



1 November 2019

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

By online submission

AUSTRALIA-SINGAPORE DIGITAL ECONOMY AGREEMENT – BSA COMMENTS

BSA | The Software Alliance (**BSA**) congratulates the Australian government for jointly launching with Singapore the negotiations on a new Australia-Singapore Digital Economy Agreement (**AU-SG DEA**) on 12 October 2019.

We commend Australia for its strong leadership on digital transformation and technology in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**) and the World Trade Organization E-Commerce Negotiations, and for once again leading the way with Singapore on digital trade through this ground-breaking AU-SG DEA. We applaud, in particular, the stated objectives of the governments of Australia and Singapore to, among other things, “push the frontiers of digital trade and digital connectivity” through “high-standard digital trade rules and pilot initiatives”¹ in the AU-SG DEA.

Statement of Interest

BSA is the leading advocate for the global software industry before governments and in the international marketplace. BSA’s members² are at the forefront of data-driven innovation that is fuelling global economic growth, including cutting-edge advancements in artificial intelligence (**AI**), machine learning, cloud-based analytics, and the Internet of Things. These innovations are helping to make our devices smarter, our businesses more competitive, and the delivery of government services more efficient. BSA’s members have made significant investments in Australia and are proud that many Australian organisations and consumers continue to rely on BSA member products and services to support Australia’s economy.

In close consultation with our members, BSA works with policymakers, stakeholders, and legislators globally to ensure our members can continue to innovate and deliver best-in-class technology to meet the requirements of customers around the world. BSA is therefore excited to have this opportunity to

¹ As mentioned in the joint media release on the launch of the AU-SG DEA negotiations, available at: https://trademinister.gov.au/releases/Pages/2019/sb_mr_191013a.aspx (**Joint Media Release**).

² BSA’s members include: Adobe, Akamai, Amazon Web Services, Apple, Autodesk, AVEVA, Baseplan Software, Bentley Systems, Box, Cadence, Cisco, CNC/Mastercam, DataStax, DocuSign, IBM, Informatica, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens PLM Software, Sitecore, Slack, Splunk, Symantec, Synopsys, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

contribute to the negotiations on the AU-SG DEA, which will have an impact on digital trade rules not only regionally, but also globally.

BSA's Recommendations for the AU-SG DEA

The world is more connected now than ever with half the world's population now online. The growth of the internet, the proliferation of connected devices, and the explosion in cloud-enabled processing capabilities have given rise to new opportunities that have the potential to improve almost every aspect of our lives. Indeed, as a recent report³ observes, technology is a critical component of modern economies like Australia, with the technology sector contributing 6.6% of Australian GDP, employing over half a million workers, supporting many small and medium-sized businesses, and underpinning innovation and productivity growth in almost every other industry.

Forward-looking digital trade rules are critical to ensure continued job creation, innovation, productivity growth, and overall competitiveness in the digital economy. Organizations of all sizes and across all sectors — from agriculture and manufacturing to financial services and health care — rely on smart digital trade policies suited to today's innovation ecosystem, including those that preserve and facilitate the movement of data across borders.

BSA accordingly **recommends that** the Australian government should use the present opportunity of the AU-SG DEA to not only improve on both countries' commitments under the Australia-Singapore Free Trade Agreement and the CPTPP, but also continue to be forward-looking on digital trade rules, building on the work of other governments around the world, including the recent US-Mexico-Canada Agreement. In doing so, BSA **further recommends that** the Australian government should incorporate as many as possible of the priorities that BSA has identified in BSA's Advancing Digital Trade Agenda⁴ (copy attached as **Annex A**). These priorities, which were developed based on BSA's and BSA's members' experience on digital trade matters, are aligned with Australia's own digital trade priorities⁵ and include the adoption in modern-day trade agreements of strong disciplines:

- prohibiting governments from adopting trade barriers such as:
 - data or server localization requirements and cross-border data transfer restrictions;
 - applying customs duties to electronic transmissions; and
 - forced technology transfers and source-code disclosures;
- ensuring the protection of personal information and security and the information technology supply chain without unnecessary restrictions on trade; and
- promoting the use of technology and innovation, including ensuring that commercial data analytics in the machine learning context is permitted.

With respect to **AI in particular**, which BSA notes will be covered by the AU-SG DEA, no other trade agreement has yet included trade rules in this area. Australia thus has an opportunity to “set ambitious benchmarks for others in the region”⁶ and globally in this regard. In relation to this, BSA has

³ AlphaBeta, *Australia's Digital Opportunity: Growing a \$122 Billion a Year Tech Industry*, September 2019, available at: <https://www.alphabeta.com/our-research/australias-digital-opportunity-growing-a-122-billion-a-year-tech-industry/>

⁴ BSA, *Advancing Digital Trade: An Agenda for Accelerating Economic Growth and Innovation*, available at: <https://www.bsa.org/policy-filings/advancing-digital-trade-an-agenda-for-accelerating-economic-growth-and-innovation>

⁵ As published on: <https://dfat.gov.au/trade/services-and-digital-trade/Pages/e-commerce-and-digital-trade.aspx>

⁶ As mentioned in the Joint Media Release.

prepared a draft set of AI provisions that could be incorporated in the AU-SG DEA (or other agreements that Australia may negotiate). We are happy to share these draft AI provisions (in the attached **Annex B**) for the Australian government's consideration.

Conclusion

BSA once again congratulates the Australian government on the launch of the AU-SG DEA negotiations, and commends Australia's consultative process and strong engagement of the industry in developing Australia's strategy for negotiating the AU-SG DEA.

BSA and our members would be delighted to further engage with the Department of Foreign Affairs and Trade and other stakeholders in the Australian government to assist in developing negotiating texts for other areas covered by the AU-SG DEA, and to explore other ways in which BSA and our members can contribute to a robust AU-SG DEA that other governments around the world can look up to and emulate in their own trade agreements.

If you require any clarification or further information in respect of this submission, please contact Mr Darryn Lim at darrynl@bsa.org +65 6292 0680.

BSA | The Software Alliance

Annex A

BSA Advancing Digital Trade: An Agenda for Accelerating Economic Growth and Innovation



ADVANCING DIGITAL TRADE:

An Agenda for Accelerating Economic Growth and Innovation

Forward-looking digital trade rules are critical to job creation, economic competitiveness, and software-enabled innovations such as cloud computing, artificial intelligence, smart devices, and other emerging technologies. Companies of all sizes and across all sectors — from agriculture and manufacturing to financial services and health care — rely on smart digital trade policies suited to today's innovation ecosystem, including the ability to move data across borders.

In ongoing and future bilateral, regional, and multilateral negotiations, updated rules on digital trade are critical. Relevant priorities include:

Trade Barriers

- » **No Data Localization Requirements and Cross-Border Data Transfer Restrictions.** Governments should not impose data localization requirements or restrict cross-border data transfers as a market access barrier, and should promote interoperable frameworks to facilitate data transfers.
- » **No Customs Requirements on Electronic Transmissions.** Governments should not impose customs requirements on software or data transmitted electronically.
- » **International Standards.** Governments should support voluntary, internationally recognized standards, and should refrain from imposing conflicting national standards on market participants.
- » **No Forced Technology Transfer.** Governments should not require or pressure companies to transfer or disclose their technology — such as source code or trade secrets, including algorithms — as a condition for market access.
- » **State-Owned Enterprises.** Governments should not favor state-owned enterprises through discriminatory regulation or subsidies.
- » **Investment and Export Restrictions.** Restrictions on the investment in, and exports of, digital technologies should be focused on safeguarding core national security objectives without undermining commercially oriented R&D or international trade.
- » **Procurement.** Procurement rules should reflect the 21st century needs of governments, allowing them to use state-of-the-art technologies, including through access to domestic and foreign cloud computing services, and government agencies should use only legally acquired software.
- » **Choice.** Companies should be free to use the technology of their choice and not be required to use local technology.

BSA supports 21st century trade agreements that reflect the transformative role of software in advancing innovation, growing economies, and raising competitiveness across all sectors of the global economy.

Privacy and Security

- » **Support for Privacy.** Governments should adopt legal frameworks that protect personal information without allowing for unnecessary or disguised restrictions on trade.
- » **Protecting Security Through Encryption.** Governments should not undermine encryption in commercial products, and should not impose restrictions on security technologies used to safeguard against intrusions.
- » **Protecting the Information Technology Supply Chain.** Governments and companies should increase their readiness to mitigate cyber and supply chain security threats, including through cyber and supply chain risk management and vulnerability disclosure processes that are based on internationally recognized standards.
- » **Fair and Transparent Requests for Access to Data.** Governments should ensure that law enforcement requests to access information are procedurally fair and transparent, and include mechanisms for resolving differing legal requirements between jurisdictions.

Innovation

- » **Machine Learning and Data Analytics.** Governments should ensure that commercial data analytics in the machine learning context is permitted.
- » **Open Government Data.** Governments should commit to making non-sensitive government-generated data freely available to the public, on a non-discriminatory basis, and in machine-readable formats.
- » **Limitations on Liability.** National laws should include appropriate limitations on liability for technology providers for legal claims arising from conduct by third parties.



Open and innovative economies are increasingly entering trade agreements to ensure their cross-border access to cutting-edge software and emerging technologies. And for good reason. These economies will be best positioned to compete and thrive in the global marketplace of tomorrow.

- » **Copyrights.** Governments should ensure that copyright rules are aligned with international standards, including appropriate exceptions and limitations, such as safe harbors for online service providers that expeditiously remove infringing content upon receiving notification from a rightsholder.
- » **Patents and Trade Secrets.** Governments should provide for nondiscriminatory software patent protection, and should protect trade secrets under civil and criminal law.
- » **Research and Development.** Government should support R&D in artificial intelligence and other emerging technologies on a transparent and non-discriminatory basis, including through funding for basic research and support for public-private partnerships.
- » **Technology in Government.** Governments should promote the use of innovative technology in public sector operations.
- » **Electronic Signatures.** National laws should recognize electronic signatures in commercial transactions, including “smart” contracts.

Annex B

BSA Draft AI Provisions

Article [x].[y]: Artificial Intelligence

1. The Parties recognize the importance of artificial intelligence (AI) as a contributor to economic growth and quality of life, as well as the importance of facilitating AI-related research and development, promoting public trust in the development and deployment of AI-related technologies, training workforces capable of using AI in their occupations, and support for voluntary, industry-led international standards relating to AI.
2. Each Party shall promote, on a non-discriminatory and transparent basis, sustained investment in AI research and development and collaboration between government entities and private industry, university, and research organizations.
3. Further to Chapter [X] [Good Regulatory Practices], each Party shall, in connection with AI-related policymaking processes:
 - a. Provide ample opportunities for engagement by the public, including industry and other interested stakeholders, such as through multi-stakeholder consultation processes, notice and comment processes, and similar open-government policies;
 - b. Employ risk-based approaches that rely on voluntary, industry-led standards and risk management best practices in AI-related policymaking processes; and
 - c. Give due consideration to core principles of technological interoperability and technological neutrality in relation to AI-related policymaking processes.
4. No Party shall prohibit the digital analysis of lawfully accessed information, including data and other content, provided that any output of this analysis otherwise complies with the requirements of this Agreement;
5. With a view to helping prepare modern, competitive workforces that benefit from the development and deployment of AI and other technologies, the Parties shall, subject to the availability of resources, upon request, and on mutually agreeable terms and conditions, exchange information and best practices, and otherwise cooperate, to:
 - a. Develop innovative exchange programs to train and reskill workers for the jobs of the future;
 - b. Invest in apprenticeship programs and other alternative pathways to future employment; and
 - c. Invest in inclusive science, technology, engineering and math education, with an emphasis on computer science, at all levels of the educational system.