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Senate Committee on Finance  
Dirksen Senate Office Bldg. Rm. SD-219  
Washington, D.C. 20510-6200

*VIA EMAIL*

Statement of Engine Advocacy re: Hearing on The President's 2023 Trade Policy Agenda Held  
March 23, 2023

Dear Chairman Wyden, Ranking Member Crapo, and Honorable Members of the Committee on  
Finance:

Engine is a non-profit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups. Engine works with government and a community of thousands of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship. Lowering barriers to trade unlocks markets for U.S. startups to expand, compete, and find success and is a vital part of promoting domestic technology entrepreneurship. Accordingly, we appreciate the Committee holding a hearing to examine the President's Trade Agenda.

The Internet and digitization of world economies has enabled startups to reach markets beyond their borders. Through digital trade, startups are able to further the outsized contributions they make to domestic economic growth and job creation. And startups help others reach markets abroad too, whether they be artists, farmers, manufacturers, or others. As digital trade has grown,<sup>1</sup> barriers to digital trade have grown along with it. Startups encounter these barriers as they grow and scale beyond U.S. borders to serve users and clients abroad, and such barriers dictate where startups can feasibly reach users.<sup>2</sup> Startups accordingly need policymakers to pursue smart digital trade policies to lower barriers to entry, facilitate cross-border transfers of data, and promote uniform regulatory environments across jurisdictions.

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<sup>1</sup> See, e.g., *Table 3.1. U.S. Trade in ICT and Potentially ICT-Enabled Services, by Type of Service*, Bureau of Economic Analysis (July 7, 2022),

<https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=9&isuri=1&6210=4#reqid=62&step=9&isuri=1&6210=4>.

<sup>2</sup> See e.g., *Comments of Engine Advocacy Regarding Foreign Trade Barriers to U.S. Exports for 2023 Reporting*, Engine (Oct. 28, 2022),

<https://engine.is/s/2022-Transatlantic-Business-Statement-on-EU-US-Data-Privacy-Framework.pdf>.

Policymakers on the Committee and at the Office of the U.S. Trade Representative must recognize and harness the benefits of smart digital trade policies that enable startups to succeed by ensuring these provisions are included in current negotiations. Unfortunately, digital trade policies that lower trade barriers for U.S. businesses appear to be facing increasing skepticism from U.S. policymakers and others that claim forward-thinking digital trade policies only serve large incumbent companies.<sup>3</sup> Reducing barriers to digital trade helps all U.S. businesses, including “big tech,” but it arguably stands to help startups the most.

Take, for instance, the invalidation of Privacy Shield in 2020, which created barriers to cross-border data transfers between the U.S. and Europe. This impacted all transatlantic businesses, but large companies were able to turn to other methods for transferring data, like Standard Contractual Clauses, while startups faced more existential business disruptions, increased costs, and lost clients.<sup>4</sup> Indeed, small businesses and startups comprised the overwhelming majority of companies that relied on free flows of data through Privacy Shield.<sup>5</sup>

Similarly, the EU’s Digital Services Act will impact all content-hosting companies operating or looking to operate in Europe. Large U.S. technology companies will face significant new obligations under the law, but none of them are likely to exit the EU market or significantly revise plans to operate there. U.S. startups on the other hand will encounter elevated barriers to entering the EU market, significant new obligations, and compliance costs.<sup>6</sup>

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<sup>3</sup> See e.g., *Hearing on The President’s 2023 Trade Policy Agenda: Hearing Before the Sen. Comm. on Fin.*, 118th Congress (2023) (Remarks of Sen. Warren); *Hearing on Opportunities and Challenges for Trade Policy in the Digital Economy: Hearing Before the Sen. Subcomm. on Int’l Trade, Customs, and Glob. Competitiveness*, 117th Congress (2022) (remarks of Sen. Warren); Cristiano Lima, *Advocates urge U.S. not to offer ‘Big-Tech-favored terms’ in trade talks*, Washington Post (Mar. 15, 2023), <https://www.washingtonpost.com/politics/2023/03/15/advocates-urge-us-not-to-offer-big-tech-favored-terms-trade-talks/>; *Webinar: Big Tech’s Ploy to Undermine AI Accountability, Privacy and Anti-Monopoly Policies with Sen. Warren, Rep. Schakowsky, and Rep. Takano*, Rethink Trade (Mar. 16, 2023), <https://rethinktrade.org/videos/webinar-big-techs-ploy-to-undermine-ai-accountability-privacy-and-anti-monopoly-policies-with-sen-warren-rep-schakowsky-and-rep-takano/>.

<sup>4</sup> See e.g., Sean Davis, *New Transatlantic Data Deal Can Reopen EU Opportunities for Startups*, Engine (Apr. 20, 2022), <https://engineadvocacyfoundation.medium.com/new-transatlantic-data-deal-can-reopen-eu-opportunities-for-startups-4a25e454572f>; #StartupsEverywhere profile: Mikel Carmenes Cavia, Co-Founder & VP of Engineering, Onfleet, Engine (May 7, 2021), <https://www.engine.is/news/startupseverywhere-sanfrancisco-ca-onfleet>.

<sup>5</sup> See generally Privacy Shield Participants, <https://www.privacyshield.gov/list>.

<sup>6</sup> Lauren Koop, *The EU’s Digital Services Act is one step closer to becoming law. How will it impact U.S. startups?*, Engine (July 28, 2022), <https://engineadvocacyfoundation.medium.com/the-eus-digital-services-act-is-one-step-closer-to-becoming-law-how-will-it-impact-u-s-startups-7be702180582>; Daphne Keller, *The EU’s new Digital Services Act and the Rest of the World*, Verfassungsblog (Nov. 7, 2022), <https://verfassungsblog.de/dsa-rest-of-world/> (Explaining the comparative impacts of the DSA on small entities: “The other predictable global harm will be to competition. The DSA burdens even very small platforms with obligations that today’s incumbents never shouldered, or else took on only much later in their development. Facebook, for example, first released a transparency report in 2013, when it was worth \$139 billion. It first allowed users to appeal removals of photos, videos, and posts (but not comments) in 2018, when the company was worth \$374 billion and had some 35,000 employees. Newer market entrants will take on similar obligations at a much earlier stage: once they reach just €10 million and fifty employees.”).

In each of these examples, U.S. policymakers have intervened to try to reach solutions with their EU counterparts.<sup>7</sup> This work advances the interests of U.S. startups and should not be foregone merely because it also helps or is supported by “big tech.” Likewise, trade frameworks that are currently being pursued and negotiated must advance the interests of U.S. startups, including through strong digital trade provisions.

Smart digital trade policy that promotes a free, open, and global Internet is needed to lower and keep low barriers to trade for startups. The recent U.S.-Mexico-Canada and U.S.-Japan Agreements enshrined commonsense digital frameworks and provide a template for smart digital trade policy that should be built upon in future trade negotiations, including the Indo-Pacific Economic Framework, for example. Inspired by these agreements, digital trade policy should embrace the following principles, which can support the success of U.S. startups looking to expand into foreign markets and engage customers abroad:

**Facilitate cross-border data flows.**

The Internet is inherently borderless and allows startups to reach foreign markets with little additional investment. Conversely, policies that restrict how and when data can be transferred across borders erect barriers to trade and increase costs that startups with limited resources have difficulty overcoming compared to their larger rivals.

**Provide proportionate, tailored, and certain intermediary liability frameworks.**

Balanced intermediary liability frameworks, like those found in the U.S. law (i.e., 47 U.S.C. §230 and 17 U.S.C. §512), provide the legal certainty needed for startups with business models that rely on user content—whether it's comments, photos, reviews, etc.—to grow and thrive. Around the world, however, common methods for governing intermediaries are taking root that undermine a startup-friendly environment and create new uncertainties and costs for U.S. companies. Laws that subject startups to the same standards as their much larger competitors, require the appointment of local representatives, impose tight content takedown timelines, require automated filtering, require the removal of content that is not otherwise illegal, and threaten heavy fines create barriers to entry for startups and reduce the number of foreign markets reasonably available to them.

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<sup>7</sup> See, e.g., *FACT SHEET: President Biden Signs Executive Order to Implement the European Union-U.S. Data Privacy Framework*, White House (Oct. 7, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/07/fact-sheet-president-biden-signs-executive-order-to-implement-the-european-union-u-s-data-privacy-framework/> (on resolving transatlantic data transfer issues); Chamber of Progress (@ProgressChamber), Twitter (Dec. 8, 2021), (Remarks of Sec. Raimondo on the DSA: “We have serious concerns that these proposals will disproportionately impact U.S.-based tech firms and their ability to adequately serve EU customers and uphold security and privacy standards.”).

### **Foster innovation and regulatory consistency.**

Extraterritorial regulations adopted in other jurisdictions, including around data privacy and emerging technologies, can limit innovation opportunities and market access for American startups. Because they often apply any time a business encounters a user in or from that jurisdiction, startups with relatively few users there are likely to forgo serving that jurisdiction because of the regulatory structure. U.S. policymakers should work through the appropriate fora to ensure American startups encounter a consistent and level playing field.

### **Avoid technology sector-specific levies.**

While startups are rarely subject to digital services taxes (DSTs) themselves, they rely on the services of larger companies who are, to build their products and reach customers.<sup>8</sup> DSTs increase the price of these services, putting startups at a disadvantage in jurisdictions with them. Working through multinational fora to reach a global solution promises the best step toward a uniform tax environment, and Congress must do its part to advance the solutions arising from these negotiations.<sup>9</sup>

### **Prohibit duties on digital transactions.**

The WTO moratorium on e-commerce is critical to fostering digital trade, and it is especially important for startups. Since 1998, member countries have agreed to not impose customs duties on electronic transmissions, but some countries have recently expressed interest in limiting or ending the moratorium.

As U.S. startups have previously told Congress,<sup>10</sup> smart digital trade policies are “critical to bolster the global competitiveness of U.S. startups,” are necessary “to ‘unlock’ America’s renowned startup ecosystem,” and will further “the deployment of software and services around the world.” U.S. trade policymakers must heed the advice of startups and pursue strong digital trade provisions in current and future negotiations and defend the ability of U.S. startups to provide their services to end users around the globe.

Engine appreciates the opportunity to submit this statement for the hearing record and the Committee’s attention to digital trade issues important to startups. We look forward to being a resource for the committee on these and other issues in the future.

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<sup>8</sup> See, e.g., *Tools to Compete Lower Costs, More Resources, and the Symbiosis of the Tech Ecosystem*, Engine and CCIA Research Center (Jan. 2023), [https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/63d2b8d5bec96f502264fd1f/1674754266044/FINAL\\_CCIA-Engine\\_Tools-To-Compete.pdf](https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/63d2b8d5bec96f502264fd1f/1674754266044/FINAL_CCIA-Engine_Tools-To-Compete.pdf).

<sup>9</sup> See, e.g., Jennifer Weinhart, *Global tax deal continues to face hurdles*, Engine (May 24, 2022), <https://engineadvocacyfoundation.medium.com/global-tax-deal-continues-to-face-hurdles-cbe2ddf71cd1>.

<sup>10</sup> See, e.g., *Statement for the Record of PILOT Inc. regarding hearing on Opportunities and Challenges for Trade Policy in the Digital Economy held November 30, 2022*, PILOT, Inc. (Dec. 14, 2022), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/639b267a1041a9585ced9704/1671112314829/Statement+for+the+record+-+Ben+Brooks%2C+PILOT.pdf>.

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