



April 28, 2023

ACCJ Digital Economy Committee
ACCJ Digital Transformation Committee

ACCJ Applauds Japan's Digital and Technology Policy Leadership Through the G7 and Urges Progress on Digital Policies to Promote Innovation for Social and Economic Development

The American Chamber of Commerce in Japan (ACCJ) applauds Japan's leadership in preparing a robust agenda for the G7 [D&T or T&D] Digital and Tech] Ministers' Meeting in Takasaki, Gunma. This important event will help to further demonstrate Japan's leadership on digital issues, deepen U.S.-Japan cooperation with like-minded partners, and secure concrete deliverables in areas such as facilitating cross-border data flow, secure and resilient digital infrastructure, and the implementation of emerging technologies.

The U.S. and Japan are indispensable economic partners joined by a long-standing alliance built upon shared values and a common vision of free market principles. With over 3000 members ranging from early-stage entrepreneurs to Fortune 500 companies operating in Japan, the ACCJ membership is deeply involved across the wide range of sectors that make up the dynamic U.S.-Japan economic relationship and is committed to furthering the bilateral relationship and improving the international business environment in Japan.

The ACCJ believes in the power of innovation and digital technology to support strong, sustainable, balanced, and inclusive social and economic development. Digital policies should harness the dynamism of the private sector to realize these benefits while ensuring that efforts to address national security and economic security needs through digital policies are considered, proportionate, and developed through robust consultation with the private sector to ensure they are fit for purpose.

To realize these shared digital policy goals among G7 parties and like-minded partners, the ACCJ urges that G7 governments take the following approaches:

- Ensure transparent and fair processes by involving a broad range of stakeholders in the formulation of regulations, procedures, and administrative decisions;
- In domestic rulemaking efforts, leverage international standards and best practices, seek interoperability with like-minded partners, and

- maintain a level playing field, which can help each country to benefit from innovation and expertise developed across the globe;
- To achieve Data Free Flow with Trust (DFFT), emphasize and utilize international frameworks to promote innovation benefiting from the free flow of data among like-minded countries while fostering economic security; and
 - Enhance information sharing and alignment among like-minded countries with regard to efforts to promote economic security.

Recommendations:

Ensure transparent and fair processes: Transparency is essential to the regulatory process, improving the quality of rulemaking and enforcement decisions by ensuring fairness, clarity and predictability. Transparency is most effectively manifest when a broad range of stakeholders are involved in the formulation of regulations, procedures, and administrative decisions that affect their interests and are made aware of these rules in a timely and open fashion. Further, transparency is enhanced through clear, consistent, and detailed written communications, and therefore, information regarding regulations and other rulemakings as well as their consideration and development should be provided in a way that all market participants can reasonably access.

Rulemaking to ensure a level playing field and support consumer trust can help to enhance consumer welfare by fostering innovation, expanding consumer's choice and convenience, and making more efficient use of society's limited resources. To avoid undermining a level playing field and to strengthen consumer trust in light of the rapid pace of change in digital products and services, governments should ensure that any necessary rulemaking is risk-based, proportionate, aligned with free market principles, technology-neutral, and does not stifle innovation or interfere with free and open trade and investment. Recognizing that digital transformation in society cannot be achieved without private sector knowledge and expertise, governments should be sure to engage in robust consultation with private sector stakeholders.

Unfortunately, to date some deliberations have taken place in closed settings without close consultation with industry, experts, and other stakeholders, which can have a negative impact in ensuring accurate understanding of complex and diverse technical matters as well as the likely implications of regulation on the marketplace. The ACCJ urges the United States, Japan, and their G7 partners to commit to further enhancing the transparency and fairness of rulemaking processes and to encourage third-country partners to do the same.

Leverage global best practices and promote interoperability: G7 parties and likeminded countries should jointly take the lead in shaping future economic development by pursuing regulatory harmonization or seeking to ensure interoperability in domestic regulatory frameworks, where appropriate. In areas

where robust global best practices exist, these best practices should be leveraged as integral parts of digital economy policies. In areas where best practices are still under development, G7 parties and like-minded countries should actively engage in developing and elevating best practices as internationally recognized standards. Consistent with maintaining a level playing field, governments should avoid policies that unfairly benefit domestic enterprises at the expense of foreign entrants to the market.

Unfortunately, there have been cases where digital policy measures taken by government have been ad-hoc, onerous, and unnecessarily prescriptive relative to the policy objective in question. Ad-hoc prescriptive requirements increase uncertainty, discourage investment, increase the likelihood of negative unintended consequences, and generally add an unnecessary burden on the private sector and should thus be avoided. Further, if specific technology mandates are introduced, failure to base them on international standards risks distorting marketplace conditions and undermining shared objectives such as enhanced cybersecurity and cooperation between like-minded countries and their businesses. In light of this risks, G7 members should seek to avoid such situations by ensuring policy measures are necessary, reasonable, and proportionate; targeted toward achieving legitimate public policy objectives; and focused on outcome rather than procedure.

Particularly recognizing the rapid pace of innovation, the ACCJ also recommends that governments closely collaborate with the private sector to achieve their goals while responding to environmental or technological changes, make increased use of pro-innovation policy measures such as regulatory sandboxes, and commit to regular reviews of existing policies that incorporate meaningful public comment periods sufficiently early in the rulemaking process in order to ensure rules remain up to date and fit for purpose.

Seek to operationalize Data Free Flow with Trust (DFFT): Ensuring the free flow of data while protecting privacy is an indispensable principle not only for economic growth and innovation but also for responding to rising global issues such as public health, climate change, and cyber threats. This is particularly important in the context of rising digital protectionism that saw the number of data localization measures in force around the world doubling between 2017 and 2021 alone, threatening opportunities for economic growth.¹

Specifically, the ACCJ urges G7 members to support international and domestic rules that favor seamless and responsible cross-border data flows. Concrete steps to

¹ Nigel Cory and Luke Dascoli, "How Barriers to Cross-Border Data Flows Are Spreading Globally, What They Cost, and How to Address Them", July 19, 2021, <https://itif.org/publications/2021/07/19/how-barriers-cross-border-data-flows-are-spreading-globally-what-they-cost/>

realize this should include: aligning domestic data transfer policies across economies and with international standards; promoting and strengthening cross-border data interoperability mechanisms such as the Global Cross-Border Privacy Rules Forum; analyzing the importance of data transfers and the costs of restrictions; supporting the OECD Declaration on Government Access to Personal Data Held by Private Sector Entities; and building on private sector-led efforts to establish principles for promoting trusted in ICT suppliers. Further, the ACCJ urges that G7 members avoid specific technology mandates, especially if such mandates are not based on international standards.

Trade policy also has an important role to play in promoting DFFT. The ACCJ urges that existing provisions in the U.S.-Mexico-Canada Agreement (USMCA) and U.S.-Japan Digital Trade Agreement (USJDTA) be leveraged through binding and enforceable disciplines including the following elements, which should apply to all sectors, including all financial services sectors:

- A ban on local data storage requirements;
- Guarantees that firms will be able to move data across borders and to base any associated regulations on legitimate public policy objectives;
- Commitments to ensure adequate protections for personal data and against forced disclosure of proprietary computer source code and algorithms;
- Commitments to provide non-discriminatory treatment for digital products and services;
- Promotion of risk-based approaches to cybersecurity;
- Support for the use of internationally recognized standards and mutual recognition of certifications for assurance of cybersecurity, including the use of encryption, algorithms, and cloud certification schemes;
- Requirements to ensure electronic / digital signatures are widely permitted, broadly recognized, not subject to local vendor requirements, and without paper-based / in-person requirements; and
- Prohibitions on the imposition of customs duties on electronic transmissions.

High-standard digital rules like those cited above are critical to advancing shared national security interests and pushing back on efforts by certain states to entrench alternative standards and governance models for the digital economy. In addition, as an essential element of realizing DFFT, G7 governments should commit to sharing information on cybersecurity threats and building cybersecurity capacity, facilitating public access to government data to foster economic and social development, and promoting interoperable privacy regimes.

Economic Security: The G7 process, including the Digital and Tech Ministers' Meeting, represents an important venue for sharing best practices and enhancing alignment in each country's respective approaches and mechanisms for promoting

economic security. As the ACCJ Principles for Promotion of Economic Security note,² economic growth is critical to economic security. Enhanced alignment, interoperability, and collaboration will not only help to ensure that economic security measures will not harm economic growth, but will also help to promote shared economic resilience—a critical economic security objective. Recognizing the key role played by the private sector in the creation and provision of a variety of digital goods and services, official government-to-government channels should also be supported by robust mechanisms for regular private sector engagement, including to help identify opportunities for enhanced coordination, cooperation, and integration. Efforts to promote economic security should also reflect careful cost-benefit analysis to ensure that measures are proportionate, fit for purpose, and do not undermine a level playing or produce other unintended negative consequences. Also, it should be noted that, while the industrial policy that promotes economic security is important, it is also important to pursue and ensure economic security in a variety of regulatory and policy discussions as well as to avoid non-transparent, discriminatory, or market-distorting subsidies.

Conclusion:

The ACCJ firmly believes that Japan's G7 host year represents an important opportunity to deepen U.S.-Japan cooperation with like-minded countries and position our societies to lead the world in benefitting from advances in digital and other technologies as tools for realizing strong, sustainable, balanced, and inclusive growth. In this context, the ACCJ stands ready to work with G7 governments and other stakeholders to achieve these goals.

² ACCJ Principles for Promotion of Economic Security can be found at https://static1.squarespace.com/static/5eb491d611335c743fef24ce/t/6254dfe5c29a295594896efa/1649729509908/ACCJ+Principles+for+Promotion+of+Economic+Security+%28ENG%29_220412.pdf