



DIGITAL TRADE 2023: THE DECLARATION, THE DEBATES AND THE NEXT GLOBAL ECONOMY

ED GRESSER
PROGRESSIVE POLICY INSTITUTE

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INTRODUCTION

In the single generation since the launch of the internet, a generation's worth of scientific research and technological innovation, infrastructure deployment, and generally good policymaking has taken a small set of computer networks operated by academics, business researchers, and government scientists, and turned into a global digital world of 5.3 billion people. Associated with this has been an enormous leap forward in individual liberty, in global prosperity, and in new policy challenges. Looking ahead with its allies and partners last year, the Biden administration helped produce a vision of the future. This is the "Declaration on the Future of the Internet," which, in a brief two and a half pages, illuminates a possible version of the next the digital world: one of freer flows of information, higher-quality consumer protection, enhanced economic growth, and liberty preserved.

Their vision is right, but it is highly contested – in part by authoritarian governments seeking to restore or strengthen controls over their publics (or even, at least in part, other countries' publics), and in part by often friendly countries mistakenly believing that their own technological leadership might depend on diminishing that of the U.S. tech

industry. The administration can help achieve its vision, and in doing so contribute to the realization of the Declaration's vision, through four steps:

1. An idealistic and ambitious approach in the 15-country "Indo-Pacific Economic Framework" (IPEF), that provides a future vision more attractive than authoritarian alternatives resting on free flows of data, opposition to forced localization of server and data, strong consumer protection, non-discriminatory regulation, anti-spam and anti-disinformation policies, cyber-security, and broad-based growth through encouragement for open electronic commerce.
2. A strong response in the U.S.-EU Trade and Technology Council (TTC) to European Union attempts to create discriminatory regulations and taxes targeting American technologies and firms.
3. Defense of U.S. values in the U.N., WTO, and other venues against "digital sovereignty" campaigns by China and others that endanger the internet's multi-stakeholder governance, normalize large-scale censorship and firewalling, and

generally place the political fears and policy goals of authoritarian government above the liberties of individuals.

4. Supporting responsible governance of technology and politely but firmly pushing back on attempts either at home or internationally to demonize technological innovation and American success.

BACKGROUND

It is now 26 years since the U.S. government's first sally into the economic potential and policy challenges posed by "global electronic commerce." In that document, "A Framework for Global Electronic Commerce," the Clinton administration's look into the future ventured a look into the future, accompanied by a statement of purpose that remains useful a quarter-century later:

"Already it is possible to buy books and clothing, to obtain business advice, to purchase everything from gardening tools to high-tech communications equipment over the Internet. This is just the beginning. Trade and commerce on the Internet are doubling or tripling every year – and in just a few years will be generating hundreds of billions of dollars in sales of goods and services. ... Government officials should respect the unique nature of the medium and recognize that widespread competition and increased consumer choice should be the defining features of the new digital marketplace. They should adopt a market-oriented approach to electronic commerce that facilitates the emergence of a global, transparent, and predictable legal environment to support business and commerce."¹

In the generation since, a digital world of 5.3 billion internet users has emerged, linked by hundreds of submarine fiber-optic cables stretching out for nearly a million miles, and by fleets of thousands of low-orbit satellites. Supporting this physical infrastructure and encouraging its use are a battery of policies more or less mirroring those the 1997 paper hoped to see – limited liability laws, bans on tariffing cross-border electronic transmissions, "last-mile" rules to extend access, prohibitions on unfair and deceptive business practices – meant to encourage technological innovation, business competition, and safe access for users. These facilitate steadily expanding access for citizens to the internet – to the point at which 93% of Americans, and 66% of the world's people are online – along with falling costs for shoppers, steady streams of new apps and forms of businesses, new types of jobs, and avenues to efficiency and low-inflation growth.

In more statistical terms, the U.S. digital economy in 2023 is approaching \$2.4 trillion in value-added output,² roughly a tenth of U.S. GDP. The "hundreds of billions of dollars" in sales of goods and services the Report predicted are commonplaces; counting transmissions of services alone, the Commerce Department reports \$89 billion in U.S. exports of information and communications services in 2021 (the last year for which data are available) along with \$594 billion in exports of "potentially ICT-enabled"³ services transiting the internet; the combined \$683 billion was a quarter of the U.S.' total \$2.56 trillion in all goods and services exports that year, to say nothing of the \$383 billion flowing back as imports.

As a result, in varying degrees and according to their preferences, the internet users of the 2020s (in the U.S. and everywhere else) are more able than any previous generation to lift their voices in good causes or in eyeroll-inducing folly, to flog cosmetics and denounce others' inferior musical taste, follow military experts analyzing the war in Ukraine, test out dating options, and otherwise amuse, educate, and enrich themselves. This is a large advance in human economic freedom and intellectual opportunity, though one accompanied by blasts of spam, hate-group organizing, disinformation, privacy intrusions, and other adaptations of old plagues to new technology.

There seems no reason to believe the internet's second human generation need be more boring or less productive than its first. Still less should anyone believe that developing policies to secure the potential benefits new technologies may bring cannot go along with the policies necessary to address its challenges. But there is good reason to see electronic commerce, and the digital world more broadly, as contested spaces whose future is less certain than they might have been in 1997, and whose potential benefits require defense.

BACKGROUND: DIGITAL ECONOMY AS AMERICAN SUCCESS

By way of background, the Biden administration's economic hallmarks have been hopes for labor-intensive growth focused on non-college employment, technological leadership, and international influence vis-à-vis competitors. The U.S. digital economy contributes quite a lot to all these goals; having mostly founded the digital

Employment is one index of this. PPI Chief Economist Michael Mandel reports, in fact, that e-commerce firms, broadband and internet businesses, and content creators account for 67% of all net new U.S. job growth since 2020:

*"As of December 2022, the United States currently enjoys a 3.5% unemployment rate, the same as pre-pandemic February 2020. To a large extent, this strong labor market has been driven by job growth in the digital sector. In total the digital sector added 1.4 million net new jobs from 2019 to 2022, accounting for 67% of net private sector job gains over the same period."*⁴

A second index is exporting, particularly in services. The BEA's \$683 billion in 2021 U.S. exports in ICT and "potentially ICT-enabled" services in 2021 was, by World Trade Organization (WTO) data, a seventh of all world commercial services that year.⁵

Commerce Department analysis suggests that, with 4,744 jobs supported per \$1 billion in services exports, ICT and ICT-enabled services exports are supporting 3.2 million jobs.

And finally, U.S. leadership on the digital economy increasingly translates directly to geopolitical leadership, with the U.S. the center of internet science and technology, the global leader on quantum computing and artificial intelligence, and the home of the world's major internet firms – search and data analytics, online markets, social networks, software firms, and so on. Elsewhere, there are large firms and influential governments, but not peer rivals. In China, a set of large firms operating from behind-the-Great-Firewall refuges, which

approach U.S. firms in size and user counts, but at least not yet in user trust or economic reach. European Union officials by contrast exercise great influence over policymaking within Europe and internationally, but have been unable to use this to create scientific or business peers. Neither are enthusiastic about American dominance of the digital world, and both are raising challenges and critiques.

WORLDWIDE: SHARED FRAMEWORK FOR LIBERTY AND COMMON-GOOD REGULATION

The story of internet economy and tech firms, then, looks like a massive success. If in 1993 the U.S. and assorted friends set out to create an integrated digital world, raising growth rates and providing a bit more liberty and choice to billions, they pretty much succeeded. In 2022, the Biden administration with considerable international support has put forward a concept for building on this, in the form of the 61-country “Declaration for the Future of the Internet.”⁶

This joins 61 countries in the western hemisphere, Europe, Asia, the Pacific, and Africa, in big-picture goals echoing the common-good hopes and better-future idealism of the internet’s early years. The Declaration is a general and abstract document spanning only two and a half pages, but this is enough for both an evocative general picture of the future internet, and a look at the type of policies necessary to create it. In sum, 20 or 30 years ahead it imagines a digital world in which:

“Human rights and fundamental freedoms, and the well-being of all individuals are protected and promoted;

“All can connect to the Internet, no matter where they are located, including through increased access, affordability, and digital skills;

“Individuals and businesses can trust the safety and the confidentiality of the digital technologies they use and that their privacy is protected;

“Businesses of all sizes can innovate, compete, and thrive on their merits in a fair and competitive ecosystem; infrastructure is designed to be secure, interoperable, reliable, and sustainable; [and]

“Technology is used to promote pluralism and freedom of expression, sustainability, inclusive economic growth, and the fight against global climate change.”

Further sections elaborate with (still general) policy goals: keeping the internet open, preserving the “multi-stakeholder” governance model of its first 30 years, promoting free flows of data across borders, protecting privacy and consumers, and ultimately providing a safe, economically strong, enjoyable and educational network for the people of the United States and the world.

Obviously no single tool is adequate for all of these at once. Some parts of the Declaration involve domestic laws and implementation, others technical assistance and best practices conversations with other governments, some public investment in high-tech infrastructure, and special support for low-income and rural community access. All involve not only government policy, but scientist-to-government, consumer-to-engineer, and business-to-activist exchanges, under the “multi-stakeholder” approach which has facilitated the development of the internet since its launch in the late 1980s.

Trade agreements and trade policy are also important elements of this vision and program. They can help provide guidelines to avoid perverse policies such as tariffing electronic transmissions, keep markets open for the services that traverse the internet, build trust and security in data flows, help startups navigate an increasingly fragmented digital world, deter attempts to force U.S. investment overseas, ensure that companies compete on price and innovation rather than either monopolistic tactics or appeals for government limits on their competitors; and help make sure that regulations serve a public-good purpose rather than limiting competition, user choice, and ultimately the sophistication and user-friendliness of the entire system. For these ends, and in the face of challenges from ideological opponents and in some cases from friends, two of the Biden administration's trade "initiatives," "frameworks," and "councils" look like very useful venues.

IPEF AND THE OPEN DIGITAL WORLD

One of these is the "IPEF," an acronym for "Indo-Pacific Economic Framework," designed by the Biden administration in 2022 to focus on a set of non-market access "trade" issues including digital economy policy as well as labor standards, de-carbonization, and supply chain "resilience." Here the partners involve the world's second-largest economy, Japan; an array of wealthy smaller and medium-sized countries such as Australia, New Zealand, Malaysia, and Korea; and a set of developing countries of various sizes and technological capacities ranging from gigantic lower-middle income Indonesia and Vietnam to small, upper-middle income Fiji.

The program's "trade pillar" (one of four pillars) has a brief but serviceable set of goals: "building an environment of trust and confidence in the digital economy; enhancing access to online information and use of the internet; facilitating digital trade; addressing discriminatory practices; and advancing resilient and secure digital infrastructure and platforms" through "trusted and secure cross-border data flows" "inclusive, sustainable growth of the digital economy"; and "the responsible development and use of emerging technologies," followed by qualifiers on preserving rights to regulate in the public interest. This last is an important point, but one that all U.S. trade agreements have taken into account through the "exceptions" included in the General Agreement on Tariffs and Trade, in Free Trade Agreements, and perhaps especially relevant in the rather prescient 1993 General Agreement on Trade in Services (GATS). This affirms that services trade agreements have exceptions to ensure (among much else) governments' right to regulate to "protect public morals," "maintain public order," "prevention of deceptive and fraudulent practices," "protection of the privacy of individuals in relation to the processing and dissemination of personal data," and "to enforce domestic laws that are not otherwise inconsistent with the Agreement."⁷

IPEF offers the chance to cement an ambitious and useful agenda on these matters. This would build logically on the content of previous agreements from the WTO's 1999 "moratorium" on the application of tariffs to electronic transmissions, forward to the 2011 U.S.-Korea FTA's groundbreaking electronic commerce chapter, and the more elaborated digital provisions of the 2015

Trans-Pacific Partnership Agreement and the 2019 U.S.-Mexico-Canada Agreement, including:

- Ensuring that IPEF members do not impose customs duties on electronic transmissions;
- Ensuring that regulations and trade policies do not discriminate against digital products;
- Guarantees for the free flow of data across borders, subject to the exceptions; appropriately noted in earlier trade agreements;
- Recognition of properly verified electronic signatures;
- Requirements to maintain laws protecting consumers and personal information;
- Requirements to maintain anti-spam legislation and enforcement;
- Ensuring appropriate “government access to information” for law enforcement and other necessary purposes.

This is a good policy agenda, and can be supplemented within IPEF with technical assistance for the smaller and lower-income participants (say, Fiji and the Philippines), and coordination to broaden acceptance of the Declaration on the Future of the Internet in the Asia-Pacific region.

U.S.-EU TTC, TAXES, AND IMPARTIAL REGULATION

The “U.S.-European Trade and Technology Council,” meanwhile, offers an opportunity to head off fragmentation of the internet and unreasonable discrimination against U.S. firms.

The European Union retains a long-held belief – a perfectly valid one – that it would be

good to have successful EU internet businesses rivaling the American complex of software, IT equipment, internet, social media, and online markets. This reasonable goal has always been alloyed with suspicion of American successes, and a vague idea that “bringing the American companies” down a bit through differential taxation and targeted anti-trust and data transfer programs would in some way “bring the Europeans up” to parity. In fact, this has not ever happened, despite programs ranging from government subsidies to the early internet-rival Minitel,⁸ and a more recent barrage of “digital services taxes” which principally taxed the major deliverers of these services, typically turning out in the fine print to be American firms.

The most recent incarnations of this are a battery of programs in the early stages of implementation or development – the Digital Services Act, the Digital Marketing Act, telecommunications infrastructure levies, and cloud services rules – which designates “gatekeepers” and “Very Large Online Platforms” with certain amounts of revenue or users to share data and trade secrets with competitors, meet disproportionate regulatory burdens or in some cases pay heavy taxes. Very precise calibration of the triggers for these regulations turns out again to put most, or all, of them on American firms presumably in the hopes that this would create a void that new European providers might fill. In fact, a brilliantly entertaining analysis by Kati Suominen of the Center for Strategic and International Studies has documented that the result is likely to be tragic-comically different: while (a) the payers of these taxes are U.S. firms such as Apple, Microsoft, Google, Amazon, etc., the group of (b) slightly smaller existing competitors falling just below the

thresholds turn out not to be European firms but Chinese providers such as TenCent, AliBaba, Baidu, Xiaomi, and others. Sheltered behind the Great Firewall they have grown very large and (to the extent the DSA and DMA take the American players down a peg) would likely be the inheritors.⁹

It is striking that this series of ideas comes some months after the European Union, among others, argued heatedly and not incorrectly that the U.S. electrical vehicle credits passed in the 2022 Inflation Reduction Act were nationalistic and could be damaging to large European automakers. The Biden administration has worked hard to defuse this argument through unconventional (and congressionally controversial) agreements on critical mineral discussions. It should not be nervous about making similar objections to European efforts to create differential taxation systems, and inequitable regulatory and anti-trust policies. Senators Ron Wyden (D-Ore.) and Mike Crapo (R-Idaho) very reasonably note that “the importance of our relationship with the EU makes it all the more necessary to expeditiously resolve all major trade irritants between us, not solely those raised by the EU,” and ask the Administration to use the U.S.-EU TTC and other transatlantic engagements to ensure that American firms, large and successful though they may be, do not face discriminatory rules and taxes. The Trans-Atlantic Trade and Technology Council is the obvious place to push this back.

AT HOME: DON'T FEAR SUCCESS

Finally, and most puzzling, is a challenge at home. The U.S. is home to top-tier internet companies providing search and data analytics, developing artificial intelligence and

quantum computing systems, and inventing an array of online marketplaces from very large multi-purpose sites to specialized networks of individual artists. Their rapid emergence as large parts of the U.S. economy in some ways embodies things the administration wants: American technological leadership, rapid job creation at both high-technical-skill and non-college levels, and a chance to shape the future world economy in accord with American values.

Obviously rapid change and the steady development not only of new technologies, industries, and companies but entirely new “sectors” of the economy – the creation of online marketplaces with tens or hundreds of millions of customers, or social networks with billions of users – raises many questions for government and society, at home as well as in international fora. It is perfectly right to wonder whether current regulatory authority and telecommunications laws designed for telephones and TV stations are adequate for social networks, telemedicine, big data, and banks of computer servers distributed around the world, and to propose updates in existing laws or the creation of new policy frameworks to manage this change. Representative Suzanne DelBene (D-Wash.) has argued frequently for a national privacy law, for example, that would apply to all internet providers and cover all users.

This is all natural and, presumably, a democratic political system can consider the issues and over time settle on good policies to address them. What is odd, though, is an apparent feeling that the leadership role U.S. businesses and researchers have earned might be a bad thing as such, that perhaps the U.S. government’s proper role is to ally

informally with efforts abroad to take them down a few pegs, or even that they should not be consulted at all in policy development. Here, the scale of U.S. success seems to have stopped some on the “populist” right and the Naderite left from taking some appropriate pride in American leadership, and instead thinking that this leadership is a problem to be solved.

One example was an ambitious 2021/22 attempt to rewrite anti-trust law specifically for tech firms, as PPI’s Malena Dailey observes with “ad hoc set of new rules which replace the current standards for antitrust enforcement based on market power and consumer welfare with a more generalized approach which targets just one industry – online platforms” based on size alone, without any need to examine “the conditions in which a company operates, the presence of direct competitors, and its potential for consumer harm.”¹⁰ Fundamentally, a large company as such is not a bad thing – some industries, in fact, do not emerge without economies of scale – and large or small, therefore, firms should be judged on behavior rather than size.

Another, more recent in the aftermath of that bill’s inconclusive end, was a set of letters from left- and right-“populists”¹¹ implying (more through leading questions than through evidence) that the IPEF digital talks might make a revival impossible – e.g., the Republican letter, from Senators J.D. Vance (R-Ohio) and Josh Hawley (R-Mo.), along with Representatives Paul Gosar (R-Ariz.), Matt Gaetz (R-Fla.), and Ken Buck (R-Colo.) inquires ingenuously whether an IPEF commitment could “conflict with Congress’ attempt to reform federal antitrust law,” or “restrict Congress’ power to shape domestic

competition policy.” (The legal answer to such questions is “no,” based on Congress’ Constitutional powers; the answer from experience with the existing digital rules of KORUS and USMCA is “clearly not.”)

A slightly later “investigative report”¹² released by Senator Elizabeth Warren (D-Mass.), meanwhile, simply suggests meetings between the Secretary of Commerce and the U.S. Trade Representative on one hand, and tech executives on the other, to discuss internet access and data flow should be viewed as bad things in and of themselves. Here it would be useful to think of the obvious parallels – a Department of Agriculture declining to meet with farmers or grocery stores, a Department of Justice castigated for hiring people with law school backgrounds, and so on – and the likely results should a government (hopefully of some other country) make policy on this eccentric basis.

It’s hard to give the Biden administration much advice on this, because the critiques are rather weak and really based on dissatisfaction with domestic law rather than trade policy. If the absence of a clear standard for privacy rules is causing problems, Congress should pass a privacy law that clarifies and settles them – and the administration should not in the meantime simply allow other countries to settle it for us through pretextual taxation and data regulations. More generally, new technologies and means of communication, new industries, and products, often require new laws and regulatory policies – but this doesn’t mean “new” is bad. Nor does it mean that U.S. leadership in a new field should arouse more fear and alarm than optimism and pride. In fact, it is good for the United States to have

world-leading companies in information technology (and likewise for automobiles, medicines, space, publishing, news media, etc.). Likewise, there is no reason to assume that any given company's interests are always identical to those of the U.S. as a country (if indeed a single "interest" is possible to identify), nor that critiques from abroad foreigners are invariably wrong to be concerned – but neither should we assume that a particular company's ideas are (unless proven otherwise) antithetical to the interest of its customers and that foreign critiques of American leadership are obviously correct.

Here, the Biden administration should not be worried by the constant repetition of terms like "Big Tech," and the identification of "meetings" with "policies that are in some way corrupt and wrong." It has a good foundation for future international consensus in the Declaration, it should take pride rather than fear in the success of the U.S. as a center for technological development and employment growth in the digital sector, and it should pursue useful consumer protection, privacy, anti-hate group, and other good policies secure in the knowledge that these are perfectly compatible with the General Agreement on Trade in Services, the U.S.-Korea Free Trade Agreement, the U.S.-Mexico-Canada Agreement, and ambitious IPEF and U.S.-EU TTC outcomes.

CONCLUSION

In effect, the right choice is the one the 1997 Framework and the 2022 Declaration set out in their different ways:

- Defend openness and user choice in internet policy;
- Develop common-good regulations through multi-stakeholder processes, and in coordination with like-minded democratic governments; be suspicious of the arguments of authoritarian and censorship-prone governments;
- Don't look naively on selective use of taxation and anti-trust against American firms;
- Keep to the vision and principles of the Declaration.

Such an approach will find supporters at home, encourage young people and liberty-minded friends abroad, and help preserve American leadership. Should the Biden administration succeed in it, they will leave for the policymakers of 2050 the happy challenge the Framework report's authors left to them: the chance to take something very good and help make it better.

ABOUT THE AUTHOR

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