



Computer & Communications  
Industry Association  
Open Markets. Open Systems. Open Networks.



March 20, 2023

The President  
The White House  
1600 Pennsylvania Ave. NW  
Washington, DC 20500

Dear Mr. President:

We write to you in advance of your upcoming visit to Ottawa to express our concerns about several measures that will undermine the ability of U.S. companies to fairly compete in the Canadian market. We urge you to raise these issues during your visit, with a view toward ensuring that Canada fully honors its international commitments.

The undersigned organizations strongly support the U.S.-Canada economic relationship. The United States, through many of our member companies, is Canada's largest investor, accounting for 44 percent of total FDI (\$420 billion as of 2020).<sup>1</sup> Furthermore, Canada has long been a strong U.S. partner and ally, like-minded in its approach to evidence-based regulation and market-economy principles.

The United States-Mexico-Canada Agreement (USMCA) was a signature bipartisan effort, and your Administration has rightly called USMCA enforcement a top priority. This is particularly true with respect to modernized enforcement mechanisms and a robust digital trade chapter. We strongly believe that the USMCA can raise standards in many areas – agricultural market access, digital trade, environmental standards, labor rights, and services access.

However, we are concerned that Canada is pursuing a number of problematic proposals and actions that could significantly limit the ability of U.S. companies to export their goods and services and fairly compete in the Canadian market. It is critical for the United States to hold Canada accountable to its USMCA commitments to ensure the continued success of this important agreement. Relatedly, Canada's proposed policy approaches would impede ongoing efforts to drive North American economic competitiveness, including the North American Leaders' Summit and the Americas Partnership for Economic Prosperity (APEP).

### ***Digital Services***

Canada is a key market for U.S. digital services exports, as it generated \$45.8 billion in 2020- which represented 86.7% of U.S. services exports to Canada that year.

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<sup>1</sup> <https://www.state.gov/reports/2022-investment-climate-statements/canada/>.

Unfortunately, Canadian policymakers continue to threaten the introduction of a discriminatory and retroactive digital services tax (DST) targeted at U.S. companies, despite its endorsement of the Organization for Economic Cooperation and Development (OECD)/G20 Inclusive Framework, where 138 countries have agreed not to enact unilateral DSTs while negotiations on international taxation of digital services are ongoing (the “standstill”). If passed, this DST is estimated to collect upwards of \$4 billion over five years, primarily from U.S. companies.<sup>2</sup> Canada’s pursuit of a DST would set a harmful precedent for other Inclusive Framework participants to adopt similarly targeted taxes on U.S. digital services.

In addition to the DST, Canada has advanced other domestic initiatives that target U.S. technology companies and raise concerns under the USMCA, such as the Online Streaming Act (C-11), which seeks to compel U.S. streaming services and social media platforms to fund and/or promote Canadian content on their platforms via extraterritorial regulatory agency actions. Consequently, U.S. content creators – regardless of whether the content creator is an established publisher or an individual content creator – will be disadvantaged on platforms. Depending on the regulatory requirements for funding and technical requirements for promoting Canadian content, the cost of doing business in Canada will increase for U.S. online streaming services and social media platforms. This cost will ultimately trickle down to Canadian consumers, who will also experience less choice and personalization on the platforms.

Furthermore, by expanding regulatory schemes designed for the traditionally restricted world of broadcasting to the inherently open nature of the internet, C-11 could have disastrous consequences for content production and distribution and could inspire other countries to implement similar content-preference schemes. This would have negative consequences for Canadian creators themselves who are prime beneficiaries of the investment and global distribution platform offered by U.S. suppliers. For these reasons, we are especially concerned with the Canadian government’s insistence on including user-generated content within the scope of C-11.

Another bill, the Online News Act (C-18), likely would require a narrow range of U.S. digital companies to pay Canadian news organizations and broadcasters for the right to display news stories, headlines, snippets, and links. Canada’s Parliamentary Budget Office estimates that in-scope companies would need to pay over \$320 million annually to Canadian firms under this legislation, primarily to broadcasters.<sup>3</sup> There has been no indication that any Canadian, Chinese, or other non-U.S. digital companies will be subject to this measure. Therefore, this policy raises significant national treatment and performance requirement concerns under the USMCA.

Given the momentum behind each of these three proposed pieces of legislation, which could pass this year, urgent action is needed to review and mitigate any potential discriminatory effects on

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<sup>2</sup> <https://www.pbo-dpb.ca/en/publications/LEG-2122-007-S--digital-services-tax--taxe-services-numeriques>.

<sup>3</sup> <https://www.pbo-dpb.ca/en/publications/RP-2223-017-M--cost-estimate-bill-c-18-online-news-act--estimation-couts-lies-projet-loi-c-18-loi-nouvelles-ligne>.

U.S. technology companies. As bipartisan members of Congress have argued, the U.S. government should ensure that the USMCA is enforced to avoid these negative outcomes for North American strategic interests.

### ***Customs and Trade Facilitation***

The Canadian Border Services Agency (CBSA) is pursuing several concerning changes to customs procedures and practices that may conflict with Canada's customs and trade facilitation obligations in the USMCA and the World Trade Organization's Trade Facilitation Agreement.

The CBSA Assessment and Revenue Management project, better known as CARM, is a multi-year initiative to change the Canadian importation process. While ostensibly implemented to streamline the border process, several aspects of the new CARM system require more complicated processes and increase the customs formalities required for informal entries. Canada is pursuing an aggressive implementation timeframe (Oct. 2023) that could increase complexity at the border, with policies for low-value shipment clearance still largely undefined. The United States should encourage CBSA to extend the rollout and continue working with various stakeholders, especially U.S. small- and medium-sized (SME) traders, with an eye toward truly simplifying customs procedures.

Last year's budget implementation bill (Bill C-19) made changes to Canada's Customs Act that will, among other things, require express carriers to take on new obligations and potential liabilities when delivering goods into Canada. These changes will have significant impacts, particularly for SME traders such as those who infrequently import small numbers of e-commerce shipments into Canada. For example, carriers in those instances could be liable for any additional taxes, duties, penalties, and other costs for up to four years after importation and would have to seek reimbursement from the shipper. As a result, shifting such significant financial and legal risk to carriers is likely to raise costs and cause unintended consequences for SMEs that rely heavily on these services. Taken together, in their current form these changes could further disrupt supply chains and increase costs for traders of all sizes on both sides of the border.

### ***USMCA Implementation***

We join with Senate Finance Committee Chairman Wyden and Ranking Member Crapo in commending USTR for its continued effort under the USMCA dispute settlement system to open Canada's dairy market to U.S. producers. The United States, Canada, and Mexico should work together to achieve full and timely compliance on other the full range of implementation issues so that the full potential of USMCA can be achieved. We encourage the Administration to continue to consult with industry and other stakeholders to identify implementation issues, develop an enforcement plan, and assess progress in addressing measures.

### ***Regulatory Cooperation***

Discussions with Canada should focus on enhancing regulatory compatibility, especially in how Parties are implementing related USMCA provisions. Such discussions should focus on risk-

based approaches to the assessment of regulations, including assessment and risk management methodologies, tools, and models, and on the development of specific risk assessments. Stronger cooperation in this area would make an outsized impact relative to national approaches and would support further trade and investment in the North American economy. For example, last year Canada proposed new regulations on a type of flame-retardant (DBDPE) commonly used in a wide range of products including vehicles, aircraft, information and communications technology (ICT) equipment, and appliances. The restrictiveness of Canada's regulatory approach is not supported by the available science and would significantly disrupt U.S.-Canadian trade and impair supply chain resiliency in several critical sectors. In addition, further regulatory cooperation between the US and Canada is necessary to ensure full implementation of USMCA provisions on combatting marine litter, including plastics and microplastics. The principles of the risk-based approach need to be the prism through which both countries approach the international negotiations relating to plastic waste.

## **Conclusion**

Timely engagement from U.S. political leadership is also particularly critical as Canada seeks to join the U.S.-led Indo-Pacific Economic Framework for Prosperity, and as work advances on APEP. Industry appreciates the work of the Administration to pursue high-standard agreements and reinvigorate multilateral initiatives to deliver the benefits of free and fair trade to workers and believes Canada could play a positive role in this initiative. Addressing these measures now will ensure that the United States and Canada can work together to model desired policy approaches in IPEF, APEP, and other multilateral efforts.

It is critical for the United States Government to hold Canada to its trade commitments and to underscore the negative global precedent that would be set if Canada implements these measures in their current form.

Sincerely,

ACT | The App Association  
American Chemistry Council (ACC)  
Coalition of Services Industries (CSI)  
Computer and Communications Industry Association (CCIA)  
Express Association of America (EAA)  
Information Technology Industry Council (ITI)  
National Foreign Trade Council (NFTC)  
Software & Information Industry Association (SIIA)  
TechNet  
United States Chamber of Commerce