September 8, 2022

Hon Damien O'Connor
Minister for Trade and Export Growth
Ministry of Foreign Affairs and Trade
195 Lambton Quay, Private Bag 18 901, Wellington 6160

Dear Minister:

BSA | The Software Alliance[1] (BSA) congratulates New Zealand on the September ministerial meeting to mark the launch of the Indo-Pacific Economic Framework (IPEF) negotiations. BSA is the leading advocate for the global enterprise software industry, and BSA members develop cloud-enabled and data-driven services that help create jobs and grow the global economy.

BSA appreciates New Zealand's leadership in advancing regional and global frameworks for digital trade and the cross-border movement of data. BSA urges New Zealand to continue to exercise leadership to support strong and binding rules that prohibit: a) unnecessary restrictions on data transfers; b) data localization requirements; c) customs duties on electronic transmissions; d) forced technology transfer requirements and improper source code disclosure mandates; and e) the misuse of technical regulations and standards to create barriers to digital trade and discriminate against non-national persons and technologies.

These rules are an important bulwark against digital protectionism, which undermines legal predictability and economic opportunity for citizens and businesses alike, widening the digital divide. In the Annex to this letter, we outline suggestions for digital trade disciplines that could be included in the IPEF.

BSA would welcome the opportunity to engage with your staff in connection with the IPEF negotiations and other regional digital trade priorities. Please do not hesitate to have your staff reach out to me or Jared Ragland, BSA's Senior Director of Policy for APAC (jaredr@bsa.org), with any questions or comments.

Sincerely,

Victoria A. Espinel
President and CEO

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[1] BSA's members include: Adobe, Alteryx, Altium, Amazon Web Services, Atlassian, Autodesk, Bentley Systems, Box, Cisco, CNC/Mastercam, CrowdStrike, Dassault, DocuSign, Dropbox, Graphisoft, IBM, Informatica, Intel, Kyndryl, MathWorks, Microsoft, Nikon, Okta, Oracle, Prokon, PTC, Rockwell, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, TriNet, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

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<u>Annex I: Proposed Baseline Digital Trade Rules in an IPEF Digital Economy Framework</u>

1. **Rules that enable open but secure movement of data and information between countries:**
   - <u>Cross-Border Transfer of Information by Electronic Means</u>: Parties should not prohibit or restrict the cross-border transfer of information, including personal information, by electronic means if this activity is for the conduct of the business.
   - <u>Location of Computing Facilities</u>: Parties should not impose requirements to use or locate computing facilities in their own territory as a condition for conducting business.
   - <u>Personal Data Protection</u>: Parties should commit to adopting or maintaining a framework that protects the personal data of those engaged in electronic commerce, while also striving to build interoperability between their respective protection frameworks.

2. **Rules that facilitate the process of digital trade**
   - <u>Custom Duties</u>: Parties should not impose customs duties on electronic transmissions.
   - <u>Non-Discriminatory Treatment of Digital Products</u>: Parties should not accord less favorable treatment to a digital product created or produced by other parties than it accords to other like digital products.
   - <u>Paperless Trading</u>: Parties should make available and accept electronic versions of trade administration documents. Parties should also strive to establish or maintain a single window/platform facilitating the submission of such documents and other relevant exchange of data.
   - <u>International Standards for Digital Services</u>. Governments should support voluntary, internationally recognized standards, and should refrain from imposing conflicting national standards on digital services and emerging technologies.
   - <u>Digital Skilling</u>: Parties should work on creating an ecosystem that will enhance digital literacy and skilling to ensure faster adoption of digital trade practices.

3. **Rules that build trust in digital systems and the online environment**
   - <u>Online Consumer Protection</u>: Parties should adopt or maintain laws that guard consumers from fraudulent or misleading conduct, which might be more prevalent when engaging in online commercial activities.
   - <u>Forced Transfer of Technology</u>: Parties should not impose requirements for businesses to transfer a particular technology, algorithm, or such information as a condition for establishing or conducting business in its territory.
   - <u>Source Code Disclosure</u>: Parties should not require the transfer of, or access to, source code of software owned by a person of the other Party, as a condition for the import, distribution, sale, or use of such software, or of products containing such software, in its territory.
   - <u>Protecting against Cybersecurity and AI-related Risks</u>: Parties should promote cybersecurity and AI risk management frameworks based on internationally recognized standards and best practices
   - <u>Digital Inclusion</u>: Parties should work together to ensure that all people and businesses have what they need to participate in, contribute to, and benefit from the digital economy, so as to close the digital divide.

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Page 2 of 2