July 13, 2026

ACT Association for Competitive Technology

The Honorable Jamieson Greer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, District of Columbia 20508

RE: Comments of Association for Competitive Technology (ACT), Request for Comments and Notice of Public Hearing Concerning the Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act for Calendar Year 2027 [USTR-2026-0298]

Dear Ambassador Greer:

In response to the request for comments published on June 30, 2026,[1] the Association for Competitive Technology (ACT) submits these comments to the Office of the United States Trade Representative (USTR) in connection with the 26th annual review of the eligibility of sub-Saharan African countries to receive benefits under the African Growth and Opportunity Act (AGOA) for calendar year 2027. ACT is an organization representing small business members, and we self-identify as such consistent with USTR's request in the notice. Our comments address one of the statutory eligibility criteria in particular, the requirement that a beneficiary country has established, or is making continual progress toward establishing, the elimination of barriers to U.S. trade and investment, and we urge USTR and the AGOA Implementation Subcommittee of the Trade Policy Staff Committee to account for digital trade barriers in applying that criterion. Addressing these barriers benefits both sides and aligns with the Administration's emphasis on reciprocal trade.

I. Statement of Interest

ACT is a global policy trade association for the small business technology developer community. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem who build products and services across every industry vertical. The value of the ecosystem ACT represents is approximately $1.8 trillion and is responsible for 6.1 million American jobs.[2] As the world embraces mobile technologies,

[1] Office of the United States Trade Representative, Request for Comments and Notice of Public Hearing Concerning the Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act for Calendar Year 2027, 91 Fed. Reg. 39653 (June 30, 2026), Docket No. USTR-2026-0298.
[2] ACT, State of the App Economy, available at https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf.

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.

The small business technology developers ACT represents depend on open and predictable digital markets to reach their customers, the overwhelming majority of whom live outside the United States. Africa's digital economy is among the most promising frontiers for that growth. Mobile technologies in Africa have already generated 1.7 million jobs and contributed $144 billion to the continent's economy[3], and studies indicate that even 3G internet coverage can produce a 10 percent decline in poverty.[4] Access to affordable and reliable internet and power is essential to unlocking that potential, and AGOA has an important role to play in advancing this growth while expanding opportunities for American innovators.

II. Digital Trade Barriers Are Relevant to the AGOA Eligibility Criteria

Section 104 of AGOA and section 502 of the Trade Act of 1974 condition eligibility on a country having established, or making continual progress toward establishing, among other things, a market-based economy, the rule of law, and the elimination of barriers to U.S. trade and investment.[5] The statute specifies that this criterion includes "the elimination of barriers to United States trade and investment, including by ... the provision of national treatment and measures to create an environment conducive to domestic and foreign investment; the protection of intellectual property; and the resolution of bilateral trade and investment disputes." ACT supports strong beneficiary performance across all of AGOA's eligibility criteria, including progress toward a market-based economy, the rule of law, and the protection of internationally recognized worker rights, and focuses here on the trade and investment criterion, where our members have particular expertise. For the small business technology developer community, the barriers that most directly impede trade and investment are increasingly digital in nature. Laws and practices that restrict cross-border data flows, mandate data localization, impose customs duties on digital content, condition market entry on the transfer or inspection of source code, weaken encryption, or fail to protect intellectual property operate as significant barriers to U.S. trade and investment, even where traditional tariff barriers have fallen.

These barriers fall especially hard on small firms. Data localization and data residency mandates require in-country servers or data centers that a small developer cannot build or maintain in every market, which forecloses entry. Network disruptions and service

[3] GSMA, The Mobile Economy Sub-Saharan Africa 2024 (2024) (finding that mobile technologies and services generated 7.3 percent of GDP across Sub-Saharan Africa in 2023, a contribution of approximately $140 billion in economic value added).
[4] Nathaniel Allen, The Promises and Perils of Africa's Digital Revolution, Brookings Institution (Mar. 11, 2021), available at https://www.brookings.edu/techstream/the-promises-and-perils-of-africas-digital-revolution/.
[5] See AGOA section 104, 19 U.S.C. 3703, and section 502 of the Trade Act of 1974, 19 U.S.C. 2462. See also 91 Fed. Reg. at 39653-54.

shutdowns cut off users and revenue without notice. Discriminatory digital services taxes, source code disclosure conditions, and encryption mandates add compliance costs and legal exposure that the largest incumbents can absorb but small businesses often cannot. The cumulative effect is to concentrate the digital economy among the largest players and to deny African consumers and entrepreneurs access to the products of American small businesses.[6] ACT's separately filed comments on the modernization of AGOA document these barriers and their effects in greater detail.

As new internet infrastructure and last-mile connections are established across sub-Saharan Africa, ACT is increasingly aware of digital trade barriers, either in proposal or already in place, across AGOA-eligible markets. ACT respectfully urges USTR and the AGOA Implementation Subcommittee to consider a beneficiary country's treatment of these digital trade barriers as part of the annual assessment of whether the country is eliminating barriers to U.S. trade and investment. Consistent with AGOA's founding purpose of advancing economic development and diversification, we encourage USTR to pair that assessment with engagement and capacity-building that helps beneficiaries make measurable progress, rather than treating the review solely as a mechanism for the withdrawal of benefits.

Addressing digital trade barriers is mutually beneficial and squares with the Administration's focus on reciprocal trade. Open and predictable digital markets accelerate Africa's own digital growth and development, which is AGOA's central purpose, while opening markets for American exporters and the small businesses that serve them. Digital trade barriers cut the other way, undermining AGOA's development goals at the same time that they harm American small businesses.

III. Digital Trade Priorities

With respect to improving Africa's digital economy and trade while expanding opportunities for American innovators, ACT supports the following principles, which we encourage USTR to reflect in the eligibility review and in related engagement with beneficiary governments:

- **Enabling cross-border data flows.** The seamless flow of data across political borders is essential to the functioning of the global economy, and small business technology developers must be able to rely on unfettered data flows as they enter new markets.
- **Prohibiting data localization policies.** Requirements that force foreign providers to build or use local infrastructure hinder trade, reduce an economy's

[6] See Office of the United States Trade Representative, National Trade Estimate Report on Foreign Trade Barriers (documenting foreign digital trade barriers, including restrictions on cross-border data flows and data localization requirements).

competitiveness, and effectively exclude small business developers that cannot maintain unique infrastructure in every country in which they operate.

- **Prohibiting customs duties on digital content.** Tolling data as it crosses borders contributes to the balkanization of the internet and blocks innovative products and services from market entry.
- **Ensuring market entry is not contingent on source code transfer or inspection.** Requirements to transfer or provide access to proprietary source code present an untenable risk of theft and piracy and are a non-starter for ACT's members.
- **Preserving the ability to use strong encryption.** Mandated encryption backdoors create known vulnerabilities that unauthorized parties can exploit and undermine the trust on which digital trade depends.
- **Securing intellectual property protections.** Adequate and effective protection and enforcement of intellectual property rights, including the full implementation of the WIPO digital treaties, is critical to digital economy innovation and growth.
- **Avoiding the misapplication of competition laws to new and emerging technology markets.** Policies that regulate mobile operating systems and software distribution platforms inconsistent with U.S. law can upend the relationships that have enabled American small business developers to grow and can themselves operate as trade barriers.

IV. Recommendations for the 2027 Review

ACT respectfully recommends that, in conducting the 2027 eligibility review and in preparing its recommendations for calendar year 2027, USTR:

- Treat progress on digital openness and the equitable treatment of American companies as relevant evidence of whether a beneficiary is eliminating barriers to U.S. trade and investment under section 104.
- Integrate specific digital-economy metrics into the annual eligibility review, so that each beneficiary's progress on digital openness is assessed on a consistent and transparent basis from year to year.
- Encourage beneficiary and applicant governments to enable cross-border data movement between trusted jurisdictions while maintaining appropriate protections, including recognition of the Global Cross-Border Privacy Rules system as a legitimate vehicle for international data transfers.
- Encourage beneficiaries to avoid data localization mandates and to refrain from measures that disadvantage U.S. digital economy innovators, including overly burdensome online platform and artificial intelligence rules, in favor of harmonized frameworks that reduce fragmentation and ease compliance burdens.

- Encourage beneficiaries to forgo digital services taxes and comparable levies that single out American firms, and to commit that market access will not be conditioned on the disclosure or transfer of source code.
- Encourage deeper cybersecurity cooperation through non-discriminatory certification regimes, the favoring of trusted vendors, and accession to the WTO Information Technology Agreement.
- Support a dedicated track for digital economy small businesses that addresses customs friction, logistics costs, compliance complexity, and limited access to digital payments.
- Pair eligibility determinations with technical assistance and capacity-building, consistent with a trade-focused approach, to help beneficiaries build the capacity to meet these goals.

ACT has separately submitted detailed recommendations on the modernization of AGOA, including the creation of a dedicated digital economy track within the program.[7] We encourage USTR to read these comments together with that submission. We also note that the African Continental Free Trade Area has adopted a Protocol on Digital Trade that addresses cross-border data flows, source code, and related digital economy provisions,[8] and that aligning AGOA's eligibility review with pro-digital-economy policies will advance the ability of American small business innovators to grow into new markets while bolstering Africa's emerging digital economy. Eligibility determinations that reward digital openness can reinforce the ambitions of that Protocol, including its commitments on cross-border data flows.

[7] See Comments of Association for Competitive Technology (ACT), Request for Comments on the Modernization of the African Growth and Opportunity Act, 91 Fed. Reg. 23142, Docket No. USTR-2026-0166 (May 15, 2026).
[8] See African Continental Free Trade Area, available at https://au-afcfta.org/. See also Protocol to the Agreement Establishing the African Continental Free Trade Area on Digital Trade, adopted by the Assembly of the African Union (Feb. 17-18, 2024) (addressing cross-border data flows, source code, and customs duties on electronic transmissions).

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

Sincerely,

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