

**Statement of Amb. Alan Wm. Wolff**  
**on behalf of the National Foreign Trade Council (NFTC)**  
**On the Probable Economic Effects of Entry into Force of the**  
**Trans Pacific Partnership Agreement**  
**Testimony Before the International Trade Commission**  
**Investigation TPA – 105 -001**  
**Washington DC**  
**January 13, 2016**

**SUMMARY**

The National Foreign Trade Council supports the Trans Pacific Partnership Agreement as being in the United States' national interest.

TPP is essential as a foundation for American leadership not only in Asia but in formulating with major partners improved conditions for world trade and investment through open markets and stronger rules. TPP shows a path forward in trade liberalization, in new rules for the digital economy and in new disciplines governing the participation of state-owned enterprises in commercial competition.

A number of members of the NFTC are particularly concerned with achieving a high standard for data exclusivity for biologics, avoiding product specific carve-outs from dispute settlement, exclusion of financial services from data flow rules, and trade and investment distortions that can be caused by currency manipulation.

The NFTC supports Congress and the Administration addressing the issues raised by the business community to achieve prompt approval of TPP in 2016.

## **The NFTC Supports the Trans Pacific Partnership Agreement**

The position of the NFTC on TPP released to the public on December 22, 2015 reads as follows:

*The National Foreign Trade Council supports the Trans Pacific Partnership Agreement because we believe it is in the United States' national interest. We are encouraged by discussions that are underway between the Congress and the Administration to address provisions in the Agreement in order to further improve trade and investment liberalization, strengthening the system of international trade and investment disciplines and procedures, including dispute settlement, for all of American business. Early resolution of areas for improvement identified by the business community will speed approval by Congress in 2016. It is imperative that TPP provide very high standards comparable to those which business enjoys in the United States so this agreement can serve as a strong foundation for other trade agreements going forward.*

*The Council believes that the Agreement can be a major step forward in establishing rules-based international trade and in opening foreign markets; enhancing economic growth for the United States as well as for its Pacific Rim trading partners; providing major new market opportunities for goods, services and investment; reducing barriers to trade and investment; and providing disciplines over state-owned enterprises that compete with private companies. The NFTC believes this path will serve the interests of American workers as well as businesses of every size in industry, services, and agriculture.*

My purpose today is to expand on this statement.

### **The role of the NFTC for 101 years.**

The NFTC was formed in 1914 during the Wilson Administration to support U.S. international commerce. It is the oldest American trade association devoted exclusively to this purpose. Our Board, which I chair, is composed of a broad range of companies, across many sectors, each playing an important role in international trade. (A list of current Board company members is attached to this testimony.) The NFTC's endorsement does not mean that our Board members do not have continuing concerns. I will address a number of key concerns in this statement as well.

### **Probable economic effects of the Agreement**

#### ***Overview***

The importance of U.S. participation in the TPP cannot be overstated. The original twelve parties account for 40% of the world's economic output. That they could reach agreement on a broad range of rules and trade liberalizing measures is an outstanding achievement.

Moreover, TPP has an open architecture. There is strong interest in Korea, Indonesia, the Philippines, Thailand, Taiwan, and Colombia to negotiate accession to the Agreement. China has been following the evolution of the Agreement, and at some, I suspect, distant point, may be ready to contemplate joining.

TPP is a potential template for the future of the world trading system. It stands in marked contrast to the inability of the 162 members of the WTO to form a consensus on these same issues. It appears that consensus on a global basis occurs only once in a generation, in 1947 (the General Agreement on Tariffs and Trade – the GATT, the first multilateral trade agreement), 1979 (the Tokyo Round – the first agreement to include successfully reduction of major nontariff barriers) and in 1994 (the Uruguay Round which created the WTO and added intellectual property and services to the world trade rules). Agreements with fewer than all WTO members are now the rule rather than the exception. The Information Technology Agreement which took 19 years to update is subscribed to by less than one third of the WTO's members although it accounts for just over 90% of world trade in the products that it covers. TPP along with the other trans-oceanic agreement under current negotiation, the Trans Atlantic Trade and Investment Partnership (TTIP), may be looked back upon as the modern equivalent of the Bretton Woods Agreement which gave rise to a rules-based global financial and trade system that has provided a foundation for economic recovery and global growth.

The United States with a few partners led the world 70 years ago in creating that system, and it is essential for it to do so again now. The costs to the American economy of a failure of the United States to participate would be enormous. TPP is a preferential trading agreement, but a broad one with an open architecture. In its absence, bilateral and regional trade agreements will continue to proliferate, to the marked disadvantage of American companies that produce goods and services, to American agriculture, and to American workers. When America is not at the table, its commercial interests are at risk. To take a few examples close to home: Canada has negotiated improved access for European producers to procurement by its provinces, access better than that offered to U.S. companies; and, under that bilateral agreement, new U.S. producers of products like feta cheese will not be able to market their goods in Canada under that name. The damage to U.S. commerce from being absent from negotiations is not theoretical. These market limitations stem from two of our closest friends, the EU and Canada. Just think what a pan-Asian agreement with China or India setting the rules would do to American commerce in Asia.

Without TPP --

- Other countries would continue to negotiate preferential trade agreements that would have serious costs for the American economy, discriminating against American commerce.
- The template for the future of international trade would be a world more divided and with lower standards than the U.S. government wants and that the American economy needs.

- The terms of agreements in Asia would be dictated by China's perceived needs. China would not at present opt for the kind of agreements the U.S. has led. This holds true both for any Asian regional accord as well as for what is done in the WTO.
- The U.S. would not be in a position to replace this agreement with either individual bilateral agreements nor broader agreements in the WTO. Failure to implement this agreement would mean the loss of EGA, TiSA, and any further trade agreement progress for an extended period. What countries would chance reaching an agreement with the United States were TPP not approved?

In short, the damage to the American economy of TPP failing to come into effect due to U.S. rejection or inaction would be enormous – and they are calculable.

The benefits to U.S. commerce of TPP are concrete. TPP stands out as a primary means to drive reforms abroad – for example, assisting Vietnam to continue its transition away from state ownership to an economy in which market forces can determine competitive outcomes. It provides a means for Japan to modernize its agricultural sector. These important steps will also benefit the economies enacting the reforms. The very fact that TPP contains within it what is essentially a U.S.-Japan FTA is itself a remarkable achievement. Just a few short years ago, a U.S.-Japan FTA was unthinkable as economic reforms in Japan had not progressed to the point where an agreement of this kind would have been possible. As it turned out, in a welcome departure from its stance in prior trade talks, Japan turned out to be perhaps America's best ally in negotiating new and enhanced rules in TPP.

### **Specific benefits of TPP**

#### *a. The digital economy*

The world has changed dramatically since the Uruguay Round concluded and the World Trade Organization was created. The revolutions in information technology, new materials, and biotech products have transformed requirements for the continued growth of international commerce. TPP stakes out important new ground in promoting an open digital economy throughout the Pacific Rim's participants. This alone makes TPP a 21<sup>st</sup> Century Agreement. The Internet enables small and medium size businesses to have instant assured access to nearly half the world's markets, and novel provisions in the TPP e-commerce chapter help guarantee that access by assuring the free flow of data across borders.

The benefits of the approach taken by TPP cannot be overstated. It means that even a one-person business in a small town in the middle of our country can become an exporter. Our board member eBay notes that 95 percent of the U.S. small businesses that operate on its platform export.<sup>1</sup> These provisions are also of enormous importance to the global value chain for

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<sup>1</sup> eBay Main Street 2015 US Small Business Global Growth Report, Available at: <http://www.ebaymainstreet.com/sites/default/files/2015-us-small-biz-global-growth-report.pdf>

our major exporters of goods and services, indeed for any part of America's commerce that is internationally tradable and for American investment. All of our members will see their businesses enhanced by the improvement in the rules enabling the growth of the digital economy. Quantifying specific benefits can be achieved through the ITC's investigation, including obtaining information from the NFTC's member companies.

Earlier this year, the NFTC released a Policy Checklist for the Global Digital Economy,<sup>2</sup> outlining the types of rules that promote access to the digital marketplace. While not perfect, the TPP checks a number of those boxes – assuring the free flow of data across borders, including a rule against forced localization of servers, and focusing specifically on small and medium sized businesses in a separate chapter. These are essential steps in making sure that global commerce can expand to take advantage of technological progress.

#### *b. Disciplines governing State Owned Enterprises (SOEs)*

Rules against trade distortions may not count for all that much when a private company is faced with either competition from state-owned enterprises, or depends upon SOEs as sources of supply or as customers. While Vietnam has made strides in reducing very substantially its number of SOEs and the share of the Vietnamese economy that they account for, the role of SOEs is growing not declining in world trade. This is an area of the TPP negotiations that I followed most closely. It is a substantial achievement of TPP that it created a first set of disciplines for SOEs that compete with private sector companies.

It is natural for a government to favor the companies it owns. In TPP, Parties are to assure that SOEs buy and sell on the basis of commercial considerations, that SOEs in doing business do not discriminate against another Party's companies and that regulators do not exercise their discretion to discriminate against other Parties' companies. SOEs are to be made subject to domestic courts. Important transparency requirements are imposed. Noncommercial assistance provided to SOEs that causes harm in most instances is made actionable under state-to-state dispute settlement (including with respect to the cross-border provision of services and the provision of services through an SOE investment in the territory of another Party).

The TPP's SOE provisions provide a foundation for disciplines in future agreements. Any future trade agreement must deal with the trade and investment distortions that SOEs can cause. Some improvements would be needed in the TPP provisions to adapt them for global application, but that fact does not detract from this first multi-party effort.

#### *c. Tariff and Non-tariff measures*

By definition a free trade agreement addresses the elimination of tariffs, and TPP takes extraordinary steps in this direction. The 18,000 tariff reductions and ultimate elimination matter. It is the closest thing in the world's trade regimes approaching in scope and impact what in Europe has become the single market, and which since America's founding, has been true for

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<sup>2</sup> Available at <http://www.nftc.org/default/Innovation/2015-NFTC-digital-economy-checklist.pdf> . Copy attached.

U.S. interstate commerce. As the United States already has a low average tariff is largely an open market, the liberalization achieved is strongly in America's favor.

Market access for services, conducted on a negative list basis (what is not excluded is liberalized) is an important step forward, with particular attention given to financial services.

Beyond tariffs and liberalization of markets for services, there are a large number of provisions of TPP that will additionally facilitate commerce. One area that may be underrated is the chapter on regulatory coherence. The United States has in the Office of Management and Budget an example of what TPP requires -- an office that tries to limit conflicting regulations. Beyond this, the chapter seeks to encourage the adoption of best practices.

As opposed to simple tariff reductions that are committed to and pre-ordained, much of TPP with respect to other matters will depend on the quality of implementation – both enforcement and cooperation. The provisions regarding TBT and SPS fall into this category as well.

### **Specific areas of concern for NFTC members**

While expressing our support for TPP, the NFTC looks forward to working actively with the Executive Branch and Congress to ensure that additional improvements are made to achieve more fully U.S. negotiating objectives.

#### *a. Achieving a high standard of IP protection for biologics*

One of the most contentious issues that remains unresolved in Administration discussions with Congressional leaders is the period for data exclusivity for biologic pharmaceuticals. The question is one of preserving the incentives for innovation. The United States is a world leader in creating new biological drugs. Under U.S. law, passed by the Congress and signed by President Obama, test data of the inventing firm cannot be used by imitators to create biosimilars for twelve years. The European Union gives ten years plus in effect an additional year of protection. TPP negotiating parties Canada and Japan give eight years of data protection each.

While USTR Amb. Froman sought to have the U.S. position adopted, the TPP contains only a five year definitive period with the possibility of some extension, perhaps to as much as 8 years. However, several TPP parties have stated that they do not expect their domestic process to change, which is likely to mean for some Parties that they intend to provide no more than five years of protection. It is far from what our pharmaceutical company members sought and strongly feel is needed to promote innovation. This issue needs to be addressed for TPP to advance at present in Congress toward a vote.

#### *b. Maintaining strong protection of investor rights*

Another contentious issue in the negotiations was the extent to which investor state dispute settlement would be available. A carve-out was created for one product, tobacco. The

NFTC position, along with the widespread view of the business community, is that a product carve-out is both a bad precedent and unnecessary, as Parties to the TPP retain the freedom to regulate for public health and safety. A carve-out for a single product puts the investors who produce that product in a position of not even being able to be heard by a tribunal as to whether a measure caused harm contrary to the obligations of the Agreement.

The NFTC believes that TPP must strengthen the system of international trade and investment disciplines and procedures, including dispute settlement, without exclusions for specific products.

*c. Excluding coverage for financial services data*

As noted earlier in my statement, a major achievement of TPP is the support it gives for enhanced economic growth through its provisions fostering the digital economy. Crucial are the provisions providing for unimpeded flow of commercial data across borders and freedom from forced localization of data storage. This achievement is marred by the exclusion of financial data from the general rules governing electronic commerce. A major source of America's international competitiveness is to be found in its financial services sector. Forced localization of data storage is a substantial threat to the interests of U.S. commerce in every sector including financial services, and these practices should be banned. The Electronic Commerce provisions should be applicable to financial services, while preserving the three standard exceptions for prudential, national security and law enforcement measures.

*d. Addressing currency manipulation*

Artificially depressing a currency to gain a competitive advantage is a problem that the trading system has never dealt with. It is not an issue directly addressed by TPP, but is the subject of a companion agreement negotiated among finance ministers and on which our members' views differ. What is clear is that an unwarranted exchange rate depreciation is the equivalent of creating an export subsidy and an additional import tariff. It is my personal view that currency relationships need to be a matter of continuing concern for trade as well as finance officials.

*d.. Remaining areas for liberalization.*

No agreement can achieve all the liberalization that it should. The NFTC has long been in favor of removal of sugar import restrictions – which have been in place in one form or another since colonial times in America. Longstanding areas of protection -- sugar, textiles and apparel, dairy -- in my opinion deserve further review. They are among the most regressive forms of taxation in effect in the United States.

Another area that should be reviewed is Mode 4 for provision of services across borders through in-country stationing of personnel. This subject is unfortunately bundled with broader questions of immigration which have lingered unresolved.

## **Going forward**

TPP will necessarily be used as an American negotiating reference guide for future agreements. As a standard for TTIP for example, TPP should be considered as a floor and not a ceiling.

Accession discussions with those countries wishing to join TPP are likely to get more intense as Congress moves to approve the TPP Agreement. Each accession application should be approached on its individual merits. The resulting accession agreements should be tailored to the individual acceding country's need to improve its trade and investment regimes.

While China is probably not ready to consider applying for accession to the TPP and will not be ready for the foreseeable future, each accession negotiation and the implementation of TPP should be carried out with a view to its potential impact on inclusion at some point, however distant, of the world's largest exporter.

First and foremost, TPP among the 12 current Parties must be approved by Congress in 2016. TPP must be judged by what it accomplishes, which is an impressive net positive. For its approval by Congress, we know that the concerns that I have mentioned need to be addressed, but believe that they will be.

Trade agreements alone are not enough to assure that America's interests in global commerce are well-served. It is beyond the scope of this hearing, but it needs to be recognized that the U.S. needs to adopt policies in tax, education and R&D to remain competitive and make full use of the advantages that the TPP offers.





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# Encouraging Economic Growth in the Digital Age

## A POLICY CHECKLIST FOR THE GLOBAL DIGITAL ECONOMY

The Internet is changing the way that individuals launch businesses, established companies function, and economies grow. Connected technologies are altering the behavior and priorities of large companies while facilitating the formation of global networks and platforms that increasingly enable small businesses, individual entrepreneurs, and organizations to engage in the international marketplace.

The National Foreign Trade Council and its member companies developed this checklist of policies essential for the global digital economy to function. These policies are crucial for the broad range of businesses and entrepreneurs that rely on the Internet.

### Global business in the digital age

An open, reliable and secure global digital economy is critical for a broad range of stakeholders from manufacturers, farmers, content creators and service suppliers to startup, development and university communities.

One often underappreciated effect of the Internet is the extent to which it has transformed the basic means of manufacturing and research. Digital technologies have dramatically altered the ways that businesses, workers and researchers collaborate, analyze and transact across geographies and institutions. Collaborative innovation – both within companies via research facilities located around the world and with outside partners through open innovation processes – relies fundamentally on reliable access to an open and secure Internet as well as effective frameworks to protect intellectual property assets.

Today, large companies engage small firms, entrepreneurs and universities in relationships across their supply chains and research platforms. Meanwhile, the Industrial Internet is enabling manufacturers of everything from refrigerators to cars to jet engines to improve efficiency, make their products more useful, and enhance customer experiences.

In addition, the Internet has accelerated the ability for financial services companies, retailers, logistics providers and other service providers to iterate and develop new products for customers – from mobile banking in remote areas of the world to one-click global retail – which facilitate transactions on and offline.

Internet-enabled technologies are also giving farmers around the world tools to understand demand better, improve efficiency, and expand access to markets for individuals in some of the most remote parts of the world.

Underpinning much of this is the promise of data analytics, as organizations begin to use data to develop insights that create new services and address global challenges. Analyzing data holds promise for everything from conserving natural resources to preventing infections in children.



Established in 1914, the National Foreign Trade Council advocates for an open, rules-based trading system on behalf of its member companies.

[nftc.org](http://nftc.org)

### Democratizing access to the global marketplace

Digital technologies are democratizing access to the global economy by improving visibility and trust for thousands of small businesses, individual entrepreneurs, and organizations around the world. Today, even very small or early stage companies and groups can thrive globally in a way that would have been impossible just a few years ago.

Online commercial platforms and payments systems are helping small businesses and startups to participate more effectively in foreign markets. Entrepreneurs can turn to global microfinancing platforms, where projects with popular appeal can receive financing in small increments from individual backers and help jumpstart fledgling enterprises. Workers have access to a broad array of training resources to keep up with the technology revolution, allowing them to continually upgrade their skill sets to satisfy the ever-growing demand for specialized labor.

The U.S. International Trade Commission found that as much as one-fourth of total online sales were made by small and medium-sized enterprises (SMEs). McKinsey has found that SMEs that heavily rely on the Web create two times as many jobs as those who do not and brought in two times as much revenue through exports as a percent of total sales. In another study, McKinsey reports that 90% of commercial sellers using the eBay Marketplace export to other countries vs. less than 25% of traditional small businesses. Data from eBay demonstrates that on average, digitally-engaged business improve their market share, are more likely to survive, and export more frequently and to a larger number of countries than traditional businesses.

### Improving economic growth

Taken together, the economic impact of the global digital economy is significant and growing.

In the United States, according to the U.S. International Trade Commission, digitally-enabled trade has increased GDP by more than more than 3 percent, boosted average real wages by up to 5 percent, and contributed to a bump of up to 1.8 percent in employment. Firms in digitally-intensive industries sold over \$900 billion in 2012 including over \$200 billion in exports. Small and medium enterprises in digitally-intensive industries sold over \$225 billion of that, or approximately one quarter of sales.

Developing countries have the most to gain from improving access to the global digital marketplace. While the impact of the Internet in emerging markets is already significant, the potential that the global digital marketplace holds to improve economic growth is sizeable. Internet users in developing countries increased by more than 300 percent between 2004 and 2013, and many entrepreneurs and businesses are flourishing globally via the Internet.

Over the next decade, major growth in Internet users and in GDP gains from the Internet are expected to occur in developing countries. As digital and physical infrastructure improves, as smartphones are more widely adopted, and as literacy and comfort with the Internet increase, the economic benefits of the Internet for emerging countries will continue to rise.

McKinsey notes that countries that are connected more intensively to the global economy see GDP growth of up to 40 percent more than less connected countries. There is a tax on unplugging from the global economy and that penalty is growing.

### A public policy framework to support access to the global digital economy

Effective participation in the global marketplace relies on an underlying public policy framework that facilitates the movement of digital information as well as the services and physical goods that the digital economy enables.

While the Internet largely developed as an open, decentralized platform free from heavy regulation, governments increasingly seem eager to impose barriers on the digital economy that mirror trade barriers of a different era. The desire to regulate may be well-intentioned, but must balance the need to protect legitimate public interests with the imperative to maintain and support an open, reliable, secure and global digital economy.

Governments should maintain policy frameworks that promote innovation and enable access to the global digital marketplace, which serves as a gateway to trade in physical goods and services and accelerates economic development and inclusion. Such a framework should:

#### 1 Ensure open global flows of information while regulating appropriately for the public good

- A. Avoid regulations that discriminate based on the origin of information or nationality of the service provider to ensure that businesses can provide information and communications technology services – on which much of the digital economy depends – on a cross-border, non-discriminatory basis.
- B. Ensure a default of openness in information flows; do not require that data be stored locally; do not require the use Information Technology infrastructure in a particular location.
- C. Maintain appropriate protections for Internet intermediaries.
- D. Craft data privacy, security, and other national regulations that impact the digital economy in ways that regulate appropriately in the interest of the public good without hindering access to the global digital marketplace, being more trade restrictive than necessary, or creating unnecessarily divergent or conflicting rules.

#### 2 Encourage access to the Internet and communications infrastructure

- A. Support appropriate rules to promote access to and use of public telecommunications networks and services and use of the Internet.
- B. Provide duty-free treatment for information and communication technologies that underlie the ability of the digital economy to function.
- C. Promote broadband deployment, particularly in rural regions, including by removing barriers to construction of new broadband networks and making physical infrastructure available.
- D. Adopt spectrum policies that promote innovation in the wireless sector, including both licensed and unlicensed access.
- E. Enable SIM and data portability through appropriate legal frameworks.

### 3 Enable access to financial services

- A. Remove regulatory hurdles to branchless banking.
- B. Acknowledge regulatory differences between different types of financial services.
- C. Pursue a harmonized regulatory framework for electronic payments modernize the national payments infrastructure to enable fast (same day or real time) settlement of consumer payments.
- D. Establish appropriate legal frameworks for crowdfunding.
- E. Implement a risk-based approach to any "know your customer" requirements.

### 4 Facilitate physical trade lanes

- A. Improve customs procedures, including by digitizing customs forms and procedures.
- B. Maximize market access for transportation and logistics services providers.
- C. Raise *de minimis* levels to facilitate small package shipments.
- D. Improve market access for goods.

### 5 Maintain effective intellectual property frameworks and protections

- A. Modernize IP frameworks to protect trade secrets and other forms of IP that are subject to greater theft in the digital age and seek to avoid policies that lead to increased public exposure of such IP through practices such as privacy impact assessments.
- B. Effectively protect copyrights while permitting the digital economy to flourish by promoting a high-standard and balanced copyright framework consistent with that which is recognized in U.S. law.

### 6 Encourage the development of a highly-skilled workforce

- A. Maximize avenues for welcoming students, entrepreneurs and highly-skilled workers through effective and open visa, immigration and border policies and procedures.
- B. Shift educational polices to focus on Science, Technology, Engineering, and Math.
- C. Revise workforce education programs to focus on digital technologies.

### 7 Set responsible tax policies that encourage growth of the digital economy

- A. Maintain moratorium on Internet duties.
- B. Set responsible and non-discriminatory tax policy for the treatment of all businesses using the Internet so that expanded cross-border digital operations are not used as an opportunity for governments to expand their extraterritorial tax reach over businesses that operate outside of their border; do not impose "data taxes."
- C. Refrain from tax discrimination treatment on intangible property.

### 8 Improve the global investment framework

- A. Refrain from imposing restrictive or discriminatory investment policies or forced localization measures.
- B. Strengthen investor protections and improve and harmonize frameworks governing investment.

### 9 Capture the impact of Internet enablement

- A. Prioritize the inclusion of the digital economy in macro and micro economic analysis.
- B. Reevaluate and refine economic indicators to capture value-add of the Internet.
- C. Improve understanding and information gathering of technology-enabled manufacturing sales, and the extent to which large-scale manufacturing relies on e-commerce.

### 10 Orient government services and policies towards a broader set of stakeholders

- A. Orient export promotion services such as trade missions and market research towards young and micro enterprises, which are participating in the global marketplace in the digital age.
- B. Improve outreach to startups and small businesses, who may not be aware of the services that governments provide or the impact of changes in public policies on their ability to operate internationally.
- C. Understand the extent to which a broad set of stakeholders are engaging in the global marketplace, and assess the effect of regulations that impact the digital economy on those stakeholders.

## Towards a more integrated global digital economy

Public policymakers must be vigilant in maintaining a framework that enables access to the global digital economy. Global bodies such as the World Trade Organization (WTO) and Organization for Economic Cooperation and Development, regional forums such as the Asia Pacific Economic Cooperation forum, international financial institutions and regional trade groupings can also help ensure that rules and regulations are compatible across economies, and support the participation of businesses and entrepreneurs in the global marketplace. These institutions can also help develop better tools to measure economic statistics and monitor government policies, and coordinate regulation and standard-setting across issues such as privacy and cyber security.