

[EXTERNAL] Re: Intro - Google

From: Darryn Lim <(b) (6)@google.com>
To: "De Lima, Deanne E. EOP/USTR" <deanne.e.delima@ustr.eop.gov>, "DeLuna, Jillian A. EOP/USTR" <jillian.a.deluna@ustr.eop.gov>, "Tanner, Robb EOP/USTR" <robert_tanner@ustr.eop.gov>
Cc: Nicholas Bramble <(b) (6)@google.com>
Date: Thu, 23 Jan 2025 04:47:14 -0500

Hi Deanne - thank you very much for the introduction.

Hi Jillian, Robb - pleased to e-meet you. Would you be available sometime the week of February 3-6 for a short introductory call? I'm based in Singapore and am available at 8:30-9:00 a.m. Eastern time Monday through Thursday.

Thanks and looking forward to connecting with you.

I'm also looping in my manager, Nick, who's based in D.C.

Best,
Darryn

Darryn LIM | APAC Head of Trade Policy & Competitiveness | (b) (6) | GOOGLE

On Wed, Jan 22, 2025 at 5:46 AM De Lima, Deanne E. EOP/USTR
<Deanne.E.DeLima@ustr.eop.gov> wrote:

Hi Jillian,

Wanted to introduce you to Darryn Lim, APAC Head of Trade Policy & Competitiveness for Google. We had a quick call this morning on workshop planning for SOM1, but he is interested in connecting with you to learn more about digital trade plans for 2025, not only for APEC but also in the WTO context and otherwise.

Deanne de Lima

Assistant USTR for Japan, Korea, and APEC (Acting)

Office of the U.S. Trade Representative

m. (b) (6)

[EXTERNAL] Re: updated Platform Regulation paper

From: Jonathan McHale (b) (6) @ccianet.org>
To: "Pietan, Scott J. EOP/USTR" (b) (6)
Date: Tue, 04 Feb 2025 12:01:52 -0500
Attachments: CCIA two-pager on Korea Platform Regulation 2.4.24.docx.pdf (369.01 kB)

Sorry, here it is. Also will send you what we sent the KFTC, when asked about comments on other markets.

On Tue, Feb 4, 2025 at 11:13 AM Pietan, Scott J. EOP/USTR <(b) (6)> wrote:

Jonathan – Thanks for stopping by last week. Can you send me an electronic copy of your updated paper on Korea's Platform Regulation proposals? Thanks, Scott

Scott Pietan

Deputy Assistant U.S. Trade Representative for Korea

Office of the U.S. Trade Representative

Tel. +1-202-395-9646

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Jonathan McHale

Vice President for Digital Trade

(b) (6) @ccianet.org

(b) (6)



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A Solution in Search of a Problem, with Adverse Effects on U.S. Businesses Korean Legislative Proposals on Platform Regulation

Introduction and Summary

Over the past year, Korea has been actively considering a range of legislative proposals, modeled on the EU's Digital Market Act (DMA), to impose prescriptive regulation on select digital service suppliers, based (like in the EU) on arbitrary definitions and thresholds. The [latest bill](#), reflecting recommendations of the Korea Fair Trade Commission, was introduced on October 28. Like the DMA, these proposals are designed to curb certain conduct deemed presumptively anticompetitive, despite being common business practices that often have pro-competitive effects and enhance consumer welfare. Market dynamics in Korea make this approach particularly questionable: unlike in the EU, where failure to nurture internet-enabled companies prompted heavy-handed intervention, Korea boasts a thriving homegrown digital ecosystem representing a diverse and growing number of successful companies.

Despite this key difference, proponents of platform regulation in Korea are using the EU's approach of an arbitrary mix of hand-crafted sectoral definitions and financial and other market thresholds to selectively target specific companies. These proposals have focused on "marketplace" services, search, video, social networking, operating systems, and advertising; with thresholds and exemptions defined by levels of revenue, market capitalization, number of users, market share, and/or number of market participants. Although proposals appear to scope in two Korean digital platforms (Naver and Kakao), they exclude major Korean companies (Samsung, LG, SK, EMart, Lotte) and new Chinese entrants (Alibaba, Tencent, Temu, Shein and Tik Tok)¹.

The sudden influx of Chinese firms (whose cross-border sales doubled in 2023²) is illustrative of both the dynamism of the Korean market but also the potential security risks this new entry poses, exacerbated if these firms gain a regulatory advantage. While falling below proposed thresholds, Chinese firms as a group are expected to earn over \$2 billion in Korea this year, and acquire (in total) over 30 million Korean subscribers.³ Given the importance of U.S.-Korea security ties, providing preferences to operators in a data-intensive sector who, by choice or mandate, maintain close links to the Chinese government raises serious concerns.

Based on the arbitrary nature of Korea's approach, its impact on select market participants and the disproportionate effect it will have on successful U.S. companies, U.S. (and Korean) industry have pressed for a more deliberative process before rushing into legislative proposals. Notably, Korea has not attempted any comprehensive market analysis to justify the need for

¹ Leading Chinese firms offering services in Korea in online marketplaces, social networking, and video content fall outside of the thresholds for monthly domestic users—these firms include Alibaba (8.05 million), Temu (6.36 million), WeChat (5 million), Shein (660,000), and TikTok (between 3.9 and 5.6 million).

²

<https://www.euromonitor.com/article/safety-concerns-mount-as-chinese-cross-border-e-commerce-sales-surge-in-south-korea#:~:text=AliExpress%20and%20Temu%20are%20the,personal%20care%20to%20small%20appliances>

³

<https://pulse.mk.co.kr/news/english/10998510#:~:text=Chinese%20e%2Dcommerce%20platforms%20AliExpress,growing%20penetration%20among%20local%20rivals>

such prescriptive intervention nor a regulatory impact analysis to examine the unintended consequences of such a step. The discriminatory aspects of the proposals implicate Korea's trade obligations under both the WTO and the Korea-U.S. Free Trade Agreement (KORUS).

Legislative Proposals

There are at least sixteen legislative proposals for platform regulation that have been introduced in National Assembly in 2024. Apart from the most recent bill noted above (proposed by Kang Min-guk of the ruling party), the most prominent alternative bill⁴ is that introduced on July 5th by Kim Nam-geun of the opposition Democratic Party. All bills are modelled to some extent on the DMA's *ex-ante* regulatory approach, including a mix of prohibited conduct (e.g., self-preferencing) and, in some bills, mandatory action (sharing source code and algorithms).

The KFTC's original legislative goals⁵ faced strong opposition from academics and firms from both the United States and Korea, and concerns about excessive regulations from the Ministry of Science and ICT. In response, the KFTC recently [announced](#) a revised approach, ostensibly moving away from *ex-ante* regulation in favor of a prescriptive enforcement framework. Rep. Kang Min-guk's October 28 bill reflects this approach and, presumably, KFTC input. Although cast as a compromise, it retains the fundamental flaws of all bills introduced to date: it seeks to regulate presumptively anticompetitive conduct, applicable only to a subset of market participants, and allows for temporary suspension orders before a final ruling is made. While this approach differs operationally from that of competing bills, its effect will be similar, as are discriminatory thresholds and "gatekeeper" definitions.

Both the KFTC-inspired proposal and competing bills require a targeted company defending itself to prove that the identified conduct is not anticompetitive or is welfare-enhancing. Given that reversed burden of proof, and the heavy fines that can result from an adverse finding, the chilling effect on legitimate commerce is obvious.

Both these approaches disproportionately impact U.S. firms and put them at a competitive disadvantage vis-a-vis a broad range of Korean (and Chinese) companies offering similar services, who are free to engage in practices that are presumptively illegal for in-scope companies.⁶ By targeting U.S. companies through arbitrarily tailored thresholds, and proscribing conduct these companies' competitors are free to engage in, both approaches reflect protectionist competition policy and are potentially inconsistent with Korea's international trade commitments, including under KORUS.

⁴ https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_V2D4D0C6J2I1H1D0A1Z4I5H9Q2P2J4

⁵ <https://www.lexology.com/library/detail.aspx?g=311f5d4c-c6de-4e2f-9e86-bde29aa708af>

⁶ For example, three firms, Lotte, Shinsegae and Hyundai control around 90 percent of department store sales in Korea, and all offer private-label products which they promote--a form of self-preferencing. See <https://www.linkedin.com/pulse/retail-korea-05-decoding-korean-department-store-2023-juampi-wzrsc/>; and <https://www.koreapost.com/news/articleView.html?idxno=5501>

Key Elements of Representative Proposals

	Kang Min-guk Bill (Bill 4947)	Kim Nam-geun Bill (Bill 1430)
Thresholds	10 million monthly domestic users and a market share of 60%; or 20 million monthly domestic users, where 3 or fewer platforms constitute a combined market share of 85%. - exemption for companies with annual revenues not exceeding 3 trillion KRW (2 billion USD)	- Capitalization of 15 trillion KRW (about \$11.3 billion) - Annual revenue of 3 trillion KRW (about \$2.2 billion) - Average users of 10 million (consumers) or 50,000 (businesses)
Services covered	- Online intermediary services (marketplaces) - Online search - Online social networking - Online video content - Operating systems - Online advertising provided by operators providing the above services - Other services defined by Presidential Decree	Same
Obligations	Restrictions on: self-preferencing (favoring one's own products or services on the platform, and using non-public data collected from third-party sellers for own services) tying/bundling (conditioning access to the platform, or purchase of a specific good or services, on the use of or purchase of one's own specified products or services, or providing a non-essential service in connection to a platform service) "multi-homing" (preventing, or disincentivizing use of, competing third-party services related to platform functions); Most-favored-nation, or "MFN" (Requiring best terms and conditions offered elsewhere as a condition for use of the platform)	Same, plus restrictions on: anti-steering (hindering customers from direct access to competing services/functions offered by a business (e.g. payment systems) data access preventing the access to, or transfer out, of data collected by the platform that that is relevant to a merchant's use of platform
Fines/Injunction	8% of relevant sales or (where no relevant sales) a fine up to 3 billion KRW (2 million USD) - Temporary suspension order	10% of relevant sales - Temporary suspension order

The Persistence of Unjustified Restrictions and Discriminatory Effect in both Proposals

Both leading bills under consideration in the National Assembly suffer from similar flaws:

- The presumption that conduct that is common in many industries is anticompetitive, simply when carried out by a firm of a certain size, in a selectively-defined market, is unjustified.
- Neither the KFTC nor parliamentarians have shown any systemic, evidence-based harms or impact assessment justifying proposed regulation.
- The KFTC-inspired bill (Kang Min-guk bill) authorizes interim (injunctive) measures for swift action. This creates significant legal uncertainty, as it applies to common business practices. As it applies only to subset of digital firms (and not at all to other industries), it is also appears discriminatory.
- The fact that such prohibitions will apply disproportionately to U.S. firms and exclude a wide swath of Korean and third-country firms (particularly from China) implicates fundamental trade principles embedded in Korea's bilateral commitments to the United States (the Korea-United States Free Trade Agreement, KORUS) and multilateral commitments in the World Trade Organization (WTO).
 - **National Treatment** obligations require Korea to accord U.S. service suppliers treatment no less favorable than it accords similar Korean suppliers. By prohibiting certain conduct when carried out by U.S. firms, but allowing it by their Korean competitors, Korea puts U.S. firms at a competitive disadvantage. The arbitrary thresholds Korea is looking to institute cannot justify this disparate treatment, and would be a clear basis for a dispute settlement claim. The fact that some Korean suppliers may fall within the threshold does not relieve Korea of its obligation to provide U.S. firms no worse treatment than that provided to others in the market.
 - **MFN** obligations prevent Korea from advantaging third-country suppliers: if such suppliers are exempt from the proposed prohibitions, Korea would be discriminating in their favor, at the expense of the U.S. suppliers who happen to fall within the prescribed thresholds. The recent influx of Chinese companies into Korea, who would not fall within the scope of the measure, underscores the real impact that such differential treatment would have on U.S. suppliers. Arbitrary thresholds are not a sufficient basis for engaging in such discrimination, even if some foreign companies are also captured.
- One key missing step in Korea's approach has been adherence to KORUS: transparency obligations (Chapter 21⁷) that require, *inter alia* that: *To the extent possible, each Party shall: (a) publish in advance any such measures that it proposes to adopt; and (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.*

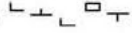
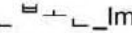
⁷ https://ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file503_12720.pdf



A Path Forward: A Formal, Open Process for Stakeholder Consultation

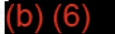
Given broad industry concerns, articulated by both U.S. and Korean stakeholders, and serious questions about compliance with trade obligations, any legislative proposals to introduce asymmetric obligations in the digital marketplace should be subject to extensive stakeholder and governmental consultation and comprehensive impact assessment before advancing in a legislative process. This is particularly important for legislation with significant implications for American businesses, given Korea's obligations under KORUS. We urge both the Korean government and lawmakers pursuing new legislation to ensure a transparent and inclusive process for gathering and considering stakeholder input, and to address trade concerns, before advancing any substantive legislation.

[EXTERNAL] Fwd: Re: Re: Re: Re: Re: Re: Re: (KFTC) Scheduling for video conference

From: Jonathan McHale <(b) (6)@ccianet.org>
To: "Pietan, Scott J. EOP/USTR" (b) (6)
Date: Tue, 04 Feb 2025 12:02:13 -0500
Attachments: DMA impact docs for KFTC (1).docx (18.68 kB); 
  Impact-Digital-Platforms-on-Small-Medium-Sized-Enterprises_draft813242238.pdf (283.07 kB); 2021-03-11 - CCIA's Position Paper on the DMA (1).pdf (959.6 kB)

Scott, FYI here is some other stuff we sent to the KFTC.

----- Forwarded message -----

From: Jonathan McHale <(b) (6)@ccianet.org>
Date: Tue, Jan 21, 2025 at 6:02 PM
Subject: Re: Re: Re: Re: Re: Re: Re: (KFTC) Scheduling for video conference
To:  (b) (6) @korea.kr>
Cc: Krisztian Katona (b) (6) @ccianet.org>, Trevor Wagener (b) (6) @ccianet.org>

Dear Ms. Kim, as promised, attached and with some links are several CCIA-generated analyses that we think helpful in identifying problems in DMA-inspired regulatory interventions. I hope these are helpful, and please let us know if you have any follow-up questions. And, we would greatly appreciate staying in touch (and having another videoconference, if appropriate) as Korea's move towards platform regulation evolves.

Many thanks,

Jonathan

Links:

[DMCC paper](#) (UK)

[Masnik Paper on Internet Regulation](#) (General survey of various countries)

[AICOA bill analysis](#) (for U.S.)

Dear Mr. McHale,

Thank you once again for hosting us during the video conference. I hope this message finds you well. I am writing to kindly request the documents we discussed during our meeting:

1. The response from the EU regarding your arguments on prohibition (e.g., self-preferencing).
2. The market analysis on targeting services according to the Digital Markets Act (DMA).

Your assistance in providing these documents would be greatly appreciated.

Best regards,

Jonathan McHale

Vice President for Digital Trade

(b) (6) [@ccianet.org](mailto:(b)(6)@ccianet.org)

(b) (6)



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DMA Impact Documents for the KFTC

1. CCIA, "DMCC: Economic Impact" (Jan. 25, 2024), <https://ccianet.org/research/reports/dmcc-economic-impact/>.
 - a. "Over a ten-year period, there risks being a £55bn-£160bn net present value impact on consumer welfare resulting from delays over 10 years, reaching £8bn-£35bn a year by year 10; and a loss in investment in digital services of 4% to 8%." (page 5).
2. Christian M. Dippon, Ph.D. and Matthew D. Hoelle, Ph.D., "The Economic Costs of Regulation of Online Platforms and Marketplaces" (Mar. 22, 2022), <https://ccianet.org/research/reports/economic-costs-regulation-online-platforms-marketplaces/>.
 - a. "The bills would impose an economic cost of \$319 billion and result in higher retail prices and the loss of free and valued services. The costs would be borne by the consumers and business users of the targeted platforms and marketplaces." (page ES-2).
 - b. "Reduce venture capital investment in startup firms by 12 percent. The proposed bills would jeopardize U.S. technological leadership and innovation as the bills would prohibit covered platforms from acquiring startups, eliminating viable exit options for many startups and reducing incentives to found or invest in startups." (page ES-3).
3. Michael Masnick, "The Unintended Consequences of Internet Regulation" (Apr. 12, 2023), <https://ccianet.org/research/reports/unintended-consequences-of-internet-regulation/>.
 - a. "We found that these regulations decreased investment in covered startups by between 15.2% and 73.4% in the jurisdictions we examined." (page 7).
4. Kati Suominen, Center for Strategic & International Studies, "Implications of the European Union's Digital Regulations on U.S. and EU Economic and Strategic Interests" (Nov. 2022), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/221122_EU_DigitalRegulations.pdf?VersionId=iuEI9KteAl_SKhjPCEWN8LlvqQORV02X.
 - a. "Compliance costs and possible fines could amount to between \$22 billion and \$50 billion." (page 22).
 - b. "The study estimates the cost increases on European businesses would conservatively be €43 billion (\$43 billion) per year and more plausibly €71 billion (\$71 billion) per year, or equivalent to 0.3 percent of EU GDP. Almost half of this is incurred by European SMEs." (page 29).
5. Kati Suominen, Center for Strategic & International Studies, "New Costs and Cybersecurity Challenges Flagged as DMA Compliance Starts" (Mar. 22, 2024), <https://www.csis.org/analysis/new-costs-and-cybersecurity-challenges-flagged-dma-compliance-starts>.
 - a. "The DMA is not only problematic to tech companies and consumers, but also creates costs and cybersecurity challenges to airlines, hotels, advertisers, brands, European agencies, and consumers."

[APG]

6. Adam Cohen, Google The Keyword, “New Competition Rules Come With Trade-Offs” (Apr. 5, 2024), <https://blog.google/around-the-globe/google-europe/new-competition-rules-come-with-trade-offs/>.
 - a. “Consumers have expressed negative views about changes to the display of Google Maps in Search. Many European users are raising concerns on message boards and help forums that they no longer see a useful Google Maps tab on our Search results page.”
 - b. “We’ve seen increased traffic to a small number of successful intermediary services and significantly less engagement with a wide range of businesses like airlines, hotels, local merchants, and restaurants.”
 - c. “Hotels are concerned that direct booking clicks are down as much as 30 percent since our compliance changes were implemented. These businesses now have to connect with customers via a handful of intermediaries that typically charge large commissions, while traffic from Google is free. European airlines and local businesses have expressed similar concerns.”
7. Javier Delgado, Mirai, “DMA implementation sinks 30% of clicks and bookings on Google Hotel Ads” (May 7, 2024), <https://www.mirai.com/blog/dma-implementation-sinks-30-of-clicks-and-bookings-on-google-hotel-ads/>.
 - a. “In the case of Google, the gatekeeper designation means it cannot include its own vertical services (Google Maps, Google Flights, or Google Hotel Ads) in its search results pages in accordance to the “self-preferencing” article in the DMA.”
 - b. “The pre-DMA search experience offered hotels participating directly in the Google Hotel Ads product, the option to present their inventory (availability and room rates) in a way that was both efficient from the standpoint of distribution cost, and enriched for the user, as it integrated the experience of other services, e.g. Google Maps. This way of presenting information was clear, relevant, and intuitive, and maximized purchasing decisions such as hotel bookings for those users who were so inclined.”
 - c. “The key result of the implementation of the DMA for hotels is that they have lost visibility in the markets affected by the DMA, and as such they have lost direct sales capacity, their profitability has been reduced and their dependence on intermediaries increased.”
 - d. Post-DMA users can no longer:
 - i. View the hotel offer at the destination (availability and prices in aggregate).
 - ii. Click on the Google Maps link to locate the hotel. This point is particularly frustrating.
 - iii. View the ‘hotel package’ (selection of three hotels with availability, price, and user ratings) in which both hotels with websites and intermediaries could participate.
 - iv. Change the dates and other booking elements, such as the number of travelers per room (these are updated in the search engine and not in the hotel file), in an easy, user-friendly way during the booking process.
 - e. Post-DMA Hotels have lost user visibility by:
 - i. 30 percent drop in clicks to websites in markets affected by DMA.
 - ii. 36 percent drop in direct bookings in markets affected by DMA.
8. Paola Talavera, Competitive Enterprise Institute, “EU’s Digital Markets Act: An obstruction to AI innovation?” (Jul. 30, 2024), <https://cei.org/blog/eus-digital-markets-act-an-obstruction-to-ai-innovation/>.

[APG]

- a. "The consequences of the current regulatory approach are already becoming apparent. Apple recently reported that it would not roll out its latest AI innovation, Apple Intelligence and iPhone mirroring, in the European Union this year. Apple Intelligence, which integrates generative AI into devices like iPhones, iPads, and Macs, represents a significant leap forward in consumer AI technology, but the DMA will force European consumers to wait longer than their global counterparts to experience these advancements."
 - b. "The implications of this regulatory obstacle extend beyond just Apple. Meta, for instance, has expressed doubts about releasing the latest version of LLaMA, its advanced AI language model similar to ChatGPT, in the EU. Alphabet is also under scrutiny for potential DMA violations. This increased regulatory pressure discourages these companies from prioritizing the European market for their most innovative AI features."
9. SignalAI, "Regulatory Compliance v. Innovation: Digital Markets Act Tech Impact" (Aug. 13, 2024), <https://signal-ai.com/insights/regulatory-compliance-v-innovation-digital-markets-act-tech-impact/>.
 - a. "While the DMA aims to curb the dominance of big tech and ensure fair competition, there is a growing concern that a push for regulatory compliance might inadvertently stifle innovation.
 - b. "As regulators become bolder and more influential, their role in shaping the tech landscape is expanding. Their increasing presence in DMA discussions signals a move towards more stringent control."
10. Samuel Stolton and Mark Gurman, "Apple Won't Roll Out AI Tech In EU Market Over Regulatory Concerns" (Jun. 21, 2024), <https://www.bloomberg.com/news/articles/2024-06-21/apple-won-t-roll-out-ai-tech-in-eu-market-over-regulatory-concerns?embedded-checkout=true>.
 - a. Apple is withholding a raft of new technologies from hundreds of millions of consumers in the European Union, citing concerns posed by the bloc's regulatory attempts to rein in Big Tech. The company announced Friday that it would block the release of Apple Intelligence, iPhone Mirroring and SharePlay Screen Sharing from users in the EU this year, because the Digital Markets Act allegedly forces it to downgrade the security of its products and services.
11. Reuters, "Airlines, hotels warn Google changes may benefit large intermediaries" (Mar. 6, 2024), <https://www.reuters.com/technology/airlines-hotels-warn-google-changes-may-benefit-large-intermediaries-2024-03-06/>.
 - a. "Lobbying groups representing airlines, hotels and restaurants warned that changes proposed by Google to comply with EU landmark rules may drive users to large online search services at their expense."
 - b. "Some of the companies could lose as much as 50% of their online traffic and possibly millions of euros in revenues due to Google's changes to its search results."
12. Morten Skroejer, Software & Information Industry Association – SSIA, "Digital Markets Act Fails European Consumers, Businesses" (Oct. 18, 2024), <https://www.siiia.net/digital-markets-act-fails-european-consumers-businesses/#:~:text=For%20consumers%2C%20the%20DMA%20has,products%2C%20and%20other%20online%20services>.

- a. “While the DMA was intended to increase competition in Europe, its rules, which almost exclusively target American tech companies that provide popular products and services, have instead hurt European consumers and businesses, and created a less innovative and dynamic economic landscape.”
 - b. “For consumers, the DMA has placed significant restrictions on the types of services that so-called “gatekeeper” companies can offer to their users. Because of this, the new rules have resulted in worse experiences for people using popular apps, products, and other online services. For example, many Europeans have complained that the DMA has degraded search engines.”

- 13. Adam Kovacevich, Medium, “Europe’s Digital Market Act Fails Consumers” (Mar. 4, 2024), <https://medium.com/chamber-of-progress/europes-digital-market-act-fails-consumers-dcaf70cc548c>.
 - a. “Because of complaints from competitors like Yelp and TripAdvisor, the DMA prohibits Google from “favoring” its own map results in Google search — even when those results are clearly useful for consumers.”
 - b. “When you Google “flights from Dublin to Frankfurt,” Google provides an easy flight search box for you. But because rivals like Booking.com complained to the EU that this was unfair, Google announced in January that it is removing this convenience.”
 - c. DMA is making digital services less useful, less secure, less family-friendly, and less useful. Europeans’ experience with digital services is about to get worse compared to the experience of Americans and other non-Europeans.

- 14. Martynas Gruodis, Brussels Report, “The EU’s new DMA regulation is about to hurt consumers” (Feb. 29, 2024), <https://www.brusselsreport.eu/2024/02/29/the-eus-new-dma-regulation-is-about-to-hurt-consumers>
 - a. [Our recent study on DMA](#) emphasizes that even if gatekeepers adapt to the DMA’s requirements, consumers may bear the brunt of negative effects. Changes in prices, service quality, and reduced choices are on the horizon, increasing consumers’ time costs and distorting competitive conditions in the market.
 - i. DMA may lead to price hikes and reduced choice, decline in quality and increase in costs, both financial and alternative.
 - ii. DMA might lead to increased complexity and inconvenience. Consumers may face an overwhelming amount of new terms and conditions, consent requests, and data management choices due to the DMA’s compliance requirements.
 - iii. DMA’s long-term implications for global competition are unclear. The isolated environment created by the DMA might inadvertently interfere the competitiveness of EU-based companies in the global market.

- 15. Enrique Dans, Center for European Policy Analysis — CEPA, “DMA: Will it Leave Europe’s Consumers Behind?” (Jul. 15, 2024), <https://cepa.org/article/dma-will-it-leave-europes-consumers-behind/>.
 - a. “Second-rate products are the downside of stringent European regulations. While the rules aim to protect people’s rights, they are beginning to frighten companies from bringing their latest innovations to the continent.”

- b. “Until recently, companies launched new European products and dared regulators to object. Since Europe’s regulators tend to see all new products or services as suspicious or a possible threat, fines accumulated, reaching billions of euros.”
- 16. Several digital services provided by US companies have been delayed, removed, or simply not launched in the EU as a result of the DMA and its additional scrutiny:
 - a. Google Maps, Google Flights
 - i. Oliver Bethel, Google The Keyword, “An update on our compliance with the DMA” (Nov. 26, 2024), <https://blog.google/around-the-globe/google-europe/dma-compliance-update/>.
 - b. Apple AI services
 - i. Rohan Goswami, CNBC, “Apple Intelligence won’t launch in EU in 2024 due to antitrust regulation, company says” (Jun. 21, 2024), <https://www.cnbc.com/2024/06/21/apple-ai-europe-dma-macos.html>.
 - c. Meta’s Threads service
 - i. Lauren Feiner, CNBC, “Threads, Meta’s Twitter competitor, is not yet available in the EU due to regulatory concerns” (Jul. 6, 2023), <https://www.cnbc.com/2023/07/06/metas-threads-not-available-in-the-eu-due-to-legal-complexity.html>.
 - d. Meta AI services
 - i. Jess Weatherbed, The Verge, “Meta won’t release its multimodal Llama AI model in the EU” (Jul. 18, 2024), <https://www.theverge.com/2024/7/18/24201041/meta-multimodal-llama-ai-model-launch-eu-regulations>.
 - e. Microsoft removed Teams from its 365 Suite
 - i. Nanna-Louise Linde, Microsoft EU Policy Blog, “Microsoft announces changes to Microsoft 365 and Office 365 to address European competition concerns” (Aug. 31, 2023), <https://blogs.microsoft.com/eupolicy/2023/08/31/european-competition-teams-office-microsoft-365/>.
- 17. Lilla Nora Kiss, “Why South Korea Should Resist New Digital Platform Laws,” Information Technology & Innovation Foundation (Dec. 9, 2024), <https://itif.org/publications/2024/12/09/south-korea-should-resist-new-digital-platform-laws/>.
 - a. “Ex ante regulations for business practices such as self-preferencing could restrict companies’ ability to differentiate their products and compete effectively. By experimenting with self-preferencing or bundling, companies uncover innovative strategies to meet consumer needs, which can ultimately benefit the market. Using regulation to police such practices risks stifling this discovery process and chilling legitimate pro-competitive behavior.”
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[APG]

- b. "To comply with business regulations, the widely used search engine in the industry had to remove its hotel booking service from the search results list. This service previously gave users a streamlined and cohesive experience when looking for, comparing, and booking hotels. This modification made the process of looking for hotels less user-friendly and more fragmented. Three months after the change was made, a [30% drop](#) in traffic to hotel websites was reported."
 - c. "The DMA mandates that relevant platforms support alternative mobile app marketplaces, [requiring companies](#) to open up the mobile ecosystem and allow users to download and pay for apps via third-party app distribution. This has resulted in increased [threat and security](#) concerns because it provides additional avenues for cyberattackers to distribute malware, malicious codes, fake apps, and intrusive mobile applications via third-party app stores. The change may also increase users' risk of downloading unsecured apps, exposing their devices and data to potential threats."
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An abstract graphic on the right side of the page. It features a series of concentric, curved orange lines on the left, transitioning into a solid orange semi-circle at the top right. Below this, there are blue curved lines and a solid blue semi-circle at the bottom right. The overall design is modern and geometric.

The Impact of Digital Platforms on Small and Medium-Sized Enterprises

Yongwook Paik, D. Daniel Sokol, Feng Zhu^{1}*

¹ * Professors respectively at KAIST, USC, and HBS. These affiliations are for identification purposes only and do not necessarily reflect the views of our institutions. This work has been commissioned by the Korean Platform Sellers Association.

Executive Summary

This report examines the impact of digital platforms on small and medium-sized enterprises (SMEs) in Korea and globally, drawing on a wealth of empirical studies and policy reports. Our analysis highlights how digital platforms have significantly benefited SMEs by reducing entry barriers, facilitating resource mobilization, and enabling cost-effective customer acquisition and market expansion through network effects, both domestically and internationally. We conclude that Korea's digital ecosystem is sufficiently competitive, with robust domestic tech companies, foreign competitors, and effective regulatory frameworks in place to address potential anti-competitive practices. Our analysis raises concerns about adopting untested regulatory approaches like the EU's Digital Markets Act. Such ex-ante regulations may stifle innovation, particularly in crucial areas like AI, and disproportionately harm the very SMEs they aim to protect. We therefore recommend leveraging existing enforcement tools wisely to promote innovation and economic growth while addressing specific anti-competitive practices as they arise, which promises to be a less risky and a more effective approach to maintaining Korea's competitive edge in the global economy.

I. Overview

Digital platforms have emerged as transformative forces in the global economy, revolutionizing the way small and medium-sized enterprises (SMEs) create value and compete in both domestic and international markets. These platforms serve as crucial connectors, bridging gaps between businesses and consumers, as well as facilitating business-to-business interactions. By leveraging these digital ecosystems, SMEs can dramatically expand their reach, streamline operations, and compete more effectively against larger, more established firms.

One of the most significant advantages offered by digital platforms is their ability to reduce barriers to entry for SMEs. Traditionally, small businesses face substantial challenges in establishing market presence, building customer relationships, and scaling operations. Digital platforms level the playing field by providing cost-effective tools for marketing, customer engagement, and business management. These tools enable SMEs to reach a wider audience, establish credibility, and grow their businesses without the need for substantial upfront investments in operational infrastructure or marketing. The democratization of these tools allows SMEs to compete with larger companies on a more equal footing with data driven insights, increased financial and operational efficiencies and development of new markets, particularly in digital advertising, e-commerce, fintech, gaming, and logistics.

Digital platforms offer SMEs unprecedented access to data and analytics, a capability previously available only to large corporations. This wealth of information allows small businesses to gain deeper insights into consumer behavior, market trends, and their own performance metrics. Armed with this knowledge, SMEs can make more informed decisions, tailor their offerings to meet specific customer needs, and identify new opportunities for growth and innovation. The ability to leverage big data and advanced analytics empowers SMEs to compete more effectively in the digital marketplace, making strategic decisions that were once the purview of larger, resource-rich companies.

Furthermore, digital platforms play a crucial role in the internationalization of SMEs, enabling them to access global markets with relative ease. These platforms help small businesses overcome traditional barriers such as limited market knowledge, lack of international networks, and high costs associated with establishing a presence in foreign markets. Through digital platforms, SMEs can showcase their products to a global audience, engage with international customers, and manage cross-border transactions and logistics, all from their home base. This democratization of international trade has opened new avenues for growth and expansion for SMEs, regardless of their size or location, contributing to a more dynamic and competitive global marketplace.

Lastly, digital platforms create value for SMEs by fostering network effects and facilitating coordination among businesses. These platforms can help mitigate issues of trust and credibility that small businesses often face when entering new markets. Features such as customer reviews and quality signaling mechanisms help establish product credibility and build trust with potential customers. Additionally, platforms enable SMEs to benefit from network effects, where they can learn and gain market knowledge from peers operating on the platforms, and where the success of one entrepreneur can positively impact others within the same ecosystem. This collaborative environment extends to areas like crowdfunding, where coordination among businesses on platform usage can significantly impact an SME's ability to secure funding and grow their operations.

In the next section, we undertake a study of empirical papers, both specific to Korea and more broadly, that focus on the effects of digital platforms on SMEs. Overall, the findings from these studies—whether written by government agencies, multilateral institutions like the IMF and World Bank, or academics—suggest that the relationship between SMEs and platforms are positive. Indeed, large platforms are credited with adding value to SME growth and to innovation generally.

II. Studies on Platforms and SME Value Creation

A. Studies focusing on platforms and SMEs in Korea

Research evaluating the impact of online platforms on SMEs in Korea shows robust benefits across a variety of industries, including general online retail, digital content creation, cosmetics, and restaurants. Numerous studies have confirmed that digital platforms enable Korean SMEs to reach significantly more domestic consumers, successfully expand into overseas markets, and generate substantially greater revenues and profits. Survey results suggest that a majority of Korean SMEs would be unsustainable without the critical benefits that online platforms provide to overcome resource constraints, achieve brand awareness and legitimacy, and foster enhanced competitiveness.

Policy for Vitalizing the SMEs' Use of Online Marketing Platform: Focused on the Developing and Extension of Domestic B2C Market (Lee & Lee, 2013)

Survey results from this 2013 policy report reveal that Korean SMEs have a greater opportunity to reach a larger number of domestic consumers through online platforms compared to traditional distribution channels. Traditional channels, such as offline retail shops and department stores, have been dominated by a small number of large, established companies with significant bargaining power over SMEs in Korea due to limited shelf space. As a result, many Korean SMEs have struggled to distribute their products or gain a competitive advantage using traditional offline distribution channels. Survey results from SMEs using various online e-commerce platforms show that many benefit from the platform's brand

power rather than relying on their own weaker brands. Additionally, SMEs can economize on marketing expenses and labor costs by using these platforms. However, the survey also indicates that SMEs face increased price competition due to the lower barriers to entry on these platforms and have difficulty hiring staff adept at web design and online marketing.

The Internationalization of SMEs via Digital Platforms: Findings and Policy Implications (Koo et al., 2021)

This policy report by the Korea Institute for International Economic Policy (KIEP) examines the internationalization of Korean SMEs into foreign markets such as the U.S., China, Japan, Vietnam, and Indonesia through E-commerce platforms like Amazon.com, Alibaba.com, Shopee.com, and Lazada.com. Survey results from the study indicate that the use of these digital platforms has significantly reduced the costs of entering foreign markets, particularly benefiting SMEs that often have limited capital and manpower. Specifically, these platforms have enhanced the performance of Korean SMEs by providing easier access to overseas consumers and facilitating promotion and marketing through online channels. However, the survey results also show that SMEs face challenges such as limited knowledge about the targeted foreign markets and difficulty in economically accessing or effectively utilizing the digital platforms.

2021 Survey on Businesses using Online Platforms (The Ministry of SMEs and Startups, Republic of Korea, 2021)

This policy report, published by the Ministry of SMEs and Startups of the Republic of Korea, contains survey results from SMEs using various online platforms. Conducted from August to September 2021, the survey highlights both the pros and cons of using online platforms for SMEs in Korea. The results show that 74.1 percent of SMEs reported generating more than 50 percent of their revenue through online platforms. Furthermore, 60 percent indicated that their business operations would become unsustainable without online platforms, with 71.2 percent experiencing increases in revenue and 58.9 percent seeing increases in operating profit after using these platforms. Notably, over 70 percent of SMEs began using online platforms from the founding of their businesses.

Effects and Challenges of Online Platforms on the Digital Content Market (Choi et al., 2023)

By examining the impact of digital content platforms on the ecosystem of digital content creators in Korea, this study demonstrates that domestic platforms, such as those provided by Naver, Kakao, Coupang Play, KT, and CJ E&M, significantly contribute to the Korean economy by acting as accelerators for digital content creators. They generate production and employment spillover effects throughout the economy and provide import and export benefits for the Korean content industry, including publishing, comics, music, film, games,

animation, broadcasting, advertising, characters, knowledge information, and content solutions. These home-grown digital platforms foster the competitiveness of Korean digital content creators, enabling them to export globally while simultaneously creating value for the domestic market. Therefore, this study concludes that, contrary to some misconceptions held by Korean policymakers that believe Korean platforms are abusing market power and harming domestic content creators, Korean platforms cannot sustainably engage in anti-competitive or unfair business practices through market monopolization or market power in the long run due to low switching costs, the ease of multi-homing, and the necessity for these domestic platforms to compete with global platforms.

A Study on the Platform Utilization Strategy and Growth of a Start-Up: Focusing the Case Study of 'Genie the Bottle' (Kim & Shin, 2023)

This paper presents an in-depth single-case study on how a Korean cosmetics startup utilized Naver Smart Store (e-commerce platform), Coupang (e-commerce platform), Wadiz (crowdfunding platform), and Market Kurly (e-commerce platform) to overcome resource constraints, liability of newness, and liability of smallness—typical disadvantages faced by startups. The study found how the startup exponentially grew its revenue with the help of these platforms. The study concludes that effectively utilizing multiple e-commerce and crowdfunding platforms helps new startups obtain brand awareness and legitimacy in a shorter time, achieve efficient resource allocation, and experience faster business growth.

The Effect on the Performance of Exporting Companies Using Global Digital B2B Platforms (Lee & Chun, 2023)

Survey results from 170 respondents in January 2022 show that by utilizing global digital B2B online platforms such as Kompass, Google, YouTube, Alibaba, and Amazon, Korean export SMEs have experienced significant improvements in both financial performance (including revenue, operating profit, sales volume, export value, and market share growth) and non-financial performance (including increased website traffic, business inquiries, new customer acquisition, and brand awareness). These improvements are attributed to enhanced marketing capabilities facilitated by these digital platforms, such as search engines, e-commerce platforms (e.g., Kompass, Alibaba, Amazon, eBay), and online advertisements on YouTube. Therefore, the study concludes that utilizing global digital B2B platforms is highly effective in strengthening the marketing capabilities of exporting SMEs.

Comparative Analysis of Business Performance Between Restaurants Using and Not Using Delivery Apps (Lee, 2024)

Data from the "Survey on Restaurant Management Status" conducted by the Korea Rural Economic Institute from 2019 to 2022 show that restaurants using delivery apps had significantly higher sales and operating profits compared to

those not using delivery apps, with the difference in performance increasing year by year since 2019 and a causal relationship is identified. Delivery app platforms provide significant benefits to small restaurant businesses by increasing sales and profits and improving efficiency (in terms of higher operating profit per square meter) and is particularly beneficial for certain restaurant types such as pizza, hamburger, and chicken specialty stores.

B. Global academic publications

Several academic studies outside the Korean context also demonstrate how digital platforms help generate new local SME business activities, particularly in low-income regions and among entrepreneurs from disadvantaged backgrounds. This research also confirms that online platforms are crucial in helping SMEs from small domestic markets successfully penetrate large foreign markets and reach new customers. Access that SMEs gain on digital platforms to sophisticated analytics tools and vicarious learning practices enables small e-retailers to make more effective data-driven decisions and resource allocations, leading to significantly higher sales and competitive positioning.

Exploring the Impact of Digital Platforms on SME Internationalization: New Zealand SMEs Use of the Alibaba Platform for Chinese Market Entry (Jin and Hurd, 2018)

Digital platforms like Alibaba (a Chinese tech giant) can help SMEs in small domestic markets like New Zealand overcome barriers to internationalization and enter large foreign markets like China. Alibaba helps SMEs overcome resource constraints by providing a low-cost entry method and bypassing expensive product registration processes, assists in building brand awareness and trust with consumers who prefer to buy foreign products through trusted platforms. Digital platforms also enable SMEs to leverage their business networks and obtain market knowledge from peers also operating on the platforms.

How entrepreneurial SMEs compete through digital platforms: The roles of digital platform capability, network capability and ambidexterity (Cenamor, Parida, and Wincent, 2019)

Entrepreneurial SMEs can enhance their performance through digital platforms. By developing their digital platform capabilities, SMEs can improve their network capabilities, allowing them to more efficiently integrate and reconfigure internal and external resources and better manage relationships with partners and customers. The improved network capabilities further lead to increased financial performance for SMEs. As entrepreneurial SMEs' exploitation and exploration orientations negatively and positively moderate this effect, respectively, they should align their orientations with network capabilities to enhance profitability through the development of digital platform capabilities.

Impact of Small Business Entrepreneurs' Absorptive Capacity of Participating in Digital Platform on Market Response: The Moderating Effect of Vicarious Learning and Experiential Learning (Kim & Kim, 2022)

Small businesses with greater absorptive capacity on e-commerce platforms can learn more from other small business participants on the platform through vicarious learning. This enables them to better prepare for market uncertainties. Additionally, these small businesses can formulate strategies to produce products and services that better meet market needs and seize opportunities more effectively.

How Digital Platforms Unintentionally Foster Entrepreneurial Activities: The Case of the Staggered Entry of Craigslist (Kim, Kim, and Paik, 2023)

The entry of Craigslist, a digital peer-to-peer (P2P) marketplace, increased the number of new local businesses in U.S. metropolitan areas by 2.4 percent, particularly benefiting low-income regions, B2C industries, and entrepreneurs from disadvantaged backgrounds. The reason behind such phenomenon is that platforms like digital P2P marketplaces can lower the entry barriers to entrepreneurship by facilitating resource mobilization and customer acquisition: Entrepreneurs can purchase affordable used goods such as office furniture and equipment needed to start businesses on Craigslist. Further, Craigslist serves as a low-cost marketing tool for entrepreneurs to advertise products or services to a wide audience. Thus, the platform makes it more feasible for individuals, especially the disadvantaged entrepreneurs, to start new ventures.

Helping Small Businesses Become More Data-Driven: A Field Experiment on eBay (Bar-Gill, Brynjolfsson, and Hak, 2024)

In a randomized field experiment, the authors found that access to an analytics tool, Seller Hub, on the eBay platform increased sellers' weekly sales by 3.6 percent on average, with the effect continuing to grow over time and reaching 6.1 percent to 7.7 percent from week 6 onward. By providing analytics tools such as Seller Hub, the eBay platform allowed small e-retailers to make more data-driven decisions through active performance monitoring, increased their sales and service qualities without increasing prices, and enabled small e-retailers to compete more effectively, especially in homogeneous product categories, by facilitating differentiation through improved service quality and faster response to demand changes.

C. Work from the World Bank, IMF, and Meta

Numerous studies, including those by the World Bank and IMF, have demonstrated that digital platforms significantly promote small business growth and innovation. Online platforms have become crucial for SMEs by reducing entry barriers, facilitating resource mobilization, and enabling customer acquisition at lower costs. Studies on e-commerce platforms like Taobao in rural China and Jumia in Africa highlight how digital platforms have led to substantial income growth and market expansion for small businesses and female entrepreneurs in particular.

E-Commerce Participation and Household Income Growth in Taobao Villages (Luo and Niu, 2019)

Taobao Villages are villages significantly engaged in e-commerce through the e-commerce platform Taobao (a Chinese platform tech giant) in rural China. E-commerce participation has a strong positive effect on household income in these villages, with an estimated 101 percent increase on average. The income growth is quite inclusive, and the benefits are broadly shared among participants in an equitable way, with wealthier households gaining more in absolute terms and poorer households seeing larger relative income gains. Based on this study, the authors conclude that e-commerce platforms allow rural entrepreneurs to leverage their skills and knowledge gained from education and urban work experience, resulting higher participation among households whose heads are younger, with secondary education, urban work experience, and knowledge of e-commerce. Overall, supporting e-commerce participation remains one important way to provide income opportunities for the left-behind segment of the labor force in rural areas in China.

Harnessing Digital Technologies to Promote SMEs and Inclusive Growth in the MENAP Region (Lukonga, 2020)

Digital platforms and the technologies they provide can benefit SMEs in several ways, such as enabling SMEs to reach new clients and markets at low cost. Consequently, SMEs can scale up faster, reducing communication and operational costs while facilitating access to finance through digital financial services and alternative funding platforms like crowdfunding, improving efficiencies through new technologies, and enabling business continuity during disruptions like lockdowns. Despite these benefits, strategies to promote SME development in the MENAP region have had limited impact on growth and employment creation: the share of SMEs embracing online trading as a consumer sales channel remains small, with e-commerce transactions for the MENAP region accounting for less than 2 percent of total sales and less than 1 percent of the global e-commerce market. A key message is that, while digital technologies offer significant opportunities, complementary reforms in areas like infrastructure, skills, and the business environment (including removing laws and regulations that hurt the development of e-commerce) are needed to fully realize the benefits.

Women and E-commerce in Africa (IFC, 2021)

E-commerce also plays an important role in supporting women entrepreneurs. This study, focusing on sellers on the Jumia platform (market leading e-commerce platform) in Côte d'Ivoire, Kenya and Nigeria, analyzed women's participation and performance in e-commerce. E-commerce platforms benefit female entrepreneurs in universal aspects, such as providing access to new markets and customers which overcomes geographic limitations and providing training and business support services valued by entrepreneurs to increase their productivity.

E-commerce platforms also benefit female entrepreneurs through more female-entrepreneur-oriented opportunities, such as lowering barriers for female entrepreneurs to start a business and enter higher-value sectors like electronics where women are traditionally underrepresented, and offering flexibility that helps women balance business and family responsibilities. Closing the gender gap with e-commerce is financially meaningful: if female led SMEs' sales could reach parity with men by 2025, it could add nearly \$15 billion to the African e-commerce market by 2030.

Global State of Small Business (Meta, 2022)

This report, formerly conducted with the World Economic Forum, provides valuable insights into the state of small and medium businesses (SMBs) globally in mid-2022 from a cross-country survey, including SMB performance, challenges, and adaptations in light of emerging economic pressures like inflation and supply chain disruptions. Specifically, the importance of digital tools for SMBs is growing rapidly as nearly two-thirds of SMBs (63%) on the Facebook app generated some proportion of their sales in the last 30 days of survey through digital channels. Digital tools were used most for communicating with customers (51%), advertising (43%), and selling goods/services (36%), with 33 percent of SMB leaders reporting that digital tools increased sales and 30 percent saying that they expanded their customer base.

III. Policy Conclusions/Recommendations

A. Additional platform regulation is not necessary or advisable in Korea as competitive market forces are working

Careful examination of Korea's digital landscape suggests that aggressive regulatory measures akin to the European Union's Digital Markets Act (DMA) are unnecessary and may be counterproductive, especially when the competition among firms is already robust and effective in the Korea market.

It is crucial to recognize that Korea's digital ecosystem differs significantly from that of Europe. Unlike the EU, Korea boasts a thriving domestic tech industry with companies known mainly for hardware (but increasingly involved in digitization and platforms) like Samsung Electronics, SK Hynix, and LG Electronics competing on a global scale. These firms, along with Korean newer digital platforms, are actively engaged in fierce competition not only with each other but also with global tech giants. This dynamic environment fosters innovation and growth, contrasting sharply with the European market that the DMA aims to address.

Moreover, the Korean digital market exhibits characteristics that naturally limit the potential for sustained anti-competitive practices. Low switching costs for consumers, the prevalence of multi-homing (users engaging with multiple platforms simultaneously), and the constant threat of competition from global

tech platforms create an environment where domestic digital platforms cannot easily monopolize the market or abuse their position. This inherent market dynamism serves as a built-in regulatory mechanism, reducing the need for heavy-handed government intervention.

Proponents of stricter regulation often overstate the causal impact of antitrust enforcement on market competition. Historical examples, such as the breakup of Standard Oil and the antitrust actions against IBM, demonstrate that the relationship between regulatory intervention and market outcomes is not straightforward. Recent empirical research on platforms reveals substantial value creation and benefits, suggesting that a nuanced, case-by-case approach to digital platform regulation is more appropriate than blanket ex-ante measures. For instance, Foerderer et al. (2018) find that Google's entry into the photography app market on Android increased complementary innovation by third-party developers. This effect was driven by increased consumer attention rather than competitive pressure, suggesting that platform owner entry can, in some cases, stimulate innovation by expanding the overall market. Zhu and Liu (2018) show that Amazon's entry into third-party sellers' product spaces targets successful products and increases consumer demand, though it discourages affected sellers from growing further on the platform. Wen and Zhu (2019) demonstrate that when faced with potential platform owner entry, app developers strategically shift innovation efforts to unaffected areas and raise prices in affected markets, indicating that entry threats can shape ecosystem innovation. Sun et al. (2024) find that restricting personal data use in e-commerce recommendation algorithms significantly reduces matching quality and market transactions, especially for niche merchants and consumers who benefit most from personalization.²

Imposing strict regulations on contract terms and business models, as proposed by some policymakers, could stifle innovation and competition. By standardizing contract obligations, such regulations risk homogenizing platform offerings, potentially benefiting established players at the expense of new entrants and startups. This outcome would be contrary to the intended goal of promoting a more competitive and diverse digital ecosystem.

B. Existing enforcement is sufficient to police against potential platform competition issues

Korea already possesses a comprehensive and robust regulatory framework capable of addressing potential anti-competitive practices in the digital economy. The Korea Fair Trade Commission (KFTC) has demonstrated its ability to enforce competition law effectively, even against large tech companies. This existing framework includes not only competition law but also consumer protection

² For a comprehensive overview of empirical research on online platforms, see Cheng, Sokol, and Zhang (2024). Their systematic review of 860 empirical platform studies published in top business and economics journals from 2000 to 2019 provides valuable insights into the evolution of platform research, methodologies, and key themes across different disciplines, highlighting the diverse value creation mechanisms and benefits of platforms across various contexts and supporting the need for more context-specific regulatory approaches.

laws, regulations on unfair trade practices, and provisions addressing the abuse of superior bargaining power. The presence of these tools suggests that Korea's regulatory system is well-equipped to handle emerging challenges in the digital marketplace without resorting to additional legislation.

Korea's current regulatory landscape includes several industry-specific fair trade laws, covering areas such as subcontracting, franchise business transactions, large distribution businesses, and agency relationships. The existing Telecommunications Business Act in Korea already provides a regulatory framework for online platforms, which are categorized as value-added telecommunication services. This act includes provisions regarding prohibited practices, which are regulated by the Korea Communications Commission (KCC). The introduction of new platform-specific regulations could lead to overlapping jurisdictions and potentially conflicting enforcement actions between the KFTC and KCC. This regulatory overlap risks creating uncertainty for businesses and may impede rather than promote fair competition.

Proposals for additional online platform legislation appear to be motivated more by perceptions of international trends rather than by empirical evidence of market failure in Korea's digital economy. Korea's information and communication technologies industry is a significant contributor to the nation's GDP, with the e-commerce sector showing particular strength. Companies like Coupang, Naver, Kakao, and Gmarket continue to drive growth and innovation in this space as do global tech companies that add value to the Korean entrepreneurial ecosystem. The absence of clear market failures in these sectors further undermines the case for enhanced regulations modeled after the DMA.

On the contrary, legislative proposals that would impose stringent ex-ante regulations on online platforms appear overreaching and potentially harmful to innovation and economic growth. There is a substantial risk that such regulations could weaken the competitive position of Korean startups and established tech companies in the global market.

It is important to consider the potential long-term consequences of overly burdensome regulations on Korea's digital economy. The country's tech sector has been a significant driver of economic growth and innovation. Implementing untested regulatory models could stifle this dynamism, potentially leading to economic stagnation rather than fostering the intended fair competition. Instead, policymakers should focus on leveraging existing enforcement tools wisely to promote innovation and economic growth while addressing specific anti-competitive practices as they arise.

C. The DMA is untested and Korea has no reason to be an early mover

The DMA, recently implemented by the European Union, remains a novel and largely untested regulatory approach. Unlike the traditional ex-post enforcement based on consumer welfare prevalent in the United States and many jurisdictions around the world, the DMA embodies a competition policy paradigm that

empowers regulators to preemptively specify which business behaviors might hurt competition. This ex-ante approach has already faced sharp criticism due to its potential harmful effects on innovation and consumer welfare. For instance, early implementation of DMA-like regulations has led to more cumbersome user interfaces and significant revenue losses for certain sectors, raising serious questions about its efficacy in promoting genuine competition and innovation.

The DMA's impact on innovation is a subject of particularly significant concern. Large tech firms argue that their substantial research and development investments are driven by the need to innovate continuously to mitigate dependencies on other platforms. The DMA's requirements for platform neutrality and data sharing could reduce these innovation incentives. For instance, if gatekeepers face limits on how they use their existing services to promote newer services, it may lead to lower quality innovations and reduced success rates for new ventures. This is particularly problematic in the fast-moving field of AI, where rapid iteration and deployment are crucial for maintaining a competitive edge.

The DMA's data sharing and user choice provisions, while intended to promote competition, also may have unintended consequences. Forcing gatekeepers to share data with competitors could disincentivize the creation of new and valuable data, a crucial resource in AI development. Moreover, the requirement to offer less personalized alternatives could disrupt the targeted advertising market, potentially harming small and medium-sized enterprises that rely on these tools to compete globally. This could inadvertently lead to further consolidation of established platforms rather than increased competition.

The political and economic context in which the DMA was conceived differs significantly from Korea's. Europe's regulatory approach is partly driven by protectionist motivations, stemming from its lack of homegrown tech competitors and innovative startups compared to countries like the United States, China, and Korea. With its vibrant tech ecosystem and numerous unicorns, Korea stands in stark contrast to Europe's digital landscape. Adopting a DMA-like approach could erode Korea's competitive advantage in the region and globally, particularly in emerging fields like AI where regulatory constraints may hinder rapid innovation and investment.

It is worth noting that other countries with strong tech innovation sectors, such as the United States, have not adopted ex-ante regulatory approaches similar to the DMA. In fact, such efforts have faced significant opposition from academics, lawmakers, and courts in these countries. Recent empirical evidence from China's implementation of platform antitrust regulations provides a cautionary tale: Rong et al. (2024) found that after China implemented its Anti-Monopoly Guidelines for the Platform Economy in 2021, affected industries saw a 27 percent decrease in monthly investments and a 19 percent drop in new startup entries compared to unaffected industries. This demonstrates that overly burdensome regulations can have unintended negative consequences on innovation and entrepreneurship.

It makes no sense for Korea, with its robust tech sector and effective existing regulatory framework, to be a first follower in adopting such controversial and untested regulations. Instead, Korean policymakers should carefully consider the potential negative repercussions on innovation, particularly in critical areas like AI, before implementing DMA-like regulations. By creating an overly restrictive regulatory environment, Korea risks stifling AI-related growth and losing its competitive edge in this crucial emerging technology sector.

D. Additional platform regulation in Korea is likely to cause greater harm for SMEs than the intended benefits to SMEs

Numerous studies confirm that online platforms effectively promote small business growth, market expansion, and innovation. These platforms are crucial for SME viability by reducing entry barriers, enabling lower-cost customer acquisition, and facilitating efficient resource mobilization. In particular, digital platforms benefit low-income regions, entrepreneurs from disadvantaged backgrounds, and female entrepreneurs.

Digital platforms also play a vital role in the internationalization of SMEs, which is particularly crucial for companies from smaller domestic markets. Studies focusing on Korean SMEs reveal that online platforms have significantly reduced the costs of entering foreign markets, enhancing their performance through easier access to overseas consumers and facilitating promotion and marketing through online channels.

Proposed ex-ante regulations therefore risk unintended consequences that could disproportionately harm SMEs. By imposing strict rules on platform operations, these regulations may inadvertently raise the costs of doing business, potentially causing venture capital to flee and disrupting the entrepreneurial ecosystems that have been fostered around these platforms. Overly broad regulations may distort markets and inadvertently favor larger, established companies over SMEs. For instance, the General Data Protection Regulation (GDPR) in Europe has made it harder for small advertisers to compete with larger ones and reduced investment funds available to technology startups.

In the Korean context, stringent regulations could end up hampering domestic businesses, potentially weakening the competitive position of Korean startups and established tech companies in the global market. While the stated intention behind platform regulation proposals is to promote fair competition, the empirical evidence suggests that additional regulations may cause more harm than good for SMEs.

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CCIA Position Paper on the EU Digital Markets Act

The Computer & Communications Industry Association (“CCIA”) supports the European Commission (“EC”) initiative to limit diverging national regulatory interventions and ensure coherent interpretation of obligations in the digital economy under the proposed Digital Markets Act.¹ We agree with the EC’s assessment that “[g]iven the intrinsic cross-border nature of the core platform services provided by gatekeepers, regulatory fragmentation will seriously undermine the functioning of the Single Market for digital services as well as the functioning of digital markets at large.”²

As the European Parliament and the Council seek to reach a common agreement on the DMA, CCIA offers five harmonising principles (Part 1), and suggests specific improvements for the DMA’s governance and enforcement framework in line with these principles (Part 2), to ensure that EU regulation of the digital economy is effective and proportionate.³ CCIA considers that, with these limited amendments, the DMA can better meet its aim of “enhancing coherence and legal certainty in the online platform environment for a preserved internal market”.⁴

1. Harmonising Principles

1.1. Protect the Open Market Economy with Free Competition

The European Union and its internal market are built on the principle of an open market economy with free competition favouring an efficient allocation of resources.⁵ Numerous studies have confirmed the many ways in which digital services and multi-sided business models (“digital platforms”) reinforce and stimulate competition in the internal market.⁶

The success of single market integration means that national firms must now compete with suppliers across the European Union and abroad. This increased competition is facilitated by the Internet, where an abundance of offers are made available, aggregated and organised by a variety of digital services. Harmonisation is necessary to prevent national rules that seek to protect national firms from this world of competition. Such rules are particularly problematic where they would restrict the freedom of platform operators to compete on the merits, to leverage the abundance of the Internet to improve consumer welfare, to orchestrate their ecosystems, or to otherwise freely design their digital products, services and business models in the interest of consumers. An open market economy requires that digital service providers continue to have the ability to better serve their customers and reduce friction in the digital economy.⁷

1.2. Preserve Dynamic Competition and Innovation Benefiting Consumers

Competition in technology industries is dynamic, creating new products and business models, transforming market boundaries and reaching entirely new customers. Innovation drives this dynamic competition. National regulatory proposals forcing firms to share with business users and rivals their innovations and the benefit of their investments would limit firms’ incentives to compete. Business users’

¹ European Commission “Proposal for a Regulation of the European Council and of the Parliament on contestable and fair markets in the digital sector (Digital Markets Act)” (15 December 2020), available [here](#) (“Proposed DMA”).

² Proposed DMA, pg. 4.

³ CCIA does not at this stage comment on the specific prohibitions and obligations of the proposed Article 5 and 6, as it is still analysing their likely individual and aggregate effects on market dynamics, consumers, business users, and the wider economy.

⁴ Proposed DMA, pg. 69.

⁵ European Union “Treaty on the Functioning of the European Union” (Consolidated Version 7 June 2016), available [here](#), art. 120 (“The Member States and the Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119”); *Ibid.*, protocol 27 (“the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted”).

⁶ See e.g. European Commission “Staff Working Document: Evaluation of the Vertical Block Exemption Regulation” (8 September 2020), available [here](#), pg. 32 (“[A]lternative online distribution models such as online marketplaces have made it easier for retailers to access customers. By using these third-party platforms, small retailers may, with limited investments and effort, become visible to potential customers and sell products to a large customer base and in multiple Member States.”).

⁷ The focus should be on a fair competitive process, not “ensuring fair economic outcomes”. *Contra*. Proposed DMA, recital 5.

competitive incentives are also dampened; they may forgo rivalrous competition in favour of a free ride with regulator mandated access to competitors' innovations.

The value generated by innovation driven dynamic competition, is, by its nature, difficult to predict. The cost to society of deterring the introduction of new goods and services, whether by existing "gatekeepers" or potential rivals who choose a remedy-taker business model, is therefore high. The cost to society of doing so solely for the short-run benefit of some subset of competitors or business users, without regard for the impact on consumers, is even higher.

1.3. Preserve Business Freedom

Digital economy regulation should preserve business freedom and choice of pro-competitive business models. The freedom to conduct a business is a fundamental right.⁸ Business users exercise this right when they choose to accept the terms of dealing with platform operators. These private enterprises should have the freedom to judge the fairness of their agreements.⁹

1.4. Prevent Distortive Dependencies

Previous experience shows that government mandated access conditions lead to long-running government-led renegotiations of terms of service.¹⁰ In dynamic and diverse digitally-enabled markets, imposing new and untested ex-ante access conditions risks tying future innovation to ongoing regulatory oversight. It warrants careful case-by-case and participative enforcement.

1.5. Provide Legal Certainty

Ex-ante regulation needs a workable and future-proof mechanism for balancing the interests of consumers, suppliers, other ecosystem participants, and the more general interest in an open market economy with free competition. To provide legal certainty, this centralised oversight of the digital economy should be based on a coherent, objective, and administrable governance and enforcement framework that can be adapted in different jurisdictions. This is all the more necessary in the absence of explicit, objective and evidence based measures for assessing fairness and contestability.¹¹

2. Improving the DMA's Governance and Enforcement Framework

2.1. Article 2(2) - Core Platform Service

Discriminatory application of the DMA through the exclusion of relevant core platform services would threaten the open market economy and free competition. The definition of "core platform services" should be broadened to ensure that the DMA does not distort competition by disadvantaging some services, but not other functionally equivalent services.¹²

⁸ European Union "Charter of Fundamental Rights of the European Union" (26 October 2012), available [here](#), art. 16.

⁹ See e.g. EU Council and Parliament "Directive 2019/663 of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain" (25 April 2019), available [here](#), ("UTP Directive") recital 16 ("When deciding whether a particular trading practice is considered unfair, it is important to reduce the risk of limiting the use of fair and efficiency-creating agreements agreed between parties.")

¹⁰ For example, the European directive in the telecom sector was originally created with the aim to "reduce ex ante sector specific rules progressively as competition in the market develops". European Parliament and Council "Directive on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)" (7 March 2002), available [here](#), recital 13. Nearly 20 years later, subsequent EU directives governing the telecommunications sector are still working on that aim.

¹¹ The Proposed DMA goes far beyond existing EU law concepts of unfair commercial practices limited to "misleading" and "aggressive" conduct. See European Parliament and Council "Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market" (11 May 2005), amended (2019), available [here](#), arts. 5-9. Even these narrow conduct rules required extensive guidance and explanation. See European Commission "Commission Staff Working Document - Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices" (25 May 2016), available [here](#).

¹² See European Commission "Regulatory Scrutiny Board Opinion [of the DMA]" (10 December 2020), available [here](#), pgs. 1-2 ("the report still contains significant shortcomings: (1) The report does not fully justify the selection of the core platform services to be covered by the initiative. ... The report should better justify why other platform services, such as content streaming

A more fundamental issue is the lack of accommodation for the on-going development of digital products and services. All of the “core platform services” described in the DMA Proposal have evolved significantly in the last years, incorporating new features and functionalities to accommodate evolving consumer demand. For example social media now includes many new features that didn’t previously exist, like news feeds, photo filters, algorithmic ranking, and video editing features. Each of these could have in the past been considered a separate product or service. Static product definitions would thereby chill product development and innovation in Europe, as complainants would demand protection from “unfair” new platform features that make competition difficult. To preserve dynamic competition, obligations that are affected by product boundaries (e.g. related to tying or bundling), should be applied in light of such product developments.

2.2. Article 3(1)(b) - An Essential Gateway

The obligations of the DMA should only apply to companies that are *essential* gateways for business users. Experts largely agree that interventions should be limited to companies controlling a strategic digital bottleneck upon which business users are dependent for market access.¹³ Allowing intrusive access conditions merely because a platform service is “important” would be a quasi-automatic designation punishing successful platform services and distorting the open market economy.¹⁴ It would also increase distortive regulatory dependencies by encouraging business users to avoid exploring alternative ways of accessing markets (e.g. reaching customers directly, or building new platforms). Mandating that technologies for access be developed solely at the expense of the platform operator would be even more distortive.

2.3. Article 3(2)(a) - Presumption of Significant Impact on the Internal Market

The quantitative thresholds proposed by the DMA are not a robust and reliable trigger for the imposition of obligations.¹⁵ For example, the DMA should apply to gatekeepers that are active in only one or two member states. All platform operators have the potential to intermediate between consumers and business users throughout the internal market. Adding regulatory burdens on those that do not impose geo-blocking would increase fragmentation and distort the open market economy. Nascent gatekeepers, notably European startups, would be encouraged to limit their activities geographically, rather than expanding across the entire EU single market.

Similarly, the DMA should not use “fair market value” as an independent criteria for determining significance of impact. Market value is a prediction of future shareholder returns, it is not strictly related

providers, would not meet the selection criteria.”). Similar concerns arise with regards to number-dependent interpersonal electronic communication services, independent advertising services, and others.

¹³ J. Crémer, Y.-A. de Montjoye, H. Schweitzer “Competition Policy for the Digital Era” (2019), available [here](#), pg. 54 (“...dependency of businesses on online platforms as quasi ‘gatekeepers’ to markets and consumers”); Commission ‘Competition Law 4.0’ “A new competition framework for the digital economy”, Report to the Federal Ministry of Economic Affairs and Energy (BMWi) Germany” (2019), available [here](#), pg. 47 (“The growing economic importance of platforms as intermediaries may lead to new forms of dependency, and especially the dependency of product and service providers on platforms”); Digital Competition Expert Panel “Unlocking digital competition” (March 2019), available [here](#), paras. 2.10, 2.25-2.27 and 3.69 (identifying “enduring market power over a strategic bottleneck market”, “control over other parties’ market access”, and the existence of “many dependent users on either side”); Swedish Competition Authority “Report on Digital Platforms in Sweden” (26 February 2021), available [here](#), pg. 26 (“The sector inquiry shows that the degree of intermediation power does not necessarily depend on the platform’s size or on market concentration.”); BEREC “Response to the Public Consultation on the Digital Services Act Package and the New Competition Tool” (7 September 2020), available [here](#) (“the control over a digital bottleneck (i.e. over a gateway for which there is no relevant substitute) for a large amount of end-users, and/or being an unavoidable trading partner for a large amount of business users.”); CERRE “The European proposal for a Digital Markets Act: A first assessment” (19 January 2021), available [here](#), pg. 15 (“size is not directly linked to gatekeeper power”) (emphasis added).

¹⁴ See e.g. European Parliament and Council “Directive 2018/1825 establishing the European Electronic Communications Code” (11 December 2018), available [here](#), (“EECC”) recital 29 (“it is essential that ex ante regulatory obligations are imposed only where there is no effective and sustainable competition on the markets concerned.”)

¹⁵ See European Commission “Regulatory Scrutiny Board Opinion [of the DMA]” (10 December 2020), available [here](#), pg. 2 (“The report should better define and justify the measures covered under the options. It should demonstrate why the proposed set of cumulative quantitative thresholds (under the ‘non-dynamic’ and ‘semi-flexible’ options) can be considered as a robust and reliable trigger across all selected core platform services for the (quasi-automatic) designation of gatekeepers and the imposition of obligations.”)

to existing activities, nor activities in Europe. Companies that are part of a wider group but still operate independently, or which have significant investments from financial institutions, could easily meet the market value threshold. Similarly, the DMA's revenue thresholds should be based on core platform service revenues not total revenues.

2.4. Article 3(6) - Gatekeeper Elements

To provide legal certainty, the DMA, or related EC guidance, should specify the way in which the EC will use and assess the gatekeeper elements of Article 3(6), and clearly define the conditions under which the gatekeeper presumption may be reversed. For example, where a company does not have the ability to harm fairness or contestability it should not be designated. This could be due to the existence of competitive alternatives or where there is multi-homing by monthly active users (a metric which should also be clearly defined).

2.5. Article 4(1) - Gatekeeper Rebuttal

The EC should be *required* to re-assess its gatekeeper designation decisions where there has been a material change in market circumstances and upon request by the designated gatekeeper. Such review cannot be limited merely to facts referred to in the EC's decision. Dynamic digital markets can change quickly, and continuing to impose intrusive obligations on companies in materially different market circumstances could cause significant harm to businesses and consumers.¹⁶

2.6. Article 5 - Unambiguous Ex-Ante Obligations

The DMA is intended to target *"those practices (i) that are particularly unfair or harmful, (ii) which can be identified in a clear and unambiguous manner to provide the necessary legal certainty for gatekeepers and other interested parties, and (iii) for which there is sufficient experience."*¹⁷ To protect the open market economy, Article 5 obligations should be limited to those practices where there is unambiguous likelihood of significant harm regardless of the context in which they occur. Additionally, limiting Article 5 to those obligations which can be complied with unambiguously would increase legal certainty.

2.7. Article 6 - Tailored Ex-Ante Obligations

To preserve dynamic competition, Article 6 should serve as a list of guiding principles, imposed as obligations only following *"a tailored application ... through a dialogue between the Commission and the gatekeepers concerned."*¹⁸ In existing EU law, imposing access conditions typically requires a market analysis of the industry concerned.¹⁹ Obligations that impact business models, existing or future product designs, or that would mandate access conditions, should be tailored to the harms in a specific industry context, and each obligation ultimately imposed should be proportionate.²⁰ As a corollary, non-compliance proceedings should apply only to breaches of tailored and specified Article 6 obligations.

¹⁶ See e.g. EEC, available [here](#), art. 68(6) ("National regulatory authorities shall consider the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, influencing competitive dynamics. ... the national regulatory authority shall assess without delay whether it is necessary to review the obligations imposed on undertakings designated as having significant market power and amend any previous decision.") (emphasis added)

¹⁷ DMA Proposal, pg. 6. As mentioned above, CCIA does not at this stage comment on the specific prohibitions and obligations of the proposed Article 5 and 6. However, these three criteria do not all appear to be met.

¹⁸ DMA Proposal, pg. 6; *Ibid.* pg. 22, recital 33 ("[I]t is necessary to provide for the possibility of a regulatory dialogue with gatekeepers to tailor those obligations that are likely to require specific implementing measures in order to ensure their effectiveness and proportionality.")

¹⁹ For elements relevant to the telecommunications industry market context, see EEC, available [here](#), art. 6(7) (requiring (a) high and non-transitory structural, legal or regulatory barriers to entry, (b) a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry, (c) competition law alone being insufficient to adequately address the identified market failures, and (d) taking into account forward-looking market developments affecting the likelihood of the relevant market tending towards effective competition, (i) all relevant competitive constraints, at the wholesale and retail levels, irrespective of whether the sources and (ii) other types of relevant regulation or measures imposed).

²⁰ See e.g. EEC, available [here](#), art. 68(2) ("In accordance with the principle of proportionality, a national regulatory authority shall choose the least intrusive way of addressing the problems identified in the market analysis.")

2.8. Article 7 - Effective Compliance

Designated gatekeepers are obliged to comply with measures that are “*effective in achieving the objectives of the relevant obligations and proportionate in the specific circumstances of the gatekeeper and the relevant service.*”²¹ To provide legal certainty, the EC should clarify in its Article 6 decision (imposing tailored obligations) the specific objectives pursued. The EC should also be required to engage with designated gatekeepers on compliance commitments under Article 7(7).²² Article 7 proceedings should be cooperative and participative, without the threat of infringement proceedings for the same conduct.

2.9. Article [#X] - Pro-competition Safe-Harbour

In order to preserve dynamic competition, the DMA should not apply to pro-competitive conduct in the interest of consumers, including the creation of entirely new products or services.²³ Consumer welfare is a well understood concept and could provide legal certainty as a benchmark. Under this benchmark, increases in dynamic and allocative efficiency for the long-term benefit of consumers are permitted, and competitive incentives maintained. Any fine or behavioural remedy based on such pro-competitive conduct should be suspended pending the conclusion of an evidence-based assessment.

2.10. Article 9 - Exemptions Subject to Conditions and Obligations

The EC should be required to exempt gatekeepers from specific obligations on broader consumer interest grounds where harms of the obligation outweigh the benefits. For example, if an obligation increases consumer complaints over online scams or fraud, the EC should be able to exempt the gatekeeper from that obligation upon reasoned request. Similarly, if a material change in market dynamics makes an obligation no longer proportionate in the specific circumstances of the gatekeeper and the relevant service, the EC should be required to modify that obligation upon reasoned request.

2.11. Article [#Y] - Exempted Agreements with Business Users

To avoid distortive regulatory dependencies, business users who can access the market without the gatekeeper should not benefit from the DMA's protections. Existing EU law on unfair trading practices exempts large suppliers from its protections, and applies only where there is a significant difference in bargaining power.²⁴ Similarly, large omni-channel suppliers who operate retail locations and their own online presence should not be able to use benefits derived under the DMA to compete unfairly with “gatekeeper” marketplaces.²⁵

The DMA is an internal market instrument and hence should avoid issues of extraterritorial jurisdiction. Accordingly, the DMA should not extend to protecting business users outside of the EU. The EU may have a legitimate interest in strengthening the bargaining power of European suppliers and business users and subsidising them with access conditions and other privileges. However, forcing platform operators in Europe to provide these benefits to business users everywhere in the world could make

²¹ DMA Proposal, pg. 41, art. 7(5).

²² Note that in the competition enforcement context, commitments offered by firms have often exceeded what would have been required to address any competition concerns. See N. Dunne, “Commitment Decisions in EU Competition Law” (Journal of Competition Law & Economics, 2014), available [here](#).

²³ European Commission “Commission Staff Working Document Impact Assessment Report (Part 1/2) Accompanying the document [DMA Proposal]” (15 December 2020), available [here](#), para. 305 (“Given that the rules only aim to prevent unfair and harmful conduct, they should not hamper market entry (even) by gatekeepers if the latter is based on fair means of competition.”)

²⁴ UTP Directive, available [here](#), recital 9 (“The number and size of operators vary across the different stages of the agricultural and food supply chain. ... A dynamic approach, which is based on the relative size of the supplier and the buyer in terms of annual turnover, should provide better protection against unfair trading practices for those operators who need it most.”)

²⁵ See e.g. European Commission “Commission Staff Working Document Accompanying the Document Report from the Commission to the Council and the European Parliament Final report on the E-commerce Sector Inquiry” (10 May 2017), available [here](#), pg. 115, para. 366 (“...marketplaces represent an important gateway for smaller and medium-sized retailers to sell cross-border whereas they are less relevant for cross-border sales of large retailers with a turnover above EUR 50 million.”)

platform business models uneconomical or unsustainable, causing them to exit and reducing open market competition.

Lastly, allowing business users to negotiate more favourable terms and conditions depending on their preferences would preserve business user freedom. For example, some business users may want more generous access conditions, and be willing to pay higher service fees in exchange. Alternatively, some business users may prefer lower service fees in exchange for more limited access conditions. Both should have that contractual freedom.

2.12. Article [Z] - Exemption for National Markets

Existing EU law on unfair trading practices allows Member States to set lower standards if the specificities of the sector involved make the conduct unproblematic.²⁶ To further preserve dynamic competition and incentives to invest in innovation, the DMA could grant designated gatekeepers the freedom to appeal to Member State authorities and Courts to allow conduct otherwise prohibited by the DMA, in duly justified cases, where harms addressed by the DMA are unlikely to arise in that particular national context.

2.13. Chapter V - Fines and Penalties

In fixing any penalty for non-compliance, the EC should credit designated gatekeepers for internal compliance mechanisms like the appointment of compliance officers, and internal impact assessments addressing “fairness” or “contestability” claims by business users.

The EC should not have the discretion to penalise *de minimis* non-compliance, particularly with regards to access conditions which are inherently ambiguous. Where a designated gatekeeper uses automated systems, a single, innocent and minor product design change could theoretically reduce access conditions for thousands of business users (whether they know it or not). For legal certainty, such a situation should not give rise to multiple non-compliance decisions (if even one), nor a finding of systemic non-compliance. This is particularly relevant given the very short time frame for implementation of the DMA, the significant product design changes that it will inevitably entail, and the concomitant risk of overly cautious compliance that could be detrimental to consumers.

Similarly, a non-compliance decision should be based on a thorough assessment of the designated gatekeepers’ core platform service and all the obligations imposed on it. Core platform services can undergo thousands of product updates a year, each affecting thousands of business users protected by a number of DMA obligations. This multiplicity requires that the EC assess conduct holistically and issue a single non-compliance decision.

2.14. Maximum Harmonisation of Conduct Rules

The DMA provides useful harmonisation with regards to diverging Member States “fairness” and “contestability” rules, but it does not prevent divergence done on the grounds of “competition”.²⁷ To provide legal certainty, the DMA should also provide maximum harmonisation with regards to diverging conduct rules. In other words, Member States should not be able to prohibit or oblige conduct already covered by the DMA merely by invoking a “competition” objective.²⁸ By that same token, national courts should not entertain claims brought under the DMA by private litigants that could risk diverging national interpretations of its obligations.

²⁶ UTP Directive, recital 20 (explaining that Member States can offer business users less protection “in duly justified cases”).

²⁷ Proposed DMA, arts. 1(5)-1(7). This distinction however is somewhat unclear. See e.g. J. Laitenberger (former Director-General for Competition, now Judge on the General Court of the European Union) “The many dividends of keeping markets open, fair and contestable” (27 April 2017), available [here](#) (“Fairness is indeed a rationale that sits right at the core of the rules we apply.”)

²⁸ See e.g. European Parliament and Council “Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market” (11 May 2005) as amended, available [here](#), art. 4 (“Member States shall neither restrict the freedom to provide services nor restrict the free movement of goods for reasons falling within the field approximated by this Directive.”)



Even with these safeguards, complainants will argue that breach of the DMA is sufficient proof of anticompetitive abuse of dominance, whether under EU or national law. They will bring follow-on damages claims.²⁹ This will reduce legal certainty and chill innovation incentives. But this could be prevented by ensuring that conduct and behaviours covered by the DMA confer immunity from such antitrust claims. In particular, DMA non-compliance decisions should not be used as proof of dominance, abuse, anticompetitive harm, or any other constitutive element of a competition claim.

2.15. Article 38 Review

Every three years, when the effectiveness and proportionality of the DMA is evaluated, the EC should also evaluate the need for continued intervention and oversight of the core platform services concerned. The EC should be required to consider whether certain provisions of the DMA can be removed. This evaluation should be done independently, not by the body enforcing the DMA. It should incorporate data from industry submissions, and should include an assessment of the DMA's positive, negative, direct and indirect effects. The EC's longer-term objective should be to eliminate any unnecessary regulation in favour of an open market economy with free competition.

2.16. Increased Resources

The EU should ensure that the EC has sufficient resources to undertake all of its tasks under the DMA. Recent experience suggests that resourcing requirements for regulation of the digital economy should not be underestimated.³⁰ Given the dynamic nature of competition between large technology companies, limiting enforcement of the DMA to only a handful of companies would significantly distort the open market economy. Even sequential enforcement of the DMA would unfairly disadvantage those competing gatekeepers who are the first targets of enforcement. To protect the open market economy, the EC's enforcement capabilities should not be limited by a lack of resources or dictated by discretionary enforcement priorities. Like with competition enforcement, the EC body responsible for enforcement of the DMA should operate independently outside political influence.

The EU should also ensure that the European Courts have sufficient resources to adjudicate disputes arising under the DMA. This is particularly important given the lack of existing EU legal precedent defining the business "fairness" and "contestability" objectives pursued.³¹ This will become increasingly important as digitally-enabled products and services multiply.

Conclusion

CCIA believes that in order to meet its stated goals, the DMA should protect the open market economy and free competition, preserve dynamic competition and innovation for the benefit of consumers, preserve business freedom, prevent distortive regulatory dependencies, and ensure a framework for digital economy regulation that will provide legal certainty and harmonisation. We look forward to working with policy-makers to ensure good regulatory outcomes for Europe.

About CCIA

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For nearly fifty years, CCIA has promoted open markets, open systems, and open networks. For more, visit www.cciagnet.org.

²⁹ Facilitated by recent law making. See European Parliament and Council "Directive 2014/104 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union" (26 November 2014), available [here](#).

³⁰ See e.g., European Data Protection Board "Contribution of the EDPB to the evaluation of the GDPR under Article 97" (18 February 2020), available [here](#), pg. 3 ("the EDPB notes that most of the [Supervisory Authorities] state that resources made available to them are insufficient.").

³¹ P. Ibáñez Colomo "The Draft Digital Markets Act: a legal and institutional analysis" (22 February 2021), available [here](#), pg. 29 ("Thus, the measures adopted under Articles 3, 5 and 6 are to be assessed exclusively by reference to the concepts introduced therein. By the same token, any disputes would revolve around the interpretation of the meaning of the said concepts.")

[EXTERNAL] MOTIE visit next week

From: Jonathan McHale (b) (6) @ccianet.org>
To: "De Lima, Deanne E. EOP/USTR" <deanne.e.delima@ustr.eop.gov>, "Pietan, Scott J. EOP/USTR" (b) (6)
Cc: "Tanner, Robb EOP/USTR" <robert_tanner@ustr.eop.gov>
Date: Fri, 14 Feb 2025 13:18:05 -0500
Attachments: CCIA-(Korea) Comments-for-2024-USTR-National-Trade-Estimate-Report.pdf (266.23 kB)

Hi Scott and Deanne, great to see you the other day and hope you are well. We hear that MOTIE is coming to town next week and may be meeting with USTR. I hope the issue we discussed can get on the agenda, and if possible, we could get a read-out of any digital-relevant discussions. I know you have this, but also including our broader set of concerns with Korea that we filed for the NTE.

Many thanks,

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Jonathan McHale

Vice President for Digital Trade

(b) (6) @ccianet.org

(b) (6)



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X. Kenya

Restrictions on Cross-Border Data Flows

Kenya released a new ICT Policy in August 2020, which requires that Kenyan data remains in Kenya, and that it is stored safely and in a manner that protects the privacy of citizens.⁵¹⁰ This provision conflicts with the 2019 Data Protection Act, which enables cross-border data transfers subject to conditions set out by the Data Commissioner. The Ministry of ICT proposed an amendment to the ICT policy guidelines in July 2023 that would remove the 30% local ownership requirement and invited public comment, but the change has yet to be finalized.⁵¹¹

Data and Infrastructure Localization Mandates and Restrictions on Cloud Services

The Data Protection Act does not require the localization of personal data, and under Section 50, the Cabinet Secretary is empowered to decide the types of personal data that must be stored and processed in Kenya due to protection of strategic interests of the state or revenue. However, industry reports that the Data Protection Regulations of 2020 required the localization of a wide array of data such as national civil registration systems, population register and identity management, primary and secondary education, electronic payment systems, revenue administration, health data, and critical infrastructure. At a minimum, a company must store a copy of data that is categorized under these definitions in a data center located in Kenya.

Taxation of Digital Products and Services

Kenya implemented the following tax laws in 2020. First, a 20% withholding tax on “marketing, sales promotion and advertising services” provided by non-resident persons; second, a 1.5% digital service tax on income from services derived from or accruing in Kenya through a digital marketplace; and third, a revision to the VAT liability of exported services from zero-rated to exempt, so that the services provided by the local entity to overseas entities would no longer be classified as services for export and the local entity would no longer claim VAT refunds on its costs for those services.

Y. Korea

Imposing Legacy Telecommunications Rules on Internet-Enabled Services

The Ministry of Science & ICT has promulgated regulations made pursuant to amendments to the Telecommunications Business Act passed in 2020, imposing obligations on OTT suppliers, including foreign suppliers, for network management issues outside their control.⁵¹²

⁵¹⁰ See *Publication of the National Information Communication and Technology Policy Guidelines, 2020*, BOWMANS LAW (Sept. 1, 2020), <https://www.bowmanslaw.com/insights/technology-media-and-telecommunications/publication-of-the-national-information-communication-and-technology-policy-guidelines-2020/>.

⁵¹¹ <https://weetracker.com/2023/07/12/kenya-ict-ownership-rule/>.

⁵¹² Kim Eun-jin, *Enforcement Decree of ‘Netflix Law’ Feared to Hurt Korean Internet Companies*, BUSINESSKOREA (Sept. 9, 2020), <http://www.businesskorea.co.kr/news/articleView.html?idxno=51497>.

The rules subject predominantly U.S. internet services to disproportionate levels of risk and responsibility regarding network management over which they have no control. The rules inappropriately shift the burden for several responsibilities pertaining to network management to “value-added telecommunications service providers” (VTSPs), even though they lack the technical or information capabilities to control end-to-end delivery of the content. Internet service providers who control the network infrastructure remain the most relevant to service reliability. These changes could also lead to unbalanced bargaining positions resulting in discriminatory or anti-competitive behavior by ISPs to the detriment of VTSPs, which could lead to demands for increased usage fees or other contractual conditions.

Network Usage Fee Legislation

Seven proposals have been made by the Korean National Assembly to mandate “network use fee” payments by certain content providers between 2021 and 2022. While in the past these proposals have been justified as necessary to help fund the costs of extending and adding capacity to local broadband markets, they are likely to distort investment incentives and lead to discriminatory treatment of content and application providers.⁵¹³ Such proposals follow years of demands by local telecommunication providers that U.S. content and application providers contribute financially to telecommunications network operators through network usage fees.⁵¹⁴ In 2022, these proposals were consolidated into what was called the “Netflix Free Ride Prevention Act.”⁵¹⁵ The legislation would effectively mandate that foreign content access providers—namely U.S. firms such as Google, Meta, and Netflix—enter into paid contracts with internet service providers for the content demanded by ISPs’ customers. Such a requirement would directly undermine long-standing global norms and procedures that serve as the foundation of the internet ecosystem and would likely violate Korea’s trade obligations to the United States, by targeting U.S. content providers and requiring contracts and extractionary fees for any company meeting arbitrary data transfer thresholds.⁵¹⁶

The legislation has now stalled as public opposition has materialized, including from a non-profit organization operating in Korea called OpenNet that collected 268,000 signatures in opposition to the proposal from September 7, 2022, to October 31, 2022.⁵¹⁷ The legislation has remained stalled in committee, warranting cautious optimism, but given the history of the issue, industry remains concerned that network usage fees could re-emerge and gain momentum.

⁵¹³ Kyung Sin Park & Michael Nelson, *Afterword: Korea’s Challenge to the Standard Internet Interconnection*, Carnegie Endowment for Int’l Peace (Aug. 17, 2021),

⁵¹⁴ *Korean Court Sides Against Netflix, Opening Door for Streaming Bandwidth Fees from ISPs*, TECHCRUNCH (June 28, 2021), <https://techcrunch.com/2021/06/28/korean-court-sides-against-netflix-opening-door-for-streaming-bandwidth-fees-from-isps/>.

⁵¹⁵ See <https://blog.naver.com/yyc8361/222870020115>.

⁵¹⁶ *New Korean Legislation Undermines Internet Norms and Raises Broad Trade Concerns*, DISRUPTIVE COMPETITION PROJECT (Sept. 19, 2022), <https://www.project-disco.org/21st-century-trade/091922-new-korean-legislation-undermines-internet-norms-and-raises-broad-trade-concerns/>; INTERNET SOCIETY, *Old Rules in New Regulations – Why ‘Sender Pays’ Is a Direct Threat to the Internet* (May 26, 2022), <https://www.internetsociety.org/blog/2022/05/old-rules-in-new-regulations-why-sender-pays-is-a-direct-threat-to-the-internet/>.

⁵¹⁷ <https://koreajoongangdaily.joins.com/2022/11/01/business/tech/Korea-network-usage-fee-Google/20221101172720310.html>.

The legislation would put South Korea in danger of violating several provisions of their Free Trade Agreement with the United States, including KORUS Article 14.2 (Access and Use); KORUS Article 14.5 (Competitive Safeguards); and KORUS Article 15.7 (Principles on Access and Use of the Internet).⁵¹⁸

CCIA has appreciated the engagement of USTR and the Department of Commerce on this issue in the past and encourages continued vigilance. As the United States and Korea seek continued engagement through initiatives such as the Indo-Pacific Economic Framework, ensuring digital services are not subject to discriminatory treatment is of paramount interest to the U.S. tech industry.

Restrictions on Cloud Services

The Korean government continues to maintain a protectionist stance to keep global cloud service providers out of the local public sector market. It has accomplished this through the Korea Internet & Security Agency (KISA) Cloud Security Assurance Program (CSAP), a set of requirements designed to ensure that public institutions relying on commercially-supplied cloud computing services benefit from secure and reliable cloud offerings. Industry reports that the three main technical requirements have prevented all global CSPs from being able to obtain the CSAP: physical separation of government data, requiring dedicated data centers; non-recognition of Common Criteria (CC) certification of equipment; and use of domestic encryption algorithms. In addition, requirements to store and process data domestically and rely exclusively on Korean nationals for the management of services severely affects foreign suppliers' ability to compete in the market.

On January 31, 2023, Korea's Ministry of Science and ICT (MSIT) promulgated a revised version of the CSAP. Despite introducing some minor flexibility with respect to data deemed low-tier (i.e., with respect to physical separation), U.S. services remain stymied at every level of CSAP certification—Low, Moderate, and High—with the result that public sector contracts go exclusively to Korean national firms.

While burdensome requirements at the low tier remain (e.g., with respect to encryption), these changes may open up a small portion of the public sector market to global CSPs, by allowing logical versus physical separation of data for this category. This key burden remains for medium and high-tier systems, which require the use of physical infrastructure separate from public cloud offerings. While recent advancements in AI technology are expected to benefit the Moderate tier of the public sector the most, their ability to utilize the most advanced global AI services may be significantly hindered by physical separation requirements. Given Korea's interest in developing its AI capability, allowing for logical separation in the Moderate tier, and alignment with international standards, should be a priority.

⁵¹⁸ CCIA, Proposed to Mandate Payments by Content and Application Providers (CAPs) Undermines the Future of U.S.-Korea Trade (Sept. 2022), <https://www.ccianet.org/wp-content/uploads/2022/09/CCIA-Trade-Analysis-of-Korean-Network-Usage-Fee-Proposals.pdf>.

The CSAP obligations have resulted in U.S. firms being effectively unable to qualify to bid on certain cloud computing procurement contracts, despite WTO and KORUS FTA commitments that should provide U.S. firms with that right, and which prohibit the use of technical requirements as a means of denying market access.

Also key to a more open market is a more open and transparent policy dialogue involving the National Intelligence Service (NIS), which has played a major role in cloud computing regulation, and creation of its independent National Cloud Computing Security Guide. The NIS Guidelines set stricter cybersecurity requirements than the CSAP guidelines, as well as other cybersecurity validation programs that impact CSAP, including by requiring that cloud facilities, equipment and personnel be under the exclusive legal jurisdiction of Korea. Therefore, reform of these Guidelines to allow for U.S. supplier participation in the Moderate tier, and NIS's increased involvement in policy discussions is crucial for ensuring more secure and reliable public services through the cloud.

The government also requires CSAP-like controls in other sectors, such as in healthcare, with the Ministry of Health and Welfare (MOHW)'s recent inclusion of CSAP-like controls—such as the physical location of cloud facilities, data residency, and CC certification obligations—as a requirement for Electronic Medical Record (EMR) system providers who seek to use public cloud services. While MOHW claims that the CSAP is not mandatory, it plans to provide medical insurance reimbursement premiums only to medical institutions with certified EMR systems, thus creating an unlevel playing field for companies who are unable to satisfy the CSAP-like controls. Similar restrictions have been considered for the education sector.

Amendments to the Telecommunication Business Act on Mobile Application Marketplaces

In August 2021, the Korean National Assembly passed legislation that requires mobile application marketplaces to permit users to make in-application purchases through payment platforms not controlled by the marketplace itself. The scope of the law effectively creates a ban on a common model for app distribution, widely used in the U.S. but which differs from local equivalents. Further, policymakers supportive of the bill have made clear their intent to single out specific U.S. companies with the new law.⁵¹⁹ This targeting of U.S. firms could conflict with Korea's trade commitments under the Korea-U.S. Free Trade Agreement, as well as commitments under Article XVII (National Treatment) of the WTO General Agreement on Trade in Services (GATS).

The rules banning app store operators from requiring “specific payment methods” were approved by the Korea Communications Commission on March 8, 2022.⁵²⁰ The agency announced on August 16, 2022, that it was investigating Google, Apple, and SK Group's OneStore over potential violations regarding in-app payments, with a specific warning to Google and Apple: “In

⁵¹⁹ Reason for Proposal and Main Contents, New regulations on prohibited acts of app market operators, etc. (Agenda No. 2102524), *available at* https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_B2C0H0N7Z3O0I1Y5X3Q0Z3Y1D1U2L3.

⁵²⁰ Enforcement Decree, Mar. 8, 2022, <https://www.kcc.go.kr/user.do?mode=view&page=E04010000&dc=E04010000&boardId=1058&cp=4&boardSeq=52916>

addition, the KCC determined that if Google or Apple imposes discriminatory conditions on the payment method (third-party payment) provided by the app developer in an internal payment, or makes the usage process inconvenient, that act may constitute an act of forcing a specific payment method (own company payment).”⁵²¹

U.S. operators of application marketplaces are disincentivized to operate in a region where it is unclear how the app distributor could recover the costs it incurs in maintaining the mobile application marketplace. Industry reports inconsistent and opaque definitions and implementation procedures of the legislation by the KCC which has resulted in uncertainty for businesses operating or seeking to operate in Korea.

The resulting rules reflect a lack of sufficient deliberation and input from parties, both domestic and foreign, on the merits and possible implications of the bill. Such implications include potential harmful effects on a nascent and thriving ecosystem that countless Korean developers utilize to reach a global market.

Location-based data restrictions

Korea’s restrictions on the export of map data continue to disadvantage foreign providers that use such data for services offered in Korea. Foreign-based services providers that offer apps and services that rely on map-based functions—such as traffic updates and navigation directions—are unable to fairly compete against their Korean rivals that generally do not rely on foreign data processing centers and therefore do not need to export map data. Korea is the only significant market in the world that restricts the export of map data in this manner.

Exporting map data requires approval from the Korean government. To date, Korea has never approved the exporting of map data, despite numerous applications by international suppliers. U.S. stakeholders have reported that Korean officials have stated that export approval is dependent on agreement to blur certain satellite imagery of the country--imagery that can be used in conjunction with map data, that Korea seeks to blur ostensibly for security reasons. While competing Korean providers do voluntarily blur select locations at the request of the Korean government, such imagery (provided by third-parties) is readily viewable on foreign mapping services available outside of the country. Thus, it is unclear how restricting the availability and denying the export of such data for foreign suppliers would address the general security concern, since high-resolution imagery of Korea is widely available as a stand-alone commercial product from over a dozen different suppliers. Accordingly, the most logical explanation is that Korea is simply seeking to protect its domestic suppliers from foreign competition.

Personal Information Protection Act

Korea’s Personal Information Protection Act of 2011 has always imposed stringent requirements on the transfer of personal data outside Korea, requiring online service providers to provide customers with extensive information about the data transfer, such as the destination of the data, the third party’s planned use for the data, and the duration of retention. However, less stringent

⁵²¹ KCC Begins Fact-Finding Investigation of Three App Market Operators, Aug. 16, 2022, <https://www.kcc.go.kr/user.do?mode=view&page=E04010000&dc=E04010000&boardId=1058&cp=1&boardSeq=53609>.

requirements apply to data transfers to third parties within Korea, which “effectively privilege Korean over foreign suppliers in any data-intensive sector without materially contributing to privacy protection,” as USTR has highlighted.⁵²²

Two years after PIPA’s introduction, on May 18, 2023, the Personal Information Protection Commission released amendments for public consultation which aim to reinforce the rights of data subjects by introducing the right to data portability and took effect on September 15, 2023.⁵²³ The amendments provide Korea’s Personal Information Protection Commission (“PIPC”) the authority to impose fines based on global, rather than local revenue. Since most Korean firms subject to this law have negligible foreign sales, such penalties disproportionately affect foreign (and mainly U.S.) suppliers, subjecting them to significantly higher financial risk than their local competitors. This amended law also grants the PIPC the authority to order the suspension of cross-border transfer of personal data based on a generalized risk of breaching privacy protections, absent evidence of specific violations. Such arbitrary authority could affect legitimate personal data transfer by U.S. companies to their U.S. headquarters, jeopardizing significant cross-border trade between Korea and the United States.

Targeted Enforcement on U.S. Companies

In September 2022, the Korean Personal Information Protection Commission (“PIPC”) levied more than \$70M in fines against two U.S. companies for alleged violations of the Personal Information Protection Act (PIPA). These are the biggest fines ever imposed by the PIPC, and were based on a new interpretation of the law with no court or regulatory precedents: the PIPC had concluded that the ad tech service provider, rather than the third-party publishers (website or app operators), must obtain consent for the user’s personal data for personalized ads on the publishers’ sites and apps. It appears that PIPC narrowly and arbitrarily scoped their investigation to only impact 2 U.S. companies, even though several domestic ad service providers also use behavioral data for personalized ads.

Taking this narrow approach to enforcement held U.S. companies to an unprecedented level of responsibility, and effectively absolved domestic ad service providers and third-party publishers of their responsibility to obtain consent for using behavioral information for personalized ads. Given there was no clear standard established by regulatory authorities or court precedents in Korea, and no establishment of harm to the user, the PIPC could have first clearly set forth the standards to be complied with by business operators in the form of guidelines and recommend them to comply with such standards.

Artificial Intelligence Legislation

On February 14, 2023, the National Assembly Science, ICT, Broadcasting and Communications Committee advanced the “Law on Nurturing the AI Industry and Establishing a Trust Basis,” following 12 different bills related to artificial intelligence that have been introduced in the

⁵²²

<https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf>.

⁵²³ <https://www.pipc.go.kr/eng/user/ltm/new/noticeDetail.do>; <https://iapp.org/news/a/south-korea-cabinet-approves-enforcement-amendments-to-pipa/>.

previous three years.⁵²⁴ While the bill does not discriminate based on nationality or size, it includes increased and unclear obligations on systems of AI determined to be “high-risk,” including methods for detailing how an AI system reaches its final decision. The broad classification of what constitutes high-risk is comparable to that of the EU AI Act and could envelop more services than appropriate.

Data Center Legislation

In late 2022, in response to a fire at a major data center, the National Assembly passed the amendments to the Broadcasting Communications Development Act (“BCDA”), the Telecommunications Business Act (“TBA”), and the Act on the Promotion of Information and Communications Network Utilization and Information Protection (“Network Act”) to encourage resiliency of data centers. The legislation entered into force in July 2023. Among the requirements of this law are extensive demands for data related to data center security that could jeopardize companies’ cybersecurity and nondisclosure agreements, and making sensitive data related to infrastructure, security, and commercially sensitive trade secrets vulnerable to exposure.

Z. Malaysia

Cabotage Policy on Submarine Cable Repairs

In November 2020, the new Minister of Transport abruptly revoked an exemption from 2019 to the Merchant Shipping Ordinance 1952 that permits non-Malaysian ships to conduct submarine cable repairs in Malaysian waters.⁵²⁵ The exemption was key in reducing the time required to conduct submarine cable repairs. This action appears to be based on pressure from a single competing Malaysian shipping company that sought beneficial treatment. The cabotage policy adds complexity, time, and cost for submarine cable owners that need to conduct repairs for cables that land in Malaysia. Due to the high costs of vessels for submarine cable repairs and the scarce availability of ships, submarine cable owners require regional and global economies of scale to recoup the large annual investments that are directly undermined by restrictive cabotage policies such as Malaysia’s that obstruct repairs. Submarine cables are the global backbone of the internet, carrying around 99% of the world’s internet, voice and data traffic, including the backhaul of mobile network traffic and data for digital trade.⁵²⁶

The revocation was a means to protect the domestic shipping industry from foreign competition. In May 2022, Malaysia’s transport minister Wee Ka Siong said the revocation would remain, and that the requirement for foreign vessels to obtain a Domestic Shipping License is “not a

⁵²⁴ <https://www.lexology.com/library/detail.aspx?g=fa073ec6-81a1-44fd-87ce-c8d3f5f7a706>;
https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_Y2B1M0R6G2I2P1B0V2X9H4Z0X3M3J2.

⁵²⁵ *Tech Giants Seek Meeting with New Malaysian PM on Foreign Ship Cable Waiver*, REUTERS (Sept. 4, 2021), <https://www.reuters.com/technology/tech-giants-seek-meeting-with-new-malaysian-pm-foreign-ship-cable-waiver-2021-09-04/>.

⁵²⁶ *Inside the Cables Carrying 99% of Transoceanic Data Traffic*, <https://99percentinvisible.org/article/underwater-cloud-inside-cables-carrying-99-international-data-traffic/> (last visited Oct. 25, 2021).

Re: [EXTERNAL] Europe blog

From: "Rogers, Michael A. EOP/USTR" <michael.a.rogers@ustr.eop.gov>
To: Khalil Gharbieh <(b) (6) @microsoft.com>
Cc: "Tanner, Robb EOP/USTR" <robert_tanner@ustr.eop.gov>, "DeLuna, Jillian A. EOP/USTR" <jillian.a.deluna@ustr.eop.gov>, "House, Ellen S. EOP/USTR" <ellen.s.house@ustr.eop.gov>
Date: Tue, 18 Feb 2025 16:50:00 -0500

Thanks Khalil. Adding Jillian and Ellen House who covers Poland for eme
Sent from my iPhone

On Feb 18, 2025, at 4:46 PM, Khalil Gharbieh (CELA) (b) (6) @microsoft.com> wrote:

Hi Mike and Robb,

Thanks for the call earlier this month. Amid concerns about possible European retaliation to tariffs and other challenges in the transatlantic relationship, I wanted to share for your viz our latest investment announcement (Poland) which attempts to address ongoing EU concerns with reliance on U.S. tech. [The View from Warsaw: Microsoft's Support for Trans-Atlantic Investment, Trade, and Economic Growth - Microsoft On the Issues](#)

Would be great to stay in touch as potential retaliation comes into view.

Best,
Khalil

Khalil Gharbieh
Senior Director, Trade Policy
Corporate, External, and Legal Affairs (CELA)

(b) (6)
(b) (6) @microsoft.com



RE: [EXTERNAL] Europe blog

From: "Hilk, Krista B. EOP/USTR" <krista.b.hilk@ustr.eop.gov>
To: Khalil Gharbieh (CELA) (b) (6) @microsoft.com>, "Rogers, Michael A. EOP/USTR" <michael.a.rogers@ustr.eop.gov>, "House, Ellen S. EOP/USTR" <ellen.s.house@ustr.eop.gov>
Date: Wed, 19 Feb 2025 00:24:00 -0500

Thanks Khalil for sharing, hope all is well.

Krista Barry Hilk
Director for Europe
Office of the U.S. Trade Representative
(b) (6)
Krista.B.Hilk@ustr.eop.gov

From: Khalil Gharbieh (CELA) (b) (6) @microsoft.com>
Sent: Tuesday, February 18, 2025 11:03 PM
To: Rogers, Michael A. EOP/USTR <Michael.A.Rogers@ustr.eop.gov>; House, Ellen S. EOP/USTR <Ellen.S.House@ustr.eop.gov>
Cc: Hilk, Krista B. EOP/USTR <Krista.B.Hilk@ustr.eop.gov>
Subject: Re: [EXTERNAL] Europe blog

Hi Krista! (and Ellen) — Hope all is well. Happy to chat if any questions.

From: Rogers, Michael A. EOP/USTR <Michael.A.Rogers@ustr.eop.gov>
Sent: Tuesday, February 18, 2025 5:16 PM
To: House, Ellen S. EOP/USTR <Ellen.S.House@ustr.eop.gov>
Cc: Khalil Gharbieh (CELA) (b) (6) @microsoft.com>; Hilk, Krista B. EOP/USTR <Krista.B.Hilk@ustr.eop.gov>
Subject: RE: [EXTERNAL] Europe blog

Oops. Sorry Khalil its actually Krista who covers Poland not Ellen.

From: House, Ellen S. EOP/USTR <Ellen.S.House@ustr.eop.gov>
Sent: Tuesday, February 18, 2025 5:16 PM
To: Rogers, Michael A. EOP/USTR <Michael.A.Rogers@ustr.eop.gov>
Cc: Khalil Gharbieh <(b) (6) @microsoft.com>; Tanner, Robb EOP/USTR <Robert.Tanner@ustr.eop.gov>; DeLuna, Jillian A. EOP/USTR <Jillian.A.DeLuna@ustr.eop.gov>; Hilk, Krista B. EOP/USTR <Krista.B.Hilk@ustr.eop.gov>
Subject: Re: [EXTERNAL] Europe blog

+Krista

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Sent from my iPhone

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Would be great to stay in touch as potential retaliation comes into view.

Best,
Khalil

Khalil Gharbieh
Senior Director, Trade Policy
Corporate, External, and Legal Affairs (CELA)
(b) (6) <[@microsoft.com](mailto:(b)(6)@microsoft.com)>

<Outlook-Microsoft .png>

[EXTERNAL] Re: USTR Seeks Comment from the Public on Unfair and Non-Reciprocal Foreign Trade Practices

From: K.C. Swanson (b) (6) @uscsi.org>
To: "Stallings, Marshall EOP/USTR" <ethan.m.stallings@ustr.eop.gov>
Date: Fri, 21 Feb 2025 10:18:53 -0500

Dear Marshall could you please add me to your media distribution list?

Thank you -

best,

K.C.

From: Stallings, Marshall EOP/USTR <Ethan.M.Stallings@ustr.eop.gov>
Sent: Friday, February 21, 2025 9:49 AM
To: Stallings, Marshall EOP/USTR <Ethan.M.Stallings@ustr.eop.gov>
Subject: FW: USTR Seeks Comment from the Public on Unfair and Non-Reciprocal Foreign Trade Practices

Happy Friday!

We wanted to make sure you were aware of the notice for public comment on unfair trade and non-reciprocal foreign trade practices. We welcome any and all input you may have.

Please let us know if you have any questions.

Best,

Marshall

Marshall Stallings
Director for Intergovernmental Affairs and Public Engagement
Office of the U.S. Trade Representative
Executive Office of the President

From: USTR Press (b) (6) @ustr.eop.gov>
Sent: Thursday, February 20, 2025 6:35 PM
To: USTR Press (b) (6) @ustr.eop.gov>
Subject: USTR Seeks Comment from the Public on Unfair and Non-Reciprocal Foreign Trade Practices



FOR IMMEDIATE RELEASE

February 20, 2025

CONTACT: media@ustr.eop.gov

USTR Seeks Comment from the Public on Unfair and Non-Reciprocal Foreign Trade Practices

Washington – The Office of the United States Trade Representative is inviting comments from the public as part of its work pursuant to the [America First Trade Policy Presidential Memorandum](#) and the [Reciprocal Trade and Tariffs Presidential Memorandum](#). These comments will assist the U.S. Trade Representative in reviewing and identifying any unfair trade or non-reciprocal foreign trade practices.

The deadline for submission of comments is March 11, 2025.

To view the Federal Register Notice, click [here](#).

Comments in response to this notice can be submitted or accessed [here](#) or, for alternatives to online submissions, please contact Catherine Gibson, Deputy Assistant USTR for Monitoring and Enforcement at 202.395.5725.

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[EXTERNAL] RE: USTR Seeks Comment from the Public on Unfair and Non-Reciprocal Foreign Trade Practices

From: "Icso, Isabelle" (b) (6)@uschamber.com>
To: "Stallings, Marshall EOP/USTR" <ethan.m.stallings@ustr.eop.gov>
Date: Fri, 21 Feb 2025 09:56:32 -0500

Thanks for flagging, Marshall. Happy Friday

--

Isabelle Icso
Senior Director, International Policy
U.S. Chamber of Commerce
Mobile: (b) (6)
(b) (6)@uschamber.com | www.uschamber.com

From: Stallings, Marshall EOP/USTR <Ethan.M.Stallings@ustr.eop.gov>
Sent: Friday, February 21, 2025 9:50 AM
To: Stallings, Marshall EOP/USTR <Ethan.M.Stallings@ustr.eop.gov>
Subject: FW: USTR Seeks Comment from the Public on Unfair and Non-Reciprocal Foreign Trade Practices

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Best,
Marshall

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[EXTERNAL] RE: USTR Seeks Comment from the Public on Unfair and Non-Reciprocal Foreign Trade Practices

From: "Augerot, Arrow" (b) (6) @amazon.com>
To: "Stallings, Marshall EOP/USTR" <ethan.m.stallings@ustr.eop.gov>
Cc: "Giovenco, Ari" (b) (6) @amazon.com>
Date: Fri, 21 Feb 2025 09:54:53 -0500

Marshall –

Thanks for flagging this. We are looking forward to working with you guys on this, and would love to connect with you sometime in the next couple weeks – I am sure things are crazy, but let us know if you have time.

Best,
Arrow

(b) (6)

From: Stallings, Marshall EOP/USTR <Ethan.M.Stallings@ustr.eop.gov>
Sent: Friday, February 21, 2025 9:50 AM
To: Stallings, Marshall EOP/USTR <Ethan.M.Stallings@ustr.eop.gov>
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From: USTR Press <(b) (6) @ustr.eop.gov>
Sent: Thursday, February 20, 2025 6:35 PM
To: USTR Press (b) (6) @ustr.eop.gov>
Subject: USTR Seeks Comment from the Public on Unfair and Non-Reciprocal Foreign Trade Practices



FOR IMMEDIATE RELEASE

February 20, 2025

CONTACT: media@ustr.eop.gov

USTR Seeks Comment from the Public on Unfair and Non-Reciprocal Foreign Trade Practices

Washington – The Office of the United States Trade Representative is inviting comments from the public as part of its work pursuant to the [America First Trade Policy Presidential Memorandum](#) and the [Reciprocal Trade and Tariffs Presidential Memorandum](#). These comments will assist the U.S. Trade Representative in reviewing and identifying any unfair trade or non-reciprocal foreign trade practices.

The deadline for submission of comments is March 11, 2025.

To view the Federal Register Notice, click [here](#).

Comments in response to this notice can be submitted or accessed [here](#) or, for alternatives to online submissions, please contact Catherine Gibson, Deputy Assistant USTR for Monitoring and Enforcement at 202.395.5725.

###

U.S. Trade Representative Press Office

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RE: Meeting

From: "DeLuna, Jillian A. EOP/USTR" <jillian.a.deluna@ustr.eop.gov>
To: "Giovenco, Ari" (b) (6) @amazon.com>, "Tanner, Robb EOP/USTR" <robert_tanner@ustr.eop.gov>
Cc: "Wang, Katherine" <(b) (6)@amazon.com>
Date: Fri, 21 Feb 2025 16:01:21 -0500

Hi Ari,

Sure! We are available Monday between 1-3 or Tuesday between 2-4.

Thanks,

Jillian

Jillian DeLuna

Senior Director for ICT Services & Digital Trade | Office of Services and Investment
Office of the U.S. Trade Representative

(b) (6)

From: Giovenco, Ari <(b) (6) @amazon.com>
Sent: Friday, February 21, 2025 3:52 PM
To: Tanner, Robb EOP/USTR <Robert_Tanner@ustr.eop.gov>; DeLuna, Jillian A. EOP/USTR <Jillian.A.DeLuna@ustr.eop.gov>
Cc: Wang, Katherine (b) (6) @amazon.com>
Subject: [EXTERNAL] Meeting

Hi Robb and Jillian,

Hope you are both well. Do you have time to meet next week to discuss trade barriers?

Thanks,

Ari



Ari Giovenco
Head, U.S. Trade Policy
(b) (6) @amazon.com
(b) (6)

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Cc: "Wang, Katherine" (b) (6) @amazon.com>
Date: Mon, 24 Feb 2025 10:49:24 -0500

Great! Happy to have you all at 1800 G Street. I'll change the invite.

From: Giovenco, Ari (b) (6) @amazon.com>
Sent: Monday, February 24, 2025 10:48 AM
To: DeLuna, Jillian A. EOP/USTR <jillian.a.deluna@ustr.eop.gov>; Tanner, Robb EOP/USTR <Robert_Tanner@ustr.eop.gov>
Cc: Wang, Katherine (b) (6) @amazon.com>
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And we're happy to do in person too.

From: Giovenco, Ari
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Subject: RE: [EXTERNAL] Meeting

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Cc: Wang, Katherine (b) (6) @amazon.com>
Subject: RE: [EXTERNAL] Meeting

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.

I'll be in Korea for APEC Wednesday 2/26 through 3/6. If you can't meet tomorrow, I'll leave it to Robb to find something that works while I'm out.

From: Giovenco, Ari (b) (6) @amazon.com>
Sent: Friday, February 21, 2025 5:05 PM
To: DeLuna, Jillian A. EOP/USTR <jillian.a.deluna@ustr.eop.gov>; Tanner, Robb EOP/USTR <Robert_Tanner@ustr.eop.gov>
Cc: Wang, Katherine (b) (6) @amazon.com>
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Head, U.S. Trade Policy
(b) (6) <[@amazon.com](mailto:(b)(6)@amazon.com)>
(b) (6)

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To: "DeLuna, Jillian A. EOP/USTR" <jillian.a.deluna@ustr.eop.gov>, "Giovenco, Ari" (b) (6) @amazon.com>, "Tanner, Robb EOP/USTR" <robert_tanner@ustr.eop.gov>, "Hull, Cordell" <hullcord@amazon.com>
Date: Mon, 24 Feb 2025 12:06:15 -0500

Hi all,
Cordell will join in my stead on behalf of AWS. Copying him here and I'll forward him the calendar invite.

Best
Kat

From: DeLuna, Jillian A. EOP/USTR <Jillian.A.DeLuna@ustr.eop.gov>
Sent: Monday, February 24, 2025 10:49 AM
To: Giovenco, Ari (b) (6) @amazon.com>; Tanner, Robb EOP/USTR <Robert_Tanner@ustr.eop.gov>
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Subject: RE: [EXTERNAL] Meeting

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Subject: [EXTERNAL] Meeting

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Thanks,

Ari



Ari Giovenco
Head, U.S. Trade Policy
(b) (6)@amazon.com |
(b) (6)

[EXTERNAL] CTA interest in USMCA review conversation

From: Edward Brzytwa (b) (6) @cta.tech>
To: "Demirjian, Sushan EOP/USTR" (b) (6), "Watson, Daniel L. EOP/USTR" <(b) (6)>
Date: Tue, 25 Feb 2025 14:30:53 -0500

Dear Daniel and Sushan,

I hope you are both doing well. Our members at CTA are very interested in learning more about the Administration's plans for the USMCA review and how we can support these efforts.

I know it is early days, but would it be possible to organize a virtual meeting between USTR staff and our members on this topic?

I welcome your guidance and feedback.

Also, I am sharing our report on the proposed Trump tariffs from January along with our February 4 statement on the IEEPA tariff threats.

<https://shop.cta.tech/products/how-the-proposed-trump-tariffs-increase-prices-for-consumer-technology-products-january-2025>

<https://www.cta.tech/Resources/Newsroom/Media-Releases/2025/January/CTA-CEO-WARNS-TARIFF-HIKES-ON-CANADA,-CHINA,-MEXIC>

We welcome the opportunity to speak with you about this as well.

Best regards,

Ed

Ed Brzytwa
Consumer Technology Association
Vice President of International Trade
(b) (6)

RE: [EXTERNAL] CSI Lauds Confirmation of Jamieson Geer as Next U.S. Trade Representative

From: Christine Bliss (b) (6)@uscsi.org>
To: "Schagrin, Kenneth A. EOP/USTR" (b) (6), Elsa Hoffacker (b) (6)@uscsi.org>
Date: Wed, 26 Feb 2025 16:27:11 -0500

Can we get sam scales and sam melolopus (chief of staff) emails from you we wanted to send release to them as well

Thanks

From: Schagrin, Kenneth A. EOP/USTR <(b) (6)>
Sent: Wednesday, February 26, 2025 2:12 PM
To: Elsa Hoffacker <(b) (6)@uscsi.org>
Cc: Christine Bliss (b) (6)@uscsi.org>
Subject: RE: [EXTERNAL] CSI Lauds Confirmation of Jamieson Geer as Next U.S. Trade Representative

Thank you! We're certainly excited to have Jamieson on board!

From: Elsa Hoffacker <(b) (6)@uscsi.org>
Sent: Wednesday, February 26, 2025 2:02 PM
To: Schagrin, Kenneth A. EOP/USTR <(b) (6)>
Cc: Christine Bliss <(b) (6)@uscsi.org>
Subject: [EXTERNAL] CSI Lauds Confirmation of Jamieson Geer as Next U.S. Trade Representative

Hi Ken,

Please see below for CSI's statement of support for Jamieson's confirmation this afternoon.

Thanks,
Elsa

Elsa Hoffacker
Coalition of Services Industries (CSI)
Senior Director
(b) (6)



CSI Lauds Confirmation of Jamieson Geer as Next U.S. Trade Representative

Washington, D.C. (February 26, 2025) — *The Coalition of Services Industries (CSI) today issued the following statement in response to the confirmation of Jamieson Greer as USTR.*

Said CSI President Christine Bliss: “The Office of the US Trade Representative will benefit from the leadership of such a highly experienced and respected negotiator and trade attorney. In his new role, we urge Jamieson Greer to pursue a strong, affirmative services and digital trade agenda and work to restore US trade leadership on trade with our allies and partners.

“After an extended period of inaction under the prior administration, we hope USTR will move quickly to tackle the services and digital trade barriers confronting US exporters and prioritize the pursuit of high-standard trade disciplines in those areas through new trade negotiations. CSI members look forward to working closely with Jamieson.”

CSI is the leading U.S. industry association devoted to promoting the trade policy priorities of the U.S. services sector on services and digital issues. Our members include companies that provide financial services, information and communication technology services, telecom services, express delivery and logistics, media and entertainment, distribution, and professional services to all sectors of the economy, including manufacturing and agriculture. CSI members include manufacturers of consumer electronics, telecommunications equipment and health and nutrition products. Our members operate in all 50 states and in nearly 200 countries, representing both large and small firms. CSI also works with counterpart organizations around the globe as co-chair of the Global Services Coalition and the Asia Pacific Services Coalition.

RE: CTA interest in USMCA review conversation

From: "Watson, Daniel L. EOP/USTR" (b) (6)
To: Edward Brzytwa (b) (6) @cta.tech>, "Demirjian, Sushan EOP/USTR" (b) (6)
Date: Wed, 26 Feb 2025 12:02:23 -0500

Ed –

It looks like Sushan and I are both free next Tuesday afternoon (after 2:30) and Wednesday morning. Would one of those windows work?

As mentioned on the phone, we'd like to focus on exchange of information, rather than the tour de table exercises we sometimes get, but don't provide much in the way of new info.

Thanks,
Daniel

From: Edward Brzytwa (b) (6) @cta.tech>
Sent: Tuesday, February 25, 2025 2:31 PM
To: Demirjian, Sushan EOP/USTR (b) (6); Watson, Daniel L. EOP/USTR (b) (6)>
Subject: [EXTERNAL] CTA interest in USMCA review conversation

Dear Daniel and Sushan,

I hope you are both doing well. Our members at CTA are very interested in learning more about the Administration's plans for the USCMA review and how we can support these efforts.

I know it is early days, but would it be possible to organize a virtual meeting between USTR staff and our members on this topic?

I welcome your guidance and feedback.

Also, I am sharing our report on the proposed Trump tariffs from January along with our February 4 statement on the IEEPA tariff threats.

<https://shop.cta.tech/products/how-the-proposed-trump-tariffs-increase-prices-for-consumer-technology-products-january-2025>

<https://www.cta.tech/Resources/Newsroom/Media-Releases/2025/January/CTA-CEO-WARNS-TARIFF-HIKES-ON-CANADA,-CHINA,-MEXIC>

We welcome the opportunity to speak with you about this as well.

Best regards,

Ed

Ed Brzytwa

Consumer Technology Association
Vice President of International Trade
(b) (6)

[EXTERNAL] Follow up information

From: Elsa Hoffacker (b) (6) <(b) (6)@uscsi.org>
To: "Pietan, Scott J. EOP/USTR" (b) (6)
Date: Wed, 26 Feb 2025 18:50:04 -0500
Attachments: 2.24.25 CSI ROK Meeting Follow up.pdf (81.3 kB)

Hi Scott,

Please find attached a letter from Christy with the requested information from our meeting last month. Please let me know if you'd like to discuss further. Thanks again for all that you're doing. Lots on your plate I can only imagine.

Thanks very much,
Elsa

From: Pietan, Scott J. EOP/USTR (b) (6)
Date: Friday, February 7, 2025 at 5:17 PM
To: Elsa Hoffacker <(b) (6)@uscsi.org>
Subject: RE: Korea platform

Thanks, Elsa. Super helpful to see this.

From: Elsa Hoffacker (b) (6) <(b) (6)@uscsi.org>
Sent: Friday, February 7, 2025 5:14 PM
To: Pietan, Scott J. EOP/USTR (b) (6)
Subject: [EXTERNAL] Re: Korea platform

Hi Scott, thanks for the extra ping. Attached is the letter we sent to the Korean Embassy. How has the reception been?

From: Pietan, Scott J. EOP/USTR (b) (6)
Date: Friday, February 7, 2025 at 4:39 PM
To: Elsa Hoffacker (b) (6) <(b) (6)@uscsi.org>
Subject: RE: Korea platform

Hey Elsa – Let me know if you have any insights on this question. Thanks, Scott

From: Pietan, Scott J. EOP/USTR
Sent: Thursday, February 6, 2025 11:01 AM
To: 'Elsa Hoffacker' <(b) (6)@uscsi.org>
Subject: Korea platform

Hi Elsa,

Thanks again for the opportunity to meet with you all on Korea's digital platform. Did CSI send a letter to Korea on this issue? I have a note that maybe you all did send a letter but realize that it may have been CCIA. If you all did send a letter, could you share it with us?

Note I am pushing Korea to be responsive to U.S. inquiries on this and am trying to track such engagements.

Best, Scott

Scott Pietan

Deputy Assistant U.S. Trade Representative for Korea
Office of the U.S. Trade Representative
Tel. +1-202-395-9646

Ms. Deanne de Lima
AUSTR, Japan, Korea, and APEC (Acting)
USTR
600 17th Street NW
Washington, DC 20508

Mr. Scott Pietan
DAUSTR for Kore
USTR
600 17th Street NW
Washington, DC 20508

February 24, 2025

Dear Ms. de Lima and Mr. Pietan,

Thank you for the opportunity to meet with you last month regarding our concerns about Korea's efforts to advance discriminatory digital platform measures. I write today to provide you the requested follow-up information on the economic impacts of the proposal and additional information on the unfairly targeted enforcement measures.

As discussed, this proposal would be costly to U.S. firms with operations in Korea. An initial estimate of annual U.S. revenues affected by the platform legislation is roughly \$32B based on recent publicly available financial reporting. We note, however, this figure does not account for the economic impacts on adjacent U.S. businesses operating in Korea or even the affected companies' broader ability to operate in other jurisdictions due to the punitive measures of the bill.

Since our meeting, we understand that the KFTC remains steadfast in its pursuit of this discriminatory measure. Local reports¹ indicate that despite the potential for the U.S. to impose reciprocal tariffs in response to regulatory and other non-tariff barriers, the KFTC continues to prioritize the bill's passage. Alarming, opposition figures are pushing to fast-track the bill using a procedural maneuver that would force a floor vote in the near future,

¹ Please refer to the enclosed auto-translated media reports.

capitalizing on the political reality that the second interim president is unlikely to veto any legislation backed by the opposition party ahead of the presidential election.

In addition to the specific platform legislation, the Korea Fair Trade Commission (KFTC) continues to target American companies with unprecedented fines, office raids, and threats of prosecution—per the enclosed media reports regarding well-publicized investigations of U.S. companies for pro-competitive activities.

The KFTC’s attempt to criminalize civil allegations and harass American companies with erroneous investigations is an outlier globally, and we understand this could potentially be considered a non-tariff barrier that could elicit a response from the Trump administration, per the presidential memorandum on Reciprocal Trade and Tariffs from February 2025 to counter any “unfair or harmful acts, policies, or practices” that present a “structural impediment to fair competition” with the United States.”² In addition, the presidential memorandum titled, “Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties”³ emphasizes that foreign regulations or practices that “disproportionally affect” or “undermine” American companies will likely be reviewed by USTR.

We thank you for your considered attention to these matters and we look forward to submitting additional details in our forthcoming comments on unfair trade practices on March 11, 2025.

Sincerely,

Christine Bliss
President

Enclosure: Compilation of Korean media reports

² <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-announces-fair-and-reciprocal-plan-on-trade/>

³ <https://www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties/>

Compilation of Recent Korean Media Reporting

(1) Despite concerns about US trade retaliation... Fair Trade Commission and opposition parties to create platform law

Even in the face of Trump's threats of "reciprocal" tariffs in response to regulatory and other non-tariff barriers, as well as MOTIE's official stance against platform legislation, the KFTC is still prioritizing passage of a PMA and DP proponents still want to fast-track a bill. In particular, the KFTC is arguing that "there is no major problem" now that they have moved away from a DMA-style pre-designation approach and maintain that the bill "does not discriminate" against U.S. companies but applies to both foreign and domestic platforms.

(2) Fair Trade Commission Increases Platform Investigation Staff

Rather than taking down the temperature, the KFTC announced it is increasing its investigative staff for "platform monitoring" and specifically named-checked Google/YouTube and Coupang "bundling" investigations.

(3) Han interview: We will Strengthen Communication with the U.S to Ensure No Issues with National Interest or Trade

KFTC Chair Han held a press conference yesterday and stated he would "respond appropriately so that trade issues do not arise" as the KFTC moves forward with platform legislation. He promised to "strengthen communication" with the National Assembly and U.S. officials, in particular "through meetings with the heads of competition authorities as well as practitioners."

(4) Trump's 'Trade Pressure' Could Strand Platform Law... Fair Trade Commission Open to Re-examination

While flagging likely U.S. trade frictions and conveying the KFTC's openness to "flexibility" and "reexamination" of PMA substantive details, additional reporting suggested that (a) the KFTC believes shifting away from pre-designation means there will be "no problem" from the U.S. and (b) that PMA remains a top priority for the Democrat Party, although there is a split between those who want to fast-track

the bill now and others who want to promote it after the coming presidential election.

(5) Amid Threats of US Platform Regulation... Fair Trade Commission Chairman: “We Will Establish a Foundation for Promoting Competition”

At the ‘2025 Fair Trade Policy Direction’ breakfast meeting held at the Korea Press Center the previous day, Chairman Han also emphasized that he would pay special attention to new types of unfair practices such as online platform regulation, algorithm collusion, and artificial intelligence (AI). He specifically cited cases of anti-competitive practices by Google, Coupang, and Kakao Mobility, and made it clear that he would block anti-competitive practices through continuous investigations and sanctions. The problem is that there are concerns that the new U.S. administration will regard Korea’s platform regulation moves as a “non-tariff barrier” that is a factor in considering reciprocal tariffs. The Fair Trade Commission is currently investigating Google’s YouTube Music bundling case, which the U.S. government could raise as a trade issue.

(6) Prosecutors Raid Coupang Headquarters for Alleged Search Manipulation

South Korean prosecutors raided Coupang’s headquarters in Seoul.

(7) Coupang's 'PB Manipulation' Corrective Action Suspended... Distribution Industry Watches Outcome of Administrative Litigation

The Fair Trade Commission (KFTC) fined Coupang and accused it of manipulating its search algorithm to unfairly boost its private brand (PB) products. This case is receiving attention because Coupang’s similar algorithm-based ranking practices are common across e-commerce, and a strict ruling could potentially shrink the private brand market, ultimately affecting consumer choice and value. Industry insiders argue that the automated nature of product ranking makes arbitrary intervention both impractical and potentially harmful to market dynamics.

(8) YouTube Music Sanctions Continue for 2 Years... Only Native Platforms Are Dying

“YouTube Music has become the undisputed No. 1 platform in the domestic music service market since last year. On the other hand, the number of domestic platform users is decreasing over time. Just like OTT (online video service) and App Store dominated by Netflix and Google, music services are also becoming dominated by foreign companies. An industry insider said, ‘When the Fair Trade Commission announced that it would begin sanctioning (YouTube Music), we expected a fair competitive environment to be created, but now we have given up,’”

(9) Despite Trump's Trade Pressure... Fair Trade Commission to 'Go According to Principles' on Sanctioning U.S. Online Platforms

According to industry sources on the 24th, the Fair Trade Commission is expected to make a conclusion on Google's "YouTube Music bundling" allegations soon.

Netflix is also among the targets of the Fair Trade Commission's sanctions.

[EXTERNAL] Sharing CCIA Priority Digital Trade Barriers for the UK

From: Amir Nasr (b) (6)r@ccianet.org>
To: "Tanner, Robb EOP/USTR" <robert_tanner@ustr.eop.gov>, "Siordia, Matthew T. EOP/USTR" <matthew.t.siordia@ustr.eop.gov>, Jonathan McHale <(b) (6)@ccianet.org>, Gabriel Delsol <(b) (6)@ccianet.org>
Date: Wed, 26 Feb 2025 13:50:54 -0500
Attachments: CCIA Memo—UK Digital Trade Barriers.pdf (536.25 kB)

Hi Robb and Matt:

I hope you are both doing well and having a great week so far.

In light of the upcoming visit of UK Prime Minister Keir Starmer to Washington, we wanted to reiterate the importance of strong U.S.-UK trade for our industry and share some of our priority concerns in the UK market, relating to digital services taxes (DSTs), encryption, and the Digital Marks, Competition, and Consumer Act (DMCC).

I am sharing a memo detailing the importance of U.S.-UK digital trade and highlighting these trade barrier concerns, available [here](#) and attached to this email. We would be happy to follow up with more information or answer any questions, if helpful. We hope this material is helpful in preparation for the PM's visit.

Thank you in advance for your consideration of this issue, and I hope you have a great rest of the week.

Best,

Amir

--

Amir-Ali Nasr
Trade Policy Manager
(b) (6)@ccianet.org
(b) (6)



Computer & Communications
Industry Association
Open Markets. Open Systems. Open Networks.

ccianet.org | [@CCIANet](https://twitter.com/CCIANet)
>www.ccianet.org<



2024 Key Threats to Digital Trade

United Kingdom

(b) (6)

The United States has enjoyed strong diplomatic and economic relationships with the United Kingdom for over a century. The United Kingdom has served as a key market for U.S. companies for decades, as has the United States for UK companies. The United States and the United Kingdom have a rich history of thriving trade relations, even absent a formal free trade agreement between the two. As the first and second largest exporters of digitally delivered services, they also represent world leaders in digital trade. The U.S. generated **\$68.2 billion in exports of digitally-deliverable services** to the UK in 2023, with a surplus of **\$6.7 billion**, bringing numerous positive externalities for business operations and consumers in the country.

As the U.S. and the UK continue to advance their robust trade relationship, the United States should support the ability of U.S. firms to enter or expand into the market and engage in cross-border delivery of goods and services.

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 followed by details of key trends.

Key Threats to the U.S.-UK trading relationship in 2024¹



CCIA identified **5** digital trade barriers in the United Kingdom

4 trade barriers enacted **1** 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 UK in 2024

Threats to the Security of Devices and Services

- ✦ The UK has pursued policies undermining secured communications by mandating law enforcement access to encrypted communications. Passed in 2016, the **Investigatory Powers Act** allows authorities to require the removal of “electronic protections” applied to communications data. Government efforts to target digital security in this manner are damaging to U.S. digital exports and the future of online communications.

- ✦ On October 26, 2023, the **Online Safety Act** became law, imposing new obligations on online service providers to remove illegal and harmful content, with non-compliance resulting in fines of £18 million or 10 percent of global annual revenue. Under the Act's Section 122, the Office of Communications (Ofcom) can provide notice to companies to scan their data, including user messages, to proactively identify and prevent illegal content. Such requirements are incompatible with end-to-end encryption on messaging apps and would require companies to install client-side scanning software that would undermine encryption, increasing risks to privacy and security. While the government has partially walked back this requirement in response to pressure from civil society and industry, stating that Section 122 will not be invoked until "appropriate technology" exists, it remains in the Act.

Taxation of Digital Services and Products

- ✦ Following a public consultation, the UK announced in 2019 that it would impose a digital services tax. The 2020 Finance Budget, presented on March 11, 2020, included legislation introducing a digital services tax of 2%. The tax is to be paid on an annual basis, with accruals beginning April 1, 2020. The tax applies to revenues of "digital services activity" which are "social media platforms," "internet search engines," or "online marketplaces." While the government did not identify which companies were impacted, it did acknowledge that 90% of the tax was paid by large digital services companies likely headquartered in the U.S., findings later confirmed by USTR. The UK was among the countries that imposed a DST with whom the United States reached an interim agreement, and any payments made under the UK DST can be accredited upon implementation of the OECD Pillar 1 solution. In 2024, some UK parliamentarians called for raising the DST from 2% to 6%, highlighting the continued salience of this issue.

Asymmetric Platform Regulation

- ✦ On May 24, 2024, the **Digital Markets, Competition, and Consumer Act** (DMCC) came into law, creating a new competition law framework for large digital services providers, and expanding the Competition and Markets Authority's (CMA) oversight of the digital economy. Among other provisions, the DMCC expands the CMA's jurisdiction to investigate agreements implemented outside the UK, and introduces new thresholds intended to address "killer acquisitions." It also allows the CMA to designate providers as having strategic market status, imposing more intrusive obligations on a small set of firms, overwhelmingly U.S. headquartered. The resulting interventions include firm-specific codes of conduct including regulation of prices and other commercial terms allowing CMA to create transfers to domestic vested interests (including a final offer mechanism similar to the Australian news media bargaining code, but not limited by sector); requiring interoperability and data sharing; which services will be offered to consumers and how and when (e.g. choice screens) and restrictions in other areas such as how complaints are handled and how data is used. The Act also allows for pro-competition interventions (PCIs) that would function similarly to existing market investigations but are intended to move faster for those SMS firms. These powers would be backed up with large potential fines (up to 10% of global turnover) and novel investigatory powers (e.g., being able to require firms to conduct experimental changes in their services). The potential for firms to challenge CMA decisions would be constrained with a shift from full-merits appeal to the Competition Appeals Tribunal to judicial review only and while, in principle, the new law allows for a consideration of consumer benefits, this will be limited in important ways (e.g., countervailing consumer benefits being used as a defense after a finding that a code of conduct has been breached, versus at the outset).

[EXTERNAL] Re: CTA interest in USMCA review conversation

From: Edward Brzytwa (b) (6) @cta.tech>
To: "Watson, Daniel L. EOP/USTR" (b) (6), "Demirjian, Sushan EOP/USTR" (b) (6)
Date: Wed, 26 Feb 2025 13:09:06 -0500

Daniel,

Tuesday afternoon at 2:30 pm is perfect. I am speaking on a panel at GW later in the day.

Many thanks to you and Sushan for making the time.

Ed

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From: Watson, Daniel L. EOP/USTR <(b) (6)>
Sent: Wednesday, February 26, 2025 12:02:23 PM
To: Edward Brzytwa <(b) (6) @cta.tech>; Demirjian, Sushan EOP/USTR (b) (6)
Subject: RE: CTA interest in USMCA review conversation

Ed –

It looks like Sushan and I are both free next Tuesday afternoon (after 2:30) and Wednesday morning. Would one of those windows work?

As mentioned on the phone, we'd like to focus on exchange of information, rather than the tour de table exercises we sometimes get, but don't provide much in the way of new info.

Thanks,
Daniel

From: Edward Brzytwa (b) (6) @cta.tech>
Sent: Tuesday, February 25, 2025 2:31 PM
To: Demirjian, Sushan EOP/USTR (b) (6) Watson, Daniel L. EOP/USTR (b) (6)
Subject: [EXTERNAL] CTA interest in USMCA review conversation

Dear Daniel and Sushan,

I hope you are both doing well. Our members at CTA are very interested in learning more about the Administration's plans for the USCMA review and how we can support these efforts.

I know it is early days, but would it be possible to organize a virtual meeting between USTR staff and our members on this topic?

I welcome your guidance and feedback.

Also, I am sharing our report on the proposed Trump tariffs from January along with our February 4 statement on the IEEPA tariff threats.

<https://shop.cta.tech/products/how-the-proposed-trump-tariffs-increase-prices-for-consumer-technology-products-january-2025>

<https://www.cta.tech/Resources/Newsroom/Media-Releases/2025/January/CTA-CEO-WARNS-TARIFF-HIKES-ON-CANADA,-CHINA,-MEXIC>

We welcome the opportunity to speak with you about this as well.

Best regards,

Ed

Ed Brzytwa
Consumer Technology Association
Vice President of International Trade

(b) (6)

[EXTERNAL] CSI Lauds Confirmation of Jamieson Geer as Next U.S. Trade Representative

From: Elsa Hoffacker <(b) (6) r@uscsi.org>
To: "Stallings, Marshall EOP/USTR" <ethan.m.stallings@ustr.eop.gov>
Date: Wed, 26 Feb 2025 13:55:05 -0500

Hi Marshall,

Please see below CSI's statement of support for the confirmation of Jamieson Greer this afternoon. Would you also please add me to your industry stakeholder distribution list?
Thank you!

Elsa

Elsa Hoffacker
Coalition of Services Industries (CSI)
Senior Director
M: (b) (6)



CSI Lauds Confirmation of Jamieson Geer as Next U.S. Trade Representative

Washington, D.C. (February 26, 2025) — *The Coalition of Services Industries (CSI) today issued the following statement in response to the confirmation of Jamieson Greer as USTR.*

Said CSI President Christine Bliss: "The Office of the US Trade Representative will benefit from the leadership of such a highly experienced and respected negotiator and trade attorney. In his new role, we urge Jamieson Greer to pursue a strong, affirmative services and digital trade agenda and work to restore US trade leadership on trade with our allies and partners.

"After an extended period of inaction under the prior administration, we hope USTR will move quickly to tackle the services and digital trade barriers confronting US exporters and prioritize the pursuit of high-standard trade disciplines in those areas through new trade negotiations. CSI members look forward to working closely with Jamieson."

CSI is the leading U.S. industry association devoted to promoting the trade policy priorities of the U.S. services sector on services and digital issues. Our members include companies that provide financial services, information and communication technology services, telecom services, express delivery and logistics, media and entertainment, distribution, and professional services to all sectors of the economy, including manufacturing and agriculture. CSI members include manufacturers of consumer electronics, telecommunications equipment and health and nutrition products. Our members operate in all 50 states and in nearly 200 countries, representing both large and small firms. CSI also works with counterpart organizations around the globe as co-chair of the Global Services Coalition and the Asia Pacific Services Coalition.

[EXTERNAL] FW: PRO TRADE REPORT: Thursday, Feb. 27, 2025

From: Elsa Hoffacker <(b) (6) r@uscsi.org>
To: "Boron, Andrea W. EOP/USTR" <andrea.w.boron@ustr.eop.gov>
Date: Thu, 27 Feb 2025 16:16:35 -0500

From: POLITICO Pro Trade <alert@email.politicopro.com>
Date: Thursday, February 27, 2025 at 4:13 PM
To: Elsa Hoffacker <(b) (6) r@uscsi.org>
Subject: PRO TRADE REPORT: Thursday, Feb. 27, 2025

TOP NEWS

[Greer to lead demoralized trade agency with uncertain future](#)

By Doug Palmer

New U.S. Trade Representative Jamieson Greer will lead an agency that has "significant vacancies" following the end of the Biden administration.

MORE TRADE NEWS

[Democrats face decision point on shutdown strategy](#)
[Shutdown fight could delay GOP budget push, Thune says](#)
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[GOP senators privately push Musk to coordinate more with Congress](#)
[Trump and GOP leaders discuss using tariffs to pay for agenda](#)
[Trump says Canada, Mexico tariffs will go into effect March 4](#)

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Greer to lead demoralized trade agency with uncertain future [\(back\)](#)

By Doug Palmer

One of Jamieson Greer's first tasks after being confirmed as President Donald Trump's U.S. trade representative Wednesday will be addressing major staffing issues at the agency — a core part of Trump's ambitious agenda to remake global trade flows.

The tiny agency was created by Congress to open new markets for American exports. But under the leadership of former President Joe Biden and his U.S. Trade Representative Katherine Tai, that agenda shifted to one focused first and foremost on promoting worker rights, while triggering sharp disagreement with business groups over its retreat from advancing digital trade, among other policies.

That coincided with plunging morale, agency surveys show, as long-time career staffers working in nearly [two dozen offices focused on different policy areas and regions](#) of the world saw their influence dwindle.

'Significant' vacancies: USTR's most recent [budget submission](#) provided to Congress last year estimated it had about 258 full-time employees, down from [273 in fiscal year 2022](#) and about 280 at one point in the first Trump administration.

However, there are indications that current employment could be much lower, at least partly because of an outflow of political appointees at the end of the Biden administration and a slow pace of replacing other departures in recent years.

Two high-profile deputy slots that require Senate confirmation were never filled after their occupants, Jayme White and Sarah Bianchi, left in 2023 and 2024. Another key position, general counsel, has been filled on an acting basis since its previous occupant, Greta Peisch, left in early 2024.

Earlier this month, Senate Finance ranking member [Ron Wyden](#) (D-Ore.) [in a set of written questions](#) for Greer raised concern about a "significant" number of vacancies at the agency and asked what the nominee would do to prevent further cuts as the result of actions being taken by the Office of Personnel Management under the direction of Elon Musk.

Greer sidestepped the question, but did take the opportunity to praise the career staff at USTR as "some of the most effective negotiators and talented lawyers in any government in the world."

If confirmed, Greer continued, "I intend to empower them to serve the national interest and to draw upon their expertise in order to execute President Trump's trade agenda."

Still, one big question is how much time Greer will spend cracking open new markets, as opposed to carrying out Trump's orders to impose tariffs on imported goods and responding to retaliatory measures that could cripple American exports.

Mum's the word: In the three weeks since the Senate Finance Committee released Greer's written responses, USTR has declined to say how many employees it currently has, offering the explanation that many new employees are still in the process of formally joining the agency.

A spokesperson for the Department of Government Efficiency also did not respond to a question about whether it was planning any personnel cuts at USTR.

Adding to the uncertainty, the Trump administration [ordered all federal agencies on Wednesday](#) to "submit plans by mid-March for laying off employees in "large-scale reductions in force." It was not immediately clear how that would impact USTR.

In contrast to the current opaque staffing situation, the Biden administration announced [13 new hires at USTR](#) on Feb 8, 2021, even though it would be another five weeks before the Senate formally confirmed Katherine Tai as [U.S. trade representative by a 98-0 vote](#).

Sinking morale: Finance Chair [Mike Crapo](#) (R-Idaho), in another written question for Greer, asked what he planned to do to boost morale at USTR, which the senator claimed had "deteriorated under the Biden administration ... not only because its USTR expressed disdain for the agency's very mission of opening up new markets for Americans, but because of limited direct face-to-face engagement and her key aides with the career staff on policy-making."

Greer, in his reply, seemed to confirm the problem, stating: "If confirmed, boosting morale and creating a culture of action is a top priority of mine."

After the disruptive years of the first Trump administration, Tai initially enjoyed strong support among USTR employees, as shown by [an annual survey conducted by the Office of Personnel Management](#).

Sixty-two percent of respondents at USTR agreed in 2021 that senior agency leaders “generate high levels of motivation and commitment in the workforce,” nearly double the 33 percent who felt that way in 2020, when Robert Lighthizer was still USTR.

However, faith in Tai’s leadership team crumbled over the next three years, falling to 50 percent in 2022, 47 percent in 2023 and back down to 33 percent in 2024, the annual survey showed.

Even so, 57 percent of USTR respondents still had a “high level of respect” for the agency’s senior leaders in 2024, compared to 41 percent in 2020. But that was down from the peak level of 74 percent in 2021, the first year of Tai’s tenure.

In another measure of sinking employee morale, only 54 percent of respondents in 2024 said they would recommend USTR as a good place to work, down from 70 percent in 2020.

Senior departures: USTR also experienced a great deal of churn in its senior positions during the Biden administration. Although many of the departures were due to retirements, which happens during any administration, it resulted in at least 14 senior officials, many of them assistant U.S. trade representatives, leaving the agency over those four years.

The high-level exodus included Christopher Wilson, who joined the agency in 2000 and subsequently served in Brussels, Geneva and Washington in various posts, including most recently as AUSTR for Japan, Korea and APEC affairs.

Other longtime staffers who left during the Biden years included Chief Economist Bill Shpiece, a veteran of 29 years at the agency, AUSTR for Europe Dan Mullaney (23 years), AUSTR for Southeast Asia and the Pacific Dawn Shackelford (18 years) and AUSTR for Services and Investment Daniel Bahar (15 years).

That still leaves several old hands at USTR, such as Kenneth Schagrin, the current AUSTR for services, who joined the agency in 2000, and Terrence McCartin, the AUSTR for China, Mongolia and Taiwan Affairs, who joined in 2001 after nine years at the Commerce Department.

Juan Millán, who has served as acting USTR since Tai’s departure and before that as acting general counsel, has also been at the agency for at least 20 years.

Political vacancies: Greer also faces a significant shortage in the upper echelons of posts at USTR, a normal occurrence at the start of any administration, in large part because they require approval by the Senate.

There are currently three empty deputy slots at USTR, although Trump recently nominated a Greer ally, Joseph Barloon, for one of the positions: ambassador to the World Trade Organization. The other two deputies typically divide their attention between Asia, Europe, the Americas and Africa and over various sectors like services and manufacturing.

Trump also still needs to nominate a chief agricultural negotiator to serve at USTR. That could be an especially important position given concern in the farm sector about other countries retaliating against U.S. agricultural exports if Trump follows through on plans to impose stiff new tariffs on imports from around the world.

To view online [click here](#).

Democrats face decision point on shutdown strategy ([back](#))

By Nicholas Wu and Katherine Tully-McManus

Republicans and Democrats are on a collision course over federal spending after GOP leaders ruled out limiting President Donald Trump and Elon Musk's ability to claw back congressionally approved funding.

It's a dynamic that's ratcheting up fears of a government shutdown in just 17 days.

Democrats are insisting on the guardrails for Trump and Musk amid deep anger on the left about the president's unilateral dismantling of the federal government. Following a meeting of top GOP appropriators and party leadership Wednesday morning, Republicans officially rejected the proposal.

Democratic leaders now face a dilemma: Do they hold firm, refrain from bailing Republicans out and allow an unpopular shutdown? Or do they fold and risk the ire of liberal voters eager to see the party stand their ground against Trump and Musk? So far, they are treading carefully.

"The red line for us is, are you going to not harm the American people? Are you going to continue to cut Medicaid, to take health care away from our seniors and kids and veterans, or are you not?" said House Minority Whip [Katherine Clark](#) in a brief interview. "That is the insurance we're looking for."

Republicans, despite controlling both chambers of Congress and the White House, are more than ready to blame Democrats for any government shutdown. Democrats in recent years have stepped in and gotten legislation over the finish line as more and more Republicans rail against the stopgap spending bills known as continuing resolutions, or CRs.

"If we do a year-long CR and we pass it and it goes over to the Senate, and the Democrats vote against it, then it will be their fault for closing the government," Republican Rep. [Mike Simpson](#) of Idaho, chair of the Interior-Environment Appropriations subcommittee, told reporters Tuesday.

Democrats think the premise is absurd in light of the GOP's control of Congress and its leaders' unwillingness to rein in their own president, whose unilateral actions to freeze government funding, fire federal workers and dismantle entire agencies are being challenged in court.

"It's not up to us — it's up to them to decide whether they want to shut the government down," said Rep. [Gregory Meeks](#) (D-N.Y.) of Republicans.

It remains to be seen, however, whether that message will break through if government funding is allowed to lapse for any amount of time, which would be sure to cause major disruptions for working Americans. While tensions have ratcheted up, Democratic leaders are still giving their negotiators some room to work out a deal.

House Minority Leader [Hakeem Jeffries](#), for instance, deferred to House Appropriations Committee ranking member [Rosa DeLauro](#) of Connecticut when asked Wednesday whether Democrats could support a funding deal that doesn't restrain Trump and Musk.

Senate Minority Leader [Chuck Schumer](#) on Tuesday similarly punted to top Senate Appropriations Democrat [Patty Murray](#), who this week said Democrats "need to know Republicans are willing to work with us to protect Congress' power of the purse" at an "absolute bare minimum" to reach a funding deal.

Speaker [Mike Johnson](#) told reporters Wednesday that "Democrats have had completely unreasonable conditions" in the spending talks.

Appropriators have been working for months to try and secure an agreement on aggregate spending levels for the military and for non-defense programs — "toplines" necessary to allow subcommittees to craft the 12 individual appropriations bills to float federal operations for the remainder of the fiscal year.

While negotiators say they closing in on those numbers, reality is sinking in that there likely isn't going to be enough time before the March 14 deadline to lock in a topline deal, write the actual spending bills and clear them through both chambers.

Last week, Senate Appropriations Chair [Susan Collins](#) said that "we're running out of time," but on Wednesday insisted, "we're still talking."

If appropriators truly think a deal with new spending bills is possible, they could seek a short term stopgap to buy them more time. There's also talk of a long-term spending patch to run through the end of the fiscal year on Sept. 30.

Rep. [Marcy Kaptur](#) (D-Ohio), the ranking member on the House Energy-Water appropriations subcommittee, called a year-long continuing resolution "the least bad alternative."

But even then, Democrats are going to have to decide how far they're willing to fight to make sure the Trump administration and Musk's Department of Government Efficiency won't completely ignore Congress' work product. Against the backdrop of frozen federal funds and mass layoffs, Democrats' low level of trust in the White House is only eroding further.

"I don't know if handshakes are working so much these days," said Rep. [Mark Pocan](#) (D-Wis.), a member of the House Appropriations Committee, in an interview. "They got to show they really mean it."

Jennifer Scholtes contributed to this report.

To view online [click here](#).

Shutdown fight could delay GOP budget push, Thune says [\(back\)](#)

By Jordain Carney

Senate Majority Leader [John Thune](#) said that GOP leaders will have to turn their attention to a looming government shutdown deadline after spending weeks intensely focused on advancing President Donald Trump's domestic policy agenda.

"We've got to get through the March 14 deadline first, but then we've also got to get work on the bigger project — the budget resolution and ultimately reconciliation," Thune told reporters as he returned from a meeting at the White House that included Trump and Speaker [Mike Johnson](#) as well as top tax writers and administration officials.

The meeting was called to start the process of reconciling competing budget blueprints from House and Senate Republicans which dictate different fiscal parameters for Trump's agenda. It came a day after House Republicans passed their version, which provides for border security, tax and energy priorities in one sprawling bill.

The Senate is now expected to take the House framework and make changes, with Thune planning to hold discussions among his members about a path forward starting next week.

"The House action helps keep that moving along. So now we've got to do some work to do with our members to figure out what the traffic will bear and what ultimately we can get through the House and Senate," Thune added.

Any changes made by the Senate will also have to pass muster in the House, and getting the two chambers on the same page could take several weeks. By comparison, Congress has just over two weeks to fund the government.

Johnson told reporters after the White House meeting on Wednesday that a continuing resolution is “inevitable at this point” while also saying that he expected the Senate to “move quickly, aggressively” on the budget.

To view online [click here](#).

Musk to meet with House Republicans [\(back\)](#)

By Meredith Lee Hill and Jordain Carney

Speaker [Mike Johnson](#) told reporters Thursday that he’s trying to schedule a meeting of House Republicans with Elon Musk soon to discuss the work of the Department of Government Efficiency.

Johnson, who met with Musk at the White House late Tuesday, said the billionaire adviser to President Donald Trump would “meet with either small groups of members, appropriators or maybe all the House Republicans,” likely next week or shortly thereafter.

“He’s anxious to share what he’s finding, and a lot of things he’s told me in our private meetings, I said we have to make sure all the members understand the degree of the fraud, waste, abuse, and how egregious it is,” Johnson said.

Separately, members of the Senate’s DOGE Caucus, a group lead by Sen. Joni Ernst (R-Iowa), are meeting with Musk at the White House on Thursday. Sen. Rick Scott (R-Fla.) also told Republicans during a closed-door GOP steering committee lunch on Wednesday that he is also working to set up a meeting for senators with Musk.

To view online [click here](#).

Acting head of BIS removed from role in latest agency shakeup [\(back\)](#)

By Christine Mui and Ari Hawkins

The Commerce Department office responsible for overseeing and enforcing export controls is facing yet another personnel shakeup under President Donald Trump.

The acting head of Commerce’s Bureau of Industry and Security, James Rockas, has been removed from that role, four people briefed on personnel plans told POLITICO. They were granted anonymity to discuss those private conversations.

Rockas, who served in the first Trump administration’s State and Commerce Departments and [also contributed](#) to the Commerce Department section of the Heritage Foundation’s Project 2025 document, assumed the duties of acting undersecretary of Commerce for Industry and Security after Trump appointed him late last month as the deputy undersecretary for the office.

It’s unclear if Rockas retains the deputy undersecretary job that Trump appointed him to or has left the agency altogether.

Rockas, Commerce and BIS did not respond to requests for comment.

But the landing pages for [Commerce Department leadership](#) and the [Bureau of Industry and Security](#) now say Robert Burkett, the Bureau of Industry and Security office's chief of staff, is performing some or all of the agency head's functions and duties. One of the people who confirmed Rockas' departure said that Burkett, who did not respond to an inquiry, is now serving as both the acting secretary and chief of staff.

The bureau is the government's primary agency in charge of regulating and enforcing export controls, which aim to prevent sensitive U.S. technologies from falling into the hands of adversaries like China. They were aggressively used by the first Trump and Biden administrations and have taken on new relevance in the global race for artificial intelligence.

Trump has charged Commerce and other departments with reviewing the U.S. export control regime and submitting a report by April 1 as part of an executive action he directed on his first day in office, which could lay the groundwork for expansive new curbs.

Rockas' demotion would be at least the second major reshuffle of leadership at BIS in recent days. Last week, the Principal Deputy Assistant Secretary of Commerce for Export Administration Matthew Borman announced his retirement to colleagues, [according to an email obtained by POLITICO](#).

Eileen Albanese, director of the Office of National Security and Technology Transfer Controls, has also left the agency. BIS remains without a top political appointee; the Senate is holding a confirmation hearing for Jeffrey Kessler, Trump's nominee to lead the agency as its permanent undersecretary, Thursday morning.

People familiar with the policy area are concerned about how the departures of experienced officials will affect export control and other trade policy implementation, going forward. In addition to the export control review due April 1, the bureau is also responsible for conducting national security probes under Section 232 of the Trade Expansion Act of 1962, which can lead to new tariffs. The president has already asked the department to impose 25 percent tariffs on steel and aluminum, and consider tariffs on copper, based on that provision.

"You're hollowing out all this experience. Who the hell is going to do the 232 tariffs?" said one of the people briefed on the personnel moves who spoke to POLITICO, granted anonymity to candidly discuss impacts. "The agency is going to be hobbled."

To view online [click here](#).

Trump will finally have to jump into the GOP budget fight [\(back\)](#)

By Jordain Carney, Dasha Burns and Mia McCarthy

First, [he wanted](#) "one powerful Bill." Then he said he'd be OK with [splitting it in two](#). Later, he [definitely wanted](#) a single "BEAUTIFUL" bill — until a few days later when he [praised senators](#) for pursuing a pair. "You could do three," [he said](#) the day after that. "You could do 10."

President Donald Trump has never been especially interested in how his vast domestic policy agenda gets enacted in Congress — happy instead to let the House and Senate duke out their differences on Capitol Hill.

But GOP lawmakers are warning that the hands-off approach might not be sustainable for much longer, with profound conflicts looming between the House and Senate over tax policy, spending cuts and more.

So far, the results of the legislative derby have been excellent for Trump: Both chambers have now approved fiscal blueprints for enacting border security, energy, defense and tax legislation, with

Trump on Tuesday pushing the House version over the line with a few well-placed calls to Republican holdouts.

Getting that “big, beautiful bill” enacted, however, is going to require more than cajoling a few irritable lawmakers — it will require making tough presidential-level decisions about thorny policy issues.

“He’ll be very involved — I think he’ll probably need to be,” said Sen. [Josh Hawley](#) (R-Mo.). “There’s a lot of distance between where the House and the Senate are on this.”

Adding to the challenge is that Trump in recent weeks has been muddying the waters, not clarifying which direction they ought to be flowing.

He has called for a [permanent extension](#) of his 2017 Tax Cuts and Jobs Act — a costly demand that could make it impossible to rein in budget deficits — while also ruling out drastic cuts to Medicaid, the joint federal-state safety-net program that House Republicans are counting on for savings.

Amid all of this, he has called for a balanced budget — a fiscal aspiration that neither the House nor the Senate plans come anywhere near meeting. “Maybe by next year or the year after, but maybe even sooner than that,” Trump told reporters Wednesday.

Congressional Republicans are familiar with the unpredictable president and his often contradictory policy demands. But reconciling them into a unified budget framework — and, eventually, actual legislation that can get enacted by the GOP’s low-single-digit majorities in the House and Senate — will require making tough choices they say that only the White House can settle.

“He’s the most instrumental person,” said Rep. [Victoria Spartz](#) (R-Ind.), who had a lengthy phone conversation with Trump on Tuesday before she agreed to back the House budget. “This branch [of government] has been very broken, so we need someone like Trump to help us to do our job.”

A person in Trump’s orbit granted anonymity to describe strategy said the president has intentionally stayed on the sidelines early on, using the House-Senate rivalry to move his agenda forward. Having the Senate plan waiting in the wings, for instance, helped House leaders get members to yes this week.

The hands-off approach changed Tuesday when a handful of hard-line fiscal hawks held out on Speaker [Mike Johnson](#)’s budget plan, arguing it didn’t cut enough federal spending.

“He wants to see something,” the person said of Trump. “And if [the House budget] failed, it would have looked like [the] GOP doesn’t have their shit together.”

Besides Spartz, Trump placed calls to several of the holdouts, according to Republicans familiar with the whip operation. In the end, Rep. [Thomas Massie](#) of Kentucky was the only GOP member to vote no.

One of the holdouts, Tennessee Rep. [Tim Burchett](#), said Trump’s call had “considerable” influence on his decision to back the budget measure: “The president assured me that he would work towards cuts, and he’s never lied to me. ... I trust the president.”

So far, GOP congressional leaders have used the phone-a-president button sparingly, aware that they can’t go running to Trump every time they have a whip problem, said two Republicans granted anonymity to candidly describe the dynamics between Trump and Congress.

A larger group of holdouts, including some more moderate members who wanted assurances on Medicaid cuts, didn’t get calls from Trump, the two Republicans said — they were won over with assurances from congressional leaders who emphasized that no safety-net program is mentioned in the budget plan. (Any actual cuts would be carried out in subsequent legislation.)

But now Republicans are facing more profound divides, some of which got hashed out in a White House meeting Wednesday attended by Johnson and Senate Majority Leader [John Thune](#) along with Trump, Vice President JD Vance and top administration economic officials.

Among the issues they discussed was the challenge of making Trump's 2017 tax cuts permanent — a move that would add trillions of dollars to the deficit. Some on Capitol Hill want to essentially ignore that cost by changing the way they handle the bill's accounting. That could allow tax writers to pursue other Trump priorities, such as exempting tips from income tax, at the risk of angering fiscal hawks who want to slow the growth of the national debt.

Getting it done, in other words, could require Trump to weigh in publicly on the kind of otherwise in-the-weeds policy matters he has previously ignored.

The president's wishes will be "as influential if not more as things get tougher," said Rep. [Carlos Gimenez](#), a Florida Republican who met with Johnson this week as the budget debate heated up. "The speaker is going to have to tee it up, going to tell him where the ball lies, how it's lying, and then the president is going to have to execute the shot."

A more delicate matter will involve potential cuts to safety-net programs that many Trump voters rely on. That includes above all Medicaid, which could be targeted for hundreds of billions of dollars worth of reductions under the House blueprint.

Trump has repeatedly said he has no plans to cut Medicaid or other entitlement programs.

"I've said it so many times that you shouldn't be asking me that question," he said Wednesday when pressed on it. "Read my lips ... we're not going to touch it. Now, we are going to look for fraud."

Congressional leaders are hoping to expand the "fraud" loophole as wide as possible. Johnson and other top House Republicans argued to skeptics this week that eliminating waste, fraud and abuse [could generate the scale of savings](#) they'd need to make the math work.

But many lawmakers, including Hawley, are doubtful the party can realize those offsets without impacting their constituents. Trump, they believe, will have to decide which Medicaid rollbacks he's comfortable with.

Already some House members have been in touch with White House officials to argue for provisions they believe can be presented as tackling waste, fraud and abuse — not as cuts to benefits. While Trump has said barring "illegal migrants" could generate huge savings, senior Republicans aren't sure.

Inside the White House, meanwhile, there is rising faith in Trump's ability to bend the legislative branch to his will as his agenda moves forward. One administration official, granted anonymity to speak candidly about interbranch relations, said Trump is "always active in negotiations on Capitol Hill" and is in frequent touch with congressional leaders about how he can be most helpful.

"He put out a [Truth Social post] stating his desire for one big, beautiful bill, and he got it done," the official said.

Rachael Bade and Jake Traylor contributed to this report.

To view online [click here](#).

Lawmakers start work on yearlong funding patch [\(back\)](#)

By Lisa Kashinsky, Meredith Lee Hill and Mia McCarthy

The Senate's top appropriator said Thursday she has been instructed by the Trump administration and GOP leadership to start prepping a stopgap spending bill to fund the government through the end of the fiscal year.

It's the clearest sign yet that bipartisan negotiations around a 12-bill funding deal are in trouble ahead of the March 14 deadline to avoid a shutdown.

Senate Appropriations Chair [Susan Collins](#) (R-Maine) told a small group of reporters Thursday that she was asked to start working on the funding patch — known as a "continuing resolution," or a CR — and said in a later interview that it was "one option" being pursued ahead of a looming lapse in funding for federal programs in just over two weeks.

Speaker [Mike Johnson](#) and Senate Majority Leader John Thune talked about the year-long funding patch option with President Donald Trump during their meeting Wednesday, according to two people familiar with the matter. Trump was supportive, according to the people.

But Democrats are still demanding that Republicans agree to put guardrails on Trump and Elon Musk's unilateral actions to freeze and claw back funding Congress has already approved in any government funding package — and Republicans say they will not agree to those conditions.

"The only person calling for a shutdown is Elon Musk. That would be very damaging to our country," said Senate Appropriations ranking member [Patty Murray](#) (D-Wash.). "We are all working to try and get an agreement and move forward. We are asking for our Republican colleagues to assure us — to give us, you know, the ability to know, when we pass bills, they're going to be followed by this White House. There is a lot of ways to do that, and we're looking at all of them."

Johnson told reporters earlier Thursday he wants as "clean a CR as possible" but acknowledged he would still need to negotiate it with Democrats. He's also entertaining trying to incorporate cuts from Musk's Department of Government Efficiency into the package, which isn't likely to clear the Senate.

To view online [click here](#).

Cruz 'hopeful' Trump's Canada, Mexico tariffs won't take effect ([back](#))

By Daniel Desrochers

Sen. [Ted Cruz](#) (R-Texas) on Thursday expressed concern that President Donald Trump's renewed threat to impose tariffs on Mexico and Canada next week could hobble Texas' economy.

"No state has paid the price more for the invasion over the last four years than Texas," said Cruz, who chairs the Senate Commerce, Science and Transportation Committee. "That being said, trade with Mexico and Canada is enormously important to the Texas economy, and so I'm hopeful we will not see the tariffs go into effect — because Mexico and Canada will be actively assisting in securing the border."

But the Texas senator also stressed he supported Trump's overall effort to drive down the flow of immigration and fentanyl at the border.

"The President uses tariffs for multiple purposes, one of them is as an incentive to cause other nations to work with the United States and advance our interests," Cruz said. "With Mexico and Canada, the president has explicitly conditioned those tariffs on those two nations actively assisting and securing the border. That is incredibly important."

Cruz's comments came shortly after [Trump reiterated in a Truth Social post that the 25 percent tariff on Canada and Mexico, which were paused for one month "will, indeed, go into effect, as scheduled," on March 4 until they stop the flow of fentanyl into the country.](#)

Trump had [created confusion on the timeline for the tariffs](#), which were originally supposed to go into force on Feb. 4, suggesting Wednesday that he would delay the 25 percent tariff on the countries until April 2.

Trade and industry experts have expressed concern that the tariffs could drive up prices in the U.S., disrupting an integrated North American economy that moves everything from auto parts to cucumbers to energy across borders.

The tariffs also risk a trade war with Canada and Mexico; both countries have developed lists of U.S. goods to target for retaliatory tariffs if the U.S. duties go into effect.

To view online [click here](#).

DOGE cuts eyed for GOP spending bill, raising shutdown fears [\(back\)](#)

By Meredith Lee Hill and Rachael Bade

Senior Republicans are seriously exploring how to include cuts made by Elon Musk's Department of Government Efficiency in an upcoming government funding bill — a move that would skyrocket tensions with Democrats and drastically raise the potential for a government shutdown.

Top GOP leaders and President Donald Trump's team have been discussing the idea, which is far from finalized, according to three people who were granted anonymity to discuss the conversations.

But one of the people said the idea would be to codify some of the "most egregious" examples of alleged waste that DOGE has identified and incorporate them into [a government funding patch](#) through the end of the fiscal year. Republicans would then dare Democrats to vote against the package, lest they be blamed for causing a shutdown come the March 14 deadline.

The strategy, if adopted, could help satisfy conservative hard-liners who are already upset Congress is hurtling toward another short-term spending patch. But it would scramble the politics of the looming shutdown fight considerably, alienating Democrats whose votes are needed to ensure passage given the narrow Republican majorities in both chambers.

Republicans were initially discussing moving ahead with a so-called clean continuing resolution, or CR, that would not include politically toxic policy riders. That would have put pressure on Democrats to fall in line, even as Republicans have ruled out adhering to Democratic demands that any funding bill include language to prevent Trump and Musk from overriding congressional spending decisions.

But codifying DOGE actions would be a nonstarter for Democrats, who are already feeling pressure from liberal voters to put up a fight. A vote for DOGE cuts of any sort would effectively be interpreted as an endorsement of what they have been calling an unconstitutional power grab.

Still, some senior Republicans see merit in the tentative plan: They believe if Trump presses Republicans to back the effort, they would get their own members to come on board and would only need to rely on a few Democratic votes to make up for any shortfall on the GOP side. Other top Republicans, however, are privately skeptical, scratching their heads at how they'd convince the necessary seven Democrats in the Senate to come along.

Notably, the idea was greeted with skepticism by key GOP senators Thursday. "I don't see how that could work," said Senate Appropriations Chair [Susan Collins](#) of Maine. Two other Republican appropriators expressed similar confusion.

The fact that Republicans are even considering such a play shows how bullish they are that the politics of cutting down the federal workforce — while messy and chaotic — skew in their favor.

The strategy would also be responsive to demands Speaker [Mike Johnson](#) is facing from his right flank to slash government spending in the funding bill. Rep. [Warren Davidson](#) (R-Ohio), said he got assurances from GOP leaders that cuts would be made to discretionary spending as part of his agreement to vote for the House GOP budget plan earlier this week.

The speaker, asked about his specific assurances to Davidson as he left the House floor Thursday, told reporters, "Stay tuned."

Johnson also suggested it could make sense to codify in the spending bill some of the Trump administration's unilateral funding freezes, including for the U.S. Agency for International Development, which has been effectively dismantled by DOGE.

"It would not make sense to appropriate funds to divisions of an agency that doesn't exist anymore, right?" Johnson said. But the speaker also said he wanted to pursue a funding patch that's as "clean as possible," suggesting the idea to incorporate DOGE cuts might not survive.

Some Republicans believe party leaders could put this idea forward to make a point, then later move to a "clean" CR without the pro-DOGE provision.

Jordain Carney contributed to this report.

To view online [click here](#).

GOP senators privately push Musk to coordinate more with Congress [\(back\)](#)

By Hailey Fuchs and Mia McCarthy

Members of the Senate DOGE Caucus, returning from a White House meeting with Elon Musk Thursday afternoon, pushed for the billionaire to coordinate more with Congress on his cuts to the federal government.

The meeting began with a discussion about retaining important federal employees in the wake of massive firings across federal government, according to Sen. Roger Marshall (R-Kansas). And Sen. John Hoeven (R-N.D.) told Musk that it was important for senators to have points of contact within DOGE to address concerns from constituents.

"We want to make sure that we keep all the federal employees that are competent and care about America," Marshall said. "We're breaking a few things, but at the end of the day, we'll keep the right people in place."

Broadly, Republicans have been supportive of Musk's effort to cut down on federal government spending, though some have expressed anxiety about the pace. There have also been calls for Musk's cuts to be retroactively approved by Congress. But others have indicated that since President Donald Trump has said Musk is acting in a more advisory role, they're comfortable with the cuts coming from the president.

"They can make observations and recommendations," Sen. Mike Lee (R-Utah), another attendee, told reporters after the meeting, referring to Musk and DOGE. "They don't have independent authority to fire, to cancel any payment, or anything like that. They just note things and say: 'Take a look at this.'"

To view online [click here](#).

Trump and GOP leaders discuss using tariffs to pay for agenda [\(back\)](#)

By Meredith Lee Hill

GOP leaders and President Donald Trump are strategizing over how to incorporate revenue from new tariffs in their massive party-line domestic policy bill, with the goal of arguing the multitrillion-dollar legislation doesn't add to the national debt.

Speaker [Mike Johnson](#), Senate Majority Leader [John Thune](#) and other senior Republicans discussed the topic during their White House meeting Wednesday, according to two people familiar with the meeting. Republicans are still planning to keep the tariffs outside the final reconciliation package. But the group discussed how to score and eventually count the revenue as part of their plans for a deficit-neutral bill.

Hours after the White House meeting, [Trump announced that tariffs](#) against Canada, Mexico and China would go into effect next month.

GOP leaders don't have the votes to actually incorporate the tariffs into the massive Trump agenda bill. The politically sensitive topic would spark a messy internal GOP war between the free-trade and America First factions of the party that could derail the entire package, which is already rife with other sticky issues.

Many Republicans don't see tariffs, which are traditionally only authorized by Congress but can be turned on and off in some circumstances by presidential fiat, as a [viable spending offset](#). But as part of their considerations, GOP leaders are discussing how to estimate the revenue generated by Trump's tariffs and then apply that figure to their assessment of how much the bill will cost.

Under that scenario, the Trump administration and GOP leaders would essentially just tell lawmakers how much money they expect to bring in from tariffs and count that to argue they have a deficit-neutral bill. They're already counting on economic growth above and beyond what nonpartisan scorekeepers are estimating to make the numbers work. Some Republicans are likely to bristle at adding tariff revenue on top of that, but leaders believe they will eventually fall in line.

Johnson on Thursday confirmed the topic came up in the White House meeting but said Republicans still needed to work through the strategy.

"We're all talking about how all those will be scored, and how the new revenue will be accounted for, and all the budgeting," Johnson said in response to a question Thursday. "But there's still some questions out there about all of it. So they'll be part of the equation."

To view online [click here](#).

Trump says Canada, Mexico tariffs will go into effect March 4 [\(back\)](#)

By Doug Palmer, Ari Hawkins and Andrew Howard

President Donald Trump pledged Thursday to enforce his planned 25 percent tariffs on Canada and Mexico starting in less than a week on March 4, after both were put on pause earlier this month.

"I don't see [any progress] at all. No, not on drugs," Trump said, when asked if Canada and Mexico were taking sufficient steps to address his concerns.

Trump has threatened tariffs on more than \$900 billion worth of goods from the two countries because he said they are not doing enough to stop undocumented migrants and fentanyl from entering the United States.

His latest comments were made to reporters before a White House meeting with United Kingdom Prime Minister Keir Starmer. He indicated the countries have made progress on the migration

concerns, but said "the drugs continue to pour into our country, killing hundreds of thousands of people."

Trump also promised Thursday to levy an additional 10 percent tariff on hundreds of billions of Chinese goods starting the same date. That would raise the fentanyl-related duty on China to 20 percent.

It is unclear how final the president's decision might be. His commitment to enacting the tariffs on Canada and Mexico follows [similar language he used Monday](#) during a joint press conference with French President Emmanuel Macron. But on Wednesday, Trump suggested he may delay the tariffs another month, [creating further confusion](#).

And Trump initially planned on instituting tariffs on both North American nations earlier this month, before [backing away at the very last minute](#) after negotiations with both countries' leaders on the border.

However, Trump seemed intent Thursday morning on clearing up any confusion about the timing of the tariffs.

"We cannot allow this scourge [of drugs] to continue to harm the USA, and therefore, until it stops, or is seriously limited, the proposed TARIFFS scheduled to go into effect on MARCH FOURTH will, indeed, go into effect, as scheduled," Trump posted to Truth Social.

Both Canada and Mexico have said they are taking steps to address Trump's concerns. Canadian officials also point out that less than 1 percent of the fentanyl that enters the United States comes across the northern U.S. border.

"[Canada] should be apprehending much more," Trump said, when pressed by a reporter on that point. "They're only apprehending 1 percent. You're right about that. It's a little more than that. But they should be apprehending much more because a lot comes through Canada. And as Mexico gets stronger in terms of the border, it goes up to Canada and a lot of drugs are coming in through Canada. We can't have that."

Canadian Immigration Minister Marc Miller, who has been in Washington this week, said engaging with the Trump administration on this issue has been challenging.

"No matter who you meet at the highest level, what is quite clear is that the decision ultimately is made by the president — and it can change," Miller said. "It can be frustrating to feel you had a productive meeting, but then if that doesn't give the outcome that you expect, then you feel like it was all for naught."

Trump has already imposed 10 percent tariffs on China after the leaders were unable to stave off a deadline earlier this month, even after Trump opted to delay 25 percent tariffs on Mexico and Canada.

A White House official confirmed to POLITICO that the new 10 percent tariffs would be on all imports on China, and would be in addition to the flat 10 percent tariffs that have been previously levied. They were granted anonymity to share internal discussions.

The official also said that China, Canada and Mexico have made "a lot of progress" on the issue of migration mostly because of action from the U.S. president, but still need to take greater action to counter the flow of fentanyl into the United States.

Beijing struck back with a series of retaliatory measures shortly after those tariffs went into effect. Those included 15 percent tariffs on imports of U.S. coal and liquefied natural gas as well as 10 percent tariffs on crude oil, agricultural machinery and certain vehicles. Trump imposed those tariffs

using the International Emergency Economic Powers Act, which grants a president [sweeping authority to control economic transactions](#) if they declare an emergency.

During his first term, Trump imposed tariffs of either 7.5 percent or 25 percent on more than \$300 billion worth of Chinese goods. Those remain in place and were expanded by President Joe Biden.

Trump's new fentanyl-based duties would also effectively increase the 7.5 percent and 25 percent duties he imposed in 2018 and 2019 to 27.5 percent and 45 percent, respectively, beginning March 4.

Chinese Embassy spokesperson Liu Pengyu slammed Trump's plan for the additional 10 percent tariffs in a statement to POLITICO, and defended Beijing's efforts on counter narcotics.

"The unilateral tariffs imposed by the U.S. will not solve its own problems, nor will it benefit the two sides or the world," Liu said. "The U.S. needs to view and solve its own fentanyl issue in an objective and rational way, cherish China's goodwill, instead of threatening other countries with arbitrary tariff hikes."

While the public is relatively split on the effectiveness of tariffs, more Americans oppose tariffs against Canada and Mexico than support them, [according to polling released this week](#).

Canada's Industry Minister François-Philippe Champagne said Wednesday that the country is working hard to clamp down on fentanyl flowing in, which was one of Trump's reasons for imposing the tariffs.

"I think there is an understanding that we have doubled down on our efforts for our own sake, to make sure there is zero fentanyl crossing the border and that we work together to control illegal immigration," he said. "I think Canada is prepared to do its part. I think this is well understood by our colleagues in Washington and we'll continue to make that point." Members of [the Canadian parliament also met](#) with their American counterparts this week about securing the border.

The tariffs would be [particularly damaging to Quebec](#), which provides 60 percent of America's aluminum.

Democrats in Congress were quick to attack Trump's shifting threats against the country's North American neighbors. "President Trump has been waffling all week on his reckless tariffs on Canada and Mexico because the consequences are spooking him," House Ways and Means ranking member [Richard E. Neal](#) (D-Mass.) and Trade subcommittee ranking member [Linda T. Sánchez](#) (D-Calif.) said in a statement. "Businesses don't know where to turn for safety. Consumers see only higher and higher prices. Our workers and farmers know too well that trade wars bring pink slips. And everyone needs stability from the White House."

Senate Finance ranking member [Ron Wyden](#) (D-Ore.) was similarly scathing. "Slapping tariffs on everything Americans buy from Canada, Mexico, and China will mean higher prices on groceries, gas and cars, with fewer jobs and lower pay when our closest trading partners respond to Trump's trade war by buying fewer American products," a statement from Wyden read.

Even some in the GOP expressed concerns about the economic fallout if the tariffs on Canada and Mexico go into force. "No state has paid the price more for the invasion over the last four years than Texas," Senate Commerce Chair [Ted Cruz](#) (R-Texas) said in an interview. "That being said, trade with Mexico and Canada is enormously important to the Texas economy, and so I'm hopeful we will not see the tariffs go into effect — because, Mexico, and Canada will be actively assisting in securing the border."

Dan Desrochers and Doug Palmer contributed from Washington, D.C. and Sue Allan contributed from Ottawa.

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[EXTERNAL] Association Letter to USTR Greer: Digital Trade

From: "Heiber, Jordan" (b) (6)@uschamber.com>
To: "Mulopulos, Sam J. EOP/USTR" (b) (6)
Cc: "Tanner, Robb EOP/USTR" <robert_tanner@ustr.eop.gov>, "Murphy, John" (b) (6)@uschamber.com>, "Heather, Sean" <(b) (6)@uschamber.com>, "Icso, Isabelle" (b) (6)@uschamber.com>
Date: Mon, 03 Mar 2025 08:15:00 -0500
Attachments: 2025 03 03 Coalition Letter Digital Trade USTR Greer.pdf (1 MB)

Sam,

Please see attached for a letter directed to USTR Greer, signed by three dozen associations and emphasizing the importance of strong digital trade rules for the success of American business of all sizes and across every sector of the economy.

We ask that USTR return to its prior posture of championing principles that facilitate cross-border data flows, pushing back on data localization mandates, and making clear to trading partners that discrimination against U.S. digital products and services will no longer be tolerated.

We in the business community believe there is a strong foundation to build on, given the USMCA agreement that served as a key trade policy win during the president's first term. Moreover, we have welcomed the early and strong statements in support of U.S. business leadership on digital policy issues from POTUS and those in his administration since his inauguration, including USTR Greer.

Please do not hesitate to reach out to me. The business community would welcome the opportunity to further engage on these issues.

Best,
Jordan Heiber

Jordan Heiber
Vice President, International Digital Economy Policy
U.S. Chamber of Commerce
1615 H Street NW | Washington, DC | 20062
(b) (6)@uschamber.com
Cell: (b) (6)



U.S. Chamber of Commerce

March 3, 2025

The Honorable Jamieson Greer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Greer,

On behalf of the undersigned associations and organizations, we wish to extend our congratulations on your confirmation as the United States Trade Representative. As you take on this critical role, we want to share the business community's recommendations for advancing U.S. leadership in constructing digital trade rules that support American jobs, exports, innovation, and competitiveness across the economy.

American businesses across all sectors — including manufacturing, services, financial services, energy, retail, healthcare, and agriculture — are the envy of the world because they innovate and use digital services and technology to support sales to customers around the world. According to the Department of Commerce¹, in 2023, U.S. exports of digitally-enabled services accounted for 64% of all U.S. services exports, driving our \$278 billion trade surplus in services. The digitally-enabled economy in recent years has contributed almost 9 million jobs across every sector of the economy, and it has helped small and medium-sized businesses compete in ways not possible even a decade ago.

During President Trump's first term, and with your active support, the United States was a recognized leader in advocating for strong digital trade rules that facilitate the movement of data, prohibit foreign governments from forcing companies to localize data abroad, prevent discrimination against American digital products and services, and safeguard sensitive source code from forced disclosure by foreign governments as a condition for selling into their markets.

You championed these trade rules and succeeded in incorporating them into the U.S.-Japan Digital Trade Agreement, the U.S.-Mexico-Canada Agreement (USMCA), and the United States-Singapore Joint Understanding on Financial Services Data Connectivity. They were also proposed by the first Trump Administration in other settings, including the World Trade Organization (WTO). You recognized that

¹ [Fact Sheet: International Trade Administration Efforts to Advance U.S. Competitiveness and Trade in the Digital Economy | U.S. Department of Commerce](#)

advancing strong U.S. digital trade rules helped ensure American businesses across all industries could compete and succeed overseas and advanced the Administration's goal of furthering the promise of AI, allowing U.S. firms to fully lead in its global development.

The Biden Administration, without explanation, repudiated this approach by opting out of digital trade negotiations, even as our allies and adversaries have continued to negotiate. Your appointment as USTR is an important opportunity to reassert U.S. leadership in this space to ensure that American workers and businesses can continue to compete around the world.

We urge the new administration to prioritize digital trade rules that advance the following principles:

1. **Facilitate Cross-Border Data Flows:** Ensuring the free flow of data across borders is vital for all sectors of the economy, from agriculture to manufacturing to services and financial services. Seamless data transfer is crucial for real-time communication, operational efficiency in global supply chains, and combatting cybercrime around the world. Restrictions on data flows can hinder innovation, disrupt supply chains, and limit market access for U.S. companies.
2. **Prohibit Data Localization Mandates:** Mandates that require data to be stored locally or prevent data from being processed overseas, as a condition for doing business in a country, create unnecessary barriers to exports and increase costs for businesses, particularly startups and small and medium-sized enterprises. These mandates can also undermine data security, cybersecurity, and privacy. Local storage requirements can lead to fragmented data management systems, increasing the risk of data breaches and compliance challenges.
3. **Prevent Discrimination Against U.S. Digital Products and Services:** The United States must prevent foreign governments from implementing measures that serve as market access barriers and discriminate against American digital products and services. Such discrimination not only harms U.S. companies but also limits consumer choice and stifles competition. Discriminatory practices can include unfair licensing requirements or biased regulatory standards and quotas or procurement mandates that favor local competitors, including on issues like cloud, AI, content, and competition.
4. **Prevent Revenue Extraction Targeting U.S. Exports:** Foreign governments are increasingly viewing competitive U.S. digital products and services as an attractive target for revenue raising measures, to the detriment of U.S. exports.

These measures include digital services taxes and similar discriminatory or extraterritorial tax measures, as well as attempts to impose customs formalities and duties on electronic transmissions. The United States should firmly oppose such measures, including by pushing to make permanent the WTO moratorium on customs duties on electronic transmissions.

5. **Safeguard Sensitive Source Code:** Protecting source code and algorithms from forced disclosure, as a condition for doing business in a country, is essential to prevent cyber theft, support AI innovation, and maintain the integrity of U.S. technology. Forced disclosure mandates can expose U.S. enterprises to malicious cyber activity and intellectual property theft. Ensuring the confidentiality of source code helps protect proprietary technologies and maintain competitive advantages for the U.S.
6. **Promote High-Standard Digital Trade Rules:** The U.S. should continue to advocate for and actively enforce high-standard digital trade rules in international agreements that support U.S. leadership in advanced technologies, and reflect the values of openness, freedom, and non-discrimination. High-standard rules help create a predictable and competitive trading environment, yielding broader market opportunities, job creation, innovation, and economic growth for the U.S. This should include reasserting a strong U.S. voice in E-Commerce-related discussions in the WTO.
7. **Support Startups and Small and Medium-Sized Enterprises (SMEs):** Digital trade policies should support the ability of startups and SMEs to compete globally. Startups and SMEs often lack the resources to navigate complex regulatory environments and bear the costs of data localization and other restrictive measures. They benefit enormously from simplified and streamlined digital trade rules that allow them to access new markets and scale their operations more effectively.
8. **Foster Innovation, Economic Growth, and Enhance Competitiveness:** Strong digital trade rules enhance the global competitiveness of U.S. businesses by ensuring they can operate on a level playing field. By promoting policies that facilitate digitally-enabled trade, the United States will continue to lead in the development of new technologies and business models. Encouraging digitally-enabled trade spurs U.S. technological advancements in areas such as artificial intelligence, biotechnology, energy production, and other sectors across the economy.
9. **Consider New Digital rules to Address Old Problems:** The proliferation of inconsistent and localized technical requirements in multiple jurisdictions has

long hampered the ability of U.S. suppliers to offer digital services on a global scale. The United States should lead in developing rules that incentivize the use of international standards, including for AI.

The America First Trade policy prioritizes identifying countries with which “the United States can negotiate agreements on a bilateral or sector-specific basis to obtain export market access for American workers, farmers, ranchers, service providers, and other businesses.” Under your leadership, we have an invaluable opportunity to restore U.S. leadership in support of digitally-enabled trade for American goods, services, and agriculture. Adhering to these principles will not only benefit American workers and businesses, but also advance broader U.S. economic and strategic interests.

Sincerely,

ACT | The App Association
American Council of Life Insurers
American Property Casualty Insurance Association (APCIA)
AdvaMed
Business Roundtable
Business Software Alliance (BSA)
Chamber of Progress
Coalition of Service Industries (CSI)
Computer & Communications Industry Association (CCIA)
Consumer Technology Association (CTA)
E-Merchants Trade Council
Engine
Entertainment Software Association
Express Association of America (EAA)
Global Data Alliance
Global Innovation Forum
Independent Film & Television Alliance
Information Technology Industry Council (ITI)
Motion Picture Association
National Association of Manufacturers
National Foreign Trade Council (NFTC)
National Retail Federation
NetChoice
Payments Leadership Council

Pharmaceutical Research and Manufacturers of America (PhRMA)
Reinsurance Association of America
Retail Industry Leaders Association
Securities Industry & Financial Markets Association (SIFMA)
Securities Industry and Financial Markets Association Asset Management Group
(SIFMA AMG)
Small Business & Entrepreneurship Council
Software & Information Industry Association (SIIA)
TechNet
Technology Trade Regulation Alliance (TTRA)
Telecommunications Industry Association (TIA)
U.S. Chamber of Commerce
US Council for International Business (USCIB)

[EXTERNAL] CTA letter to Secretary Lutnick, Secretary Bessent, and Ambassador Greer

From: Edward Brzytwa <(b) (6)@cta.tech>
To: "Demirjian, Sushan EOP/USTR" (b) (6)
(b) (6)@treasury.gov, Jennifer Boger (Federal) <(b) (6)@trade.gov>
Date: Mon, 03 Mar 2025 18:21:43 -0500
Attachments: CTA Letter to Lutnick, Bessent, and Greer on IEEPA tariffs - 20250303.pdf (175.87 kB)

Dear Sushan, Lailee, and Jennifer,

I am sharing a letter from Gary Shapiro, CTA's CEO and Vice Chair, and Kinsey Fabrizio, CTA's President, to Secretary Lutnick, Secretary Bessent, and Ambassador Greer.

Given that front office staff are still coming into place, can you help us with getting this letter to the right people for your principals? We welcome your suggestions on appropriate front office contacts as well.

Many thanks,

Ed

Ed Brzytwa

Vice President of International Trade
Consumer Technology Association, producer of CES®

(b) (6)@cta.tech

m: (b) (6)

[CTA.tech](https://cta.tech) | [CES.tech](https://ces.tech)





1919 S. Eads St.
Arlington, VA 22202
(b) (6)
CTA.tech

March 3, 2025

The Honorable Scott Bessent
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Howard Lutnick
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Ambassador Jamieson Greer
United States Trade Representative
Office of the U.S. Trade Representative
600 17th St. NW
Washington, DC 20508

via email

Dear Secretary Bessent, Secretary Lutnick and Ambassador Greer:

On behalf of the Consumer Technology Association's (CTA)[®] more than 1200 members and thousands of companies that exhibit at CES[®] in Las Vegas each January, we respectfully seek your assistance to avoid damaging tariffs on imports from Canada, Mexico, and China proposed to take effect March 4.

We urge you to work with President Trump to reach agreements with the governments of these countries that will both address concerns about the scourge of fentanyl and avoid the risk of inflation and increased costs for products that Americans love and rely on.

In our industries' experience, tariffs are taxes on goods that Americans pay. Foreign governments or companies do not pay U.S. tariffs. President Trump won a historic election centered around lowering prices for average American families. While threatening tariffs may bring other countries to the negotiating table, they come at great cost. Tariffs on imports will fuel inflation and raise prices on essential goods and services, in areas like agriculture, automotive manufacturing, and technology. Higher prices are surely not what either the President or the American people want.

Consumer Technology Association^{*}
Producer of CES^{*}

If the President chooses to move forward with his proposed tariffs, he will significantly disrupt integrated supply chains in North America and make it harder for American businesses to thrive and grow. Tariffs also undermine efforts to fight inflation, damaging the U.S. economy and hurting Americans already struggling after years of inflation. Longer term, tariffs will also reduce companies' investments in research and development, reducing our country's ability to innovate. In its January 31 analysis, The Budget Lab at Yale concluded that the tariffs would reduce U.S. households' average annual income by \$1245.¹

More, the tariffs would further strain our relationships with Canada and Mexico—two of our closest neighbors and key trading partners. These countries have already pledged to retaliate immediately against U.S. exports, further harming the U.S. national interest. If we break North American trade and scrap the historic U.S.-Mexico-Canada Agreement, which the President negotiated in his first term, only China will benefit.

The technology sector is a critical engine of the American economy, driving innovation and job creation. Research conducted by CTA has consistently shown that tariffs act as a tax on Americans, leading to higher consumer prices and diminished purchasing power. Our studies indicate that if the President's proposed tariffs, including those on Canada, Mexico, and China, are implemented as initially proposed, U.S. consumer purchasing power for technology products alone would decline by \$90-\$143 billion.²

We urge you to convey to the President that promoting U.S. innovation and economic growth and avoiding tariffs, higher inflation, and economic harm is the better path for the United States.

Thank you for your attention to this critical issue. CTA stands ready to work with your agencies and across the Trump Administration plus Congress to support policies that enhance American innovation and reduce barriers to trade.

Sincerely,

Gary Shapiro
CEO & Vice Chair

Kinsey Fabrizio
President

¹ <https://budgetlab.yale.edu/research/economic-and-fiscal-effects-trump-administrations-proposed-tariffs>

² <https://shop.cta.tech/collections/all/products/how-the-proposed-trump-tariffs-increase-prices-for-consumer-technology-products-january-2025>

Re: [EXTERNAL] CSI Lauds Confirmation of Jamieson Geer as Next U.S. Trade Representative

From: "Stallings, Marshall EOP/USTR" <ethan.m.stallings@ustr.eop.gov>
To: K.C. Swanson (b) (6) n@uscsi.org>
Date: Mon, 03 Mar 2025 14:28:19 -0500

Appreciate you sending this my way, K.C.!

Marshall

Sent from my iPhone

On Feb 27, 2025, at 11:42 AM, K.C. Swanson <kcswanson@uscsi.org> wrote:

Hi Marshall, we wanted to share with you CSI's statement of congratulations on the confirmation of Jamieson Greer - we shared this with the press yesterday.

best,

K.C.

From: K.C. Swanson

Sent: Wednesday, February 26, 2025 1:04 PM

To: K.C. Swanson (b) (6) @uscsi.org>

Subject: CSI Lauds Confirmation of Jamieson Geer as Next U.S. Trade Representative

CSI Lauds Confirmation of Jamieson Geer as Next U.S. Trade Representative

Washington, D.C. (February 26, 2025) — *The Coalition of Services Industries (CSI) today issued the following statement in response to the confirmation of Jamieson Greer as USTR.*

Said CSI President Christine Bliss: "The Office of the US Trade Representative will benefit from the leadership of such a highly experienced and respected negotiator and trade attorney. In his new role, we urge Jamieson Greer to pursue a strong, affirmative services and digital trade agenda and work to restore US trade leadership on trade with our allies and partners.

"After an extended period of inaction under the prior administration, we hope USTR will move quickly to tackle the services and digital trade barriers confronting US exporters and prioritize the pursuit of high-standard trade disciplines in those areas through new trade negotiations. CSI members look forward to working closely with Jamieson."

CSI is the leading U.S. industry association devoted to promoting the trade policy priorities of the U.S. services sector on services and digital issues. Our members include companies that provide financial services, information and communication technology services, telecom services, express delivery and logistics, media and entertainment,

distribution, and professional services to all sectors of the economy, including manufacturing and agriculture. CSI members include manufacturers of consumer electronics, telecommunications equipment and health and nutrition products. Our members operate in all 50 states and in nearly 200 countries, representing both large and small firms. CSI also works with counterpart organizations around the globe as co-chair of the Global Services Coalition and the Asia Pacific Services Coalition.

[EXTERNAL] Re: USCMA review

From: Edward Brzytwa (b) (6) @cta.tech>
To: "Watson, Daniel L. EOP/USTR" <(b) (6)>, Vada Garcia (b) (6) @cta.tech>, "Demirjian, Sushan EOP/USTR" (b) (6)
Date: Wed, 05 Mar 2025 11:00:17 -0500

Also sharing our 2022 study on the impact of the Section 301 tariffs on our industry, which has a Mexico section: <https://shop.cta.tech/products/analysis-of-section-301-tariff-impacts-on-imports-of-consumer-technology-products>

And for good measure, our study on Building a Resilient Consumer Technology Supply Chain from October 2023: <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:c45a57b1-4365-44ba-bcdc-ff1f0e96fc69>

And our study on the proposed Trump tariffs: <https://shop.cta.tech/collections/all/products/how-the-proposed-trump-tariffs-increase-prices-for-consumer-technology-products-january-2025>

From: Watson, Daniel L. EOP/USTR (b) (6)
Sent: Wednesday, March 5, 2025 10:56 AM
To: Vada Garcia (b) (6) @cta.tech>; Demirjian, Sushan EOP/USTR (b) (6); Edward Brzytwa (b) (6) @cta.tech>
Subject: RE: USCMA review

Thanks, Vada, appreciate it!

From: Vada Garcia (b) (6) @cta.tech>
Sent: Wednesday, March 5, 2025 10:52 AM
To: Demirjian, Sushan EOP/USTR (b) (6); Edward Brzytwa (b) (6) @cta.tech>; Watson, Daniel L. EOP/USTR (b) (6)
Subject: [EXTERNAL] RE: USCMA review

Daniel, it was nice to meet you yesterday, and Sushan, it's always so good to see you!

I am sharing CTA's comments to Global Affairs Canada on USMCA priorities from last October. We also created a two-page summary of our priorities. As Ed mentioned, we'll be engaging with our members soon on updates for our priorities.

Also, here is the link for the Coalition for North American Trade (CNAT):
>><https://www.coalitionfornorthamericantrade.com/><<;

From: Demirjian, Sushan EOP/USTR (b) (6)
Sent: Wednesday, February 26, 2025 5:28 PM
To: Edward Brzytwa (b) (6) @cta.tech>; Watson, Daniel L. EOP/USTR (b) (6); Vada Garcia (b) (6) @cta.tech>
Subject: RE: USCMA review

Great—then we'll meet in either Daniel's or my office. See you Tuesday!

From: Edward Brzytwa (b) (6) <[redacted]@cta.tech>
Sent: Wednesday, February 26, 2025 5:26 PM
To: Demirjian, Sushan EOP/USTR (b) (6) [redacted]; Watson, Daniel L. EOP/USTR (b) (6) [redacted]; Vada Garcia (b) (6) <[redacted]@cta.tech>
Subject: [EXTERNAL] Re: USCMA review

Only the two of us (Ed and Vada).

From: Demirjian, Sushan EOP/USTR (b) (6) [redacted]
Sent: Wednesday, February 26, 2025 5:24 PM
To: Edward Brzytwa (b) (6) <[redacted]@cta.tech>; Watson, Daniel L. EOP/USTR (b) (6) [redacted]; Vada Garcia (b) (6) <[redacted]@cta.tech>
Subject: RE: USCMA review

In person is fine for me. How many do you think will be in your group?

From: Edward Brzytwa (b) (6) <[redacted]@cta.tech>
Sent: Wednesday, February 26, 2025 5:10 PM
To: Demirjian, Sushan EOP/USTR (b) (6) [redacted]; Watson, Daniel L. EOP/USTR (b) (6) [redacted]; Vada Garcia (b) (6) <[redacted]@cta.tech>
Subject: [EXTERNAL] Re: USCMA review

Sushan, I would prefer in person if that's possible. My colleague Vada Garcia will join us. It's been a while since I've paid homage to the Winder Building!

Ed

From: Demirjian, Sushan EOP/USTR (b) (6) [redacted]
Sent: Wednesday, February 26, 2025 5:08 PM
To: Edward Brzytwa (b) (6) <[redacted]@cta.tech>; Watson, Daniel L. EOP/USTR (b) (6) [redacted]; Vada Garcia (b) (6) <[redacted]@cta.tech>
Subject: RE: USCMA review

Ed, just to confirm, will the meeting be in person or video? Either is fine, but if in person, I want to make sure we have a room. Thanks.

-----Original Appointment-----

From: Edward Brzytwa (b) (6) <[redacted]@cta.tech>
Sent: Wednesday, February 26, 2025 5:01 PM
To: Edward Brzytwa; Watson, Daniel L. EOP/USTR; Demirjian, Sushan EOP/USTR; Vada Garcia
Subject: [EXTERNAL] USCMA review
When: Tuesday, March 4, 2025 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 600 17th St NW, Washington, District of Columbia 20006, United States

Sushan, I would prefer in person if that's possible. My colleague Vada Garcia will join us. It's been a while since I've paid homage to the Winder Building!

Ed

From: Demirjian, Sushan EOP/USTR (b) (6)
Sent: Wednesday, February 26, 2025 5:08 PM
To: Edward Brzytwa (b) (6) @cta.tech>; Watson, Daniel L. EOP/USTR (b) (6)
(b) (6) Vada Garcia (b) (6) @cta.tech>
Subject: RE: USCMA review

Ed, just to confirm, will the meeting be in person or video? Either is fine, but if in person, I want to make sure we have a room. Thanks.

-----Original Appointment-----

From: Edward Brzytwa (b) (6) @cta.tech>
Sent: Wednesday, February 26, 2025 5:01 PM
To: Edward Brzytwa; Watson, Daniel L. EOP/USTR; Demirjian, Sushan EOP/USTR; Vada Garcia
Subject: [EXTERNAL] USCMA review
When: Tuesday, March 4, 2025 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 600 17th St NW, Washington, District of Columbia 20006, United States

Consumer Technology Recommendations and Asks on the Operation of the CUSMA

On 31 October 2024, CTA [submitted comments](#) to Global Affairs Canada in response to a consultation on the operation of the Canada-United States-Mexico Agreement (CUSMA). We and our members recognize the CUSMA as an essential framework for fostering North American trade, competitiveness, and innovation. Since its implementation in 2020, CUSMA has enabled stable trade relations and growth in the consumer technology industry, supporting over CA\$ 302 billion in technology trade among Canada, the United States, and Mexico in 2023.

Recommendations and Asks on CUSMA

1. Digital Trade: CTA strongly supports maintaining high-standard digital trade rules in CUSMA, which protect cross-border data flows and prohibit forced data localization.
2. Investor-State Dispute Settlement (ISDS) Mechanism: CTA underscores the importance of healthy investor and investment protections to support supply chain diversification and address investment problems in Mexico.
3. Cybersecurity: CTA suggests strengthening cybersecurity provisions to ensure growth in emerging technologies, ensuring they are non-discriminatory, aligned, and set a global standard.
4. Rules of Origin: CTA recommends avoiding increasing the restrictiveness or complexity of Rules of Origin (ROOs) requirements, as higher regional value content thresholds could impose undue burdens on the consumer technology industry.
5. Full Implementation of CUSMA Chapters: CTA advocates for the full implementation of key chapters of CUSMA to accelerate supply chain diversification across North America. This includes chapters on Customs Administration and Trade Facilitation, Technical Barriers to Trade, Information and Communication Technology, and Good Regulatory Practices.
6. Trade Remedies: CTA urges the CUSMA Parties to tread lightly in creating disparate trade remedies among the three parties, as such measures can undermine the agreement's core objective of fostering seamless trade within North America.
7. Quantitative Restrictions: CTA advocates for maintaining the integrity of CUSMA by avoiding any additional side letters that impose new quantitative restrictions beyond what is already included in the agreement.

Recommendations and Asks on Canadian Issues

8. Canada's Digital Services Tax Act (Bill C-59): CTA urges Canada to reverse its digital services tax (DST), which is inconsistent with Canada's commitments under CUSMA. Reversal would avoid the need for dispute settlement proceedings under the agreement.
9. Canada's Artificial Intelligence and Data Act (AIDA) (Bill C-27): CTA applauds the framework set out in AIDA but suggests amendments to reflect industry standards and balance the risk of over-regulating against the benefits of innovation.
10. Canada's Online Streaming Act (Bill C-11): CTA advocates for the reversal of Canada's Online Streaming Act, which is inconsistent with CUSMA's requirement for equal treatment of both U.S. and Canadian services and service suppliers.
11. Canada's EnerGuide Label: CTA supports Canada's commitment to energy efficiency through its EnerGuide label but suggests aligning energy efficiency approaches across North America.
12. Cross-Border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations: CTA urges the Canadian government to reassess its proposed amendments to these regulations to ensure alignment with international obligations on e-waste management.

Recommendations and Asks on Mexican issues

13. Mexico's Judicial Reforms: CTA expresses concern over Mexico's proposed judicial changes, which could introduce significant uncertainty into commercial relations and jeopardize CUSMA discussions.
14. Mexico's Possible Accession to the WTO Information Technology Agreement: CTA recommends that Canada and the United States work to secure a commitment by Mexico to join the WTO Information Technology Agreement.
15. Mexico's Failure to Implement CUSMA Intellectual Property Rights: CTA urges Canada and the United States to encourage Mexico to promptly address the gap in implementing necessary regulations under CUSMA's Intellectual Property Rights chapter.
16. Mexico's Data Localization for Financial Services: CTA calls for addressing Mexico's 2021 regulation on electronic payment fund institutions which acts as a de facto data localization measure and violates the CUSMA Financial Services chapter.

About the Consumer Technology Association (CTA)®:

As North America's largest technology trade association, CTA is the tech sector. Our members are the world's leading innovators – from startups to global brands – helping support millions of jobs across North America. CTA owns and produces CES® – the most powerful tech event in the world.

31 October 2024

Hon. Mary Ng, P.C. M.P.
Minister of International Trade, Export Promotion, Small Business and Economic
Development
Canada-United States-Mexico Agreement (CUSMA) Consultations
Global Affairs Canada
Trade Negotiations – North America
John G. Diefenbaker Building
111 Sussex Drive
Ottawa, Ontario
K1N 1J1

**Re: Consulting Canadians on the operation of the Canada-United States-Mexico
Agreement (CUSMA)**

Dear Minister Ng:

The Consumer Technology Association (CTA) welcomes the opportunity to submit comments in response to the Government of Canada's consultation on the operation of the Canada-United States-Mexico Agreement (CUSMA). We sincerely appreciate your consideration of our input and contribution to this important issue.

CTA represents over 1,300 companies from every facet of the consumer technology industry and relies on broader supply chains built upon strategic arrangements with trusted Canadian trading partners. We also own and produce CES®, the world's most powerful technology event and in 2024, attracted more than 145,000 people, including 50,000-plus international visitors, among which 3,761 from Canada.¹ Throughout its 100-year existence, CTA has remained steadfast in its mission to promote North American innovation and the adoption of new technologies that address significant global challenges.

We and our members recognize the CUSMA as an essential framework for fostering North American trade, competitiveness, and innovation. Since its entry into force in 2020, CUSMA has enabled stable trade relations among its partners, thereby facilitating growth in the consumer technology industry. As consumer technology supply chains

¹ CES 2024 Attendance Audit Summary,
https://cdn.ces.tech/ces/media/pdfs/2024/attendeeauditsummary_2024.pdf.

diversify in response to geopolitics, CUSMA continues to provide the requisite predictability and certainty for companies to source from within North America. North America's seamless trade and investment environment plays a critical role in enabling companies to shift production, mitigate risks, and maintain competitiveness.

In 2023, the agreement supported over CA\$ 302 billion in technology trade among Canada, the United States, and Mexico, directly benefiting CTA members as they seek to expand operations and invest in developing, manufacturing, and deploying emerging technologies across the continent.² As we look to the future, full implementation and enforcement of CUSMA's provisions will further enable supply chain resilience and drive economic growth in the tech sector.

In the remainder of this letter, CTA outlines our recommended issues for inclusion during the first joint review of CUSMA in 2026 and priorities for 2025, including Canada's chairing of the fifth CUSMA Free Trade Commission meeting. We urge Canada to work closely with the United States and Mexico to continue CUSMA and avoid termination or any other disruption of the agreement.

In our view, the review is an opportunity for all three Parties to re-emphasize the essential economic nature of the North American trading block, renew endorsement of each trading partner, and improve the implementation and adherence to the enforcement provisions of the agreement. We hope Canada, the United States, and Mexico, re-center a rules-based international trade regime with the rule of law at its foundation. Renegotiation of CUSMA is neither desirable nor necessary.

Digital trade

Digital trade is a cornerstone of the modern economy, so CTA strongly supports maintaining the high-standard digital trade rules enshrined in CUSMA. These rules protect cross-border data flows and prohibit forced data localization, so they are crucial for fostering innovation and ensuring the seamless operation of digital services across North America. Weakening these provisions, or even questioning their efficacy would undermine the competitiveness of the technology sector, hinder growth, and disrupt the integrated digital marketplace that CUSMA has helped create.

As digital trade continues to expand, the Parties must preserve the agreement's robust framework to support the growth of North American businesses and their global leadership in cutting-edge technologies. More, Canada, Mexico, and the U.S. should work together on including the CUSMA provisions on digital trade in other agreements

² Based on numbers from the USA Trade® Online data tool (<https://usatrade.census.gov/>) provided by the U.S. Census Bureau. Technology trade is defined by CTA to include consumer technology products and components, semiconductors, semiconductor manufacturing equipment, and batteries.

they are negotiating, including the Indo-Pacific Economic Framework (IPEF), and advocate for them at the World Trade Organization (WTO).

Investor/Investment Protections and Investor-State Dispute Settlement (ISDS) Mechanism

CTA underscores the importance of healthy investor and investment protections to support the diversification of supply chains across North America. Should the three Parties choose to revisit the Investment Chapter of CUSMA, we favor stronger investment and investor protections.³ In addition, CTA hopes Canada and the United States make greater use of state-to-state dispute settlement provisions in CUSMA to address investment problems in Mexico.

Cybersecurity

We suggest strengthening cybersecurity provisions to ensure growth in emerging technologies and a thriving North American, principled-based, economy. CTA urges Canada to ensure that cybersecurity standards, certifications, and frameworks are non-discriminatory, aligned, and set a global standard for allowing businesses to operate in markets that share baseline values.

Policies that run counter to these principles prevent governments and consumers from accessing services that are best-in-class and undermine cybersecurity more broadly. CTA also encourages the CUSMA Parties to establish a formal mechanism for industry and governments to collaborate and cooperate on cybersecurity policies, best practices, and threat information sharing relevant for cross-border business operations.

Rules of Origin

CTA expects that the review of CUSMA may prioritize adjustments to the Rules of Origin (ROOs). We implore the three CUSMA Parties to avoid increasing the restrictiveness or complexity of the requirements. Specifically, higher regional value content thresholds could impose undue burdens on the consumer technology industry. More restrictive ROOs may lead companies to opt for paying Most-Favored-Nation (MFN) duties, as this would be less burdensome and potentially less costly. Increasing tariffs for goods traded among the three Parties would defeat the purpose of CUSMA in promoting regional trade and integration. We encourage policymakers to maintain a balanced approach to ROO that supports the industry's competitiveness and aligns with the agreement's original intent as well as respecting the enforcement and adjudicative mechanisms already in place.

³ CUSMA – Chapter 14 – Investment, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/14.aspx?lang=eng>.

Full Implementation of CUSMA Chapters to Accelerate Supply Chain Diversification

CTA advocates for the full implementation of key chapters of CUSMA, which will play a critical role in accelerating the diversification of supply chains across North America.

- **Chapter 7 on Customs Administration and Trade Facilitation:** Streamlining customs procedures and enhancing transparency are essential for reducing delays and improving efficiency in cross-border trade, particularly for time-sensitive tech products.
- **Chapter 11 on Technical Barriers to Trade (TBTs):** Ensuring that technical standards are consistent and non-discriminatory will reduce unnecessary costs and barriers for the technology industry, allowing companies to operate seamlessly across borders.
- **Sectoral Annex 12-C on Information and Communication Technology (ICT):** Full implementation of this annex will promote regulatory cooperation and interoperability, making it easier for tech products to move freely across the region and fostering innovation in the ICT sector.
- **Chapter 28 on Good Regulatory Practices:** Ensuring good regulatory practices across all Parties is essential for transparency, predictability, and the avoidance of unnecessary barriers to trade. This will create a more favorable environment for companies looking to diversify supply chains away from concentrated markets, such as China.

By advancing these priorities, CUSMA can remain a powerful tool for fostering a resilient, diversified, and innovative North American supply chain.

Trade remedies

CTA urges the USMCA Parties to tread lightly in creating disparate trade remedies among the three parties. Imposing such measures can undermine the agreement's core objective of fostering seamless trade within North America. By ensuring that trade remedies are rarely used against CUSMA partners, the region can continue to promote economic integration, support supply chain diversification, and enhance the competitiveness of our industries. We encourage a balanced approach that protects domestic industries while maintaining the spirit of cooperation and mutual benefit enshrined in the CUSMA agreement.

Quantitative restrictions

CTA advocates for maintaining the integrity of CUSMA by avoiding any additional side letters that impose new quantitative restrictions beyond what is already included in the

agreement. Introducing further limits on trade volumes could disrupt market access and undermine the benefits that CUSMA provides for the consumer technology industry. Any new restrictions could hamper supply chain efficiency, raise costs for businesses, and ultimately reduce consumer choice. We encourage all Parties to uphold the existing commitments under the agreement and avoid measures that may impose unnecessary limitations on trade.

Canada's Digital Services Tax Act (Bill C-59)

CTA urges Canada to reverse its digital services tax (DST), a measure inconsistent with Canada's commitments under the Cross-Border Trade in Services and Investment chapters of CUSMA.⁴ Reversal would avoid the need for dispute settlement proceedings under the agreement. Instead, Canada should seek alternative approaches that align with CUSMA's goal of promoting innovation and economic growth.

While U.S. firms may comprise a large share of negatively affected companies, the structure of the DST as a tax on revenue means that these costs will ultimately be passed on to Canadian consumers in the form of higher prices. By raising prices for Canadian consumers and imposing costs on U.S. firms, the DST poses a barrier to the export of U.S. digital services to Canada.⁵

This tax policy undermines the spirit of the CUSMA by unfairly burdening technology companies, creating barriers to digital trade, and disrupting the free flow of services across borders. Resolving this issue is critical to preserving the integrity of CUSMA's digital trade provisions and maintaining a cooperative trade relationship between Canada, the United States, and Mexico.

Canada's Artificial Intelligence and Data Act (AIDA) (Bill C-27)

CTA applauds the Government's thoughtful framework set out in the AIDA, but the framework should be amended to reflect industry standards. In addition, and in alignment with Article 11.4 of CUSMA, Canada should explicitly balance the risk of over-regulating against the benefits of innovation in the emerging AI markets.⁶ Aligning with

⁴ CUSMA – Chapter 15 – Cross-border Trade in Services, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/15.aspx?lang=eng>; CUSMA – Chapter 14 – Investment, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/14.aspx?lang=eng>.

⁵ "Canada's Digital Services Tax Act: Issues Facing Congress," Congressional Research Service, August 1, 2024, <https://crsreports.congress.gov/product/pdf/IN/IN12399>.

⁶ CUSMA – Chapter 11 – Technical barriers to trade, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/11.aspx?lang=eng>.

the U.S. framework would ensure a more proportionate and effective regulatory environment, fostering innovation while addressing potential risks associated with AI.⁷

Canada's Online Streaming Act (Bill C-11)

CTA advocates for the reversal of Canada's Online Streaming Act, which is inconsistent with Article 15.3 of CUSMA that requires equal treatment of both U.S. and Canadian services and service suppliers.⁸ While the Act aims to promote Canadian content and support local creators, it risks imposing excessive burdens on streaming services that could stifle competition and limit consumer choice. Repealing this legislation would help ensure a more competitive digital marketplace, allowing both Canadian and international platforms to thrive and better serve consumers. We encourage policymakers to reconsider the Act's implications for industry dynamics and consumer access, and instead seek to foster an environment that prioritizes innovation and fair competition in the digital economy.

Canada's EnerGuide Label

CTA supports Canada's commitment to energy efficiency through its EnerGuide label, which helps consumers make informed decisions about the energy consumption of appliances and electronics. We suggest that any CUSMA review discussions on regulatory cooperation prioritize energy efficiency, as expressed in Article 12.D.4 of CUSMA.⁹ To that end, we recommend that Canada work with the U.S. and Mexico to align approaches to create consistent energy efficiency standards across North America, benefitting both business and consumers by simplifying compliance. As energy efficiency standards evolve, the Parties must ensure that the requirements for labeling do not impose excessive costs or burdens on manufacturers, particularly in the consumer technology sector.

By harmonizing these efforts, we can ensure that energy-efficient technologies are more widely adopted, contributing to environmental sustainability and economic resilience in the region. CTA encourages the Canadian government to continue refining the EnerGuide program in a way that promotes innovation, energy efficiency, and market accessibility across North America.

⁷ National Institute of Science and Technology, AI Risk Management Framework, (rel. Jan. 23, 2023), <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>.

⁸ CUSMA – Chapter 15 – Cross-border Trade in Services, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/15.aspx?lang=eng>.

⁹ CUSMA – Chapter 12 – Sectoral annexes, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/12.aspx?lang=eng>.

Canada's proposed amendments to the Cross-Border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations

CTA urges the Canadian government to reassess its proposed amendments to the Cross-Border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations and instead ensure that any potential changes align with obligations under the Basel Convention.¹⁰ CTA suggests Canada take concerted steps with its CUSMA partners on this issue, taking note of the CUSMA Market Access and Environment chapters.¹¹

Although the proposed amendments intend to address environmental concerns, they can hinder responsible recycling efforts and the circular economy in many core areas, including battery technology. Many businesses in the consumer technology industry rely on the ability to move used electronics across borders for proper refurbishment, recycling, and disposal in facilities equipped to handle these tasks. Aligning Canada's regulations with international standards on e-waste management and transportation would facilitate more efficient and environmentally sound recycling practices while ensuring that valuable materials are recovered and reused. This would benefit both the environment and the consumer technology industry by reducing waste and promoting sustainability.

Mexico's judicial reforms

While the Mexican government has the sovereign right to amend its constitution, some of the proposed changes risk damaging the long-standing trade and investment relationship between Canada, Mexico, and the United States, as well as the rights of North American companies under CUSMA.¹² If enacted, these amendments could introduce significant uncertainty into our commercial relations and jeopardize the upcoming CUSMA discussions.

Given the rapid pace at which these constitutional reforms are moving, we respectfully urge Canada to raise these concerns in 2025 and recommend that the Sheinbaum administration adopt a more deliberate and thoughtful approach. We are particularly concerned with the proposal to remove all judges and replace them through popular

¹⁰ "Canada Gazette, Part I, Volume 157, Number 39: Regulations Amending Certain Department of the Environment Regulations," September 30, 2023, <https://canadagazette.gc.ca/rp-pr/p1/2023/2023-09-30/html/reg2-eng.html>.

¹¹ CUSMA – Chapter 2 – National Treatment and Market Access for Goods, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/02.aspx?lang=eng>; CUSMA – Chapter 24 – Environment, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/02.aspx?lang=eng>.

¹² Industry letter to U.S. Secretary of State Antony Blinken," August 19, 2024, <https://subscriber.politicopro.com/f/?id=00000191-7b03-d7ad-a591-7ba73f220000>.

election, which poses serious risks to the rule of law and the administration of justice in Mexico. Without fair and predictable legal recourse for Canadian investors, the enforcement of CUSMA may face additional challenges in the Investment chapter.¹³

Mexico's possible accession to the WTO Information Technology Agreement

CTA recognizes that the review of CUSMA is an opportunity for all three Parties to make new commitments to each other. Canada and the United States both participated in the 1997 WTO Information Technology Agreement and its 2015 expansion, while Mexico does not. During the review, Canada should work with the United States to secure a commitment by Mexico to join both agreements. Mexico's involvement would not only align its trade policies with its North American partners but also accelerate the diversification of supply chains away from China.

By embracing these agreements, Mexico, together with Canada and the United States, can enhance its individual and collective competitiveness in the global technology market, promote innovation, and create a more resilient economic framework that benefits businesses and consumers alike. This step would further solidify the region's collaborative approach to trade and technology, advancing growth and stability across North America.

Mexico's failure to fully implement the CUSMA Intellectual Property Rights

CTA expresses concern over Mexico's delay in implementing necessary regulations under Chapter 20, the Intellectual Property Rights (IPR) chapter of CUSMA.¹⁴ This lack of enforcement creates uncertainty for North American businesses relying on strong intellectual property protections, particularly in the technology sector, where innovation is key. Without clear regulations, companies face heightened risks of intellectual property theft and diminished confidence in the market.

We urge Canada to take note of Mexico's delay and recommend Canada and the United States together encourage Mexico to promptly address this gap by introducing robust regulations that align with CUSMA's IPR standards, ensuring a level playing field for businesses and fostering innovation across North America.

Mexico's measures resulting in de facto data localization for financial services

CTA expresses concern with Mexico's 2021 regulation that requires electronic payment fund institutions to either 1) follow a multi-cloud approach with at least two cloud service providers from two different country jurisdictions, or 2) have an on-premise data center

¹³ CUSMA – Chapter 14 – Investment, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/14.aspx?lang=eng>.

¹⁴ CUSMA - Chapter 20 - Intellectual Property Rights, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/20.aspx?lang=eng>.

in the country that doesn't depend on the primary (foreign) cloud service provider. This requirement is a de facto data localization measure. In addition, offshore cloud infrastructure companies must spend more time and resources to provide services than their domestic cloud infrastructure counterparts. We call for CUSMA to address this issue in Article 17.18 in the Financial Services chapter.¹⁵

Conclusion

CTA is pleased to provide the above specific recommendations on issues for inclusion during the first joint review of CUSMA in 2026 and priorities for work being undertaken in 2025. We look forward to serving as a resource for the Government of Canada during the CUSMA review.

Sincerely,

(b) (6)

Ed Brzytwa
Vice President of International Trade
Consumer Technology Association

(b) (6)

Michael Petricone
Senior Vice President of Government Affairs
Consumer Technology Association

¹⁵ CUSMA – Chapter 17 – Financial Services, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/17.aspx?lang=eng>.

[EXTERNAL] AT&T Mexico

From: "ALVAREZ, AMY L" (b) (6) @att.com>
To: "Tanner, Robb EOP/USTR" <robert_tanner@ustr.eop.gov>, "Young, Braeden P. EOP/USTR" <braeden.p.young@ustr.eop.gov>
Date: Sat, 08 Mar 2025 07:06:59 -0500
Attachments: 05-03-2025 AT&T Mexico Trade_USMCA violations.docx (34.28 kB)

Hi Rob and Braeden,

Thank you again for your time yesterday to discuss the market environment in Mexico. I look forward to working with you on these critical issues.

As promised, attached is the background paper we pulled together that walks through the various government actions and maps them to potential USMCA violations. Happy to answer any follow up questions.

Have a great weekend,

Amy

Changes in the MX telecommunications legal and regulatory framework violating USMCA commitments

As we near the upcoming USMCA revision process in 2026, it is crucial to address significant concerns related to the role of the state in the Mexican telecommunications market that hinder certainty for foreign investment and undermine a level playing field. We have identified four key issues arising from Government actions and changes to the legal and regulatory frame that undermine several commitments made under the USMCA.

1. High spectrum costs

Contrary to the commitments made under the USMCA, AT&T has been discriminated against other telecommunications providers in Mexico. Firstly, the Mexican Government assesses a fixed fee for the spectrum for telecommunication services regardless of its use. This creates a distortion that translates into an advantage to the preponderant agent which pays proportionally much less per subscriber given its size. The high costs of the spectrum, which exceeds the international median by 60%, limit investment capacity and affect the ability of smaller-scale operators to compete with the dominant player, as their payment represents a significantly higher percentage of their revenue.

According to a study conducted by the telecom regulator IFT in 2023, current annual spectrum fees in Mexico have proven to hinder competition:

*"The high fees currently set for the use of the radio spectrum create barriers to entry and expansion that restrict competition among providers. Additionally, they limit the quality and coverage of mobile telecommunications services."*¹

Moreover, the NTE 2024 issued a recommendation to lower spectrum fees in Mexico to stop giving artificial advantages for the dominant player to increase its market power:

*"The cost of spectrum in Mexico is one of the highest in Latin America. Although Mexico assigns spectrum licenses through competitive auctions, it imposes a substantial annual fee based on the amount of spectrum held by each licensee. This approach is out of sync with international best practices and is in part responsible for the relative failure of Mexico's most recent auction (IFT-10), where only 3 of 41 blocks of spectrum received any bids. It also appears that the structure of Mexico's annual spectrum fee may advantage the dominant supplier and has led another supplier to return to the Government of Mexico all the spectrum it had been awarded. The Government of Mexico dismissed several proposals to lower the costs made by the IFT and the private sector. The United States continues to press Mexico to consider changes to its rules that would lower overall costs for spectrum and address the market power of the dominant supplier."*²

Contrary to the USTR's recommendation, in November 2024, the Mexican Congress maintained the annual spectrum fees for 2025 at the same elevated levels as in 2024.

¹ "Estudio de mercado sobre los Costos del Espectro Radioeléctrico para servicios móviles en México", page 52. Available at:

https://www.ift.org.mx/sites/default/files/estudio_costos_del_espectro_0.pdf

² Mexico, Services Barriers, Telecommunications services, page 255. Available at:

https://ustr.gov/sites/default/files/2024%20NTE%20Report_1.pdf

Secondly, AT&T is not only being discriminated against the dominant supplier through high spectrum costs, but also against the state-owned operator ALTAN which is currently using the 700MHz band paying only 10% of the total spectrum cost compared to what is paid by private operators for equivalent bands. This preferential fee was contingent upon ALTAN adhering to a legal framework, which it has failed to comply with, causing an additional artificial advantage for the state-owned operator compared to private operators.

Both government decisions violate USMCA Articles 14.4 (1) and 18.21 (5), which require the Mexican government to provide equal treatment to national and foreign investors and to promote competition in the telecommunications market through market-based approaches:

Article 14.4 (1): National Treatment

"1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory."

Article 18.21 (5): Allocation and Use of Scarce Resources

"5. Each Party shall endeavor to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services. To this end, each Party may use mechanisms such as auctions, if appropriate, to assign spectrum for commercial use."

2. Strengthen role of state-owned companies, hindering competition with private operators

The Mexican government, through state-owned companies CFE and ALTAN, is unfairly competing in the telecommunications market, causing significant distortions in both wholesale and retail markets.

ALTAN was initially designed as a privately funded project, free from operator control, with specific coverage obligations by January 2024. However, it has been publicly acknowledged that the government rescued the project, funded with public resources (capital and debt)³ with a significant delay in payment obligations, and receiving non-transparent subsidies without being duly supervised by the Mexican Government.⁴ These changes from the original plan for ALTAN provide it with an unfair competitive advantage allowing ALTAN to sell to MVNOs at rates that no commercial entity can replicate.

At the same time, CFE, which was originally formed to serve only in unserved areas and social program beneficiaries on a non-profit basis now has been permitted to offer

³ On June 21, 2022, the Mexican regulator authorized the national development banks to acquire \$161M USD of ALTAN's debt. Public release:

<https://www.ift.org.mx/sites/default/files/comunicacion-y-medios/comunicados-ift/comunicado60ift1.pdf>

⁴ A report by the Mexican Superior Auditor in 2021 identified multiple breaches of the legal framework to which ALTAN was bound. The report also noted that Promtel, the agency responsible for ensuring ALTAN's legal compliance and coverage obligations, had initiated sanction procedures against ALTAN. Furthermore, the Auditor concluded that Promtel's supervision was insufficient to mitigate non-compliance risks. Full report:

https://www.asf.gob.mx/Trans/Informes/IR2021c/Documentos/Auditorias/2021_0193_a.pdf

commercial services in direct competition with private market operators, including in served areas, and with advantages that enable prices that are not economical for commercial entities.

These actions violate several USMCA provisions by providing better conditions for ALTAN and CFE to compete with private operators:

Article 14.4 (2): National Treatment

"2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."

Article 22.4 (1.a): Non-discriminatory Treatment and Commercial Considerations

"1. Each Party shall ensure that each of its state-owned enterprises, when engaging in commercial activities:

(a) acts in accordance with commercial considerations in its purchase or sale of a good or service..."

Article 22.5 (2): Courts and Administrative Bodies

"2. Each Party shall ensure that any administrative body that the Party establishes or maintains that regulates a state-owned enterprise exercises its regulatory discretion in an impartial manner with respect to enterprises that it regulates, including enterprises that are not state-owned enterprises."

Moreover, a Constitutional reform approved on October 31, 2024, classifying state-provided internet as a strategic activity (comparable to oil, gas, electricity), exempting it from competition laws and authorizing state-owned enterprises (SOEs) providing internet services to lawfully act as a monopoly. This recent reform therefore places these state-owned operators above private companies, altering market rules and infringing on their rights. This violates articles 18.18 and 21.1 (3) of the USMCA:

Article 18.18: State Enterprises

"No Party shall accord more favorable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of another Party on the basis that the supplier receiving more favorable treatment is owned or controlled by the central level of government of the Party."

Article 21.1 (3): Competition Law and Authorities

"3. Each Party may provide for certain exemptions from the application of its national competition laws provided that those exemptions are transparent, established in its law, and based on public interest or public policy grounds."

3. Elimination of autonomy for the Mexican regulator

In the latest National Trade Estimate Report (NTE), published in March 2024, the USTR raised concerns on how the intention to eliminate the Mexican regulator (IFT) could prevent Mexico to comply with its USMCA obligations:

“Notwithstanding the sweeping reforms of the telecommunications sector in 2013 and 2014, new market entrants still must compete with the traditional dominant supplier, which has maintained a market share well above 60 percent and was designated as a “preponderant economic agent” by the IFT. The entrenched position maintained by this dominant supplier, particularly regarding the mobile services market, demonstrates the continued need for vigilant enforcement by the IFT of the regulations it adopted to address that supplier’s status as a preponderant economic agent. Statements by the Mexican President concerning the intention to eliminate the IFT raise significant concerns regarding Mexico’s continued compliance with its USMCA obligations.”⁵

Despite this ominous warning, on December 20, 2024, the Mexican government approved a Constitutional reform that eliminated seven regulatory entities, including the IFT. As USTR identified, this action violates the USMCA. Specifically, it contravenes Note 14, Article 18.17 on Telecommunications Regulatory Bodies, which states:

Article 18.17 (Note 14): Telecommunications Regulatory Bodies

“14. For Mexico, the telecommunications regulatory body is autonomous from the Executive Branch of government, is independent regarding its decisions and functioning, and has the purpose of regulating and promoting competition and efficient development of telecommunications, as set out in existing Mexican law.”

4. Secondary Legislation⁶

A draft of the new telecommunications law for Mexico (“Law”) was leaked in recent weeks that revealed additional developments that undermine commitments made in the USMCA, indeed, which constitute potential violations of the USMCA, and that should be assessed in the USMCA Sunset Review:

- **Retail Enablement to Altan.** One of the law’s provisions proposes that Altan, the state-owned wholesale network, provides services to end-users. This is expressly prohibited in the Mexican Constitution, as the *Red Compartida* project was conceived as a solely wholesale network. Additionally, Altan was granted an advantage in the payment of fees for the use of the 700 MHz spectrum band (it has a 90% discount compared to other bands used by other operators to provide telecommunications services to end-users) on the basis that the spectrum was supposed to be destined only for wholesale purposes.

Violation:

Article 18.18: State Enterprises

“No Party shall accord more favorable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of another Party on

⁵ Mexico, Services Barriers, Telecommunications services, page 255. Available at: https://ustr.gov/sites/default/files/2024%20NTE%20Report_1.pdf

⁶ Draft not publicly available. Media reports analyzing the proposed law: <https://www.eleconomista.com.mx/opinion/telecom-sera-nueva-ruta-20250209-745631.html> & <https://consumotic.mx/telecom/regulacion-asimetrica-la-atdt-definira-revisara-y-sancionara/>

the basis that the supplier receiving more favorable treatment is owned or controlled by the central level of government of the Party.”

- **Non-compliance with the Principle of Competition Neutrality.** Another provision proposes that, within the principle of “Competition Neutrality,” the State’s actions and results to provide telecommunications services will not be considered market distortions (reinforcing the Constitutional reform approved on October 31, 2024). If approved, the State could create market distortions with its actions, such as granting private advantages or benefiting public companies. Additionally, the obligation to make exemptions transparent and justified, if applicable, is not met.

Violation:

Article 18.18: State Enterprises

“No Party shall accord more favorable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of another Party on the basis that the supplier receiving more favorable treatment is owned or controlled by the central level of government of the Party.”

Article 18.19: Universal Services

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 21.1 (3): Competition Law and Authorities

“3. Each Party may provide for certain exemptions from the application of its national competition laws provided that those exemptions are transparent, established in its law, and based on public interest or public policy grounds.”

- **Direct Allocation of Spectrum for Commercial Use.** A third provision of the proposed Law suggests the direct assignment of spectrum bands to the Government (including ALTAN), meaning a potential unjustified preferential treatment granted in favor of governmental entities to the detriment of private companies.

Violation:

Article 18.17 (2): Telecommunications Regulatory Bodies

“2. Each Party shall ensure that its regulatory decisions and procedures, including decisions and procedures relating to licensing, interconnection with public telecommunications networks and services, tariffs, and assignment or allocation of spectrum for commercial telecommunications services, are impartial with respect to market participants.”

Article 18.18: State Enterprises

“No Party shall accord more favorable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of another Party on the basis that the supplier receiving more favorable treatment is owned or controlled by the central level of government of the Party.”

Article 18.21 (4): Allocation and Use of Scarce Resources

"4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavor to rely on an open and transparent process that considers the public interest, including the promotion of competition."

- **Blocking Certain Applications for Users in Mexico.** An additional provision proposes that the Digital and Telecom Agency could require internet operators to block digital platforms that do not comply with the regulations issued by the Agency and eliminates the principles on which net neutrality regulation should be based.

Violation:

Article 19.10 (a): Principles on Access to and Use of the Internet for Digital Trade

"The Parties recognize that it is beneficial for consumers in their territories to be able to: (a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management;"

[EXTERNAL] CSI 2025 Priorities and Services 101

From: Christine Bliss (b) (6)@uscsi.org>
To: "Schagrin, Kenneth A. EOP/USTR" (b) (6)
Cc: "Tanner, Robb EOP/USTR" <robert_tanner@ustr.eop.gov>, "DeLuna, Jillian A. EOP/USTR" <jillian.a.deluna@ustr.eop.gov>, "Nissen, Todd M. EOP/USTR" <todd_nissen@ustr.eop.gov>, "Boron, Andrea W. EOP/USTR" <andrea.w.boron@ustr.eop.gov>, K.C. Swanson (b) (6)@uscsi.org>, Elsa Hoffacker (b) (6)@uscsi.org>
Date: Mon, 10 Mar 2025 14:22:22 -0400
Attachments: 20250310 CSI statement priorities.docx (88.4 kB)

Ken—

Attached is the press release we issued today announcing our 2025 priorities and Services 101 documents. The PR contains links to both documents. We will be sending a letter to Ambassador Greer later today transmitting these documents and requesting a meeting to discuss. We will send you a copy of the letter.

Regards
Christy



Contact: K.C. Swanson

(b) (6) @uscsi.org

In 2025 Priorities, CSI Urges Administration to Pursue New High-Standard Services and Digital Trade Commitments

Washington, D.C. (March 10, 2025) — [In its new 2025 list of priorities](#), the Coalition of Services Industries today urged the Trump administration to take expeditious action to address discriminatory services and digital trade barriers and to prioritize securing high-standard commitments on services and digital trade through new trade negotiations.

In its priorities, CSI underscored the importance of addressing digital bottlenecks such as regulations and taxes that are unfairly scoped to target US companies. Ongoing opportunities for stakeholder input can help ensure that services and digital trade disciplines accurately reflect current and emerging trade barriers.

Said Bliss: “We commend the administration for making clear in the recent White House memo that US exporters must be able to transfer commercial data across borders without undue restrictions.” Related to that goal, CSI said in its priorities that the US-EU Data Privacy Framework has been vital in facilitating cross-Atlantic data transfers, and protecting the framework will be key to sustaining American export competitiveness. Bliss urged the administration to provide continued support for the mechanisms that underlie the framework, including through the appointment of new board members to ensure a fully functioning Privacy and Civil Liberties Oversight Board.

Bliss expressed appreciation for the White House statement in support of a permanent moratorium on duties on e-commerce, and its pledge to secure fair digital treatment of US companies by US trading partners, including through enforcement.

CSI recommended in its priorities that any imposition of new duties should be carefully scoped to minimize risks, while also providing for an exclusion process. Noting the risks of over-broad use of tariffs to America services firms, as well as manufacturers, Bliss commented, “Since services are integrated into many US goods intended for export, retaliatory tariffs stand to damage both industries. Tariffs also disrupt the capacity of services and digital firms to support critical cross-border supply chains.”

[Today CSI issued its Services 101 report](#), with data highlighting the value of services and digital trade to the US economy.

CSI is the leading U.S. industry association devoted to promoting the trade policy priorities of the U.S. services sector on services and digital issues. Our members include companies that provide financial services, information and communication

technology services, telecom services, express delivery and logistics, media and entertainment, distribution, and professional services to all sectors of the economy, including manufacturing and agriculture. CSI members include manufacturers of consumer electronics, telecommunications equipment and health and nutrition products. Our members operate in all 50 states and in nearly 200 countries, representing both large and small firms. CSI also works with counterpart organizations around the globe as co-chair of the Global Services Coalition and the Asia Pacific Services Coalition.

[EXTERNAL] CSI Welcome and Meeting Request

From: Elsa Hoffacker (b) (6) <(b) (6)@uscisi.org>
To: "Mulopulos, Sam J. EOP/USTR" (b) (6)
Cc: "Scales, Samuel A. EOP/USTR" <samuel.a.scales2@ustr.eop.gov>, "Schagrin, Kenneth A. EOP/USTR" (b) (6), Christine Bliss (b) (6)@uscisi.org
Date: Mon, 10 Mar 2025 15:33:07 -0400
Attachments: 20250310 CSI Letter to Jamieson Greer .pdf (41.9 kB)

Dear Sam,

I hope you are doing well in your new role. On behalf of Christy Bliss and the Coalition of Services Industries, huge congratulations to Jamieson for his successful confirmation. As you know, CSI and our members have been vocal in our support of Jamieson and we are eager to work with all of you to advance policies that strengthen U.S. competitiveness and leadership, particularly in services and digital.

To that end, we would like to request a meeting with Jamieson to speak with a small group of high-level CSI representatives in the coming weeks. We appreciate the administration's stated intention to addressing non-tariff barriers and we would like to see how CSI can support these efforts and offer sectoral insights that might be useful, particularly leading up to the Trade Policy Agenda hearings and in preparation of future negotiations.

We would welcome the opportunity to meet at Jamieson's convenience so please do let us know what works best. Attached please find a welcome letter to Jamieson and please also refer to CSI's newly released [2025 trade priorities](#) and our [Services 101](#) for more context.

Thank you for your consideration and we hope to meet with you soon.

Kind regards,
Elsa

Elsa Hoffacker
Coalition of Services Industries (CSI)
Senior Director
M: (b) (6)





March 10, 2025

The Honorable Jamieson Greer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Greer,

On behalf of the Coalition of Services Industries (CSI) and our members, congratulations on your confirmation as the United States Trade Representative. CSI looks forward to working with you to ensure the U.S. maintains its competitiveness in services exports and that services and digitally-enabled services trade continues to benefit the economy. With the America First Trade Policy including the negotiation of new sectoral trade agreements, we believe there is an important opportunity to pursue a services and digital trade agreement that opens new export markets and ensure the competitiveness of America at the forefront of international trade.

You may be aware, CSI is the leading U.S. industry association devoted to promoting the trade policy priorities of the U.S. services sector on services and digital issues. Our members include companies that provide financial services, information and communication technology services, telecom services, express delivery and logistics, media and entertainment, distribution, and professional services to all sectors of the economy, including manufacturing and agriculture. CSI members also include manufacturers of consumer electronics, telecommunications equipment and health and nutrition products. Our members operate in all 50 states and in nearly 200 countries, representing both large and small firms. CSI members work with small businesses around the country to help them gain the tools and skills they need to grow and prosper by providing their services in both domestic and international markets. CSI also collaborates with counterpart organizations around the globe as co-chair of the Global Services Coalition and the Asia Pacific Services Coalition.

Please see [CSI's 2025 Trade Priorities](#) and our [Services 101](#) document that highlight the significant and specific impact of services trade to our economy, workforce and I hope that you will consider CSI and our members as a resource during your tenure at CSI. We look forward to working with you again.

Sincerely,

Christine Bliss
President
Coalition of Services Industries

[EXTERNAL] Sharing Concerns with South Korea's Basic AI Act and Implementing Regulations

From: Gabriel Delsol <(b) (6)@ccianet.org>
To: "Pietan, Scott J. EOP/USTR" (b) (6)
Cc: Amir Nasr (b) (6)@ccianet.org>, Jonathan McHale (b) (6)@ccianet.org>, "De Lima, Deanne E. EOP/USTR" <deanne.e.delima@ustr.eop.gov>
Date: Wed, 12 Mar 2025 12:38:37 -0400
Attachments: CCIA_Korea AI Act_Explainer.docx (1.18 MB); KR AI Act_Translation.pdf (373 kB)

Good afternoon,

I'm reaching out to share CCIA's concerns regarding South Korea's recently adopted Basic AI Law (see machine translated version attached) and forthcoming implementing regulations.

As written, the law poses several concerns for U.S. firms operating in South Korea regarding their ability to develop and deploy AI models. I've also attached an explainer highlighting flaws with the law's definitions of AI business entities, transparency obligations, the use of compute thresholds to determine risk, forced disclosure of risk mitigation plans, local presence requirements, and low thresholds for issuing fact-finding investigations. We hope to sensitize these concerns with the Korean government before it releases implementing regulations in the coming month.

Would it be possible to schedule a 30 minute call or meeting to discuss this issue? Many thanks for considering this request and please let me know if I can provide any additional information from our end.

Best,

--

Gabriel Delsol

Policy Manager, Digital Trade

(b) (6)@ccianet.org

M: (b) (6)



Computer & Communications
Industry Association

Open Markets. Open Systems. Open Networks.

ccianet.org | [@CCIANet](https://twitter.com/CCIANet)

CCIA Comments on South Korea's AI Law

On January 21, South Korea signed the AI Basic Act into law. The law's provisions will enter into force on January 22, 2026, and the Ministry of Science and ICT (MSIT) is currently developing sub-regulations that it will likely finalize by early April. As the South Korean government advances in implementing the law, it should address numerous flaws contained within the text. These include issues with definitions of AI business entities, transparency obligations, the use of compute thresholds to determine risk, forced disclosure of risk mitigation plans, local presence requirements, and low thresholds for issuing fact-finding investigations.

Further comments are detailed below.

Article 2: Definitions

Article 2.7 of the law defines "artificial intelligence business entities" as follows.

2.7. The term "artificial intelligence business entity" means any of the following corporations, organizations, individuals, national agencies, etc. which are engaged in a business related to the artificial intelligence industry:

(a) An artificial intelligence developer: A person who develops and provides artificial intelligence;

(b) An artificial intelligence deployer: A person who provides artificial intelligence products or artificial intelligence services by using artificial intelligence provided by a business entity under item (a).

This overly broad definition makes the obligations outlined in Articles 31-35 exceedingly difficult for AI business entities to implement. First, developers and deployers control different stages of an AI model's lifecycle, and requiring both to assume equal liability for how a model is deployed is highly impractical. This is particularly true for foreign developers, who may have limited control or visibility over how deployers use the models to interact with consumers.

Second, this definition treats developers and deployers as operating in a binary fashion (while being subject to the same requirements), therefore failing to account for other relevant agents. For example, deployers may modify an AI model's weights, thus operating in some ways as developers. Similarly, intermediaries providing access to third-party AI models might be labeled as both developers and deployers. Without greater clarity, Article 2.7 subjects a wide range of agents in the AI sector to ambiguity regarding their responsibilities.

To address these issues, any implementing regulations for this law should more clearly define responsibilities for certain AI business entities. First, developers and deployers should have their obligations delineated according to their capabilities, such as by developing role-specific duties while encouraging collaborative compliance on risk management across the value chain. Second, AI business entities that optimize trained AI models without additional learning or retraining from new data should not be subject to the same obligations as the original model developer, as doing so would create redundancy.

Article 31: Obligations to ensure transparency of AI

Article 31.1 requires AI service providers intending on providing products or services using either high-impact AI or generative AI to provide advance notice of the use of such AI to users. This requirement is generally burdensome for a wide variety of AI services. For example, South Korea already employs AI-based traffic control systems in certain cities that qualify as high-impact AI under Article 2.4.h. However, it would be technically infeasible to notify all drivers potentially interacting with such systems in a meaningful way, and could therefore inhibit the deployment of innovative AI systems due to an inability to comply. Therefore, implementing regulations for this law should adjust the obligations for providing advance notice to situations where doing so is technically feasible.

Article 31.3 requires AI business entities providing outputs such as sounds, images, or video that are difficult to distinguish from non-AI generated ones to notify users of the fact clearly and conspicuously. The requirement to provide such notice in a clear and conspicuous manner is excessive given existing best practices adopted by industry. For example, the Coalition for Content Provenance and Authenticity (C2PA) has already established a latent standard for provenance metadata,¹ and individual companies are increasingly deploying cutting-edge watermarking technologies that are invisible to the human eye.² While Article 31.1 provides an exception for outputs that are artistic or creative expressions or form part of such expressions, this alone does not provide sufficient clarity that latent watermarking is permissible. Any implementing regulations should remove the requirement to provide notice clearly and conspicuously, and could endorse the use of industry watermarking. Doing so would afford AI business entities the flexibility to assess and address risks particular to the services they provide, thereby maximizing consumer protection.

Article 32: Obligations to ensure safety of AI systems

Article 32.1 imposes specific obligations on AI business entities that provide AI systems deemed to be high-risk, as determined by their systems surpassing a specific compute threshold, to be defined in implementing regulations. Using compute thresholds to determine the level of risk posed by an AI system presents numerous problems.

First, compute thresholds are not a useful equivalent for risk. Increasingly, models will develop greater, more specialized capabilities using far less compute, making a compute-based approach likely to become obsolete in light of newer innovations. For example, China's DeepSeek-V3, which is as capable as models that Korea would categorized as high-risk, would be scoped out of these obligations by default. (DeepSeek is currently banned in South Korea for privacy concerns,³ but if DeepSeek were to address the government's privacy concerns and obtain approval, it would not be subject to these obligations.)

¹ <https://c2pa.org/>.

² <https://deepmind.google/technologies/synthid/>.

³

<https://www.pipc.go.kr/np/cop/bbs/selectBoardArticle.do?bbsId=BS074&mCode=C020010000&nttId=11007#LINK>.

Second, Article 32 would set risk according to compute thresholds for AI systems, as opposed to AI models, the latter of which is the standard for comparable policies elsewhere, such as the EU's AI Act and the now-rescinded U.S. Executive Order on Artificial Intelligence.⁴ Setting compute thresholds based on the overly broad definition of an AI system would lump in the compute required for training a model, as well as for deploying and fine-tuning its application. Additionally, AI systems based on the same AI model would require separate risk assessments, highlighting unnecessary duplication and increased costs imposed by this provision.

Third, designating certain AI systems as high-risk according to their compute thresholds and subjecting them to additional regulations risks producing a discriminatory regime that excessively targets U.S. companies, while excluding their domestic and Chinese competitors. Such a discriminatory outcome could implicate South Korea's trade obligations under both the WTO and the Korea-U.S. Free Trade Agreement (KORUS). To address these concerns, implementing regulations should entirely omit the use of compute thresholds for determining AI systems subject to additional obligations and instead focus on capabilities as a proxy for risk.

Article 34: Obligations for AI business entities providing high-impact AI

Article 34.2 authorizes MSIT to publicly notify measures taken by AI business entities providing high-impact AI products and services to ensure safety and reliability. Such measures include developing a plan to explain the final outputs produced by artificial intelligence, disclosing major criteria used in producing the final outputs, and providing a summary of training data. Disclosing such information could implicate trade secrets and expose potential vulnerabilities for malicious actors to exploit. Subsequent implementing regulations should clarify that MSIT will not publicly disclose affected companies' information that could compromise their trade secrets or system security.

Article 36: Designation of domestic agents

Article 36 requires AI service providers without a domicile or place of business in Korea, that meet a certain criteria based on the number of users or the volume of sales, to designate a domestic agent that may be held liable for any violations of the law. While implementing regulations have yet to scope the thresholds for this requirement, it risks imposing significant burdens for cross-border service providers, especially smaller businesses, and exceeds the standard necessary for ensuring that companies have accessible representatives. Depending on how this is implemented, this requirement could contravene Article 12.5 of KORUS that prohibits requiring service providers to establish a representative office as a condition for providing cross-border services by forcing U.S. companies to establish presence in the country to comply with these obligations (since third-party agents might be unwilling to assume liability). Implementing regulations should only require the designation of domestic agents for

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689>; and <https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence>.



service providers offering high-risk AI systems, and remove a requirement for the agent to assume liability.

Article 40: Fact-finding investigations

Article 40 allows MSIT to place AI business entities under investigation if they receive a report or complaint of a potential violation of the AI law, and to subsequently direct public officials to enter the office of the entity to inspect books, documents, or other data or articles. Merely receiving a complaint of an alleged violation is an excessively low threshold for law enforcement action, and unfairly subjects companies to intrusive raids of their offices and property. Implementing regulations should require MSIT to discover a violation of a specific article in the law prior to authorizing such an investigation.

Further comments

As South Korea advances with implementing its Basic AI Law and issues implementing regulations, it should properly address the concerns above to maximize both consumer protections and incentives for innovation by domestic and foreign firms. MSIT should provide companies with meaningful opportunities for consultation, including U.S. companies that are afforded standard notice and comment periods under KORUS.

[EXTERNAL] Re: Meeting request to Ambassador Greer

From: Spencer Davis (b) (6) @itif.org>
To: "Tanner, Robb EOP/USTR" <robert_tanner@ustr.eop.gov>
Date: Fri, 14 Mar 2025 15:19:09 -0400

Hi Robb, thanks for reaching out and happy Friday.

First off, no press are allowed and the discussions are off the record. The attendees will include representatives of companies that support ITIF. A full list of our supporters can be [found here](#). Not every company listed on the supporter list will be in attendance, but some will be. We like to keep these discussions smaller to allow for better discussion, so there would likely be between 20 - 30 people in attendance. Previous attendees have included company CEOs, but they are usually the DC-based senior leaders on the topic being discussed. For this discussion, it would be the supporter companies' trade-focused leadership. Attendees usually fall under a vice president or executive director title (e.g., Executive VP, Senior VP, VP, Associate VP, etc.) There would likely be some government relations leadership there, but it would not make up the majority of the attendees.

Once we agree on a date, then invitations will start going out to supporter companies and I'll be able to give you updates on who is planning on being in attendance.

Please let me know if you have any other questions!

Best,
S

Spencer S. Davis
Government Relations Manager | [Information Technology & Innovation Foundation](#)
(b) (6) | (b) (6) @itif.org

From: Tanner, Robb EOP/USTR <Robert_Tanner@ustr.eop.gov>
Sent: Thursday, March 13, 2025 3:16 PM
To: Spencer Davis (b) (6) @itif.org>
Subject: Meeting request to Ambassador Greer

Spencer,

I wanted to follow up on the meeting request to Ambassador Greer. Is there any further information that can be provided on who would be in attendance (in addition to Rob) at the proposed meeting?

Thanks!

Robb Tanner
Deputy Assistant USTR for ICT Services & Digital Trade
Office of the United States Trade Representative
Executive Office of the President
Mobile: (b) (6)
Email: rtanner@ustr.eop.gov

[EXTERNAL] FW: India paper for USG

From: "Kemp, Sarah" (b) (6) @intel.com>
To: "DeLuna, Jillian A. EOP/USTR" <jillian.a.deluna@ustr.eop.gov>
Date: Tue, 18 Mar 2025 13:55:07 -0400
Attachments: For the US Government MAR0325_Clean.docx (25.99 kB)

Dear Team USTR:

Thank you again for taking the time to meet with Dipakshi and I . I am sorry this took longer than we have hoped, but attached is the non-paper we discussed. Let us know if you have any questions and if we can help with anything. Also if you are traveling overseas we would love to host you at any of our sites.

All the best

Sarah

Sarah E Kemp
Vice President International Government Affairs, Policy and Trade



Mobile: (b) (6)

1155 F Street, Suite 1025
Washington, DC 20004

www.intel.com

<https://www.linkedin.com/in/sarahkemp/>

For the US Government:

The U.S.-India relationship has emerged as a cornerstone of stability and collaboration in the Indo-Pacific region, underpinned by shared national security interests and a commitment to democratic values. In light of increasing global challenges, particularly from an assertive China, the partnership between the United States and India has only grown stronger. The recent “U.S.-India COMPACT (Catalyzing Opportunities for Military Partnership, Accelerated Commerce & Technology) for the 21st Century” initiative launched by President Trump and Prime Minister Modi underscores this commitment to transformative cooperation across multiple domains, including defense, trade, technology, and energy security. This initiative aims to solidify mutual trust and enhance strategic engagement, reflecting both nations' resolve to bolster their partnership for the benefit of their citizens and the broader global community.

President Trump and Prime Minister Modi also emphasized the critical need for cooperation on cybersecurity and high-tech semiconductors, recognizing that collaboration in these areas is essential for safeguarding national security and fostering innovation, as both nations work to build resilient supply chains and counter the growing threats posed by cyber adversaries and supply chain vulnerabilities.

The below outlines areas of collaborations that could produce positive immediate to midterm results for both countries:

Opportunity for Market Expansion:

India's PC penetration rose to 18% after the pandemic, an increase from 11-12% pre-pandemic. With an increasing appetite and need for tier 2 and tier 3 cities to digitize using advanced devices, the market is expected to double in 5-7 years. While India has established assembly processes for laptops and PCs, it heavily depends on U.S. processors. Any uptick in PC market penetration, particularly as these are not controlled ICs or processors, will benefit trade.

Moreover, India holds 20% of global data but only 3% of data center capacity. This capacity is expected to expand significantly by the end of the decade, driven by factors such as digitalization, localization laws, increased AI usage by businesses, and consumer data consumption—all supported by the rollout of 5G. Although the India AI Mission encourages the use of GPUs, the expansion of data centers will also boost the demand for CPUs, essential for data preprocessing and control solutions as well as for inferencing.

Proposals for Trade Deal to Support Growth:

1. **Reclassify Laptops and PCs:** India should reclassify laptops and PCs as basic necessities (tax rate: 5%) or standard goods (tax rate: 12%) rather than essential goods (tax rate: 18%). While there may be concerns about potential revenue loss, linking the tax reduction to India's Make in India initiative—joined by many U.S.-based OEMs—can mitigate these concerns. Taxes paid throughout the manufacturing value chain would offset the loss, making U.S. OEMs with operations in India more cost-competitive.
2. **Support AI Development:** The India and US government should develop a joint consortium of US and Indian developers to work jointly to develop open-source AI LLM and SLMs, leveraging a democratic mix of technologies, primarily CPUs and NPUs. The governments could provide tax

incentives to the consortium participants that would create ecosystem stickiness for these technologies, aiding in the development of cost-effective AI innovations relevant for the world's most populous country.

3. **Technology Collaboration in O-RAN:** India is investing significantly in its 4G and 5G networks. The penetration of telecom solutions necessitates U.S.-India collaboration on O-RAN development and deployment. Active collaboration in this field will solidify U.S. technology's position over European or Chinese alternatives.

Support Ecosystem Creation and Stickiness:

India has a relatively mature assembly ecosystem for IT hardware such as laptops, desktops, mobiles, and servers, but lacks component and sub-assembly depth. If the U.S. and India aim to reduce dependence on China and Taiwan for components, India can be developed into that market for low-complexity and high-volume components, complementing U.S. interests while providing India the scale it needs. A detailed analysis can be conducted to provide a list of such components along with their HSN codes.

Proposals for Trade Deal to Support Diversification of the Component Supply Chain:

1. **Acknowledge India as a Trusted Partner:** Recognizing India as a Trusted Partner for a focused list of high-volume, low-complexity components would bolster India's prospects to attract Taiwanese component manufacturers. With scale in mobiles and desktops, and potential growth in laptops, India can produce quality components quickly. This recognition will also help balance the supply chain outside of China and Taiwan. A strategic request from India could be to procure machinery and equipment for such projects from the U.S., where viable.
2. **Mutual Recognition of Standards:** There is a significant need for harmonization of standards, testing, and certifications. India has recently moved away from accepting internationally accredited benchmarks, which has negatively impacted its business environment. If Indian components are to gain acceptance with U.S. manufacturers, India's stance on mutual recognition of standards may need to soften, potentially focusing on select components and goods produced in India and the U.S.
3. **Tariff-Free Sectoral Corridor:** Establishing a duty-free corridor for select components and finished electronics goods between the two nations will foster economic growth and complementarity. This initiative will encourage component manufacturers to establish a base in India, thereby reducing dependence on China for components. A detailed study of such components, their market readiness, and the benefits of diversification could be undertaken during negotiations carried out by one of the key associations.

By leveraging the framework established by the U.S.-India COMPACT and the shared commitment to national security, both nations can enhance their strategic partnership, driving economic growth and technological advancement while addressing challenges posed by global supply chain vulnerabilities.

Creating Resilience in Critical Information Infrastructure:

India and the United States share a strategic interest in securing critical information infrastructure supply chains, particularly given the growing geopolitical tensions and the need for technological sovereignty.

Both nations recognize the vulnerabilities associated with reliance on silicon developed in China and Taiwan, due to possible conflict and trade uncertainties.

By collaborating to shift towards U.S.-made silicon, India and the U.S. can enhance the resilience and security of their technology ecosystems. This transition not only mitigates the risks of supply chain disruptions but also fosters innovation and economic growth within both countries. The U.S., with its advanced semiconductor manufacturing capabilities, offers a reliable alternative that aligns with India's ambitions to bolster its own technological infrastructure and reduce dependency on foreign components. This partnership could encompass incentives, green channel trade approvals, and subsidies to the startup and design ecosystem to enhance a mutual commitment to safeguarding national security interests and promoting a stable, secure, and diversified global supply chain for critical technologies.

[EXTERNAL] Missing - TIA comments on reciprocal trade

From: Patrick Lozada (b) (6) @tiaonline.org>
To: "Gudicello, Rebecca P. EOP/USTR" <rebecca.p.gudicello@ustr.eop.gov>
Date: Wed, 19 Mar 2025 22:07:21 -0400
Attachments: 2025 USTR Reciprocal Trade Comments FINAL.pdf (501.98 kB)

Hi Rebecca:

Hope you are doing well. I just had a momentary panic attack as I realized that our comments on the reciprocal tariff docket did not go through in advance of the submission deadline on the 11th. I would have sworn on a stack of bibles that I entered them into the portal, but I checked – and they are not there.

I emailed Catherine Gibson, the contact point on the submission, just now to notify her that our comments were missing; but I wanted to share them with you directly as well in case they are useful.

Let me know if any questions. Thank you!

Best,
Patrick

Patrick Lozada

Director, Global Policy

Telecommunications Industry Association (TIA)

(b) (6) | (b) (6)a@tiaonline.org

[TIAonline.org](https://tiaonline.org) | Twitter: [@TIAonline](https://twitter.com/TIAonline)

Before the
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
Washington, D.C. 20230

In the Matter of	)	
	)	
	)	
Request for Comments to Assist in	)	
Reviewing and Identifying Unfair Trade	)	Docket No. USTR-2025-0001
Practices and Initiating All Necessary Actions	)	
To Investigate Harm From Non-Reciprocal	)	
Trade Arrangements	)	
	)	

**COMMENTS OF THE
TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

Patrick Lozada
Director, Global Policy

TELECOMMUNICATIONS INDUSTRY
ASSOCIATION
1310 N. Courthouse Road
Suite 890
Arlington, VA 22201
(b) (6)

Filed: March 11, 2025

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INTRODUCTION

The Telecommunications Industry Association (“TIA”) appreciates the opportunity to provide comments to the Office of the United States Trade Representative (“USTR”) regarding unfair trade practices and the harm imposed by non-reciprocal trade arrangements. TIA is a U.S.-based trade association and Standards Developing Organization that represents more than 400 trusted, global manufacturers of telecommunications equipment and services. TIA members design, produce, market, and manage the information communications technology (“ICT”) equipment and services that connect Americans to high-speed broadband networks.

TIA has, for many years, provided input to USTR on unfair trade practices undertaken by foreign countries as part of the Non-Tariff Estimate (“NTE”) report; and we are happy to do so again.¹ We support robust trade enforcement action to ensure that U.S. partners play by the rules that they themselves have agreed to in global trade. Too often, countries rely on overly broad exceptions to justify protectionist trade policies; or simply opt to flagrantly violate the rules. Absent appropriate action, these countries will not correct their unfair trade practices.

RECOMMENDATIONS

While TIA supports corrective action aimed at curbing unfair trade practices by America’s trading partners, we also believe that the administration should approach the imposition of duties on ICT products carefully. Around the world, **most countries have a zero bound tariff rate on most Information and Communications Technology products** because of the success of the Information Technology Agreement (“ITA”) and the subsequent ITA Expansion Agreement. The lower costs stemming from these agreements have helped rapidly expand access to the internet around the world, opening up countries to high-tech U.S. goods and services export. Should the U.S. seek to pursue a strictly reciprocal trade policy, the rate for most ICT imports would be set at zero. Where a remedy might be appropriate is on countries that have not already set their duty rates to zero for ICT products, or countries like India and Indonesia where their applied duty rates violate their existing commitments.

If tariffs are chosen as an appropriate remedy, we recommend that USTR **institutes an exclusion process for duties** that includes the consideration of three factors:

1. Whether the product can feasibly be made in the United States on reasonable commercial terms;
2. Whether the product is an intermediate input into products subsequently manufactured in the United States; and
3. Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.

¹ The Telecommunications Industry Association, *2025 NTE Trade Barriers Filing* (October 17, 2024) <https://tiaonline.org/policy/2025-nte-trade-barriers-filing/>

An exclusion process should be improved with respect to the process and the criteria used. This would build on prior practice from the first Trump Administration, wherein USTR wisely established a similar exclusion process to mitigate the impact on consumers.²

We also want to remind USTR that **the agency has specific authority to address telecommunications trade barriers under Section 1377** of the Omnibus Trade and Competitiveness Act of 1988.³ In addition to establishing a process and the prioritization of barriers affecting the telecommunications industry, the Act includes an annual review component which has since been merged with the annual NTE process.⁴ Conducting a separate review under Section 1377 in advance of further action would further bolster the case for any trade remedy.

Finally, TIA believes that – when considering eliminating foreign trade barriers and imposing reciprocal tariffs – USTR should **take into account the strategic nature of the telecommunications industry and the need to compete with untrusted telecommunications vendors** like Huawei, ZTE, and other firms identified as national security threats. Addressing trade barriers facing trusted, U.S. telecommunications companies is so important because those barriers may impact their ability to compete against telecommunications equipment vendors that pose national security risks (see Mexico). Additionally, duties that the United States imposes on foreign partners may: 1) put trusted vendors that manufacture here at a competitive disadvantage *vis a vis* Chinese vendors who face no tariffs on the intermediate inputs they use, and 2) cause trade partners to exclude U.S. companies from their procurement by way of retaliating against duties the United States imposes.

TRADE BARRIERS BY COUNTRY

BRAZIL

Protectionist Measures Favoring Domestic ICT Industry

Brazil provides tax reductions and exemptions on many domestically produced ICT and digital goods that qualify for status under the Basic Production Process (*Processo Produtivo Básico*, or PPB). The PPB and I.T. law were reshaped after being considered inconsistent under WTO rules (Dispute Settlement decisions -- WT/DS472/R and WT/DS497/R, Brazil – Certain Measures Concerning Taxation and Charges). Despite this reshaping, the measures still require local content, albeit in a less straightforward way than previously. Tax exemptions are also provided for the development and build-out of telecommunications broadband networks that utilize locally developed products and investments under the Special Taxation Regime for the National Broadband Installation Program for Telecommunication Networks (*Regime Especial de Tributação do Programa de Banda Larga para Implantação de Redes de Telecomunicações*, or REPNBL-Redes).

² [84 FR 25895](#)

³ [19 USC 3106](#)

⁴ Office of the United States Trade Representative, *Telecom Industry Initiatives*, <https://ustr.gov/issue-areas/industry-manufacturing/industry-initiatives/telecom>.

Another example of localization requirements that impose barriers to trade is the bidding for spectrum bands promoted by the Brazilian National Agency of Telecommunications (*Anatel*) in June 2012. Companies that were given the right to explore the 2.5 GHz and 450 MHz spectrum bands were required to prove investments that include a high percentage of products, equipment, and telecommunication systems with local content. This includes goods manufactured in Brazil according to the PPB rules and locally developed technology.

Recommendation: TIA is of the view that the government of Brazil should adopt measures that foster more competitiveness in terms of local content instead of just imposing requirements. It should eliminate policies that may obstruct fair access to the future spectrum auction processes for foreign companies. TIA also recommends that the methodology for software certification for local development be rescinded as a tool to grow and develop Brazil's domestic software industry. We recommend the government of Brazil not unnecessarily impede the cross-border flow of information through local data storage mandates. Market dynamics, not government requirements, should be the main factors determining which technologies should be deployed based on customer needs. Brazilian consumers, including government agencies and businesses, should benefit from competition and have access to world-class technologies, regardless of where they are produced.

Government Procurement

Decree 7174/2010, which regulates the procurement of a number of goods including ICT goods and services, allows federal agencies and state entities to give preferential treatment to locally manufactured products and goods or services with technology developed in Brazil based on compliance with the PPB. ICT bids for goods and services considered "strategic" may be limited to those with technology developed in Brazil.

Recommendation: Brazil should continue to move forward in its bid to accede to the WTO Government Procurement Agreement (GPA) in order to increase transparency in the procurement process. This would help address concerns regarding preferential treatment and promote fair competition.

Complex Tax and Tariff System

Brazil places high import tariffs on imported telecommunications products, including a 16 percent import tax on mobile phones, and a system of multiple cascading taxes makes the effective tax rate much higher. Double taxation is an issue that affects many multinational companies doing business in Brazil, even those headquartered in countries with which Brazil has a Bilateral Tax Treaty in effect. While the multiple layers and cumulative nature of taxation in Brazil is a cross-sectoral challenge, there are special complexities regarding taxes on telecom services, which reach as high as 40 percent in some states. A variety of tax incentives disadvantage foreign goods and favor domestically produced products. Brazil's complex tax system often leads to litigation, and there is currently no process for mediation.

Recommendation: Brazil should explore simplifying its tax system to better align it with other countries. As is, the current unnecessarily complicated tax system leads to higher prices that are subsequently passed on to consumers. Brazil should also streamline the legal process under which taxpayers can challenge assessments raised by the Brazilian tax authorities, which should include the implementation of a tax mediation procedure.

Brazil should also join the WTO Information Technology Agreement (ITA). The ITA removes tariffs on a broad range of ICT products, including telecommunications equipment. This would reduce costs for consumers, expand connectivity, and drive broader economic growth.

Testing and Certification

TIA is concerned about the Brazil National Telecommunications Agency (*Anatel*) not accepting test data generated outside of Brazil, except in those cases where the equipment is physically too large and/or costly to transport. The limitations on test data essentially requires virtually all testing for I.T./telecom equipment, including everything from mobile phones to optical cables, to be conducted in Brazil. Test data is only accepted when it is generated by a laboratory located in Brazil, and when witnessed by an approved certification body. These requirements conflict with Brazil's WTO commitments, including the WTO TBT Agreement, Article 2, Section 2.2, by creating unnecessary barriers to international trade, which raise costs and delay time to market. For example, one member company reported that Brazil currently requires them to ship 64 battery packs for testing for each new product to labs in Brazil. However, restrictions on the air transport of lithium-ion battery packs because of a perception that they are dangerous have caused significant delays and substantial cost for companies seeking to sell battery-powered ICT equipment in Brazil. Certification delays can take three to four months, without any increase in value to Brazilian consumers, and in many cases must be undertaken every two years.

Recommendation: *Anatel* should institute reforms that allow manufacturers to manage their own test process to minimize cost and redundancy and declare conformity with Brazilian requirements in the manner described in ISO/IEC 17050 Part 1 and Part 2. *Anatel* could then focus more attention on enforcement and less on equipment certification. This would help to ensure Brazilian consumers have access to innovative products more quickly and at a lower cost.

ICT Device Pre-Import Certification

Regulation on Conformity Assessment and Approval of Telecommunications Products (Resolution No. 715, of October 23, 2019) prohibits the use and marketing in Brazil of non-approved telecommunications products. In 2020, Act n. 4521 (2020) was published that requires all certificated telecom products to be homologated prior to importation, except for lab testing, in effect as of December 27, 2021. Samples for other local tests and prototypes are under specific authorizations (for Temporary Use of Spectrum or for Special Service for Scientific and Experimental Purposes). These processes are not clear and the timing to grant approval is estimated from 60 to 90 days.

Recommendation: USTR should encourage the improvement of such regulation to require only minimal information to ensure the level of confidentiality needed, especially for prototypes. In addition, to facilitate the import of products and investment in Brazil, the import process should allow entry of reasonable quantities and should be compatible with global company operations.

Mutual Recognition Agreements

The United States has urged Brazil to implement the Inter-American Telecommunication Commission (CITEL) Mutual Recognition Agreement (MRA) with respect to the United States. Under the CITEL MRA, two or more CITEL participants may agree to provide for the mutual recognition of conformity assessment bodies and mutual acceptance of the results of testing and equipment certification procedures for imported telecommunications equipment. The United States and Brazil are both

participants in CITEC. If Brazil implemented the CITEC MRA, it would benefit laboratories in both countries that could test to the other country's specifications, suppliers seeking to sell telecommunications equipment globally, and consumers who would enjoy speedier access to new technologies.

Recommendation: Brazil should implement the CITEC MRA. Implementation of the MRA would benefit U.S. suppliers seeking to sell telecommunications equipment in the Brazilian market by allowing them to have their products tested in the United States to meet Brazil's technical requirements, eliminating the need for such testing at laboratories in Brazil.

Remanufactured Goods:

Brazil is one of the few countries in the Western Hemisphere that does not allow the importation of remanufactured goods. The Ministry of Economy issued a Public Consultation (circular Secex 45/2021) on July 2021 to collect information and investigate the potential impacts on the economy, industry, investments, employment and environment if Brazil were to allow the importation of remanufactured goods.

Recommendation: USTR should encourage Brazil to allow for the import of remanufactured goods and parts, which can reduce the consumer cost and company service costs of such goods, and help advance environmental goals by facilitating a more circular economy.

CHILE

Need Public Consultation on Regulatory Requirements

Over the past three years, Chile has implemented a number of regulations, guidelines and technical requirements that disrupt global supply chains, resulting in product delays and increasing the cost of doing business. Such requirements are often Chile-specific obligations that are inconsistent with global practices or standards. In a number of cases, they appear to have been published without seeking public input. The resulting costs and challenges to business could arguably have been avoided with prior industry consultation.

Recommendation: Chile should provide a public consultation process with affected stakeholders prior to finalizing and enacting regulation. This will offer the industry an opportunity to bring useful feedback and experience into the regulatory process.

Homologation Issues

In March 2017, Subtel Resolutions 1474 and 1463 (and updates) imposed a mandatory Chile-unique emergency alert (vibration) standard on all mobile devices. In addition to the required software changes, companies also must test phones *from every shipment* for compliance in a lab in Chile or establish local testing labs.

These requirements are unduly burdensome and/or unnecessary. No other country requires this type of per shipment testing and hardest hit may be SMEs that do not import in bulk and importers facing import delays. To the extent that Subtel believes such a measure is needed, it would be sufficient to require testing for a new software/major upgrade and/or authorize random inspections to deter evasion.

Recommendation: SUBTEL should revise the existing processes for testing, inspection, and registration associated with the homologation of telecommunications equipment so that such processes do not unnecessarily increase consumer costs and are better aligned with the commercial realities of global supply chains.

Mobile Phone Label Requirements

In July 2017, SUBTEL issued guidelines, "Manual of Graphic Standards: Broadband Label" pursuant to Resolution N° 1.463. All mobile phone sellers must include a specific label on their packaging and in certain advertising indicating that device's compatibility with all mobile networks (e.g. 2G, 3G, 4G). The label is required for all phones and further delineate the label specifications, including content, colors, size, and placement.

Recommendation: SUBTEL should limit or remove national labeling requirements and instead align with global labelling standards, including the use of e-labels.

Safety Marking

Chile's Resolution 16677/2017 and protocol PE-8/8 implemented new safety certifications named "System 2" (S-mark System) requiring that all power adaptors for smartphones to be certified in Chile by the SEC (*Superintendencia de Electricidad y Combustibles*) and that these certifications be displayed with the product that contains the charger. In mid-2019, Chile also issued Public Consultation [PE N° 8/9:2019](#), regarding the extension of the rule for many other power adaptors including for notebooks, tablets, and audio and video products. These regulation and protocols have created challenges and cost increases for OEMs and sellers who only had a short period of time to comply with this Chile-specific requirement.

Recommendation. SEC should accept international documentation issued under the C.B. scheme by accredited international bodies certifying product safety instead of mandating duplicative, Chile-specific requirements with unnecessary factory inspection rules.

CHINA

State Campaign to Replace Foreign Technology with Domestic Products

Despite ostensibly agreeing to ramp up the purchase of U.S. ICT telecommunications equipment as part of purchase targets set out in the "Phase One" trade deal agreed to in early 2020, the Chinese government has continued to pursue an aggressive import substitution campaign in key sectors such as telecommunications equipment, semiconductors, software, cloud computing, and artificial intelligence. President Xi Jinping and other senior officials continue to promote technological "self-reliance,"

advancing a range of measures to support domestic industry and undermine global technology companies. U.S. firms have been particularly impacted by these efforts in the context of rising U.S.-China trade tensions.

This industrial policy, previously advanced under the name "Made in China 2025," is now being pushed forward under the label of the Strategic and Emerging Industries (SEI) initiative. This initiative dates back to planning documents released in 2010 and represents primarily a continuation of previous technology industrial policies as opposed to a substantive change from the Made in China 2025 initiative.

Over the past several years, government agencies have issued a growing number of guidelines and policies that call on both companies and government entities to buy I.T. hardware that is "secure and controllable," "secure and trustworthy," or "indigenous and controllable." Though Beijing has never provided a clear definition for these terms, Chinese officials have invoked such language in state media to explain China's need to develop indigenous technology and to justify cybersecurity reviews of I.T. products.

These restrictions have notably increased in the past few years through both formal and informal restrictions on the purchase of non-Chinese technology generally and U.S. technology specifically. Examples include:

- Informal guidance issued to Chinese government entities and SOEs to avoid purchasing ICT equipment from U.S. companies;
- Threats issued publicly in state media outlets to interrupt individual company operations in China;
- Guidance issued by city and provincial governments requiring computer purchases to incorporate domestically manufactured inputs such as computer chips;
- Laws, rules, and standards requiring entities classified as "Critical Information Infrastructure" limit the use of products whose supply could be disrupted due to "non-technical factors like policy, diplomacy, and trade."

The Chinese government has also continued to release a maze of overlapping laws, rules, and standards it says are necessary for national security, many associated with the Cybersecurity Law that took effect in June 2017. TIA is concerned that China's growing slate of security rules may disadvantage U.S. exporters selling into China's commercial markets. With penalties set to increase, the practical impact of these restrictions are likely to increase even further in the near future.

Discriminatory Regulations and Standards Ostensibly Based on National Security.

Beijing has sought to project its security umbrella far beyond areas where valid national security concerns might normally apply to include large swathes of the economy. The Chinese government has shown itself increasingly inclined to categorize commercial industries as Critical Information Infrastructure (CII), which it uses to justify restrictions on public communication and information services, energy, transportation, water conservancy, finance, public services and e-government. The scope of this system became clearer with the release of Critical Information Infrastructure Security Protection Regulations which came into effect in September of 2021.

Since the implementation of the Cybersecurity Law, China has issued a complex and overlapping series of policies and standards that restrict the ability of global companies to access the China market. China's

Technical Committee 260 and other Chinese standards development bodies have significantly increased the pace of the release of these documents over the course the previous few years. China has plans to further expand the scope of ostensibly cybersecurity-focused standards over the next few years per the "Guidelines for the Development of Data Security Standard System in Telecom Network and Internet Industry," which also contains a length list of relevant standards of concern to industry.

Recommendation: China should narrowly limit the scope of CII to networks involved in operations critical to national security, fully open technical committees responsible for developing security standards to participation by non-Chinese entities, and eliminate language that discriminates against foreign firms.

Restrictions on Cross-border Data Flows

China has aggressively expanded its restriction on crossborder data flows over the last few years including through the promulgation of a series of laws, rules, and standards.

These various actions have solidified the crossborder data restrictions laid out in China's Cybersecurity Law and continue to make it challenging for multinational companies to do business in the country.

Recommendation: The development of e-commerce, innovation, and overall economic growth in the digital era – all key objectives of China's Internet Plus strategy -- are enabled by the free flow of data across borders. Instead of pursuing an overly restrictive, China-specific scheme of data containment, we would recommend Beijing seek to align with international practice in how it approaches data. The Asia-Pacific Economic Cooperation (APEC) Cross-Border Privacy Rules (CBPR) system and the Organization for Economic Co-operation and Development (OECD) Privacy Principles could serve as key references in the development of frameworks would help to enable interoperability and compatibility with respect to data. We strongly urge China not to impose onerous restrictions on cross-border data transfers.

Expansion of Security Ranking System

The Chinese government has expanded and updated a security ranking system, known as the Multi-level Protection Scheme (MLPS). Under the MLPS, networks are assessed according to a subjective ranking based on their alleged sensitivity to national security, social order, the public interest, and the legitimate interests of individuals and organizations. Networks classified above a level 3 on a scale of 1 to 5 will be required to use more "secure" products and services. It is not clear how security would be evaluated, raising concerns that the rules will be interpreted to favor Chinese suppliers. Expanded MLPS 2.0 rules came into effect in December of 2019, and further expanded the scope of this ranking system.

Recommendation: TIA urges the Chinese government to refrain from implementing security policies that unfairly limit the use of global ICT solutions by companies on security grounds.

Cybersecurity Review Regime

China's Cybersecurity Review Measures, which came into effect in June of 2020 after several rounds of edits and were subsequently revised in July of 2021, discriminates against use of foreign ICT products in China by enterprises identified as "Critical Information Infrastructure."

Specifically, Article 9 of the law contains language which are likely to exclude the use of foreign products by identifying the "the risk of supply disruptions due to political, diplomatic, and trade factors." This is most likely to impact U.S.-origin technology specifically because of company compliance with U.S. export control rules. Article 9 also creates uncertainty with a vague catch-all category of "other factors that could harm CII security and national security."

The 2021 revisions to the Measures also added a vague new category of covered network products and services called "important telecommunications products." As this is not a defined product category and many types of ICT products and services are already explicitly covered, the addition of this category creates uncertainty about a wide range of ICT sales and whether they would be covered under the Measures.

Recommendation: We recommend that implementation of the Cybersecurity Review Regime be scoped narrowly and use risk-based assessment criteria that do not discriminate against products produced by non-Chinese companies.

Full Market Access for Products Listed in Telecommunications Services Catalogue

China's 2019 update to the Telecommunications Service Catalogue continues to impose significant market access restrictions on some of the fastest growing and most important technology sectors. This impacts cloud computing, where U.S. companies have staked out a leading role, as well as a number of other digital services including content delivery networks, information services and virtual private networks.

The catalog incorrectly classifies a wide range of ICT technologies and services as telecom value-added services, when in fact they are computer and related services that are merely delivered over a telecom network. This distinction matters because companies that provide so-called value-added services can only operate in China through joint ventures, in which foreign ownership is capped at 50 percent. In reality, they should be classified as computer and related services, which under China's WTO commitments should not be subject to any market restrictions.

The regulation requires TIA member companies that seek to do business in these areas either to find a Chinese partner, which brings its own set of challenges, or choose to stay out of the market altogether.

The resulting disparity in treatment between China and the United States is particularly noticeable in the cloud market. Chinese cloud providers are expanding globally into geographies including the U.S., where they are allowed to freely establish commercial operations without need of a license or foreign partner.

MIIT's October 7 draft plan to "open up" the value added telecommunications service catalog – announced in early October – does not create meaningful opportunities for TIA members as it is limited in scope.

Recommendation: TIA urges MIIT to dismantle the value-added telecom services licensing regime, including associated equity caps and capitalization requirements. We seek to ensure that efforts to regulate services delivered over public networks be consistent with China's WTO commitments.

Standards-setting Approaches that Depart from Global Norms

Article 15 of China's revised 2019 Foreign Investment Law (FIL) marked rhetorical progress in the ability of foreign enterprises to participate in standards development in China. This rhetorical progress, however, has not been matched by results. While U.S. companies are able to participate in some cases, in many others they continue to be excluded from participation in government-affiliated working groups deemed sensitive by the Chinese government. In other cases, companies are able to join certain standards development technical committees but are subsequently excluded from certain working groups.

More broadly, progress is undermined by the reality of a Chinese standards-setting regime that has traditionally distinguished between Chinese and non-Chinese participants, undermining the core principle of "openness without discrimination" in standards policy outlined in the WTO Technical Barriers to Trade Committee in its "Decision...on Principles for the Development of International Standards."

Finally, it is unclear the extent to which foreign companies will be able to fully participate in the development "social organization standards," which are primarily generated by groups of Chinese companies and may later be incorporated into Chinese laws and regulations.

Measures implementing key provisions of China's revised *Standardization Law* also continue to raise concerns in the U.S. business community. For example, requirements that companies disclose "enterprise standards" in effect require companies to share proprietary product or service specifications. These details often contain confidential patents, copyrights, and trade secrets which are protected by a range of intellectual property rights.

Over the past few years, China has released a series of documents laying out its plans for future engagement on standards issues most notably the "National Standards Development Outline" and an ensuing implementation plan earlier last year. While there are some individual statements in the outline and implementation plan indicating openness to international standards, there are also indications that China is set to continue to leverage industrial policy to improperly influence standards developments through subsidies and a government "coordination mechanism" that will support PRC government and industrial policy priorities.

Recommendation: We ask that China fully implement its commitment in the FIL to allow for full foreign participation in Chinese standards technical committees. We also ask that China employ international standards as the basis for mandatory standards whenever possible, align with global rules and best practices regarding independent company participation in SDO activities, provide adequate time for comment on new draft standards, limit disclosure requirements and unfair treatment related to the implementation of the enterprise standards system, and ensure that social organization standards are not incorporated into Chinese laws and regulations in such a way that creates market access barriers for foreign companies.

Testing and Certification

The product testing and certification process in China is significantly more difficult than in other markets, which increases the costs of U.S. products for sale in the Chinese market. China's current certification requirements for telecommunications equipment conflict with its WTO obligations, which stipulate that imported products should be subject to only one conformity assessment scheme and require the same mark to be used for all products (Article 13.4(a) of China's WTO Accession). In total,

China has three different licensing regimes – the Radio Type Approval (RTA), the Network Access License (NAL), and the China Compulsory Certification (CCC). For a given piece of equipment, it can cost between U.S. \$20,000-\$30,000 to test for all three licenses (RTA, NAL, and CCC).

China has opted out of the C.B. scheme for electromagnetic compatibility (EMC) testing, with the result that such testing must be done in-country. EMC requirements emerged out of a collective international effort and many countries participate in the EMC component of the certification body (C.B.) scheme and accept C.B. scheme test reports generated by other participating members.

Ideally, China should eliminate the NAL as a product licensing requirement. However, recognizing the structural/legal problems that would pose, TIA and its members recommend that, in the interim, China reduce the number of tests required by the NAL to a bare minimum.

To promote improved transparency in testing and certification in China, reduce associated costs and generally facilitate trade, we urge the Chinese government to provide the necessary scope in product coverage and enact the necessary legislative changes to allow it to resume meaningful talks with the U.S. government on a mutual recognition agreement (MRA).

Recommendation: TIA asks the government of China to improve the application of international conformity body scheme reports by national laboratories and eliminate the need for additional samples and redundant testing. Any certification-related process should be in conformance with related WTO TBT requirements. We also recommend that such efforts conform to international best practices as reflected in the ISO/IEC CASCO Guidelines. Finally, we strongly encourage China to take steps to make meaningful progress on an MRA.

Anti-Monopoly Law

TIA notes the purpose of China's *Anti-Monopoly Law* (AML), which took effect in 2008, is to prevent monopolistic behavior and enhance competition in China's commercial environment. While this is a laudable goal, AML investigations by Chinese authorities appear to be distorting the AML and related laws to target foreign companies as an additional policy tool to support China's national industrial policy objectives. The Chinese companies that benefit from these AML enforcement cases are often national champions in various strategic sectors, including the telecommunications sector.

Recommendation: TIA urges the government to employ the AML only in such a manner as to promote fair and open competition without trespassing on I.P. protections or otherwise undermining the market position of foreign companies to the advantage of domestic entities.

Government Procurement

China's progress towards joining the WTO Government Procurement Agreement (GPA) has been extremely slow, dating from its first offer for accession in December 2007 to its most recent revised offer (its sixth) submitted in October 2019, which unfortunately fell short of expectations in its coverage. In the meantime, as noted earlier, the government has issued a number of policies under the banner of improving security that seek to replace foreign ICT goods and services with "secure and controllable" Chinese products in government computer systems. Such actions raise questions about the current degree of Chinese political support for improving the terms of any subsequent GPA offer. However, we

believe China would benefit from embracing the principles of openness, transparency and non-discrimination embodied in the GPA.

Recommendation: TIA urges China to join the GPA and ensure that its accession package fully accords with international norms.

COLOMBIA

VAT Application

Colombia currently offers a VAT exemption for computers and other computing devices below a specified price, equivalent to 50 UVTs, or COP 1,780,350 in 2020. A similar provision applies for tablets and smartphones if the price falls below the 22 UVTs, or COP 783,354 in 2020. Besides the artificial threshold of the policy, which makes the most advanced devices less accessible to the Colombian population, exchange rate variations make the market highly unpredictable. In 2019, for example, the dollar equivalent of 50 UVTs varied from a low of US\$480 to US\$560. This introduces a considerable element of uncertainty for small and medium business owners who retail such devices, since they are captive to the vagaries of the exchange rate. Whether or not a device vendor must pay the steep 19 percent VAT surcharge depends on currency fluctuations on the day a given device is imported.

Today, smartphones (or intelligent mobile devices) often substitute for such devices, but are still subject to the full 19% VAT rate if their price is higher than 22 UVTs. Intelligent mobile devices or smartphones (e.g. mobile phones that offer greater functionalities than feature phones) should be afforded the same VAT exemption as other computing devices. Failure to afford the VAT exemption has the potential to restrict electronic commerce and is a barrier based on the type of device, rather than its functionalities.

Recommendation: The Colombian government should extend the VAT exemption to apply to all smartphones as well as other digital devices.

Public Consultation on Regulatory Requirements

Over the past two years, Colombia has implemented a number of regulations, guidelines and technical requirements that disrupt global supply chains, result in product delays, and increase the cost of doing business. Such requirements are often Colombia-specific obligations that are inconsistent with global practices or standards.

In a number of cases, these regulations appear to have been published without seeking public input. Some agencies failed to conduct an impact regulatory analysis in its regulations, such as the Superintendency of Industry and Commerce, which is in charge of competition issues, consumer protection, and data protection.

Recommendation: Colombia should provide a public consultation process with affected stakeholders prior to finalizing and enacting regulations, particularly for Superintendencies that have rule-making authority but are not bound by the rules applicable to the Regulatory Commissions. This will offer industry an opportunity to bring important feedback and experience into the regulatory process.

Theft of Mobile Phones

On October 16th, 2015, the Government of Colombia published Decree 2025, which "establishes measures to control the import and export of intelligent mobile phones, cellular mobile phones, and their parts, susceptible to classification under Customs Tariff subheading 8517.12.00.00 and 8517.70.00.00", as part of its strategy to address the theft of mobile phones. In practice, Decree 2025 creates burdensome restrictions and administrative requirements for trade in mobile phones, without significantly deterring or limiting illegal trade in stolen phones.

Implementation of the Decree continues to be disruptive to businesses, as the time frames set out in the law are routinely not met and no single agency owned responsibility for addressing such shortcomings. While several sets of changes were made to the Decree over the course of 2016, it still includes provisions that impede regular trade and commerce.

Colombia maintains a system of black (mobile phones reported as lost or stolen) and white (mobile phones with homologation, valid International Mobile Equipment Identity - IMEI) lists. It requires that each mobile phone have a government-issued verification certificate at the time of import. It requires exports (e.g., as WEEE or for repair) be on the White List, though not all phones must be included on that list prior to import – for example, a device brought into the country by an individual. This system is challenging the operational capacity of the government and recently civil society organizations raised privacy and security concerns about the system. While the concern about phone theft is valid, the current system imposes unnecessary and undue burdens and impedes regular trade and commerce of communications devices.

Rather than continue to address legitimate concerns about phone theft through processes that are not working, Colombia should explore approaches that have proven effective in other countries. These could include focused efforts on the illicit spare parts market, educational campaigns about technology-based solutions (such as those that allow the user to block the phone, remotely erase the content, and make the devices unable to connect to the network), and cooperation beyond national borders.

In 2019, the Communications Regulatory Commission (CRC) launched a general Regulatory Impact Analysis on these measures. It is expected that this analysis will show minimal effectiveness and additional burdens from this regulation on the industry. During 2020, though CRC has demonstrated little progress in developing this analysis.

Recommendation: We recommend the government repeal the import requirement to register all IMEI numbers before import and instead focus police enforcement on the places where organized crime tampers with IMEI systems.

Mobile Phone Label Requirements

In November 2019, the Superintendency of Industry and Commerce (SIC), acting as the consumer protection authority, issued regulation (Circular Externa No. 002 – November 2019) asking all mobile phone sellers and manufacturers to include a specific label on their packaging and in certain advertising indicating that device's compatibility with all mobile networks (e.g. 2G, 3G, 4G). The label is required for all phones. The draft guidelines further delineate the label specifications, including content, colors, size, and placement. Labels must be placed on the front of the mobile terminal equipment packaging, in places either online or in-store, where they are exhibited, and when nontraditional or remote selling

methods are used. In addition, sales representatives have to provide this information to potential buyers.

Requiring country-unique labels requires suppliers to exactly predict market demand, with the likely consequence that they will underestimate the supply available in a country. Specifically, on packaging, consumers often do not see packaging until after they have purchased a device so a label has no informational value. Analyses have shown that the label is most effective when displayed in the Point-of-Sale and online sites, but it has lower effectiveness when displayed in the packaging box.

A public consultation period of longer than two weeks and a regulatory impact analysis in this case might have explained what market failure was intended to be corrected by this regulation. It is important for any transparency policy to have a main objective that advances the public interest, which may be different from merely providing information to customers

Recommendation: SIC should revise its regulation and limit pervasive labelling mandates. TIA also supports the use of global standards for e-labelling.

EGYPT

Duties Imposed in Contravention of WTO Commitments

In November 2021, Egypt adopted a 10% tariff on imports of mobile phones ((Presidential Decision 558/2021), in contravention of Egypt's commitments under the WTO Information Technology Agreement. Notably, in addition to the 10% duty, Egypt also imposes a variety of other fees on imported phones: 14% VAT, 5% "development" fees, 5% airport fees, and 5% regulator (NTRA) fees. In March 2022, Egypt went a step further and barred the importation of mobile phones altogether. With a view to controlling foreign exchange flows, Egypt prohibited 13 items (including phones) from being imported into the country without prior Central Bank approval; no such approval has since been granted for the import of phones, resulting in an effective ban on imports. These import barriers frustrate and contradict the government of Egypt's stated digitalization goals, as mobile phones are a critical catalyst for digital transformation. The measures also give fodder to illicit trade in products, as this becomes the only channel through which mobile devices can be imported into the country.

Recommendation: The Government of Egypt should adhere to its WTO commitments and remove tariffs and other barriers to the import of mobile phones.

EUROPEAN UNION

European Union Cloud Cybersecurity Scheme (EUCS) Excludes U.S. Cloud Services Providers:

The EUCS excludes U.S. providers of cloud services by making local ownership and control the deciding factor in assessing whether a cloud service provider can be deemed as meeting the highest level of cybersecurity. This measure is expected to become mandatory, and could be expanded to apply to E.U. private sector industries deemed "essential," including banking and financial services, energy,

healthcare and transportation. The EUCS builds on a previous regulatory effort in France known as SecNumCloud, and has the potential to significantly disrupt U.S. exports of cloud services.

This approach that violates the E.U.'s WTO trade obligations, and it sets a worrying precedent by signaling that the E.U. does not consider U.S. firms to be trustworthy.

Recommendation: The European Union should drop the country-of-origin requirements in the EUCS and adopt a risk-based approach to cloud services that does not impair the ability of U.S. companies to provide cloud services to all parts of the economy.

E.U. Standards Strategy Excludes Non-EU Participants

Pursuant to the implementation of the 2022 Standards Strategy, the European Union made changes to Regulation (E.U.) No 1025/2012 and to its engagement with European Standards Organizations (ESOs), like the European Telecommunications Standards Institute, that have [limited the ability of U.S. companies](#) and other global stakeholders to participate in the development of some standards.

Openness is fundamental to the development of standards. As noted in the WTO TBT principles regarding standardization, "Membership of an international standardizing body should be open on a non-discriminatory basis to relevant bodies of at least all WTO Members. This would include openness without discrimination with respect to the participation at the policy development level and at every stage of standards development."

As Europe continues to use standards to confer regulatory compliance – itself a concerning deviation from the WTO's emphasis on the voluntary nature of standards – the ability of U.S. companies to fully participate in the development of standards will only become more important.

Recommendation: The European Union should retract the measures excluding global participants from fully participating in all standards activity.

INDIA

The issue of greatest concern to TIA in India is New Delhi's repeated imposition of import duties on ICT products, in violation of its WTO obligations.

When India joined the Information Technology Agreement in 1996, it agreed to grant zero-duty treatment to many ICT goods, including telecom equipment products classified under the 8517 harmonized system (H.S.) heading. In 1997 the Indian government modified its GATT schedule to reflect those changes, and under a staging process, introduced a plan to eliminate duties on all 8517 products by 2005. In accord with its WTO obligations, in 2005 India formally updated domestic customs regulations to provide for zero-duty rates on the goods.

However, in a clear breach of those commitments, India has subsequently levied duties on covered products on seven separate occasions. These actions violate the basic WTO obligations on duty treatment documented in India's GATT schedule.

A brief chronology follows:

- In July 2014, India rescinded a duty exemption and implemented a 10 percent basic duty on a range of advanced telecom technologies classified under the 8517 heading.¹
- Three years later in July 2017, New Delhi again imposed import duties of 10 percent, this time on a much broader group of telecom equipment products including mobile phones, smart phones, and base stations.²
- Only five months later in December 2017, India boosted the duty rate on cell phones and smart phones once more, from 10 percent to 15 percent.³
- In February 2018, India further increased the duty on cellular mobile phones from 15 percent to 20 percent, while raising duties on phone parts from a range of 7.5-10 percent to 15 percent. The duty on wearable devices was raised from 10 percent to 20 percent.⁴
- In April 2018, India announced it will impose a 10 percent duty on populated printed circuit boards (PCBs) used in mobile phones.⁵
- In October 2018, India said it will double the 10 percent levy on telecom goods including base stations, smart watches, optical transport and VOIP equipment to 20 percent⁶ and impose a new 10 percent duty on parts and components of telecom products⁷ that were previously not subject to duties.
- In February of 2020, India's Union Budget proposed increasing customs duties on mobile phones and mobile phone components including fingerprint scanners, printed circuit board assemblies, by 10%.
- In February of 2021, India's Union Budget again proposed increasing customs duties on mobile phone components including camera modules, connectors, printed circuit board assemblies, parts for the manufacture of lithium ion battery packs, and mobile phone charger inputs. These duties were put into place on February 2 pursuant to Customs Notification 03/2021.
- In 2024, India's budget proposed decreasing customs duties on mobile phone, printed circuit board assemblies ("PCBAs") for mobile phones, and chargers to 15%; while at the same time increasing duties on PCBAs for specified telecommunications equipment.

At the same time, New Delhi has rolled out multiple rounds of duties, it has clearly proclaimed its protectionist intentions to keep out foreign goods and create a domestic telecom equipment industry.

India's national Digital Communications Policy released in September 2018 calls openly for "rationalising taxes and levies and differential duties to incentivize local manufacturing of [digital communications] equipment, networks and devices." It also called for incentivizing private operators to buy domestic Indian telecom products. Unfortunately, India's protectionist policies have made U.S. products more expensive and less competitive in the marketplace, effectively shrinking American market access.

These tariffs specifically have led some TIA member companies to reduce U.S. manufacturing for certain products that they had previously exported to India.

Recommendation: We urge the Indian government to rescind the aforementioned duties on imported ICT equipment as soon as possible. The new levies have not only hurt investor confidence, but risk needlessly raising the price of technology products and services for India's own businesses and citizens, which will make it more difficult for the government to achieve the goals of Digital India.

We also encourage USTR to take further action in the context of the WTO with the goal of getting India to comply with its tariff bound rates on ICT products.

Excessive and Redundant Requirements for In-Country Tests and Certification

In 2018 India introduced a sweeping system of required in-country tests and certifications for telecom equipment, MTCTE (mandatory testing and certification for telecom equipment). The policy was not initially notified to the WTO in draft form.

The requirements impose needless costs on ICT companies, which already conduct such tests in internationally accredited labs in other geographies. Testing fees may cost up to 50 lakhs rupees or \$78,000 per product when carried out by government labs, and no price cap has been established for commercial labs. The system of certifications will eventually cover all types of telecom equipment, ranging from simple IoT devices to fully functioning base stations.

While the policy was initially intended to become effective October 2018, India's Department of Telecommunications (DoT) subsequently delayed implementation. By October of 2019 the Department of Telecommunications made MTCTE mandatory for 2-wire telecom equipment, modems, G3 fax machines, ISDN CPE, private automatic branch exchange (PABX) systems, and cordless telephones. Since that time, DoT has continued to expand the requirements under "Phase II" of the plan to cover areas including Transmission Terminal Equipment, the PON family of Broadband Equipment, and feedback devices as laid out in TEC/01/2017-TC on June 23, 2020. These requirements were notified to the WTO under G/TBT/N/IND/158, G/TBT/N/IND/159, and G/TBT/N/IND/160 in August of this 2020 and became compulsory as of October 1, 2020.

India has continued to expand testing and certification requirements under "Phase III" and "Phase IV," which cover 32 products categories including: equipment operating in the 2.4 GHz and 5 GHz Bands, IoT Gateways, Local Area Network Switches, Routers, Conferencing equipment, and Base Station Control/Radio Network Controllers. While some of these requirements – such as those requirements for mobile phones and smart watches – have been delayed, it is our expectation that GOI will continue to move forward in implementing this technical barrier to trade.

In June 26, 2023 India released details regarding "Phase V" of MTCTE covering Base Station for Cellular Networks, 5G Core, Hypervisor, E-band Fixed Radio Relay Systems, Converged Multi Service Application Access Equipment, IP Terminals, and Hybrid Set Top Boxes. While the expectation had been that the certification regime for these Phase V products would come into effect by July 1, the mandatory certification deadline for these products has been delayed until January 10 for Hypervisors and IP terminals and until September 30 for 5G base stations and E-band Fixed Radio Relay Systems. MTCTE certification deadlines for Smart Electricity Meters, Satellite Communication Equipment, 4G base

stations, SIM, and VHF UHF Radio Equipment Systems were also delayed in the notice from India's Telecommunications Engineering Centre (F.No. 5-2/2024-TC/TEC).

Besides the lack of available tests for some of the prescribed parameters, India's current lab capacity for electromagnetic compatibility (EMC) and electromagnetic interference (EMI) is limited, and the number of certification bodies exist nationwide to review results and summary reports is insufficient. Because of the local requirements, this lab capacity has to support both testing for the local market and testing for ICT exports. Allowing the use of global labs could increase the capacity of U.S. manufacturers to access testing and certification services and accelerate India's own goal to export more telecommunications products.

Moreover, there is no need for India-based tests, as global vendors already certify products to a high level of international standards in areas such as radio frequency and safety. Requirements to test once again for the Indian market will not improve safety but merely incur needless and unnecessary costs for suppliers. Telecom suppliers worry that intrusive testing could potentially allow for leaks of proprietary information.

Recommendation: TIA urges the government to indefinitely allow ICT equipment vendors use internationally accredited labs in any global location to conduct testing. Where such tests focus on security issues, India should recognize Common Criteria certifications from countries that are parties to the Common Criteria Recognition Arrangement of which India is one. To the extent that testing continues to be required, the government of India should also give companies the option to either conduct in-country testing in India or submit test reports from an accredited global test lab. This will help the government to ensure quality and safety along the various parameters will be met.

We further encourage the Indian government to reference internationally-recognized standards to be used in such testing. Such an approach allows for robust security vetting without imposing new fees that will drive up end user costs or needlessly delay time to market for ICT products.

We appreciate USTR's approach to seeking reductions in technical barriers to trade by encouraging India to accept test results from accredited conformity assessment bodies on a bilateral basis whenever possible for non-agricultural goods as stated in the January Trade Policy Forum Joint Statement. While we hope this effort yields fruit, ultimately we continue to believe India should accept test results from accredited labs regardless of the jurisdiction where that testing occurs. TIA does not support the creation of an MRA with India.

Source Code Disclosure Requirements as Part of Security Testing

As part of security testing under the India Telecom Security Assurance Requirements (ITSAR)⁵, DoT has asked OEMs to share the source code of equipment used in telecom networks, including servers and mobile phones. This source code constitutes commercially valuable, confidential, and sensitive information. Divulging proprietary information to testing labs and agencies could lead to the leakage of

⁵ These source code disclosure requirements are spelled out specifically in ITSAR for E-Node B in Para 3.3 on Page 12, ITSAR for UICC (SIM and USIM) in Para 2.3.2 on Page 22, ITSAR for Packet Data Network Gateway in Para 2.3.3 on Page 21 and ITSAR for Mobile Device at Section 6.17, Page 40.

business confidential information to the competition and endanger the privacy and security of individuals and the OEMs.

Although the Indian government has made some limited concessions by delaying implementation and moving temporarily to a self-attestation system to obtain a “pro-tem” certification, the government has fundamentally not moved away from its demands for proprietary source code or internal test reports. Access to this information is a red line for industry, and we encourage USTR to prioritize addressing this issue.

Recommendation: TIA recommends that the Indian Government remove language requiring source code disclosure or proprietary test reports in all draft ITSARs. We recommend that USTR prioritize engagement with India on this issue as a timely issue of concern to industry. India should follow global norms and best practices in this area, such as Common Criteria.

Preferential Market Access (PMA)

India has recently issued a series of policies to promote government purchases of locally made ICT products, including the following:

In January 2017 the Department of Telecommunications issued [conditions for a list of telecom products](#) under which they could qualify as domestic and therefore be accorded a preference in government procurement. Under the [Public Procurement \(Preference to Make in India\) Order](#) issued in June 2017 by the Department of Industrial Policy and Promotion, government agencies and companies are requested to accord a 20% price preference to products containing more than 50% local content. In September 2017, the Ministry of Electronics and Information Technology issued a [lengthy list of cybersecurity products](#) that will be subject to this order. The agency subsequently updated and re-iterated these requirements in procurement orders issued in [2018](#), [2019](#), and [2021](#).

This was worsened in [2024](#), through a further increase to the value addition thresholds for telecom products and requirements to effectively localize all components and a high percentage of value attributable to an Indian intellectual property (i.e. a design patent residing in India).

At a practical level, local content requirements are often difficult to meet. For example, the procurement preference for local content is difficult to meet for many switching systems used in telecommunications as well as satellite systems. It is not currently possible to manufacture such systems in India while meeting the necessary technical requirements outlined in tenders.

Like all countries that manufacture ICT products, India's ICT manufacturing base depends on a globally flexible supply chain that is characterized by intense competition and fluctuations in price and supply of different inputs. Market demands are such that it would be impractical for the commercial sector to eliminate the use of global resources or a distributed supply chain model.

Recommendation: Since India is not currently a member of the WTO Government Procurement Agreement (GPA), we acknowledge that this policy is not in conflict with its formal agreements. However, we would submit that the PMA policy does a disservice to the Indian government in limiting access to the most cost-effective and advanced ICT products available, especially at a time when officials are implementing important new programs to promote digital connectivity nationwide. We would urge the Indian government to consider a procurement policy that grants agencies maximum flexibility,

allowing them to purchase products based on performance, operational needs, and overall cost, rather than focusing on local content requirements.

Local content mandates have not historically proven effective in promoting the development of local products that are either high quality or cost competitive. Instead of granting domestic preferences in public procurement, a better way to help local industry would be to focus on enhancing the business environment to foster healthy competition and encourage innovation.

As the Indian government seeks to enhance exports, we would encourage it to take a closer look at the practices reflected in the GPA and consider how they might bring their practices into alignment with it. Ultimately, joining the GPA would expand the access of Indian's own I.T. industries, including its services sector, to government procurement markets around the world.

Freedom to Use Strong Encryption

TIA urges India to adopt policies allowing the use of strong encryption algorithms that have been reviewed by international experts for robustness and security assurance to protect corporate and personal information online. The freedom to use strong encryption is a global standard for securing information online, such as confidential business information, financial information, online transactions, and internal government communications, from intrusion by hackers, thieves, competitors, and other wrongdoers.

Recommendation: TIA urges the government of India to amend its current encryption policy to allow for more robust encryption, which will enable India's rapidly growing I.T. enabled services and business process outsourcing industries that rely on strong encryption to secure their global clients' confidential information. India should adopt policies that protect the freedom to use strong encryption online and, consistent with global practice, not limit the type of encryption technologies that can be employed by the private sector.

Duplicative Security Certification Schemes Being Promoted by the Indian Government

In July 2019, India's Ministry of Electronics and Information Technology (MeitY) released a duplicative security certification known as the "Trusted Electronics Value Chain – Compliance Scheme" (TEVCCS). TEVCCS is technically equivalent to IEC/ISO 20243 -1 & 2 (Information Technology - Open Trusted Technology Provider Standard or OTTPS) but stipulates certification by MeitY's Standardisation, Testing and Quality Certification (STQC) Directorate. The draft scheme envisages certifying the processes that apply to commercial, off-the-shelf ICT hardware and software throughout the entire product life cycle encompassing the areas of technology development and supply chain. Currently, the certification scheme is voluntary, but there are significant indications that it may be converted to a mandatory certification requirement. This new requirement will add to the long list of existing certification schemes in India and potentially subject confidential elements of product design and supply chain to additional government audits.

Recommendation: We request that MeitY avoid formally or informally mandating the use of the TEVCCS.

Delays in Wireless Planning Commission (WPC) Certifications

Imports of certain electronics and ICT products require certification from the Bureau of Indian Standards (BIS) and "equipment type approval" from the Wireless Planning & Coordination wing of the Ministry of

Communications. The procedure for obtaining these approvals is massively time consuming and opaque, with undefined timelines that often produce inordinate delays. The lack of transparency, predictability, and timeliness creates a significant barrier to imports.

Recommendation: We request that the Indian government expedite the process to reduce the processing time and make it process more transparent.

F.M. Radio Receiver Advisory Raises Concerns

On April 28 of 2023, MEITY circulated [an advisory](#) stating that handset manufacturers should build F.M. radio receiver functionality into mobile phones. Because of the tightly integrated design of mobile phones, a requirement to do so would require a significant redesign of many handsets currently available on the market and would constitute a technical barrier to trade.

Recommendation: The Government of India should refrain from making F.M. radio a mandatory requirement.

TRAI Proposal to Ban Permanent Roaming for IoT Devices

In March of 2024, the Telecom Regulatory Authority of India (TRAI) released Recommendations on Usage of Embedded SIM for Machine-to-Machine (M2M) Communications, which included a provision that would ban permanent roaming for any M2M eSIM fitted in imported devices and require those devices to be reconfigured into local communications profiles within six months. If adopted, this recommendation would limit the ability of U.S. companies to sell products in the Indian market, as well as ultimately raising costs for companies and raising prices for consumers.

Recommendation: The Government of India should reject the TRAI recommendation.

Misaligned Indian Export Controls

Telecommunications companies manufacturing in India face significant challenges from India's stringent export control rules for dual-use items, called Special Chemical, Organisms, Materials, Equipment & Technology ("SCOMET") Rules. Some telecom products are considered dual-use, and therefore companies are required to obtain licenses to export products from India. Under the SCOMET rules, an OEM must submit End-User Certificates ("EUC") from all end users of the product to be exported. This is a challenge for companies because the exported items are likely to re-transferred multiple times within the supply chain until an item reaches the end user. Further, there is also a complex requirement for post-reporting of exports. Such extensive documentation and export license requirements are unique to India and failure to comply may result in a penalty and/or cancellation of the export license. For example, the U.S. government provides bulk export licenses to U.S. companies for dual-use items, but the Indian government does not.

Recommendation: The U.S. government should push India to harmonize its export control rules with those of the United States, streamlining its export control system so that U.S. companies that establish a manufacturing presence in India can export globally.

INDONESIA

Protectionist Policies including Local Content Requirements

We are concerned about a pattern of Indonesian regulations issued in recent years that provide a framework for protectionist measures, some of which target ICT goods and services. In 2014, the Indonesian government finalized a trade bill that authorizes the government to take protectionist steps such as restricting exports and imports with the goal of helping local industries.

In 2015, the Ministry of Communications and Information Technology issued regulation no. 27, which imposes local content requirements on LTE-based telecom equipment that would rise to 40% for base stations and 30% for subscriber stations within two years of the date of implementation. This follows the ministry's earlier issuance of two decrees, a wireless broadband decree in 2009 and a telecommunications decree in 2011, that place restrictive local content requirements and sourcing requirements on service providers. The "wireless broadband decree" requires local content of 30 to 50 percent in the wireless broadband sector. The "telecommunications decree" requires all service operators to spend 35 percent of their capital expenditures on domestically manufactured equipment.

Currently, at least 40 percent of the equipment must be locally sourced, but within the next five years it is expected to increase to 50 percent. These provisions are reiterated in Article 6 of the 2011 decree on the use of the 2.3 GHz Radio Frequency Band (19/PER/M.KOMINFO/09/2011

In 2016, the Communication and Information Technology Ministry proposed new regulations that would require foreign companies that provide online content to set up formal offices in Indonesia according to national tax law and abide by a number of other requirements, including local censorship rules. The high costs of complying with such a mandate could make it difficult for many smaller foreign service providers to operate in Indonesia, and as a result, may limit Indonesian access to innovative online applications that would be available in other global markets.

Finally, [Ministry of Industry Regulation No. 22 of 2020](#) concerning Terms and Procedures for Calculating the Value of Domestic Component Level for Electronic and Telematics Products set out a 70% requirement for the manufacture of digital products.

Recommendation: TIA urges the government of Indonesia to rescind local content requirements that limit technology choices available to its consumers and businesses.

Data Localization

Regulation No. 82 of 2012 requires operators of "public services" to locate data centers on Indonesian territory. This was modified in Government Regulation No. 71 of 2019, but it remains a barrier to trade.

Recommendation: Data localization is likely to impede innovation by rendering international communication more difficult; moreover, by increasing costs, the regulation threatens to discourage service providers from entering the Indonesian market. Rescinding the data localization requirement would serve to promote investment by alleviating investor concerns over the expense and time associated with compliance.

Classification of Zero-Duty Digital Goods in Tariff Schedule

In February 2018, the Indonesian Ministry of Finance issued regulation No. 17, which established five eight-digit tariff lines under chapter 99 on software and other digital products. Though initial duty rates were established at zero, the treatment of services as potentially dutiable goods creates a worrying precedent. Any imposition of duties on such goods would appear to violate the WTO's moratorium on e-commerce, in which members agree to abstain from imposing duties on electronic transmissions.

Foreshadowing this development, at the MC11 trade ministerial in Buenos Aires in 2017, Indonesia circulated a communication saying it is Jakarta's understanding that the e-commerce moratorium "applies only to the electronic transmissions and not to products or contents which are submitted electronically." In practice, such an approach is at odds with the moratorium and would render it effectively meaningless.

Recommendation: We urge the Indonesian government to remove digital services it has pledged to keep duty-free from its tariff schedule.

Assessing Customs Duties in Excess of its Bound Rates

Since 2018, Indonesia has been assessing customs duties on ICT products that are in excess its obligations under its WTO Goods Schedule. For example, certain routing and switching products under HTS Code 8517.62 are being assessed a 10% duty, when Indonesia has committed to provide duty-free treatment in its Good Schedule.

Recommendation: The Government of Indonesia should restore duty-free treatment to products that are bound at zero under Indonesia's WTO Goods Schedule.

MEXICO

Local SAR Testing Requirements

In February of 2020, Mexico's Instituto Federal de Telecomunicaciones (IFT) published new guidelines pursuant to Technical Provision IFT-012-2019 that pose a significant barrier to trade for mobile telecommunications products. These guidelines came into effect in February of 2021, and they restrict sales from U.S. companies and delay time to market by requiring in-country testing for Specific Absorption Rates (SAR). These testing requirements are not only redundant and have no conceivable benefit to Mexican consumer safety, but also they also refer to out-of-date standards instead of recent guidance from the IEC/IEEE and ICNIRP. These requirements also lack the normal clauses exempting retroactive compliance, raising the specter that not only would new products require testing but also all existing products would require testing. Finally, these testing requirements would seem to indicate a breach of Mexico's commitment to national treatment for conformity assessment bodies pursuant to Article 11.6 of the USMCA.

Currently, there are only a few accredited laboratories for SAR testing, which creates bottlenecks for testing new products and may cause time-to-market delays. Industry has repeatedly asked the IFT to accept interim certificates and/or international test reports until the testing laboratory infrastructure is sufficiently established and robust in the country.

Recommendation: We recommend that the Government of Mexico (GOM) eliminate these duplicative and unnecessary domestic testing requirements. TIA also recommends that the U.S. government push Mexico to engage further on this issue in the context of ongoing USMCA implementation discussions with the goal of having Mexico accept test results from U.S. accredited labs, possibly through the inclusion of SAR testing in the U.S.-Mexico telecom MRA.

Capricious Government Procurement Practices Violating USMCA Obligations

Mexico has violated its USMCA commitments related to government procurement. For example, while implementing its "Internet Para Todos" project in mid-2020, a subsidiary of the Comisión Federal de Electricidad (CFE) issued Requests for Information for telecommunications products seemingly with the express goal of having these contracts go to Huawei Technologies. In issuing RFIs pursuant to this initiative, CFE neglected to publish public notices, named and/or described Huawei products instead of creating vendor neutral criteria, and left a period of only days between the release of the RFI and the eventual selection of a vendor. This would seemingly violate several articles of Chapter 13 of the USMCA on government procurement, and it illustrates broader industry concerns about non-transparent government procurement practices in Mexico.

Recommendation: We recommend that the Government of Mexico stringently implement government procurement practices in line with its commitments under USMCA Chapter 13.

New Labeling Requirements Violate USMCA Telecom Annex Provisions

On August 4 of 2023, Mexico's IFT put out new draft guidelines regarding the labeling of telecommunications products that would require the use of physical NOM labels on telecommunications devices.

If implemented, this requirement would violate Mexico's commitments under Chapter 12.C.4 of the USMCA. In this sectoral annex, parties to the agreement commit that, "if a Party requires equipment subject to electromagnetic compatibility and radio frequency requirements to include a label containing compliance information about the equipment, it shall permit this information to be provided through an electronic label."

Recommendation: IFT should allow the use of e-labels for telecommunications devices in line with its commitments under Chapter 12 of the USMCA. As appropriate, USTR should work with the FCC and other agencies to support Mexico's compliance with the agreement via an exchange of technical information regarding the use of e-labels.

Spectrum Allocation Policies that Favor Domestic Incumbents

Mexico maintains a method for pricing spectrum that supports large, domestic incumbents at the expense of U.S. companies that provide – or seek to provide – telecommunications services in the country. By dissuading competition, Mexico may be in violation of its Chapter 18 obligations in which parties commit that they "shall endeavor to rely on an open and transparent process that considers the public interest, including the promotion of competition."

Recommendation: The Mexican government should adjust its method for assessing spectrum fees and adjust spectrum valuation to include factors like coverage commitments. This would promote competition and ultimately lead to more benefits for Mexican consumers.



U.S. Chamber of Commerce
International Affairs

U.S.-Japan
Business Council

Digitalization Delivers:

Japan's Digital Health Transformation
and Optimizing Patient Health Outcomes
through a U.S.-Japan Partnership

February 2025

Key Takeaways

- Japan is in the midst of a digital revolution in healthcare in the areas of telemedicine, digital therapeutics, and the development of AI-based diagnostic tools. The Japanese government has advanced significant regulatory changes to embrace digitalization and strengthen Japan's global competitiveness, as well as address gaps revealed during the COVID-19 pandemic and the challenges it faces as an aging society.
- The developments have been reinforced by U.S.-Japan public and private cooperation in areas ranging from R&D to commercialization, with both governments offering significant support at the highest levels for further academic and research collaboration.
- Japan still faces significant challenges in building a globally competitive health technology development ecosystem. These challenges extend to critical areas, including the collection, storage, and transfer of electronic medical records (EMRs) and interoperability in cross-border data flows.
- To strengthen Japan's digital health infrastructure, the Japanese government should promote U.S.-Japan and other international cooperation on privacy and cybersecurity. Additionally, it should enact legislation that facilitates cross-border data exchange while protecting privacy.
 - › Investment in digital health systems, particularly in underserved rural areas, should be encouraged through tax incentives, subsidies, and innovative financing models like development impact bonds. Additionally, Japan should review policies on responsible AI use in healthcare research and explore harmonizing AI ethics frameworks.

Introduction

Japan's demographic concerns and ever-straining social spending budget have long been driving forces reshaping the country's healthcare delivery system. Digital technologies can play an important role in improving the quality of healthcare services and creating efficiencies, and advance Japan's role as a leader in healthcare innovation. Demographic challenges are growing ever more acute: in 2023, one in 10 Japanese people were 80 years or older, with 29.1% of the 125 million population aged 65 or older. By 2040, those aged 65 and over are projected to account for 34.8% of the population.¹ This trend led to early research into digital health products and services, including electronic health records (EHRs) and telemedicine. However, their adoption has progressed slowly.² The COVID-19 pandemic further exposed severe gaps in healthcare delivery and access, especially among the older population. COVID-19 also revealed significant limitations in Japan's ability to gather necessary health data for surveillance and decision-making.

Japan's demographic decline has also contributed to a shortage of medical professionals, especially in rural areas,

further limiting access to critical healthcare services and underscoring the urgent need to accelerate its digital transformation. A 2022 white paper from the Ministry of Health, Labour, and Welfare (MHLW), presented to former Prime Minister Fumio Kishida, projected a shortfall of 960,000 medical and welfare workers by 2040. This gap would leave the workforce significantly below the 10.7 million workers needed to meet the demands of an aging population. The report underscores the potential for digital health to support the existing workforce by enhancing efficiency in healthcare services.³

These factors, along with the experience of the COVID-19 pandemic, have renewed interest in digital health tools. The Government of Japan is actively looking at ways to provide top-of-the line healthcare and advanced medical technologies to patients and to use digital health to reduce health inequities, increase operational efficiencies, and enhance patient convenience. Reflecting its view of digital health transformation as a key priority, the MHLW allocated roughly USD 400 million (JPY 61.7 billion) for the promotion of digital health innovation in its FY2024 budget.⁴ Additionally, on December 5, the Japanese

1 <https://www.bbc.com/news/world-asia-66850943>

2 <https://www.appliedclinicaltrials.com/view/is-japan-leading-a-new-digital-health-movement->

3 <https://www.mhlw.go.jp/english/wp/wp-hw2022/dl/summary.pdf>

4 <https://pj.jiho.jp/article/250187>

government released the draft of its next five-year healthcare plan, which promotes Japan's digital transformation (DX in healthcare and emphasizes the need for stronger data utilization and interdisciplinary engagement in AI and DX to advance innovation in drug discovery and medical devices. The government plans to promote and support the use of data and digital tools in research and development, including in AI drug discovery, genomic drug discovery, and software as a medical device (SaMD), as well as improve data processing and quality among other initiatives in the strategy.⁵

The U.S.-Japan Business Council's (USJBC) Healthcare Innovation Working Group previously identified digital innovation as a critical area of reform to reconfigure Japan's healthcare and regulatory frameworks to better support innovation and meet the evolving needs of its society. Since 2020, the USJBC has

issued recommendations to the U.S. and Japanese governments urging greater public-private cooperation and bilateral collaboration in four key identified areas:

- (1) Cross-Border Data Flows and Privacy;
- (2) Telemedicine and Remote Care;
- (3) Digital Therapeutics (DTx); and
- (4) Data Utilization and Artificial Intelligence (AI) Diagnostic Development.

Building on these efforts, this paper analyzes the state of Japan's digital health transformation and identifies additional opportunities for collaboration between the United States and Japan—particularly within the private sector. Such cooperation can enhance patient access, improve health outcomes, lower costs, and promote innovation.

⁵ <https://www.kantei.go.jp/jp/singi/kenkouiryoku/sanyokaigou/dai24/siryoku2-2.pdf>



Privacy, Data Utilization & Cross-Border Data Flows



Greater cooperation among the U.S., Japan, and like-minded countries on data privacy practices and cybersecurity is needed to ensure the free flow of data with trust and data-driven innovations across borders.

-USJBC



Globally, policymakers have been assessing the formidable challenges around facilitating cross-border health data flows to enable research and deliver healthcare services and products while safeguarding patient privacy. Cross-border data flows are essential for effective disease surveillance, especially during health emergencies such as pandemics or outbreaks. Sharing timely and accurate health data across borders enables global coordination, early detection of emerging threats, and accelerates response efforts. For example, the Antimicrobial Testing Leadership and Surveillance (ATLAS) platform tracks antimicrobial resistance (AMR) globally, relying on seamless data exchange between countries to monitor trends and provide insights into resistance patterns.

Japan is a staunch advocate of its Data Free Flow with Trust (DFFT) concept, which champions more seamless exchange of data across international borders among like-minded partners. However, achieving this requires a sophisticated alignment

and interoperability of privacy and data transfer frameworks between Japan and its international partners. Japan has been a leader in operationalizing DFFT through the Institutional Arrangement for Partnership (IAP), an international mechanism under the OECD.

Japan has also made significant strides in promoting cross-border data flows with trading partners through bilateral agreements. The U.S.-Japan Digital Trade Agreement, signed in 2019, includes provisions that prohibit certain data localization measures, ensure the free flow of data across borders, and protect against the forced disclosure of source code and algorithms as conditions for market access.⁶ Also in 2019, Japan became the first country in Asia to obtain a declaration by the European Union (EU) recognizing its standards as adequate under the General Data Protection Regulation (GDPR). This designation allows for the free transfer of data between the EU and Japan. The EU and Japan are currently discussing the expansion of their mutual adequacy arrangement to include research institutions and government agencies

⁶ <https://ustr.gov/countries-regions/japan-korea-apec/japan/us-japan-trade-agreement-negotiations/us-japan-digital-trade-agreement-text>

beyond the scope of the original agreement. The expansion would enable the EU and Japan to collaborate more effectively and efficiently on joint research involving personal medical data, share diagnostic data during infectious disease outbreaks, and seamlessly transfer information in advanced fields such as genetic research for drug discovery and development.⁷

The Act on the Protection of Personal Information (APPI) of Japan, subject to triennial reviews and amendments, imposes stringent requirements on global healthcare companies processing or importing personal information from Japan. The bill was amended in 2021 to include several key provisions that significantly impact data handling practices, such as the need for informed consent for cross-border data transfers, mandatory reporting and notification of data breaches, and the introduction of new categories of data such as “Personally Referable Information” and “Pseudonymously Processed Information.”⁸ Additionally, increased criminal penalties underscore the importance of compliance. The amendments also brought government-run hospitals and universities under

the same regulatory framework as the private sector, streamlining data sharing and transfer processes in compliance with APPI.

In June 2024, the Personal Information Protection Commission (PPC) released an Interim Summary outlining proposed changes to the APPI as part of its triennial review.⁹ Key proposals included relaxed reporting obligations for data breaches, new rules for biometric data, the introduction of a class action system and administrative fines for data privacy violations, and updated guidelines for handling children's personal information. The proposal, however, received mixed, predominantly negative reactions, primarily with respect to the implementation of a financial penalty scheme and tightening regulations, from both the industry and the ruling Liberal Democratic Party (LDP). Both industry and LDP representatives expressed concerns that the initially proposed approach was focused more on strengthening rules than allowing open economic activity. In addition, they voiced concerns regarding the negative impact of new fines and compliance costs on business activity and data utilization.^{10,11}

7 <https://www.nikkei.com/article/DGXZQOUA2029EQ4A620C2000000/>

8 <https://www.morganlewis.com/pubs/2022/08/how-japans-privacy-act-amendments-affect-global-healthcare-businesses>

9 <https://iapp.org/news/a/japan-s-dpa-publishes-interim-summary-of-amendments-to-data-protection-regulations>

10 <https://www.nikkei.com/article/DGXZQOUA1779V0X10C24A6000000/>

11 https://storage2.jimin.jp/pdf/news/policy/208287_2.pdf

In response to the feedback urging a reevaluation of the Act’s fundamental design—especially in light of new technologies like AI and the ongoing digital transformation—the PPC announced in October that it would revise its proposed amendments. The Commission will focus on three key areas:

- (1) the administrative fine system and related topics to be discussed in working groups;
- (2) individual issues such as biometric data; and
- (3) core principles that should guide personal information protection policy moving forward.

At a December 18, 2024 meeting, the Commission also considered industry concerns regarding the business impact and decided to limit the financial penalty proposal scope to “malicious cases”; although the definition of “malicious” is unclear and will require further debate.¹² With the revised APPI set to take effect in 2027, these changes are expected to have a significant impact on the healthcare industry’s data governance and compliance strategies.

Despite advancements in data flow interoperability that have enabled cross-border collaboration and research, Japan continues to face significant challenges in the collection, storage, and transfer of electronic medical records (EMRs). Japan lacks a national electronic health record (EHR) system that allows individual medical institutions to contribute to a centralized database. The United States implemented comprehensive policies in 2009 that allowed the digitalization of health records through the Health Information Technology for Economic and Clinical Health (HITECH) Act. The HITECH Act incentivized the adoption of electronic health records and strengthened the privacy and security provisions of the Health Insurance Portability and Accountability Act (HIPAA). Historically, medical institutions in Japan have been hesitant to adopt EMRs due to concerns about data leakage, high IT system operating costs, and a shortage of IT personnel. To address these challenges, the Japanese government could model current approaches to EMR policy implementation on the U.S. 2009 HITECH Act.¹³

¹² <https://news.yahoo.co.jp/articles/b14e0a205ddb5f476d8c26baa6b7e4ba60f84e0c>

¹³ <https://www.sciencedirect.com/science/article/pii/S1386505622000661>

In a meeting of the Headquarters for Medical Digital Transformation (DX) Promotion in 2023, former Prime Minister Kishida announced the development of a new system to facilitate EMR information sharing. This initiative includes the creation of a standardized cloud-based EMR system, with the goal of enabling the exchange of essential patient medical information across nearly all medical institutions by 2030.¹⁴ Recently, the Digital Agency's My Number Portal introduced a new feature allowing individuals to access their own health and medical records. However, its scalability and adoption remain limited, suggesting that the adoption of EHRs continues to be dogged by public mistrust.

Another significant concern is the utilization of data for broader medical research and innovation. While Japan does not have a

specific data protection and management framework for health information,¹⁵ this area does fall under “special care-required personal information.” In principle, medical institutions in Japan must obtain patient consent for each research or statistical project that involves extracting and sharing data from EHRs, making creating a comprehensive database difficult. According to an OECD survey conducted between 2019 and 2020, Japan, despite having a high percentage of national health datasets available, demonstrates a significantly lower rate of regular linkage of these datasets for research, statistics, and monitoring indicators—only 9%, compared to 100% in countries like Finland.¹⁶ This presents a critical challenge to effectively leveraging health data for advancing medical research and improving patient outcomes in Japan.

¹⁴ https://www.kantei.go.jp/jp/101_kishida/actions/202306/02iryoudx.html

¹⁵ <https://www.lexology.com/library/detail.aspx?g=80355ecc-4c42-4c5e-9488-3cd533b26b2c>

¹⁶ <https://www.oecd-ilibrary.org/docserver/55d24b5d-en.pdf?expires=1721309713&id=id&accname=guest&checksum=574AE73C2EEDC2DEC9A1674B5EF6CC04>



Recommendations

- Exchange best practices on responsible data collection, enhancing interoperability, cybersecurity, and leveraging private sector technologies and capacity.
- Promote trust and understanding with the public about the value of collecting, storing, and using data to evaluate and/or create new medicines/technologies, and support pandemic detection and response.
- Advance data sharing and integration by enacting legislation that facilitates cross-border data exchange and safeguards privacy, endorsing the development and adoption of international data standards, and providing targeted funding or incentives to public providers for the implementation of interoperable data systems that adhere to stringent security and privacy regulations.
- Support U.S.-Japan and multilateral cooperation on privacy and cybersecurity efforts by ensuring that: privacy and cybersecurity policies are risk-based and globally aligned; privacy regimes are proportionate, balanced, and developed in partnership with industry; and cybersecurity is strengthened by enabling cross-border data flows and investing in cloud computing storage services, as opposed to forced data localization, which would only undermine the security of health data.

Telemedicine and Remote Care



Telemedicine could provide long-term, irrevocable benefits and convenience for Japanese society beyond COVID-19, not just to address the rising demands of a rapidly aging population but as a beneficial medical service for patients during public health crises.

-USJBC

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During the COVID-19 pandemic, telemedicine was quickly identified as an area of critical importance for the transformation of healthcare services in both Japan and the United States. In June 2020, then-U.S. Embassy Tokyo Chargé d’Affaires ad interim Joseph Young spoke about the “rapid adoption of digital solutions” amid the disruption of COVID-19 and pointed to healthcare—specifically telemedicine—as an important area of “leveraging innovative technology in patient care, contact tracing and the development of treatments.”¹⁷ Young, at the time, was encouraged by the increased use and popularity of telemedicine and progress in related regulatory review in both countries.

In Japan, telemedicine services had a very slow uptake in clinics and medical institutions prior to the COVID-19 pandemic. Regulations still required in-person first contact for reimbursement; platforms for virtual engagements were still limited; and

trust in new methods of healthcare delivery was low. In 2018, only 970 clinics were registered as offering telemedicine services. By July 2020, this number had increased exponentially to 16,100 as regulations were temporarily eased during the COVID-19 pandemic, allowing first visits to happen virtually and be reimbursed. By 2021 (the most recent year for which data is available), the number of registered clinics with telemedicine services increased to 17,000¹⁸ (15%). In 2022, the top diseases treated via telemedicine were COVID-19 (56.5%), acute upper respiratory tract infection (19.8%), and acute bronchitis (16.4%).¹⁹ Although the United States’ market and regulatory environment differs from Japan’s, it saw a similar growth in telemedicine services during the pandemic: according to a 2023 American Medical Association survey, 74.4% of physicians reported that telehealth was used in their medical practices—up from 25.1% in 2018.²⁰ However, in Japan, the

17 <https://asia.nikkei.com/Opinion/US-Japan-digital-cooperation-is-world-leading>

18 <https://www.reuters.com/article/idUSKBN24A01P/>

19 <https://www.mhlw.go.jp/content/12404000/001165066.pdf>

20 <https://www.ama-assn.org/system/files/2022-prp-telehealth.pdf>

percentage of medical institutions that have actually implemented telephone or online medical care from the first visit is currently less than 1% of the total.²¹ This may be due to gaps in IT literacy among GPs (78% of whom are over 50 years old) and the fact that the elderly are particularly comfortable with face-to-face consultations.

While the sector was at first slow to pick up telemedicine services, COVID-19 provided the catalyst for rapid adoption and expansion. The Japanese telehealth market is expected to grow to USD 15 billion by 2030²², supported by ongoing government deregulation and updated reimbursement policies. These efforts have made it possible for the industry to drive development and innovation in the market, with major players and startups both playing key roles. Limited but expanding reimbursement for telemedicine services and incentives for expanded access are further driving uptake,

as local governments provide medical institutions with subsidies and reimbursements to adopt new service formats and insurance companies start to cover these services.

Furthermore, research and development to advance telemedicine technologies to create better access, especially for rural and isolated areas, and reduce health disparities is advancing at the university level—a prime area for U.S.-Japan collaboration, and one highlighted by both countries' leaders during the historic April 2024 U.S.-Japan Leaders' Summit. An example of this is research at Nagoya University investigating how 5G connectivity can enable telemedicine to contribute to medical care in remote communities. The Japanese government is also taking a direct part in this transformation, recently completing a three-month demonstration project establishing telemedicine services at “community centers” like post offices.²³

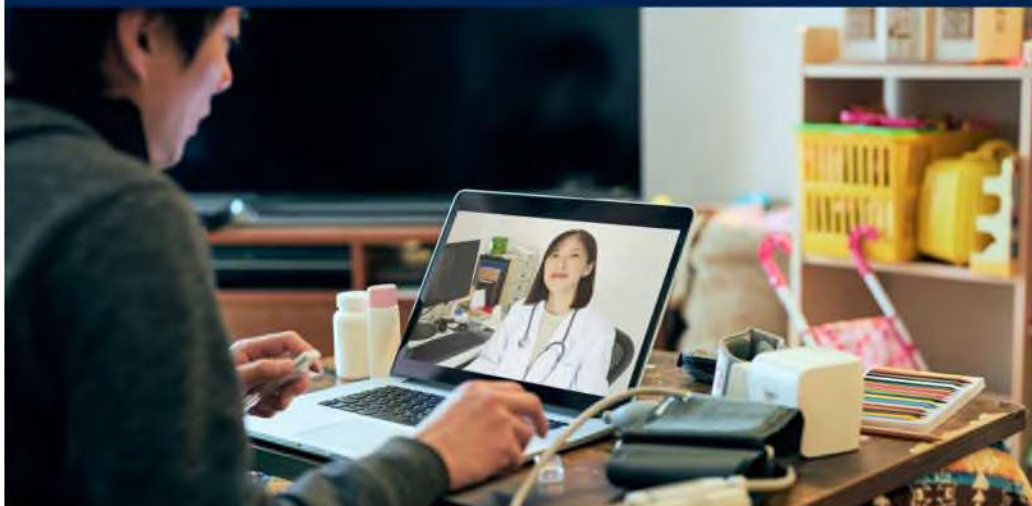
21 <https://www.soumu.go.jp/johotsusintokei/whitepaper/ja/r03/html/nd122320.html>

22 <https://www.insights10.com/report/japan-telemedicine-market-analysis/>

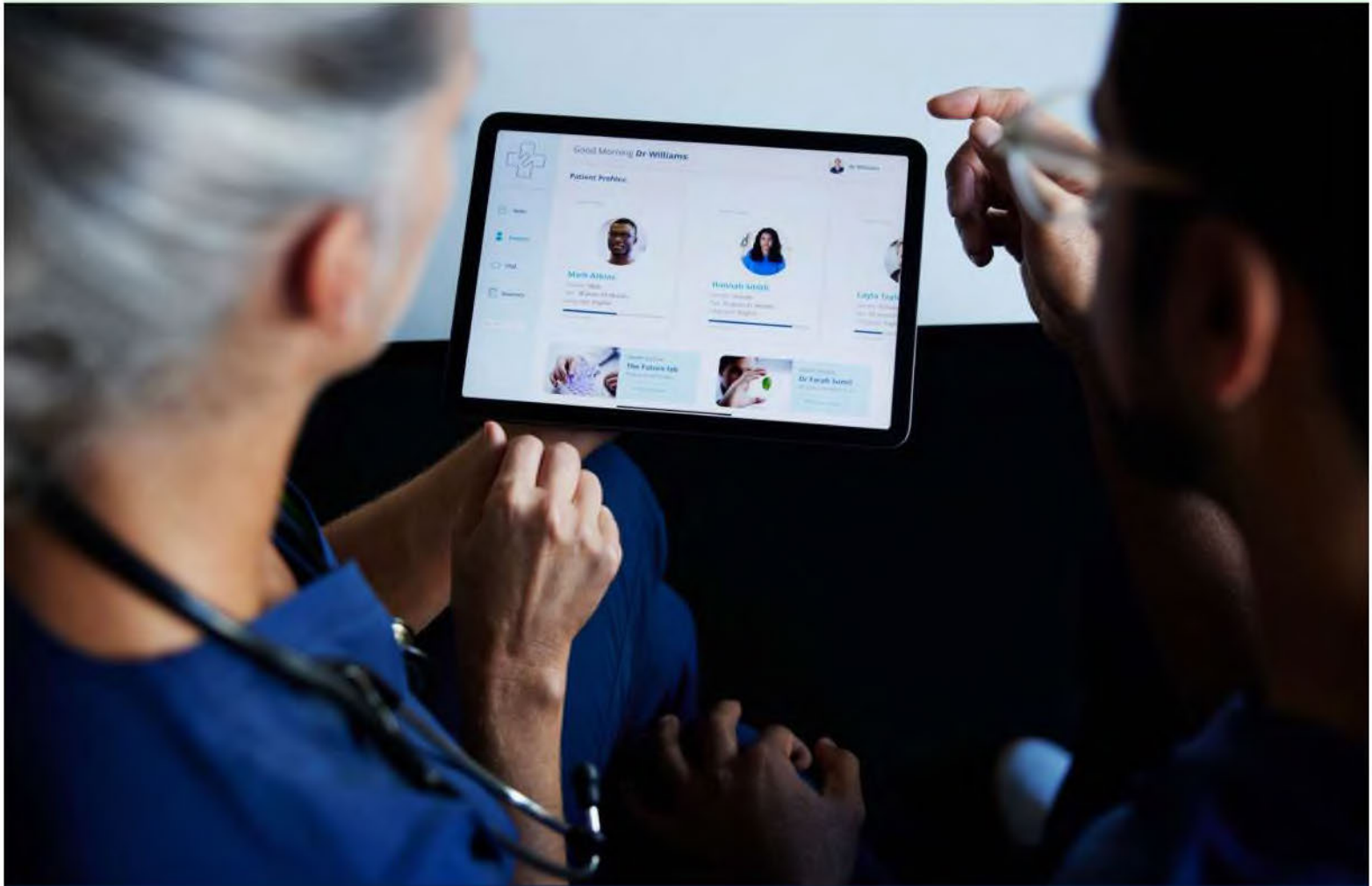
23 <https://pj.jiho.jp/article/250830>

Recommendations

- Promote equitable access by investing in digital infrastructure, including widespread internet access, and by fostering public-private partnerships.
- Support healthcare providers in adopting innovative digital health solutions through education campaigns and adoption incentives like expanding reimbursement scope for telemedicine services.
- Mobilize investment for digital health infrastructure, particularly in remote, rural, and underserved areas, through traditional financing mechanisms like tax incentives, subsidies and fund-matching schemes, as well as through innovative financing mechanisms like development impact bonds and blended financing instruments.
- Promote digital health literacy to ensure that all individuals are equipped to effectively use digital health technologies, including by collaborating with educational institutions to incorporate digital health education into healthcare curricula and conducting outreach campaigns to groups that may face additional barriers to digital health literacy, such as the elderly.
- Develop best practices to promote paperless operations for healthcare, including by removing the requirement to create/submit physical documents and amending the regulations under the Electronic Signature Act to clarify the legal status of cloud-based digital signatures.



Digital Therapeutics (DTx)



Develop policies and a regulatory environment conducive to the monetization and reimbursement of digital solutions to accelerate the development of digital therapeutics (DTx).

-USJBC

The development and implementation of Digital Therapeutics, also known as DTx, is making further headway in Japan, given the growing need for alternative and innovative ways to deliver and monitor health. Software for mobile devices, software as a medical device (SaMD), and other software tools are being developed with the same vigor as innovative medical devices and pharmaceuticals, with clinical trials verifying their safety and efficacy to support or implement medical practices and advance disease prevention, diagnosis, treatment, and health management. Such technologies include everyday items like health and fitness apps on smartphones, clinically approved apps to manage chronic conditions, and new technologies like head-mounted displays.

Companies are pushing ahead with innovative digital health products, supported by the Japanese government's efforts to streamline regulations for the adoption and implementation of DTx as part of its initiatives to upgrade its healthcare system. The 2014 revision of the Act on Securing Quality, Efficacy, and Safety

of Products Including Pharmaceuticals and Medical Devices and the release of the Japanese government's Action Plan of Growth Strategy called for initiatives to set the foundation for Japan's digitalization of medicine, nursing care, and healthcare, like the establishment and utilization of a digital infrastructure in medical care and the creation of a system for utilizing medical and personal information. The government subsequently promoted the early adoption of SaMD products through the Digital Transformation Action Strategies in Healthcare (DASH) for SaMD in 2020 and unveiled an updated DASH strategy package (dubbed DASH 2) to enable clearer approval processes in 2023.

Despite early support and changes toward development and implementation of DTx, adoption remained sluggish until 2020, when startup CureApp received Japan's first DTx regulatory approval for its "CureApp SC," a nicotine addiction treatment app. This was followed by the world's first regulatory approval for its "CureApp HT"—a hypertension management app—in 2022.



Japanese companies are also contributing to the development of DTx in the United States, with Otsuka Pharmaceutical and Click Therapeutics recently announcing U.S. FDA approval for Rejoyn, the first prescription digital therapeutic authorized for the treatment of major depressive disorder symptoms.²⁴

However, Japan still lags behind its counterparts in the United States and Europe, approving or reviewing only three SaMD therapeutic apps as of April 2024, compared to 32 in Germany and 27 in the United States. Additionally, a total of 141 apps in the United States and 48 in Europe were in development at that time, while just 12 were being developed in Japan.²⁵ So while there has been movement in this space, there is clearly room for improvement

and opportunities for further industry engagement and collaboration. Clearer criteria for reimbursement for SaMDs would provide a more predictable environment for developers. Chronic regulatory challenges around language requirements also hinder expansion of SaMDs in the Japanese market, given the Japanese language requirement for application documents.²⁶ The Japan Digital Health Alliance (JaDHA), established in 2022, is leading the charge in Japan for further regulatory and reimbursement reform, as well as to grow familiarity with digital health among consumers and healthcare providers. The group also aims to expand its international collaboration, exploring opportunities to cooperate with the U.S. Digital Therapeutics Alliance.²⁷

²⁴ <https://www.otsuka-us.com/news/rejoyn-fda-authorized>

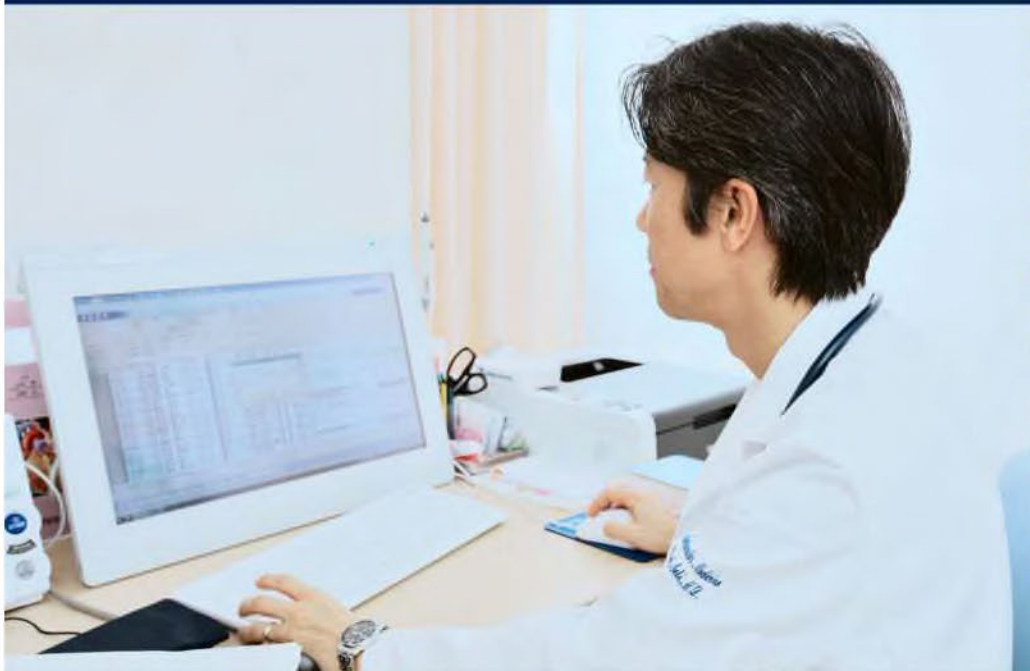
²⁵ <https://pj.jiho.jp/article/249676>

²⁶ <https://www.pmda.go.jp/english/about-pmda/0004.html>

²⁷ <https://pj.jiho.jp/article/251210>

Recommendations

- Review existing reimbursement methods with the potential for identifying new options for payment policies that could promote the alternative delivery of treatments including via digital therapeutics and telemedicine.
- Engage with domestic and international partners from the public and private sectors to share best practices and discuss ways to improve the DTx development process, resolve delays in regulatory reviews and approvals, and enhance patient access to innovative digital therapeutics.
- Develop a clear criteria for reimbursement for SaMDs, in close collaboration with the private sector, to allow for a predictable regulatory environment.
- Address regulatory challenges around language requirements by extending PMDA's pilot English-language application initiative for pharmaceutical applications to medical devices and SaMD. The September 2024 initiative allows foreign companies to submit an application in English if they do not have a branch office in Japan on a case by case basis. The program could be extended to include foreign medical device companies as well to accelerate SaMD development and innovative product launches.



AI in Diagnostics and Drug Discovery



Research in healthcare AI has been growing rapidly, but launching real-world applications remains challenging given concerns about generalizability and bias, as well as compliance with data privacy laws.

-USJBC



Patient access to critical care and the efficient development of drugs and medical devices have driven much of the digital transformation in healthcare and research and development. Developers and providers are also driving change to address the accelerating shortage of medical workers and researchers. A growing number of startups are exploring alternative resources, including AI-enabled or enhanced medical technologies, to make processes faster and more efficient for developers, medical institutions, providers, and patients. Japan's market for diagnostic and therapeutic healthcare tools enabled by AI is expected to be worth around USD 114 million by 2027²⁸, with startups founded by medical professionals driving much of this momentum.

AI for healthcare, as currently conceived, involves the ability to process and learn from massive amounts of data, and includes machine and deep learning, expert systems, natural language processing and large language model (LLM) technologies, healthcare informatics,

and cloud computing, as well as applications in robotics. Japan has focused on the use of AI in health and medical care since as early as 2015, when the government established an expert panel on the promotion of the use of information and communications technology (ICT) in the fields of health and medical care.²⁹ It then launched a consortium for accelerating the development of AI in the fields of health and medical care in 2018, which developed a road map to address challenges in the use of AI, such as informed consent, anonymization of data, and regulatory reviews.

Japan's push to incorporate AI into its healthcare ecosystem is largely meant to address the difficult intersection of a declining healthcare workforce, growing aging population, and unmet needs in drug discovery and medical devices. The government has recognized the strain on human resources—researchers, doctors, and medical professionals—to maintain quality care for patients and contribute to drug discovery and development. An interim

28 <https://www.weforum.org/agenda/2023/12/three-ai-tools-setting-the-stage-for-a-tech-revolution-by-japans-entrepreneurial-doctors/>

29 https://www.jstage.jst.go.jp/article/jnipph/72/1/72_2/_pdf

report released in May 2024 by Japan's "council for the rapid delivery of the latest medicines to public through the improvement of drug discovery and development capabilities" details the human resource constraints at university hospitals, where doctors face an increased workload and lack the resources to contribute to drug discovery. The report recommends that resources are allocated to improve work efficiencies through the use of digital health transformation and the use of AI in development and clinical trials, as well as medical treatments and diagnostics.³⁰

AI is already enabling more efficient, rapid innovation in drug discovery and medical devices and enhances the ability of existing diagnostic modalities to identify diseases. Such use of AI in disease categorization and identification reduces misclassification and increases quality of care, while opening up the market to other telemedicine solutions. Japan has established programs to integrate data derived from industry and academia into AI databases to better support research and development. One such program had

18 participating firms as of 2021. Another program launched in 2021, called the Healthcare AI Platform Collaborative Innovation Partnership, has supported efforts to integrate AI into R&D and helped find effective ways to utilize AI in healthcare.³¹ Universities are also working to establish hubs and institutions in support of AI utilization in research and development. Tohoku University Graduate School of Medicine created The Medicinal Hub to connect doctors, AI experts, and health technology companies to develop AI-based medical solutions.³²

As the government looks to support providers and developers, the startup community has been active in enhancing Japan's established strengths in areas like diagnostics with AI technologies. For example, one area of focus has been endoscopes for early cancer detection. Japanese companies hold 98% of the global market, and entrepreneurial AI companies like AI Medical Services (AIM) are leveraging their resources and expertise to develop AI tools to enhance cancer detection.³³ Other diagnostic areas that startup companies have focused on include influenza and heart disease.

30 <https://pj.jiho.jp/sites/default/files/pj/document/2024/05/Interim%20Report%20%28May%2022%2C%20Japanese%20only%29.pdf>

31 https://www.jstage.jst.go.jp/article/jnip/72/1/72_2/_pdf

32 <https://www.nature.com/articles/d42473-023-00376-2>

33 <https://www.weforum.org/agenda/2023/12/three-ai-tools-setting-the-stage-for-a-tech-revolution-by-japans-entrepreneurial-doctors/>

The United States and Japan are also collaborating on AI diagnostic development. In June 2024, SoftBank announced a joint venture with Chicago-based health tech company Tempus, worth USD 200 million, to develop AI medical technology starting in oncology. The joint venture will enable the Chicago-based company to “build clinical sequencing capabilities, organize patient data and build a real-world data business in Japan,” with SoftBank providing “genomic testing, medical data aggregation and analysis (genomic, clinical, pathology and imaging data), as well as AI insights for personalized treatments and therapies.”³⁴

Despite the accelerating development of innovative diagnostic and research tools using AI, and Japan’s focus on supporting medical care professionals by making their work more efficient, companies still face regulatory hurdles in Japan. With regulatory approval for AI medical tools taking up to a year, only about 30 AI medical devices have been approved and certified in Japan as of February 2023, and any upgrades are required to undergo additional scrutiny post-approval. Integrating the devices into everyday medical use also continues to be a challenge as not all new innovative AI tools are

covered by the national health insurance system and healthcare providers do not receive reimbursements for the service.

The Japanese government clearly recognizes the challenges and opportunities presented by AI technologies in healthcare. In addition to the government’s interim report, Japan’s Pharmaceuticals and Medical Devices Agency (PMDA) is already implementing policies that address the evolving nature of medical devices that incorporate software and machine learning (ML) technologies. As part of the government’s support, MHLW also earmarked JPY 61.7 billion of its JPY 33.8 trillion FY2024 budget toward “promoting the establishment of a platform for innovation” and supporting AI-driven drug discovery research that is oriented toward patients and clinical settings. A separate report from the MHLW’s Project Team on Healthcare Startup Acceleration, led by former MHLW Parliamentary Vice-Minister Akihisa Shiozaki, urged further government support of startups in this area. The project team pledged to unlock Japan’s startup potential and address challenges through strategic investments in areas like AI data utilization and increased communication and government engagement with startups.³⁵

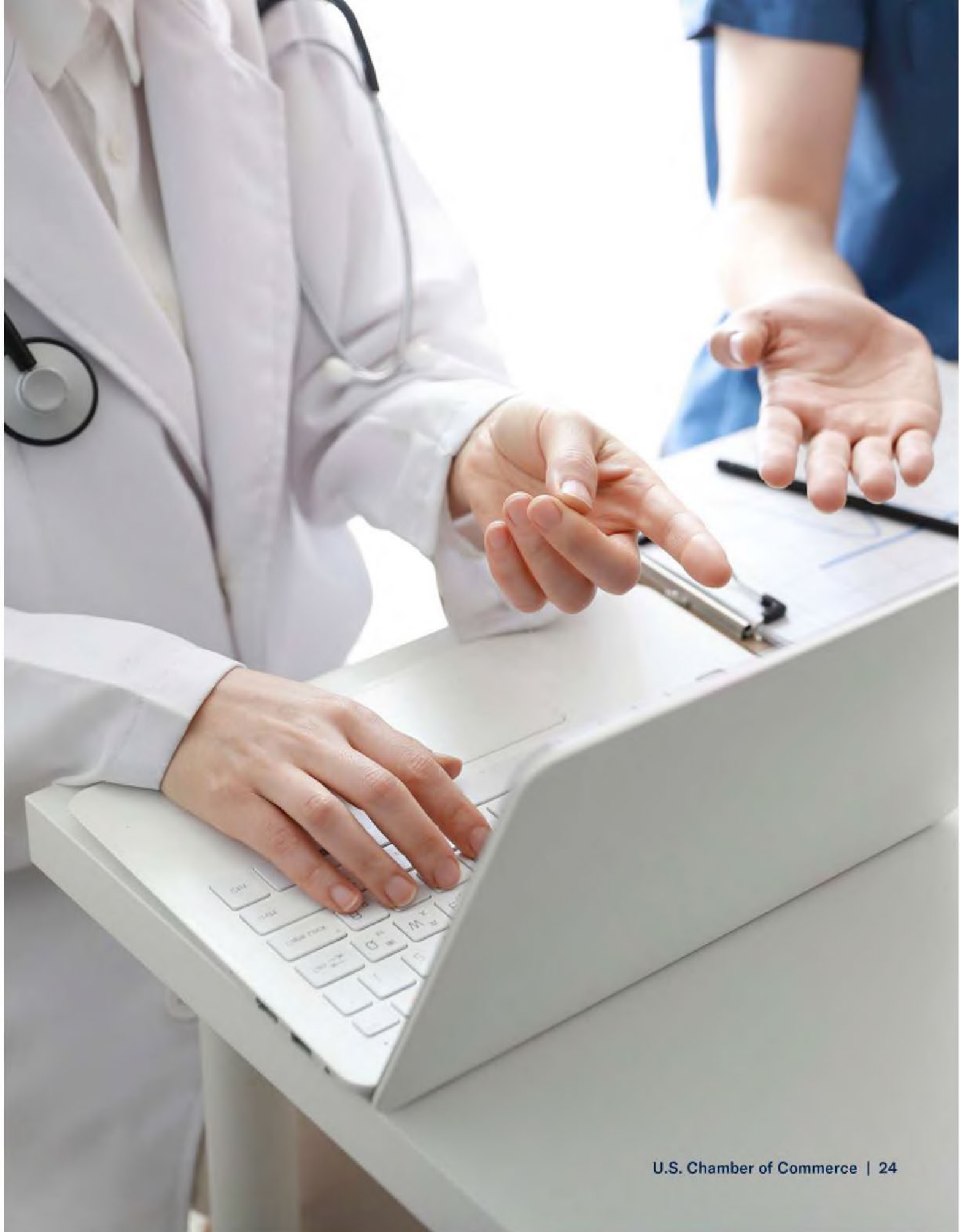
34 <https://techcrunch.com/2024/06/27/softbank-forms-ai-healthcare-jv-in-japan-with-tempus/>

35 <https://www.mhlw.go.jp/content/10807000/001257559.pdf>

Recommendations

- Review policies on responsible AI use in healthcare R&D and explore consensus-based definitions and frameworks for responsible AI.
- Incorporate education on AI tools for healthcare workers.
- Improve the regulatory approval system for AI-based technologies in the health sector.
- Push for legislation that covers more AI tools within the national health insurance scheme.
- Support the more extensive utilization of EMRs or EHRs for medical research and drug development and the use of AI tools, including LLM, by healthcare workers in research using these records.
- Promote public-private dialogue to encourage Japan to embrace data-driven solutions to healthcare challenges through evidence-based policy that supports data utilization.





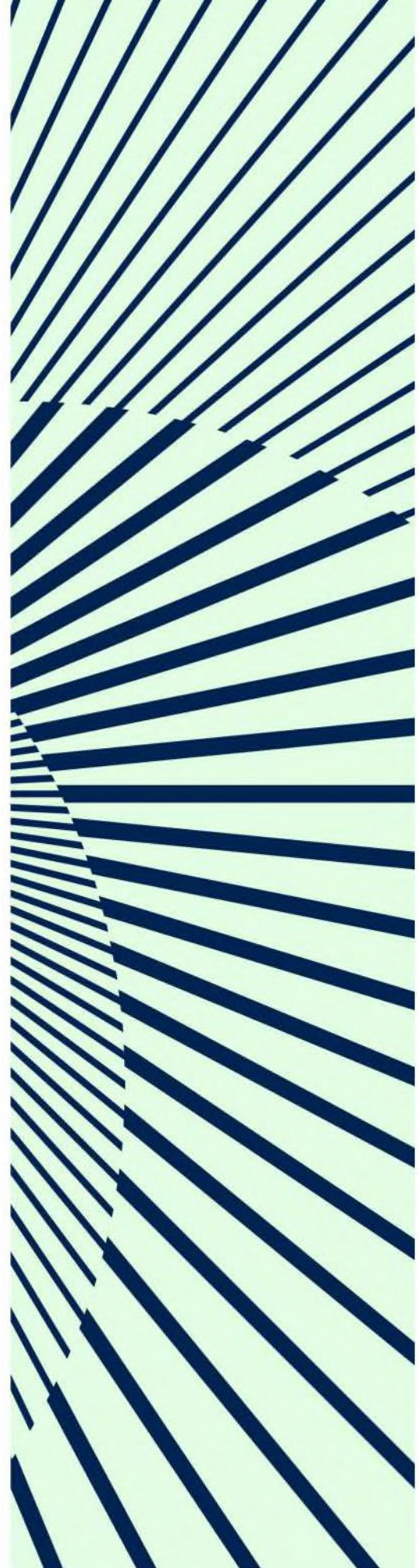
Conclusion

Japan is making strides in its digital health transformation, especially in the post-COVID-19 era, but there are ample areas for further leadership and improvements to ensure reliable, accessible health systems. Foremost among these are hurdles to sharing health data among medical institutions and companies to improve patient care and support research efforts. However, even this area has been trending toward eased regulations due to the need to improve efficiency in medical research and development and provide transparency in clinical trials.³⁶

As it works to create an innovative, efficient, and resilient healthcare ecosystem, the Japanese government has been engaging the private and academic sector for their perspectives now more than ever. U.S. companies can further build on this momentum and engage with the Japanese government, partners in the private sector, and research institutions to advance the country's digital health transformation.

Cooperation between the U.S. and Japan on digital health presents a unique opportunity to revitalize bilateral engagement and secure some near-term wins for both countries that can advance the health and well-being of their populations.

³⁶ https://www.jpma.or.jp/english/reports/drug_evaluation_committee/eki4g60000001d6n-att/ctds_nl_2019.pdf





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