

United States Senate
WASHINGTON, DC 20510

March 19, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Biden:

We write today to express our opposition to the United States Trade Representative's (USTR) decision to withdraw its support for long-standing U.S. government positions on digital trade, data localization, and source code at the World Trade Organization (WTO). This decision will create uncertainty and directly harm American innovators and small businesses that rely on the free flow of data and rules-based digital trade.

Ambassador Katherine Tai claimed recently that the United States does not have a position on digital trade, but Congress has been clear on its position. In 2015, Congress passed the Bipartisan Congressional Trade Priorities and Accountability Act, which directed USTR to "ensure that governments refrain from implementing trade-related measures that impede digital trade in goods and services, restrict cross-border data flows, or require local storage or processing of data." Then in 2020, Congress passed the United States Mexico Canada Agreement Implementation Act, which preserved barrier-free treatment for digital trade, prevented data localization requirements, and banned the forced transfer of intellectual property in North America. The chapter on digital trade was meant as a model for future trade agreements and sets a strong, shared position between Congress and the executive branch on digital trade. USTR's reversal is a rebuke of bipartisan agreement on these issues since 2015.

American innovators and businesses of all sizes engage in digital trade. The free flow of data, unimpeded by tariff and non-tariff barriers, gives a mom in a rural American town with a small Etsy shop of handmade goods the ability to sell to customers around the world. It allows manufacturers to access supply chain management software from the most innovative developers and share best practices between industry partners. Every sector utilizes the digital economy and removing barriers to entry gives small businesses the chance to compete globally, reach economies of scale, and remove the impact that geography once had on trade.

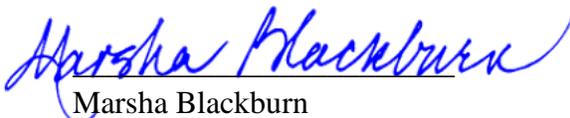
Many countries have data localization requirements, meaning that data collected must be stored in that country. Data localization requirements are a direct barrier for American small businesses to operate abroad due to the immense capital required to construct or lease data storage facilities, as well as to employ people with legal expertise to comply with diverse international rules. Some countries allow for American companies to contract data storage with local businesses; however, doing so can limit oversight over the security of data, leaving

businesses and consumers potentially vulnerable to cyberattacks and data theft. Without U.S. leadership, data localization requirements will grow in adoption abroad and it will become infeasible for American companies to engage with foreign customers. Yet the large firms that are the target of this policy change will be able to afford the massive compliance costs associated with data localization.

The protection of intellectual property is the backbone of innovation in America. Our laws incentivize individuals and small businesses to create new software, goods, websites, apps, and so much more. Protecting proprietary source code for innovative technologies, especially for small businesses that rely on licensing that technology, is paramount. Many countries do not protect intellectual property in the same manner as the United States, leaving American innovators and small businesses subject to intellectual property theft by individuals abroad. By backing away from positions that ensure the protection of intellectual property rights, the U.S. government is opening the door to additional theft by adversaries like China, as well as disincentivizing future innovation by American companies.

Ambassador Tai's decision to pull American support for these protections must be reversed, as it would forfeit an area of American leadership in the world economy. Further degrading of leadership on these issues will allow for adversaries like China to write protectionist digital trade rules that undermine the rule of law, open American businesses to additional intellectual property theft, and harm the millions of small businesses that are the lifeblood of the American economy. The United States must remain a world leader in innovation and the digital economy; unfortunately, USTR's policies will undermine our ability to do just that.

Sincerely,



Marsha Blackburn
United States Senator



Mike Crapo
United States Senator



John Thune
United States Senator



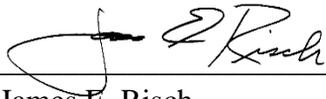
Ted Budd
United States Senator



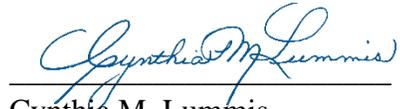
John Barrasso, M.D.
United States Senator



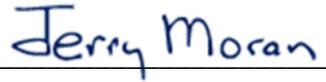
Marco Rubio
United States Senator



James E. Risch
United States Senator



Cynthia M. Lummis
United States Senator



Jerry Moran
United States Senator

CC: U.S. Trade Representative Katherine Tai