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Telecommunications Industry Association

**Request for Public Comment  
From the Office of the U.S. Trade Representative  
on Negotiating Objectives for a U.S.-Japan Trade Agreement**

Docket Number USTR–2018–0034

November 26, 2018

The Telecommunications Industry Association (TIA) appreciates the opportunity to comment on negotiating objectives for a U.S.-Japan trade agreement. TIA represents approximately 250 manufacturers and suppliers of global communications networks in the United States and around the world. TIA is also an ANSI-accredited standards development organization.

In considering negotiating objectives for the proposed trade agreement, we believe it would be beneficial to draw upon a number of highly constructive provisions in the recently negotiated U.S.-Mexico-Canada Agreement (USMCA). 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 negotiators at the Office of the U.S. Trade Representative (USTR) and hope the administration will leverage key provisions in forthcoming negotiations with Japan.

Below, we focus on the particular value of provisions related to digital trade, technical barriers to trade, government procurement, as well as other text. We understand that USTR plans to undertake negotiations in two stages; the provisions we have highlighted below are highly beneficial to U.S. goods trade, and we would urge negotiators to seriously consider including them in the first stage of discussions.

**Market access in goods.**

We would like to emphasize the value of maintaining duty-free treatment of ICT products traded between the U.S. and Japan, in accordance with both countries' commitments under the WTO Information Technology Agreement. In addition, we hope USTR will seek commitments that allow for unimpeded trade in remanufactured and reused goods, an issue that both the U.S. and Japan have supported in APEC and other fora.

**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.

On a related note, we request that both the United States and Japan make permanent the prohibition on the imposition of tariffs, duties, and/or taxes on cross-border data flows and digital products.

*IPR protections.* The USMCA also offers important new IPR protections that we hope will be carried forward in future U.S. trade agreements. Notably, this includes a ban on government requirements for companies to disclose source code or algorithms in exchange for market access. The agreement also forbids governments from forcing companies to provide specific information about cryptography in commercial products as a pre-condition for market access.

In addition, the agreement 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 we 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 the regulatory drafting process.* The USMCA also includes 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.

*International Standards.* Another important provision enhances rights and obligations under the WTO TBT Agreement, including using the WTO TBT *Committee Decision on International Standards* as a basis in determining what standards are “international.” In cases where there is no international standard, the chapter provides an alternative pathway for standards developed in other organizations (such as by consortia) to be considered in technical 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.**

*Protections for telecommunications suppliers.* The USMCA telecommunications chapter included provisions to ensure nondiscriminatory access for U.S. suppliers to public telecommunications services, including submarine cable landing stations, in partner countries. It promotes a light-touch approach to value-added services and flexibility in regulation – constructive elements to help support telecom-based innovations.

*Requirement to allow e-labeling.* Another beneficial provision for ICT companies is language that allows for electronic labeling, or e-labeling. New text in the USMCA 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. While Japan’s Ministry of Internal Affairs and Communications allows e-labeling if it is easily and clearly displayed, we believe it would be helpful to affirm this in a free trade agreement.

#### **Summary.**

Newly negotiated provisions in the USMCA 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. We hope the administration will further leverage these advances in its upcoming negotiations with Japan.