



U.S. House Committee on Ways and Means
Trade Subcommittee

“Protecting American Innovation by Establishing and Enforcing Strong Digital
Trade Rules”

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Chairman Smith, Ranking Member Blumenauer, and members of the subcommittee. On behalf of Workday, thank you for the opportunity to share our views on the synergies between strong digital trade rules, cross-border data flows, and smart technology regulation. I commend the subcommittee for convening today's hearing and for its bipartisan focus on U.S. leadership in digital trade in a challenging global environment.

My name is Evangelos Razis, and I'm Senior Manager of Public Policy at Workday, where I lead the company's policy efforts on data flows, privacy, and artificial intelligence (AI). My colleagues and I engage with federal and state policymakers to support workable, meaningful, and risk-based frameworks that build trust in digital technologies. Previously, I led digital trade and international data policy at the U.S. Chamber of Commerce, advocating around the world for U.S. exporters of all sizes and in every industry. Throughout my career, I have seen, first hand, the importance of U.S. leadership on digital trade in promoting and protecting American innovation.

Background

Workday is a leading provider of enterprise cloud applications for finance and human resources.¹ Founded in 2005, Workday offers companies a single cloud-native platform to help them manage their most important assets: their people and money.

Today, Workday is used by more than 10,500 organizations around the world and across industries, from medium-sized businesses to more than 60% of the Fortune 500. Headquartered in Pleasanton, California, we have nearly 20,000 employees and offices across the U.S., including in Atlanta, Boulder, Chicago, Dallas, McLean, Minneapolis, and Seattle. Our customers' employees are a community of more than 70 million Workday users, and in the first half of 2024 nearly 30% of all U.S. job openings were processed using our software.² We are deeply committed to providing innovative, reliable, and secure software services to our customers and their employees. We also believe we have a unique opportunity to improve employee experiences and empower people to do their best work.

For Workday and our customers, digital trade is essential for exporting to foreign markets and engaging in day-to-day global commerce. Our software platform is available in 35 languages and more than 175 countries, enabling enterprises and their employees to work seamlessly across borders. With 75% of our business in North America, access to foreign markets is essential for our continued growth.³

¹ "Company Overview," Workday Newsroom, <https://newsroom.workday.com/company-overview>.

² "Workday Global Workforce Report: Restoring Trust Before Your Top People Leave," Workday, 2024, https://forms.workday.com/en-us/reports/workday-global-workforce-report/form.html?step=step1_default.

³ Esherwood, P., "New Dawn, new Workday: Carl Eschenbach to lead next chapter," ERP Today, <https://erp.today/new-dawn-new-workday-carl-eschenbach-to-lead-next-chapter/>.

My testimony will focus on the importance of high-standard digital trade rules for cross-border data flows, which Workday and our customers rely on to grow, innovate, and do business around the world. I will also discuss the importance of smart regulations that build trust in the digital economy, especially with regard to data privacy and AI. We believe high-standard digital trade rules complement smart regulations and advance global regulatory cooperation, which promotes U.S. interests and better protects consumers.

I. U.S. leadership on digital trade is vital for cross-border data flows, which Workday and our customers rely on to grow, innovate, and do business.

Since the 1990s, the U.S. has led the world in advocating for rules, frameworks, and norms that advance an open digital economy.⁴ While this longstanding policy approach reflects American values and supports a variety of U.S. interests, the economic benefits are clear.⁵ The U.S. is the world's largest exporter of cross-border services, and digitally-enabled exports drive much of the U.S.'s \$1 trillion services trade surplus.⁶ A study published this spring found that digital trade supports 3 million American jobs.⁷ As a U.S.-headquartered company supporting thousands of U.S. enterprises, and whose platform is used by millions of American workers every day, we are proud to contribute to the U.S.'s considerable digital-trade advantage.

For decades, policymakers in Congress and the executive branch from both parties have sought to preserve this advantage through enforceable trade rules. In 2001, the U.S. entered its first trade agreement with commitments on electronic commerce.⁸ Previous administrations built on these efforts, culminating in the high-standard disciplines in the U.S.-Mexico-Canada Agreement (USMCA) and the U.S.-Japan Digital Trade Agreement (USJDTA). Today, these disciplines are the gold standard. The USMCA and USJDTA safeguard the free flow of information across

⁴ E.g., "A Framework For Global Electronic Commerce," The White House, July 1, 1997, <https://clintonwhitehouse4.archives.gov/WH/New/Commerce/read.html> ; "The Geneva Ministerial Declaration on global electronic commerce," World Trade Organization, May 18, 1998, https://www.wto.org/english/tratop_e/ecom_e/mindecl_e.htm.

⁵ See "Cross-Border Data Policy Index," Global Data Alliance, <https://globaldataalliance.org/resource/cross-border-data-policy-index/>.

⁶ "What Drives the U.S. Services Trade Surplus? Growth in Digitally-Enabled Services Exports," The White House, June 10, 2024, <https://www.whitehouse.gov/cea/written-materials/2024/06/10/what-drives-the-u-s-services-trade-surplus-growth-in-digitally-enabled-services-exports/> ; "Recent Trends in U.S. Services Trade: 2024 Annual Report," United States International Trade Commission, May, 2024, <https://www.usitc.gov/publications/332/pub5512.pdf>.

⁷ Heiber, J. and Ico, I., "How Digital Trade Benefits the American Economy," U.S. Chamber of Commerce, March 19, 2024, <https://www.uschamber.com/international/trade-agreements/how-digital-trade-benefits-the-american-economy>.

⁸ "Agreement Between the United States Of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area," October 24, 2000, <https://ustr.gov/sites/default/files/Jordan%20FTA.pdf>.

borders and ban market access barriers, including data localization requirements and mandates to transfer source code and algorithms as a condition for doing business.⁹ The rules in these agreements have only grown in importance because of rapid advances in AI.

Like many, we were surprised by the U.S. Trade Representative's (USTR) decision last year to withdraw support for high-standard digital trade rules at the World Trade Organization (WTO).¹⁰ U.S. leadership sets the tone around the world on data policy, and USTR's decision cedes crucial ground to the growing number of digital trade barriers erected abroad. It also appears at odds with the current administration's efforts to promote a freer and more secure internet and build "digital solidarity" with U.S. allies and partners.¹¹ Safeguarding cross-border data flows and protecting exporters from market access barriers has long been a bipartisan priority. We applaud committee members' recent expressions of support for high-standard digital trade rules, which are necessary in a challenging global environment.

For Workday, high-standard digital trade rules safeguard our ability to export innovative and secure software services abroad. The ability to transfer data and access information across borders is essential. Workday can develop AI-powered solutions in the U.S. and deliver them digitally to our customers, wherever they are in the world. While Workday is a technology company, enterprises in every major industry rely on our software platform to recruit, manage, train, and empower their employees; complete payroll; process benefits; and manage their finances. Workday can deliver services securely and in a privacy-protective way because of legal, technical, and administrative measures that are the cornerstone of the enterprise cloud software industry.¹²

The U.S. has multiple avenues for advancing the free flow of information and promoting open markets. Bilateral agreements, such as the U.S.-EU Data Privacy Framework, and multilateral initiatives at the Organization for Economic Cooperation and Development (OECD), among other fora, are vital for building trust in the digital economy.¹³ Yet they are not sufficient for

⁹ United States-Mexico-Canada Agreement, Chapter 19: Digital Trade, December 10, 2019, <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19-Digital-Trade.pdf> ; United States-Japan Digital Trade Agreement, October 7, 2019, <https://ustr.gov/countries-regions/japan-korea-apec/japan/us-japan-trade-agreement-negotiations/us-japan-digital-trade-agreement-text>.

¹⁰ "USTR Statement on WTO E-Commerce Negotiations," Office of the United States Trade Representative, October 24, 2023, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/october/ustr-statement-wto-e-commerce-negotiations>.

¹¹ See "National Cybersecurity Strategy," The White House, March, 2023, <https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf> ; "A Declaration for the Future of the Internet," The White House, April, 2022, https://www.whitehouse.gov/wp-content/uploads/2022/04/Declaration-for-the-Future-for-the-Internet_Launch-Event-Signing-Version_FINAL.pdf ; "United States International Cyberspace & Digital Policy Strategy," U.S. Department of State, May, 2024, <https://www.state.gov/united-states-international-cyberspace-and-digital-policy-strategy/>.

¹² "Trust," Workday, <https://www.workday.com/en-us/why-workday/trust/overview.html>.

¹³ "Data Privacy Framework (DPF) Overview," Data Privacy Framework Program, <https://www.dataprivacyframework.gov/Program-Overview> ; <https://www.oecd.org/en/about/programmes/data-free->

safeguarding U.S. exports of digitally-enabled goods and services. High-standard digital trade rules, together with enforcement, can open and sustain market access for American companies in all sectors of the economy.¹⁴

U.S. leadership on digital trade is needed now more than ever. Barriers to the free flow of information and exports of U.S. digitally-enabled services are growing abroad.¹⁵ One study in 2021 found that 62 countries implemented 144 data localization requirements, up from only 35 countries and 67 such barriers in 2017.¹⁶ Until recently, the National Trade Estimate (NTE), an annual report compiled by USTR at Congress’s direction, comprehensively identified and analyzed these growing barriers to digital trade.¹⁷ Although USTR has limited its reporting on data localization requirements in the most recent NTE, persistent trend lines suggest the global environment has gotten more—not less—challenging.¹⁸

Workday is better positioned than many to overcome market access barriers. For small businesses, these barriers can halt digitally-enabled exports altogether.¹⁹ At the same time, data localization requirements can be particularly challenging for cloud software companies. In fact, Workday launched its policy advocacy efforts in 2018 in response to threats to cross-border data flows. Unlike legacy systems, where customers use software on their own on-premises data centers, cloud software services are delivered through the internet. This “software-as-a-service” business model was pioneered in the U.S., and it enables companies in every sector of the

flow-with-trust.html ; “Data free flow with trust,” Organisation for Economic Co-operation and Development, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0487>.

¹⁴ For example, U.S. manufacturers are the second-largest exporter of digitally-enabled services. “What Drives the U.S. Services Trade Surplus?.”

¹⁵ See “OECD Services Trade Restrictiveness Index,” Organisation for Economic Co-operation and Development, February 12, 2024, https://www.oecd.org/en/publications/oecd-services-trade-restrictiveness-index_b9e5c870-en/full-report.html#introduction-d5e23.

¹⁶ Cory, N. and Dascoli, L., “How Barriers to Cross-Border Data Flows Are Spreading Globally, What They Cost, and How to Address Them,” Information Technology & Innovation Foundation, July 19, 2021, <https://itif.org/publications/2021/07/19/how-barriers-cross-border-data-flows-are-spreading-globally-what-they-cost/>

¹⁷ See “Joint Association Memorandum to Members of the Senate Committee on Finance and House Committee on Ways and Means,” April 12, 2024, <https://www.nftc.org/wp-content/uploads/2024/04/Joint-Association-Memo-on-2024-NTE-Digital-Trade-Barrier-Report.pdf>.

¹⁸ See “The Extent and Impact of Data Localisation,” Frontier Economics, June 1, 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125805/Frontier_Economics_-_data_localisation_report_-_June_2022.pdf.

¹⁹ See “Cross-Border Data Transfers & Small Businesses,” Global Data Alliance, <https://globaldataalliance.org/issues/small-businesses/> ; Ieso, I., “How USTR’s Digital Trade Reversal Will Hurt Small Businesses,” U.S. Chamber of Commerce, November 20, 2023, <https://www.uschamber.com/international/trade-agreements/ustr-digital-trade-reversal-will-hurt-small-businesses> ; “Making Small Businesses Mighty: The Digital Trade Opportunity for Small Businesses in the Indo-Pacific,” Global Innovation Forum, September, 2022, <https://globalinnovationforum.com/reports/us-apac-small-business-digital-trade/>.

economy to access innovative new technologies, including AI, securely and at scale. By contrast, data localization can mean fewer and costlier services that are less innovative and less secure.²⁰

II. High-standard digital trade rules complement smart regulations which, together, build trust in the digital economy.

For Workday and others, USTR’s decision last year was also surprising for its rationale, the need for “policy space” to regulate the digital economy. International trade rules safeguard exporters from arbitrary and discriminatory restrictions enacted by foreign governments. They do not preempt domestic regulation, regardless of whether the law is already in force or has yet to be enacted. Under the General Agreement on Trade in Services, USMCA, and the USJDTA, governments have a right to regulate their domestic economies.²¹ Moreover, when Congress passed USMCA’s implementing legislation by an overwhelming bipartisan majority, it reiterated that U.S. law prevails if there is any conflict with the agreement’s disciplines.²² This provision is standard in U.S. trade law.²³

Workday actively supports both high-standard digital trade rules and smart technology regulations. We see incredible opportunities for technology to unlock human potential. But we also recognize that the risk of unintended consequences is real and that people won’t use technology they don’t trust. Smart regulations can address this trust gap.²⁴ For these reasons, Workday advocates for workable, meaningful, and risk-based frameworks for the digital economy at the federal level, in state capitals, and in markets around the world. *In our view, high-standard digital trade rules complement—and don’t preempt—these regulations.* Our experience with data privacy and AI governance illustrates why.

- **Data Privacy Protections:** Workday views privacy as a fundamental human right.²⁵ As a California-headquartered company with operations in the European Union, we must comply with the California Consumer Privacy Act and the General Data Protection Regulation (GDPR), among other leading frameworks. Workday also uses government-

²⁰ “The ‘Real Life Harms’ of Data Localization Policies,” Centre for Information Policy Leadership, March, 2023, https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl-tls_discussion_paper_paper_i_-_the_real_life_harms_of_data_localization_policies.pdf.

²¹ See Article XIV of the General Agreement on Trade in Services, which is incorporated in both the U.S.-Mexico Canada Agreement (Article 32.1(2)) and U.S.-Japan Digital Trade Agreement (Article 3(1)).

²² USMCA Implementation Act, Pub. L. 116-113, Section 102 (Relationship of the USMCA to United States and State Law); S. Rep. 116-283 at 40 (confirming that “U.S. law prevails in the case of a conflict with the USMCA.”).

²³ E.g., United States-Korea Free Trade Agreement Implementation Act, Pub. L. 112-41, Section 103 (Relationship of the Agreement to United States and State law) and United States-Panama Trade Promotion Agreement Implementation Act, Pub. L. 112-43, Section 102 (Relationship of the Agreement to United States and State law).

²⁴ “Workday Global Survey Reveals AI Trust Gap in the Workplace,” Workday Press Release, January 10, 2024, <https://investor.workday.com/2024-01-10-Workday-Global-Survey-Reveals-AI-Trust-Gap-in-the-Workplace>.

²⁵ “Privacy at Workday,” Workday, <https://www.workday.com/en-us/why-workday/trust/privacy.html>.

backed tools for transferring personal information across borders in a privacy-protective way.²⁶ These include the U.S.-EU Data Privacy Framework, the Asia-Pacific Economic Cooperation's (APEC) Cross-Border Privacy Rules System, binding corporate rules, and standard contractual clauses. We invest in these data transfer tools to provide our customers and their employees with assurance that their personal information is protected.²⁷

We also support a federal comprehensive privacy law that protects U.S. consumers and enables responsible innovation.²⁸ Federal privacy reform is long overdue. In recent years, there have been two bipartisan, bicameral attempts to advance U.S. privacy protections: the American Data Privacy and Protection Act (ADPPA) and the American Privacy Rights Act (APRA).²⁹ Both bills would require rigorous protections on personal information. Neither would impose the kinds of discriminatory data localization requirements or restrictions on cross-border data transfers that high-standard digital trade rules prohibit. The same can be said of sectoral privacy laws at the federal level and the comprehensive privacy laws enacted by nineteen states.³⁰ Indeed, data localization has been shown to harm the privacy and security of consumers' personal information.³¹ The binary choice between high-standard digital trade rules and rigorous privacy protections is a false one.

- **Risk-Based AI Regulation:** Given recent progress in AI development, lawmakers around the world are also considering whether to institute new safeguards to protect consumers. Workday has endorsed bipartisan, bicameral legislation here in Congress that would advance meaningful AI governance, and we are active in state capitals in support

²⁶ Cosgrove, B., "Workday's Take on Global Data Transfers: An Update and What's Next," Workday Blog, May 12, 2022, <https://blog.workday.com/en-us/workdays-take-global-data-transfers-update-whats-next.html>.

²⁷ Cosgrove, B., "What the New EU-US Data Privacy Framework Means for Cross-Border Data Transfers," Workday Blog, July 10, 2023, <https://blog.workday.com/en-us/what-new-trans-atlantic-executive-order-cross-border-data-transfers.html>.

²⁸ "Accounting for Enterprise Cloud Technologies in Comprehensive U.S. Privacy Legislation," Workday, 2019, <https://www.workday.com/content/dam/web/en-us/documents/whitepapers/privacy-accounting-for-enterprise-cloud.pdf>.

²⁹ American Data Privacy and Protection Act, H.R. 8152, 117th Cong. (2022) ; American Privacy Rights Act of 2024, H.R. 8818, 118th Cong. (2024).

³⁰ See Folks, A., "US State Privacy Legislation Tracker," International Association of Privacy Professionals, July 22, 2024, <https://iapp.org/resources/article/us-state-privacy-legislation-tracker/>.

³¹ Swire, P., Kennedy-Mayo, D., Bagley, D., Krasser, S., Modak, A., & Bausewein, C. (2024). Risks to cybersecurity from data localization, organized by techniques, tactics and procedures. *Journal of Cyber Policy*, 1–32. <https://doi.org/10.1080/23738871.2024.2384724> ; Swire, Peter and Kennedy-Mayo, DeBrae, The Effects of Data Localization on Cybersecurity - Organizational Effects (June 15, 2023). Georgia Tech Scheller College of Business Research Paper No. 4030905, Available at SSRN: <http://dx.doi.org/10.2139/ssrn.4030905> ; Shahbaz, A., Funk, A., & Hackl, A., "User Privacy or Cyber Sovereignty?," Freedom House, July, 2020, <https://freedomhouse.org/report/special-report/2020/user-privacy-or-cyber-sovereignty>.

of AI regulation.³² Notably, in May, Colorado passed a first-in-the-nation law to regulate high-risk uses of AI.³³ Similar to state comprehensive privacy laws, the ADPPA, and an early version of APRA, the Colorado AI Act aims to protect consumers from AI-related harms such as unlawful discrimination.³⁴ These federal and state frameworks do not run afoul of USMCA or the USJDTA, including the agreements’ protections for American innovators’ source code and algorithms.

Why? Because federal and state AI frameworks do not require foreign companies to transfer intellectual property as a condition for doing business. In fact, the Colorado AI Act and ADPPA provide for trade secrets protections.³⁵ They are also enforced by regulators that are empowered to demand information about AI systems to investigate potential violations—the same practices that are expressly exempted from USMCA and USJDTA’s disciplines on source code and algorithms.³⁶

Workday is not alone in believing that high-standard digital trade rules complement—rather than preempt—technology regulations. U.S. allies and partners do as well. Japan, which is a leading advocate for digital trade rules, has a modern, comprehensive data privacy law and is an important convenor on global AI governance.³⁷ The same is true of the United Kingdom, which has the GDPR and is considering new AI regulations.³⁸ In recent years, the EU has also made commitments to new digital trade disciplines.³⁹ Put differently, the U.S. allies and partners that have been the most active in regulating the digital economy recognize that domestic technology regulation is consistent with digital trade rules.

³² “Reps Lieu, Nunn, Beyer, Molinaro Introduce Bipartisan Bill To Establish AI Guidelines For Federal Agencies And Vendors,” Congressman Don Beyer Press Release, January 10, 2024, <https://beyer.house.gov/news/documentsingle.aspx?DocumentID=6066>.

³³ Colorado Artificial Intelligence Act, Senate Bill 24-205, 2024, <https://leg.colorado.gov/bills/sb24-205>.

³⁴ See Rice, T., Francis, J., & Lamont, K., “U.S. State AI Legislation: How U.S. State Policymakers Are Approaching Artificial Intelligence Regulation,” Future of Privacy Forum, September, 2024, <https://fpf.org/blog/fpf-unveils-report-on-emerging-trends-in-u-s-state-ai-regulation/>.

³⁵ Colorado AI Act, Section 6-1-1703(8) ; ADPPA, Section 207(c)(3)(B)(ii).

³⁶ USMCA, Article 19.16 ; USJDTA Article 17.

³⁷ Japan Act on the Protection of Personal Information, Act No. 57 of 2003, <https://www.japaneselawtranslation.go.jp/en/laws/view/4241/en> ; “Hiroshima AI Process,” <https://www.soumu.go.jp/hiroshimaaiprocess/en/index.html>.

³⁸ United Kingdom Data Protection Act 2018, <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted> ; Coulter, M., “Britain’s new government aims to regulate most powerful AI models, Reuters, July 17, 2024, <https://www.reuters.com/technology/artificial-intelligence/britains-new-government-aims-regulate-most-powerful-ai-models-2024-07-17/>.

³⁹ “EU and Japan conclude landmark deal on cross-border data flows at High-Level Economic Dialogue,” European Commission Press Release, October 28, 2023, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5378 ; EU-UK Withdrawal Agreement, European Commission, November 12, 2019, https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-withdrawal-agreement_en.

III. High-standard digital trade rules support global regulatory cooperation and better protect consumers.

Far from undermining domestic regulations, high-standard digital trade rules promote consumer protection and cross-border regulatory cooperation. Under the USMCA and the USJDTA, governments commit to adopting or maintaining laws that protect privacy and address fraudulent and deceptive practices online.⁴⁰ Parties to USMCA also agree to exchange information and cooperate when regulating digital technologies and enforcing the law.⁴¹

In addition to protecting consumers, global regulatory cooperation enabled through high-standard digital trade rules advances U.S.-supported frameworks, including the National Institute for Standards and Technology’s Cyber Security Framework, the APEC Privacy Framework, and OECD recommendations.⁴² At a time when discriminatory and arbitrary trade barriers are erected in the name of privacy, cybersecurity, and other policy aims, a U.S. vision for cultivating a trustworthy and open digital economy is needed. Without high-standard digital trade rules, the U.S. loses a key avenue for promoting its values and interests abroad, including the interests of U.S. digital services exporters and the millions of workers they employ.

U.S. leadership on digital trade is vital for maintaining the global free flow of information and an open digital economy. When the U.S. led on digital trade, our closest allies and partners joined to develop and commit to high-standard rules. Today, these countries—Australia, Japan, the United Kingdom, and Singapore, among others—have been crucial in supporting rules that align with U.S. values and interests.⁴³ Unfortunately, USTR’s decision isolates the U.S. at a moment when data localization requirements and other foreign trade barriers continue to grow. If the U.S. cedes leadership, the impacts will be felt not only by businesses and employees, but by everyone who seeks a free and open internet and an “innovative, secure, and rights-respecting digital future.”⁴⁴

Conclusion

Again, I am grateful for the invitation to testify before the subcommittee. At Workday, we believe that high-standard digital trade rules and smart regulations on digital technologies are not only consistent but complementary. As an enterprise cloud software company, Workday, as well as our customers and their employees, benefit greatly from U.S. leadership in this vital space. As you chart a way forward on digital trade, the subcommittee can consider us a partner and ally in its efforts.

⁴⁰ USMCA, Article 19.7-19.8 ; USJDTA, Article 14-15.

⁴¹ USMCA, Article 19.14.

⁴² USMCA, Article 19.8(2), (6); USMCA, Article 19.15; USJDTA, Article 19.

⁴³ Declaration for the Future of the Internet.

⁴⁴ Cyberspace & Digital Policy Strategy.