

March 30, 2021

The Honorable Katherine Tai  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> St. NW  
Washington, DC 20508

Dear Ambassador Tai:

On behalf of the Information Technology Industry Council (ITI), I extend my warm congratulations to you on your recent confirmation as U.S. Trade Representative (USTR).

ITI is the premier global advocate for technology, representing the world's most innovative companies. We promote public policies and industry standards that advance competition and innovation worldwide. Our diverse membership and expert staff provide policymakers the broadest perspective and thought leadership from technology, hardware, software, services, and related industries. Our companies are unified in their goal to foster policy environments that enable innovation and maximize the benefits of technology for all citizens, deliver long-term and inclusive economic growth, create well-paying jobs for the middle class, and provide modern tools for solving the world's most pressing global challenges, including climate change.

Under your guidance, we see an immense opportunity for the development of a comprehensive U.S. trade agenda that re-establishes U.S. leadership in the global economy and supports U.S. competitiveness through the promotion of open, rules-based, and inclusive trade policies that empower workers in the United States, promote a sustainable planet, and counter growing protectionist trends that U.S. exporters face around the world.

It is with these goals in mind that we present the tech sector's comprehensive trade policy priorities for the Biden-Harris Administration. We look forward to working with you, others at USTR and your interagency partners to develop and promote these goals in a manner that shares the benefits with all Americans.

Sincerely,



Jason Oxman  
President and CEO

Attachment: Tech Sector Trade Priorities for the Biden-Harris Administration

March 30, 2021

## Tech Sector Trade Priorities for the Biden-Harris Administration

The Information Technology Industry Council (ITI) congratulates Ambassador Katherine Tai on her recent confirmation as U.S. Trade Representative. Our membership comprises companies from all corners of the technology sector, including hardware, software, digital services, semiconductor, network equipment, and internet, as well as technology-enabled companies that rely on information and communications technology (ICT) to drive their businesses. Despite their diversity, our companies are unified in their goal to foster policy environments that enable innovation and maximize the benefits of technology for all citizens, deliver long-term and inclusive economic growth, create well-paying jobs for the middle class, and provide modern tools for solving the world's most pressing global challenges, including climate change.

We strongly support the Biden-Harris Administration's objective to take decisive action to facilitate U.S. recovery from the COVID-19 pandemic and the resulting economic crisis, and to Build Back Better by fostering an inclusive and resilient economy. In fact, the technology sector has helped to grow and enhance many services-related jobs in the United States and around the world, and to facilitate the delivery of goods and services to people around the United States and the world. To Build Back Better, the United States needs a strong industrial base, supported by a rules-based trade policy that levels the economic playing field for U.S. technology companies and workers. The adoption of new technologies and the expansion of digital trade will benefit workers and firms alike across virtually every sector of the economy, including through advancing the competitiveness of the United States' most innovative companies. We also look forward to working with the Biden-Harris Administration on relevant domestic legislation that aims to foster a more equitable and inclusive approach to the benefits realized through U.S. technological and trade policy leadership and supports U.S. global competitiveness.

The United States is a global leader in the innovation and delivery of data-driven products and services, and the U.S. economy and middle class benefits greatly from technological innovation and digital trade. As noted in a 2020 report co-authored by now-National Security Advisor Jake Sullivan, "the percentage of middle-income jobs will continue to grow in service sectors that capitalize on digital trade and other technological advances, where the United States maintains a competitive edge in the global economy."<sup>1</sup> While the trend was already well underway, the pandemic has accelerated the adoption and use of digital technologies across all aspects of our lives, from remote work, remote education, and access to critical services, to staying in touch with loved ones. One in three small and medium-sized enterprises (SMEs) report that their businesses would not have survived the pandemic without digital tools,<sup>2</sup> and over 60 percent of small business employers say that technology can help them overcome export barriers.<sup>3</sup> In all, the internet has directly and indirectly contributed nearly 20 million American

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<sup>1</sup> Carnegie Endowment for International Peace (2020), "Making U.S. Foreign Policy Work Better for the Middle Class": [https://carnegieendowment.org/files/USFP\\_FinalReport\\_final1.pdf](https://carnegieendowment.org/files/USFP_FinalReport_final1.pdf)

<sup>2</sup> Connected Commerce Council (2020), "Digitally Empowered: How Digital Tools Power Small Businesses Amid Covid-19": <https://digitallyempowered.connectedcouncil.org/pdf/3C-DigitallyEmpowered-52720v2.pdf>

<sup>3</sup> U.S. Chamber of Commerce Technology Engagement Center (2019), "Growing Small Business Exports: How Technology Strengthens American Trade": [https://www.uschamber.com/sites/default/files/ctec\\_googlereport\\_v7-digital-opt.pdf](https://www.uschamber.com/sites/default/files/ctec_googlereport_v7-digital-opt.pdf)

jobs.<sup>4</sup> American digital services exports are now \$517 billion per year, generating a U.S. digital trade surplus of \$220 billion that is shared by small and large firms and workers far outside the traditional “digital sector.”<sup>5</sup>

Indeed, technology products and services drive growth and job creation in virtually every sector of the economy. In recent years, the global value of cross-border data flows has surpassed the value of trade in goods, with some 75 percent of that value accruing to companies outside the technology sector, primarily through increases in growth, productivity, and employment. By plugging into the global digital network, technology enables firms across the world to access international markets with limited asset footprints, leading to the emergence of “born-global firms” which quickly attain global reach through reliance on existing available digital technologies and with minimal cross-border investment. This connection between digital trade and entrepreneurship, and the importance of policy actions to enable the digitalization of entrepreneurship and the use of digital technology, have also been noted as key in fostering inclusive development.<sup>6</sup>

U.S. technological leadership has been driven by the concurrent advancement of innovative U.S. trade policy and the traditional concept of reciprocal market access, where American companies have been provided a level playing field on which to compete abroad. Working with allies and partners, the U.S. government has pioneered the development and international adoption of trade rules that ensure the benefits of international commerce continue to accrue across all sectors of the U.S. economy. At the same time, some U.S. trading partners, including many of its largest trading partners, continue to promulgate digital and other policy approaches that detrimentally impact not only the U.S. but the entire global innovation ecosystem. In recent years we have seen a proliferation of precisely the kinds of damaging barriers to digital trade that state-of-the-art U.S. trade provisions are designed to counter. These measures have been increasingly documented by the U.S. government and the private sector and include but are not limited to both *de jure* and *de facto* restrictions on market access and cross-border data flows, restrictive and often country-unique approaches to the regulation of new technology, and burdensome and opaque customs practices. The restrictions outlined above detract from U.S. global competitiveness, inhibit value generation, reduce U.S. exports and the flows of foreign direct investment into the United States, result in productivity losses for domestic companies, and can have a meaningful impact on the cost and availability of key digital goods and services.

The Biden-Harris Administration has the opportunity to re-establish U.S. leadership in the global economy and support U.S. competitiveness through the promotion of an open, rules-based, and inclusive trade agenda that empowers workers at home, promotes a sustainable planet, and counters growing protectionist trends that U.S. exporters face around the world. As part of these efforts, we encourage continued U.S. leadership to address technical standards that create barriers to both goods and services trade by leveraging trade agreements, the WTO, and other multilateral organizations. Given the complexity and fast pace of innovation in technology sectors, we also urge the United States to establish of deep and consistent engagement with trading partners to recognize and mitigate the impact of regulation on digital trade and innovation.

It is with these goals in mind that we present the following paper outlining the tech sector’s trade policy priorities. We look forward to working with USTR and its interagency partners to develop and promote these goals in a manner that shares the benefits with all Americans.

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<sup>4</sup> (2019) “Measuring the U.S. Internet Sector,” Internet Association: <https://internetassociation.org/publications/measuring-us-internet-sector-2019/>

<sup>5</sup> <https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=6&isuri=1&tablelist=357&product=4>

<sup>6</sup> Bineswaree Bolaky (2019), “Digitalization, Entrepreneurship and Inclusiveness,” *Digital Trade in Africa: Implications for Human Rights*, United Nations Economic Commission for Africa.

## Table of Contents

Global Trade Priorities.....	4
Digital Trade .....	4
Digital Services Taxes and Other Targeted Digital Measures.....	5
Regulatory Compatibility and Technical Barriers to Trade.....	6
Customs and Trade Facilitation .....	8
Services and Goods Market Access .....	8
Enforcement of U.S. Trade Agreements and Multilateral Commitments.....	9
Strategic Engagement with U.S. Trading Partners .....	10
European Union.....	10
China.....	11
India .....	12
Asia-Pacific Region.....	13
United Kingdom.....	13
Latin America.....	14
Africa.....	14
U.S. Leadership in Multilateral Forums .....	15
World Trade Organization .....	15
G20/G7 .....	15
Asia-Pacific Economic Cooperation Forum.....	16
Summit of the Americas .....	16

## Global Trade Priorities

### Digital Trade

Where data flows, growth and innovation follow. Cross-border data flows and access to digital services and technologies enable “born global” firms by offering them new ways to reach customers near and far. New data-powered technologies have been a game-changer for small businesses, significantly contributing to the integration of SMEs into global supply chains, increasing their access to overseas customers, and enabling them to more efficiently promote their products and services and process payments. Access to cloud-based digital services allows SMEs to make use of the same cutting-edge technologies and solutions as multinational companies, and to scale their businesses more quickly and more cost-effectively.

More broadly, digital trade has made available immense benefits and opportunities to small enterprises – increasingly so when in-person commercial engagement is restricted – and has meaningfully leveled the playing field for enterprises of different sizes across different markets. The tech sector is characterized by good, high-paying jobs: the U.S. state average for wages earned by high-tech sector workers is nearly \$85,000 – well above the national average – and these workers make up a state-level average of nearly 10 percent of the total U.S. workforce. These U.S. jobs also contribute disproportionately to U.S. exports, accounting for a state-level average of nearly 30 percent of all U.S. manufacturing exports and 12 percent of all services exports.<sup>7</sup> Digital exports have also enabled technology companies to lead all sectors in terms of investing back in the U.S., with one report finding that technology firms are 10 of the top 25 American investors based on domestic capital expenditures.<sup>8</sup>

However, the clear benefits of broad-based digital growth risk being derailed by existing and emerging barriers to trade that restrict innovation and create obstacles to the cross-border provision of digitally enabled services.<sup>9</sup>

Key U.S. trading partners are advancing approaches to digital trade that may allow for – or even promote – restrictive approaches to data governance and the regulation of new technology that will hurt U.S. companies and workers. A Build Back Better approach to trade policy should therefore include an ambitious digital trade agenda designed to increase the United States’ global competitiveness across all technology-enabled sectors. We encourage USTR to continue to be a champion of digital trade principles in its bilateral, regional, and multilateral engagement and negotiating efforts, including through efforts to:

- Prohibit restrictions on the cross-border flow of data (allowing only for narrowly tailored exceptions) and forced localization of computing facilities;
- Prohibit tariffs and customs formalities on electronic transmissions;
- Enshrine non-discriminatory treatment of digital goods and services and stop trading partners from pursuing discriminatory approaches to digital regulation;
- Secure commitments to refrain from the implementation of taxation measures that are discriminatory in nature and contravene long-standing principles of international taxation;

<sup>7</sup> Information Technology Industry Council (2020), “Powering Innovation, Driving Growth: The High-Tech Economy in Communities Across America”: <https://www.itic.org/policy/ITI-Powering-Innovation-Report-Final.pdf>

<sup>8</sup> Mandel, Michael and Elliot Long (2019), “Investment Heroes 2019: Boosting U.S. Growth,” Progressive Policy Institute: [https://www.progressivepolicy.org/wp-content/uploads/2019/12/PPI\\_InvestmentHeroes2019\\_V4.pdf](https://www.progressivepolicy.org/wp-content/uploads/2019/12/PPI_InvestmentHeroes2019_V4.pdf)

<sup>9</sup> See, for instance, the OECD Digital Services Trade Restrictiveness Index: [https://www.oecd-ilibrary.org/trade/the-oecd-digital-services-trade-restrictiveness-index\\_16ed2d78-en](https://www.oecd-ilibrary.org/trade/the-oecd-digital-services-trade-restrictiveness-index_16ed2d78-en)

- Ensure the protection of personal data, taking into account best international practices for privacy and interoperability;
- Strengthen and expand good regulatory practices for digital trade, in accordance with the Organisation for Economic Co-operation and Development's (OECD) principles, as a means to promote new technologies like Artificial Intelligence (AI), machine learning, and additive manufacturing;
- Seek to expand the application of TBT-style commitments to digital services, including commitments ensuring reliance on global, industry-driven, voluntary consensus standards;
- Promote governmental cooperation and risk-based approaches to cybersecurity;
- Prohibit requirements to disclose source code, algorithms, and proprietary information relating to cryptography;
- Address potential market access barriers related to platform governance while enabling effective content moderation practices;
- Facilitate access to and use of open public data in minable, machine-readable formats to spur adoption of AI and other new technologies; and
- Enshrine acceptance of electronic contracts, signatures, and authentication.

### Digital Services Taxes and Other Unilateral, Targeted Measures

The ongoing digitalization of the global economy poses legitimate international tax challenges. However, an increasing number of jurisdictions have adopted digital services taxes (DSTs) or other discriminatory tax measures that target U.S. technology companies and are inconsistent with global principles of taxation. Not all unilateral tax measures are the same but many of them deviate from international tax and trade norms in similar ways: focusing solely on the digital sector, operating outside of tax treaties, charging a tax on gross revenue, targeting nonresident companies, requiring companies to institute extensive compliance regimes, and eschewing the principle of permanent establishment. Beyond further fragmentation of the international tax policy landscape, individual country measures have raised significant trade implications, as detailed in the findings of USTR's Section 301 investigations into France's DST and six other measures.

ITI appreciates USTR's continued commitment to rigorously investigate the many unilateral, discriminatory tax measures to demonstrate the tax and trade implications for U.S. companies, and encourages USTR to address these discriminatory taxes and to continue its work to discourage further proliferation of such measures. Not only are they disproportionately harmful to U.S. companies, but these unilateral DSTs represent one of the most significant challenges to ultimately securing a sustainable international agreement through the OECD/G20 Inclusive Framework's project.

ITI has long supported the OECD/G20 Inclusive Framework's project for providing a forum to reach a consensus-based, multilateral solution, and is encouraged by early messages of the Biden-Harris Administration that it will prioritize robust engagement in these conversations in the spirit of reaching a multilateral solution. This project is an opportunity for order where the alternative is increased fragmentation of the global tax system, reduced competitiveness of U.S. companies, and negative global macroeconomic impacts resulting from the proliferation of unilateral measures, as well as potential counter-measures in the form of retaliatory tariffs. Despite significant progress taking place at the OECD, and continued international commitment to its process and goals, the spread of unilateral DSTs continues. It is essential that removal of unilateral DSTs remains a condition of any multilateral agreement.

The U.S. government's robust response to these unilateral measures has been instrumental in both decelerating their proliferation and facilitating recommitment to reaching a multilateral, consensus-based solution. As the U.S. government considers next steps, USTR should develop a clear plan to address DSTs found to be discriminatory

and inconsistent with international principles of taxation, and to discourage countries from pursuing unilateral tax measures that subject U.S. companies to double taxation and undermine the ongoing multilateral negotiations to address the tax challenges arising from the digitalization of the global economy.

### *Targeted Digital Regulations*

We are noting a trend in which the scope of emerging digital regulation across different jurisdictions is tailored in a way that may deviate from sound, transparent regulatory practices. Ensuring the strict observance of good regulatory practices as governments move forward with more targeted forms of digital regulation is essential not only to avoiding potentially discriminatory impacts, but ensuring that global approaches to both digital and technology governance as well as digital trade are developed in a manner that does not detract from the broader, global innovation ecosystem. Particularly where they may clearly seek to target a narrowly defined set of companies, we urge the Biden-Harris Administration to ensure that emerging regulation is non-discriminatory and based on rigorous, objective criteria, with proportionate and well-justified obligations accompanied by appropriate due process guarantees.

### Regulatory Compatibility and Technical Barriers to Trade

Trade in ICT products tends to be particularly susceptible to non-tariff barriers to trade, and the same is increasingly true for ICT services. There are several explanations for this: relative to other sectors, ICT products are disproportionately designed for the global market; have large numbers of components and rely on complex, global supply chains; are constantly evolving in response to user demands and technological advances; are deployed in a wide and varied array of scenarios and sectors; and are highly configurable (i.e., one product family can have hundreds of different configurations). Moreover, ICT goods – and increasingly, services – are standards-intensive.

Emerging regulatory approaches to new technology bear significant trade implications for digital services and even “processes” as well. This is increasingly apparent where governments have developed, or are in the process of developing, certification requirements in areas such as cybersecurity (including with respect to cloud services), AI, and privacy. As noted above in our digital trade priorities, **we therefore see it as essential that the U.S. government seek to expand and develop provisions that extend TBT-style commitments to digital services, including as regards regulatory reliance on international standards** developed in accordance with the Committee on Technical Barriers to Trade (TBT) Decision on International Standards. Absent such commitments we fear that a wide range of emerging regulatory approaches could, either incidentally or by design, create new market access barriers that are not currently disciplined under existing international obligations.

### *International Standards*

The U.S. technology sector is a key contributor to the development of technical standards in a wide range of international standardization bodies and consortia domiciled in various jurisdictions. Innovations in recent U.S. free trade agreements (FTAs) therefore bear a great deal of significance for ITI members in preventing the emergence of non-tariff barriers to trade and fostering regulatory compatibility across increasingly connected industry sectors.

The United States-Mexico-Canada Agreement’s (USMCA) commitments covering international standards – both in the context of the technical barriers to trade (TBT) chapter as well as in discrete provisions outside of the TBT chapter – drive forward innovation-facilitating policies that enable industry and regulators alike to draw on the widest range of technical standards solutions in assessing or demonstrating compliance with regulatory

requirements. Such provisions are reflective of the U.S. government’s approach to the use of standards in regulation and the broader U.S. standardization ecosystem, in which there are hundreds of active, industry-led standardization bodies and consortia, many of which develop international standards in accordance with the principles of the TBT Committee Decision on International Standards. Importantly, these provisions advance standardization policy that is favorable to both trade and innovation by pushing back on government policies, whether *de jure* or *de facto*, that stipulate mandatory reliance on either country- or region-unique standards, rather than providing the broadest range of fit-to-purpose international standards. In addition to reducing the likelihood of such market access barriers, reliance on the broadest range of international standards aligns with risk-based governance approaches that are better suited to keeping pace with technological development and avoiding unnecessarily restrictive requirements.

### *Conformity Assessment*

USMCA provisions governing conformity assessment are likewise crucial to the U.S. ICT goods sector. Given the prevalence of divergent ICT hardware technical regulations around the world, localized testing requirements for ICT products are regularly atop the list of technology sector trade concerns. U.S. provisions that build on Article 6.4 of the WTO TBT Agreement<sup>10</sup> and lock in national treatment for conformity assessment bodies directly challenge such ill-founded localization requirements. India’s Compulsory Registration Order (CRO) is a compelling, long-standing example of such a requirement. Under the CRO, companies are required to retest products in India to meet international safety requirements despite having already passed identical tests in internationally accredited labs. The registration process is incredibly costly to U.S. firms and fails to improve product safety. To compound concerns, in 2020, the Ministry of Electronics and Information Technology (MeitY) proposed to expand the CRO to cover additional products; however, it failed to perform any risk or regulatory impact assessment to justify these additions. In fact, stakeholder meetings revealed that the emphasis now seems to be on limiting imports of products into India from certain other countries, rather than on assessing for product safety and risk to the Indian public. India is not alone in its pursuit of such requirements, and the expanded acceptance of strong FTA provisions on conformity assessment is necessary as a means of pushing back on this protectionist trend.

### *International Schemes*

Similarly beneficial both in reducing trade barriers and fostering regulatory compatibility are provisions that promote reliance on international accreditation schemes as a means of facilitating the acceptance of reliable, international test results. Schemes such as the International Laboratory Accreditation Collaboration (ILAC) Mutual Recognition Arrangement (MRA), the International Accreditation Forum (IAF) Multilateral Recognition Arrangement (MLA), and the IEC System of Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE) CB Scheme provide for a rigorous peer-review process that ensures the quality of test results produced by accredited conformity assessment bodies (CABs) and certification bodies. Expanding reliance on these schemes through U.S. FTA provisions would not only facilitate increased trade in regulated areas where testing and certification is necessary, but would have positive ramifications for safety, quality, and consistency, both by broadening the range of acceptable, trustworthy results, and allowing regulators and market surveillance authorities to concentrate resources in the most efficient and effective manner possible.

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<sup>10</sup> See USMCA Articles 11.1 and 11.2.

### *Good Regulatory Practices (GRPs)*

U.S. innovation of trade disciplines concerning good regulatory practices clearly reflects the importance of regulatory transparency both in facilitating trade and fostering strong regulatory outcomes. Communication between regulators and a broad range of stakeholders on the approach and objectives of new regulatory requirements eliminates regulatory uncertainty and can prevent the emergence of barriers to trade. Similarly, early and consistent notification to the WTO of both technical regulations and voluntary measures provides a necessary channel for government and stakeholder input. Beyond the more specific applications referenced in the context of digital trade above, we encourage USTR to promote the acceptance of state-of-the-art commitments on GRPs that facilitate compatibility and transparency by broadening reliance on open, evidence-based approaches to the development of policy, legal frameworks, and regulation.

### *Additional Areas of Regulatory Compatibility*

Finally, ITI recognizes the tangible economic benefits of discrete regulatory compatibility provisions contained in sectoral annexes of U.S. FTAs, including but not limited to provisions governing supplier's declaration of conformity, encryption, importation of ICT devices for testing purposes, and electronic labeling (e-labeling). With specific respect to e-labeling, allowing the display of regulatory and other product information via electronic means provides a practical solution that ensures labels will not inhibit product innovation while helping to minimize manufacturers' logistical burdens and allowing compliant products to move freely without additional administrative barriers.<sup>11</sup>

## Customs and Trade Facilitation

E-commerce has played a revolutionary role in opening new opportunities for SMEs to sell goods across borders, and customs and trade facilitation commitments in USMCA have established a gold standard for broadly facilitating the benefits of e-commerce. In its current and future trade negotiations, we strongly encourage USTR to build on and strengthen customs and trade facilitation provisions in USMCA and the WTO Trade Facilitation Agreement (TFA). Further simplifying customs clearance procedures – including through establishment of commercially meaningful *de minimis* levels, as well as informal clearance thresholds – enables greater U.S. SME participation in international trade and continues to send a clear message about the unambiguous economic benefits of such commitments.

## Services and Goods Market Access

### *Services Market Access*

As a means of complementing and giving effect to the modern, rules-based digital commitments described above, U.S. efforts to enshrine market openness through full liberalization of services market access has had a profound impact on the United States' role as a global leader in services trade. According to U.S. Census Bureau data, U.S. services exports – a large proportion of which, as noted in the introduction, are digitally delivered – increased from \$200 billion in 1994 to \$845 billion in 2019.<sup>12</sup> U.S. FTA commitments are especially impactful given that, with

<sup>11</sup> Cory, Nigel (2017), "How E-labels Can Support Trade and Innovation in ICT", *Information Technology Innovation Foundation*, <https://itif.org/publications/2017/09/25/how-e-labels-can-support-trade-and-innovation-ict>

<sup>12</sup> <https://www.census.gov/foreign-trade/statistics/historical/gands.pdf>

the exception of accession commitments, no new services market access commitments have been finalized at the WTO since the conclusion of negotiations on the General Agreement on Trade in Services (GATS) in 1995.

More specifically, the U.S. approach of negotiating services market access on a negative list basis, with minimal non-conforming measures, has been essential to the growth of U.S. services trade and the vibrancy of the U.S. technology sector. Beyond opening U.S. market access in sectors that are key to digital trade, including computer and computer-related services, telecommunications, advertising services, distribution services, electronic payment services, audiovisual services, and postal and express delivery sources, the U.S. adoption of a negative list approach ensures that new sectors benefit from market access commitments without further negotiation. The value of this approach has become more apparent as U.S. trading partners such as the European Union (EU) have sought in preferential trade agreements to retain the right to discriminate in the broad and ill-defined category of “new services.”

### *Goods Market Access*

Similarly, U.S. efforts to secure full market liberalization for ICT products with trading partners, including through efforts to broaden product coverage and geographic participation in the WTO Information Technology Agreement (ITA) and its expansion, have opened global markets for exporting U.S. technology firms and facilitated meaningful benefits for businesses, workers, and consumers. By reducing the price of ICT goods, the ITA has boosted U.S. export competitiveness, increased the availability of productivity-enhancing goods such as mobile phones, and reduced the import prices of computers and semiconductors by 66 percent since 1996.<sup>13</sup> While approximately 97 percent of trade in ICT goods has been liberalized, half of all WTO members are not parties to the ITA – including Mexico and most of Latin America. And large economies such as China, India, and Indonesia have either yet to fully implement ITA and ITA expansion commitments, or in some instances appear to willfully break their WTO tariff bindings that have been lowered to zero by their participation in the ITA. U.S. efforts both in FTAs as well as at the WTO, and as part of other negotiations such as OECD membership, remain essential to expanding participation in and enforcing implementation of the ITA and further broadening the list of covered products, including as a means of ensuring that rapidly evolving technology products can benefit from tariff-free treatment. Expanding ICT goods market access in non-ITA signatory markets is also consistent with U.S. goals of boosting economic growth and opportunities in developing countries.<sup>14</sup>

In addition, we strongly encourage efforts by the Biden-Harris Administration to expand market access for environmental goods and services, including through engagement with like-minded partners at the WTO. Such efforts would be directly supportive of the Administration’s aims with respect to climate, trade, economic growth, and diplomatic engagement with international partners.

## **Enforcement of U.S. Trade Agreements and Multilateral Commitments**

The strength of the United States’ trade commitments lies in the demonstrated ability of the USG to monitor, catalog, and respond robustly to measures that contravene them. These efforts are particularly important for

<sup>13</sup> World Trade Organization (2020), “20 Years of the Information Technology Agreement”:

[https://www.wto.org/english/res\\_e/booksp\\_e/ita20years\\_2017\\_chap1\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/ita20years_2017_chap1_e.pdf)

<sup>14</sup> See Ezell, Stephen and John Wu (2017), “How Joining the Information Technology Agreement Spurs Growth in Developing Nations,” *Information Technology Innovation Foundation*, <https://itif.org/publications/2017/05/22/how-joining-information-technology-agreement-spurs-growth-developing-nations>

reinforcing the value of some of the relatively new commitments discussed to this point, as well as to proactively advance labor and environment priorities as part of a modern Biden-Harris trade agenda. We encourage USTR to use all tools at its disposal, including but not limited to bilateral and regional engagement, state-to-state dispute settlement, and WTO channels (including dispute settlement as well as active committee engagement) to ensure that trading partners adhere to their international commitments. Doing so will ensure the United States' ambitions for 21<sup>st</sup> century trade policy benefit from consistent and thorough implementation while building confidence in the efficacy of U.S. trade agreements.

In the North American context, we urge USTR to prioritize enforcement of all USMCA provisions, including its landmark digital trade provisions. In this regard, we welcome efforts to prioritize addressing Mexico's recent "kill-switch" provision, an unprecedented enforcement mechanism that empowers Mexico's tax authority, in collaboration with its telecom regulator, to demand that local Internet Service Providers (ISPs) block websites or digital services providers that are non-compliant with Mexico's Value Added Tax (VAT) rules. Given the nature of the measure, its potential for expansive detrimental impact on U.S. service suppliers, and its potential contravention of USMCA commitments, we urge the Biden-Harris Administration to ensure that Mexico amends this provision in a way that achieves the tax policy objectives of the Mexican government and conforms with Mexico's international trade obligations. In addition, we urge the Administration to:

- push back on data localization measures, such as Mexico's new regulation requiring Fintech's to localize certain data in Mexico;
- challenge recent Canadian DST proposal and ensure that the Canadian government remains committed to a multilateral OECD solution; and
- challenge Mexico's rollback of energy reform, which will preference dirty energy over cheaper, more climate-friendly renewable energy.

Finally, U.S. exporters, many of which are small businesses, face intensifying customs and regulatory issues at the Mexico border. We encourage the administration to work with Mexico to ensure full implementation of the USCMA trade facilitation chapter and eliminate any new barriers to entry for U.S. exports.

## Strategic Engagement with U.S. Trading Partners

### European Union

The U.S.-EU economic relationship remains the largest bilateral trade and investment relationship in the world. Digital and ICT products and services are a key enabling component of that relationship: over half of digitally-enabled services imported by the United States from the EU are used to produce U.S. products for export, and vice-versa.<sup>15</sup> A robust history of bilateral and multilateral cooperation forms a solid basis for fostering a closer partnership. At the same time, the EU is actively pursuing an ambitious digital policy strategy under the banner of "technological sovereignty," the legislative results of which – including initiatives such as the Digital Markets Act (DMA), a proposed unilateral Digital Levy, development of an EU Cloud Federation and regional cloud procurement regimes, and forthcoming *ex ante* regulation of AI – bear significant implications for the U.S. and global technology sector. Maintaining and increasing the ability to develop key technologies and ensure their availability to the EU in the future is a legitimate goal, and ITI welcomes USTR engagement to encourage pursuit of these objectives in a manner that eschews protectionism and discrimination. Furthermore, with a foundation of common values including democracy, privacy, and security, it is imperative that the U.S. and the EU jointly

<sup>15</sup> Hamilton, Daniel and Joseph Quinlan (2020), "The Transatlantic Economy 2020: Annual Survey of Jobs, Trade and Investment between the United States and Europe," *Foreign Policy Institute, Johns Hopkins University SAIS*, [https://www.uschamber.com/sites/default/files/te2020\\_report\\_final.pdf](https://www.uschamber.com/sites/default/files/te2020_report_final.pdf)

demonstrate best practices for the global digitalized economy, including as a means to promote global solutions in areas where technology can play a key role in facilitating progress, such as climate change and economic recovery from the COVID-19 pandemic.

ITI therefore strongly supports the establishment of a U.S.-EU Trade and Technology Council (Council) as a timely and necessary forum to expand on recent trade discussions and enhance transatlantic cooperation, facilitate regulatory compatibility, and to address current and potential market access barriers in critical areas of digital and technology policy. As part of this transatlantic Council, the technology sector sees great benefit in the establishment of a structured bilateral dialogue to discuss and resolve policy approaches to digital trade matters of importance to either side, including open, trade-facilitative approaches to data governance and data flows, digital taxation, and the regulation of new technology. Such discussions should be premised on the non-discriminatory treatment of digital goods and services, and undertaken with a view to promoting transparent, compatible approaches to digital policy at the global level. In addition to digital policy and digital trade, the scope of a U.S.-EU Trade and Technology Council could also comprise engagement on:

- **Standardization and conformity assessment**, including discussions to explore innovative and transparent mechanisms that enable industry and regulators alike to consistently rely on global, industry-driven, voluntary consensus standards as a means of demonstrating conformance with new regulatory requirements – including with respect to digital services;
- **Technology, investment, and security**, including discussions to align policy approaches in areas such as investment screening and export controls, and on modernized approaches to implementing them;
- **Combatting unfair trading practices and facilitating multilateral collaboration**, including discussions to further progress toward shared, rules-based approaches to addressing unfair and market-distorting trading practices; and
- **Climate, sustainability, and innovation**, including exploration of how to leverage new technology to accelerate and amplify the impact of policies aimed at achieving common environmental and sustainability objectives.<sup>16</sup>

Acknowledging that transatlantic data flows are an integral pillar of the EU-U.S. trade relationship and that any disruption to their free flow constitutes a major challenge to the technology sector and the entire transatlantic economy, it is important that the EU and the U.S. – in parallel to work undertaken in a transatlantic Council – continue and swiftly conclude their negotiations for an enhanced transatlantic data transfer agreement.

## China

ITI appreciates the continuing focus of the Biden-Harris Administration on China and its discriminatory and market-distorting trade practices. USTR’s work across multiple administrations has helped to usher broad international recognition of unfair Chinese trading practices falling outside the scope of existing multilateral rules. Forced partnerships with Chinese companies, the provision of market-distorting subsidies and other state support to Chinese technology firms, the inability of U.S. cloud services companies to obtain licenses to operate and serve other multinational companies with facilities in China, recent and prospective Chinese “citizen boycotts” of non-Chinese companies’ products, and data localization requirements remain key concerns for ITI members. Addressing these critical barriers, and holding China accountable to its existing bilateral and multilateral commitments, is important not only as concerns facilitating the competitiveness of U.S. firms in China and globally, but also for continuing to pressure China toward more responsible behavior on the global stage. Unfortunately,

<sup>16</sup> See ITI’s full Recommendations for an EU-U.S. Trade and Technology Council here: <https://www.itic.org/documents/trade/2021.01.14ITIREcommendationsforanEU-USTTCFinal.pdf>

many governments – including India – following China’s lead and using trade barriers and domestic requirements in order to discriminate against U.S. companies in their markets. As USTR continues to confront the significant challenges China poses to the global trading environment, ITI sees opportunity for strategic approaches through both bilateral and broader international engagement.

In the near-term, we encourage the Biden-Harris Administration to formulate a trade policy vis-à-vis China that prioritizes digital and technology issues, and establishes benchmarks for a phased rollback of Section 301 tariffs. Simultaneously, we encourage you to move swiftly on your hearing commitment to ensure a transparent, predictable, and rapid process for tariff exclusions to alleviate the harm to American workers and consumers. We believe a prioritization of the following areas will not only further U.S., EU, and other international efforts to date to level the competitive playing field with China, but will be essential in stemming the impact of certain restrictive practices on the broader global innovation ecosystem:

- **Cross-border data flows & data protection:** counter restrictive data governance practices and prioritize allowance of cross-border data transfers for business purposes on a transparent and non-discriminatory basis, including the movement, processing, transfer and storage of personal data;
- **Cloud and telecommunications market access:** pursue full and non-discriminatory market access for U.S. cloud and telecom service providers, including through provision of necessary approvals for U.S. companies to provide services in China, without the need to enter into a joint venture in order to acquire a value-added telecom service license;
- **Industrial policy and subsidies:** apply pressure for notification of all Chinese government/public subsidies related to industries specified within the Made in China 2025 initiative to the WTO, and termination of subsidies that contravene existing WTO commitments; advance work with international partners to update rules-based commitments governing industrial subsidies and state-owned enterprises where necessary;
- **International technical standards:** apply pressure to ensure China’s adoption and reliance on international, industry-driven, voluntary consensus standards, and its full implementation of the *2020 Foreign Investment Law* provision regarding equal access for foreign companies in domestic standards development bodies.

## India

India continues to impose policies that threaten U.S. competitiveness and the entire global innovation ecosystem, and its regulatory environment for technology goods and services has continued to degrade for U.S. exporters. As noted above, India’s conformity assessment regime for safety of ICT products – centered around the CRO – is the most burdensome in the world for technology importers and has continued to expand with regular new phases. The Government of India (GOI) has taken the strategies used in the CRO for years and has begun applying them to new and expanding conformity assessment requirements in other areas of new technology. These import requirements are in addition to India’s continued increase of tariffs on ICT products and component parts, many of which are in violation of its binding tariff obligations at the WTO.

Further, India’s approach to regulating the digital economy is rapidly diverging from that of the United States and has become a major hindrance both to bilateral trade and constructive multilateral engagement. India’s tendency toward data localization and restrictions on cross-border data flows in multiple policy streams from multiple regulatory and legislative bodies – such as the Reserve Bank of India’s data localization directive and the pending Personal Data Protection Bill – threaten to create complex and systemic discriminatory barriers for U.S. firms doing business in India. India continues to pursue a discriminatory approach to digital taxation through the expansion of its Equalization Levy, which targets U.S. and other non-resident digital services providers while excluding Indian firms. At international fora such as the G20 and WTO, India has taken on a consistently aggressive protectionist and individualist position on tech trade issues, and unfortunately, is viewed by many developing countries as a

guidepost in terms of protecting developing countries' assertions of policy space as they develop their digital sectors.

U.S.-India cooperation on trade in past administrations essentially has been limited to cooperation on strategic defense and manufacturing. We encourage the Biden-Harris Administration to prioritize bilateral and multilateral engagement with the GOI early in its term in an effort to establish robust and productive dialogue to trade concerns. In addition to revitalized engagement under the Trade Policy Forum (TPF), this could include leveraging security and defense dialogues to address digital trade barriers in India that undermine shared geostrategic and defense objectives. Going forward, we believe a regular and robust dialogue focused on digital trade is immediately necessary, whether under the auspices of the TPF or a separate mechanism. We believe that U.S. prioritization of the three following areas in any future engagements with India would create the highest impact for U.S. industry doing business in India: (1) promoting the free flow of data across borders and countering forced data localization, (2) easing conformity assessment requirements for ICT products, and (3) reducing tariffs on ICT products, including through holding India accountable to its tariffs bindings at the WTO.

### Asia-Pacific Region

The United States benefits from deepening commercial, diplomatic, and security relationships with key allies and partners in the Asia-Pacific region, particularly those that can serve as trusted supply chain partners, including Australia, Japan, South Korea, Vietnam, and others. Strengthening ties with countries in the Asia-Pacific is even more important today, following the conclusion of the Regional Comprehensive Economic Partnership (RCEP) that many countries in the region signed, drawing them closer to China. At a time when policymakers, companies, and non-government stakeholders have coalesced around the need for secure and resilient supply chains, multiple economies in the region are positioned to play a leading role in that evolving ecosystem given their strong capabilities in technology R&D and manufacturing. Furthermore, where U.S. firms are already seeking to diversify their operations outside of China, we see a role for the USG both to deepen regional engagement, including through efforts to increase regulatory compatibility and reduce market access barriers, which will have a direct, positive impact on the ability of U.S. technology firms to compete globally.

We encourage the Biden-Harris Administration to broaden U.S. leadership in the Asia-Pacific region by comprehensively assessing potential opportunities, including through existing international mechanisms such as the Asia-Pacific Economic Cooperation Forum (APEC), for expanding acceptance of state-of-the-art rules-based commitments that are global and interoperable, eliminating barriers to trade, facilitating the open flow of data, and elevating regulatory compatibility as a matter of strategic importance with key partners in the region.

As part of a broader Asia-Pacific strategy, we encourage the Biden Administration's review and reconsideration of rejoining the existing Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). We would also encourage the Biden-Harris Administration to formulate a strategy to proactively engage like-minded Asia-Pacific countries on digital trade, including through plurilateral and bilateral digital trade agreements. These can form the basis of efforts to foster a group of like-minded digital trade partners to challenge digital restrictions on a plurilateral basis, and counter global pressure towards internet balkanization while promoting digital regulatory alignment and interoperability among allied countries.

### United Kingdom

The U.S. and the United Kingdom (UK) are the world's leading exporters of digitally-delivered services, among each other's most important cross-border e-commerce markets, and among each other's biggest trading partners for digitally-enabled services. U.S. corporate stakes in the UK total \$748 billion, more than five times the U.S. investment presence in China and India combined.<sup>17</sup> A wide range of companies in both economies – both large

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<sup>17</sup> Hamilton and Quinlan (2020).

and small – are at the forefront of embracing new technology to facilitate trade across a plurality of economic sectors. An agreement reflecting commercially meaningful rules-based and market access commitments as well as sound, transparent, risk-based approaches to regulation will set the stage for digital trade and innovation to flourish across the Atlantic.

Following years of bilateral engagement, including five rounds of formal negotiations, the United States and UK are well positioned to further advance and conclude work on a strong FTA. In line with broader Administration priorities, including the Build Back Better agenda, we encourage USTR to expeditiously review the current state of negotiations with a view to concluding a state-of-the-art bilateral agreement that will serve to deepen bilateral trade and investment ties; ensure a non-discriminatory approach to digital regulation; and expand the acceptance of the world’s strongest international rules-based commitments.<sup>18</sup> Further, the U.S. and UK should maintain their commitment to reaching a multilateral solution to the tax challenges arising from the digitalization of the economy, including through the UK’s withdrawal of its unilateral DST.

### Latin America

ITI urges the Biden-Harris Administration to pursue a trade agenda in Latin America that builds on existing U.S. trade agreements and leverages the policy approaches reflected in those agreements. We see value in deepening collaboration with the regional trade blocs to open new avenues for securing commitments that facilitate trade in goods and services and further integrate economies in the Americas. In this regard, we encourage USTR to pursue rules-based trade commitments that provide a path to economic growth and prosperity, counter digital protectionism, and facilitate trade. By harmonizing testing and labeling requirements, lowering or eliminating tariffs (including through but not limited to joining the WTO ITA and its expansion), and streamlining customs regulations and procedures, governments in the region can facilitate broader, faster, and more equitable access to productivity-enhancing technology goods and services. Through direct engagement, we urge the United States to work to prevent the advancement of harmful unilateral digital taxation policies in favor of pursuing a sustainable, multilateral solution to address the tax challenges arising from digitalization of the global economy. More broadly, realizing a comprehensive and forward-looking digital trade agenda in the region would be a remarkable achievement benefitting companies, employees, and small business owners operating in the region who want to expand their reach, as well as workers and consumers availing themselves of the socioeconomic benefits provided through those services.

### Africa

We encourage the Biden-Harris Administration to deepen engagement on digital trade with African nations and to develop champions for an open and free digital environment on the continent. Intra-continental digital trade discussions are currently ongoing between members of the African Union (AU) under the auspices of the African Continental Free Trade Agreement (AfCFTA) E-Commerce Protocol. We encourage USTR and the interagency to move quickly to inform these efforts by committing resources to educate negotiating parties on the benefits of strong digital trade rules for development and achievement of the UN Sustainable Development Goals, particularly as concerns opportunities for SMEs and start-ups to reach consumers around the world through adoption and use of data-enabled technologies. This will pay dividends not only in Africa, but also in multilateral discussions on digital trade. Many AU countries are important participants in the WTO Joint Statement Initiative (JSI) on E-Commerce, for example, and many remain undecided on the future of the Moratorium on Customs Duties on Electronic Transmissions. As part of its regional strategy, we encourage USTR to review the current state of U.S.-

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<sup>18</sup>See ITI’s full recommendations for a State-of-the-Art U.S.-UK Trade Agreement here: <https://www.itic.org/news-events/news-releases/iti-recommends-state-of-the-art-approach-for-u-s-uk-trade-agreement>

Kenya FTA negotiations, which have the potential to establish an important benchmark for high-standard digital trade rules for developing countries.

## U.S. Leadership in Multilateral Forums

### World Trade Organization

While there is a real and pressing need for reform, the WTO remains integral to U.S. leadership, growth, and innovation, particularly in the technology sector. The United States, in turn, has a vital leadership role to play at the WTO, including in constructively driving WTO reform efforts, resolving procedural impasses, and underscoring the United States' continuing commitment to advancing commercially meaningful commitments as part of plurilateral and multilateral initiatives. The Biden-Harris Administration's early efforts to facilitate the appointment of Dr. Ngozi Okonjo-Iweala as Director General represent a positive first step toward engendering trust among key trading partners and enabling the continued functioning and necessary reform of the WTO. We encourage the Biden-Harris Administration to take steps to reassert U.S. leadership at the WTO, including but not limited to:

- **Continuing to actively drive work toward the prompt conclusion of an ambitious and commercially meaningful plurilateral agreement on digital trade** through the WTO's JSI on E-Commerce.
- Preventing the emergence of an entirely new class of damaging barrier to trade through efforts to **uphold and render permanent the Moratorium on Customs Duties on Electronic Transmissions**.
- **Engaging in the expansion and enforcement of plurilateral agreements**, including the Agreement on Government Procurement (GPA) and ITA and its expansion, as well as collaborating with like-minded countries to explore re-activation and/or initiation of beneficial new plurilateral initiatives, for instance to eliminate market access barriers for environmental goods and services.
- Leading in discussions of necessary reform, including with regard to:
  - **The Appellate Body and multilateral dispute settlement system.** ITI supports the goals of improving the predictability, credibility, timeliness, and effectiveness of the WTO's dispute settlement system as a means of ensuring its efficacy as a tool to fairly and transparently enforce WTO commitments.
  - **The negotiating function.** We support U.S. efforts to work toward the inclusive development and implementation of WTO commitments, as well as to explore existing and new mechanisms that allow for the development and socialization of plurilateral rules under the auspices of the WTO.
  - **Addressing unfair trading practices.** As an element of collaboration with like-minded partners, ITI encourages efforts within the WTO to develop and facilitate the acceptance of new and updated rules aimed at addressing unfair trading practices.
- **Maintaining robust working-level engagement across WTO committees.** We also support USTR's efforts to ensure that WTO members fully abide by notification and transparency commitments across committees.

### G20/G7

The G20 and the G7 continue to be important forums for the development and acceptance of technology trade norms in key international economies. In particular, we view the joint statements that result from the yearly G20 Digital Economy Ministerial and the Trade and Investment Ministerial as useful in signaling a global advancement on digital trade ideas and norms. The last several years have seen iterative improvement in the language on data flows in particular, and we note that the establishment of the "Osaka Track" and "Digital Free Flows with Trust" during Japan's leadership year was ultimately a positive development in promoting awareness of the importance

of data flows and the tools that are available to create trust in technology. Similarly, we appreciate past USG efforts to limit the inclusion of language that would seek to advance closed, and even authoritarian, visions of the internet and vital new technologies such as AI. We encourage the Biden-Harris Administration to continue robust U.S. engagement in these forums to drive forward the global discussion on digital trade and build awareness of, and consensus on, these issues.

### Asia-Pacific Economic Cooperation Forum

APEC has proven to be an essential forum where substantive policy discussions can advance through education and consensus-building initiatives. In particular, we view APEC's Cross-Border Privacy Rules (CBPRs) as an important model for developing interoperability between existing privacy regimes in participating countries, thereby enabling strong protections for personal information, cross-border data flows, and increased trade. In addition, we support ongoing efforts to build consensus among APEC economies on digital trade issues through the Digital Trade Building Blocks and the Pathfinder on the Moratorium on Customs Duties on Electronic Transmissions. We encourage the Biden-Harris Administration to continue the USG's commitment to advance these initiatives at APEC, and to work closely with New Zealand to ensure that APEC 2021 includes a robust digital agenda that delivers on APEC's goal for digital transformation.

### Summit of the Americas

The Ninth Summit of the Americas, to be hosted by the United States, provides an important, early opportunity to reinforce and strengthen alliances in the region and lay out a renewed vision for cooperation, growth, and partnership with key allies. ITI encourages the Biden-Harris Administration to prioritize engagement on the Summit, including through the advancement of a series of commitments and principles centering on connectivity, skills development, and strong digital trade principles.