



August 11, 2023

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Office of the U.S. Trade Representative
600 17th St. NW
Washington, D.C. 20508

VIA ONLINE SUBMISSION

Comments of Engine Advocacy re: Docket no. USTR–2023–0004: Advancing Inclusive, Worker-Centered Trade Policy

Dear Ms. Paster:

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. Smart trade policy can unlock markets for U.S. startups—led by individuals from all types of communities all across the country—to expand, compete, and find success and is a vital part of promoting domestic technology entrepreneurship. As such, Engine appreciates the opportunity to submit these comments to USTR on advancing inclusive trade policy.

I. Trade improves quality of life and facilitates economic growth.

The Internet and digitization of world economies has enabled startups to reach markets beyond their borders. Through digital trade—which has more than doubled in the last 15 years—¹startups are able to further the outsized contributions they make to domestic economic growth and job creation.² And because three-fifths of startups serve other businesses,³ they help individuals and other businesses succeed and reach markets abroad too, whether they be conventional small businesses, farmers, manufacturers, or others.

¹ U.S. Trade in ICT and Potentially ICT-Enabled Services, Bureau of Economic Analysis (July 6, 2023), <https://apps.bea.gov/iTable/?reqid=62&step=9&isuri=1&product=4#eyJhcHBpZCI6NiIsInN0ZXBzIjpBMsw5LDYsNi0sImRhdGEiOltbInByb2R1Y3QiLCI0Ii0sWylUYWJsZUxpc3QiLCIzNTkiXSxbIkZpbHRlcl8iMSIsWyIxIiwilMiIsIjMiLCI0IiwilNSIsIjYiLCI3IiwilOCIsIjkiLCI4IiwilMCIsIjExIiwilMTiLCI4IiwilJdXSxbIkZpbHRlcl8iMSIsWyJwIiwilMSIsIjIiXV0sWyJGaWx0ZXIjflzMlFsiMCIjJdXSxbIkZpbHRlcl8iNCIsWyJwIiwilMlFsiRmlsdGVyXyM1IiwiljAixV1dfQ==>.

² Ryan Decker et al., *The Role of Entrepreneurship in US Job Creation and Economic Dynamism*, 28 J. Econ. Persp. 3 (2014), http://econweb.umd.edu/~haltiwanger/JEP_DHJM.pdf; John Haltiwanger et al., *High Growth Young Firms: Contribution to Job, Output and Productivity Growth*, U.S. Census Bureau Working Paper (2017), <https://www.census.gov/content/dam/Census/library/working-papers/2017/adrm/carra-wp-2017-03.pdf>.

³ *Distribution of super startup companies offering B2B and B2C solutions worldwide in 2020*, Statista (Feb. 2020), <https://www.statista.com/statistics/1098800/super-start-ups-b2b-b2c-worldwide/>.

Trade enables startups to access markets around the world, and it improves outcomes by raising incomes and reducing poverty.⁴ Every U.S. state benefits from trade, which creates a positive net impact on jobs in each state and supports over 40 million net U.S. jobs.⁵ Trade liberalization has helped to drive these gains, and we must use the experience of the past decades as we continue to improve U.S. trade policy to ensure more participants share in the benefits of trade.

II. Startups are key stakeholders in trade policy.

The promise of digital trade is too important to be enjoyed inequitably or only by large companies. Startups contribute overwhelmingly to economic growth,⁶ and they (and other SMEs) comprise the vast majority of exporters,⁷ making them key stakeholders in trade policy. However, startups feel several trade issues more acutely than their larger counterparts, because they have fewer resources, less capital, fewer people, and less margin for failure.⁸ Startups—and their founders hailing from communities across the country—should encounter a trade environment where they can succeed.

III. Startups—especially those led by underrepresented founders—need trade policy that lowers barriers to succeed.

To enable startups to succeed, U.S. trade policy must seek to reduce barriers, smooth regulatory regimes globally, and lower costs. Startups have few resources, but startups led by underrepresented founders face additional challenges because they encounter discrimination, receive less investment, and have a harder time raising capital.⁹ As a result, these founders are likely to lack the resources needed to navigate the trade landscape, finding the benefits of digital trade out of reach and either forgoing or delaying conscious efforts to export their products and services. Fortunately, trade policy that reduces barriers can open opportunities for startups, especially those led by underrepresented founders.

Take, for example, the experience of Ben Brooks, the Founder and CEO of PILOT, Inc.—a New York-based startup that is one of a small handful of certified LGBTQ-owned businesses providing enterprise Software as a Service (SaaS). The company serves end users on five continents but faces

⁴ Ana Revenga & Anabel Gonzalez, *Trade has been a global force for less poverty and higher incomes*, World Bank (Feb. 2, 2017), <https://blogs.worldbank.org/developmenttalk/trade-has-been-global-force-less-poverty-and-higher-incomes>.

⁵ Laura Baughman & Joseph Francois, *Trade and American Jobs: The Impact of Trade on U.S. and State-Level Employment*, (Feb. 2022), https://tradepartnership.com/wp-content/uploads/2022/03/Business-Roundtable_TradeandAmericanJobs2022.pdf.

⁶ *Supra* note 2.

⁷ *ITA Exporter Database*, International Trade Administration (2020), <https://www.trade.gov/ita-us-exporters-database-home>.

⁸ See, e.g., *the State of the Startup Ecosystem*, Engine (Apr. 2021), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/60819983b7f8be1a2a99972d/1619106194054/The+State+of+the+Startup+Ecosystem.pdf>.

⁹ See, e.g., *Making the Startup Ecosystem More Equitable*, Engine, (Nov. 15, 2021), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/6193d03ac7eb9c40442a6740/1637077051416/Making+the+Startup+Ecosystem+More+Equitable+11.15.pdf>.

an uphill battle navigating the international environment, often finding their competitiveness diminished or losing out on opportunities altogether as a result.

As Ben told the Senate Finance subcommittee on International Trade, Customs, and Global Competitiveness:¹⁰

To help startups like PILOT be competitive abroad, policymakers must pursue digital trade policies that lower barriers to entry, facilitate cross-border transfers of data, and promote uniform regulatory environments across jurisdictions. Data localization policies and regulatory regimes—especially around data protection and privacy—that vary from jurisdiction to jurisdiction increase the costs of serving customers and their employees in locations with these policies.

Compliance costs are not insignificant, especially for startups. [...] [W]e must devote our limited resources to understanding our obligations and responding appropriately, especially when we serve customers abroad. High compliance costs amount to a transaction cost—a tax on doing business—that elevates barriers to operating in certain markets, without, in our view, any real tangible benefit to end users.

The opportunity costs of compliance are not one to one. The resources devoted toward compliance that does little productive for our business could instead go toward additional innovation and job creation if those costs were reduced through smart digital trade policy. Savings from rationalized compliance policies free up dollars I can invest back into the business that helps us grow, in areas like marketing, sales, and R&D. That means we create more high-quality jobs for Americans in communities across the country, and generate more tax revenue for governments—all while adhering to our thoughtful and industry best-practices around data privacy and IT security, protecting our customer’s data and our reputation.

IV. Startups that serve underrepresented communities need balanced frameworks that ensure their competitiveness.

Balanced intermediary liability frameworks provide the legal certainty needed for startups with business models that rely on user content to grow and thrive. Often, these startups create needed spaces for communities that aren’t served elsewhere on the Internet. Without these frameworks, like those found in Section 230 of the Communications Decency Act or Section 512 of the Digital Millennium Copyright Act, startups would be forced to devote significantly more resources to moderating user content on their sites or avoid hosting user content altogether. To keep barriers low

¹⁰ *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>.

as startups serve users around the world, U.S. trade policy should seek to incorporate these parts of U.S. law.

Consider, for example, Black-led startup iAccess Life.¹¹ Founder and CEO Brandon Winfield was paralyzed from the waist down following an accident and decided to start the platform to be a space where people with disabilities could share their accessibility experiences with businesses and public spaces. The company has enabled mobility-impaired and disabled individuals to review sites in more than 25 countries around the world with just a three-person team.

Intermediary liability frameworks found in U.S. law are critical because “we’re a small organization,” Winfield says, “and we don’t have the attorneys, the money, or other resources to try and keep up with what every user says in real-time.” “[W]e can only do so much while we’re getting off the ground and can’t be responsible for everything each of our users says. We want companies to be paying attention to accessibility, and if we had to constantly focus on moderating content, it would stop us from growing and getting the traction that we need for big organizations of the world to take notice of us. And it would hurt us a lot if we had to deal with legal action from companies that did not like a review they got.”¹²

V. Principles to guide trade policy and support startup success.

Guided by the experiences of startups like PILOT and iAccess, U.S. digital trade policy should embrace the following principles, to 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. Enabling cross-border data transfers are critical to reducing trade costs for startups and other MSMEs.¹³ 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

¹¹ See *About*, iAccess Life (2023), <https://www.iaccess.life/about/>.

¹² #StartupsEverywhere Profile: Brandon Winfield, Founder & CEO, iAccess Innovations, Engine (Apr. 29, 2022), <https://www.engine.is/news/startupseverywhere-atlanta-ga-iaccesslife>.

¹³ See e.g., *Cross-Border Data Policy Index*, Global Data Alliance (July 19, 2023), <https://globaldataalliance.org/wp-content/uploads/2023/07/07192023gdaindex.pdf>.

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.

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 U.S. 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.¹⁴ 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 and other U.S. policymakers must do their part to advance the solutions arising from these negotiations.¹⁵

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. Instead, the moratorium should be made permanent.

¹⁴ 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.

¹⁵ 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>.

VI. Orient trade assistance programs to companies and jobs of the future.

Trade and small business agencies across government laudably provide resources to help small entities be successful trading abroad. Sometimes, these programs don't work for startups—for reasons of scale,¹⁶ timeline,¹⁷ or because they're focused on physical, rather than digital, products and services.¹⁸ As digital exports continue to grow,¹⁹ government resources devoted to helping those sorts of startup exporters succeed should as well. But most often, these programs are under-utilized for lack of awareness and outreach. When they are made aware of them through local trusted organizations, like accelerators, incubators, coworking spaces, or small business development centers, startups can leverage available trade resources for good results.

Take the experience of Black woman-founded Productions.com, an Atlanta-based platform that helps to simplify and diversify hiring within the production community.²⁰ The startup has experienced interest from crew abroad and organic international growth such that they now have crew across the US and Canada and in 30 additional countries. In parallel with this success, founder Carolyn Pitt reached out to her local small business development center to learn about and be connected to international trade resources at the Commerce Department and Georgia's economic development agency. She was able to use these resources to receive feedback on digital marketing and the international utility of their site and to develop relevant relationships in other countries. These resources, Carolyn says, are key among “several steps to make our global expansion as smooth as possible.”

“Small business owners definitely need guidance, research tools, expertise, and information about potential quagmires and opportunities regarding international trade,” she adds. “A dedicated forum to discuss international trade with governmental entities and other business owners would be a helpful resource to help more businesses succeed in this space and should be facilitated by trade policymakers. Finally, a more uniform regulatory environment globally would be helpful to lower barriers for startups as well.”

Trade Adjustment Assistance has been part of U.S. trade policy for over 60 years to help reallocate productive capabilities, account for trade-related economic changes, and mitigate adverse impacts on workers.²¹ Trade Adjustment Assistance for Workers lapsed in July 2022, but the program historically

¹⁶ See, e.g., *#StartupsEverywhere Profile: Jeff Wigh, Founder & CEO, Bryght Labs*, Engine (Feb. 4, 2022), <https://www.engine.is/news/startupseverywhere-overlandpark-ks-bryghtlabs>.

¹⁷ See, e.g., *Growing the Innovation Economy: A Roadmap for Supporting Startups Everywhere*, Engine (Aug. 2022), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/62fbb0a039956b0d96fef653/1660661921600/Growing+the+Innovation+Economy+Recover+Paper+2022.pdf> (discussing long government granting timelines).

¹⁸ See, e.g., *State Trade Expansion Program (Year 8) Annual Report to Congress*, U.S. Small Business Administration Office of International Trade 7, 14, 19-20 (2023), https://www.sba.gov/sites/sbagov/files/2023-03/STEP%20Year%208%20Annual%20Report%202021-R_508_0.pdf.

¹⁹ *Supra* note 1.

²⁰ See Productions.com

²¹ Pub. L. 87-794, Title III, (Oct. 11, 1962) (repealed).

provided income, relocation, and job training assistance.²² Presently, there are shortages of skilled workers in many areas needed by startups, especially for those requiring STEM training.²³ As part of trade policy that expands opportunities for startups following the above principles, adjustment assistance should be considered with emphasis on job training to close these talent gaps and connect workers with the jobs of the future.

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Engine appreciates the opportunity to submit these comments as USTR explores how to best expand the benefits of trade to include more people and parts of the economy like startups, especially those led by underrepresented founders or located in rural areas. We look forward to continuing to engage with trade policymakers at USTR and across government to make sure U.S. trade policy works for startups.

Sincerely,
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²² See, e.g., *Trade Adjustment Assistance for Workers*, U.S. Department of Labor (2023), <https://www.dol.gov/agencies/eta/tradeact>.

²³ *Supra* note 17 (discussing human capital shortages).