March 14, 2022

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Capitol Building, H-232
Washington, DC 20515

The Honorable Charles E. Schumer
Senate Majority Leader
Capitol Building, S-221
Washington, DC 20510

The Honorable Kevin McCarthy
House Republican Leader
Capitol Building, H-204
Washington, DC 20515

The Honorable Mitch McConnell
Senate Republican Leader
Capitol Building, S-230
Washington, DC 20510

The Honorable Steny Hoyer
House Majority Leader
Capitol Building, H-107
Washington, DC 20515

Dear Madam Speaker, Majority Leader Schumer, Republican Leader McConnell, Republican Leader McCarthy, and Majority Leader Hoyer:

BSA | The Software Alliance[1] appreciates your leadership and hard work on the many important issues found in S. 1260, the United States Innovation and Competition Act of 2021 (USICA) and HR 4521, the America COMPETES Act.  We commend both chambers for their commitment to fostering scientific research and advancing technological capacity.

BSA is the leading trade association representing the global enterprise software and technology industry. Digital transformation, and the software that enables it, is essential to businesses of all sizes and every industry. Our members provide cutting-edge cloud services, data analytics, manufacturing and infrastructure tools, and other digital capabilities to help businesses modernize and grow. The software industry supports nearly 16 million US jobs, including 12.5 million outside the tech sector, and contributes $1.9 trillion to the US economy.

BSA applauds both chambers' commitment to high-tech R&D funding, financial support for advanced STEM education programs, as well as other provisions that support technology development and job growth. Both chambers included direction to significantly increase tech-focused R&D at NSF, DOE, and NIST with an eye towards commercialization, including numerous provisions focused on AI,

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[1] *BSA's members include Adobe, Alteryx, Atlassian, Autodesk, Bentley Systems, Box, Cisco, CNC/Mastercam, DocuSign, Dropbox, IBM, Informatica, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.*

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cybersecurity, privacy, cloud, and computing research. By providing the infrastructure and services that enable remote work for many Americans, enterprise technology firms have provided the backbone for much of the US economy during the pandemic. Additional investments, many of which are included in both measures, will provide needed resources for the United States to remain competitive in many of these critical fields.

As you work to develop a final version of the bill, we offer the following suggestions to address important provisions under consideration.

**Digital Trade**

Today, US cross-border digital policy leadership is vital as developing countries face growing pressure to follow digitally protectionist and/or authoritarian policy models that: (1) impede economic development abroad and impair the effectiveness of US foreign assistance and other development programs; (2) undermine human rights; and (3) harm US exports and job opportunities across US communities. **Therefore, we urge you to maintain the USICA provisions relating to the negotiation of digital economy agreements and the provisions relating to cross-border data policy, digital trust, and the Generalized System of Preferences.**

First, the Biden Administration announced on February 11, 2022 its intention to negotiate a new Indo-Pacific Economic Framework to, among other things, "promote and facilitate high-standards trade [and] govern the digital economy." Sec. 71013 of USICA provides clear congressional guidance on both the substance and process of such a negotiation. Ensuring ample opportunity for congressional input will be essential to the success of the negotiations. We urge Congress to include such guidance in the final conference bill.

Second, we urge Congress to retain provisions in USICA Sec. 74001(a)(11) that granted to the Office of the US Trade Representative (USTR) express authority in the GSP context to address foreign government policies relating to cross-border data transfers, data localization, consumer protections, the privacy of personal information, and open digital ecosystems.

**CHIPS**

The lingering global chip shortage poses a direct threat to our economy and national security. Failing to produce chips in the US hinders our ability to develop future emerging technologies. We applaud both the House and Senate for the progress made to advance $52B in Creating Helpful Incentives to Produce Semiconductors for America Act (CHIPS Act) investments to accelerate new semiconductor innovation, manufacturing, and research and development. These investments are critical to addressing the global chips shortage and securing American semiconductor leadership, which is foundational to our national and economic security. **We urge you to include this funding in the final version of the bill.**

In addition, **BSA supports the inclusion of Other Transaction Authority (OTA) in the House bill.** We believe that NIST will lead the implementation of most of the CHIPS Section 9906 advanced R&D provisions. We support America COMPETES amendments to the CHIPS Act to add Section 9909(1) that provides NIST OTA, as it will be important to implementing these CHIPS activities.

**STEM and Workforce Development**

As the software industry evolves, the gap between available technology-related jobs and qualified workers continues to grow. To close the skills gap, greater investments are needed in workforce development, STEM, and upskilling programs that enable students and workers to attain the in-demand skills needed for technology jobs. BSA supports investments in "earn and learn" programs like apprenticeships that will help fill existing opportunity gaps and provide new pathways for Americans to find fulfilling, good-paying careers. Furthermore, we are encouraged by bipartisan efforts to expand Pell

Grant eligibility to high-quality short-term skills and job training programs that would allow part-time students and mid-career professionals to get Pell Grants for shorter term learning programs, including internships or community college classes. **We urge Congress to incorporate the National Apprenticeship Act and expanded short-term Pell Grant eligibility provisions in the final version of the bill.**

As we work to improve education and training of the US workforce, high-skilled immigration can ensure these jobs – and the innovation they support – remain in the United States. Responsible immigration policy can enable the United States to recruit the best and brightest across industry sectors to fill high-demand jobs and contribute to American innovation. **BSA therefore supports provisions in the America COMPETES bill that would exempt STEM Ph.D. graduates from numerical limits on immigrant visas**. This additional support for recent graduates entering the workforce, and an expansion of visa caps, will help the US economy maintain its competitive edge during these trying times when demand for cyber and other national security specialties is at an all-time high.

**Software Bill of Materials**

Today, most major software includes open-source elements – including software used by the national security community. Open-source software brings unique value and has unique, but manageable, security challenges because of its breadth of use and the number of volunteers responsible for its ongoing security maintenance. In January, the technology community came together to discuss initiatives to improve the security of open-source software and new collaboration pathway to rapidly drive improvements.[2]

We have concerns about a statutory requirement in America COMPETES that contractors submitting bids to the US Department of Homeland Security provide a software bill of materials (SBOM). SBOMs have not been fully developed and are not yet widely practiced. It is too soon to codify SBOMs as a best practice for the acquisition of software in the federal government. Such a requirement also has the potential to conflict with efforts being undertaken pursuant to Presidential Executive Order 14028, Improving the Nation's Cybersecurity, and the Paperwork Reduction Act. **As such, BSA opposes the SBOM requirement as written in America COMPETES.**

**SHOP SAFE**

America COMPETES includes HR 5374, the SHOP SAFE Act, a measure that attempts to limit counterfeit items sold through online marketplaces. BSA has a long history of advocating for strong IP protections and against patent abuses and fraud. However, the SHOP SAFE Act is flawed in several ways, most notably the overbroad definitions of "electronic commerce platform" and "goods that implicate health and safety" would sweep in a large swath of enterprise service providers beyond these marketplaces directed at American households, misplacing responsibility and imposing resource-intensive compliance burdens not in the spirit of the measure. Further, the problems with the overbroad definitions would be compounded by SHOP SAFE's creation of a novel form of contributory liability that would expose business software providers that are far removed from any underlying infringement to expansive private litigation. More work needs to be done on the SHOP SAFE Act to avoid these unintended consequences. **Therefore, BSA opposes the inclusion of the bill in any final product.**

**Open RAN**

With 5G supply chains of increasing concern, BSA has advocated investment in innovative software solutions to supply chain challenges, such as virtualized Radio Access Network (RAN) technology,

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[2] *Readout of White House Meeting on Software Security* – https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/13/readout-of-white-house-meeting-on-software-security/

which will replace hardware-centric RAN with software to enable greater diversity and competitiveness in the supply chain while improving performance and lowering cost. Both USICA and America COMPETES provide $1.5 billion in appropriations for the Public Wireless Supply Chain Innovation Fund established under the National Defense Authorization Act for Fiscal Year 2021. This fund would create a grant program administered by NTIA to accelerate the deployment of open RAN and spur movement towards open, standards-based architecture, software-based wireless technologies in 5G and beyond. **BSA supports appropriating funding for this program to enable greater supply chain security and US technology leadership in 5G**.
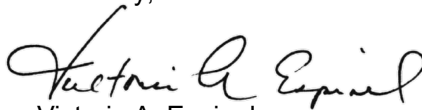
**Investment Screening**

America COMPETES includes a new "Committee on National Critical Capabilities," an interagency group led by the USTR, charged with reviewing transactions by US businesses seeking to move certain infrastructure capabilities to countries of concern. BSA understands the need to manage supply chain security risk and sees the potential danger in offshoring certain production capacity. **However, we have concerns that, as written, the measure could stifle American companies' ability to compete in global markets and presents an overly broad scope for both the government and private sector to comply with the statute**. In addition, as an organization that routinely interacts with USTR, we believe the objectives fall outside the scope of the USTR mission. Further, USTR is staffed to handle international trade policy and does not have the resources necessary to evaluate investments through a national security lens.

**Supply Chain Resiliency Program**

Both America COMPETES and USICA would establish a Supply Chain Resiliency and Crisis Response program within the Department of Commerce. This program would collaborate with the private sector to identify and recommend opportunities to mitigate or address supply chain vulnerabilities in the United States. **We encourage Congress to ensure that software and other digital solutions are eligible for support and leveraged to the greatest extent possible to increase the resiliency, transparency, and agility of US supply chains**.

We would welcome the opportunity to work with you and your staff to address these priorities in the final product of the USICA/America COMPETES conference process. Thank you for your leadership, and we look forward to working with you.

Sincerely,

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