October 17, 2022

Barton Meroney,
Executive Director, Office of Manufacturing Industries
International Trade Administration
1401 Constitution Ave NW
Washington, DC 20230

Re: Request for Comments, International Trade Administration; Artificial Intelligence Export Competitiveness; 87 Fed. Reg. 50288 Docket No.:ITA-2022-0007 (August 16, 2022)

Dear Mr. Meroney:

The U.S. Chamber of Commerce ("the Chamber") welcomes the opportunity to comment on the U.S. Department of Commerce's request for public comments to gain insight on the current global artificial intelligence (AI) landscape and stakeholder concerns regarding international AI policies, regulations, and other measures which may impact U.S. exports of AI technologies.

The Chamber believes in AI's potential as a force for good to tackle challenges and spur economic growth for the benefit of consumers, businesses, and societies. We have been deeply invested and involved in this vital space.

In 2019, we issued <u>ten principles</u> for policymakers considering action on AI:

1. Recognize Trustworthy AI is a Partnership
2. Be Mindful of Existing Rules and Regulations
3. Adopt Risk-Based Approaches to AI Governance
4. Support Private and Public Investment in AI Research and Development
5. Build an AI-Ready Workforce
6. Promote Open and Accessible Government Data
7. Pursue Robust and Flexible Privacy Regimes
8. Advance Intellectual Property Frameworks that Protect and Promote Innovation
9. Commit to Cross-Border Data Flows
10. Abide by International Standards

We have leveraged these principles to serve as a guidepost for governments around the world as they seek to set policy criteria for this critical technology space.

The Chamber also <u>launched</u> the Artificial Intelligence (AI) Commission on Competition, Inclusion, and Innovation in 2022 to advance U.S. leadership in the use and regulation of AI technology. With AI poised to transform the way Americans work,

socialize, and other numerous facets of our lives, this Commission was established to provide independent, bipartisan recommendations to aid policymakers and recommend artificial intelligence policies as they relate to regulation, international research and development, competitiveness, and future jobs. In recent months, the AI Commission has convened field hearings in key locations around the U.S. and internationally to explore these critical issues The Commission is working on its recommendations and will look to release them in early 2023.

As detailed in our responses below, we believe ITA has a key role to play in ensuring the U.S. builds on its leadership in the promotion and flexible, risked-based regulation of AI, contributing to a global digital economy based on open digital architectures, interoperability, high-standard trade rules, and equitable cross-border data flows.

1. <u>What foreign/international AI policies or regulations exist?</u>

AI is critical to shaping the new economic era, and whoever leads in the advancement of AI will lead the global economy. To be clear, the U.S. is well positioned to take on a global leadership role in the regulation of AI, especially if we coordinate with likeminded countries. Pursued cautiously and responsibly, AI policy and regulation can strengthen the overall competitiveness of American firms.

Strategic competitors, allies, and others around the world are increasingly moving in the pursuit of AI leadership, as countries undertake initiatives and explore regulatory frameworks to guide and foster the development of AI.

Earlier this year, Russia and China announced they would work cooperatively in AI development. China is already investing heavily in this space, having stated its ambitions to become an "AI superpower" by 2030 and investing billions of dollars in research and AI startups, raising major concerns for U.S. policy makers and the business community given our shared interest in maintaining a competitive advantage in this space.

In Europe, efforts are underway to write onerous regulations around the use of data and AI, some of which could disadvantage U.S. businesses if not carefully constructed and limited to certain use cases. For example, the current proposal of the EU AI Act, would ban certain AI practices outright and mandates that AI applications deemed "high-risk" meet strict data governance and risk management requirements. Concerningly, many within the European Parliament and some European countries are seeking to dramatically expand the number of use cases that would be considered "high risk," or even label entire sectors accordingly.

Given the history of its General Data Privacy Regulation, the EU AI Act has the potential to govern artificial intelligence well beyond Europe's borders. U.S. and European regulators are discussing AI norms and standards within the context of the

U.S.-EU Trade and Technology Council (TTC), but there are growing risks that the EU will forge ahead on its own, regardless of any progress made within the TTC context.

Other countries have in recent years also begun formulating their own national AI strategies, including India, Israel, Japan, the United Kingdom, Saudi Arabia, Brazil, South Korea, and Australia.

Domestically, the White House Office of Science and Technology Policy on October 4 released its "Blueprint for an AI Bill of Rights." The Chamber has taken a leadership role in developing trustworthy AI. As such, we are concerned that the process for developing this Blueprint was not stakeholder driven and that it utilizes definitions that will not facilitate harmonization, among other issues. We believe this White House effort represents a step in the wrong direction at home, and that a combined lack of stakeholder involvement and the articulated principles could be used by other countries to justify their own approaches which could contain problematic and trade restrictive measures that undermine competitiveness of U.S. companies.

2. What trade barriers currently exist in the AI space? What remedies could resolve these trade barriers?

Barriers affecting trade in AI and other digitally tradeable services include data localization requirements, cross-border data flow limitations, infringement of intellectual property rights, forced technology transfers, measures that violate the WTO's national treatment obligations, strictures on government procurement that violate the WTO Government Procurement Agreement, and a host of other regulatory barriers. Many of these policies do not include the requisite flexibility to account for the future evolution of the digital economy, potentially stifling innovation.

In February 2022, the Chamber published a comprehensive report, highlighting how U.S. workers benefit from the ongoing digital trade revolution. In this report, we also detail significant barriers to digital trade that harm U.S. companies and competitiveness.

Importantly, the report also calls for a digital trade agreement that supports the free flow of data internationally and prohibits forced localization policies, among other objectives. Such an agreement should also address AI and outline how it is an important contributor to the global digital economy. Any provisions addressing AI should include language encouraging governments to work together and commit to flexible, risk-based frameworks that encourage AI innovation via sound and interoperable practices.

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3. <u>What challenges are there when it comes to exporting AI products or services?</u>

The U.S. government should work closely with industry to craft narrowly tailored export controls to avoid unduly restricting trade. Any new export controls should be coordinated with likeminded countries, objectively specified, and consistent with existing regulations. Such controls should not be a barrier to international standardization.

Specifically, media reports indicate the Biden administration is preparing an executive order to establish an outbound investment screening mechanism focusing on a select number of industry sectors, including AI. Officials acknowledge that AI is a broad field covering a variety of capacities ranging from mundane commercial applications to those with national security implications, and it appears these efforts will endeavor to restrict the screening mechanism to the latter (i.e., not to the entire diverse field of AI).

The U.S. Chamber appreciates this general goal and is committed to working with officials — in their preparatory phase and in the anticipated notice-and-comment period expected to follow the executive order — to ensure that government action is carefully targeted on national security concerns and avoids unnecessary harm to other growth-promoting, job-supporting activities relating to AI.

4. <u>How could international AI regulations impact future product or service design and development?</u>

There is a risk to U.S. businesses, consumers, and the competitiveness of our economy of not moving expeditiously to update regulations to reflect the unique qualities of AI technologies. Legal and regulatory clarity is essential for businesses to be able to invest and innovate.

However, in pursuit of a regulatory framework, policymakers should refrain from instituting overly prescriptive or burdensome regulations, or regulations that do not account for the novel qualities of AI technologies. The U.S. Chamber has advocated for approaches that increase safety and build trust, while allowing for flexibility and innovation. This is particularly applicable to emerging technologies such as AI.

The Chamber has supported the National Institutes of Science and Technology's (NIST) work in drafting the Artificial Intelligence Risk Management Framework (AI_RMF). As a stakeholder-driven framework, the AI RMF is "intended for voluntary use and to improve the ability to incorporate trustworthiness considerations into the design, development, use, and evaluation of AI products, services, and systems."

Furthermore, any AI governance framework should recognize the diversity of AI applications and, wherever possible, leverage existing rules and regulatory bodies. In doing so, regulatory proposals should take into consideration the need to avoid

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impacting product design of emerging technologies, as innovators and suppliers need to provide a single product that can meet demands in multiple markets. Businesses design products for multiple markets and customers, and the ability for U.S. innovators to not only participate but to hold leading positions in the global marketplace is key to facilitating the cycle of private-sector R&D investment.

This is why we continue to advocate for policy considerations that recognize the need to avoid impacting companies' ability to provide AI technologies and solutions for global customers and enable R&D activities. We believe regulations can, and should, be modernized without duplicating or conflicting with existing regulations.

5. What trade policies could be helpful in supporting small-to-medium sized enterprises that export AI products and services?

The U.S. Chamber has long proposed a digital trade agreement as the best policy solution to a range of digital trade constraints by guaranteeing the ability to move data across international borders; prohibiting forced localization of data; ensuring non-discriminatory treatment of digital products; prohibiting customs duties on electronic transmissions; adopting interoperable frameworks to protect personal information, while supporting innovation; and promoting risk-based approaches to cybersecurity and AI.

Building on the model set out in the digital trade chapter of the United States-Mexico-Canada Agreement (USMCA) and the U.S.-Japan Digital Trade Agreement, the U.S. should launch negotiations for a high-standard plurilateral digital trade agreement. Moreover, the U.S. should build on these recent agreements via enhanced rules that facilitate public trust and trustworthiness in AI technologies.

America's small business exporters are among those with the most to gain from digital trade, including in AI. U.S. small and medium-sized businesses generate about two-thirds of all new U.S. jobs and estimates suggest 98% of the nearly 300,000 American companies that export are small and medium-sized businesses. In this context, digital trade offers impressive new opportunities for America's small businesses. New digital technologies have the potential to overcome longstanding hurdles facing small exporters. A 2019 U.S. Chamber report found that 9% of U.S. small businesses currently export goods or services, a figure considerably higher than indicated by official statistics. The report estimated that small business exports generated $541 billion in output in 2017 and supported more than 6 million U.S. jobs.

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6. Who is involved in standards development activities related to AI? In which fora should standards development for AI take place?

The development of global standards in collaboration with the business community is the best way to promote common approaches that are technically sound to deliver on technology solutions and policy objectives. Such standards should be voluntary, open, transparent, globally recognized, consensus-based, and technology-neutral.

This builds upon the international standards principals established by the World Trade Organization Technical Barrier to Trade Agreement by promoting the alignment of standards across borders, facilitating trade in connected products, and stimulating innovation in industry.

For this reason, the Chamber believes that the Department of Commerce should diligently look to implement the authorities that it received within the "Chips and Science Act" to assist in the development in "international standards." These authorities provide a great opportunity to assist in the United States leading in the development of international standards.

We believe that the development of international standards for AI applications can advance both commercial and security priorities by facilitating constructive outcomes such as improved interoperability, greater trust in the digital economy, and strengthened competitiveness of products and services. The Chamber has actively worked to advance important standards policy in support of open and competitive markets, particularly with emerging technology initiatives.

Furthermore, we believe it's necessary to engage in dialogues with democratic partners to advance interoperable approaches to AI governance to help minimize the risk of unnecessary regulatory divergences and trade-restrictive practices emerging in the digital economy. Indeed, the United States' *Guidance for Regulation of Artificial Intelligence Applications* includes such a directive. The Organization for Economic Cooperation & Development's (OECD) *Recommendation on Artificial Intelligence* and groups of likeminded nations, such as the Global Partnership on Artificial Intelligence, serve as important reference points in this respect.

Similarly, we believe that international organizations such as ISO and IEEE, should play a leading role in global AI standards development; and those standards should be relied upon in the formulation of any new standards-based regulations.

State-directed and country-specific standards or approaches—including those embraced by the People's Republic of China (PRC) —are disruptive to the inherently global nature of many new emerging digital technologies, as they create both separately controlled spheres of influence and incompatible technology domains that slow down

market growth and impede cooperative efforts to improve global infrastructure, products, and services.

It is also critical that the U.S. government continue to support standards development that is rules-based, transparent, and technology-neutral – an approach that builds upon the international standards principles established by the WTO Technical Barriers to Trade (TBT) Agreement by promoting the alignment of standards across borders, facilitating trade in connected products, and stimulating innovation in industry. Ultimately, embracing this approach will be the best way to protect against anti-competitive, anti-democratic interference from governments in standards-setting bodies over the long term.

As the USG seeks to understand and influence standards development organizations (SDOs) and consortia that focus on emerging technologies, such as AI, we recommend that it concentrate its efforts on the following imperatives:

1. Ensuring due process, robust IP protections, and transparency in standardization bodies.
2. Enhancing efforts to establish dedicated dialogues with private stakeholders to address concerns regarding state-directed interference in SDOs.
3. Bolstering the participation and capacity of U.S. industry in critical standards setting bodies and processes.
4. Incorporating private-sector feedback into diplomatic engagement on standards-related issues and launching a standards coordination mechanism with like-minded allies.
5. Preserving the multi-stakeholder approach to internet and digital data policy.

7. What challenges does your organization face with regards to protecting your AI intellectual property (IP), especially during overseas dealings?

Effective IP protection underpins the business communities' investments in markets abroad. The U.S. Chamber International IP Index illustrates how strong IP protection and adequate enforcement not only support that investment but offer a host of benefits to the domestic economy. Specifically, economies with the most effective IP ecosystems are more likely to use state-of-the-art technologies, have greater innovative output, and see increased private sector investment in R&D.

The innovative community is increasingly relying on AI to seek out innovative and cost-effective solutions to everyday problems. We are witnessing daily the ways AI has helped transform innovation, from its value in adapting vaccines to tailor them to new variants to increasing patient safety during procedures like labor and delivery. Yet, many IP ecosystems in both the U.S. and many global markets were built before the discovery of AI. As a result, the IP standards for emerging AI technologies – including

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patentability standards and IP ownership – remains unsettled. Building an effective IP framework for AI will be key to ensuring the business community can continue to leverage AI to address unmet global challenges.

8. What can the U.S. government do to best foster and protect IP rights for U.S. AI technologies in overseas dealings?

The AI ecosystem is highly dynamic, routinely benefiting from collaboration and open research to fuel commercial innovation, which is often built on a range of open source and proprietary components, such as software frameworks, data, and cloud-enabled processing capabilities. The innovative and creative communities utilizing AI rely on the U.S. government to help secure effective IP protection and enforcement in global markets. As noted above, the lack of clarity around AI IP standards creates uncertainty for innovators and creators employing AI technologies in markets abroad.

In July 2022, the U.S. Chamber convened an Artificial Intelligence Commission field hearing focused on how the United States government can better approach IP in a broader international context. The panel of legal experts and former and current U.S. government officials discussed how creating greater certainty and predictability around IP rights for AI technologies is key to fostering continued investment in new technologies and ensuring emerging AI technologies do not jeopardize U.S. national security. The U.S. Chamber looks forward to working with the USG to ensure that all IP-driven AI technologies are adequately protected in global markets to secure America's leadership in AI innovation.

9. How should trustworthiness and risk management of AI systems be considered by industry and/or policymakers?

Fostering public trust and trustworthiness in AI technologies is necessary to advance its responsible development, deployment, and use. Trustworthy AI encompasses values such as transparency, explainability, fairness, and accountability. However, the speed and complexity of technological change means that governments and policy makers alone cannot promote trustworthy AI.

The Chamber believes that policy makers must partner with the private sector, academia, and civil society when addressing issues of public concern associated with AI. We recognize and commend existing partnerships that have formed in the AI community to address these challenges, including protecting against harmful biases, ensuring democratic values, and respecting human rights. Any governance frameworks should be flexible and driven by a transparent, voluntary, and multi-stakeholder process.

As AI is still in its infancy, rushing to impose onerous data, technical, and transparency requirements could create substantial risks for companies and their users, while potentially reducing the incredible transformative potential of AI technology across a range of industries and sectors including public health, the environment, and the economy. This risk is especially potent when there are no clear and practicable consensus standards for key elements of AI governance.

10. What role do global innovation hubs and regulatory sandboxes play in U.S. competitiveness in AI? Please describe specific examples of involvement if applicable.

The Chamber believes that an important mechanism for U.S. global competitiveness is policy prototyping through which different stakeholders can co-create and test the AI RMF. Policy prototyping is an experimentation-based approach for policy development that can provide a safe testing ground to test and learn early in the process about different approaches to the formulation of the AI while assessing its impact before its actual release. Policy prototyping involves a variety of stakeholders that come together to co-create governance frameworks, including regulation and standards.

By developing and testing governance frameworks in a collaborative fashion, this allows policymakers to see how such frameworks can integrate with other co-regulatory tools such as corporate ethical frameworks, voluntary standards, certification programs, ethical codes of conduct, and best practices. This method has been successfully used in Europe to test an AI Risk Assessment framework, leading to several concrete recommendations for improving self-assessments of AI.

11. How is U.S. competitiveness (talent, research and development, and commercial exports) in AI compared to other countries?

Across the U.S., AI is powering machines and computers to help us solve problems and work more efficiently. It's assisting scientists to develop vaccines and treat patients more effectively, securing America's networks and critical infrastructure against cyberattacks, alerting customers of bank fraud, and expanding financial opportunities for underserved communities through access to credit. AI is rapidly changing how businesses operate—and is foundational to a thriving 21st-century economy. By 2030, 70% of businesses globally expect to use AI. Around the world, AI is estimated to boost global GDP by 14% over the same period, accounting for nearly $16 trillion of added economic output.

However, additional resources are needed to ensure the U.S. remains a leader in this space. Emphasis should be placed on:

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1. Expanding the availability of digital skills to ensure workers have the necessary abilities to succeed in an increasingly digitalized economy.
2. Streamlining export and import processes to ensure as many businesses as possible are able to trade their goods.
3. Collaborating with likeminded countries to provide resources for companies to digitalize their businesses.
4. Sharing best practices to ensure businesses, especially SMEs, can utilize resources available from various platforms to reach larger audiences and secure additional market opportunities.

12. What can the International Trade Administration do to create more opportunities for U.S. AI technologies in the global marketplace? What impactful actions can ITA take to reduce or remove challenges, risks, and barriers to help U.S. AI technologies compete in the global marketplace?

ITA should elevate international AI policy by designating a subject matter lead whose office is uniquely qualified to provide Agency guidance and strategy and empowering that office to serve as a liaison to U.S. AI industry stakeholders. The office should seek avenues to work with like-minded countries to promote open digital architectures, high-standard trade rules, and cross-border data flows. The U.S. has advanced digital policy priorities in multilateral forums as diverse as the G7, the G20, the Asia-Pacific Economic Cooperation (APEC) forum, and the World Trade Organization. As mentioned above, greater coordination with Europe in particular, through the Trade and Technology Council, is also essential.

In addition to the traditional focus on digital trade, data flows, privacy, and cybersecurity, cooperation on careful, pragmatic, innovation friendly, and risk-based approaches to AI governance should be a priority. These efforts can be built on a strong plurilateral foundation, including the OECD's AI Recommendations and the Global Partnership on AI.

We recommend that ITA redouble its efforts to work with USG counterparts and U.S. stakeholders to identify and address barriers to U.S. exports of AI technologies and new areas for bilateral, plurilateral, and broader cooperation on AI governance. This includes the further development of voluntary governance frameworks consistent with the NIST principles on explainable AI, complementing its other work on cybersecurity and privacy. Other areas for cooperation may lie in establishing new dialogues or retrofitting existing ones between regulators, including in financial services, transportation, healthcare, and data protection, to discuss AI governance as applied to specific sectors and regulatory considerations. Through these efforts, it's critical that whichever office is tasked as a subject matter lead on international AI policy, their primary policy aim is focused on minimizing the risk of unnecessary regulatory divergences and trade-restrictive practices from emerging in the AI space.

13. How can AI be incorporated into existing and future trade agreements to ensure the competitiveness of U.S. industry? (Strengthen and promote a rules-based global trading system)

As stated in our responses above, the Chamber believes the U.S. should seek and launch negotiations for a high-standard plurilateral digital trade agreement with economies that share our vision for promoting durable digital trade rules that guarantee the ability to move data across international borders, prohibiting forced localization of data, ensuring non-discriminatory treatment of digital products, adopting interoperable frameworks to protect personal information and support innovation, and promoting risk-based approaches to cybersecurity and AI. In the February 2022 report on digital trade, the Chamber outlined a host of digital trade priorities for inclusion in any agreement, including provisions that promote trust and innovation in AI.

Conclusion

The Chamber thanks the Department of Commerce for the opportunity to provide these comments. We are committed to serving as a valued partner as you consider the future of AI governance in the U.S. If you have any questions regarding our submission or need more information, please do not hesitate to contact Abel Torres, Executive Director at the Center for Global Regulatory Cooperation, at atorres@uschamber.com and Jordan Heiber, Vice President for International Digital Economy Policy, at jheiber@uschamber.com.

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