

## DIGITAL ECONOMY

The global community is facing unprecedented challenges as a result of the ongoing COVID-19 pandemic. The U.S.-Japan Business Council and the Japan-U.S. Business Council (“the Councils”) encourage the U.S. and Japanese governments to continue promoting policies and legislation to accelerate digital transformation that will facilitate not only economic recovery in the United States, Japan, and third countries, but also a better “new normal” as we continue to cope with COVID-19. We believe that these efforts should focus on:

- 1. Promoting the free flow of data and enabling data usage.** The Councils remain committed to promoting policy frameworks that facilitate data usage. In line with this, the Councils welcome the Agreement on Digital Trade between Japan and the U.S. that went into effect on January 1, 2020. We affirm its high standards as a model for the global digital economy and sincerely appreciate the efforts put forth by both governments towards fulfilling them. While steady execution of this Agreement is important, we strongly encourage the two governments to continue working closely to promote the free flow of data in multilateral fora such as the G7, G20, OECD, APEC, and the WTO.

We support efforts by both governments to promote frameworks that allow for self-regulation, utilize certifications and industry codes of conduct, and foster interoperability. We encourage the two governments to strive for greater adoption of these principles through emerging concepts, such as the Data Free Flow with Trust (DFFT) initiative agreed upon at the 2019 G20 Osaka Summit.

Moreover, we hope the WTO’s work on e-commerce rules, such as non-discriminatory treatment of digital products and services and a permanent moratorium on customs duties for electronics transmissions, will produce commercially meaningful results. While these efforts should be as inclusive as possible, a future agreement must achieve high standards. We recognize efforts made in the CPTPP, the EU-Japan EPA, and the United States-Mexico-Canada Agreement (USMCA) to advance an open global data governance architecture. We also remain supportive of ongoing efforts among Japan, the U.S., and the European Union to cooperate more closely on resolving long-standing issues around forced technology transfers by third parties.

- 2. Strengthening privacy and data protection.** The Councils remain committed to promoting policy frameworks that facilitate the enhancement of privacy and data protection. We encourage

both governments to promote high-standard privacy protection in multilateral fora as well. We urge the two governments to continue working closely to adopt these principles through established mechanisms such as the APEC Cross-Border Privacy Rules system and the OECD and to advance their adoption in third countries.

Additionally, we encourage the U.S. government to pursue federal privacy legislation that would protect consumers and eliminate a confusing patchwork of state laws, and encourage the Japanese government to work closely with the private sector when implementing updates to the Act on the Protection of Personal Information (APPI). We also urge the two governments to continue advancing interoperability between both countries' privacy regimes.

- 3. Developing and promoting secure and trusted next-generation telecommunication infrastructure.** The Councils believe that 5G technology will be both an enabler of innovation and a creator of new opportunities across all industry sectors. As the trustworthiness of 5G networks is critical for economic security, we recognize that the U.S. and Japan should collaborate closely to maintain the trustworthiness of 5G networks by accurately identifying and analyzing vulnerabilities as well as introducing advanced security technology to deploy 5G networks that citizens can use with peace of mind.

We also believe that open, interoperable architecture is the key technology for enhancing economic security by expanding options for selecting trusted vendors and diversifying supply chains. We urge the U.S. and Japanese governments to establish clear public policies aimed at accelerating the development and voluntary adoption and use of virtual, open, and interoperable 5G technologies and solutions both domestically and internationally, particularly with regards to the Open Radio Access Network (O-RAN) standard. Moreover, we encourage the two governments to take initiative in accelerating adoption of this technology. Doing so will enable the deployment of cost-effective, flexible 5G networks by presenting new opportunities for companies to enter the market and compete.

We also urge the two governments to continue to cooperate and play a key role in adopting similar policies for like-minded countries. This includes the adoption of open, interoperable architecture from trusted vendors and continuing to provide necessary funding through export credit agencies in order to accelerate the deployment of trusted 5G networks in other markets.

- 4. Striving to promote the utilization of Artificial Intelligence (AI).** The Councils encourage the two governments to promote the advancement of AI technologies through the development and use of global, consensus-based, and industry-led AI standards. We encourage the two governments to build and promote governance frameworks that are flexible and driven by a transparent, voluntary, and multi-stakeholder process.

Any efforts by the two governments in this area should be mindful of existing rules and regulations, incorporate risk-based approaches to AI governance, and maintain data protection regimes that recognize the need to collect, retain, and process data for AI development, deployment, and use. We also encourage the two governments to work closely with industry

and civil society to play a global leadership role focused on principles of fairness, explainability, and accountability. In this respect, we look forward to continuing close cooperation at the OECD and applaud the June 2020 launch of the Global Partnership on Artificial Intelligence (GPAI), which was established with the aim of guiding the responsible development and use of AI, and to which the U.S. and Japanese governments both belong.

**5. Promoting best practices and international standards to manage increasing cyber risks.**

The Councils recognize that managing cyber risk, especially with regards to critical infrastructure, is critical to the economic and national security of the U.S. and Japan and increasingly important for our nations' bilateral digital trade relationship. Given the evolving nature of cybersecurity threats, the Councils recognize that a risk-based approach is more effective to manage cyber risk than prescriptive regulation. Such an approach should at a minimum:

- Strengthen—jointly with industries—the capabilities of each government's respective national entities responsible for cybersecurity incident response;
- Consider building cyber capacity with respect to national competent authorities, legal conventions, computer emergency response teams, critical infrastructure protection, and cyber education, particularly through public-private cooperation;
- Strengthen existing collaboration mechanisms for bilateral cooperation to identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks;
- Employ and encourage enterprises within territories to use risk-based approaches that rely on consensus-based standards and risk management best practices to identify and protect against cybersecurity risks, as well as to detect, respond to, and recover from cybersecurity events; and,
- Promote the development of cryptography communication capable of ensuring security and privacy in anticipation of the coming quantum computer age.

The Councils also support efforts by both governments to promote the NIST Cybersecurity Framework and key International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) standards around risk management and assessment, and to coordinate closely on cybersecurity capacity building programs with APEC and through the U.S. Department of State's Digital Connectivity and Cybersecurity Partnership.

**6. Accelerating the formulation of rules for global digital taxation.** The Councils are concerned that the unilateral introduction of digital taxation in each country could lead to not only an increase in tax disputes, but also economic contraction. We urge the two governments to take the lead in accelerating the formulation of rules currently being discussed by both the G20 and the OECD as well as in ensuring the introduction of an orderly and fair taxation system.

**7. Establishing bilaterally harmonized and interoperable frameworks in digital platforms/ICT regulations.** The Councils urge both governments to enable innovation and investment, as well as balance critical societal objectives with the benefits that digital products and services bring to the consumers. Permitting the seamless use and deployment of latest media service and technology in an open and non-discriminatory marketplace will enable consumers to leverage the best-in-class applications at competitive prices.

In turn, our economies will benefit from increased economic growth, job creation, foreign investment, and innovation. Unnecessary regulatory requirements only serve to stifle innovation and investment, dampen competition, and harm consumers. Therefore, the Councils urge the U.S. and Japan to ensure that any changes to digital platforms/ICT regulations are implemented in a transparent and predictable manner—to include prior dialogue with the private sector and key stakeholders, especially regarding measurement criteria, reasonable levels of compliance, and reporting thresholds.