



18 March 2022

AUSTRALIA-UNITED KINGDOM FREE TRADE AGREEMENT – BSA COMMENTS TO JOINT STANDING COMMITTEE ON TREATIES

Submitted Electronically to the Joint Standing Committee on Treaties

BSA | The Software Alliance (**BSA**) congratulates the Australian Government for signing the Australia-United Kingdom Free Trade Agreement (**Australia-UK FTA**) with the Government of United Kingdom on 17 December 2021. Australia and the United Kingdom are playing a leading role in advancing digital trade norms around the world, and the Australia-UK FTA is an important step in building a global consensus on new digital trade rules.

Open and innovative economies are increasingly negotiating trade agreements that ensure their cross-border access to cutting-edge software and emerging technologies. The inclusion of forward-looking digital trade rules like those found in the Australia-UK FTA help ensure such continued access, and support job creation, innovation, productivity growth, and overall competitiveness in the digital economy.

In Australia and other countries, organisations of all sizes and across all sectors — from agriculture and manufacturing to financial services and health care — rely on smart digital trade policies suited to today’s innovation ecosystem, including those that preserve and facilitate the movement of data across borders. Indeed, international agreements like the Australia-UK FTA best places the economy of Australia to compete and thrive in the global marketplace.

Statement of Interest

BSA is the leading advocate for the global software industry before governments and in the international marketplace. BSA’s members¹ are at the forefront of data-driven innovation that is fuelling global economic growth, including cutting-edge advancements in artificial intelligence (**AI**), machine learning, cloud-based analytics, and the Internet of Things. These innovations are helping to make our devices smarter, our businesses more competitive, and the delivery of government services more efficient. BSA’s members have made significant investments in Australia and are proud that many Australian organisations and consumers continue to rely on BSA member products and services to support Australia’s economy.

BSA Supports Ratification of the Australia-UK FTA

The Australia-UK FTA contains a robust Digital Trade chapter and a first-of-its-kind Innovation chapter.

¹ BSA’s members include: Adobe, Alteryx, Altium, Amazon Web Services, Atlassian, Autodesk, Aveva, Bentley Systems, Box, Cisco, CNC/Mastercam, Dassault, DocuSign, Dropbox, IBM, Informatica, Intel, MathWorks, Microsoft, Nikon, Okta, Oracle, PTC, Rockwell, 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.

The forward-looking provisions in these chapters will generate opportunities and remove barriers for Australian businesses, while also facilitating close collaboration between Australia and the UK on innovation to support trade and economic growth. **BSA therefore supports the ratification of the Australia-UK FTA.**

Digital Trade

Trade barriers and digital protectionism are growing around the world at the very time that digital trade and connectivity are helping sustain economic activity, employment, and social well-being. Binding rules on the free movement of data are an important bulwark against this worrying trend.

In this regard, BSA notes that key provisions in the Digital Trade chapter provide the assurances that each country will not prohibit or restrict the cross-border transfer of information by electronic means and that each country will not require the use or location of computing facilities in its own territory. These provisions also permit derogations that address Australian public policy objectives. BSA further notes that the Australia-UK FTA helpfully provides cross-border data transfer and localisation rules for the financial services sector that are substantially the same as the rules of general applicability.

BSA strongly supports these binding rules on data transfers and localisation, as they will allow Australian businesses to reach international customers and access cutting-edge technologies from overseas service providers. They will also enhance Australia's attractiveness as an investment destination for businesses, as they will not need to incur costs duplicating their data processing/storage facilities in Australia. These provisions send a strong signal that both Australia and the UK support a rules-based international trade and economic system that supports free, fair, and open trade in a global economy increasingly dependent on international data transfers and secure and trusted digital services.

In addition, the Australia-UK FTA digital trade provisions extend beyond data transfers to a range of additional important digital trade provisions. These include:

- **Prohibition on access to or disclosure of software source code as a condition for the import, distribution, sale or use of software.** Governments should not require or pressure companies to transfer or disclose their technology — such as source code or trade secrets, including algorithms — as a condition for market access.
- **Prohibition on customs duties on electronic transmissions.** BSA strongly supports this provision as such duties would place an unnecessary burden on trade for Australian businesses and would have an immediate impact on the digital economies of both Australia and United Kingdom.
- **Mutual recognition and interoperability for electronic signature, authentication, electronic contracts, electronic invoicing and digital identity frameworks.** These are important provisions that will break down barriers to digital trade by reducing unnecessary and outdated processes. They will also support individuals and businesses in Australia by allowing them to conduct business quickly and securely with customers and partners in the United Kingdom.
- **Interoperability of personal information protection regimes.** BSA applauds the provision to promote compatibility and enhance interoperability between the personal information protection regimes of Australia and the United Kingdom. Privacy and security are bedrock principles for the digital economy and international interoperability will provide a safe digital trading environment for both consumers and businesses.
- **Cooperation on data innovation and other evolving issues.** BSA supports cooperation on important digital trade issues that can help shape global standards and effective regulations in digital trade.

- **Open Government Data.** BSA commends the addition of a provision on open government data. Government-generated data can serve as a powerful economic driver, promoting economic growth and enabling innovation.

Innovation

The Australia-UK FTA also contains Australia's first ever chapter dedicated to innovation, under which both countries will establish a Strategic Innovation Dialogue to promote trade-facilitative innovation policy which may include emerging and transformative technologies such as AI. With innovation underpinning the growth of the digital economy, provisions in the Innovation chapter would help in the development of interoperable frameworks and promote bilateral cooperation in emerging technologies.

We are also encouraged to see the strong emphasis placed on AI in the Innovation chapter, which expressly referenced the Global Partnership on AI and the Organisation for Economic Cooperation and Development's (OECD) Principles on AI. Given that AI systems are developed and deployed in an international context, AI regulations and standards should ideally operate across different jurisdictions, so as to facilitate and promote further adoption and use of AI technologies. Support for voluntary, consensus-driven internationally recognised standards that foster interoperability is important to this outcome. Engagement in international fora and consideration of internationally recognised principles or guidelines are therefore crucial in building regulations for AI. **As such, BSA strongly supports the language in the Innovation chapter.**

Conclusion

BSA once again congratulates the Australian government on successfully signing the Australia-UK FTA and commends Australia's consultative process with industry in developing Australia's strategy for negotiating the Australia-UK FTA.

BSA supports the Australia-UK FTA and enthusiastically recommends that the JSCOT support its ratification.

BSA looks forward to continued collaboration with the Australian Government and their regional partners across the Asia-Pacific as they continue to advance international norms on digital trade. If you require any clarification or further information in respect of this submission, please contact the undersigned at shenhongt@bsa.org.

Sincerely,



Tham Shen Hong
Manager, Policy – APAC