



## House Ways & Means Trade Subcommittee Sep. 24, 2024, Hearing on Protecting American Innovation by Establishing and Enforcing Strong Digital Trade Rules

# What They Are Saying: U.S. Digital Trade Rules

At a Sep. 20 [hearing](#) titled, “Protecting American Innovation by Establishing and Enforcing Strong Digital Trade Rules,” held by the Trade Subcommittee of the House Ways & Means Committee, members and witnesses examined the importance of digital trade rules to the [U.S. economy](#), [freedom of expression and human rights abroad](#), and the ability of [small](#) and larger [businesses](#) to operate in remote markets with small workforces.

In recent years, the Office of the U.S. Trade Representative (USTR) has [withdrawn](#) from negotiating new commitments to cross-border data flows, prohibitions on countries imposing unjust data localization requirements, and restrictions on countries indiscriminately mandating the disclosure of a company’s source code as a condition for operating in a market.

However, many members of the subcommittee and the witnesses in attendance highlighted why negotiating new digital trade commitments and enforcing those that are currently on the books are paramount for pursuing U.S. economic and diplomatic priorities. Below are some of the most notable statements from the hearing.

### Digital Trade Caucus Co-Chair Rep. Darin LaHood (R-IL)

“In our increasingly interconnected world, the trade of digital goods and services is essential for American growth, innovation, and global leadership. Digital trade is more than buying and selling of goods online and encompasses a global flow of data, ideas, and talent. In 2022, digital trade encompassed more than \$2.5 trillion of U.S. economic activity and represents the fastest growing segment of global trade. As the Co-Chair of the Digital Trade Caucus here in Congress, I’m increasingly concerned about the proliferation of restrictive, and oftentimes discriminatory, digital regulatory frameworks and laws which risk curtailing American digital competitiveness.”

“In recent years, we have seen close trading partners including Canada, Australia, Korea, and the EU enact regulatory frameworks, or levy digital service taxes that risk unfair treatment of American businesses. While laws like the EU’s [Digital Markets Act] or Digital Services Act, DSA, are intended to create a fairer digital landscape and stimulate domestic competition in practice, they often discriminate against U.S. companies, posing challenges that stifle innovation and competition. I think it’s also important to remember the U.S. leads the world in technology, we lead the world in digital competition. We need to be much more aware of that when we look at what Europe and a number of other countries are doing.”

### House Ways & Means Trade Subcommittee Chairman Adrian Smith (R-NE)

“Technology products are a crown jewel of American competitiveness. If our tech sector was its own country, its economy would be the eighth largest in the world, larger than even Canada or Russia. It employs 8.9 million Americans and pays 33% more than other industries on average. However, our status as an innovation powerhouse is under threat. In recent years, our strategic and economic rivals have sought to erode America’s competitive edge through a



series of discriminatory digital trade and tax measures targeting American companies. There is no question this is contrary to our national interest...”

“America needs to return to the table. We need to get back to negotiating smart trade agreements that support our innovators, agreements with real teeth. Further, the U.S. government must have the will to enforce them. We need to make sure foreign governments know discriminatory actions will be met with a swift and decisive response from a government that supports its job creators.”

### **Digital Trade Caucus Co-Chair Rep. Suzan DelBene (D-WA)**

“... If we step back from the negotiating table until Congress acts, we run a serious risk of harming the very objectives, such as defending American companies, protecting privacy, and supporting a free and open internet, that have been core to U.S. policy for many years.”

“Obviously, protecting our intellectual property from adversaries and competitors is essential to keeping our edge and protecting the livelihoods of small business owners across the country. And that’s why the U.S. has historically opposed forced source code disclosure as a condition of doing business in a trading partner country. And we included this protection in the broadly bipartisan USMCA.”

### **Rep. Jimmy Panetta (D-CA)**

“When it comes to global leadership, does the fact that U.S. participation, you know, or lack of, does that also create a vacuum in global leadership, especially when it comes to digital trade rules that could be filled by policies proposed by other trading partners, such as Russia or China?”

### **Robert Atkinson (President of the Information Technology and Innovation Foundation)**

“Congress has the ability to do virtually anything in regulating the digital policy space, virtually anything, as long as it doesn’t discriminate in favor of American companies against foreign companies. So we could pass an AI bill if we wanted to. And it wouldn’t change anything about our need to push back against foreign countries that are using AI regulation to discriminate against American companies. We could pass, and we should pass, a national privacy bill, that would not at all preclude us from pushing back against cross border data limitations.”

“And one of the key points that I think is lost in this debate: regulation flows with the data, the idea that if you move data offshore, you no longer have to comply with the regulatory standards of that country, is just false. The Canadian government brought a case a few years ago against an American company that was doing business in Canada and the U.S., and it took Canadian personal data, put it into the U.S. and complied with U.S. law, but unfortunately, it broke the Canadian law. Canadians sued the company and they won in court as they rightly should have, because the American company violated the laws of the country they were doing business in. So cross-border data flows do not mean that you can have a ‘Get Out of Jail Free’ card.”

“Let me just close by saying this is such an important sector, as you noted, that if we don’t take stronger action, we’re going to lose this sector. And we’re going to lose the jobs and the revenue and the exports that come with it.”

### **Adrian Shahbaz (Vice President of Research and Analysis at Freedom House)**

“The Chinese and Russian governments are working with other authoritarian leaders to reshape global cyber norms in their interests. At the United Nations and other multilateral fora, they seek to legitimize their domestic crackdowns on freedom and privilege their ability to control data. If global norms further shift in favor of data localization and restrictions on cross-border data flows, there is a risk that companies in authoritarian countries and backsliding democracies will face increased demands to censor legitimate materials and hand over data about their users.”

“In places where one’s political opinions, religious beliefs, and gender or sexuality can be labeled as extremist, these trends may lead to increased persecution of journalists, lawyers, politicians, and ordinary people who speak out against the government. The United States plays a critically important role in protecting the free flow of information and data across borders – a necessary condition not only for the protection of rights but for the protection of innovation, prosperity, and security.”

### **Olivia Walch (CEO and Founder of Arcascope)**

“My company originated in a first-floor apartment about 500 feet from Michigan Stadium. I was able to grow my company thanks to SBIR funding, access to top-level talent, and an unparalleled innovation ecosystem. The United States is the best place in the world for small tech. But my company cannot invest resources to retool our product for a fractured trade environment in the same way that larger companies can.”

“Without proactive digital trade leadership from the United States, the already entrenched players will become more entrenched and global markets that U.S. startups like mine can reach will become smaller. With strong leadership on digital trade from the United States, companies like Arcascope can continue to do what we do best—build—and compete on a global stage.”

### **Evangelos Razis (Senior Manager of Public Policy at Workday)**

“U.S. leadership on digital trade is vital for maintaining the global free flow of information and an open digital economy. When the U.S. led on digital trade, our closest allies and partners joined to develop and commit to high-standard rules. Today, these countries—Australia, Japan, the United Kingdom, and Singapore, among others—have been crucial in supporting rules that align with U.S. values and interests.”

“Unfortunately, USTR’s decision isolates the U.S. at a moment when data localization requirements and other foreign trade barriers continue to grow. If the U.S. cedes leadership, the impacts will be felt not only by businesses and employees, but by everyone who seeks a free and open internet and an ‘innovative, secure, and rights-respecting digital future.’”