

August 18, 2025

*Submitted via Electronic Mail to [www.regulations.gov](http://www.regulations.gov)*

The Honorable Jamieson L. Greer  
United States Trade Representative  
Office of the U.S. Trade Representative  
Executive Office of the President  
600 17th Street, N.W.  
Washington, District of Columbia 20036

**RE: Comments of ACT | The App Association, *Initiation of Section 301 Investigation: Brazil's Acts, Policies, and Practices Related to Digital Trade and Electronic Payment Services; Unfair, Preferential Tariffs; Anti-Corruption Enforcement; Intellectual Property Protection; Ethanol Market Access; and Illegal Deforestation; Hearing; and Request for Public Comments* [USTR-2025-0043; 90 FR 34069]**

Dear Ambassador Greer:

In response to the Federal Register notice issued on July 18, 2025,<sup>1</sup> ACT | The App Association hereby makes this submission to the United States Trade Representative (USTR) in response to its request for comments on its initiation of a Section 301 investigation into Brazil's acts, policies, and practices, in particular with regard to digital trade issues.

The App Association 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 that engage with verticals across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology. App developers like our members also play a critical role in developing entertainment products such as streaming video platforms, video games, and other content portals that rely on intellectual property protections. The value of the ecosystem the App Association represents—which we call the app

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<sup>1</sup> Office of the United States Trade Representative, *Initiation of Section 301 Investigation: Brazil's Acts, Policies, and Practices Related to Digital Trade and Electronic Payment Services; Unfair, Preferential Tariffs; Anti-Corruption Enforcement; Intellectual Property Protection; Ethanol Market Access; and Illegal Deforestation; Hearing; and Request for Public Comments*, 90 FR 34069 (July 18, 2025), available at <https://www.federalregister.gov/documents/2025/07/18/2025-13498/initiation-of-section-301-investigation-brazils-acts-policies-and-practices-related-to-digital-trade>.

economy—is approximately \$1.8 trillion and is responsible for 6.1 million American jobs, while serving as a key driver of the \$8 trillion internet of things (IoT) revolution.<sup>2</sup>

While digital technologies in the global economy hold great promise for App Association member companies, our members face a diverse array of challenges when entering new markets. These challenges, commonly referred to as “trade barriers,” are part of laws, regulations, policies, or practices that protect domestic goods and services from foreign competition, artificially stimulate exports of particular domestic goods and services, or fail to provide adequate and effective protection of intellectual property rights. These barriers take many forms but have the same net effect: impeding U.S. exports, competitiveness and investment.

We applaud USTR’s efforts to understand and examine the most important foreign barriers affecting U.S. exports of goods and services, foreign direct investment, and intellectual property rights. We commit to working with USTR and other stakeholders to reduce or eliminate these barriers. With respect to digital trade, the small business innovators we represent prioritize 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 and Digital Service Taxes 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

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<sup>2</sup> ACT | The App Association, State of the App Economy (2022), <https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL.pdf>.

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 the App Association'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 threatens the success of the App Association'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 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 would put mandates on nascent and developing emerging technology markets, jeopardizing small businesses' ability to compete and 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.

We also wish to draw attention to activities in certain international fora that are responsible for the creation of potential digital trade barriers or seek to legitimize policies that inhibit digital trade. For example, the App Association is a leading advocate against efforts within the United Nations' International Telecommunications Union (ITU) to develop pro-regulatory approaches to “over-the-top” (OTT) services – any service accessible over the internet or utilizing telecommunications network operators'

networks.<sup>3</sup> In the ITU, the App Association worked to highlight the benefits of OTT to economies of all sizes across sectors. We continue to work to educate the public and other governments on how a new layer of regulation over OTT services will stifle growth, and we continue to oppose pro-regulatory OTT service proposals. The App Association has called on the ITU to seek consensus across stakeholder groups to reduce barriers to the digital economy, which will benefit the billions of internet users around the globe. We recommend that the USTR include the concerning proposals from international fora like the ITU that inhibit the free flow of data and digital commerce in the investigation of harm from non-reciprocal trade agreements.

Below, we highlight numerous Brazil-specific trade barriers that our members face, which we urge the USTR to consider in identifying unfair trade practices and initiating all necessary actions to investigate harm from non-reciprocal trade agreements pursuant to the America First Trade Policy Presidential Memorandum and the Presidential Memorandum on Reciprocal Trade and Tariffs. The practices highlighted below include both implemented and proposed policies, both of which should be considered by USTR.

#### Issue: Brazilian General Data Protection Law

The National Congress of Brazil passed the Lei Geral de Proteção de Dados Pessoais (LGPD)<sup>4</sup> in August of 2018. The LGPD was enacted on August 27, 2020, and came into force, allowing for penalties and sanctions to be imposed, on August 1, 2021.<sup>5</sup> Various provisions of the LGPD, much like the EU's General Data Protection Regulation, impose additional requirements on non-Brazilian firms (due to its extraterritorial reach) that increase the cost and risk associated with handling data pertaining to Brazilian citizens. Furthermore, Article 33-36 does not permit cross-border data transfers based on the controller's legitimate interest. The countries with which cross-border data transfers will be allowed has not been determined yet, and the App Association urges USTR to advocate for the United States' inclusion on the list of permitted countries.<sup>6</sup> Such provisions can be an insurmountable hurdle to our small business members seeking to enter the Brazilian market. Anything that can be done throughout the LGPD's

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<sup>3</sup> *Comments of ACT | The App Association to the ITU Council Working Group on International Internet-Related Public Policy Issues Regarding its Open Consultation, Public Policy Considerations for OTTs*, ITU, August 18, 2017, available at <https://www.itu.int/en/Lists/consultationJune2017/Attachments/31/App%20Assn%20Comments%20re%20ITU%20OTT%20Consultation%20081817.pdf>.

<sup>4</sup> Chris Brook, *Breaking Down LGPD, Brazil's New Data Protection Law*, DATAINSIDER, June 10, 2019, available at <https://digitalguardian.com/blog/breaking-down-lgpd-brazils-new-data-protection-law#targetText=What%20is%20the%20LGPD%3F,scheduled%20date%20of%20February%202020>.

<sup>5</sup> [Robert](#) Healy, *The Brazil LGPD: How Organizations Can Ensure Compliance*, LEXOLOGY, Oct. 7, 2021, available at <https://www.lexology.com/library/detail.aspx?g=465b3d85-2f7d-40a2-aa19-b200cb819f8a>.

<sup>6</sup> Renata Neeser, *Is the Brazilian Data Protection Law (LGPD) Really Taking Off?*, LITTLER, June 7, 2021, available at <https://www.littler.com/publication-press/publication/brazilian-data-protection-law-lgpd-really-taking>.

implementation process to ease the burden for small and medium-sized companies could have tremendously positive economic implications.

More recently, Brazil's Congress introduced Bill No. 4097/2023, which seeks to impose new "digital sovereignty" measures within the LGPD. This bill would require IT companies operating in Brazil to have a significant level of Brazilian ownership and control—such as at least 25 percent of voting shares held by Brazilian nationals, incorporation under Brazilian law, or headquarters in Brazil.

#### Issue: Discriminatory Competition Frameworks for Digital Platforms

The App Association remains concerned with the introduction of Bill PL 2768/2022, which continues to be considered in the Brazilian House of Representatives. The bill, which in its justification states its inspiration is derived from the European Union's Digital Markets Act, seeks to regulate, inspect, and sanction digital platforms above a certain size. The bill grants wide discretion to the current telecom regulator, the National Telecommunications Agency – ANATEL – to define broad terms and regulate the functioning and operation of digital platforms. Designated digital platforms would be forced to pay an inspection fee amounting to 2% of their annual gross operating revenue, and ANATEL can also sanction platforms with a fine of up to 2% of the national revenue and suspend certain business activities. The extreme obligations and tax penalties in the bill would create tremendous uncertainty for U.S. businesses that would be disproportionately impacted by the discriminatory proposal.

Brazil has a robust competition defense system, which has well-established tools to combat and remedy anti-competitive conduct to protect consumers across sectors. The Administrative Council for Economic Defense (CADE) has the expertise necessary to conduct rigorous investigations - based on evidence and economic analysis across industries and companies, including those operating online. Efforts to impose a new competition framework on digital platforms is meant to discriminate against and harm U.S. companies.

In October 2024, the Brazilian government through the Ministry of Finance released a report advocating for ex ante regulation, where it outlined a proposed framework mirroring the EU's DMA and the UK's Digital Markets, Competition and Consumer Act (DMCC). The clear similarities between Brazil's proposal and these existing regulations, particularly the EU's DMA, create significant concerns.

Under the proposed framework, which news reports indicate the executive branch will send to Congress this week, Brazil will establish a specialized Digital Markets Unit within the Administrative Council for Economic Defense (CADE). This unit will hold broad discretionary powers to identify companies subject to regulation and impose various "special obligations" at its discretion. The Ministry has explicitly stated these regulations will affect a select group of no more than 10 companies, targeting those already designated as "gatekeepers" under the EU's DMA framework - predominantly American technology companies. The proposal's structure will create an uneven playing

field, where other foreign and domestic competitors will not need be subject to the same rules, uncertainty or potential fines.

The economic implications for U.S. companies will be substantial. Beyond the immediate compliance costs, which will be significant, the proposed regulations will reduce competitiveness in the Brazilian marketplace, impact employment throughout the U.S. technology sector's value chain, and constrain resources available for innovation and R&D efforts. Small businesses in particular will suffer, as they depend on the benefits provided by the kinds of curated online marketplaces that will be subject to the new regulation to reach customers in markets like Brazil's. The discriminatory aspects of the proposal demand scrutiny under Section 301 trade provisions, as they create unfair market conditions that specifically disadvantage U.S. businesses.

#### Issue: Artificial Intelligence Regulation

Brazil's Congress is rapidly advancing AI regulation that diverges sharply from the U.S.-led risk-based approach and could undermine the global competitiveness of American technology firms. Bill 2338/2023, already approved by the Senate and pending House approval, has faced widespread opposition from civil society, businesses, and academia, who warn it could harm Brazil's economy, stifle innovation, and disrupt international interoperability. The bill would impose significant restrictions on U.S. AI developers and businesses deploying AI-driven solutions, limiting their ability to export tools and services to Brazil—dealing a major setback to leading U.S. innovators competing against Chinese tech firms. Of particular concern, the bill takes a broad, indiscriminate approach to AI regulation, failing to focus on high-risk applications and instead encompassing even low-risk, routine business functions. Additionally, it lacks clear distinctions between AI system developers and deployers, creating regulatory uncertainty that could severely hinder companies of all sizes from advancing AI innovation.

#### Issue: OTT Regulatory Requirements

The App Association is concerned with the launch of a public consultation by ANATEL proposing mandates for financial contributions by OTTs (termed “value added services”) for the improvement, expansion, and maintenance of the network infrastructure and a related push to establish ANATEL as a regulator for the digital economy in Brazil. The expansion of network infrastructure support fees to OTTs would imperil countless network edge technology innovators' efforts to grow and create new jobs and contradicts well-established U.S. policy on universal service contribution base expansion.

#### Issue: Intellectual Property Rights (IPR) and Standards

Brazil has begun presenting IPR and competition challenges for App Association members. The country is seeing an influx of SEP disputes, in which injunctions are being

rapidly awarded without serious competition consideration. This trend of injunctive relief is in part because Brazilian IP law does not require previous licensing negotiations or notice prior to seeking an injunction. In adjudicating these cases, Brazilian courts do not delineate their treatment of SEP cases and cases regarding regular patents as opposed to the U.S. courts that make this distinction through a proportionality test that determines when an injunction is appropriate and within the public interest.<sup>7</sup> Instead, Brazilian courts apply either preliminary or final injunctions that do not adequately consider SEP holders' voluntary FRAND commitments. For example, while preliminary injunctions in Brazil are assessed based on the impact on the defendant's business and public interest as mandated by Article 300(3) of the Civil Procedure Code, final injunctions are issued almost automatically upon a finding of infringement. This places SEP holders in a unique position to control who can use a standard by virtue of their patent's necessity.

The Brazilian patent system contributes to the enabling (and emboldening) of foreign SEP holders to systematically abuse their dominant market position as a gatekeeper to the use of the standard to attain supra-FRAND terms (a practice known as hold-up<sup>8</sup>) from U.S. businesses. For example, Swedish company Ericsson is a well-known SEP holder that uses courts in key jurisdictions to support hold-up tactics. Most recently, Ericsson sought injunctions in Brazilian and Colombian courts after filing a suit in the United States for the same alleged infringement but before a U.S. court could determine FRAND compliance. While the lower court denied the defendant's plea for an anti-suit injunction against Ericsson to stop interference of U.S. jurisdiction over the case, the United States Court of Appeals for the Federal Circuit reversed and remanded this decision.

Therefore, the FRAND commitment can only be raised as an affirmative defense to a patent infringement suit. We expect Brazil's jurisprudence to have a significant impact on the global SEP licensing landscape. We encourage USTR to work with Brazil to improve their approach to patents and SEPs.

#### Issue: Discriminatory Localization Policies

Brazil has made changes to its tax laws with respect to information and communications technology (ICT) and digital goods in response to findings that the laws were in violation of World Trade Organization (WTO) rules, but Brazil's Basic Production Process law continues to inappropriately favor "local content" production of these categories.

Further, recent amendments to Institutional Security Group (GSI) policies require the localization of certain types of government data. The GSI, led by the military, issued a Normative Instruction outlining new rules for federal cloud service contracts, mandating that data and metadata be stored exclusively within Brazil in certain cases. These requirements disadvantage foreign digital service providers that lack local data storage capabilities, setting a concerning precedent for broader data localization mandates.

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<sup>7</sup> *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006).

<sup>8</sup> Lemley, Mark A. and Shapiro, Carl, Patent Holdup and Royalty Stacking. 85 Texas Law Review 1991 (2007).

Meanwhile, the Department of Innovation within the Ministry of Development, Industry, and Trade (MDIC) is exploring legislative proposals modeled after the European Union's Data Act, aimed at regulating the "data economy." While no formal proposal has been released, a public consultation is expected by the end of the year, with discussions on how Brazil should implement a similar framework. There is concern that such regulations could impose discriminatory obligations on U.S. companies, particularly through targeted thresholds.

Brazil also maintains various data localization barriers, largely in response to the limited competitiveness of its domestic tech sector. It offers tax incentives for locally produced information and communication technology (ICT) goods and equipment (under the Basic Production Process – PPB, Law 8387/91, Law 8248/91, and Ordinance 87/2013) and prioritizes local ICT hardware and software providers in government procurement (per 2014 Decrees 8184, 8185, 8186, 8194, and 2013 Decree 7903). Additionally, Brazil does not recognize conformity assessments conducted outside the country for telecommunications equipment (per ANATEL's Resolution 323).

The GSI has also updated its cloud computing guidelines, mandating localization for certain types of government data. While these rules currently apply only to government data and remain advisory in nature, they set a troubling precedent for broader restrictions on cross-border data flows, raising serious concerns for U.S. digital service providers operating in Brazil.

#### Issue: Digital Services Tax

The App Association is a strong supporter of the several multilateral efforts to keep digital services taxes (DSTs) out of the international taxation system. Despite these efforts, the Brazilian Congress has introduced a number of bills seeking to create a DST that would impact any U.S. company that does business in Brazil. Seven such bills are currently under consideration, and President Lula recently expressed support for their goal of "charg[ing] taxes from U.S. digital service providers." If the policy envisioned by these bills—an additional tax exclusively on the revenue of multinational companies—becomes law, the burden will fall heavily on American companies and may force small businesses to withdraw from the country's marketplace.

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The App Association appreciates the opportunity to submit these comments to the USTR's investigation of harm from Brazil's various practices. We stand ready to work with USTR and other stakeholders to address trade barriers for all of America's businesses and innovators.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Scarpelli', with a stylized, cursive script.

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