

**ITI**

Promoting Innovation Worldwide

April 11, 2022

Mr. William Shpiece  
Chair of the Trade Policy Staff Committee  
Office of the United States Trade Representative  
600 17<sup>th</sup> St NW  
Washington, DC 20006

**RE: ITI Response to USTR Request for Public Comments on the Proposed Fair and Resilient Trade Pillar of an Indo-Pacific Economic Framework**

Dear Mr. Shpiece:

The Information Technology Industry Council (ITI) is the premier global advocate for technology, representing the world's most innovative companies. Founded in 1916, ITI is an international trade association with a team of professionals on four continents. We promote public policies and industry standards that advance competition and innovation worldwide. Most of ITI's members service the global market built over decades in which technology is developed, made, and service customers across all levels of government and the full range of global industry sectors, such as financial services, healthcare, and energy.

Our membership includes 80 high-tech and tech-enabled companies, including wireless and wireline network equipment providers, computer hardware and software companies, internet and digital service providers, mobile computing and communications device manufacturers, consumer electronics companies, payment networks and network security providers. All of our members are headquartered in, operate U.S. subsidiaries, or otherwise have significant operations in the United States, and their investments have propelled economic growth and innovation across the country. Many (if not all) of these statements also accurately characterize our members' engagement with key U.S. trading partners in the Indo-Pacific region, which underscores both the breadth of our experiences with varying governance regimes in the region and the importance of promoting alignment to foster stronger trade, investment, innovation, and diplomatic relations.

The tech sector leads globally in the development and delivery of innovative goods and services, and 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 wage across all sectors – and these workers make up a state-level average of nearly 10 percent of the total U.S. workforce.<sup>1</sup> U.S. tech sector 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. These exports have enabled technology companies to lead all sectors in terms of investing back in the U.S. – technology firms are 10

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<sup>1</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>

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of the top 25 American investors based on domestic capital expenditures.<sup>2</sup> Moreover, these statistics are limited to what can be classified as the technology sector; the gains afforded by ICT goods and services to governments and companies of all sizes accrue across every sector of the economy.

The COVID-19 pandemic has spurred the digitalization of economies and opened new opportunities for digital trade. One in three small and medium-sized enterprises (SMEs) reports that their business would not have survived the pandemic without digital tools, and access to data and cross-border connectivity has become a key factor in the ability of companies across all sectors to compete globally. Nowhere has digital transformation been more rapid than the Indo-Pacific region. The majority of internet users today are in the Indo-Pacific region, and that number is expected to increase to 3.1 billion by 2023. This presents tremendous market opportunities for U.S. companies to scale and expand abroad, creating more employment at home and strengthening U.S. competitiveness.

At the same time, both democratic and authoritarian governments around the world are advancing policies that restrict the movement of information, goods, and services under the guise of data protection, data sovereignty, cybersecurity, government access to data, or industrial policy. Such policies, which may mandate the localization of data, block market access, or enable internet shutdowns/blocking, directly detract from the ability of firms both small and large to foster growth and exports in key areas of the United States' comparative advantage, and are often based on the flawed premise that data restrictions and digital protectionism are necessary to achieve policy objectives. Furthermore, some governments are pushing for digital trade policy approaches that greenlight and enable digital protectionism or authoritarianism.

Against this backdrop, we applaud the Biden-Harris Administration's commitment to strengthening U.S. engagement in the region, including through development of an Indo-Pacific Economic Framework (IPEF), a major component of which will be a USTR-negotiated agreement under the Fair and Resilient Trade pillar. Given the challenges in the region, industry views it as critical that this agreement include strong disciplines that, among other things, facilitate the movement of data across borders, prohibit data localization, counter emerging, discriminatory approaches to the regulation of technology, ensure the broadest reliance on industry-led international technical standards for policies applying to both goods and services, and broaden the acceptance of globally interoperable regulation based on internationally-accepted best practices. Bold, impactful engagement on these issues directly supports the Biden-Harris Administration's aims to prioritize workers, inclusive access to vital goods and services, international development, and a free and open internet.

## General Comments

U.S. officials have suggested that participation in the IPEF will be “a la carte,” in the sense that partner countries will be able to select which among the four modules they wish to participate in. We strongly encourage the Administration to establish a robust umbrella structure for the IPEF and a meaningful connective mechanism among the modules. We view such a mechanism as important for several reasons:

- Policy coherence – to ensure that the elements/provisions in each module are complementary to, supportive of, and informed by the elements of other modules and the policy positions being expressed by partners in the discussion of those modules. There are natural and meaningful linkages

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<sup>2</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)

between the subject matter envisaged for each module (trade, supply chains, infrastructure & decarbonization).

- Cross-module disciplines – certain U.S. policy objectives may be best effectuated through disciplines that run across IPEF modules, or that require corresponding commitments in another module. In traditional trade and investment agreements, these types of linkages are achieved through “general provisions” that apply across all chapters of the agreement, or through chapter-specific provisions that cross-reference, modify, or supplement provisions in another chapter.
- Incentives – individual partners may have limited incentives to participate in certain IPEF modules, particularly if doing so requires them to adhere to higher standards than they have previously undertaken in an international agreement. In the absence of tariff concessions (a primary incentive in traditional trade agreements), the IPEF should seek to create these incentives by conditioning participation in some modules, or access to certain benefits within them, to participation in some or all of another module.

With respect to this final point, while the present consultation does not directly seek input regarding goods or services market access, we would also underscore the broad-based benefits that further market access openings in the Indo-Pacific region would yield for U.S. firms and workers, as well as broader U.S. international policy objections. We urge the Biden-Harris Administration to offer expanded market access opportunities as a means of generating commercially significant benefits to U.S. companies doing business in the Indo-Pacific region. The evolving nature of digital services, along with the digital and physical infrastructures enabling the provision of such services, suggests that even the most forward-looking, horizontal rules-based commitments – which remain essential to countering and preventing the emergence of damaging barriers to digital trade – must be accompanied by robust market access commitments that provide necessary certainty to businesses and individuals alike.

In addition, we encourage the Administration to consider engagement on goods and services market access as a means of incentivizing greater participation in the IPEF, thereby broadening the acceptance of the rules negotiated under the Fair and Resilient Trade pillar. The inclusion of market access provisions would also better reflect the reality that there are competing visions for the future of trade, investment, and digital infrastructure in the Indo-Pacific region. For example, the conclusion of the Regional Comprehensive Economic Partnership (RCEP) – the largest free trade agreement in the world – represented a fundamental, geopolitical shift in regional dynamics, and it reinforces the importance of U.S. engagement to foment strong disciplines like those mentioned throughout this comment. Without ensuring broad participation of trade partners through preferential market access incentives, U.S. workers, farmers and companies may face mounting disadvantages in the Indo-Pacific region and U.S. trade partners may be less ambitious in negotiating commitments.

Industry seeks the broadest possible participation in the Fair and Resilient Trade pillar. As USTR and Commerce identify potential partners to approach for their respective pillars, we suggest special consideration for jurisdictions that already make significant contributions to ICT supply chains and with whom there are opportunities to foster supply chain resiliency, such as Japan, Korea, and Taiwan. However, the participation of a wider range of regional partners should not come at the expense of commercially meaningful commitments. Moreover, participation in IPEF modules should be conditioned on a demonstrated willingness to pursue positive models for data governance and inclusive trade aligned with U.S. interests. USTR has a long history of conducting rigorous analysis, and, where necessary, demanding reform of prospective trading partners’ policies prior to entering negotiations. Those high standards should apply in equal measure to the IPEF.

In this regard, we are concerned about the increased data flows restrictions in privacy and data governance proposals, for example, India’s advancement of Data Protection Bill (DPB) that includes problematic components such as strict data localization requirements, restrictions on cross-border transfers of data, the inclusion of non-personal data with its scope, and stringent, country-specific testing and localization requirements. Vietnam’s draft Personal Data Protection (PDP) decree entails similar restrictions. These requirements are fundamentally at odds with the vision of intra-regional, and global, integration and evidence- and values-based governance that the IPEF seeks to advance. Particularly as the United States seeks to deepen security and supply chain cooperation with regional partners, it should make clear that countries actively pursuing policies at odds with these objectives – such as the proposed DPB – must commit to more open and trade-facilitative approaches. Similarly, the World Trade Organization (WTO) Information Technology Agreement (ITA) has been fundamental to the advancement of digital trade. We strongly encourage the USTR to emphasize adherence to ITA commitments and adoption of ITA expansion where appropriate within the context of IPEF negotiations.

Finally, we encourage USTR to ensure that IPEF rules are binding and enforceable and do not allow for broad exceptions or derogations. Such enforcement could include the ability to suspend IPEF membership partially or fully for participants that do not meet the agreed standards of the various modules. To the extent that flexibility is needed, this could be attained by allowing phased-in implementation rather than carve-outs. Industry also feels it is important that the IPEF serve as a “living framework,” with built-in review mechanisms to ensure the rules and initiatives are kept up-to-date and relevant. In the IPEF negotiating process, USG should consult and update industry regularly, draw on technical expertise from a wide range of stakeholders, and ensure greater transparency around negotiating texts.

Below, we offer more specific feedback on several of the areas identified in the Federal Register notice. Beyond the present consultation, we strongly encourage USTR to establish transparent and consistent mechanisms for further engagement of the private sector and civil society as IPEF efforts advance.

## Digital Trade

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. The increasing frequency of data-restrictive practices and digital protectionist measures around the world therefore requires that the United States play a more active role in the establishment of global norms governing digital trade. A recent study by the Information Technology Innovation Foundation found that data localization requirements around the world more than doubled over the last four years.<sup>3</sup> Such requirements directly hinder the ability of firms in all sectors and across the United States to effectively develop and export goods and services. Developing inclusive digital trade rules with partners in the Indo-Pacific as part of the Fair and Resilient Trade pillar of the IPEF should be a critical element within a broader U.S. trade agenda to counter protectionist digital economy trends, safeguard the interests of U.S. workers, and bolster U.S. political, strategic, and economic equities and opportunities in the region.

ITI stands ready to partner with the U.S. government and its regional partners in the development and advancement of new digital trade rules aimed at ensuring the benefits from digital trade are as equitable

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<sup>3</sup> Information Technology Innovation Foundation (2021), “How Barriers to Cross-Border Data Flows Are Spreading, What They Cost, and How To Address Them,” <https://itif.org/publications/2021/07/19/how-barriers-cross-border-data-flows-are-spreading-globally-what-they-cost>

and impactful as possible. A digital trade component of the Fair and Resilient Trade pillar should comprise core disciplines that:

- Prohibit restrictions on the cross-border flow of data (allowing only for narrowly tailored exceptions) and forced localization of computing facilities, including for financial services data;
- Ensure that foreign companies are treated no less favorably than local companies, specifically with respect to market access, participation in government procurement, or eligibility to achieve cybersecurity certification;
- Establish a permanent moratorium on tariffs and customs formalities on electronic transmissions, including the transmitted content;
- Enshrine non-discriminatory treatment of digital goods and services and stop trading partners from pursuing both de jure and de facto discriminatory approaches to digital regulation;
- Underscore importance of the WTO ITA and ITA expansion agreements as foundational for the advancement of digital trade, and encourage partners to fully implement and abide by existing commitments;
- Eliminate local content and forced partnership requirements that hinder efforts to bolster supply chain resiliency;
- Encourage open and transparent government procurement processes that provide national treatment for participating jurisdictions;
- Secure commitments to refrain from the implementation of taxation measures that are discriminatory in nature and contravene long-standing principles of international taxation;
- Ensure the protection of personal data, taking into account best international practices for privacy and the importance of globally harmonized regulatory frameworks;
- Promote international data flows by codifying protections into domestic laws for the APEC Cross-Border Privacy Rules (CBPR) System as a valid basis for transfers of personal data;
- Promote the free and open internet, including ensuring that internet-based telecommunications service providers are able to interconnect and negotiate with international internet services providers on a market-driven basis;
- 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 foster the development and deployment of new technologies like Artificial Intelligence (AI), machine learning, and additive manufacturing;
- Seek to expand the application of technical barriers to trade (TBT)-style commitments to digital services, including commitments ensuring reliance on global, industry-driven, voluntary standards;
- Promote governmental cooperation on and risk-based approaches to cybersecurity, including adopting best practices related to the sharing of threat information and incident response;
- Prohibit requirements to disclose source code, algorithms, and proprietary information in particular to cryptography;
- Address potential market access barriers related to platform governance while enabling effective content moderation practices;
- Facilitate innovation, competition, and technology choice by encouraging the widespread use of open standards;
- Facilitate access to and use of open public data in machine-readable formats to spur adoption of AI and other new technologies; and

- Facilitate acceptance of electronic contracts and signatures.

USTR has recent templates for high-standard rules to facilitate digital trade, in particular the Digital Trade chapter of the U.S.-Mexico-Canada Agreement (USMCA). The inclusion of these rules from USMCA should be the baseline minimum for digital trade provisions in the IPEF, in light of the tremendous importance of digital trade for U.S. businesses large and small, and the growing international trend toward restrictive digital policies. In crafting digital trade provisions for the IPEF, it will be equally important that USTR also incorporate other elements of recent U.S. trade practice, given the critical linkages these provisions have to digital trade.

For example, although the Digital Trade chapter of USMCA addresses many impediments to the conduct of digital trade, it does not by itself create an obligation on governments to actually allow foreign suppliers to provide digital services to businesses and consumers into their territory. This basic commitment is instead provided for the Cross-Border Trade in Services chapter of USMCA. USTR should incorporate key provisions from this chapter into the digital trade components of the IPEF, in order to ensure that U.S. providers of digital services are not excluded from the markets of IPEF participant countries or allowed to engage in fewer activities than third-country competitors.

Important Services Chapter obligations in this regard include “national treatment” (USMCA Art. 15.3), “most-favored-nation treatment” (Art. 15.4), the prohibition against quantitative supplier limitations (Art. 15.5), “local presence” (Art. 15.6), and “payments and transfers” (Art. 15.12). The latter two are especially important for individual entrepreneurs and small businesses, because they ensure that these entities are able to export digital services from where they sit in the U.S., without having to establish a physical presence in each market in which they seek to do business. With these provisions, a small business owner can reach customers anywhere the world from her home; without them, the trade and export potential of the internet is effectively neutered.

The U.S. should also include in the IPEF the services-specific “good governance” provisions that supplement the more generic good regulatory practice obligations that apply across all sectors. In USMCA, such provisions are found in the “development and administration of measures” article of the Services chapter (Art. 15.8), and address matters such as fair administration of licensing procedures, and transparency and timeliness in regulatory processes. To ensure that the IPEF is at least as high standard as agreements already concluded internationally, the U.S. should ensure that it incorporates the results of the WTO Joint Initiative on Services Domestic Regulation, which the U.S. and 67 other participants concluded in December 2021. Importantly, the Joint Initiative was one of the first trade agreements to address gender-based discrimination.

*Stemming Technical Barriers to Trade in Digital Services*



Realizing the potential of digitally connected services<sup>4</sup> is integrally tied to the development of internationally-recognized technical standards<sup>5</sup> as their successful design and delivery is rooted in technical standards that are developed in a wide range of international standardization bodies and consortia around the world. Internationally-recognized standards should be developed using principles recognized by the WTO, such as open, impartial, voluntary, and transparent procedures, as these afford an opportunity for consensus among all interested parties and engender confidence in the resulting standards.

In digital services, governments are increasingly applying standards-based or technical regulatory governance approaches to advance policies relating to cybersecurity, AI, or industrial policy. These approaches often transpose tools traditionally used to regulate goods – such as standards-setting practices, mandatory or de facto mandatory cybersecurity certifications, conformity assessment requirements such as third-party certification, product labeling, country-specific duplicative testing or other technical requirements – to digitally connected services. However, when governments mandate compliance with country- or region-unique technical requirements or standards, or use nationality of ownership or location of corporate headquarters as a disqualifying criteria, they create the risk of national treatment violations, non-tariff barriers to trade, and unnecessary regulatory divergence and incompatibility, all of which negatively impact consumers. Such trade restrictions undermine market access commitments and disproportionately hurt workers and SMEs that produce digital services or connected goods for export. OECD analysis has shown that in relatively more restrictive services markets, new exporters confront costs as much as 53 percent greater than those faced by incumbent exporters. As SMEs predominantly operate in the services space and frequently have limited or no export experience, countering emerging restrictions to services trade would promote the success of new and emerging firms by enabling new export opportunities.<sup>6</sup>

Unfortunately, we are indeed noting an increasing trend in emerging digital services policy towards reliance on country- or region-unique technical requirements or standards, the development of which lacks the openness, transparency and due process associated with open, voluntary, international standards development processes. Such technical requirements are more likely to result in regulatory divergence and incompatibility – with attendant security, trade, and economic implications – whether in the same country or across international borders. Examples of problematic measures and processes include:

- Government-directed multi-stakeholder groups that are tasked with establishing technical requirements or standards for particular technologies in the absence of due process safeguards that are typically part of the international standards development;

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<sup>4</sup> Digitally connected services include services that are software-based, whose operational characteristics are accessed through a network connection, which allows for continued improvements and/or modifications (including updates and patches). [Note: This is a working definition and, as such, is an imperfect description of the complicated space that includes all digitally connected services.]. Examples of digitally connected services include data transfers and the provision and use of cloud services. Such services typically affect related privacy, cybersecurity, machine learning (ML) (e.g., AI) and/or other emerging digital services embedded in industrial, vehicular, consumer, and other IoT devices.

<sup>5</sup> *i.e.*, All those developed in accordance with Annex 2 to Part 1 (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement) in the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev.13), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

<sup>6</sup> OECD (2017), Services Trade Policies and the Global Economy, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264275232-en>

- Measures requiring the adoption of unique certification requirements or encryption standards that do not align with internationally-recognized standards or broadly used schemes such as the Common Criteria;<sup>7</sup> and
- Frameworks to regulate or establish procurement criteria for emerging technologies, such as AI, blockchain, or cloud computing, that would mandate preferences for or reliance on one country or region's domestic technical requirements, standards, local testing bodies, or technology, services and/or suppliers.

Given these trends, we view the IPEF as a vehicle for advancing new commitments that ensure that:

- Technical regulations, conformity assessment schemes and standards for digitally-enabled services do not create unnecessary obstacles to international trade;
- Parties use appropriate internationally-recognized standards as the basis for technical regulations, conformity assessment schemes and standards for digitally-enabled services;
- Parties use open, non-discriminatory, transparent and consensus-based processes when developing technical regulations, conformity assessment schemes and standards for digitally-enabled services;
- Parties encourage standards development organizations in their territory and regional organizations in which they are involved to use open, non-discriminatory, transparent and consensus-based processes;
- Parties provide adequate notice and consultation periods prior to adopting new technical regulations, conformity assessment schemes or standards for digitally-enabled services; and
- Parties do not require that conformity assessment bodies be located within their territory as a pre-condition of their ability to assess compliance with technical regulations, and should recognize test reports and certifications from internationally-accredited laboratories without the need for such testing and certification to be repeated within their respective jurisdictions.<sup>8</sup>

Advancing such disciplines would not only encourage inclusive U.S. digital trade in the Indo-Pacific region, but would set a positive global precedent in promoting the continued reliance on truly international standards in the face of increasingly fragmented approaches to the regulation of new technology. We stand ready to partner with USTR in this effort, including through the provision of more detailed information as necessary.

### *Targeted Digital Regulations and Digital Sovereignty*

Industry is noting a worsening trend in which the scope of emerging digital regulation and taxation measures 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

<sup>7</sup> Common Criteria is the technical basis for the Common Criteria Recognition Arrangement (CCRA), an internationally employed technical certification and mutual recognition agreement for secure IT products.

<sup>8</sup> For greater certainty, this provision also applies in instances where certifications are required or otherwise confer a significant market advantage in the delivery of digitally-enabled services in the territory of a Party.



on rigorous, objective criteria, with proportionate and well-justified obligations accompanied by appropriate due process guarantees. With specific regard to taxation, IPEF members should commit to not enact discriminatory unilateral measures and work through multilateral discussions in the OECD/G20 Inclusive Framework to update global taxation rules.

## Regulatory Compatibility and Technical Barriers to Trade

As is increasingly the case for ICT services, trade in ICT products tends to be particularly susceptible to non-tariff barriers to trade. 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.

We therefore view it as essential that the IPEF Fair and Resilient Trade pillar advance core technical barriers to trade, good regulatory practices, and other related provisions, including as a necessary means of promoting greater ICT supply chain cooperation among IPEF partners. The USMCA provides a model for such rules that should be carried forward in the IPEF.

### *Internationally-Recognized 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.

USMCA commitments covering internationally-recognized standards – both in the context of 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 internationally-recognized 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 internationally-recognized standards. In addition to reducing the likelihood of such market access barriers, reliance on the broadest range of internationally-recognized 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>9</sup> and lock in national treatment for

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<sup>9</sup> See USMCA Articles 11.1 and 11.2.

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 delays introduction of products and services to markets, all while failing 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 provides confidence in the quality of test results produced by accredited conformity assessment bodies (CABs) and certification bodies. Expanding reliance on these schemes through U.S. trade 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. Where countries are members of this scheme, consistent reliance on test results under the scheme is essential. In Indonesia, the telecommunications agency (SDPPI) has a unique rule requiring accreditation of a National Certification Body (NCB) for product safety testing. This is a redundant requirement that is unnecessary because product safety testing is already governed under the IECEE certification body (CB) scheme, of which Indonesia is a member.

### *Good Regulatory Practices*

U.S. innovation of trade disciplines concerning good regulatory practices (GRPs) 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>10</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. As a component of Fair and Resilient pillar 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.

In addition, trusted trader or “authorized economic operator (AEO)” programs are an invaluable component of trade facilitation that serve a variety of complementary objectives, including enhancing U.S. exporter competitiveness, securing supply chains, making more effective use of limited customs resources, and facilitating low-risk trade. These programs are even more useful when coordinated internationally, allowing AEO participants in the U.S. to receive border facilitation benefits in partner countries. At present, the U.S. has AEO mutual recognition arrangements only within the North American region. The U.S. should seek to use the IPEF to extend these arrangements into the Indo-Pacific region, where there is both a significant need for trade facilitation and tremendous opportunity for U.S. export growth. As in the USMCA (Art. 7.14), the U.S. should also use the IPEF to seek baseline commitments from partner governments to maintain AEO programs.

Additionally, ITI urges USTR to include binding commitments in IPEF on:

- Avoiding unnecessary import and export licenses for imports and exports of digital hardware and software;
- Information sharing between the government and private sector on seizures;
- Strengthening informal entry language; and
- Establishing a unified entry process through Single Window from all Partner Government Agencies.

## Environment and Climate

The circular economy provides an opportunity for the U.S. to simultaneously advance several of the objectives it has set out for the IPEF, including climate change mitigation, supply chain resilience, and trade facilitation. Used goods, and used technology products in particular, provide a wealthy source of raw materials that can be recovered and fed back into the production process for new goods. Doing so reduces the need for mining of virgin materials, reduces waste, and enhances supply chain resiliency by

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<sup>10</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>

capitalizing on the supply of critical materials already embedded in ubiquitous consumer products. Resource recovery of this nature does not occur at scale today, due in large part to regulatory impediments. The United States should use the IPEF to seek to address such barriers to a more circular economy.

Specifically, a primary impediment to greater extraction and use of recoverable materials is international rules that limit the cross-border movement of both used consumer devices and resources recovered from them. These international rules are designed to safeguard against the potential harms of uncontrolled trade in waste products, but they lack efficient mechanisms to allow safe and lawful movement of materials even among trusted entities. The IPEF provides an opportunity to explore the creation of “resource recovery lanes” among trusted partners, within which individual companies could be certified to operate based on their willingness to adhere to standards set out by participating governments. Such a program among IPEF partners could be developed in stages, for example by initially covering only certain materials, and could potentially be expanded over time to include non-IPEF governments, with a long-term objective of creating cost parity between the use of recovered vs. virgin raw material.

Additionally, we encourage USTR to include commitments to promote a regulatory framework that will facilitate U.S. and local companies to reach renewable energy goals. Examples of commitments include:

- Open access to energy markets for renewable electricity suppliers, consumers, and corporate buyers and link those markets across borders;
- Removal of regulatory barriers to privately built and operated renewable energy projects and foreign investments in renewable energy;
- Increasing consumer options for sourcing renewable energy beyond the existing grid mix; and
- Promotion of common accounting tools to track renewable energy such as renewable energy certificates (REC) or other similar instruments.

## Labor

Nearly two-thirds of all new jobs created in the last decade require either high- or medium-level digital skills, but one in three workers have limited or no digital skills. Given the acceleration of digital transformation during the pandemic, the IPEF should include cooperative measures to develop a skilled digital workforce by committing governments to:

- Establish centers within domestic economic development agencies and public universities that will partner with the private sector on programs to upskill students and workers, including those in under-represented communities in tech like women and girls, and to train artisans and small businesses on how to be ecommerce sellers.
- Work with the World Bank, the Inter-American Development Bank, and the Asian Development Bank to establish global financing programs in conjunction with the private sector that will allow countries to obtain funds to help small businesses and entrepreneurs develop technical skills, navigate business registration, use digital technologies to transform their business, and connect with local expansion partners. Such initiatives could include modernizing job-training programs and ensuring that workers have the digital skills they need to engage in digital trade, including through certificate programs and courses to establish mutual recognition of bonafide educational qualifications among participating IPEF members.

Countries could also commit to prohibit imports of goods and services produced in whole or in part with forced or compulsory labor, including compulsory child labor.

## Services and Goods Market Access

### *Services Market Access*

As noted above, ITI encourages the pursuit of both goods and services market access commitments in the IPEF to encourage broadened participation in the negotiation of strong rules and ensure the most ambitious outcome possible. 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 have 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>11</sup> U.S. trade commitments are especially impactful given that, with 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.

Moreover, services market access openings yield policy outcomes in line with broader USG objectives around worker-centric and equitable trade. Such openings disproportionately benefit smaller firms – as SMEs predominantly operate in the services space and frequently have limited to no export experience, coordinated reductions in barriers to services market access would disproportionately promote the success of new and emerging firms by generating new opportunities to export to other markets. Further evidence in the U.S. context has demonstrated that the expansion of access to global digital services technologies will directly help businesses owned by women and Black, Indigenous and People of Color, who benefit disproportionately from engagement in the global marketplace. Bolstered by digital tools, women-owned exporters are 1.2 times more productive on average than male-owned business exporters and 3.5 times more productive than women-owned businesses that do not export.<sup>12</sup> In addition, minority-owned businesses are twice as likely to export than non-minority-owned businesses, while Black-owned businesses drew 45 percent more revenue from overseas markets than non-minority-owned businesses during the pandemic.<sup>13</sup>

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 services, 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 ITA and its

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<sup>11</sup> <https://www.census.gov/foreign-trade/statistics/historical/gands.pdf>

<sup>12</sup> Inclusive Trade: A Primer, Global Innovation Forum, <https://globalinnovationforum.com/inclusive-trade/>

<sup>13</sup> Global Innovation Forum (2021), “Global, Digital & Resilient: How digital tools are powering U.S. small businesses' global engagement amid COVID-19,” <https://globalinnovationforum.com/reports/global-digital-resilient/>

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>14</sup>

While approximately 97 percent of trade in ICT goods has been liberalized, half of all WTO members are not parties to the ITA – and large economies such as India and Indonesia have either yet to fully implement ITA and ITA expansion commitments, or in some instances willfully break WTO tariff bindings that have been lowered to zero by their participation in the ITA. These contraventions of WTO market access commitments undermine their value and signal to third countries that enforcement of such infringements is not a priority. U.S. efforts in the IPEF should therefore seek to expand market access commitments to ensure 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>15</sup>

Further, IPEF participants should eliminate local content mandates and forced partnerships. ITI encourages increased transparency and open processes for government procurement. One procurement-related opportunity could be extending national treatment to IPEF participants. Several governments in the region provide preferential procurement opportunities for companies with local manufacturing and/or local content, which limits opportunities for U.S. operations and directly contravenes ongoing efforts to bolster globally resilient supply chains.

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 Indo-Pacific partners. Such efforts would be directly supportive of the Administration's aims with respect to climate, trade, economic growth, and diplomatic engagement with international partners.

## Conclusion

The United States benefits from deepening commercial, diplomatic, and security relationships with key allies and partners in the Indo-Pacific region, particularly those that can serve as trusted supply chain partners, including Australia, Japan, Korea, Vietnam, and others. Strengthening ties with countries in the Indo-Pacific is even more important today, following the conclusion of the RCEP that many countries in the region signed, greatly enhancing China's position in the competition for regional influence. 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 U.S. government 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.

In conclusion, we welcome the Biden-Harris Administration's inclusion of a Fair and Resilient Trade pillar in the IPEF, and believe the broader IPEF can serve as a step to broaden U.S. leadership in the region by region by expanding acceptance of state-of-the-art rules-based commitments that are global and

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<sup>14</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>15</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>



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. We look forward to continuing to partner with USTR and other agencies to advance these objectives, and encourage the establishment of a transparent structure to better enable stakeholder engagement.