

United States Senate

WASHINGTON, DC 20510

July 14, 2017

President Donald J. Trump
The White House
Washington, D.C. 20500

Dear Mr. President,

We write to highlight the key role the internet plays in driving the American economy, as well as the need to safeguard this 21st century engine of innovation and civic participation from mounting trade restrictions abroad. Both the economic necessity of a free and open internet and the threats to it are at all-time highs. Last year alone, stakeholders cited digital trade barriers in at least three dozen countries, such as Brazil, Canada, China, France, Germany, India, Indonesia, and Nigeria. Exporters in every state would benefit from a comprehensive U.S. strategy to take on the full range of challenges.

Promoting cross-border data flows and eliminating data localization requirements should be important priorities for America in any trade negotiation, but it's important to understand that the implications of these policies extend far beyond traditional "digital businesses." Internet-related trade restrictions affect all U.S. businesses that rely on the global network to reach foreign markets – not just purely digital players. In fact, over \$86 billion in manufacturing exports are tied to online orders. Cross-border data flows also enable manufacturers to analyze and improve product performance and support next generation features.

Little wonder that the 14,000-member National Association of Manufacturers has joined the chorus decrying blatant digital discrimination around the world. As manufacturers incorporate ever more technology into products and processes, they will be confronted by various other restrictions that once affected mainly Silicon Valley. For instance, countries that lack liability safe harbors for websites hosting user reviews may hamper their ability to gain trust and credibility among customers, endangering e-commerce sales channels for U.S. exporters large and small.

The internet is also a vital facilitator of the services trade and job creation broadly. Over 60 percent of U.S. services exports can now be delivered digitally. Government restrictions, including but not limited to data controls, jeopardize our \$159 billion surplus in trade of such services and the jobs linked to them. With the services sector responsible for at least 70 percent of employment in all but one state, livelihoods across the nation are at risk.

The proliferation of obstacles to digital trade around the world reflects an absence of shared rules of the road. Countries like China that enact protectionist policies and internet censorship face few consequences for locking out American internet and cloud services, while even some more open trading partners pursue or promote rigid policy frameworks that could hobble our exporters.

In order to deal with these growing and varied challenges, we encourage you to respond with more committed U.S. leadership on digital trade than ever before.

First, because a renegotiated North American Free Trade Agreement (NAFTA) should address the wide array of issues undermining the internet's economic potential, it must set the highest possible bar. Our opening position in negotiations for NAFTA 2.0 should be a strong defense of American interests, which means that we should not begin with the Trans-Pacific Partnership agreement, which was the result of years of give-and-take between 12 countries. Beyond data flow and data localization provisions, a modernized NAFTA should, among other things, secure the clearest liability protections for websites hosting user speech and commerce, the toughest bans on discriminatory licensing terms for online services, customs thresholds and procedures that work for small online sellers, and a copyright regime that is consistent with the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

Second, as you plan further negotiations, we ask that you also prioritize establishing disciplines on digital trade in all future trade agreements. Data and online services can cross dozens of borders in the time it takes to read this sentence. We cannot safeguard such global phenomena, provide legal certainty across enough jurisdictions, or maintain broad influence, if digital trade is not addressed in every forum available. The wider the consensus we build around disciplines on openness in digital trade, the more we will benefit from our competitive advantage.

Additionally, several relevant federal agencies are overdue for an upgrade. There is not yet a whole-of-government strategy to counter the protectionist drift in digital trade, no standalone report on progress towards the goal of addressing the ensuing barriers, and few management roles with clear mandates to achieve real results in this area. A larger corps of technology-oriented leaders across U.S. departments and agencies, especially the Office of the United States Trade Representative and the Department of Commerce, would better suit this topic's broad impact.

When it comes to digital trade, America already *is* first, but we can ill afford to play only defense as foreign protectionism gains momentum. Here, you have a chance to score a victory both sides of the aisle would applaud. More importantly, a forward-leaning stance would preserve and expand opportunities for exporters in every sector. We look forward to working with you to promote and protect American digital trade.

Sincerely,



John Thune
United States Senator



Ron Wyden
United States Senator

Cc: Ambassador Robert Lighthizer
United States Trade Representative

Cc: Wilbur L. Ross, Jr.
United States Secretary of Commerce