

July 14, 2017

The Honorable Robert Lighthizer  
Ambassador  
United States Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, DC 20006

Dear Ambassador Lighthizer:

As Members of the House bipartisan Digital Trade Caucus, we write to highlight the significant impact digital trade has on the U.S. economy and the importance of modernizing the North American Free Trade Agreement (NAFTA) to address digital trade issues.

The internet is changing the way we trade, and is enabling more Americans to benefit from trade. Hundreds of thousands of American small businesses, in nearly every sector of the economy, and in every Congressional district in the country, are harnessing the power of the internet and technology to reach new customers around the world. At the same time, manufacturers are leveraging the internet to export \$86.5 billion of products and services through online sales.

Technology companies employ over 6.9 million Americans – 5.7 percent of private sector employment – and account for 7.5 percent of U.S. GDP. In addition, digital trade is now a main driver of U.S. economic strength and accounts for more than half of U.S. services exports. Online exporters in our districts also help power a massive \$159 billion digital trade surplus. Yet restrictive digital policies abroad are impeding U.S. exports, threatening the promise of digital trade to lift American workers and businesses. To ensure every sector of the economy – from manufacturing to financial services to mining to agriculture and food – can fully take advantage of digital trade, we are supportive of your work to modernize NAFTA.

As you begin negotiations to modernize NAFTA later this year, we encourage you to include a digital trade framework that will strengthen the North American market and set important precedents for future trade agreements around the world. Specifically, we urge you to prioritize the following updates to NAFTA:

- **NAFTA should promote cross-border data flows and eliminate data and facilities localization requirements.** Cross-border data flows among the United States, Canada, and Mexico are critical for manufacturers to manage customer networks and provide ongoing maintenance and services for their products, small businesses to reach new customers, and services providers to sell directly to customers. Restrictions on cross-border data flows put U.S. manufacturers, service providers, farmers, and small businesses at a competitive disadvantage, restrict their ability to sell products and services in foreign markets, and limit innovation.

- **NAFTA should address non-IP intermediary liability/safe harbors relating to third-party content.** We need a clear legal framework – consistent with U.S. law – that provides appropriate limitations on liability for internet service suppliers for third-party content, while encouraging actions taken in good faith by suppliers to restrict access to or availability of harmful or objectionable material.
- **NAFTA should foster intellectual property frameworks to facilitate legitimate digital trade.** Intellectual property is critical to the U.S. economy and companies excelling in innovation, research, development, and content creation. NAFTA was negotiated before the commercial Internet existed, and its intellectual property chapter should be modernized consistent with the Congressional directive articulated through the Trade Promotion Authority legislation.
- **NAFTA should streamline burdensome customs procedures and establish meaningful de minimis thresholds.** E-commerce and online marketplaces seamlessly connect buyers and sellers in the North American market. Unfortunately, both Canada and Mexico continue to erect customs and trade facilitation barriers that limit the success of internet-enabled goods exporters, many of which ship small, low-value packages. Both countries should raise their de minimis levels to facilitate an increase in exports.
- **NAFTA should prohibit unnecessary regulation of digital services.** Trading partners are erecting barriers to digital services, including onerous restrictions, licensing requirements, or even outright prohibitions. In order to ensure that digital services keep growing and contributing to the health of the United States economy, governments should ensure non-discriminatory market access to enable current business models, and also enable entirely new services to emerge, while also eliminating forced technology transfer requirements. Any regulation of emerging online services and applications should be no more trade restrictive than necessary to achieve a legitimate regulatory objective.

Through these modernizations, we believe trade can work for more Americans, while increasing U.S. innovation, competitiveness, economic growth, and job creation. We look forward to partnering closely with you on these critical negotiations.

Sincerely,

Erik Paulsen  
Member of Congress

Suzan DelBene  
Member of Congress

Cc: The Honorable Wilbur Ross, Secretary of Commerce