

United States Senate

WASHINGTON, DC 20510

October 13, 2023

The Honorable Katherine Tai
Ambassador
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Tai:

As the Administration continues negotiating the Indo-Pacific Economic Framework for Prosperity (IPEF) and other international trade initiatives—including the recently announced United States-United Kingdom trade pact—we write to urge you to advance common principles that should serve as a baseline for new data governance and digital trade rules. From general manufacturing to artificial intelligence, the role of digital trade in the global economy has never been more consequential. It is a shared understanding throughout the global community that establishing digital policies to regulate the transfer and use of information, data, software, and technology will drive the future of international trade. Fortunately, the digital initiatives within IPEF—if effectively negotiated in close coordination with Congress—present the United States with an opportunity to lead the development of guiding principles for the future of trade and global commerce. As such efforts progress, it's crucial to collaborate closely with IPEF partners, and engage proactively with other multilateral forums such as the G20, the Organization for Economic Cooperation and Development, the Asia-Pacific Economic Cooperation, and the Americas Partnership for Economic Prosperity.

Through our ongoing trade engagements, the United States should begin to build on the high-standard digital commitments in the United States-Mexico-Canada Agreement (USMCA) and the U.S.-Japan Digital Trade Agreement (US-J DTA). As affirmed by the inclusion of bipartisan digital trade principles in S. 2226, the National Defense Authorization Act, as passed by the Senate on July 27, 2023, the United States will be best served by advancing trade policies with our partners in the Asia-Pacific region and across the globe that build on the success of these existing pacts, while adding new features to further promote digital inclusiveness, strengthen consumer confidence and trust, and protect personal information and privacy.

Ultimately, it is critical that the United States assume a leadership role in digital trade, as it is a fundamental catalyst for American competitiveness. Doing so presents a real opportunity to counter efforts by our trading partners, including China and the European Union, to pursue digital sovereignty policies that restrict or prevent American companies from operating in their markets. It also presents a real opportunity for small and medium-sized enterprises (SMEs) to export and reach customers globally, allowing them to thrive and grow. For example, a notable development has been the expansion of e-commerce platforms, which create commercial opportunities for everyday Americans by providing integrated payment solutions, trust mechanisms, and effective dispute settlement procedures. The digital economy is a major source

of existing and future U.S. jobs and growth, and strong digital disciplines can unlock new global opportunities to benefit America's manufacturers, workers, and small businesses.

In particular, there are a number of key principles that the United States should pursue—in IPEF as well as in other current and future negotiations—to make any new digital trade standards transparent, inclusive, interoperable, and beneficial, particularly for SMEs.

First, the free flow of data is essential for fueling the digital economy. Today, the adoption of data localization requirements is becoming a major barrier for businesses of all sizes, with nations worldwide adopting excessively stringent regulations to confine data within their borders. The impacts of these policies are especially harmful for e-commerce and internet-enabled services within countries as they increasingly depend on cross-border data flows. To unleash the potential of digital trade for economic growth and job creation, the United States must advocate for policies promoting the unencumbered flow of data, including a prohibition on data localization and a permanent moratorium on custom duties for electronic transmissions.

Second, the United States should build a trusted framework with our trading partners and allies to align on digital policies and develop a unified set of standards, enabling more seamless data flow across borders. The most articulate concept of such a framework was put forward by Japan at the World Economic Forum in Davos: “Data Free Flow with Trust,” which suggests a multilateral approach where countries agree to raise privacy standards to facilitate cross-border data flows. We strongly urge the Administration, in close consultation with Congress, to pursue a mechanism for facilitating cross-border data flows as early as possible.

Third, the IPEF and future negotiations must ensure that the benefits of digital trade extend to SMEs, working to bridge the digital divide. One of the greatest impacts of the digital economy is its ability to help small businesses establish and expand, both domestically and internationally. A starting point for such an effort could draw inspiration from the Digital Economy Partnership Agreement (DEPA), a partnership among New Zealand, Chile, and Singapore that spotlights SMEs and enhances the information and tools available to them. For instance, DEPA provisions on e-invoicing should encourage the growth of small businesses and enhance their global reach.

Fourth, establishing basic privacy standards specifying what data can be collected and retained by companies will help protect personal consumer information and other sensitive data. The scope of potential cybersecurity threats crosscuts the digital space—including cybertheft of intellectual property and personal data and manipulation of online information—as well as the physical space—including critical infrastructure and the “Internet of Things” (IoT), which relies on interconnected software to network services. The United States should consider reasonable domestic stakeholder concerns about potential risks related to the transmission of sensitive data and work with our partners to appropriately mitigate global cybersecurity and data privacy risks.

These principles are foundational for developing multilateral and more robust digital trade arrangements. Further, it is imperative that the digital chapters in the USMCA and US-J DTA serve as a floor, not a ceiling, in crafting enforceable digital trade rules, and the Administration

should take immediate action to prioritize the establishment of ambitious and binding obligations.

Thank you for your attention to this important matter, and we look forward to continuing this critical work with you.

Sincerely,

A handwritten signature in blue ink that reads "Tom Carper". The signature is fluid and cursive, with a long horizontal flourish at the end.

Thomas R. Carper
United States Senator

A handwritten signature in blue ink that reads "Todd Young". The signature is cursive and somewhat stylized, with a long horizontal flourish at the end.

Todd Young
United States Senator