The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C.
20220

The Honorable Lael Brainard
Director
White House National Economic Council
1600 Pennsylvania Avenue, NW
Washington D.C.
20220

January 31st, 2024

Dear Secretary Yellen and Dr. Brainard:

We, the undersigned, are writing to express concern about the problematic backtracking of the Office of the United States Trade Representative's (USTR) commitment to World Trade Organization (WTO) negotiations regarding prohibitions of data localization measures, protections for cross-border data flows, preventing discrimination against digital products, and preventing forced disclosure of sensitive source code. We endorse the messages conveyed in the cross-sectoral letter sent on November 7, 2023, from a broad range of market participants addressed to White House National Security Advisory Jake Sullivan and White House National Economic Council Director Lael Brainard. This letter seeks to highlight the significant harm that could result from USTR's position not only for the financial services industry, but also to the broader U.S. economy and U.S. policy interests – including the stability of the U.S. financial system and the safety and soundness of U.S. financial institutions.

Financial Services are Critical to the U.S. Economy

The U.S. financial services sector is a strength of U.S. global leadership and foreign policy that benefits U.S. consumers and workers. Our capital markets are the deepest, most liquid financial markets in the world, and help finance countless U.S. businesses of all sizes, and reduce costs for American taxpayers. The U.S. financial services industry also directly employs nearly 11 million Americans. It is estimated that for every U.S. job created in financial services, almost four are created elsewhere in the U.S. economy. The sector generates over $3 trillion in output per year and accounts for over seven percent of U.S. gross domestic product (GDP). U.S. financial services companies account for 15 percent of all services provided by U.S. firms through their overseas affiliates, well above the industry's share in U.S. GDP, and promote the interests of U.S. workers and U.S. policies abroad.

Changing Long-held U.S. Trade Policy on Data Flows and Data Localization Will Harm Financial Stability, Make Data Less Secure, and Weaken U.S. Leadership

For the United States to now walk away from its historic support for open cross-border data transfers and objections to data localization measures, including in financial services, would harm financial stability. It would also undermine stated U.S. policy objectives and would fail to protect U.S. companies and workers. Preventing data localization measures helps reduce global cybersecurity risks and limits the ability of international governments from stealing U.S. commercial or trade secrets, or otherwise mishandling personal or commercially sensitive data. Promoting a policy that encourages the proliferation of multiple nodes and copies of data creates significant operational and cybersecurity risks for companies, U.S. workers, and the U.S. government. Hindering the cross-border transfer of data injects greater risk and complexity into companies' cybersecurity operations by increasing the number and locations of data centers that must be staffed and maintained.

Increased barriers to data flows and data localization requirements would also make it more difficult to manage risk on a holistic basis across affiliates and borders. It would make it more challenging to comply with financial regulatory requirements in various jurisdictions, including Know Your Customer (KYC) counter-terrorism financing, anti-bribery and corruption, and Anti-Money Laundering (AML) regulations. Moreover, permitting increased data localization would make it harder to monitor and defend global networks from malicious cyberattacks.

In addition, data localization measures are most often used by international competitors and hostile rogue governments to acquire access to important corporate information that would be better protected through fewer points of data access.

Lastly, increased data localization and restrictions on cross-border data would make more challenging work towards climate related goals including meaningful corporate disclosures and improving metrics measuring the sustainability impacts of investment. It is therefore vital that any digital set of disciplines and commitments in the WTO e-commerce negotiations, IPEF, or any other bilateral or regional initiative include financial services.

U.S. Leadership in Protecting Data

Supporting cross-border data flows and prohibiting mandatory data localization requirements have been key pillars of U.S. digital trade policy and are now enshrined in U.S. law.

While opposition to data localization became a key trade objective of the Obama Administration, it was just a more explicit articulation of obligations that have served as the cornerstone of U.S. digital and financial services policy since at least the 1990s through the General Agreement on Trade in Services (GATS), whose financial services provisions (in both the Annex on Financial Services, as well as the heightened obligations undertaken by parties, including the United States, to the Understanding on Commitments in Financial Services) explicitly require World Trade Organization members to allow for the cross-border transfer of information. Congress and

President Obama made clear through provisions included in the 2015 Bipartisan Congressional Trade Promotion Authority and Accountability Act (TPA) that opposition to data localization measures would be a key U.S. trade objective going forward. And the U.S. legal provisions generally prohibiting data localization by U.S. authorities was signed into U.S. law through the 2020 enactment of the United States-Mexico-Canada Agreement (USMCA).

U.S. trade agreements do not prevent public authorities and regulators from protecting the public interest, and that commitment is particularly robust in financial services. First, the “prudential exception” included in the 1994 GATS Annex on Financial Services, in USCMA, and in other US trade agreements provides recognition and legal protection for banking and market regulators to protect safety and soundness and market integrity. In addition, the USMCA provision prohibiting data localization in financial services (Article 17.18: Location of Computing Facilities) expressly notes that data localization is prohibited “so long as the Party’s financial regulatory authorities, for regulatory and supervisory purposes, have immediate, direct, complete, and ongoing access to information processed or stored on computing facilities that the covered person uses or locates outside the Party’s territory.” As a result, the U.S. trade obligations set a high standard and presumption against data localization measures, while providing regulators full authority to carry out their statutory and regulatory mandates.

Combatting data localization through trade agreements and other measures has the support for from central banks and other regulators in the United Kingdom, Japan, Singapore, Australia, and elsewhere. In addition, international bodies like the G20 and Financial Stability Board have voiced support for trade and other policies that facilitate cross-border data flows in financial services (e.g., the G20 reports on cross-border payments.

International Data Flows Support U.S. Jobs and Economic Growth

The secure and open transfer of cross-border data is critical not only for the financial services industry, but also essential to enable the services they provide to manufacturers, farmers, workers, and small businesses in all sectors of the U.S. economy.

Cross-border data transfer is a critical component of the economic contribution that financial services generate, especially through U.S. small and medium size enterprises (SMEs). For example, electronic payments services are an especially important digital tool for the growth of minority women-owned SMEs. The data incorporated into those products enables faster, more secure sales and delivery. In another example, cross-border information transfers for online insurance services help small farmers insure their crops. And it is also instrumental to the efforts industry makes to comply with Government policies and to contribute to other societal goals. Specifically, transferring data across borders is crucial for the financial services industry to:

- Provide core products and services to customers, including executing buy and sell orders in global markets. This becomes more necessary as regulations often have extraterritorial reach and require more data to incorporate into orders.

- Support the development of financial technologies (fintech) and other technological innovations.
- Complement the role that digitalization is playing in opening wider markets to SMEs by enabling data to strengthen SME client services and product offerings.

The U.S. retrenchment on data flows and data localization disproportionately hurts the poorest communities and micro, small and medium size businesses (SMEs). Financial innovation and digitally enabled financial services are crucial to connecting underserved populations with basic financial tools. However, the development of such services is dependent on comprehensive data and the ability to use it to shape those innovations. Abandoning U.S. support for strong digital trade rules that facilitate cross-border data flows and prevent forced data localization inordinately impacts SMEs, which most acutely feel the increased costs associated with duplicating servers in local markets.

Moreover, localizing data only serves to make an economy less appealing for private sector investment, especially for companies domiciled in other jurisdictions and could also harm U.S. economic competitiveness over the long term. An OECD questionnaire found that around 70 percent of business respondents either disagreed with, or were undecided on, the suggestion that data localization promoted innovation or other public policy goals.

Conclusion

We therefore urge the administration to engage with the financial services industry and other market participants before fully adopting any new policy position on data flows and data localization. Doing so will also enable the Biden Administration to gather input and perspectives from U.S. businesses large and small that rely on cross-border transfers to operate efficiently and support American workers. We believe urgently having such a dialogue would be a crucial step towards the goal identified by those trade associations in the aforementioned letter to "*return the U.S. to its traditional role as the global leader in writing rules for the rules-based trading system that benefit American workers and business, align with American priorities and values, and will empower the government to push back on the regulatory overreach of authoritarian regimes*."

Yours Respectfully,

American Council of Life Insurers (ACLI)

American Property and Casualty Insurance Associations (APCIA)

Bank Policy Institute (BPI)

Coalition of Service Industries (CSI)

Electronic Transactions Association (ETA)

Payments Leadership Coalition (PLC)

Reinsurance Association of America (RAA)

Securities Industry & Financial Markets Association (SIFMA)

Cc: The Honorable Katherine Tai, United States Trade Representative

The Honorable Jake Sullivan, U.S. National Security Advisor