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William Shpiece
Chair of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

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Dear Mr. Shpiece,

BSA | The Software Alliance¹ provides the following information in response to the notice published by the Office of the US Trade Representative (USTR) seeking comments on the Indo-Pacific Economic Framework (IPEF), announced in October 2021 by President Biden.

BSA is the leading advocate for the global software industry, representing the perspective of the enterprise software industry. BSA members are at the forefront of developing cutting-edge, data-driven services that have a significant impact on US job creation and growing the global economy.

BSA supports the US government's launch of negotiations on an Indo-Pacific Economic Framework that includes a robust digital economic framework. This submission addresses the following: (1) Context for a digital economic framework within the IPEF; (2) economic benefits to Americans from such a digital economic framework; (3) proposed substantive elements of such a digital economic framework.

I. Context for a Digital Economic Framework within the IPEF

A digital economic framework in the Indo-Pacific Economic should be undergirded by a broad, bipartisan commitment to advancing American strategic interests, democratic values, and economic prosperity with like-minded allies. More specifically, such a digital economic framework for the Indo-Pacific should:

A. Contain digital provisions to protect American jobs in all economic sectors from digital trade barriers and discrimination

Advancing jobs-centric digital trade means keeping Indo-Pacific markets open for digitally enabled goods and services produced by American workers in fast growing, knowledge-intensive sectors, such as digitally enabled manufacturing and services, where the US economy is primed for further growth and job creation.

Today, a growing number of US trading partners — such as India, Indonesia, and Vietnam — are erecting digital barriers to US exports. Furthermore, China, with the digital trade restrictions in its Cybersecurity Law and related measures, is a party to and wields huge influence in the world's largest free trade area in the Regional Economic Partnership Agreement (RCEP). The United States is excluded from the RCEP.

The digital rules in the RCEP and in many countries across the region contain few, if any, effective digital disciplines on improper efforts to exclude or discriminate against digitally enabled goods and services produced by American workers (including American-made aircraft, machinery, creative content, financial services, and other services) through: (a) data localization mandates; (b) unnecessary data transfer restrictions; (c) customs duties on electronic transmissions; (d) forced technology transfer requirements relating to software source code; (e) the misuse of technical regulations and standards relating to digital services or digital technologies to create barriers to trade and discriminate against non-national persons and technologies; or (f) other non-transparent or discriminatory provisions that harm US exports and US workers.

US-led digital economic framework negotiations can help mitigate this threat. The United States should also insist upon inclusion of digital provisions that protect American workers who produce American-made aircraft, automobiles, machinery, and other connected devices that depend upon networked and over-the-air functionality.² The negotiation should keep foreign markets free from data-related barriers to the authorized distribution of American films, music, software, and publications.³ The negotiation should also protect the American workers and citizens from the harmful effects of forced technology transfer and malicious cyberactivity, such as through mandates to expose sensitive source code to unscrupulous actors. Finally, the negotiation should protect the interests of US enterprises and workers at every stage of the value chain — from R&D and product design, to manufacturing, warehousing, and logistics, to service and sales.⁴

B. Protect US alliances and democratic values across the Indo-Pacific

US-led digital economic framework negotiations can also strengthen US alliances while advancing shared labor-, sustainability-, and democratic governance-related goals. These negotiations are urgently needed as others seek to fill the vacuum created by the United States' absence in the region. Economies with very different perspectives on democracy, human and labor rights, and civic and economic freedoms are establishing new digital rules across the region to codify and build support for their own perspectives on digital governance.

For example, as drafted, the RCEP digital provisions not prevent limit or restrict any country from: (a) engaging in acts of digital repression of political dissidents, labor unions, or minorities; (b) accessing or seizing privately held data without legal limitation, transparency, or

accountability; (c) denying civic and economic freedoms or human rights online without due process; (d) misusing technology to promote forced labor or the trade in goods made with forced labor; (e) engaging in malicious cyberactivity for commercial purposes; or (f) to engaging in other acts of digital authoritarianism.

US-led digital economic framework negotiations can help promote more democratic, inclusive, and balanced digital standards. Such negotiations can bring together like-minded countries that wish to reflect their shared commitment to democratic digital governance, privacy, consumer protection, and open, secure, and inclusive digital ecosystems that preserve and protect the rights and agency of individuals. Such negotiations could also encourage regional cooperation to use all available digital tools to combat climate change and to deepen scientific and green technology cooperation.⁵

II. Economic Benefits to Americans

There are significant economic benefits to Americans of US-led digital economic framework negotiations. As the US Trade Representative (USTR) has stated, “the key to our global competitiveness and creating shared prosperity begins at home.”⁶ Given that many digitally skilled jobs pay more than double the average national wage and are often accessible without a four-year college degree, the United States has done well in recent years to invest in STEM education, digital skills, and advanced manufacturing and software training opportunities, helping to foster an agile workforce that could benefit from US-led digital economic framework negotiations.

As one of the world’s most innovative and technologically advanced economies with few digital trade restrictions, the United States is well positioned to benefit under an Indo-Pacific digital economic framework. The digital economy accounts for 9.6% of the US GDP and supports 5% of total US employment (as of 2019).⁷ Additionally, from 2005 to 2019, the United States digital economy grew at an average rate of 5.2% per year, outpacing the 2.2% growth of the overall economy.⁸

An agile and digitally skilled US workforce also stands to benefit from such US-led digital economic framework negotiations.⁹ Across every sector of the economy, US digital and technology-related job opportunities are growing rapidly, with:

- 67% of new US science, technology, engineering, and mathematics (STEM) jobs in computing and software;¹⁰
- nearly 16 million workers employed in software jobs in the United States;¹¹
- 1.5 million more such jobs open for American workers;¹²
- 40% of US manufacturers urging additional upskilling for advanced manufacturing positions;¹³
- A 19% pay premium going to workers in digitally-skilled and export-intensive manufacturing sectors (as compared with workers that are not in such non-export intensive manufacturing sectors).¹⁴
- numerous digital training opportunities available across all 50 US states, the private sector, community colleges, vocational schools, and apprenticeship programs.¹⁵

With this dual growth in demand and available training opportunities, US advanced manufacturing jobs are growing in software engineering, computer-aided design and

manufacturing (CAD/CAM), industrial machinery mechanics, and Computer Numerical Control (CNC) machinery operations.¹⁶

Other beneficiaries include many of the 32.5 million small- and medium-sized enterprises (SMEs) in the United States. SMEs account for:

- 99.9% of all US businesses;
- Nearly 50% of all US workers (61.2 million workers);
- 90% of all US business openings (909,808 new openings and 9.1 million new jobs in 2019-2020);¹⁷
- 95% of all US exporting enterprises,¹⁸
- 25% of all US exports, supporting over 6 million jobs.¹⁹

SMEs stand to benefit from adopting new digital tools and accessing new markets via digital economic opportunities afforded through the Indo-Pacific Economic Framework. With greater foreign market access, SMEs estimate that they could increase sales by 15-40% and hire between 10-50 new employees each.²⁰

This relief is particularly important to respond to the COVID-19 pandemic, which has impacted 95% of US SMEs with almost 90% having sales (as of late 2020) below pre-pandemic levels.²¹ At the same time, the challenging environment created by COVID-19 caused 70% of SMEs to accelerate efforts to become more digitally competitive, resulting in the most digitally progressive SMEs growing 8 times faster than the least progressive.²² This acceleration in SME digital transformation is welcome news: Studies show that SMEs with a strong digital presence grow twice as fast, and are 50% more likely to sell outside their region, relative to SMEs with little or no digital presence.²³

To grow jobs at home and exports abroad, SMEs benefit from cross-border access to e-commerce platforms, purchasers, suppliers, and other commercial partners. As the OECD has explained, “cross-border data flows are especially important for [MSMEs] ... Better and faster access to critical knowledge and information also helps MSMEs overcome informational disadvantages, notably with respect to larger firms, reducing barriers to engaging in international trade and allowing them more readily to compete with larger firms.”²⁴

A recent survey, which examined the experiences of SMEs under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), illustrates the importance to US-based SMEs of digital economy provisions in an Indo-Pacific Economic Framework. 65% of surveyed companies move data across borders, with even higher percentages for companies that export. SMEs highlighted divergent data privacy rules (40-60% of SME survey respondents) and data localization rules (30-40% of SME respondents) as key challenges.²⁵

III. Proposed Substantive Elements

To counter growing acceptance for digital protectionism and authoritarianism in the Indo-Pacific, the United States should use the digital economic framework negotiations to advance an alternative vision that deploys digital tools to benefit US goods and services exports, large and small business, workers, and economic opportunity for all. Such negotiations should also advance other priorities in the digital environment, including human rights, labor rights,

environmental sustainability, and equity and inclusion across all communities.²⁶ Broadly speaking, the negotiations should:

- Prohibit improper digital policies or practices that undermine data security and economic opportunity in the United States and among like-minded allies, including:
 - data localization mandates;
 - unnecessary data transfer restrictions;
 - customs duties on electronic transmissions;
 - forced technology transfer requirements (e.g., source code transfer mandates);
 - source code and encryption key disclosure/access mandates; and
 - other discriminatory digital measures that harm US economic interests.
- Support digital policies and practices that will contribute to data security and economic opportunity in the United States and among like-minded allies, including by supporting:
 - stronger privacy and data protection;
 - consumer protection;
 - risk-based approaches to cybersecurity as well as protections for source code from mandatory disclosure or access;
 - open government data;
 - data-driven innovation and collaborations, such as data sharing projects and regulatory sandboxes;
 - electronic authentication, e-contracts, and electronic trading;
 - voluntary and open standard-setting processes for digital services and emerging technologies, such as Artificial Intelligence (AI)²⁷;
 - protection of choice and competition;
 - good regulatory practices; and
 - compatibility and interoperability in legal frameworks affecting data and emerging technologies.
- Protect democratic governance, civic and economic freedoms, and human rights in the digital environment. This could be achieved through:
 - commitments not to misuse technologies to target political dissidents, labor unions, or racial, ethnic, religious, and other communities;
 - commitments not to misuse technologies to harm democratic governance (including elections), the rule of law, or human or labor rights;
 - shared principles relating to the collection of data for law enforcement purposes;

- mechanisms for the expeditious resolution of legal conflicts regarding law enforcement-related governmental data access requests in different jurisdictions; and/or
 - frameworks to deploy digital technologies to combat trade in goods made with forced labor.
- Demand private sector digital responsibility, including through:
 - frameworks to discipline online extremism and to support a safe online environment consistent with the G7 Internet Safety Principles and the Christchurch Call to Action; and
 - norms or best practices for the ethical use of AI and for AI risk management (such as incentives or requirements for private companies to conduct AI impact assessments for high-risk AI applications).
- Deploy all available digital tools to address climate change and promoting sustainability. This could include:
 - commitments to collaborate in R&D relating to digitally-enabled climate technologies;
 - open government frameworks that foster the sharing of research data; and/or the
 - application of AI and other emerging technologies in the search for digitally-enabled climate technologies.
- Advance digital inclusion across underserved communities by committing to:
 - follow through on a positive agenda to overcome the digital divide;
 - improve access to digital tools by small businesses and across all communities;
 - address systemic bias in AI systems;
 - share best practices to promote broadband access across all communities; and
 - promote digitally-focused developmental assistance activities in furtherance of an open, secure and democratic Internet across the region.
- Ensure that the United States gets the “benefit of the bargain” through binding dispute settlement provisions with meaningful enforcement mechanisms.

¹ BSA's members include: Adobe, Alteryx, Atlassian, Autodesk, Bentley Systems, Box, Cisco, CNC/Mastercam, DocuSign, Dropbox, IBM, Informatca, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

² Global Data Alliance, *Cross-Border Movement of Data – Creating Jobs and Trust in Every Sector* (2020), at: <https://www.globaldataalliance.org/downloads/GDAeverysector.pdf>

³ Global Data Alliance, *GDA Website – Media & Publishing* (2022), at: <https://globaldataalliance.org/sectors/media-publishing/>

⁴ Global Data Alliance, *GDA Website – Supply Chain Logistics* (2022), at: <https://globaldataalliance.org/sectors/supply-chain-logistics/>

⁵ Global Data Alliance, *Cross-Border Data Transfers & Innovation* (2021), at: <https://globaldataalliance.org/wp-content/uploads/2021/07/04012021cbdtinnovation.pdf>

⁶ <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/remarks-prepared-delivery-ambassador-katherine-tai-outlining-biden-harris-administrations-new>

⁷ Congressional Research Service, *Digital Trade and US Trade Policy* (2021) at: <https://sgp.fas.org/crs/misc/R44565.pdf>

⁸ *Id.*

⁹ BSA | The Software Alliance, *Advancing a Jobs-Centric Digital Trade Policy* (2021), at: <https://www.bsa.org/files/policy-filings/11132021jobscentricdigitrade.pdf>

¹⁰ *Id.*

¹¹ Software.org, *Supporting US Through COVID* (2021), at: <https://software.org/wp-content/uploads/2021SoftwareJobs.pdf>

¹² BSA | The Software Alliance, *BSA Workforce Agenda* (2019), at: <https://www.bsa.org/policy-filings/innovation-competitiveness-opportunity-a-policy-agenda-to-build-tomorrows-workforce>

¹³ Software.org, *Every Sector is a Software Sector – Manufacturing* (2019), at https://software.org/wp-content/uploads/Every_Sector_Software_Manufacturing.pdf

¹⁴ International Trade Administration, *COVID-19 Economic Recovery: An Important Moment Arrives for U.S. Exporters* (May 2021), at: <https://blog.trade.gov/2021/05/19/covid-19-economic-recovery-an-important-moment-arrives-for-u-s-exporters/#:~:text=Additionally%2C%20export-intensive%20industries%20pay%20more%2C%20on%20average%2C%20than,who%20work%20in%20manufacturing%20industries%20that%20don%E2%80%99t%20export.>

¹⁵ A four-year degree is often not necessary to acquire the coding and other skills necessary for software jobs. [Transform Your Trade](https://transformyourtrade.org/) and similar programs connect workers with software training opportunities in the manufacturing and service sectors across [all 50 US states](#), the [private sector](#), [community colleges](#), vocational schools, and apprenticeship programs. See e.g., *Transform Your Trade Website* (2022) at: <https://transformyourtrade.org/>

¹⁶ Software.org, *Every Sector is a Software Sector – Manufacturing* (2019), at: https://software.org/wp-content/uploads/Every_Sector_Software_Manufacturing.pdf

¹⁷ US Small Business Administration, Office of Advocacy, *2021 Small Business Profile* (2021), at: <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143723/Small-Business-Economic-Profile-US.pdf>

¹⁸ US Census Bureau, *Preliminary Profile of US Exporting Companies, 2022* (Nov. 4, 2021), at: <https://www.census.gov/foreign-trade/Press-Release/edb/2019/2019prelimprofile.pdf>

¹⁹ US Chamber of Commerce, *Growing Small Business Exports (2021)* at https://www.uschamber.com/assets/archived/images/ctec_googlereport_v7-digital-opt.pdf

²⁰ *Id.*

²¹ Federal Reserve Banks, *Small Business Credit Survey: 2021 report on employer firms (2021)*, at: <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2021-sbcs-employer-firms-report>

²² IDC, *Small Business Digital Transformation: A Snapshot of Eight of the World's Leading Markets (2020)* https://www.cisco.com/c/dam/en_us/solutions/small-business/resource-center/small-business-digital-transformation.pdf

²³ US International Trade Commission, *Digital Trade in the US and Global Economies (Part II) (2014)*, at: <https://www.usitc.gov/publications/332/pub4485.pdf> A 2019 survey of US-based SMEs shows that 96% of eBay-enabled SMEs exported to an average of 16 different markets, whereas 0.9% (less than one percent) of other businesses exported to an average of 4 markets. Furthermore, eBay-enabled SMEs across the United States averaged 16 different export markets. eBay, *United States Small Online Business Report (May 2021)*, at: <https://www.ebaymainstreet.com/sites/default/files/policy-papers/2021%20Small%20Online%20Business%20Report.pdf>

²⁴ OECD, *Mapping Approaches to Data and Data Flows (2020)*, <http://www.oecd.org/trade/documents/mapping-approaches-to-data-and-data-flows.pdf>

²⁵ Center for Strategic and International Studies, *What Do CPTPP Member Country Businesses Think about the CPTPP (2021)*, at: <https://www.csis.org/analysis/what-do-cptpp-member-country-businesses-think-about-cptpp> For SMEs engaged in online sales, the most important digital economy provisions were those that: (1) ensured that companies can move customer data across borders; (2) permitted companies to choose where to store their data; (3) prohibited digital customs duties; and (4) protected consumers from harmful practices, such as spam.

²⁶ *See generally*, BSA | The Software Alliance, *Advancing Digital Trade: An Agenda for Accelerating Economic Growth and Innovation (2019)*, at: https://www.bsa.org/files/policy-filings/05072019bsa_advancingdigitaltradeagenda.pdf

²⁷ For example, such provisions should ensure that standards, guides, and recommendations that are the basis for technical regulations, conformity assessment schemes, and standards for digitally-enabled services are developed through use open, non-discriminatory, transparent, and consensus-based processes, and do not create unnecessary obstacles to international trade. Such provisions should also require each Party to use international standards whenever possible, and require engagement with other Parties to resolve trade barriers that result from non-reliance on international standards. Each Party should also afford national treatment to conformity assessment bodies located outside of its territory or established under the law of another Party.