



U.S. Chamber of Commerce

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August 15, 2017

The Honorable Robert Lighthizer
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Lighthizer:

The U.S. Chamber of Commerce supports the Trump Administration's efforts to modernize the NAFTA, including the addition of meaningful obligations that reflect the growing digitization of the economy. American companies, across all sectors, are global leaders in bringing new technologies to market, offering innovative products and services, and deploying technology to increase efficiency to sustain competitive advantages in the marketplace. Further, technology is often a great equalizer, allowing small and medium business to reach overseas markets and tap new customers.

As a result, the NAFTA modernization negotiations need to secure cutting-edge trade commitments that reflect trade not only in digital products and services, but also address the reality that traditional industries are inextricably connected digitally across borders. Without enforceable rules in trade agreements, the leading position enjoyed by U.S. companies in many foreign markets will be undermined. Accordingly, it is important to address the following policy matters that can present themselves as non-tariff barriers to American competitiveness as part of the forthcoming negotiation with Canada and Mexico.

First and foremost, as already outlined in USTR's negotiating objectives, the United States should secure commitments in the NAFTA that ensure the ability for U.S. businesses in all sectors to move data across borders. This includes a prohibition on the forced localization of data.

In addition, the United States should ensure that its NAFTA partners avoid innovation-inhibiting practices that undermine the benefits of trade. In order to promote a rules-based digital economy, we recommend that the United States secure commitments from NAFTA partners to:

- Explicitly prohibit measures that link market access and other commercial benefits to local technology infrastructure;
- Prohibit customs duties on electronic transmissions, including information being transmitted electronically;
- Not discriminate against U.S. technology companies, products, and/or services;
- Not require the transfer or access to software source code or algorithms as a condition for market access;
- Facilitate a regulatory environment that allows companies to utilize data collection and analysis;
- Streamline and modernize customs processes, such as the use of electronic customs forms, electronic signature and authentication, and secure on-line payment, in addition to upgrading de minimis levels; and
- Champion smart and effective approaches to encryption that do not require companies to undermine product security.

We also encourage the NAFTA negotiations to ensure that any domestic regulations governing privacy and cybersecurity facilitate data flows that underpin trade and commerce. Many countries are endeavoring to adopt regulatory policies that restrict trade unnecessarily, and some are plainly protectionist in intent. The increasing number of diverging privacy rules and regulations are creating increasingly unworkable barriers for American companies. While privacy standards are necessary to ensure consumer protection, consumers also demand the mobility of data to bring them the best products and services. The NAFTA should:

- Commit to avoid implementing unjustified privacy protections that limit the transfer of cross-border data;
- Agree to continue to endorse and promote the principles-based approach in the APEC Cross-Border Privacy rules as an important tool in developing appropriate privacy protections and ensuring the flow of data; and
- Work towards developing common mechanisms to promote further compatibility and ease of doing business.

Increasingly, countries are also adopting new cyber regulations. Companies are victims of cyber-attacks and it is important that the rise of cyber regulation does not undermine trade but instead safeguards the data flows that underpin it. The NAFTA should:

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- Commit to enabling industry compliance with national cyber laws through adherence to well-aligned international standards, such that best-in-class approaches to cybersecurity can be scaled across borders.
- Work towards common cyber incident reporting structures; and
- Establish a forum through which public and private stakeholders in all three countries can voluntarily share cyber threat information.

Finally, it is incredibly important that the NAFTA protect intellectual property and combat forced technology transfer. So much of the innovation and technology that drives U.S. competitiveness and makes American companies leaders relies on intellectual property protection. Patents, copyright, trademarks and trade secrets (to include proprietary algorithms) all play an important role in technological competitiveness and trade in digital goods and services.

We look forward to working with your negotiating team and urge continued robust engagement that demonstrates U.S. digital economy leadership in forthcoming negotiation to modernize the NAFTA.

Sincerely,

A handwritten signature in black ink, appearing to read "John Murphy". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

John Murphy
Senior Vice President for International Policy