TechAmerica

Before the United States Trade Representative

Re: Docket USTR-2013-0027
Re: Request for Public Comments Regarding the National Trade Estimate Report on Foreign Trade Barriers

Comments of TechAmerica

Prepared by Burak Guvensoylar
burakg@techamerica.org
October 22, 2013
Submitted Via Regulations.gov

TechAmerica

601 Pennsylvania Avenue, N.W.
North Building, Suite 600
Washington, D.C. 20004
202-595-3668

By Federal Register notice dated August 19, 2013, the United States Trade Representative solicited comments from stakeholders regarding the National Trade Estimate Report on Foreign Trade Barriers. This report sets out an inventory of the most important foreign barriers affecting U.S. exports of goods and services and U.S. foreign direct investment. We applaud the attention this year's report has placed on recognizing localization barriers to trade, restrictions on cross-border data and information flows, and restrictions on the use of data processing. These are the key 21st Century barriers that companies across sectors and sizes face when operating around the world. TechAmerica is pleased to respond this notice and to offer our industry's perspective on the importance of cross-border data flows to ensure stronger trade ties with our trading partners, and minimize the disruption and costs of regulatory differences.

TechAmerica is the leading voice of the US technology industry in Washington and throughout the U.S. In addition, we have a strong voice on technology regulatory issues in the EU through TechAmerica Europe. In the U.S. we represent hundreds of member companies from small to large enterprises who serve both public and private customers throughout the economy. Our members comprise the industry's largest advocacy organization, and have worked to ensure our voice is heard at both the grassroots as well as the global level. We have offices across the U.S., a shared-office with the U.S. Information Technology Office (USITO) in China, as well as in Brussels where our TechAmerica Europe office is located.

The high-tech industry, while a significant sector in size and employment in the U.S. (5.95 million jobs[1]) is also critical in terms of its competitive leadership role in trade policy. It invests more heavily in R&D than all other industry sectors, spurring innovations that help to boost productivity, lower consumer costs, and increase employment across all industries. The Internet economy has also expanded into a substantial driver of U.S. economic growth – accounting for more than 20 percent of GDP growth throughout developed economies and more than 5 million U.S. jobs. As a platform to facilitate global commerce, the Internet's impact exceeds that of many established traditional economic sectors such as energy and agriculture. At the same time, trade is the lifeblood of the high-tech industry, as most technology companies depend on exports for the majority of their revenues.

We believe the number one priority for USTR should be to preserve the ability to allow cross-border data flows between the U.S. and all of its trading partners. This is a universal issue that impacts every industry that uses the internet to market and sell their services and/or goods through websites, e-mail, social media, mobile devices, cloud services and online money transfer services. As United States Trade Representative Michael Froman recently said: "Combining globalization with new technology and with new business models has dramatically accelerated the pace of change and innovation. The flow of data is as important as the movement of goods."[2]

---

[1] Cyberstates 2013, TechAmerica Foundation, Yearly High-tech Sector Analysis
[2] World Trade Organization (WTO). WTO Public Forum. *World Trade Organization.* By Michael Froman. N.p., 1 Oct. 2013. Web. 22 Oct. 2013.
<http://www.wto.org/english/news_e/news13_e/pfor_01oct13_e.htm>

One form of restriction to cross-border information flows has been the growing threat of localization barriers to trade. In recent years, governments around the world have dramatically increased the use of localization policies that seek to protect local industries and national champions by discriminating against foreign competition. In key markets around the world, American companies have been faced with a wide range of protectionist policies, including technology transfer requirements, local data storage requirements, local ownership, discriminatory market access for foreign online sellers vs. local competitors, qualitative local hiring requirements, import restrictions, and restrictions on the cross-border flow of data, amongst others. These types of discriminatory policies not only undermine our ability to compete fairly in key markets, but lead to the fragmentation of the global economy.

Unfortunately, over the past year Vietnam, Indonesia, China, and Brazil have all proposed new restrictive measures to limit the transfer of data across borders. For example, the Vietnam Prime Minister signed decree # 72/2013 on the "Supervision, provision and use of Internet services and online data" on 15 July 2013 which comes into force on 1 September 2013. The Decree mandates that domestic providers of information websites, social networks and gaming services place at least one server in Vietnam for domestic service providers so authorities can have access to user data. This means domestic companies cannot use international platforms that do not have local servers in Vietnam. The Decree also intends to regulate service providers on a cross border basis - to date; the Government has not issued a clarifying Circular. TechAmerica members have also been alarmed by proposals in Brazil to require in storage data requirements that would have unintended repercussions on international consumers, businesses, and economic growth.

The European Union has also taken new measures that could impact cross-border information flows and the success of the Internet economy. The European Union is currently re-evaluating the EU-U.S. Safe Harbor Agreement (Safe Harbor) and proposed new privacy regulations and directives in 2012 to strengthen their own digital borders. We believe the Safe Harbor successfully bridges the differences in regulatory approaches between the U.S. and EU. This agreement should be preserved as the two trading partners strengthen their relationships through the Transatlantic Trade & Investment Partnership (TTIP) negotiations.

As USTR moves forward with trade negotiations, we appreciate its continuing effort to promote the ability to transfer data across borders through its trade principles which specifically address open networks, network access and use, cross-border information flows, local infrastructure requirements, use of spectrum, and international cooperation. However, we also encourage USTR to make commitments on the transfer of data on a "negative list" basis while establishing interoperable systems with the EU's Binding Corporate Rules and the Asia-Pacific Economic Cooperation (APEC) Cross-Border Privacy Rules (CBPR) rules. Furthermore, we recommend the expeditious allocation of all available spectrum using impartial, market-based mechanisms on service-flexible, technology-neutral terms.

TechAmerica believes a strong, interoperable and consistent global framework is needed in order for the digital economy to truly flourish. Without such a framework, technology could be faced with differing legal systems, raising the costs and burdens associated with compliance. In addition, companies could face liability concerns. Such uncertainty could diminish European and American companies' competitiveness in the global market. In addition, a strong, consistent data protection framework would enhance users' trust in digital products and services. This is especially important to support market acceptance of new technologies and services such as cloud computing.

This global interconnection is especially true with regard to Internet/cloud computing, for example. As Internet/cloud computing continues to grow, so too will the amount of data crossing national borders. If divergent claims to jurisdiction over user content remain, then it becomes quite difficult for providers to manage their legal obligations and their global technology operations while at the same time protect their consumers.

The growth of the Internet helps domestic businesses, both big and small, be more productive and export more, and lets Internet users around the globe start new businesses and find global customers. The Internet, consisting of cross-border information flows, impacts nearly every modern business.

Thank you for the opportunity to comment on this important and timely initiative. We strongly support the efforts of the USTR to take actionable steps to expand ICT trade and investment ties. We applaud the US government's efforts to recognize the most pressing restrictions on trade U.S. companies face when operating around the world. Preventing the forced localization of data and supporting cross-border information flows are key to both the success of the Internet economy and the global economic trading system. We offer any further assistance from our headquarters in Washington, D.C. and Brussels in these and other areas of ICT policy.