

May 5, 2025

The Honorable Scott Bessent
Secretary
Department of the Treasury
1500 Pennsylvania Avenue Northwest
Washington, District of Columbia 20220

The Honorable Howard Lutnick
Secretary
Department of Commerce
1401 Constitution Ave Northwest
Washington, District of Columbia 20230

The Honorable Jamieson Greer
Ambassador
Office of the U.S. Trade Representative
600 17th Street Northwest
Washington, District of Columbia 20508

Dear Secretary Bessent, Secretary Lutnick, and Ambassador Greer:

ACT | The App Association appreciates the efforts of the Trump-Vance Administration to address trade barriers that limit the access of American businesses to international markets and unfairly undermine their ability to compete. A strong and fair digital trade framework is vital to the success for American small tech businesses, and they need your support their continued investment, growth, and job creation across the United States.

The App Association represents thousands of small business innovators and startups in the software development and high-tech space around the globe.¹ As the world has embraced mobile technologies, our members create the innovative products and services that drive the global digital economy by improving workplace productivity, accelerating academic achievement, and helping people lead more efficient and healthier lives. Today, the digital economy is worth approximately \$1.8 trillion annually and supports more than 6.1 million American jobs.

As you negotiate with Japan and seek ways to support American small business innovators through digital trade policies and eliminating non-tariff barriers to trade, and otherwise support U.S. economic and national security through a bilateral trade agreement with Japan, we draw your attention to a recently enacted piece of legislation, the Promotion of Competition for Specified Smartphone Software Act (“Smartphone Act”), that presents significant challenges for American small businesses in the software space. Japan’s Smartphone Act, and its ongoing implementation, represents a critical trade barrier that

¹ ACT | The App Association, *About*, available at <http://actonline.org/about>.

should be addressed in these critical negotiations to protect American digital economy small business innovators.

Enacted on June 12, 2024, the Smartphone Act is modeled after the European Union's (EU's) Digital Markets Act (DMA) but applies more narrowly to a targeted set of software services used on smartphones, including mobile operating systems, app stores, search engines and browsers. Notably, the same software services used on tablets, PCs, and other internet-enabled devices are not within the scope of the Act. Under the Act, the Japan Fair Trade Commission (JFTC) has the authority to impose significant ex-ante obligations on the providers of the specified software if they have more than 40 million domestic smartphone users per month. This threshold was carefully crafted by the JFTC to designate two American companies—Apple and Google, which in April were indeed designated as “essential software” under the Smartphone Act²—while excluding domestic competitors and other foreign firms, including Chinese tech companies operating in Japan. It even appears that the JFTC will exclude Japanese search provider Yahoo! Japan, despite evidence that they cross the threshold.

The Smartphone Act improperly targets American companies and disadvantages American small business app companies in several ways.

Targeting American companies in a manner that is inconsistent with trade obligations and hurts the U.S.-Japan Alliance. The Smartphone Act's scope targeting American companies may run afoul of the existing U.S.-Japan Digital Trade Agreement and the World Trade Organization's General Agreement on Trade in Services. Similar business models and products are excluded from the legislation, such as gaming app stores, in which large Japanese corporations have a leading market share.

Benefitting China and hurting U.S. competitiveness. The Act not only scopes out Japanese competitors like Yahoo! Japan but also leaves out Chinese competitors that could gain substantial market share in Japan. This may have a damaging impact on U.S.-China tech competition.

Devaluing software distribution. The Act would presumptively prohibit app store management, forcing small app companies to list their software alongside malware, phishing scams, and junk apps.

Devaluing search. By applying a prohibition on self-preferencing, search operators may not be able to showcase their most relevant services, even when doing so would genuinely improve consumer experience. This could lead to a more fragmented and less effective marketplace, where innovation is hampered, and consumers miss out on the best possible options. Proscribing preferencing of popular results needlessly undermines consumer experience.

² https://www.jftc.go.jp/houdou/pressrelease/2025/mar/250331_smartphone.html.

Creating unnecessary security risks. Requiring app stores and operating systems to carry and fully accommodate any software, including potential malware, exposes consumers to novel security risks.

Undermining American intellectual property (IP) protection. Presumptively requiring app stores to carry any app obliges small app companies to be listed next to their copycat versions, raising costs of IP protection and barriers to entry for startup software developers.

We request your assistance in addressing the harmful impacts of the Smartphone Act, a leading example of a non-tariff barrier to trade that should be confronted by the United States, in your discussions and negotiations with Japan. The new reciprocal trade agreement between the United States and Japan must provide assurances that its laws will be applied in a nondiscriminatory manner and effect necessary changes to the Smartphone Act and its enforcement to provide certainty of the same. Further, the new reciprocal trade agreement between the United States and Japan should provide a transparent, fair, and efficient dispute settlement process for addressing discriminatory non-tariff barriers that harm U.S. economic security and competitiveness.

Thank you for your consideration of this matter and your continued support of strong trade policies that bolster the success of American small businesses.

Sincerely,

A handwritten signature in black ink that reads "Morgan Reed". The signature is fluid and cursive, with the first name "Morgan" and the last name "Reed" clearly distinguishable.

Morgan Reed
President

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