

May 15, 2026

Ambassador Jameison Greer  
Office of the U.S. Trade Representative  
600 17th Street, NW  
Washington, District of Columbia 20508

**Re: Comments of the Association for Competitive Technology (ACT), Request for Comments on the Modernization of the African Growth and Opportunity Act (91 FR 23142, Docket Number USTR-2026-0166)**

The Association for Competitive Technology (ACT) appreciates the opportunity to provide its views to the Office of the U.S. Trade Representative (USTR) on the modernization of the African Growth and Opportunity Act (AGOA).<sup>1</sup>

ACT represents small business application developers and connected device companies located both within the United States and around the globe.<sup>2</sup> As the world embraces mobile technologies, our members create the innovative products and services that drive the global digital economy by improving workplace productivity, accelerating academic achievement, and helping people lead more efficient and healthier lives. These efforts today represent an economy worth more than \$1.8 trillion annually and that provides over 6.1 million American jobs.<sup>3</sup>

Mobile technologies in Africa have already generated 1.7 million jobs and contributed \$144 billion to the continent's economy.<sup>4</sup> While the global digital economy holds great promise for the small business digital economy in terms of growth and competition, many entrepreneurs face a diverse array of challenges entering new markets. These barriers include laws, regulations, policies, or practices that either exclude U.S. goods and services from foreign markets, artificially stimulate exports of particular domestic goods and services to the detriment of U.S. companies, or fail to provide adequate and effective protection of intellectual property rights for U.S. companies. While these challenges take many forms, they have the same net effect: impeding U.S. exports and investment, and depriving entrepreneurs and consumers in Africa of access and opportunity. With respect

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<sup>1</sup> 91 FR 23142.

<sup>2</sup> Association for Competitive Technology, *About*, available at <http://actonline.org/about>.

<sup>3</sup> Association for Competitive Technology, *State of the App Economy* (2022), <https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL.pdf>.

<sup>4</sup> Nathaniel Allen, *The promises and perils of Africa's digital revolution*, Brookings Institute (March 11, 2021) available at <https://www.brookings.edu/techstream/the-promises-and-perils-of-africas-digital-revolution/>

to improving Africa's digital economy and trade while also expanding opportunities for American innovators, ACT supports the following principles:

- ***Enabling Cross-Border Data Flows:*** The seamless flow of data between economies and across political borders is essential to the functioning of the global economy. Small business technology developers must be able to rely on unfettered data flows as they seek access to new markets.
- ***Prohibiting Data Localization Policies:*** American companies looking to expand into new markets often face regulations that force them and other foreign providers to build and/or use local infrastructure in the country. Data localization requirements seriously hinder imports and exports, reduce an economy's international competitiveness, and undermine domestic economic diversification. Our members do not have the resources to build or maintain unique infrastructure in every country in which they do business, and these requirements effectively exclude them from commerce.
- ***Prohibiting Customs Duties on Digital Content:*** American app developers and technology companies must take advantage of the internet's global nature to reach the 95 percent of customers who live outside of the United States. However, the tolling of data crossing political borders with the purpose of collecting customs duties directly contributes to the balkanization of the internet. These practices jeopardize the efficiency of the internet and effectively block innovative products and services from market entry.
- ***Ensuring Market Entry is Not Contingent on Source Code Transfer or Inspection:*** Some governments have proposed policies that require companies to transfer, or provide access to, proprietary source code as a requirement for legal market entry. Intellectual property is the lifeblood of app developers' and tech companies' innovation; the transfer of source code presents an untenable risk of theft and piracy. Government policies that pose these requirements are serious disincentives to international trade and a non-starter for ACT's members.
- ***Preserving the Ability to Utilize Strong Encryption Techniques to Protect End User Security and Privacy:*** Global digital trade depends on the use of strong encryption techniques to keep users safe from harms like identity theft. However, some governments continue to demand that backdoors be built into encryption keys for the purpose of government access. These policies jeopardize the safety and security of data, as well as the trust of end users, by creating known vulnerabilities that unauthorized parties can exploit. From a privacy and security standpoint, the viability of an app company's product depends on the trust of its end users.

- **Securing Intellectual Property Protections:** The infringement and theft of intellectual property and trade secrets threaten the success of ACT’s members and hurts the billions of consumers who rely on these app-based digital products and services. These intellectual property violations can lead to customer data loss, interruption of service, revenue loss, and reputational damage – each alone a potential “end-of-life” occurrence for a small app development company. The adequate and effective protection and enforcement of intellectual property rights (and the global adoption and full implementation of the WIPO Digital Treaties) is critical to the digital economy innovation and growth.
- **Avoiding the Misapplication of Competition Laws to New and Emerging Technology Markets:** Various regulators, including key trading partners, are currently considering or implementing policies that jeopardize the functionality of mobile operating systems and software distribution platforms that have enabled countless American small businesses to grow. Since its inception, the app economy has successfully operated under an agency-sale relationship that has yielded lower overhead costs, greater consumer access, simplified market entry, and strengthened intellectual property protections for app developers with little-to-no government influence. Foreign governments regulating digital platforms inconsistent with U.S. law will upend this harmonious relationship enjoyed by small-business app developers and mobile platforms, undermine consumer privacy, and ultimately serve as significant trade barriers.

Access to affordable and reliable internet and power is essential to unlocking the digital trade potential within the continent. However, without investment in broadband infrastructure, internet access will remain out of reach for many African people, especially those living in rural areas. A recent study has demonstrated that even 3G internet coverage can produce a 10 percent decline in poverty.<sup>5</sup> Simultaneously, as new internet infrastructure and last-mile connections are established, ACT is increasingly aware of digital trade barriers, either in proposal or already in place, that run counter to our general priorities noted above.

As Congress considers reauthorization, AGOA should be updated to explicitly account for and promote the export of digitally deliverable services across sub-Saharan Africa. The United States should create a dedicated digital economy track within AGOA consistent with the program’s founding purpose of advancing economic development and diversification. Bringing the digital economy under the AGOA umbrella would extend the program’s reach well beyond its traditional manufacturing focus and open the door to participation by a much wider universe of regional firms and entrepreneurs. Reauthorization also presents a timely opening to align AGOA with the Administration’s

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<sup>5</sup> Nathaniel Allen, *The promises and perils of Africa’s digital revolution*, Brookings Institute (March 11, 2021) available at <https://www.brookings.edu/techstream/the-promises-and-perils-of-africas-digital-revolution/>

Trade Over Aid framework, working alongside multilateral partners on capacity-building initiatives that advance open-market reforms in digital services.

While AGOA eligibility determinations already include modality-neutral evaluations (e.g., already include determining whether there is adequate and effective protection and enforcement of intellectual property,<sup>6</sup> which ACT fully supports the continuation of), the growth and unrealized potential of the digital economy for both U.S. and AGOA-eligible businesses and consumers must be further prioritized. ACT therefore urges the Administration to address the barriers to digital trade that exist across AGOA-eligible markets by including ACT's digital trade policies above as prerequisites to AGOA eligibility, and to identify specific ways to help AGOA beneficiaries build their capacity to achieve these goals. Further, ACT requests that AGOA beneficiaries demonstrate their steps to align with pro-digital trade goals in order to remain AGOA beneficiaries, including by notifying USTR of their efforts to create new laws and/or change existing laws to align with pro-digital trade goals noted above as well as their joining and enforcing relevant treaties.

ACT specifically recommends that AGOA eligibility be tied to demonstrable progress on digital openness and equitable treatment of American companies. Drawing largely from the Administration's Agreements on Reciprocal Trade, AGOA beneficiary governments should be expected to commit to the following:

- Enabling cross-border data movement between trusted jurisdictions while maintaining appropriate protections, and recognizing the Global Cross Border Privacy Rules system as a legitimate vehicle for international data transfers;
- Avoiding data localization mandates that force U.S. firms to rely on in-country computing infrastructure;
- Refraining from policies that disadvantage U.S. digital economy innovators, including overly burdensome online platform and artificial intelligence rules, and pursuing harmonized regulatory frameworks that reduce fragmentation, ease compliance burdens, and enable scalable cross-border data flows;
- Pledging not to impose digital services taxes or comparable levies that single out American firms;
- Committing to ensure that market access will not be conditioned on the disclosure or transfer of source code;
- Deepening cybersecurity cooperation with the U.S. through crafting domestic cybersecurity certification regimes that operate on a non-discriminatory basis, which the U.S. government can reinforce through targeted technical assistance and capacity building;

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<sup>6</sup> See AGOA Section 104(1)(C)(ii) and AGOA Section 111.

- Favoring trusted vendors when sourcing goods and services, with the U.S. government available as a reference point for vendor evaluation;
- Joining the WTO Information Technology Agreement; and
- Creating a dedicated track for small and medium-sized businesses and e-commerce to address persistent obstacles in the form of customs friction, logistics costs, compliance complexity, and limited access to digital payments. Such a track could address these gaps by improving compatibility with e-commerce platforms and trade facilitation tools; and offering tailored support to help startups and scaleups satisfy regulatory and consumer expectations.

ACT also urges the United States to mitigate and eliminate these barriers through bilateral and/or multilateral agreements. Now, more than ever, it is imperative that the United States set an example of the best ways to pursue digital trade and the growth of the digital economy through trade agreements (and U.S. domestic policies). For example, the African Continental Free Trade Area (AfCFTA) represents a major global economic trade block and plans to develop digital economy provisions for the AfCFTA agreement.<sup>7</sup> It is imperative that pro-digital economy policies are reflected across AGOA beneficiaries. Doing so will advance the ability of American small business innovators to grow into new markets to create more American jobs, while bolstering Africa's emerging digital economy.

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<sup>7</sup> <https://au-afcfta.org/>.

ACT appreciates the opportunity to provide its views, and we look forward to working with the USTR to advance digital transformation and growth across sub-Saharan African countries that receive AGOA benefits.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Scarpelli". The signature is fluid and cursive, with a prominent loop at the end.

Brian Scarpelli  
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Chapin Gregor  
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**Association for Competitive  
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