MODERNIZING DIGITAL TRADE:
An Agenda for Software in NAFTA and Beyond

In the 25 years since the conclusion of North American Free Trade Agreement (NAFTA), the American software industry has transformed. It has evolved from floppy disks and desktop computing to cloud computing, smart devices, and data analytics. Innovation moves quickly, and changes continue at a rapid rate: artificial intelligence, autonomous devices, blockchain, and "smart" contracts are each reshaping how software is used. Software supports nearly 10 million American jobs.

We urge a well-constructed and modern agreement that includes truly 21st century obligations that drive US job creation, competitiveness, and innovation. Such an agreement must be consistent with the objectives established by Congress in Trade Promotion Authority laws, and the precedents set by existing agreements. Commerce Secretary Ross and United States Trade Representative Lighthizer have said that the Trans-Pacific Partnership provisions on digital trade provide a good basis on which to build. We agree.

Software supports nearly 10 million American jobs.

We strongly support a trilateral modern NAFTA agreement that:

» Preserves the positive elements of the existing agreement;

» Builds on existing international law on e-commerce and the emerging international consensus on digital trade;

» Addresses the current and anticipated challenges faced by the US software industry; and

» Establishes rules in evolving areas, especially on data-driven economic activity.

The driving principle should be: **no market access barriers and no discrimination against innovative software services.**

more >>

Specifically, key elements of a trade agreement for the 21st century economy include:

DATA ECONOMY

Privacy and security are imperatives. But governments invoke privacy or security as a rationalization for creating market access barriers that harm US companies.

» **Free Movement of Data Across Borders:** Given the importance of cross-border data to the modern economy, governments must use privacy or security policies only as necessary, and never as disguised market access barriers.

» **No Data Localization:** Governments should not use data localization requirements as a market access barrier. For example, governments should not require that a data center be built inside its borders as a condition for doing business in a country.

» **Electronic Signatures:** National laws should recognize electronic signatures in commercial transactions, including "smart" contracts.

TECHNOLOGY IN GOVERNMENT

» **Technology in Government:** Governments should promote the use of innovative technology in government operations as they provide services to their citizens.

» **Procurement:** Procurement rules should be changed to reflect the 21st century needs of governments.

» **Choice:** Companies and government agencies should be free to use the technology of their choice and not be required to use local technology.

REGULATION

» **Strong Support for Encryption:** Governments should not undermine encryption in commercial products by imposing restrictions on security technologies used to safeguard against intrusions.

» **International Standards:** Governments should not force companies to use conflicting national standards.

» **State-Owned Enterprises:** Governments should not favor state-owned enterprises through discriminatory regulation or subsidies.

» **No Forced Technology Transfer:** Governments should not force companies to transfer their technology, or to disclose trade secrets or source code in order to have market access.

» **No Customs Duties on Electronic Transmissions:** Governments should not impose customs duties on the telecommunications value of electronic transmissions or on data being transmitted.

INTELLECTUAL PROPERTY

» **Copyright Rules:** Governments should have copyright rules in line with international standards with appropriate exceptions and safeguards, clear rules permitting commercial data gathering, and rules ensuring that ISPs are protected from liability for unlawful content posted by third parties.

» **Legal Software:** Governments should use legal software in government agencies.

» **Cyber Theft Penalties:** Governments should have criminal penalties for cyber theft of trade secrets.

» **Patent Protections:** Governments should have nondiscriminatory protection for software patents.