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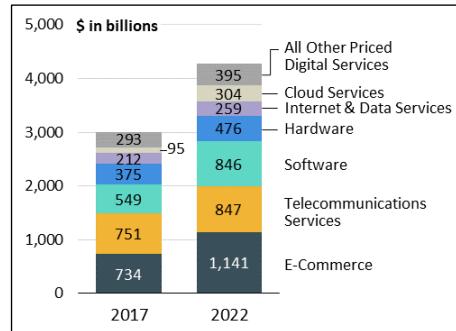
Digital Trade and Data Policy: Key Issues Facing Congress

Digital trade includes trade in all goods and services for which orders are placed digitally. E-commerce generally refers to digitally ordered goods. Services that are digitally ordered may also be delivered digitally (e.g., online banking) or provided through a subscription (e.g., streaming or cloud services). Cross-border data flows are essential to the technologies used to digitally order and deliver goods and services, and to many facets of the digital economy, including digital platforms. Because of this, much debate on digital trade has focused on data policy and technology. Digital trade issues facing Congress include data privacy, data localization, artificial intelligence (AI), and regulation of the technology sector. Congress could also monitor outcomes and impacts of U.S. negotiations involving digital trade, and consider action to encourage or require the executive branch to pursue certain objectives.

Measuring the Digital Economy

Output in the U.S. digital economy, consisting mainly of e-commerce, digital services (e.g., telecommunication, internet, and cloud services), and infrastructure (software and hardware), was \$4.3 trillion (9% of the value of all goods and services produced in the United States) in 2022 (most recent data available), an increase of 42% since 2017 (Figure 1). E-commerce was the largest activity by output, while cloud services was the fastest growing.

Figure 1. Digital Economy Gross Output



Source: CRS calculations using U.S. Bureau of Economic Analysis (BEA) data.

Note: Excludes federal nondefense digital services due to their small size (\$402 million in 2017 and \$457 million in 2022).

The total value of digital trade flows is difficult to estimate in part because official international trade statistics do not explicitly measure e-commerce or trade in digitally ordered or delivered services. Some measures of trade in digital services exist and provide insight into the growth of digital trade over time. The U.S. Bureau of Economic Analysis (BEA) tracks trade in services that could be delivered digitally, including telecommunications, business, and information services. U.S. exports of such services were \$626 billion in 2022 (67% of total U.S. services exports),

an increase of 28% since 2017. This growth outpaced the 11% growth in total U.S. services exports during this time. Some international organizations are discussing how to improve the accuracy of statistics on digital trade, including enhanced tracking of international business-to-consumer (B2C) or business-to-business (B2B) e-commerce and cross-border data flows (see text box).

Cross-Border Data Flows vs. Digital Trade

Most cross-border data flows are transfers of information between servers unrelated to commercial transactions. Digital trade involves the cross-border transfer of a good or service for money in a commercial transaction. Some cross-border data flows are digital trade (e.g., the online purchase of a dataset from a foreign company) or related to a digital trade transaction (e.g., data flows associated with international e-commerce). As a result, the treatment of cross-border data flows may impact digital trade. Digital trade is increasingly interconnected with data policy and regulation of emerging technologies (e.g., AI) and digital platforms, both of which rely on cross-border data flows.

U.S. Digital Trade and Data Policy

Until 2023, the United States generally supported policies in its free trade agreements (FTAs) that promote the free flow of data across borders with limited exceptions. In fall 2023, the Office of the U.S. Trade Representative (USTR) ended its support for certain proposed provisions in plurilateral negotiations on the Joint Statement Initiative (JSI) on E-commerce at the World Trade Organization (WTO) related to cross-border data flows, data localization, and source code. The United States also suspended digital trade talks in the Indo-Pacific Economic Framework for Prosperity (IPEF). USTR Katherine Tai attributed the decisions to the need for domestic policy space on digital economy issues given rapid technological advancement and shifting debates on technology regulation since the proposals were introduced in the WTO in 2019.

The decision was supported by some Members of Congress who described the suspended provisions as a potential hindrance to data privacy, anti-monopoly, and other digital safeguards sought by the Biden Administration and some in Congress. Other Members criticized the decision as negatively impacting U.S. businesses and workers since e-commerce is vital to many industries and as ceding U.S. leadership to other governments such as China. Several industry groups across a range of sectors expressed concern with the potential for restrictions on data flows to harm American workers. A coalition of technology companies that support more competition in the app marketplace praised the decision and urged the Administration to replace the provisions with regulation of technology firms. Some

Members have criticized USTR for not adequately consulting with Congress on the decision, which they assessed was a major change in U.S. digital trade policy. In March 2024, the Chairman of the House Committee on Oversight and Accountability launched an investigation over the alleged lack of consultations and the transparency of USTR's communications with civil society.

Negotiations in the JSI on E-commerce, a plurilateral negotiation with around 90 WTO members, concluded in July 2024. The United States, among others, did not sign the joint statement, stating that "more work is needed." U.S. officials have expressed concerns with whether the use of a security exception by a country should be subject to review.

Data Localization

Until 2023, the United States sought provisions within trade agreements to limit the use of data localization measures and raised concerns over the use of these measures in other countries. Data localization policies require that data generated within a country be stored and processed on servers within that country or in a cloud environment hosted and controlled by a firm physically located in the country. This restriction on the movement of data across borders may act as a trade barrier by requiring firms to comply with different regulations across countries and increase the cost of storing data. Data localization policies may be considered when privacy and national security concerns exist, particularly for the storage and transfer of sensitive data. TikTok's Project Texas is an example of a planned data localization effort to address data security concerns for U.S. user data; the project would store all data generated by U.S. users in Oracle's U.S. cloud environment with access controlled by a U.S.-based data security team.

Data Protection

The United States has not enacted comprehensive federal data protection legislation. Legislative proposals have been discussed in Congress (e.g., the American Privacy Rights Act). Data protection legislation generally aims to secure the privacy of consumer data. Protection of personal data can ease privacy and national security concerns. Restricting cross-border data flows could interfere in some firms' ability to conduct international trade.

Congress and the Administration are considering more limited data protection measures related to restricting cross-border data flows in instances when national security or the security of sensitive data on U.S. citizens is at risk. A February 2024 executive order issued by President Biden aims to restrict data brokerage activities and prohibit certain transactions with foreign adversaries when the U.S. government assesses a national security risk exists. The Justice Department issued an Advanced Notice of Proposed Rulemaking (ANPRM) to provide information on potential restrictions and solicit feedback. Bills that aim to implement data protection measures includes the Protecting Americans' Data from Foreign Surveillance Act of 2023 (S. 1974, H.R. 4108) and the Protecting Americans' Data from Foreign Adversaries Act (H.R. 7520).

Digital Economy Regulation

The United States does not have federal legislation that establishes standards for digital platforms and technology firms. Bills include the Future of AI Innovation Act (S. 4178) and bills to regulate TikTok.

U.S.-EU Relations on the Digital Economy

The United States and the EU have cooperated on standards for AI and other technology issues in the U.S.-EU Trade and Technology Council (TTC). More broadly, the EU's strategy for the digital economy includes several pieces of enacted legislation (see **text box**). Some observers have voiced concerns that some EU digital regulations discriminate against U.S. technology companies.

EU Regulations on the Digital Economy

General Data Protection Regulation (GDPR). Aims to protect individuals when their personal data is collected.

Digital Markets Act (DMA). Aims to increase competition in the digital marketplace; designates some large platforms as 'gatekeepers' subject to additional regulations.

Digital Services Act (DSA). Sets rules on user safety, content moderation, and platform accountability and transparency; designates some large platforms as 'Very Large Online Platforms' (VLOPs) subject to additional regulations.

AI Act. Sets rules on transparency, placing systems on the market, monitoring, and supporting innovation; requirements based on four risk levels: unacceptable, high, limited, minimal.

Considerations for Congress

Since removing support for some digital trade provisions at the WTO in 2023, USTR has not proposed new digital trade objectives. Congress is considering legislating in a number of areas that may shape the future of U.S. digital trade policy, including data privacy and regulation of the technology sector. Congress could consider, for example, how proposed data protection legislation might impact consumer data protection, treatment of cross-border flows of sensitive information, minimization of foreign adversaries' access to data on U.S. citizens, and regulation of data brokers. Congress could also consider legislating or conducting oversight on specific data localization issues (e.g., whether or not to mandate localization of data generated by U.S. TikTok users). When considering the overall digital economy, Congress could consider regulation or oversight of digital platforms and emerging technologies such as AI.

Congress could also consider to what extent future policy may depart from or conflict with standards set in agreements such as the U.S.-Mexico-Canada Agreement (USMCA) and the U.S.-Japan Digital Trade Agreement. Given the debate over the appropriate level of USTR's consultation with Congress in 2023, Congress could consider to what degree Members should be consulted by USTR on digital trade issues. Congress has set requirements for consultation and transparency in legislation such as Trade Promotion Authority, the most recent version of which expired in 2021 (P.L. 114-26).

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