U.S. Chamber of Commerce & U.S.-Japan Business Council
Comments on METI's
"Governance Guidelines for Implementation of AI Principles"

The U.S. Chamber of Commerce and the U.S.-Japan Business Council welcome the opportunity to comment on the Ministry of Economy, Trade, & Industry's *Governance Guidelines for Implementation of AI Principles*.

The Chamber is the largest business advocacy organization in the world, operating in all 50 states and in over 50 countries to promote free enterprise and advance American trade and investment globally, representing companies of every size and from every sector, working with state and local Chambers and over 100 AmChams around the world. Through our U.S.-Japan Business Council ("USJBC"), we represent a substantial share of U.S. economic activity with Japan and advocate for stronger commercial ties between our two countries. The Chamber is also a leading business voice on digital economy policy, including on issues of artificial intelligence ("AI"), data privacy, cybersecurity, digital trade, and e-commerce. In the U.S., Japan, and globally, we advocate for sound policy frameworks that support economic growth, promote consumer protection, and foster innovation.

The Chamber and USJBC believe in AI's potential as a force for good to tackle challenges such as the COVID-19 pandemic and to spur economic growth for the benefit of Japanese consumers, businesses, and society. In 2019, we issued ten principles for policymakers considering action on artificial intelligence:

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 hope these principles serve as a guidepost for the Ministry of Economy, Trade, & Industry ("METI"), the Expert Group on Architecture for AI Principles to be Practiced ("Expert Group"), and the broader Government of Japan ("GOJ"). In addition to these general principles, the Chamber and USJBC have prepared specific input on the *Governance Guidelines for Implementation of AI Principles* ("Guidelines") below.

The U.S.-Japan Digital Partnership & International Regulatory Cooperation

The U.S.-Japan partnership is the cornerstone of a global digital economy based on open digital architectures, high-standard trade rules, and cross-border data flows. The U.S. and Japan have leveraged this partnership to advance common digital policy priorities in multilateral forums as diverse as the G7, the G20, the Asia-Pacific Economic Cooperation, and the World Trade Organization. At the heart of this partnership are strong bilateral ties built on a commitment to regular dialogue on digital policy and on frameworks, such as the U.S.-Japan Digital Trade Agreement. Appropriate focus on the bilateral digital partnership strengthens our commercial ties, while creating high standards that can be replicated elsewhere.

The U.S. Government and the GOJ have an opportunity to consider the next chapter in our bilateral digital partnership. In addition to the traditional focus on digital trade, data flows, privacy, and cybersecurity, U.S.-Japan cooperation on careful, pragmatic, innovation friendly, and risk-based approaches to AI governance should be a priority. Importantly, these efforts can be built on a strong multilateral foundation, as U.S. and Japanese collaboration was crucial to finalizing the Organization for Economic Cooperation & Development's ("OECD") *AI Recommendations* and in establishing the Global Partnership on AI. Nonetheless, the Chamber and USJBC recommend that the GOJ and the Expert Group explicitly identify areas for bilateral U.S.-Japan cooperation on AI governance. As we previously noted in our February 2021 submission on METI's *Interim Report on Artificial Intelligence Governance in Japan*, one opportunity may be in the development of voluntary governance frameworks. We appreciate the GOJ's efforts to encourage businesses to set their own AI governance goals specific to their activities and operations while adhering to overarching principles from Japan and the broader international space and would encourage further bilateral cooperation to the benefit of the Japanese and U.S. business communities.

We note that the U.S. National Institute for Standards & Technology ("NIST") has developed principles on explainable AI and has been directed by the U.S. Congress to develop an AI risk management framework, complementing its existing work on cybersecurity and privacy. Another area 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. The U.S. Government's implementation of its *Guidance for Regulation of AI Applications* may serve as an important reference point.

The Chamber and USJBC are committed to supporting U.S.-Japan cooperation on this essential matter of digital policy and welcome follow up discussions with the Expert Group and the Government of Japan. In 2020, we launched the *Forum on Global AI Governance*, a project undertaken jointly with Keidanren and Orgalim to bring together business leaders and policymakers from the U.S., Japan, and the European Union to discuss interoperable approaches to AI governance. We note that representatives from METI and the Ministry of Internal Affairs & Communications

("MIC") joined these discussions. As we continue this programming in the future, the Chamber and USJBC seek to further support the GOJ's leadership on issues of AI governance.

Flexible, Proportionate, and Risk-Based Frameworks

The Chamber and USJBC appreciate the Guidelines' emphasis on a risk-based, flexible, and voluntary AI governance regime that avoids binding prescriptive and one-size-fits-all solutions to companies engaged in the development and deployment of AI applications. AI governance frameworks must be flexible as the risks of an AI application put to the same use by different companies will pose varying risks depending on the way it is integrated into a business's operations. For example, the degree of human oversight and safeguards, such as monitoring, may vary between contexts and may increase or decrease the risk based on the AI in question. The Guidelines note that the recommended action targets are intended to be general and objective and should be modified by individual companies to appropriately meet their circumstances rather than rigidly adhere to them. This flexible approach is crucial for companies, because they are often better equipped to assess and determine their respective risks, as opposed to having mandatory guidelines that treat companies or sectors the same. The flexibility afforded to the business community in implementing the wide range of action targets in these Guidelines will steer industry innovation and Japan's digital transformation forward.

Additionally, the Chamber and USJBC work to advance important standards policy in support of open and competitive markets. The development of global standards in collaboration with the private sector is the best way to promote common approaches that are technically sound to deliver on technology solutions and policy objectives. We encourage global governments to develop governance frameworks and standards for emerging technologies, such as AI, that are flexible and driven by a voluntary, open, globally recognized, consensus based, technology neutral, and multi-stakeholder process.

Multi-Stakeholder Approaches

The Chamber and USJBC appreciate the Expert Groups' acknowledgement that these Guidelines are subject to change as the AI technology landscape rapidly evolves. This approach gives both industry and the GOJ the space to adjust to changes in the emerging technologies environment without the burden of revisiting the legal and regulatory process to make such necessary amendments. The Chamber appreciates the Expert Groups' desire to continue reviewing how AI governance and the Guidelines should be revised, notably through a multi-stakeholder process.

The Chamber and USJBC also encourage the GOJ to further explore ways to incentivize research and development (R&D) in AI by partnering with businesses at the forefront of AI development and deployment. Promoting flexible governance frameworks such as regulatory sandboxes, policy prototyping, utilizing testbeds, and funding both basic R&D and more advanced R&D are all ways in which the GOJ could achieve "agile governance" and environments of co-creation. These tools are especially useful when dealing with regulation concerning fast-emerging technologies like AI. Policymakers should recognize that advancements in AI R&D happen within a global ecosystem where businesses, universities, and institutions collaborate across borders.

Given the speed and complexity of technological change, governments cannot foster trust in AI alone, rather a partnership between governments, the business community, the AI open-source community, academia and other stakeholders is necessary. In addition, the multi-stakeholder model allows for adequate participation of a broader foundation of interested parties inclusive of technical experts and civil society. For example, the OECD reached consensus on international principles to improve the trustworthy development of AI without holding back AI innovators or favoring one economic or security interest over another. The multi-stakeholder model has driven outcomes leading to the rapid innovation of technologies, such as the internet, and has led to vast informational and societal benefits.

Definitions and Scope of the Guidelines

The Chamber and USJBC appreciate the Expert Groups' recognition that there is no clear definition of AI or its scope. The Guidelines consider that too broad a scope could cover a significant number of software applications that are not considered to be AI systems. For example, statistical approaches and search and optimization methods have been used in many applications across industries for some time and are generally not considered AI, so this approach would rightfully exclude them from the scope of these Guidelines.

However, the Guidelines do take an overly-broad approach in cases where "software and other systems which could replace human decision making and in which the process of such decision making is less visible to users . . . the Guidelines are expected to be referred to as necessary, even if a machine learning approach is not used." The consequence could be that the Guidelines may be applicable even if a machine learning approach is not used. The definition of an AI system explicitly consists of systems that are developed with a machine learning approach. This incongruence renders the text of the guidelines unclear and ambiguous regarding its scope of application.

The Chamber and USJBC also commend the Expert Group for using the OECD's definition of an AI system as a guide. It is important to build on multilateral efforts such as the OECD's *AI Recommendations* to increase adherence to international recommendations and standards. However, the Guidelines include the specification that an AI system "is designed to operate with various levels of autonomy" without elaborating on the concept of 'autonomy' within the definition. The Chamber and USJBC recommend that the concept of 'autonomy' be included in the definition since it is a fundamental part of an AI system.

Additionally, we appreciate the Guideline's taxonomy distinguishing between "AI developer," "AI operator," and "AI user." However, we believe this taxonomy is not sufficiently granular and encourage the GOJ to develop a more nuanced taxonomy to identify the relevant participants in the AI ecosystem - researchers, innovators, open source community - and allocate the appropriate responsibilities.

Further, the Chamber and USJBC support the focus on fairness in the Guidelines. Fairness is an essential part of the Chamber's AI principle for "Recognizing Trustworthy AI is a Partnership." The Chamber and USJBC believe that trustworthy AI encompasses values such as

transparency, explainability, fairness, and accountability. We believe that these pillars will help advance the responsible development, deployment, and use of AI.

Conclusion

The Chamber and USJBC thank METI for the opportunity to provide these comments. Few technologies hold more potential to help people, businesses, and governments address the many challenges facing society. The U.S. business community is proud of its longstanding and substantial contributions to the U.S.-Japan commercial relationship, and we look forward to continuing the dialogue on the AI Guidelines and other important digital policy issues.

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