Will Hurt U.S. Jobs.

## Fact: Jobs in digitally-intensive industries are growing.

Over the past decades, digitally-intensive job growth is responsible for a net gain of over 15 million jobs. This growth remains strong, with unemployment rates half those of the economy generally—supported by robust digitally-enabled exports. Even the one target of trade critics, call-center jobs, do not support the offshoring narrative: call center jobs have actually increased in the past decade, from 2.3 to 2.8 million. In short, trade rules that support the U.S. competitive advantage in the digital economy will help ensure strong U.S. job growth going forward; and a turn to localization and other protectionist measures (as seen in the EU and China) will only diminish it.

### Myth: Digital Trade Rules that Prohibit the Disclosure of Source Code Undermine a Regulator's Ability to Investigate Harms.

## Fact: Digital trade rules strike the right balance between protecting trade secrets and the public interest.

Regulators may need access to source code in limited cases, and these cases can be addressed in trade rules, as was done in USMCA, balancing such access against the harms to trade secrets and cybersecurity protections. Rules limiting access to source code are not designed to, and do not in practice, protect companies from regulatory oversight or enforcement actions. Those goals generally can be addressed through robust testing, and does not require access to source code. Regulating against commonly identified harms (bias, inequity, and other forms of discrimination) is fully consistent under digital trade rules. And, where evidence of harms emerges, particularly when it is intentional (e.g., in the motor vehicle emissions cases of a decade ago, or financial market manipulation), the rules accommodate such need for access—subject to requirements under the law to protect the trade secrets and other confidential business information. Expanding the scope of regulatory access to source code puts U.S. companies at significant risk in many markets that do not have the robust trade secret protections of the United States. To this end, trade agreements should not create new access rights to governments or third parties that are not available under existing Parties' law.

### Myth: Non-Discrimination Rules Hinder Enforcement of Existing and New Anti-Monopoly Laws.

## Fact: Prohibiting discrimination on the basis of nationality is a worthy goal that does not implicate robust competition enforcement

Critics of digital trade rules have asserted that a 20-year-old rule preventing discrimination against digital products undermines efforts to enforce or enhance competition law. The digital products rule[25] extends a 75-year-old "national treatment" rule common in trade agreements,[26] that is applicable to physical products, to their digital counterparts. Based on this rule, a country would be prohibited, for example, from imposing a tax on foreign software that was downloaded from abroad that it does not also impose on domestic software (i.e., creating a preference for domestic software). This rule has no more bearing on legitimate competition law than its older goods-rule analogue. Critics are erroneously conflating how a government treats a supplier generally with how that supplier's products are treated in comparison to those of its competitors.

Regardless of whether new competition-inspired regulation is justified, measures seeking to constrain the behavior of specific suppliers (e.g., Europe's Digital Markets Act, Korea's App

[25] e.g. USMCA 19.4, available here: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19-Digital-Trade.pdf

[26] i.e., Article III-4 of the General Agreement on Tariffs and Trade, available at https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm

store legislation) do not typically result in creating explicit "preferences" for domestic products, the target of digital non-discrimination rules.[27] Rather, these regulations typically seek to constrain specific conduct of specific firms.

CCIA has raised compliance concerns with the digital product rule in the context of efforts to impose payment obligations on U.S. digital platforms for hosting or indexing news content in Canada and Australia. The problematic discrimination identified in these instances is not vis-a-vis the internet platforms but, rather, competing foreign news products. None of this is relevant to any U.S. domestic conversation, since trade rules do not constrain burdens that the United States may choose to apply to its own suppliers.

[27] There is a separate question of whether competing domestic firms as a whole gain preferential treatment by virtue of being excluded from the scope of such regulations. That is a legitimate inquiry under the analogous national treatment rules for services, but such inquiry does not does not require analyzing treatment of those domestic firms' products.