



Telecommunications Industry Association

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

Docket Number USTR–2018–0035

December 10, 2018

The Telecommunications Industry Association (TIA) appreciates the opportunity to comment on negotiating objectives for a U.S.-EU trade agreement. TIA is the leading trade association for the information and communications technology industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. 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 EU.

Below, we focus on the particular value of provisions related to digital trade, technical barriers to trade, and government procurement, as well as other text. We understand that the EU has agreed to work together with the U.S. towards zero non-tariff barriers, and many of the concepts we have endorsed below would further that goal, especially in the digital trade and TBT sections.

Since the two parties plan a close dialogue on standards, we have also made reference in the TBT section to the importance of U.S.-EU alignment on particular policies related to standards setting.

In addition, a number of the provisions we highlight in the body of this submission are relevant to another critical goal set forth in the joint U.S.-EU statement: protecting American and European companies from unfair global trade practices. Trade policies can act as a powerful agent in creating new norms to govern international commerce and serve to deter discriminatory trade behaviors. We highlight below selected USMCA provisions that we believe could help address some of the market-distorting behaviors that have given rise to current global trade frictions.

- Digital trade language banning data localization and source code disclosure and promoting risk-based cyber security practices



- TBT text prohibiting in-country testing and certification, improving disclosure on the use of IP in conformity assessment, and ensuring governments don't show preferences for standards that discriminate against foreign participants
- IPR provisions imposing criminal penalties for theft of trade secrets
- Stipulations that state-owned enterprises should not undermine the normal functioning of the market through the grant of non-commercial preferences for domestic products or provision of subsidies.

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 the EU, 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.

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.

In addition, we request that both the United States and the EU 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.

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. As the EU has been slow to embrace e-labeling, we would strongly encourage U.S. negotiators to press for such commitments.

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 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.

Behavior of state-owned enterprises (SOEs)

The USMCA's SOE chapter included commercially meaningful provisions stipulating that an SOE should not show a non-commercial preference for goods or services from its own country, and states should not subsidize SOEs to the disadvantage of other signatories. Both concepts are important in helping level the global playing field for the U.S. ICT industry.

Cross-border trade in services.

Some EU member states require companies to establish a local entity to be eligible to receive a services license. This creates an additional regulatory burden for U.S. firms that would like to provide services to EU consumers. As such, we would encourage the administration to consider leveraging text from the USMCA Cross-Border Trade in Services chapter that bans requirements that companies set up a local office in order to supply cross-border services.

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 the EU.