SEIZING THE DIGITAL FUTURE: WHY THE UNITED STATES MUST JOIN THE DIGITAL ECONOMY PARTNERSHIP AGREEMENT

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Abstract

The rapid expansion of the digital economy has revolutionized global trade, making data the cornerstone of modern commerce. However, the absence of a unified international framework for digital trade has led to regulatory fragmentation, increased compliance costs, and stifled innovation. The Digital Economy Partnership Agreement (DEPA) offers a flexible solution by establishing a modular framework that addresses critical issues such as cross-border data flows, artificial intelligence (AI) governance, and cybersecurity. Unlike rigid trade agreements, DEPA's adaptable structure allows for continuous updates, ensuring it remains relevant as digital trade evolves.

This article argues that the United States must join DEPA to advance its economic, strategic, and geopolitical interests. First, U.S. participation would harmonize digital trade rules, reducing regulatory conflicts and fostering global innovation. Second, it would enable the U.S. to counter China's growing influence in digital governance, ensuring that DEPA's principles align with democratic values and open markets. Finally, by leveraging DEPA's living agreement model, the

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U.S. could lead efforts to develop a comprehensive global framework for digital trade. Building on this foundation, DEPA offers the U.S. a strategic opportunity to shape the future of global digital trade.

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I. INTRODUCTION

As *The Economist* first coined in a 2017 article, data has replaced oil as the world's most valuable resource.[1] Today, cross-border data flows generate more economic value than global trade in goods.[2] However, the rapid pace of digital innovation has outstripped the capacity of existing regulatory frameworks to address emerging issues such as data privacy, cybersecurity, artificial intelligence (AI), and e-commerce. This regulatory lag has created a confusing web of rules and regulations for businesses and governments, underscoring the urgent need for a comprehensive framework in digital trade governance.

The Digital Economy Partnership Agreement (DEPA)[3] represents a groundbreaking response to this challenge. Initially signed by Singapore, Chile, and New Zealand, DEPA is the first trade agreement exclusively designed for the digital economy. DEPA's provisions address critical issues in digital trade, including cross-border data flows, digital identity, cybersecurity, and ethical AI standards.

While the first and second Trump administrations have been skeptical of multilateral trade agreements, DEPA presents a unique opportunity that aligns with its broader economic strategy. Unlike traditional trade pacts, DEPA's flexible modular structure allows the United States to adopt provisions that directly serve its interests, particularly in digital trade, a sector where the U.S. seeks to maintain its competitive edge. As global digital governance becomes increasingly fragmented, DEPA can advance U.S. trade priorities without requiring deep economic integration or extensive regulatory commitments.

This Note argues that United States (U.S.) participation in DEPA is crucial to its national and economic interests for three main reasons: 1) DEPA's flexible framework provides a means for harmonizing favorable digital trade rules for U.S. businesses and consumers; 2) U.S. participation is necessary to counter China's influence in setting digital governance norms, particularly for artificial intelligence; and 3) DEPA offers a platform to lay the groundwork for a comprehensive global framework for digital trade.

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1. *The World's Most Valuable Resource Is No Longer Oil, but Data*, THE ECONOMIST (May 6, 2017), https://www.economist.com/leaders/2017/05/06/the-worlds-most-valuable-resource-is-no-longer-oil-but-data.

2. *Data Flows*, INT'L CHAMBER OF COM., https://iccwbo.org/global-insights/digital-economy/data-flows/ (last visited Oct. 18, 2025).

3. Digital Economy Partnership Between Republic of Chile, New Zealand, and the Republic of Singapore [2020] NZTS 2020/02 (signed Jun. 11, 2020, entered into force 7 January 2021) [hereinafter DEPA].

A. Background of the Digital Economy Partnership Agreement

Digital trade encompasses all trade in goods and services that are digitally ordered and/or digitally delivered.[4] In facilitating this trade, data flows across borders between servers.[5] With the advent of digital trade, issues unique to this area of trade emerged.[6] These challenges concern data privacy and data localization as well as potential new liabilities with rapidly evolving technologies, including AI and blockchain.[7] In recognizing these challenges, Chile, New Zealand, and Singapore, as 'small, outward facing, trade-dependent countries,' saw an opportunity to shape global digital trade rules in furtherance of open markets and inclusive trade.[8] Accordingly, Chile, New Zealand, and Singapore launched trilateral talks in pursuit of a plurilateral agreement to establish the regulatory landscape for digital trade and its emerging technologies on May 17, 2019.[9]

These three economies (and Brunei) previously collaborated in trade negotiations, which resulted in the Trans-Pacific Strategic Economic Partnership or the 'P4 Agreement' in 2005.[10] The P4 laid the groundwork for further cooperation in trade across several Pacific Rim countries in Asia, the Pacific, and the Americas, culminating with the signing of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in 2018.[11]

Chile, New Zealand, and Singapore concluded their negotiations on January 21, 2020, and jointly developed the Digital Economy Partnership Agreement (DEPA).[12] Chile, New Zealand, and Singapore, as

4. DANIELLE M. TRACHTENBERG, CONG. RSCH. SERV. IF12347, DIGITAL TRADE AND DATA POLICY: KEY ISSUES FACING CONGRESS (2024).

5. *Id.*

6. *Id.*

7. *Id.*

8. Press Release, Minister for Trade and Indus. of Sing., Minister for Trade and Exp. Growth of N.Z., Vice Minister of Int'l Econ. Aff. of Chile, Joint Ministerial Statement on the Substantial Conclusion of Digit. Econ. P'ship Agreement ("DEPA") Negot. (Jan. 21, 2020), Annex B, para. 2–3.

9. Press Release, Ministry of Trade and Indus. of Sing., Ministry of Commc'n and Info. of Sing. & Infocomm Media Dev. Auth., Sing. Leads the Way in the New Digit. Econ. P'ship Agreement with Chile and N.Z. (May 17, 2019).

10. Trans-Pacific Strategic Economic Partnership Between Republic of Chile, New Zealand, the Republic of Singapore, and Brunei Darussalam [2005] NZTS 2006/09 (signed 18 July 2005, entered into force 28 June 2006).

11. Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTTP") [2018] NZTS 2018/10 (signed 8 March 2018, entered into force 30 December 2018).

12. Joint Ministerial Statement on the Substantial Conclusion of Digit. Econ. P'ship Agreement ("DEPA") Negot., *supra* note 8.

the original DEPA Parties, signed the agreement on June 11, 2020[13] Scholars identify DEPA as going beyond that of a pure trade agreement by addressing the broader issues of the digital economy such as digital identity and data privacy.[14] Rather, DEPA is a 'living agreement' open to other World Trade Organization (WTO) countries so long as they meet its standards.[15] Indeed, South Korea entered negotiations to join and successfully acceded to DEPA on May 3, 2024.[16] As of October 2025, nine other countries announced their intention to join as well: China, Canada, Costa Rica, Peru, the United Arab Emirates (UAE), El Salvador, Ukraine, Thailand, and Uruguay. [17] To evolve as technology changes and new challenges arise, DEPA's scope is "wide, open, and flexible."[18] This adaptability is enshrined under Article 16.3: Amendments, enabling parties to amend the agreement when necessary, and such amendments become an integral part of the agreement.[19]

B. DEPA's Modular Approach

DEPA is noteworthy for its 'modular structure.' With its unique design, DEPA is sectioned into several subject-specific 'Modules' that cover a wide range of issues in the digital economy whose implementation has the following objectives: "facilitate seamless end-to-end digital trade; enable trusted data flows; and build trust in digital systems."[20] The Modules function as "building blocks within a building

13. Press Release, Ministry of Trade & Industry Sing., *Singapore, Chile, and New Zealand Sign Digital Economy Partnership Agreement Electronically* (June 12, 2020), https://www.mti.gov.sg/Trade/Digital-Economy-Agreements/The-Digital-Economy-Partnership-Agreement.

14. *See*, Mira Burri, *Towards a New Treaty on Digital Trade*, 55(1) J. WORLD TRADE 77, 91-2 (2021) (discussing DEPA).

15. *Id.* at 92.

16. Press Release, Ministry of Trade & Industry Sing., *Joint Press Release on the Successful Accession of the Republic of Korea to the Digital Economy Partnership Agreement* (May 3, 2024), https://www.mti.gov.sg/Newsroom/Press-Releases/2024/05/Joint-Press-Release-on-the-successful-accession-of-the-Republic-of- Korea-to-the-Digital-Economy.

17. Ministry of Trade and Industry of Singapore, Digital Economy Partnership Agreement (DEPA), https://www.mti.gov.sg/Trade/Digital-Economy-Agreements/The-Digital-Economy-Partnership-Agreement (last updated Oct. 23, 2025).

18. Burri, *supra* note 14, at 91.

19. DEPA, *supra* note 3, art. 16.3.

20. Robert Fay & Dan Ciuriak, *Digital Economy Partnership Agreement Is a Big Step Forward: Canada Should Join*, CTR. FOR INT'L GOVERNANCE INNOVATION (Apr. 14, 2022), https://www.cigionline.org/articles/digital-economy-partnership-agreement-is-a-big-step-forward-canada-should-join/.

block."[21] Traditionally, individual free trade agreements (FTAs) are often considered in their totality.[22] However, with the DEPA and its modular structure, prospective countries have more options. A country can sign onto the agreement in its entirety.[23] Alternatively, another country can detach specific modules from the agreement and incorporate them in their domestic policies and/or future trade agreements.[24]

Box 1: DEPA Modules covering various digital trade issues[25]	
Module 1	Initial Provisions and General Definitions
Module 2	Business and Trade Facilitation
Module 3	Treatment of Digital Products and Related Issues
Module 4	Data Issues
Module 5	Wider Trust Environment
Module 6	Business and Consumer Trust
Module 7	Digital Identities
Module 8	Emerging Trends and Technologies
Module 9	Innovation and the Digital Economy
Module 10	Small and Medium Enterprises Cooperation
Module 11	Digital Inclusion

21. Giridharan Ramasubramanian, *Building on the Modular Design of DEPA*, E. ASIA FORUM (July 10, 2020), https://eastasiaforum.org/2020/07/10/building-on-the-modular-design-of-depa/.

22. *Id.*

23. *Id.*

24. *Id.*

25. *See generally*, DEPA, *supra* note 3 (containing 10 modules addressing each subject and an introductory provision with Definitions of terms of usage in digital trade).

The remaining modules deal with the operation and implementation of the DEPA:

Box 2: Modules covering DEPA operation and implementation[26]	
Module 12	Joint Committee and Contact Points
Module 13	Transparency
Module 14	Dispute Settlement
Module 15	Exceptions
Module 16	Final Provisions (with regard to amendments, entry into force, accession procedures, and withdrawal)

This modular structure is not without precedent; it mirrors the WTO's General Agreement on Trade in Services (GATS)[27] and other plurilateral agreements, which similarly allow countries to choose commitments on a sector-by-sector basis rather than adopting an agreement in its entirety. For example, under GATS, WTO members commit only to specific service sectors. DEPA applies this same logic to digital trade, enabling countries to selectively adopt modules covering issues such as AI governance, cybersecurity, and cross-border data flows. This flexibility makes DEPA particularly appealing for countries with divergent domestic regulatory frameworks, including the United States.

C. DEPA's Key Provisions

In outlining DEPA's key rules and principles for digital trade within the Modules, it is important to note that DEPA outright replicates several provisions from the CPTPP and mirrors other rules from the United States-Mexico-Canada Agreement (USMCA) and the United States-Japan Digital Trade Agreement (DTA). These mirrored provisions are consistent with adopting the United States approach to digital trade,[28] which will be further discussed in Part II.

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26. *See id.*

27. General Agreement on Trade in Services, Apr. 15, 1994, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994).

28. *See* Burri, *supra* note 14 at 88.

Concerning personal information (under Module 4, Article 4.2), DEPA Parties recognize the importance of protecting the personal information of participants in the digital economy.[29] In alignment with that principle, DEPA provides (using the same language from Article 14.8 of the CPTPP) that "each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce."[30] DEPA extends this provision to include "digital trade" at the end.[31]

DEPA's provisions involving cross-border data flows also mirror the rules established by the CPTPP. In particular, 'Article 4.3: Cross-Border Transfer of Information by Electronic Means' under Module 4 uses verbatim language from Article 14.11 of the CPTPP, wherein the "Parties affirm their level of commitments relating to cross-border transfer of information by electronic means."[32] Article 4.3's inclusion, as derived by the CPTPP, indicates the DEPA Parties' commitment to support easy and free flows of data across borders. However, in aligning with the CPTPP's exceptions, paragraph 3 of Article 4.3 in DEPA will not prevent the adoption of inconsistent domestic measures to achieve a "legitimate public policy objective."[33]

Article 4.4 of the DEPA and Article 14.11 of the CPTPP are almost identical in ensuring that the Parties of their agreements do not "require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory."[34] Similarly, DEPA pulled provisions from the CPTPP in the language of the articles covering customs duties (Article 3.2) and digital products (Article 3.3). In both the DEPA and the CPTPP, parties cannot impose customs duties on electronic transmissions between "a person of one Party and a person of another Party."[35] The DEPA and the CPTPP provide for the 'Non-Discriminatory Treatment of Digital Products,' wherein parties cannot "accord less favorable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer,

29. DEPA, *supra* note 3 art. 4.2.
30. *Id.*; CPTPP, *supra* note 11, art. 14.8.
31. DEPA, *supra* note 3, art. 4.2.
32. *Id.* art. 4.3; CPTPP, *supra* note 11, art. 14.8.
33. DEPA, *supra* note 3, art. 4.3; CPTPP, *supra* note 11, art. 14.8.
34. DEPA, *supra* note 3, art. 4.4; CPTPP, *supra* note 11, art. 14.13.
35. DEPA, *supra* note 3, art. 3.2; CPTPP, *supra* note 11, art. 14.3.

producer, developer or owner is a person of another Party, than it accords to other like digital products."[36]

The DEPA does contain different language from the CPTPP concerning paperless trade, but DEPA's Article 2.2 and the CPTPP's Article 14.9 still maintain the importance of it as the digitalization of the world progresses.[37] Regardless, the DEPA is noteworthy in tackling digital issues not covered in most agreements, including the CPTPP. Module 8 recognizes the rapid evolution of 'emerging trends and technologies' such as financial technology (fintech)[38] and artificial intelligence (AI).[39] Accordingly, 'Article 8.2: Artificial Intelligence' in Module 8 employs softer language and calls for promoting the adoption of such ethical and governance frameworks that support the responsible use of AI technologies.[40] In developing these AI governance frameworks, DEPA calls for the consideration of the internationally-recognized principles of "explainability, transparency, fairness, and human-centered values."[41] Overall, DEPA's provisions outline the general digital trade rules the original Parties conceived in order to reach their objectives in promoting seamless and trusted flows of data across borders.

D. Where is the United States?

Despite the significance of DEPA, the United States remains notably absent from the agreement. This absence is increasingly untenable as the U.S. faces mounting challenges in the global digital trade arena. China, through its initiatives, is aggressively exporting its model of digital governance, which emphasizes state control and data localization. At the same time, U.S. technology companies face regulatory conflicts across jurisdictions, from the European Union's General Data Protection Regulation (GDPR) to varying domestic privacy and taxation laws. These developments highlight the risks of regulatory fragmentation and the strategic cost of ceding leadership in setting global digital trade standards.

This Note proceeds as follows. Part II explores how DEPA's modular framework can harmonize U.S. and global digital trade rules while

36. DEPA, *supra* note 3, art. 3.3; CPTPP, *supra* note 11, art. 14.4.
37. DEPA, *supra* note 3, art. 2.2; CPTPP, *supra* note 11, art. 14.9.
38. DEPA, *supra* note 3, art. 8.1.
39. *Id*. art. 8.2.
40. *Id*.
41. *Id*.

accommodating domestic regulatory complexities. Part III examines the growing influence of China in digital trade and artificial intelligence and argues that U.S. participation in DEPA is essential to counter this trend. Part IV considers the potential of U.S. involvement in DEPA to serve as a foundation for a comprehensive global framework on digital trade. This Note concludes by emphasizing the critical importance of U.S. leadership in DEPA to secure its economic, strategic, and ethical interests in the digital economy.

The stakes for U.S. involvement in DEPA extend far beyond economics. Digital trade rules will define the contours of the 21st-century global economy, influencing everything from privacy rights to national security. If the U.S. fails to engage, it risks ceding this vital space to competitors like China, jeopardizing both its economic leadership and its vision for an open and secure digital future. Joining DEPA is not merely a policy choice; it is a strategic imperative to safeguard U.S. influence in the digital age.

II. UTILIZING DEPA'S FLEXIBILITY TO HARMONIZE FAVORABLE DIGITAL TRADE RULES

As digital trade continues to grow, regulatory fragmentation poses significant challenges for businesses operating across borders. The lack of a unified framework increases compliance costs, creates legal uncertainties, and stifles innovation. DEPA's modular structure provides an adaptable solution that allows the United States to selectively adopt provisions that align with its domestic regulations while promoting global consistency. This section explores how DEPA can help the U.S. harmonize digital trade rules, reduce regulatory burdens, and reinforce its leadership in global trade. By examining the fragmented digital landscape, DEPA's alignment with existing U.S. trade agreements, and the benefits for American businesses, including small and medium enterprises (SMEs), this section contends that DEPA provides an essential framework for shaping international digital trade norms in a way that supports U.S. economic and strategic interests.

A. Global Digital Trade's Fragmented Landscape

As briefly touched upon in Part I, digital trade poses unique challenges. Accordingly, economies around the world adopted policies to tackle these issues. Even with the growing relevance of this issue, at the multilateral level, the World Trade Organization (WTO) has failed to reach an international agreement to address all aspects of digital

trade in a comprehensive manner.[42] Understandably, the 1995 WTO agreements on trade lack dedicated provisions on trade issues that emerged during the digital age. Otherwise, WTO Members agreed not to impose customs duties on electronic transmissions.[43] However, this agreement is only a temporary moratorium that Members must periodically extend by consensus rather than a permanent prohibition.[44]

In December 2017, 71 WTO members initiated exploratory work to begin negotiations on trade-related aspects of e-commerce.[45] These trade discussions (with 82 eventual members) lasted for about five years. On July 26, 2024, Australia, Japan, and Singapore (as co-convenors) released the WTO 'joint statement initiative on electronic commerce'.[46] However, this agreement only covers "less controversial issues"[47] including 1) enabling electronic commerce; 2) openness and electronic commerce; 3) trust and electronic commerce; 4) transparency, cooperation, and development; 5) telecommunications; and 6) institutional arrangements including dispute settlement, implementation, etc.[48] Crucially, the agreement lacks language on other important issues related to digital trade including "cross-border data, localization mandates, discriminatory treatment of digital products, or source code."[49] Moreover, the United States (through the Office of the U.S. Trade Representative or 'USTR') withdrew from these discussions on October 24, 2023 in order to "give Congress room to regulate big tech firms."[50]

With the lack of a comprehensive WTO agreement as well as the U.S. withdrawal from international digital trade negotiations, the

42. Zhihan Tian, *Cracking the Digital Spaghetti Bowl: A Recipe for Streamlined Global Trade*, MICH. J. INT'L L. BLOG (Nov. 2023), https://www.mjilonline.org/cracking-the-digital-spaghetti-bowl.

43. *Id.*

44. Frank J. Schweitzer, Ian Saccomanno & Naoto Nelson Saika, *The Rise of Artificial Intelligence, Big Data, and the Next Generation of International Rules Governing Cross-Border Data Flows and Digital Trade—Part I*, 1 GLOB. TRADE L.J. 98, 104 (2024).

45. Ministerial Conference, *Joint Statement on Electronic Commerce*, WTO Doc. WT/MIN (17)/60 (Dec. 13, 2017).

46. World Trade Organization, *Joint Statement Initiative on Electronic Commerce*, WTO Doc. INF/ECOM/87 (July 26, 2024).

47. *See* Schweitzer, Saccomanno & Saika, *supra* note 44, at 109.

48. *Id.* at 112.

49. *World Trade Organization Publishes Agreement on Electronic Commerce*, GLOBAL DATA ALLIANCE (July 26, 2024), https://globaldataalliance.org/news/world-trade-organization-publishes-agreement-on-electronic-commerce/.

50. David Lawder, *U.S. Drops Digital Trade Demands at WTO to Allow Room for Stronger Tech Regulation*, REUTERS (Oct. 25, 2023), https://www.reuters.com/world/us/us-drops-digital-trade-demands-wto-allow-room-stronger-tech-regulation-2023-10-25/.

United States ceded ground to other countries around the world to develop their own digital trade rules. Accordingly, countries have devoted chapters to digital trade in new preferential trade agreements and/or instituted domestic and foreign policies related to digital trade (that could be described as a 'spaghetti bowl of digital trade rules'),[51] effectively creating "a new, albeit fragmented, governance framework for the data-driven economy."[52] Within this landscape, three approaches to digital trade (as developed by the largest economies in the world) emerged.

B. Three Approaches to Digital Trade

For recent trade agreements, the United States has consistently incorporated provisions addressing digital trade, with notable examples including the now-defunct Trans-Pacific Partnership (TPP) (which was continued as the CPTPP without the United States), the United States-Mexico-Canada Agreement (USMCA), and the US-Japan Digital Trade Agreement (DTA).[53] These provisions comprise what scholars consider as the U.S. approach to digital trade.[54] These provisions prohibit measures such as imposing customs duties on electronic transmissions, discriminating against foreign digital products, restricting cross-border data transfers, mandating local data storage, or requiring the transfer of source codes.[55]

Through the General Data Protection Regulation (GDPR),[56] the European Union (EU) adopts a firm stance on prioritizing privacy over the unrestricted flow of data.[57] The GDPR views privacy as a fundamental human right.[58] Accordingly, it restricts the transfer of personal

51. *See* Tian, *supra* note 42, at 2.

52. Pablo Trigo Kramcsák & Michelle Bordachar Benoit, *The Potential Impact of the Digital Economy Partnership Agreement on the Future of Cross-Border Personal Data Flows*, DIGITAL TRADE ALLIANCE (Oct. 5, 2023) https://dtalliance.org/2023/10/05/the-potential-impact-of-the-digital-economy-partnership-agreement-on-the-future-of-cross-border-personal-data-flows/.

53. *See* Burri, *supra* note 14, at 88, 90.

54. *Id.* at 90.

55. *Id.* at 84.

56. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation), 2016 O.J. (L 119) 1.

57. Frank J. Schweitzer, Ian Saccomanno & Naoto Nelson Saika, *The Rise of Artificial Intelligence, Big Data, and the Next Generation of International Rules Governing Cross-Border Data Flows and Digital Trade—Part II*, 1 GLOB. TRADE L.J. 173, 181–82 (2024).

58. Henry Gao, *Data Regulation in Trade Agreements: Different Models and Options Ahead*, *in* DIGITAL TRADE AND DATA REGULATION: EMERGING MODELS AND THE FUTURE OF GLOBAL RULES 324, 328–29 (2021).

data outside the EU unless the destination country is deemed to provide adequate data protection.[59] This policy has created ongoing tensions with the United States, as EU courts have repeatedly issued rulings limiting data transfers between the two economies due to concerns over privacy standards.[60] Additionally, the EU passed data-related domestic laws that affect the United States such as the Digital Markets Act (DMA).[61] The act identifies digital services across borders as under its purview.[62] A CSIS study showed that EU regulations in the tech sector resulted in an estimated $22–$50 billion in compliance costs for U.S. service providers.[63] In addition, as of November 2024, Apple is set to be the first company to face fines under the DMA as EU regulators charged that the company has breached the EU's tech rules.[64]

China's approach to digital trade is currently relatively modest.[65] China's provisions focus on trade facilitation measures.[66] These include a moratorium on customs duties for electronic transmissions, the recognition of electronic authentication and electronic signatures, protections for personal information in e-commerce, the promotion of paperless trading, the establishment of domestic legal frameworks for electronic transactions, and ensuring that consumers engaging in e-commerce receive a level of protection comparable to that provided in traditional commerce.[67]

For Chinese domestic laws, internet activity and data usage have long been subject to strict authoritarian regulation, covering both the hardware required to access international networks and the content permissible online.[68] Many foreign websites are filtered or blocked, reflecting China's cautious approach to the free flow of data, and in 2017, China enacted the Cybersecurity Law, mandating that operators of critical information infrastructure store any personal data collected

59. *Id.* at 329.

60. *Id.* at 328–29.

61. Thibault Denamiel et al., *Beyond Economics: How U.S. Policies Can Undermine National Security Goals*, CTR. FOR STRATEGIC & INT'L STUD. (May 3, 2024), https://www.csis.org/analysis/beyond-economics-how-us-policies-can-undermine-national-security-goals.

62. *Id.*

63. *Id.*

64. Foo Yun Chee, *Apple Set to Face Fine Under EU's Landmark Digital Markets Act, Sources Say*, REUTERS (Nov. 5, 2024), https://www.reuters.com/technology/apple-set-face-fine-under-eus-landmark-digital-markets-act-sources-say-2024-11-05/.

65. *See* Gao, *supra* note 58, at 329.

66. *Id.*

67. *Id.*

68. *Id.* at 330.

or generated within China locally.[69] This requirement contrasts sharply with U.S. efforts to eliminate data localization mandates in international trade agreements.[70] Additionally, privacy protection in China is relatively underdeveloped.[71] It was only introduced into the legal framework in 2009, and it includes broad exemptions for government actions.[72]

Evidently, more and more countries are following the approaches by the EU and China in prioritizing data localization over the free flow of data across borders. There is an increasing number of countries pursuing data localization measures with nearly 100 such measures implemented across 40 countries by early 2023.[73] Over half of these measures were introduced after 2015, highlighting a recent significant increase in their adoption. These measures are becoming progressively restrictive.[74] By 2023, more than two-thirds of the measures required local storage and processing of data, often without allowing for alternative arrangements or exceptions.[75] This trend underscores a tightening approach to data globally.[76]

The United States had the opportunity to push for its approach in global digital trade rules during the negotiations that culminated with the development of the WTO joint statement on e-commerce.[77]Notably, the agreement prohibits customs duties on electronic transmissions, which aligns with the U.S. approach.[78] However, as discussed earlier, the United States withdrew from these negotiations before these talks concluded.[79] Although the agreement adopted the U.S. approach to digital trade, the U.S. withdrawal itself signals an opening for other countries to pursue their own global digital trade rules.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. Chiara Del Giovane, Janos Ferencz & Javier López González, *The Nature, Evolution and Potential Implications of Data Localisation Measures*, OECD Trade Policy Paper No. 278 (2023).

74. *Id.* at 12.

75. *Id.*

76. *See id.* at 12–13.

77. *See* Burri, *supra* note 14, at 94.

78. *Id*.

79. Lawder, *supra* note 50.

C. Promoting the U.S. Approach Through DEPA

The lack of consistent rules and regulations increases compliance costs and disrupts the seamless flow of goods, services, and data across borders. This issue is particularly acute for U.S. businesses due to the absence of a unified federal data privacy law.[80] Without federal action from the executive or legislative branches, individual states have adopted their own regulations, such as the California Consumer Privacy Act (CCPA) and Virginia's Consumer Data Protection Act (CDPA).[81] These fragmented policies create additional challenges to establishing national leadership, as a cohesive approach is critical to supporting the domestic tech sector effectively.[82]

The proliferation of state-level regulations increases the regulatory burden on businesses, which must navigate and comply with multiple, sometimes incompatible, sets of standards rather than adhering to a single federal framework.[83] These inconsistencies not only complicate compliance but also pose significant challenges for U.S. companies competing on a global scale.[84]

The Digital Economy Partnership Agreement (DEPA) provides a solution to these challenges by offering a harmonized yet flexible framework for digital trade. DEPA's modular structure enables member countries to adopt provisions selectively, ensuring that their regulatory priorities are respected.[85] This flexibility makes DEPA an ideal platform for reinforcing consistent rules that reduce fragmentation while furthering innovation and economic growth.

Furthermore, DEPA's provisions are modeled after the U.S. approach. As discussed in Part I, DEPA features language similar and sometimes identical to that in the CPTPP, USMCA, and DTA.[86] Article 4.4 prohibits unnecessary data localization requirements involving the location of computing facilities, ensuring that businesses can store and process data where it is most efficient.[87] By removing these barriers, DEPA facilitates the seamless movement of data, enabling

80. *See* Denamiel et al., *supra* note 61.

81. DANIEL CASTRO, LUKE DASCOLI, & GILLIAN DIEBOLD, THE LOOMING COST OF A PATCHWORK OF STATE PRIVACY LAWS 4-5 (2022).

82. *Id.* at 1.

83. *Id.*

84. *See id*. (estimating that, absent federal privacy laws, state privacy laws could impose out-of-state costs exceeding $1 trillion over a 10-year period).

85. Ramasubramanian, *supra* note 21.

86. Burri, *supra* note 14, at 92.

87. DEPA, *supra* note 3, art. 4.4.

companies to operate on a global scale. At the same time, Article 4.2 emphasizes the importance of protecting personal data, striking a balance between data mobility and privacy.[88]

For the United States, these provisions (as modeled by the U.S. approach) offer significant benefits. Major U.S. tech companies, such as Amazon, Microsoft, and Google, rely on cross-border data flows to deliver services, support AI development, and facilitate global e-commerce.[89] Data localization laws in key markets impose considerable costs on these businesses.[90] Based on OECD business survey findings, businesses report significant cost increases due to data localization measures.[91] Local storage requirements without flow restrictions are estimated to raise data management costs by approximately 16%.[92] However, when combined with restrictions on data transfers, costs rise dramatically by around 55%.[93] Furthermore, 8% of surveyed businesses indicated that stringent data localization measures could entirely prevent them from operating internationally.[94]

By joining DEPA, the United States would advocate for international rules that protect data mobility while maintaining high standards of privacy and security. U.S. membership in DEPA would incentivize other major economies to adopt DEPA's principles. Moreover, DEPA's provisions align with ongoing domestic discussions about federal privacy legislation. Although the U.S. currently lacks a unified approach to data privacy, DEPA's emphasis on transparency and accountability complements existing state laws. [86A] This alignment demonstrates that the United States can join DEPA without compromising its regulatory autonomy. Aside from harmonizing digital trade rules, certain DEPA provisions would also support U.S. businesses and promote consumer trust.

88. *Id.* art. 4.2.

89. *See generally* Volker Brühl, *Big Tech, the Platform Economy and the European Digital Markets*, 58(5) INTERECONOMICS 274, 274 (2023).

90. *See generally* NIGEL CORY & LUKE DASCOLI, HOW BARRIERS TO CROSS-BORDER DATA FLOWS ARE SPREADING GLOBALLY, WHAT THEY COST, AND HOW TO ADDRESS THEM (2021) (explaining that restricting data flows has a statistically significant impact on a nation's economy).

91. *See* Giovane, Ferencz & López González, *supra* note 73, at 17–28.

92. *Id.* at 17.

93. *Id.*

94. *Id.*

D. Supporting U.S. Business Operations in Global Trade

Efficient trade operations are critical for businesses navigating the complexities of global commerce. However, traditional trade processes, which are often reliant on paper-based systems, are slow, expensive, and prone to errors.[95] There is concern that the U.S. approach in digital trade rules, which the first Trump administration supported based on the digital trade provisions in the USMCA and DTA,[96] overwhelmingly favors Big Tech companies and their interests.[97] Accordingly, several congress members supported the USTR withdrawal from WTO e-commerce negotiations in order to hold Big Tech accountable.[98] However, small and medium enterprises (SMEs), in particular, struggle to meet the administrative burdens of international trade and would benefit from adopting and promoting favorable digital trade rules under the U.S. approach.

As the U.S. Chamber of Commerce notes, SMEs, unlike larger corporations with diverse product offerings, service lines, and greater resources, often struggle to absorb the additional costs associated with data localization, forced technology transfers, and inconsistent regulatory enforcement targeting U.S. firms.[99] The withdrawal of U.S. support in addressing cross-border data restrictions in spaces such as the WTO statement on e-commerce paves the way for more countries to implement forced data localization and other barriers to critical data flows.[100] This would further complicate the ability of smaller businesses to transfer data internationally, placing them at a significant

95. *See Paperless Trading: How Does It Impact the Trade System,* WORLD ECON. F., 4 (Oct. 2017), https://www3.weforum.org/docs/WEF_36073_Paperless_Trading_How_Does_It_Impact_the_Trade_System.pdf.

96. *See* Tian*, supra* note 42 (citing Leslie L. Rossman & Joshua S. Hanan, *Trump's Promise to Make America Manufacture Again: USMCA and the Rhetoric of Neoliberal Exception*, NAT'L. COMMC'N. ASS'N. (Feb. 19, 2019), https://www.natcom.org/publications-library/trumps-promise-make-america-manufacture-again-usmca-and-rhetoric-neoliberal/#:~:text=Home%20%C2%BB%20Publications%20Library%20%C2%BB%20Trump's%20Promise,resource:%202019%20Current%20Commentary%20Feb%20Political%20Communication).

97. *See* Rishab Bailey & Melinda St Louis, *Big Tech's Broken Record: Supply Chains Hearing Edition*, PUB. CITIZEN (May 10, 2024), https://www.citizen.org/news/big-techs-broken-record-supply-chains-hearing-edition/; Lawder, *supra* note 50.

98. *See generally* DEPA, *supra* note 3, art. 4.2 (establishing transparency and accountability as requirements for personal data protection).

99. Isabelle Isco, *How USTR's Digital Trade Reversal Will Hurt Small Businesses*, U.S. CHAMBER OF COM. (Nov. 20, 2023), https://www.uschamber.com/international/trade-agreements/ustr-digital-trade-reversal-will-hurt-small-businesses.

100. *Id.*

disadvantage.[101] U.S. membership in DEPA would signal to other countries the importance of the U.S. approach to the free flow of data across borders and opposition to data localization measures.

DEPA's provisions for the adoption of digital identity frameworks and paperless trading systems would also support SMEs. Article 7.1 encourages the development of interoperable digital identity frameworks, which allow businesses and consumers to verify their identities securely and efficiently.[102] These systems reduce fraud, enhance trust, and facilitate cross-border transactions. Meanwhile, Article 2.5 supports the use of electronic invoicing (e-invoicing), streamlining trade documentation and reducing transaction costs.[103] For the United States, these digital trade provisions would be particularly important. SMEs play a vital role in the U.S. economy, accounting for nearly half of the country's GDP and employing approximately 61 million people.[104] However, SMEs often lack the resources to navigate complex international trade regulations.[105] By adopting DEPA's provisions on digital identities and e-invoicing, the United States could simplify trade processes, making global markets more accessible to smaller businesses. In addition, these provisions align with existing U.S. initiatives to modernize trade infrastructure. For example, the U.S. Customs and Border Protection agency has increasingly adopted paperless systems to expedite cargo clearance.[106] DEPA's emphasis on paperless trading in Article 2.2 would complement these efforts, fostering greater efficiency across the supply chain.

E. Enhancing Consumer Trust Through Cybersecurity and Data Protection

Consumer trust is essential for the growth of the digital economy. However, high-profile data breaches and cybersecurity threats have eroded confidence in online systems. Without robust protections, consumers may be reluctant to participate in digital trade, limiting its potential. DEPA prioritizes consumer trust through provisions on

101. *Id.*

102. DEPA, *supra* note 3, art. 7.1.

103. *Id.* art. 2.5.

104. Stephanie Ferguson Melhorn, Makinizi Hoover, & Isabella Lucy, *Small Business Data Center*, U.S. CHAMBER OF COM. (May 20, 2024), https://www.uschamber.com/small-business/small-business-data-center.

105. *See* Brühl, *supra* note 89.

106. U.S. Customs & Border Prot., CBP Goes Paperless for Global Entry, CBP, https://www.cbp.gov/newsroom/local-media-release/cbp-goes-paperless-global-entry.

cybersecurity and data protection. Article 5.1 promotes international cooperation on cybersecurity, encouraging member countries to adopt best practices and share information about emerging threats.[107] Additionally, Article 6.3 emphasizes the importance of protecting consumer rights in e-commerce, ensuring that buyers have access to accurate information and effective dispute-resolution mechanisms.[108]

For the United States, these provisions align with domestic priorities. The U.S. government has already taken steps to enhance cybersecurity through initiatives such as the Cybersecurity and Infrastructure Security Agency (CISA) and the National Institute of Standards and Technology (NIST) Cybersecurity Framework.[109] By joining DEPA, the United States could extend these efforts to the international stage, fostering greater collaboration on global cybersecurity challenges.

Policymakers argue that committing to global standards could limit a country's ability to pursue its own policies. This concern was highlighted when the United States withdrew from WTO negotiations on e-commerce in October 2023, citing the need to retain flexibility for implementing stronger domestic regulations on technology and digital trade.[110] This move underscores the tension between adhering to international frameworks and preserving national policy autonomy. However, DEPA's modular structure addresses these concerns by allowing countries to adopt provisions selectively.[111] This flexibility ensures that member states can align their commitments with domestic priorities while also benefiting from the agreement's broader framework.

For the United States, this approach strikes an ideal balance between flexibility and consistency. By participating in DEPA, the U.S. can influence the development of international standards while retaining control over its regulatory agenda. Moreover, DEPA's provisions are designed to complement, rather than replace, existing national laws, ensuring that participation does not compromise sovereignty.

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107. *See* DEPA, *supra* note 3, art. 5.1.

108. *See id.* art. 6.3.

109. *See generally* CYBERSECURITY & INFRASTRUCTURE SECURITY AGENCY, U.S. DEP'T OF HOMELAND SEC., https://www.cisa.gov/about; *see* U.S. DEPARTMENT OF COMMERCE: NAT'L INST. OF STANDARDS & TECH., NIST CYBERSECURITY FRAMEWORK; *see* 2.0 SMALL BUSINESS QUICK-START GUIDE, (2024), https://www.nist.gov/itl/smallbusinesscyber/nist-cybersecurity-framework-0.

110. Lawder, *supra* note 50.

111. Ramasubramanian, *supra* note 21.

DEPA represents a unique opportunity for the United States to address the challenges of regulatory fragmentation while fostering innovation and growth. Its provisions on cross-border data flows, digital identities, and emerging technologies offer practical solutions to the complexities of digital trade. Moreover, its living agreement model ensures that the framework remains adaptable to future developments. By joining DEPA, the United States can reinforce harmonized rules that reduce compliance burdens, enhance consumer trust, and support SMEs. At the same time, it can maintain the flexibility needed to protect domestic priorities. In doing so, the U.S. strengthens its own digital economy both domestically and globally.

III. COUNTERING CHINA'S GROWING INFLUENCE AND ESTABLISHING U.S. LEADERSHIP IN DIGITAL TRADE AND ARTIFICIAL INTELLIGENCE

China is rapidly expanding its influence in global digital trade through initiatives like the Digital Silk Road and its participation in the Regional Comprehensive Economic Partnership (RCEP). Beijing's model of digital governance, which emphasizes state control, data localization, and surveillance, stands in direct contrast to the open-market, privacy-centric approach championed by the United States. If China successfully joins DEPA without U.S. involvement, it could reshape the agreement's provisions to align with its regulatory preferences, undermining DEPA's foundational principles. This section highlights China's strategic ambitions in digital trade and artificial intelligence (AI) governance, the risks of allowing China to dominate digital trade rule-making, and how U.S. membership in DEPA would serve as a counterweight to Beijing's growing influence. By leveraging DEPA's living agreement model, the U.S. can shape emerging technology regulations, reinforce democratic values in AI governance, and prevent China from tilting global digital norms in its favor.

A. China's Growing Influence

China's growing influence in the global digital trade space has become a significant geopolitical and economic challenge for the United States. Initiatives such as the Digital Silk Road (DSR), a key component of China's Belt and Road Initiative[112], have expanded Beijing's

112. *See* Su Dan, *Digital Silk Road Development Enables Connectivity, Prosperity*, BELT AND ROAD PORTAL (Apr. 17, 2024), https://eng.yidaiyilu.gov.cn/p/0N79SEI5.html.

technological reach by providing infrastructure and digital services to developing nations, often accompanied by strict data localization requirements and state-centric internet governance models.[113] China has reportedly invested approximately $79 billion in projects related to the DSR, with expectations that its financial support for these initiatives will increase significantly throughout the 2020s.[114] Additionally, China's participation in the Regional Comprehensive Economic Partnership (RCEP)[115] has further solidified its role in shaping regional trade dynamics in Asia, with limited U.S. involvement in the Asia-Pacific region to counterbalance this influence.[116]

In this context, U.S. leadership in digital trade agreements such as DEPA is critical. The United States' absence in key multilateral frameworks has created a vacuum that China has adeptly filled, promoting its authoritarian vision of digital governance. By contrast, DEPA provides an opportunity to advance the U.S. approach for openness and innovation, which counterbalances the restrictive and state-controlled approach championed by Beijing.

Recent U.S. policy actions underscore the urgency of re-engaging in the digital trade arena. The trade war with China during both Trump administrations highlighted the complexities of economic interdependence, particularly because of China's unfair trade practices. Measures such as the 2022 CHIPS Act[117] and the 2024 TikTok ban[118] upheld by the Supreme Court[119] emphasized the need to address security risks associated with China's digital and technological influence. However, these actions alone are insufficient to construct a cohesive global strategy.

China's expressed interest in joining DEPA further demonstrates the stakes involved. If Beijing succeeds in shaping the agreement to align with its preferences, it could undermine DEPA's original principles of free data flows, digital trust, and interoperability. U.S.

113. *See generally* Assessing China's Digital Silk Road Initiative, COUNCIL ON FOREIGN REL., https://www.cfr.org/china-digital-silk-road/ (last visited Jan. 17, 2025).

114. *See id.*

115. Regional Comprehensive Economic Partnership Agreement, Nov. 15, 2020, https://cil.nus.edu.sg/about-us/.

116. *See* Jennifer Kavanagh & Mariano-Florentino Cuéllar, *U.S. Engagement in the Indo-Pacific: Don't Trade Away Trade*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jun 25, 2024), https://carnegieendowment.org/research/2024/06/us-engagement-in-the-indo-pacific-dont-trade-away-trade?lang=en.

117. CHIPS and Science Act of 2022, Pub. L. No. 117-167, 136 Stat. 1366.

118. *See* Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. No. 118-50, 138 Stat. 955 (2024).

119. *See* TikTok, Inc. v. Garland, 604 U.S. 56, 73 (2025).

membership is essential to ensuring that the agreement remains aligned with the U.S. approach to digital trade.

B. The Rise of Artificial Intelligence in the U.S. and China

Artificial intelligence (AI) as an emerging technology is at the heart of the digital revolution. AI technologies underpin innovations in autonomous vehicles, healthcare, financial systems, and national security. With applications in almost every sector, AI has become a key driver of economic growth and a strategic asset in global competition. The United States and China are the top two players in the AI race, accounting for the majority of global investment, talent, and growth in the field.

According to a Stanford University report on AI, the U.S. and China together make up the majority in global AI research and development spending.[120] By objective measures, the United States leads the world in AI development and private investment, with its companies, universities, and think tanks producing groundbreaking advancements in machine learning models.[121] At the same time, China is looking to increase its influence and development in AI as it seeks to be the United States' primary AI competitor. According to a recent report from the International Data Corporation (IDC), China is projected to more than double its investment in artificial intelligence to approximately $27 billion by 2026, with over half of this spending allocated to the hardware market.[122] China has demonstrated strong competitiveness in AI since Chinese startup DeepSeek unveiled its DeepSeek-V3 model in December 2024.[123] The startup's research paper questioned whether U.S. companies could maintain their AI lead, as it claimed to have trained the model using only a fraction of the computing power relied on by major US-based AI firms.[124]

The importance of artificial intelligence to the United States cannot be understated. The U.S. artificial intelligence market was valued

120. STANFORD UNIV. INST. FOR HUMAN-CENTERED ARTIFICIAL INTELLIGENCE, THE 2025 AI INDEX REPORT (2025), https://hai.stanford.edu/ai-index/2025-ai-index-report.

121. *Id.*

122. Ben Wodecki, *China Set to More Than Double AI Spending by 2026*, DATA CTR. KNOWLEDGE (Oct. 14, 2022), https://www.datacenterknowledge.com/ai-data-centers/china-set-to-more-than-double-ai-spending-by-2026 (citing *IDC's Worldwide AI and Generative AI Spending – Industry Outlook Generative AI*).

123. *See* Cade Metz, *What to Know About DeepSeek and How It Is Upending A.I.*, N.Y TIMES (Jan. 27, 2025), https://www.nytimes.com/2025/01/27/technology/what-is-deepseek-china-ai.html.

124. *Id.*

at approximately USD 103.7 billion in 2022 and is projected to grow significantly, reaching an estimated USD 594 billion by 2032.[125] The seven largest AI companies in the world are U.S.-based,[126] including Apple, Alphabet, Meta, and NVIDIA. On a federal policy level, federal agencies are increasingly identifying applications for artificial intelligence within their operations.[127] In 2024, agencies reported over 1,700 potential use cases for AI, representing a significant increase of approximately 500 examples compared to 2023.[128] The second Trump administration also foresees the importance of AI. President Trump recently appointed White House staff members whose policy platforms center on artificial intelligence, including Silicon Valley veteran David Sacks as AI czar[129] and Sriram Krishnan as the Senior Policy Advisor for Artificial Intelligence within the White House Office of Science and Technology Policy.[130] In addition, President Trump announced a $500 billion private sector investment to fund AI infrastructure in a joint venture called Stargate.[131] To guide this national effort, the White House released America's AI Action Plan in July 2025, laying out a three-pillar strategy: accelerating AI innovation, building domestic infrastructure such as data centers and semiconductor facilities, and leading in international AI diplomacy and security.[132] The plan,

125. Benjamin Stratton, *AI Industry Growth Statistics*, BLUE TREE DIGITAL (Oct. 18, 2025), https://bluetree.digital/ai-industry-growth-metrics/.

126. *See* Denamiel et al., *supra* note 61, at 5.

127. Jory Heckman, *Trump Administration's AI Team Comes into Focus as Agencies Reach 1,700 AI Use Cases,* FED. NEWS NETWORK (Dec. 23, 2024), https://federalnewsnetwork.com/artificial-intelligence/2024/12/trump-administrations-ai-team-comes-into-focus-as-agencies-reach-1700-ai-use-cases/.

128. Jory Heckman, *Trump Administration's AI Team Comes into Focus as Agencies Reach 1,700 AI Use Cases*, FED. NEWS NETWORK (Dec. 23, 2024), https://federalnewsnetwork.com/artificial-intelligence/2024/12/trump-administrations-ai-team-comes-into-focus-as-agencies-reach-1700-ai-use-cases/ (citing U.S. CHIEF INFO. OFFICERS COUNCIL, 2024 FEDERAL AI USE CASE INVENTORY (2024), https://cg-f7a6dbc1-b791-40b1-9eeb-e725679c82c9.sites.pages.cloud.gov/demo/gsa/cio.gov-redo/policies-and-priorities/ [https://cg-f7a6dbc1-b791-40b1-9eeb-e725679c82c9.sites.pages.cloud.gov/demo/gsa/cio.gov-redo/policies-and-priorities/Executive-Order-13960-AI-Use-Case-Inventories-Reference/]).

129. Andrew R. Chow, *What Trump's New AI and Crypto Czar David Sacks Means for the Tech Industry*, TIME (Dec. 10, 2024, at 2:14 ET), https://time.com/7200518/david-sacks-new-white-house-ai-crypto-czar-trump-administration/.

130. Gyana Swain, *Trump Taps Sriram Krishnan for AI Advisor Role Amid Strategic Shift in Tech Policy*, CIO (Dec. 23, 2024), https://www.cio.com/article/3629924/trump-taps-sriram-krishnan-for-ai-advisor-role-amid-strategic-shift-in-tech-policy.html.

131. Steve Holland, *Trump Announces Private-Sector $500 Billion Investment in AI Infrastructure*, REUTERS (Jan. 21, 2025, at 19:42 PT), https://www.reuters.com/technology/artificial-intelligence/trump-announce-private-sector-ai-infrastructure-investment-cbs-reports-2025-01-21/.

132. EXEC. OFF. OF THE PRESIDENT, WINNING THE RACE AMERICA'S AI ACTION PLAN (2025).

developed pursuant to Executive Order 14179, frames AI as essential to national security and American prosperity, calling for deregulation, expanded federal adoption, workforce retraining, and protection of U.S. technological leadership.[133]

Given the strategic importance of AI, establishing international rules for its development and use must be a top priority for the United States. However, the values and priorities of the U.S. and China differ significantly. The overwhelming consensus in the United States is that responsible artificial intelligence requires "fairness, transparency, privacy, human safety, and explainability."[134] In contrast, China's AI governance model is intertwined with its broader digital trade approach, which emphasizes state control and the use of AI for surveillance and social management.[135]

For the United States, DEPA's adaptability is a significant advantage. As a global leader in technological innovation, the U.S. is uniquely positioned to shape the rules governing emerging technologies. For instance, the United States could use DEPA's living agreement framework to advocate for international standards in line with DEPA's consideration on ethical AI usage, including "transparency, fairness, and human-centered values" under Article 8.2.[136] Through DEPA's amendment process under Article 16.3,[137] the U.S. can propose AI provisions that align with its approach in digital trade rules and responsible AI governance. These standards would not only ensure responsible AI development but also protect U.S. companies from unfair competition in markets with less rigorous regulations.

C. DEPA as a Platform for Shaping AI Governance

DEPA provides an ideal platform for the U.S. to shape international AI governance. Article 12.4[138] of DEPA includes provisions for cooperation on emerging technologies, including AI. These provisions emphasize ethical AI practices, transparency, and innovation, aligning closely with U.S. priorities. DEPA's AI provisions are "open-ended

133. *Id.*; Exec. Order No. 14179, 90 Fed. Reg. 8741 (Jan. 23, 2025).

134. Darrell M. West, *Six Steps to Responsible AI in the Federal Government*, BROOKINGS INST. (Mar. 30, 2022), https://www.brookings.edu/articles/six-steps-to-responsible-ai-in-the-federal-government/.

135. Jing Cheng & Jinghan Zeng, *Shaping AI's Future? China in Global AI Governance*, 32 J. CONTEMP. CHINA 794, 798-804 (2023).

136. DEPA, *supra* note 3, art. 8.2.

137. *Id.* art. 16.3.

138. *Id.* art 12.4.

and indeterminate, which does not make it possible to specify the scope of these non-binding commitments, nor does it provide clear guidelines on the framework that the Parties should develop."[139] However, these broad provisions leave room for further development by the United States. By joining DEPA, the U.S. could lead efforts to expand these provisions, advocating for rules that promote responsible AI development while addressing key challenges such as algorithmic bias, data privacy, and intellectual property protection. Through the amendment process outlined in Article 16.3,[140] the United States can propose AI governance provisions for their inclusion and advocate that DEPA member countries follow suit in their own domestic policy areas.

As the global leader in artificial intelligence, the United States is poised to be at the forefront of identifying and addressing emerging issues arising from the rapid advancement of AI technologies. Among these challenges, intellectual property (IP) and copyright protections stand out as current challenging areas. The unique ability of AI systems to generate creative works, from written content like scripts to visual art, raises profound questions about authorship, ownership, and the scope of existing legal frameworks. The United States is well-positioned to pioneer provisions for DEPA that balance the interests of creators, AI developers, and end-users. By tackling these issues early, the U.S. can shape global norms and standards, ensuring that IP and copyright policies remain fair, forward-looking, and conducive to continued technological progress.

China has already begun addressing this issue by introducing IP protections for AI-generated works under its domestic laws.[141] If China were to influence DEPA's rules, it could push for provisions that favor its state-led and restrictive approach. To counter this, the U.S. could advocate for expanded AI provisions within DEPA that explicitly protect IP rights. Currently, there is ongoing legislation such as the NO FAKES Act, which aims to protect creators from unauthorized digital replicas.[142] DEPA allows the United States to enshrine

139. Kramcsák & Benoit, *supra* note 52, at 32.

140. *See* DEPA, *supra* note 3, art. 16.3.

141. *See* Loke-Khoon Tan, James Lau & Harrods Wong, *China: A Landmark Court Ruling on Copyright Protection for AI-Generated Works*, GLOB. LITIG. NEWS (May 8, 2024), https://global-litigationnews.bakermckenzie.com/2024/05/08/china-a-landmark-court-ruling-on-copyright-protection-for-ai-generated-works/.

142. Nina Frazier, *NO FAKES Act Introduced in the Senate: Protecting Artists' Rights in the Age of AI*, RECORDING ACAD. (Aug. 9, 2024, at 08:44 PT), https://www.recordingacademy.com/advocacy/news/no-fakes-act-introduced-in-the-senate/.

these provisions through Article 16.3's amendment process.[143] Such provisions incentivize productivity in creative industries such as film and music by ensuring that creators are compensated for their contributions. Additionally, these rules would provide clarity for businesses operating in international markets, reducing the risk of disputes and fostering a level playing field.

By establishing these rules, the U.S. could set the standard for ethical AI usage, compelling future DEPA members to adopt these norms as a prerequisite for engaging in trade with the U.S. Other countries, including the United Kingdom, India, and Singapore, are actively developing their own AI systems[144], which makes it imperative for the U.S. to define the rules for how AI is used in global trade. Doing so would not only secure the ethical application of AI but also ensure that U.S. businesses and consumers benefit from robust protections. Furthermore, by codifying these rules in DEPA as amendments proposed through Article 16.3, the United States can extend its influence, shaping the global AI landscape to align with democratic values and responsible AI usage, while maintaining its leadership in the digital economy.

D. The Risks of China's Influence in DEPA

China's interest in joining DEPA poses significant risks. While DEPA is currently aligned with US-based principles of openness and fairness, China's potential influence could shift the agreement toward more restrictive norms. If China were to join DEPA, it could advocate for provisions that prioritize state access to data and limit cross-border data flows. This would undermine the agreement's foundational principles that follow the U.S. approach and disadvantage U.S. companies, which thrive in open and competitive markets. China's approach to AI governance prioritizes efficiency and control over transparency and accountability. For example, China has deployed AI technologies to monitor public behavior, suppress dissent, and enhance state surveillance.[145] If these priorities were incorporated into DEPA, they could erode trust in the agreement and discourage participation from the United States itself.

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143. *See* DEPA, *supra* note 3, art. 16.3.

144. *Global AI Power Rankings: Stanford HAI Tool Ranks 36 Countries in AI*, STAN. UNIV. INST. FOR HUM.CENTERED A.I. (Nov. 21, 2024), https://hai.stanford.edu/news/global-ai-power-rankings-stanford-hai-tool-ranks-36-countries-in-ai.

145. *See* Ilaria Mazzocco, *The AI-Surveillance Symbiosis in China*, BIG DATA CHINA (July 27, 2022), https://bigdatachina.csis.org/the-ai-surveillance-symbiosis-in-china/.

It remains uncertain whether China will ultimately gain membership, as its approach to digital trade governance significantly diverges from the U.S.-based approach championed by DEPA Parties. These differences mean substantial challenges to overcome during the negotiation process for China's potential integration into the agreement. Previously, China has struggled to join similar multilateral and regional trade agreements, such as the post-U.S.-withdrawal CPTPP. [146]

However, this can be attributed to the "poison pill" provision in the USMCA.[147] The provision, known as "Article 31.10" in the USMCA, prevents Canada and Mexico from forming trade agreements with what the agreement identifies as "non-market economies" like China.[148] If a USMCA country forms an agreement with a non-market economy, the other two countries have the right to terminate the USMCA with that country.[149]

Canada and Mexico are both members of the CPTPP.[150] The USMCA's poison pill means that Canada and Mexico would likely never allow Chinese accession into the CPTPP. However, although Canada has announced its interest in joining DEPA, it is still not currently a member of the agreement.[151] As a result, Canada is currently unable to directly oppose or influence the decision regarding China's potential membership into DEPA. This dynamic could open the door for China's eventual inclusion.

To counter the possibility of China joining DEPA and expanding its influence over the agreement's direction, the United States must act decisively by joining DEPA itself. U.S. membership would provide a critical counterweight to China's potential efforts to shape DEPA's provisions in ways that align with its state-centric and restrictive digital governance model. Without U.S. leadership, China could gain significant leverage among DEPA Parties, potentially steering the agreement away from its U.S.-based principles of openness, transparency, and the free flow of data. Failure to act risks ceding influence to China,

146. Shannon Tiezzi, *Will China Actually Join the CPTPP?*, DIPLOMAT (Sep. 17, 2021), https://thediplomat.com/2021/09/will-china-actually-join-the-cptpp/.

147. *Id.*

148. *Id.*

149. *Id.*

150. *See* CPTPP, *supra* note 11, annex 1-A.

151. *Minister Ng Announces Canada's Request to Join the Digital Economy Partnership Agreement*, GLOB. AFFS. CAN. (May 22, 2022), https://www.canada.ca/en/global-affairs/news/2022/05/minister-ng-announces-canadas-request-to-join-the-digital-economy-partnership-agreement.html.

jeopardizing possible strategic and economic benefits that the U.S. could attain through DEPA membership.

IV. BUILDING A FOUNDATION TOWARDS A COMPREHENSIVE GLOBAL DIGITAL TRADE FRAMEWORK

The absence of a comprehensive global framework for digital trade has created uncertainty for businesses and policymakers alike. Without clear international rules on data privacy, cybersecurity, and AI, nations have adopted divergent regulatory approaches, leading to inefficiencies and increased trade barriers. DEPA presents a viable path toward a global digital trade system, as its flexible, modular design allows countries to gradually integrate into a broader international framework. This section argues that U.S. participation in DEPA would not only enhance its influence over digital trade rules but also serve as a stepping stone toward a future multilateral agreement. By joining DEPA, the U.S. can demonstrate the benefits of structured digital trade governance, encourage wider international adoption, and lay the groundwork for a comprehensive global framework that aligns with democratic values and economic openness.

A. The Need for a Unified Approach to Digital Trade

In a rapidly evolving digital landscape, the absence of a comprehensive global framework for digital trade poses significant challenges. As nations adopt divergent rules on cross-border data flows, privacy, cybersecurity, and artificial intelligence (AI), businesses face mounting compliance costs, and economic opportunities remain underutilized. The patchwork of national and regional regulations hinders innovation, creates inefficiencies, and reduces predictability for companies operating in global markets.

The Digital Economy Partnership Agreement (DEPA) provides a foundational framework for addressing these challenges. DEPA was designed as a modular and flexible agreement that could serve as a template for global cooperation on digital trade.[152] With its growing membership and scalable provisions, DEPA is emerging as a viable platform for establishing consistent international rules for the digital economy. U.S. participation in DEPA would not only enhance its influence but also lay the groundwork for a broader multilateral

152. *See* Ramasubramanian, *supra* note 21.

framework that reflects the U.S. approach of openness, transparency, and trust.

B. DEPA's Modular Approach to Trade Negotiations

As discussed in Part I, one of DEPA's most significant innovations is its modular structure, which allows member countries to adopt specific provisions incrementally based on their own capacities and policy priorities.[153] This approach enables countries with varying levels of digital trade readiness to participate meaningfully without committing to a comprehensive overhaul of their domestic regulations all at once.[154] For instance, DEPA's Modules cover a wide array of topics from artificial intelligence governance to cybersecurity and digital inclusion, which allow nations to selectively adopt provisions that align with their strategic goals.[155]

This modularity is particularly appealing for future trade negotiations, as it offers a framework that balances flexibility with consistency.[156] Nations hesitant to engage in comprehensive agreements due to concerns over the lack of regulatory autonomy [157] by providing a clear pathway for countries to gradually adopt these digital trade provisions, DEPA establishes a foundation that other countries and future multilateral or regional agreements can emulate.

By joining DEPA, the United States can amplify the benefits of this modular framework, demonstrating its potential as a model for broader international adoption. U.S. participation signals to other nations that this approach is both practical and effective, encouraging hesitant countries to explore the agreement's benefits. Over time, the modularity of DEPA could serve as a template for creating a comprehensive global digital trade framework that accommodates diverse economic and regulatory environments.

C. The Strategic Importance of U.S. Membership

The United States is at the forefront of digital innovation, hosting the largest technology companies in the world and driving global

153. *Id.*

154. *Id.*

155. *See* DEPA, *supra* note 3, arts. 5.1-2, 8.1 & 11.1.

156. *See generally* Ramasubramanian, *supra* note 21 (discussing the modular structure of the Digital Economy Partnership Agreement (DEPA) as an innovative framework for international digital trade governance and future plurilateral cooperation).

157. *Id.*

technological advancements. As discussed in Part II, the U.S incorporated digital trade provisions addressing cross-border data flows, the prohibition of data localization mandates, and the protection of digital intellectual property in previous agreements including the USMCA and DTA (the U.S. approach as discussed in Part II). Joining DEPA would build on this legacy and enable the United States to shape international norms, promote interoperability, and strengthen alliances by collaborating with like-minded nations to counter protectionist trends and establish trust in cross-border data flows.

By demonstrating the benefits of a unified digital trade strategy, DEPA membership could inspire other nations to adopt similar principles, creating a domino effect that drives global alignment back to the U.S. approach of digital trade. This process would involve building consensus on critical issues such as intellectual property protections, consumer data rights, and mechanisms for resolving digital trade disputes. The U.S., with its vast technological resources and expertise, is uniquely positioned to lead this effort.

Moreover, the geopolitical implications of U.S. leadership in digital trade are profound. As authoritarian regimes seek to assert control over the internet and establish restrictive digital ecosystems, the U.S. has an opportunity to champion its vision of a free and open digital economy. This vision aligns with the U.S. approach of openness and promotes innovation, entrepreneurship, and the equitable distribution of digital benefits. By leveraging its influence through DEPA, the U.S. can counterbalance competing models that prioritize state control and censorship.

DEPA membership can serve as a catalyst to attract other countries that might otherwise be reluctant to join. Despite the growing number of countries applying to join DEPA, much of the world has not announced their intention to apply. However, U.S. involvement would lend credibility to DEPA and demonstrate the benefit of joining such an agreement. This can lead to a ripple effect that encourages broader participation among non-member countries by highlighting the advantages of aligning with a global leader in technology and innovation.

The lack of U.S. leadership in recent years has contributed to the rise of data localization measures worldwide. Without a strong advocate for free data flows and digital trust, many nations have pursued restrictive policies that require data to be stored and processed within their borders.[158] These measures stem from concerns for protecting

158. *See* Foo, *supra* note 64.

national security interests, protecting the "privacy of their citizenry, ensuring greater economic opportunities for domestic digital players, and maintaining public order."[159] However, the proliferation of data localization requirements has fragmented the global digital economy, increased compliance costs, and hindered global trade.[160] U.S. leadership is essential to reverse this trend and establish a framework that balances national interests with the need for an open and interoperable global digital ecosystem.

D. Other Possible Options for the United States?

The absence of U.S. involvement in key international negotiations, such as the WTO Joint Statement Initiative on E-Commerce, has left a vacuum that other nations have filled with divergent approaches to digital trade.[161] This lack of coordination has made it more challenging to develop a comprehensive global framework.[162] U.S. participation in DEPA provides the necessary leadership to bridge these divides and build momentum toward a comprehensive global digital trade framework.

According to the Center for Strategic and International Studies, critics argue that a non-binding arrangement such as DEPA lacks the enforceability and impact of a formal treaty.[163] However, several counterarguments highlight the advantages of DEPA.[164] First, DEPA's "soft" rulemaking and norm-setting framework has demonstrated its effectiveness in other settings.[165] The Asia-Pacific Economic Cooperation (APEC) forum has achieved significant progress in areas like digital governance using similar methods, as it has successfully advanced digital governance through voluntary frameworks and

159. Kaitlyn Tsai, *Regulation of Data Localization and How the Legal Profession Can Play a Role*, 34 GEO. J. OF LEGAL ETHICS 1355, 1356 (2021) (first citing Joshua P. Meltzer, *Data and the Transformation of International Trade*, BROOKINGS INST. (Mar. 6, 2020), https://www.brookings.edu/articles/data-and-the-transformation-of-international-trade/; then citing Martina F. Ferracane, *Restrictions on Cross-Border Data Flows: A Taxonomy* 2 (ECIPE Working Paper No. 1/2017, 2017), https://ecipe.org/wp-content/uploads/2017/11/Restrictions-on-cross-border-data-flows-a-taxonomy-final1.pdf; and then citing Benjamin Wong, *Data Localization and ASEAN Economic Community*, 10 ASIAN J. INT'L L. 158, 159 (2020)).

160. Tsai, *supra* note 159, at 1356.

161. *See* Schweitzer, Saccomanno & Saika, *supra* note 44, at 113.

162. *Id.*

163. Matthew P. Goodman, *DEPA and the Path Back to the TPP*, CTR. FOR STRATEGIC & INT'L STUD. (July 15, 2021), https://www.csis.org/analysis/depa-and-path-back-tpp.

164. *Id.*

165. *Id.*

consensus-building initiatives.[166] For instance, APEC's Cross-Border Privacy Rules (CBPR) system has facilitated interoperability between different economies without imposing rigid legal obligations.[167] Second, by joining DEPA, the United States could swiftly begin advocating for the development of rules and norms in the global space.[168] This approach avoids the lengthy and complex process of formal trade negotiations, enabling the U.S. to establish leadership and shape the global digital trade landscape more efficiently.[169]

Another option for the United States is to negotiate new bilateral digital trade agreements as it has with Japan under the 2019 US-Japan DTA.[170] This is an approach championed by the first Trump administration in its strategy of pursuing bilateral over multilateral trade agreements.[171] Negotiating new bilateral digital trade agreements would be lengthy and resource-intensive.[172] The inclusion of digital trade provisions in the USMCA and DTA illustrates the U.S. prioritizing such standards during trade with key partners like Canada, Mexico, and Japan. However, it is unlikely that the U.S. would allocate similar time and resources to develop standalone bilateral agreements with countries it deems less critical to its trade priorities.

In this context, joining the Digital Economy Partnership Agreement offers a more practical and efficient alternative. DEPA's existing framework provides a ready-made platform for engaging with a broader range of countries without the need for extensive bilateral negotiations.[173] By docking onto DEPA, the U.S. could streamline its engagement in shaping global digital trade norms while avoiding the

166. *Id.*

167. ASIA-PACIFIC ECONOMIC COOPERATION, APEC CROSS-BORDER PRIVACY RULES SYSTEM POLICIES, RULES AND GUIDELINES 11 (Nov. 2019), https://cbprs.org/wp-content/uploads/2019/11/4.-CBPR-Policies-Rules-and-Guidelines-Revised-For-Posting-3-16-updated-1709-2019.pdf.

168. Goodman, *supra* note 163.

169. *Id.*

170. International Trade Administration, *Japan – Trade Agreements*, U.S. Dept. of Commerce (Jan. 2, 2024), https://www.trade.gov/country-commercial-guides/japan-trade-agreements.

171. *Bilateral or Multilateral: Which Trade Partnerships Work Best,* KNOWLEDGE AT WHARTON (Apr. 27, 2017), https://knowledge.wharton.upenn.edu/article/bilateral-multilateral-trade-partnerships-work-best/.

172. NIGEL CORY, INFO. TECH. & INNOVATION FOUND., U.S. OPTIONS TO ENGAGE ON DIGITAL TRADE AND ECONOMIC ISSUES IN THE ASIA-PACIFIC 5 (Feb. 2022), https://www2.itif.org/2022-apac-digital-trade.pdf.

173. *See* Pablo M. Garcia & Andrés Rebolledo, *The Digital Economy Partnership Agreement, a Milestone in Trade Negotiations,* INTER-AM. DEV. BANK (Sep. 15, 2020), https://blogs.iadb.org/integration-trade/en/the-digital-economy-partnership-agreement-a-milestone-in-trade-negotiations/.

delays and inefficiencies associated with negotiating multiple new agreements from scratch. This approach allows the U.S. to focus its resources on influencing and strengthening DEPA's provisions, ensuring they align with its strategic objectives and reinforcing its leadership in the global digital economy.

By joining DEPA, the United States can counter competing governance models, particularly those advanced by authoritarian regimes, and champion a vision of a free and inclusive digital economy. This proactive engagement will not only enhance the credibility and influence of DEPA but also set a precedent for future global agreements. Additionally, U.S. participation could catalyze broader membership, encouraging hesitant nations to adopt high-standard digital trade principles and fostering a more integrated and interoperable global economy. Embracing DEPA is not just a practical step; it is a vital one for securing American leadership in the digital age.

V. CONCLUSION: EMBRACING LEADERSHIP IN THE DIGITAL ERA

The Digital Economy Partnership Agreement (DEPA) presents the United States with an unparalleled opportunity to reclaim its leadership in the evolving digital trade landscape. As the global economy becomes increasingly reliant on digital commerce, the need for a cohesive, scalable, and forward-thinking framework for digital trade has never been more urgent. DEPA's modular approach offers a dynamic platform to address emerging challenges in areas like artificial intelligence, data privacy, and cybersecurity while providing the flexibility needed to accommodate diverse domestic and international priorities.

By joining DEPA, the U.S. would not only align itself with like-minded nations but also shape the rules of the digital economy in accordance with democratic values of openness, transparency, and trust. Such participation would serve as a counterbalance to authoritarian governance models, particularly those championed by China, which threaten to fragment the global digital ecosystem and impose restrictive norms that undermine innovation and fair competition.

Moreover, U.S. membership in DEPA would lay the foundation for a comprehensive global framework on digital trade. It would send a powerful signal to the international community that the United States remains committed to fostering economic resilience, protecting intellectual property, and promoting the free flow of data across borders. This leadership would also incentivize other countries to join DEPA, creating a ripple effect that harmonizes digital trade rules globally.

The stakes are too high for the U.S. to remain on the sidelines. Without decisive action, the United States risks ceding influence to competitors and allowing protectionist and restrictive policies to dominate the global digital trade landscape. Joining DEPA is not only an opportunity; it is a strategic imperative. By embracing this agreement, the United States can secure its leadership in the digital economy, safeguard its strategic interests, and set an influential precedent for the equitable and innovative future of global trade.