2024 Key Threats to Digital Trade

The Americas

This document accompanies CCIA's annual National Trade Estimate Report filing. Information and data is current as of October 17, 2024. For the most recent dataset visit digitaltradebarriers.ccianet.org.

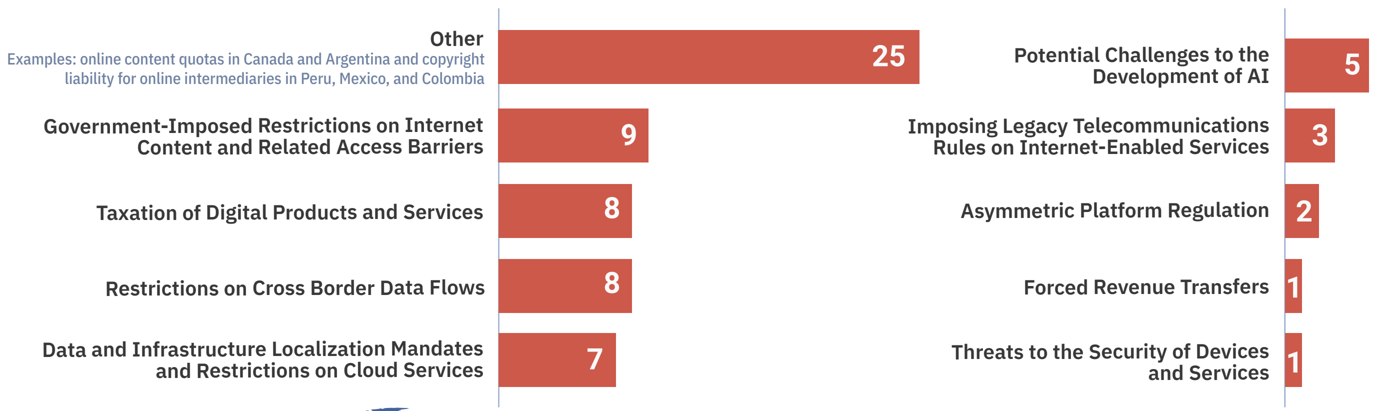
The United States has enjoyed strong diplomatic and economic relationships with the countries in the Americas for centuries. Services drive the modern benefits for U.S. exports in this mutually beneficial relationship, as are digital services. The U.S. generated **$167.5 billion in exports of digitally-deliverable services** to the region in 2023, bringing numerous positive externalities for business operations and consumers in the region and a **trade surplus of at least $60.1 billion** in the sector in 2022.

This region includes an analysis of policies in Argentina, Brazil, Canada, Chile, Colombia, Cuba, Mexico, Panama, and Peru.

The United States has formalized its trading partnership and economic cooperation with countries in the region in several fora, including the U.S.-Mexico-Canada Free Trade Agreement, several bilateral treaties and trade agreements, and the more recently announced Americas Partnership for Economic Prosperity. As work is done to advance these initiatives, the United States should ensure partners do not restrict the ability of U.S. firms to enter or expand into their markets and engage in cross-border delivery of goods and services.

This engagement comes at a critical moment in the relationship. Countries in the Americas have enacted policies that hinder the ability of U.S. digital services to operate. The following is excerpted from CCIA's annual comments submitted to the Office of the U.S. Trade Representative regarding its National Trade Estimate report—including broad takeaways from the region followed by details of key trends.

Key Threats to the U.S.–Americas trading relationship in 2024[1]



CCIA identified **69** digital trade barriers in the Americas region

39 trade barriers enacted

30 trade barriers developing

1 The following is excerpted from CCIA's annual comments submitted to the Office of the U.S. Trade Representative regarding its National Trade Estimate report—first, there are broad takeaways from the region followed by details of the trends identified in the region. https://ccianet.org/library/comments-for-the-2025-ustr-national-trade-estimate-report/

Digital Trade Barrier Trends for the Americas in 2024

Government-Imposed Restrictions on Internet Content and Related Access Barriers

- **Cuba:**
  - There have been many cases of the Cuban government disrupting access or blocking certain Internet services to stifle political dissent and organization. Government ownership and control of the Empresa de Telelcommunicaciones de Cuba S.A, the telecommunications services provider for the country, increases the risk of censorship.
  - In August 2021, the Cuban government adopted new regulations that ban dissent against the government on social media, making it illegal to criticize "the constitutional, social and economic" rules of the country or that provoke acts "that alter public order." The definitions behind false information and public safety are vague and left in the hands of the government authorities.

- **Argentina:**
  - On July 12, the **Bill on Freedom of Expression, the Right to Information, and the Exchange of Ideas on Social Networks and Internet Search Engines** was introduced in the Senate. The Bill would restrict social networks from exercising its own content moderation policies by prohibiting social media services providers from removing content, unless it involves judicial orders and other narrow exceptions such as criminal activity or third-party claims. Social media providers would also be required to issue notifications in the case of removals and provide users with the opportunity to challenge removals. The Bill would also implement principles of non-discrimination and equality for the algorithms and programs used by companies to moderate content, which could lead to burdensome interference in online speech.

- **Canada:**
  - On February 26, Canada's government unveiled its legislative proposal for the **Online Harms Act**, which would create the nation's first federal online content moderation regime. The Bill is currently being considered in the House of Commons. The Bill would create a new legislative and regulatory framework that would define harmful content such as content that foments hatred, incites violence, or that is being used to bully a child, and would impose duties upon social media services, among other measures, although it excludes private communications.
  - The bill would impose 24-hour deadlines for companies to assess user flags for "content that sexually victimizes a child or revictimizes a survivor or intimate content communicated without consent" and remove or dismiss it. The new law would also create the Digital Safety Commission and give the new agency broad powers to administer and enforce the Act. The Commission has the power to issue codes of conduct, promulgate regulations, convene hearings (that they can make secret if they determine it to be necessary), fine companies up to 6% of global revenue, and execute inspections (with wide-ranging powers in this regard), and contemplates that companies regulated through this law could be required to fund the Commission. Further, the bill gives the Commission sweeping powers that could include issuing orders or initiating investigations that undermine encryption through scanning mandates.
  - Although private messaging is explicitly excluded from the legislation, other end-to-end encryption services—including file transfers, contact sharing, cloud storage, shared photo albums, backups of files, and collaboration software—could be swept in through efforts to require companies to report on harmful material on their services.

Taxation of Digital Services

- **Colombia:**
  - In November 2022, the Colombian government approved a significant economic presence (SEP) framework that would impose a new tax on gross income earned by overseas providers of goods and digital services in-country. The SEP rule (**Law 2277/22, Article 57**) distinguishes between goods and digital services, though exporters of both are subjected to certain combined obligations as well. For both goods and services, an entity is deemed in-scope if it has a deliberate and systematic interaction with the Colombian market, defined as interacting with 300,000 or more users or customers located in Colombia. Further, an entity is treated as in-scope if it earns a gross income of roughly $300,000 or more from consumers within Colombia. The tax applies to both the sale of tangible goods and certain digital services, such as cloud services. Because of this distinction, the SEP provisions affect companies in the digital services sector more than those in other industries. This SEP provision contradicts the OECD two-pillar framework process and the MLC, which Colombia signed and agreed to.

  - The rule institutes a 10% withholding tax on a non-resident with an entity determined to be an SEP in Colombia. The tax is applied at the source, on the total payment earned by the non-resident for the sale of goods and/or provision of services, including cross-border sale of goods and digital advertising. This 10% rate is high compared to other enacted DSTs and similar measures. A non-resident can, if it registers in Colombia, avail itself of an alternative, a 3% tax on the gross income earned through selling goods and/or providing digital services. The SEP rule entered into force on January 1, 2024, marking what appears to be the first DST-like tax imposed in the Latin American region. Columbia recognizes that the measure may be inconsistent with the OECD framework and indicates that it will be adjusted if and when the OECD framework comes into force. This rule is currently being applied on US technology companies who operate within the country.

  - These measures are inconsistent with global tax norms, which favor taxing income at the permanent establishment associated with income generation, as well as the evolving principles being developed at the Organisation for Economic Co-operation and Development to address global tax fairness.

  - Imposing a gross-basis tax on non-residents of Colombia on income derived from cross-border sales impedes U.S. sales into the Colombian market. In addition, since the U.S. does not have a tax treaty with Colombia, implementation of this measure will likely result in double taxation for U.S. companies. To the extent that this measure results in the treatment of U.S. manufacturers, distributors, content creators, and service suppliers being treated less favorably than Colombian entities, it also raises serious issues of Colombia's compliance with its trade obligations under both the WTO and the United States-Colombia Trade Promotion Agreement which prohibits discriminatory treatment of U.S. suppliers, including with respect to taxation measures.

- **Mexico:**
  - On September 8, 2020, the Secretary of Finance & Public Credit, Arturo Herrera, presented to the Mexican Congress the legislative project for the Government's Budget for 2021. Included in the proposal is the implementation of a **"kill switch,"** which is an enforcement mechanism that the Mexican government initially proposed in their 2020 Budget against non-resident entities that do not comply with the application of the VAT on non-resident supplies of digital services to Mexican consumers. The measure was reintroduced and entered into force on January 1, 2021.

  - The regulation empowers tax authority to work with the telecom regulator to non-resident Internet platforms, removing them from accessibility to Mexican users. At time of filing, the provision hasn't been used as the vast majority of U.S. Internet companies have already been registered and have been complying with fiscal obligations.

Canada:

- On June 20, **Bill C-59**, which included a law implementing a retroactive 3% digital services tax DST, received Royal Assent. Canada's DST targets digital suppliers, while sparing domestic rivals providers in parallel industries, such as brick-and-mortar retailers or traditional broadcasters. The definitions of covered services exclude Canadian competitors that provide like services through non-digital means, as it applies to revenues derived from Online marketplace services; Online advertising; Social media services; and online User data. All of these are sectors where U.S. companies are competitive relative to Canadian and other non-U.S. companies. Canada's proposed DST also applies only to entities that earn annual revenues of €750 million globally and C$20 million in "Canadian digital services revenue," which primarily captures U.S. companies while carving out most Canadian competitors.

- The DST is not only discriminatory against U.S. companies, but the policy is also unreasonable. Though Canada's tax was passed in 2024, it applies retroactively to January 1, 2022, requiring those in scope to come up with large payments for past activity that is not reflected on their current balance sheets. The retroactively is particularly harmful because the DST applies to gross revenues of the targeted U.S. companies rather than income or profits—contravening international norms; revenues are determined to be Canadian-sourced based on a vague "reasonableness" test; the DST introduces a novel requirement for companies to collect and track user location rather than rely on the company's location, making compliance difficult and costly; and the DST applies to companies on a retroactive basis to January 1, 2022, which is highly burdensome.

- The DST would disproportionately harm U.S. companies—it will cost U.S. companies up to $2.3 billion annually, money that would ultimately be lost from the U.S. tax base. Additionally, up to 3,140 American workers would be estimated to lose their jobs because of this policy. The Parliamentary Budget Officer in October 2023 estimated that the tax would bring the Canadian government C$7.2 billion in five years, the vast majority of which would be paid by U.S. companies. It is expected that a majority of the revenue collected would be from U.S. companies. The targeted nature of the DST, based both on revenue thresholds and the definitions of the covered services, places Canada in conflict with its commitments under Chapters 14, and 15 of the USMCA with respect to cross-border trade in services and investment, WTO most-favored-nation commitments in the GATS. Like EU Member states' analogous taxes, it is also subject to Section 301 actions under U.S. law.

- CCIA is greatly appreciative of USTR's persistent efforts to address Canada's DSTs, including its decision on August 30 to request dispute settlement consultations with Canada under USMCA. CCIA encourages USTR to continue pursuing the case against Canada's DST until the harm experienced by U.S. companies, and the U.S. tax base, are fully addressed and rescinded.

Brazil:

- On September 5, 2024, Sen. Flavio Azevedo issued a request to the Minister of Finance to initiate more aggressive taxation of big technology companies. On October 3, 2024, Brazil's Ministry of Finance issued Provisional Measure No. 1,262/24, a 15% minimum tax on multinationals operating in Brazil. Brazil described this as a Social Contribution on Net Profit, ostensibly in line with the OECD's Pillar II scheme. It will require implementing legislation, and deserves careful monitoring for consistency with OECD principles and WTO non-discrimination obligations.

Restrictions on Cross-Border Data Flows

Brazil:

- In 2018, Brazil passed a privacy law, **Lei Geral de Proteção de Dados** (LGPD) that went into effect in August 2021. The law is closely modeled after the EU's General Data Protection Regulation (GDPR) and has extraterritorial scope. However, the LGPD lacks a number of provisions in the GDPR designed to lessen the burden on smaller firms. Further, the LGPD does not permit cross-border data transfers based on the controller's legitimate interests but rather lists ten instances in which cross-border data transfer is permitted. In addition, the national authority is tasked with determining whether a foreign government or international organization has a sufficient data protection scheme in place before any data is authorized to be transferred.

- On August 23, 2024, the Brazil Data Protection Agency (ANPD) published the **International Transfer of Personal Data Regulation**. The regulation implements a framework to identify jurisdictions deemed to have adequate privacy protections for the transfer of data, with the ANPD requiring "equivalence in the level of personal data protection" -- a regime similar or comparable to the LGPD, while not needing to be identical. The regulation allows for the use of standard contractual clauses (SCCs) in four categories: general information, mandatory clauses, security measures, and additional clauses and annexes. This regulation is largely modeled off the GDPR, but Brazil's SCC requirements differ in not prescribing specific templates, except with respect to mandatory clauses. The ANPD can certify foreign SCCs as adequate but the ANPD board must approve and publish SCCs and their applicability to Brazil's SCCs before they enter effect. To date, many aspects of this framework remain incomplete. However, the regulation explicitly states that the international collection of personal data (such as personal data from a subject carried out directly by a foreign processing agent) does not constitute an international data transfer.

- Industry reports that the Department of Innovation of the Ministry of Development, Industry, and Trade (MDIC) is considering policies and legislative proposals related to the "data economy" that is based on the European Union's Data Act. As with the EU, these proposals would likely impose discriminatory obligations on U.S. companies regarding the use of non-personal data. Although a formal proposal has not been released, a public consultation on the issue is expected by the end of the year, with a likely goal being the adoption of a law similar to the Data Act. Industry is concerned that Brazil's proposal could unfairly target U.S. companies through specific thresholds designed to benefit local incumbents.

Canada:

- The Government of **Quebec passed privacy legislation** in September 2021 that, amongst other things, would make data transfers extraordinarily difficult. The law entered into effect on September 22, 2022, with various provisions entering into effect in phases over three years. The U.S. International Trade Commission identified the law as a barrier to digital trade in its "Year in Trade 2021" report published in August 2022.

Chile:

- Chapter 20-7 of the *Comisión para el Mercado Financiero's* compilation of updated rules, **Recopilación Actualizada de Normas Bancos**, requires that "significant" or "strategic" outsourcing data be held in Chile.

- The same requirement is outlined in **Circular No. 2**, which is addressed to non-banking payment card issuers and operators. In effect, these regulations can apply to any confidential records. In the case of the international transfer of such data, transfer may occur but duplicate copies of such records must be held in Chile.

Data and Infrastructure Localization Mandates and Restrictions on Cloud Services

- **Mexico:**
  - On April 21, 2020, new **regulations by the Central Bank and the National Banking and Securities Commission** came into force, mandating electronic payment companies using third-party cloud providers for data storage to implement backup options. Such options risk incentivizing data localization or reliance on untrusted third vendors and could violate the USMCA's financial services provision prohibiting data localization. It could also lead to U.S. cloud services being disadvantaged in the region compared to local data center firms.
  - Article 50 of the draft provisions would require IFPEs that use cloud computing services to have a secondary infrastructure provider, once they reach certain transaction thresholds. Either this provider must have in-country infrastructure, or its controlling company must be subject to a different jurisdiction than that of the first cloud provider. A similar requirement is being imposed on financial service providers that have requested to participate in Mexico's national payments system (SPEI), regulated and operated by the Central Bank. Industry reports that financial sector regulators, most notably the Central Bank, have been requiring financial service providers to store data in Mexico.
  - Article 49 would establish an authorization model based on a high degree of discretion and lack of transparency for the use of cloud computing services. These provisions would also conflict with the localization principles established in USMCA digital and financial commitments.
  - The National Banking and Securities Commission administers approvals, a process that industry is concerned requires extensive resources and discriminates against non-Mexican providers, as data centers in Mexico are eligible for a shorter and more streamlined notification process. These rules represent a de facto data localization requirement, as U.S. and foreign firms are already subjected to a time-consuming and complicated process for approval. Industry is encouraged by the United States' statements (including from the U.S. Congress) that these obligations on cloud services providers and electronic payment fund institutions could hinder U.S. competitiveness in the Mexican market. CCIA urges USTR to continue to press Mexico to remove these requirements, as they serve as a de facto requirement for U.S. companies operating in the market to partner with inexperienced local suppliers or untrustworthy foreign suppliers such as Huawei, a major investor in cloud services in Mexico.
- **Panama:**
  - **Resolutions 52 (2021)** and **03 (2024)** of the Government Innovation Authority AIG require government entities using cloud services for functions that are determined to be critical, relating to state security, or involving sensitive institutional data that are hosted on servers abroad to bring the data back to Panama by Dec. 31, 2024. These resolutions undermine the ability of foreign companies to continue serving the government in its functions. The resolutions undermine cross-border data flows, harm Panama's chances of serving as a regional hub, could restrict the deployment of new services such as Generative AI, and will introduce cybersecurity vulnerabilities.
- **Brazil:**
  - In August 2023, the Brazilian Senate introduced **Bill of Law N° 4097, DE 2023**, which would amend a 2014 law to implement new "digital sovereignty" measures under the General Data Protection Law. Under the legislation, IT companies offering services in Brazil would have local ownership and control obligations. These companies would be required to have 25% of the voting share capital owned by Brazilian nationals and/or Brazilian companies (those that are headquartered in Brazil or incorporated under Brazilian law). Since such a requirement discriminates against foreign suppliers, and is thus inconsistent with Brazil's GATS obligations, USTR should urge Brazil to reject this legislative proposal.

- On June 21, 2024 the Brazilian government published its **2024-2027 National Digital Government Strategy**. The Strategy details the government's plans to harness technology to reduce barriers to access for public services, including through the development of digital public infrastructure such as a digital ID. The U.S. government should monitor these developments to ensure the rules associated with Brazil's digital public infrastructure plans do not require U.S. companies to partner with or purchase from domestic companies or undermine civil liberties by intruding on personal privacy.

Potential Challenges to the Development of AI

Brazil

- On May 12, 2023, **Bill No. 2338** was introduced in the Brazilian Senate to create a regulatory framework for AI technologies. As written, the Bill specifies requirements for AI systems to operate in Brazil, including risk assessments and classification. The Bill adopts a blanket approach towards AI applications, imposing excessive reporting obligations on high- and low-risk AI offerings, neither of which are well defined. Concerningly, the proposal would impose a wide-ranging approach to AI regulation that could bring low-risk applications, such as everyday business functions, into the scope of the regulations. The Bill also does not clearly differentiate between developers and deployers of high-risk AI systems, creating regulatory uncertainty and imposing excessive burdens on basic research and innovation. The bill also contains copyright provisions that extend far beyond proposals floated elsewhere globally, which would require developers to provide compensation for any Brazilian content used to train AI models. This obligation would effectively result in generative AI features not being developed or used in Brazil. The bill will severely restrict U.S. AI developers, as well as other U.S. businesses that deploy AI-powered services, from offering their up-to-date products and services in the Brazilian market, often the source of their competitive advantage. This would harm U.S. companies that compete with Chinese and other foreign providers.

Canada

- The **Artificial Intelligence and Data Act** seeks to establish "common requirements, applicable across Canada, for the design, development and use" of AI systems. The Act uses a vague definition of AI systems, leaving interpretations that could lead to the disclosure of trade secrets, excessive punishments for innovators, and restrictions on services trade for online programs. "High-impact" AI systems are not defined in the bill and are set aside for elucidation in future regulations, while also putting legal obligations on individuals or companies who "develop or make available for use the artificial intelligence system or manage its operation" to determine whether or not a system is "high-impact" or risk punishment of a fine. The lack of clarity regarding "high-impact" AI systems is concerning as it will inform the extent to which this legislation applies to firms currently developing technology given the scope and ability of the Minister of Innovation, Science and Industry to regulate them. The proposal also includes monetary penalties of up to 3% of global revenues and introduces a criminal enforcement provision for non-compliance, which represents a unique addition to AI regulatory proposals. This legislation could introduce an overly burdensome regulatory framework, which would in turn endanger interoperability across the continent for services subject to these obligations.

- On July 7, 2024, the Competition Bureau concluded its open consultation on its discussion paper on AI and competition. The paper is part of the Bureau's broader inquiry on how competition is developing in AI markets, the potential for regulation to protect and promote competition in AI markets, and potential measures to address competitive harms arising from AI. Generally, however, the market for Generative AI includes many participants, and there are no indications that access to AI inputs has impeded market development or created competitive harm. Existing competition rules in Canada are sufficient to address any future problems, such as the potential for algorithmic collusion.

Imposing Legacy Telecom Rules on Internet-Enabled Services

Brazil

- The Brazilian Telecommunications regulator (ANATEL) in 2023 launched a public consultation regarding the regulation of “Value Added Services” (VAS) (e.g., internet services), including exploring the viability and appropriateness of network usage fees in Brazil. The consultation sought input on whether there is a need for specific regulations targeted at large content and application suppliers (CAPs) offering services over broadband networks, including new remuneration obligations. A proposal to impose network usage fees on “large” companies would by definition discriminate against U.S. internet services, given their popularity in Brazil.

- ANATEL issued a second consultation focused on network usage fees that concluded in May 2024 in which it reiterated many of the misguided arguments suggesting that remuneration schemes between online services providers and internet service providers are necessary and beneficial to the broader connectivity ecosystem. The Minister of Communications has publicly supported network usage fees and argued that ANATEL has the authority to impose them. One ANATEL Commissioner has publicly expressed that he supports network usage fees, and the ANATEL Chair has suggested that the agency will put forward network sustainability regulations in the coming years.

- On September 7, 2024, Sen. Angelo Coronel introduced **Bill of Law 2804/2024**, which includes giving ANATEL authority to oversee a wide range of internet services and requires digital services suppliers to contribute 5% of their gross operating revenue in Brazil to the Universal Fund for Telecoms Services. The legislation avoids specific prescriptive mandates, but it does grant ANATEL broad discretionary authority to set the definitions and draft rules. As such, the bill would empower ANATEL to require U.S. service providers to contribute to the telecommunications and transmissions infrastructure of Brazilian companies—some of which compete against these U.S. firms in the realm of content and streaming—even though the U.S. internet services do not have any direct access to or control over the infrastructure relevant to the Fund. As drafted, this law could violate the principle of competitive neutrality under the WTO’s rules governing universal service, as Brazilian suppliers would receive preferential treatment at the expense of foreign suppliers that are unable to access the Fund (including through affiliates).

Asymmetric Platform Regulation

Brazil

- In November 2022, **Bill 2768** was introduced in Brazil’s Congress. This bill would authorize ANATEL as the primary regulator of “digital platforms.” The bill also prescribes a regulatory framework for “digital platforms” that offer services to users in Brazil without clearly delineating specific requirements needed to comply. Instead, it provides ANATEL with broad discretionary authority to define terms and create rules. Due to the opaque language in the bill, companies have little certainty regarding the specific obligations that would apply, and at a minimum, would face increased compliance costs and could require restructuring their business operations.

Canada

- On November 24, 2022, the Canadian Government opened a consultation seeking feedback on its initiative to update the **Canadian Competition Act**. The consultation specifically requests public comment on data and digital markets, asking whether “sector-specific mechanisms” should be adopted and for suggested approaches for intersecting with privacy and data protection. The Government released a report, dubbed “The Future of Competition Policy in Canada,” on November 22, 2022, as part of this effort. The report concluded that reforms could be necessary to address several modern-day competition issues, including “ensuring the necessary elements are in place to remedy unilateral forms of anti-competitive conduct, such as abuse of a dominant position, notably with regard to large online platforms” and “taking into account the implications of new technology and business practices for deceptive marketing provisions.”