

U.S.-CHINA TRACK II DIALOGUE ON THE DIGITAL ECONOMY

CONSENSUS MEMORANDUM

December 9-10, 2019
Sanya, Hainan, China

THE GUANCHAO CYBER FORUM AND THE NATIONAL COMMITTEE ON U.S.-CHINA RELATIONS convened their second Track II Dialogue on the Digital Economy on December 9 and 10, 2019 in Sanya, Hainan, China. The dialogue brought together U.S. and Chinese experts from academia, think tanks, and industry for off-the-record discussions on digital economy issues of concern to both countries. (See *attached name list*.)

Through the two-days meeting, both sides recognized that, as the two largest digital powers in the world, trust and collaboration between China and the United States will have an important impact on the economies of the two countries and even the global economy. Confrontation and even "decoupling" between the two countries in the digital field may result in huge economic losses to both nations in terms of duplicative research and development, excess manufacturing capacity, reduced innovation, and the disruption of global industry supply chains. Localization of production should be limited and transparent to avoid further economic disruption. The possibility of two—or more—different digital economy ecosystems could drastically limit the interaction among the leaders and citizens of the two largest economies in the world, and therefore severely affect the understanding and trust of both sides.

In recent years, the governments of both nations have tended to use overly broad concerns regarding national security as a reason for restricting access to certain data or technologies. These restrictions impose a heavy burden on industry and ultimately citizens. To avoid such harms, both governments should define national security-based restrictions as clearly and precisely as possible, based on well-defined policy goals, and should apply such restrictions only to the specific product or element of a product that poses a national security risk.

During the two-day meeting, representatives from both sides discussed a series of topics including data governance, optimizing and appropriately securing digital economy supply chain, artificial intelligence technology, and new trends in digital economic cooperation. They reached the following consensus to provide a set of recommendations for their respective government departments based on the principles of openness and mutual benefit:

DATA GOVERNANCE

Data flows across borders should only be restricted to the extent necessary to achieve legitimate goals related to national security and protection of personal data and critical infrastructure-related information. Measures should be developed to allow confidence in security and data protection regardless of the physical storage location of data.

We recommend that through clear data classification standards, efforts should be made to minimize the misclassification of data as sensitive data related to national security, personal privacy data and key infrastructure data. To this end, the two governments could consider in detail how to start with managing flows of commercial data, paving the way for mechanisms and solutions for handling cross-border data flows between China and the United States—one approach could be to establish a "free data port" where certain uses of commercial data and personal data could be streamlined under agreed rules, in line with best international practices.

GLOBAL DIGITAL ECONOMY SUPPLY CHAINS

In the spirit of both nations' laws and international norms related to the protection of intellectual property rights, technology sharing and collaboration between the two countries should be encouraged, as it is conducive to enhancing the overall innovation capacity of industry.

Denying non-domestic companies access to domestic technology should be done only in the most limited of situations and for specific, publicly available reasons.

Policy challenges or disputes touching on specialized technical fields should be dealt with separately, and not be made a part of broader trade or economic negotiations.

Both governments should collaborate to develop mutually recognized technical safety standards and industrial certification systems (or adopt existing international standards and systems recognized by third parties), and should enter each other's market with the same standards and methods. Relevant technical disputes and industrial supply chain disputes should be resolved through technical and economic means. Neither country should employ restrictions on digital economy supply chains to express displeasure to the other nation on unrelated issues.

ARTIFICIAL INTELLIGENCE

In fields such as 5G and AI where private sector actors are most consequential in shaping technology's role in society, forums for exchange and policy thinking should include private sector, government, and civil society stakeholders.

On the basis of complying with relevant regulations, the two countries should encourage collaboration in key areas of research into artificial intelligence technology and the integration of AI technology (including software and hardware). They should also jointly discuss the safety, security and ethics of artificial intelligence technology with the goal of contributing to the formulation of international standards and governance approaches that ensure that artificial intelligence develops in a "positive" direction.

DIGITAL ECONOMY DEVELOPMENT

The two governments should open direct contact between officials working on specialized technical fields such as 5G wireless, artificial intelligence, and data governance. Based on current policy challenges, regular meetings between these officials should be established.

In addition, universities and think tanks in China and the United States, with their forward-looking perspective, should strengthen exchanges and cooperation to further improve understanding and sharing of norms relating to the development of the digital economy.

Both governments should promote technical cooperation on the basis of abiding by the intellectual property protection laws of the two countries. If there is a dispute, it should not be "stigmatized" or "presumed guilty," but should be resolved legally through an international court or an international Court of Arbitration in accordance with relevant international intellectual property protection regulations.

KEY POINTS TO DISCUSS IN THE NEXT SESSION

During the meeting, the experts from both sides considered that in the midst of recent trade disputes, the policies or laws enacted by the two governments have interfered with markets, trade and acquisitions, and will seriously affect normal international markets and particularly global supply chains. It is necessary to make further in-depth discussions on the following aspects and to make reasonable proposals for both governments to enact corresponding policies:

- (1) All subsidies and financial support that a government provides to any organization should be transparent (e.g., published on a government website); open to local and global companies on an equal footing; government requirements should not require any mandated technology transfer; and should meet all applicable WTO rules.
- (2) Both governments should publish all procurement rules and should avoid those (both in writing and in practice) that encourage organizations to “buy local” or “not buy foreign.”
- (3) Both governments should respect the other’s multilateral trade activities in global supply chains, and should not through domestic laws implement “long-arm jurisdiction” to limit normal trade activities between the other nation and third-party countries.

The digital economy presents enormous opportunities for all nations, and digital infrastructure has become even more important in the wake of the COVID-19 pandemic, as we move work, education, and entertainment on-line. We are entering a new era of digital transformation, for both governments and businesses, and the resilience and security of digital infrastructure has never been more important for our two economies, and for global economic stability. Like all countries, China and the United States face novel security, economic and social challenges as technology develops and comes into use. It is in the interest of both nations to handle emerging issues jointly through careful discussion and understanding of their mutual interests.

AMERICAN PARTICIPANTS

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