



Oral Testimony of K.C. Swanson  
Director, Global Policy  
**Telecommunications Industry Association (TIA)**

Before the  
**United States International Trade Commission**  
**Investigation No. TPA-105-003**  
**Hearing on**  
**The United States-Mexico-Canada Agreement:**  
**Likely Impact on the U.S. Economy and on Specific Industry Sectors**

Friday, November 16, 2018

Thank you for the opportunity to provide testimony today. TIA represents some 250 manufacturers and suppliers of advanced telecommunications networks and services in the United States and around the world. We are also an ANSI-accredited standards development organization.

In our view, the USMCA represents a major advance in trade rules for the information and communications technology industry. It institutionalizes new norms that will facilitate expanded U.S. trade. We appreciate the thoughtful work of USTR negotiators in forging this agreement with key American trading partners and hope the administration will leverage key provisions in forthcoming negotiations with the European Union, Japan, and the U.K.

Below, we focus on the particular value of provisions related to digital trade and technical barriers to trade, as well as several other important areas of text.

**Digital trade.**

**Ban on data localization.** One of the biggest threats to U.S. ICT services trade is a trend by governments around the world to force companies to bottle up data within their own borders. The USMCA tackles this challenge head-on, prohibiting partner countries from mandating that computer facilities must be based on their territory.

**Unrestricted cross-border data transfers.** On a related note, the trade agreement creates a default for unrestricted data transfers across borders. It also helpfully acknowledges the value of APEC Cross-Border Privacy Rules, a mechanism to promote international compatibility in data regimes that has been endorsed by both the Trump and Obama administrations. Enabling cross-border data flows in this manner will help promote the growth of telecom-based services in which the U.S. is a global leader, including cloud computing.



*New IPR protections.* The USMCA also offers important new IPR protections. Notably, this includes a ban on government requirements for companies to disclose source code or algorithms in exchange for market access. The agreement also provides criminal penalties for theft of trade secrets.

*Promotion of risk-based cybersecurity approaches.* The USMCA sets out an expectation that both partner countries and firms within their borders should use risk-based approaches based on consensus-based standards to deal with an evolving constellation of global cyber threats. The new language represents a helpful step forward in forging cyber norms. This is a timely development as more countries are wielding the specter of cyber threats as cover to undertake protectionist, trade-restricting policies.

**Technical barriers to trade.**

All the above are critical foundational elements for modernizing NAFTA and promoting digital trade, and we expect they will prove highly beneficial to ICT companies in the United States. But I would also like to highlight a chapter of the revised trade agreement that has received less attention but is of great value to the American ICT industry. The technical barriers to trade chapter is both robust and very comprehensive; it introduces a number of noteworthy precedents that we would urge USTR to carry forward into future free trade agreements.

*Ban on requirements for in-country testing and certification.* One especially important provision bans localization requirements for testing and certification (also known as conformity assessment). Government demands that firms use only testing and certification facilities on their home territory frequently collide with the complexities of ICT global supply chains, posing a substantial commercial burden to U.S. companies. The language marks an important effort to craft new norms in a commercially significant area of TBT.

*Better disclosures on protection of IP in conformity assessment.* A second important provision grants free trade partners the right to ask how confidential business information will be protected during conformity assessment procedures by government bodies. Amid a growing tendency of governments around the world to enact requirements for cyber-related testing, it is critical to provide better protections for American IP. The new USMCA language lays down an important marker in this respect.

*Non-discriminatory standards-setting.* Worth highlighting too is the inclusion in USMCA of a commitment to non-discriminatory standards setting. New language in the trade agreement prohibits government preferences for standards developed in a way that disadvantages foreign standards-setting participants. While this may sound like a technical matter, the reality is that governments too often use the standards process as a backdoor for protectionist behavior that hurts U.S. industries.

*Requirement for assessments as part of regulatory drafting process.* The USMCA also included a requirement for parties to undertake an assessment of proposed major new regulations. We believe such language serves a constructive purpose in prompting governments to consider the costs relative to the benefits of potential new regulations.



**Government procurement.**

In some countries, governments constitute the biggest market for ICT products. Thus we value language in USMCA that maintains open, non-discriminatory and transparent market access in government procurement.

**Telecom-related issues.**

*Requirement to allow e-labeling.* Another beneficial provision for ICT companies is language that allows for electronic labeling, or e-labeling. New language requires parties to allow regulatory information, such as that for electromagnetic compatibility and radio frequency, to be displayed electronically. It effectively lets companies that sell devices with a screen employ e-labels rather than affix physical labels to devices, saving considerable money and time. Building on the ICT annex, provisions in the TBT chapter stipulate that rules for labeling not pose unnecessary obstacles to trade.

*MRA with Mexico.* Also helpful to the ICT industry are provisions encouraging parties to implement the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment. We are optimistic that the MRA for telecommunications equipment between the United States and Mexico, which has recently begun to be implemented, will be successfully and fully operationalized.

**Summary.**

Newly negotiated provisions in the USMCA not only modernize NAFTA, but also set very important and commercially significant new precedents in areas such as digital trade and technical barriers to trade. The language establishes fairer trade conditions that will help make U.S. telecom equipment suppliers more globally competitive. In summary, we strongly endorse the agreement.