November 30, 2023

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

Dear President Biden:

We write to express our concerns with the decision of the United States Trade Representative (USTR) to stop supporting key commitments in the e-commerce negotiations at the World Trade Organization (WTO)—and potentially in other negotiations. These commitments reflect bipartisan principles that, until now, the United States has strongly supported across political parties, administrations, and the federal government: an open internet that promotes the flow of information across borders to support American exports and American values. USTR's decision to abandon these commitments at the WTO creates a policy vacuum that China and Russia will fill. Accordingly, before changing the longstanding U.S. position, we request that you work with Congress and run a comprehensive consultation process—with other federal agencies, with the public, and with us—to reach a consensus U.S. position on these issues that promotes U.S. competitiveness, innovation, and jobs.

For decades, the United States has been at the helm of global leadership on protecting, promoting, and expanding the open internet as both a means of worldwide connectivity and an engine of U.S. economic growth and opportunity. This effort has long been a feature of U.S. trade policy: the United States advocated for commitments to ensure the free flow of information in WTO rules agreed to almost 30 years ago, and our trade agreements with Korea, Mexico, Canada, and Japan include strong digital trade rules guaranteeing the right to move data across borders. In this vein, the United States joined negotiations on e-commerce at the WTO, working with like-minded democratic allies to create rules for a digital economy that is open, fair, and competitive for all. The United States has supported proposals to spur economic growth, encourage free expression and access to information, and promote consumer protections online, while also allowing countries to address concerns regarding security, privacy, surveillance, and competition. These negotiations are crucial to our strategic approach to outcompeting our adversaries: both China and Russia are at the negotiating table, actively pushing their cyber-agenda of censorship, repression, and surveillance that not only hurts their own citizens but also undercuts U.S. competitiveness. Indeed, China is actively seeking to weaken the very principles at issue so it can promote its own version of internet governance.

In spite of this, on October 25, 2023, USTR reversed course and announced that it was walking away from the negotiating table on several core commitments in the e-commerce negotiations. These commitments, which again have broad bipartisan support, are fundamental to the modern economy, supporting U.S. businesses of all sizes across all sectors. Specifically, USTR abandoned the following commitments:

- *Promoting the free flow of data.* Almost every sector of the U.S. economy requires cross-border data flows, from manufacturers sharing product specifications, to airlines diagnosing problems mid-flight, to farmers leveraging precision agriculture to maximize crop yield. Arbitrary and trade-distorting restrictions on cross-border data flows that serve no legitimate public policy purpose can prevent American firms from doing business abroad, stifle economic growth here at home, and trample on human rights in authoritarian countries. Russia, for example, has weaponized data-restrictive laws to crack down on dissent, control information, and expel civil society organizations amidst its ongoing invasion of Ukraine.[1] Recognizing the importance of data flows to U.S. economic and foreign policy goals, the United States' original proposal at the WTO sought to ensure that consumers, companies, and non-governmental organizations could move data across international borders, while recognizing that countries must be able to act in the public interest, such as to protect personal data from abuse and foreign surveillance.

- *Combating forced data localization.* China and Russia, as well as other countries emboldened by their actions, have increasingly pursued data localization measures that require certain domestic data to be stored or processed within their borders. These policies require companies to build or maintain capital- and energy-intensive infrastructure in every market they enter, a major expense for large businesses, but an insurmountable hurdle for small and medium-sized enterprises. Small and medium-sized businesses are then left with an impossible choice: enter a risky joint venture with a foreign enterprise or get shut out of the market entirely. In this way, authoritarian governments leverage data localization measures to discourage competition and facilitate governmental access to data within their borders, helping them access trade secrets, censor and surveil their citizens, and hide human rights abuses, including forced labor.[2] The United States' proposal sought to limit data localization, while acknowledging that in certain circumstances, data localization may be appropriate to address national security, law enforcement, and privacy concerns.

- *Preventing forced tech transfer.* The U.S. government opposes the Chinese government's practice of conditioning market access on the sharing of proprietary information belonging to U.S. innovators, creators, and start-ups—a threat to both our economic and national security.[3] The United States' proposal sought to ensure that countries could not

1 Justin Sherman, The Brookings Institution, *Russia is Weaponizing Its Data Laws Against Foreign Organizations* (Sept. 27, 2022), https://www.brookings.edu/articles/russia-is-weaponizing-its-data-laws-against-foreign-organizations/.

2 Freedom House, *User Privacy or Cyber Sovereignty?* (2020), https://freedomhouse.org/report/special-report/2020/user-privacy-or-cyber-sovereignty.

3 Daniel Wagner, *The Global Implications of China's National and Cyber Security Laws*, International Policy Digest (Aug. 10, 2020), https://intpolicydigest.org/the-global-implications-of-china-s-national-and-cyber-security-

force businesses to surrender their source code or share it with domestic competitors as a condition of doing business, while preserving the ability of governments to access source code to achieve legitimate public policy objectives, such as conducting investigations and examinations and promoting consumer health and safety.

- *Open, competitive markets for digital goods and services.* The principle of non-discrimination has been a central component of U.S. trade policy for decades and underlies the international trading system that the United States helped create. It has opened markets for American exporters across industries, from farmers to filmmakers. At its core, non-discrimination ensures that foreign governments treat U.S. companies fairly. It ensures that countries cannot gain a competitive edge by targeting their regulations on imports from one or multiple countries without regulating similarly situated domestic businesses. China, in particular, has leveraged discriminatory policies to handicap international competitors and nurture its domestic companies, many of which are state-owned enterprises that operate at the behest of the Chinese government.[4] Not only do these homegrown giants facilitate human and worker rights abuses, particularly in the Uyghur community in Xinjiang, but they have the ability to grow without competition and then undercut American competitors in international markets. Recognizing this, the U.S. WTO proposal sought to ensure that protections against discrimination would apply to digital products (e.g., apps, music, games, and movies), ensuring that American creators, innovators, and businesses could operate on a level playing field around the world.

As indicated above, each of these commitments maintained flexibility to regulate for legitimate public policy reasons.

USTR provided no policy alternatives to these longstanding and bipartisan U.S. positions, nor a timeline for providing them. We are concerned that USTR's retreat will hurt workers and employers across all sectors of the U.S. economy, with disproportionate effects on small and medium-sized businesses in creative industries like film, music, and book publishing; innovative industries like software, medical devices, and precision agriculture; travel, tourism, and transportation; logistics, shipping, and supply chain management; and manufacturing, including the critical automotive and semiconductor sectors. Moreover, with this abrupt change in policy, USTR has not only turned its back on our democratic allies and undermined U.S. credibility in other negotiations and fora around the world, but it has also empowered authoritarian regimes like China and Russia, who are eager to fill the void and regulate U.S. jobs out of existence.

We recognize that there is much interest in the digital regulation space, particularly with the rapid adoption of artificial intelligence technology. We welcome discussions and debate on the best way to protect consumers, promote privacy, and ensure a competitive marketplace. However, these efforts do not require the United States to walk away from negotiating strong rules at the WTO that support U.S. businesses and workers—nor would these rules constrain the

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laws.

4 U.S.-China Economic and Security Review Commission, *2021 Annual Report to Congress* at p. 165, https://www.uscc.gov/annual-report/2021-annual-report-congress ("The Chinese Communist Party (CCP) views achieving technological self-sufficiency as essential for both economic growth and political survival.").

ability of the United States to regulate. In fact, the commitments under discussion have built-in exceptions that ensure countries can legislate in the public interest. Retreating from our longstanding principles without offering a viable alternative does not help U.S. workers, it does not help U.S. consumers, it does not help U.S. businesses, and it does not help U.S. allies; it only helps our adversaries.

We continue to support the core commitments that USTR has distanced itself from in the WTO e-commerce negotiations. We request that you run a consultation process before changing the historical, consensus U.S. position on these important issues. We look forward to working with you to address this and other bipartisan Member concerns.

Sincerely,

Ron Wyden
United States Senator

Mike Crapo
United States Senator

Thomas R. Carper
United States Senator

Bill Cassidy, M.D.
United States Senator

Chris Van Hollen
United States Senator

Thom Tillis
United States Senator

Christopher A. Coons
United States Senator

John Barrasso, M.D.
United States Senator

Catherine Cortez Masto
United States Senator

Charles E. Grassley
United States Senator

Tim Kaine
United States Senator

Ted Budd
United States Senator

Angus S. King, Jr.
United States Senator

Todd Young
United States Senator

Patty Murray
United States Senator

Shelley Moore Capito
United States Senator

Kirsten Gillibrand
United States Senator

Steve Daines
United States Senator

Maria Cantwell
United States Senator

Kevin Cramer
United States Senator

Kyrsten Sinema
United States Senator

Cynthia M. Lummis
United States Senator

Benjamin L. Cardin
United States Senator

John Cornyn
United States Senator

Mark Kelly
United States Senator

James E. Risch
United States Senator

Ted Cruz
United States Senator

Ron Johnson
United States Senator

Jacky Rosen
United States Senator

Alex Padilla
United States Senator

Tim Scott
United States Senator

James Lankford
United States Senator