June 12, 2017

Edward Gresser, Chairman
Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th St NW
Washington, DC 20006
Submitted electronically via www.regulations.gov

RE: Request for Comments on Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement With Canada and Mexico (82 F. R. 98, pp 23699-23700; Docket ID: No. USTR-2017-0006)

Dear Chairman Gresser,

A modernized North American Free Trade Agreement (NAFTA) that reflects the last 25 years of technological progress and innovation will benefit the American economy through open markets, increased exports, more jobs, higher wages, and greater innovation. ITI's member companies drive U.S. competitiveness, growth and job creation in virtually every sector of the economy, supporting our manufacturers, automakers, energy firms, construction firms, financial firms, healthcare providers, farmers, ranchers, and small businesses. In 2016, U.S. companies exported more than $200 billion of technology goods, including $43 billion to Mexico and $24 billion to Canada (our two largest export markets). In 2015, U.S. firms exported almost $400 billion of services potentially provided over information and communications technology networks.

We look forward to working with the Administration to open markets, create jobs, grow our economy, and realize the many other economic benefits of "digital trade." In working to modernize the NAFTA, we encourage the Administration to support U.S. companies and workers by:

- Promoting a free and open Internet;
- Ensuring that data can move freely across borders;
- Prohibiting requirements on companies to localize data or production, or to turn over technology, source code, algorithms, or encryption keys;
- Seeking industry-led, globally "interoperable" approaches to privacy and cybersecurity;
- Ensuring that regulation of online services and applications targets genuine regulatory objectives, and that governments do not make Internet intermediaries, platforms, and cloud providers liable for activity by third parties that they do not control;
- Eliminating restrictions, tariffs, taxes, and fees on all technology products and committing Mexico to join the WTO information Technology Agreement (ITA);

- Eliminating burdensome customs regulations that technology products face at the border;
- Prohibiting discrimination against "new services" – i.e., services not yet conceived;
- Ensuring the use of industry-led international standards in technical regulations; and
- Promoting balanced copyright rules and strong protections for patents and trade secrets.

Our submission below elaborates on the above points and other important issues in response to USTR's request for comments.

We look forward to engaging with Ambassador Lighthizer and the USTR staff throughout the NAFTA modernization process. Thank you for taking our comments into account.

Best regards,

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Information Technology Industry Council (ITI)
Public Comments on the NAFTA Modernization
June 12, 2017

Introduction

ITI is the global voice of the tech sector. We advocate for public policies that advance innovation, open markets, and enable the transformational economic, societal, and commercial opportunities that our companies are creating. Our members represent the entire spectrum of technology: from Internet companies, to hardware and networking equipment manufacturers, to software developers. ITI's diverse membership and expert staff provide a broad perspective and intelligent insight in confronting the implications and opportunities of policy activities around the world. A full list of our members is attached to this submission.

General Negotiating Objectives

ITI appreciates the opportunity to provide comments on this important undertaking, and we welcome the opportunity to support efforts to grow the U.S. economy through a modernized North American Free Trade Agreement (NAFTA). ITI was an active participant in consultations that resulted in the 2015 Trade Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA). This law includes negotiating objectives specific to digital trade that we believe should guide the Administration during NAFTA modernization negotiations.

We share the Administration's goals of opening markets and increasing U.S. manufacturing, agricultural and services exports; creating jobs and raising wages in the United States; and improving the U.S. climate for investment and innovation. We encourage all three parties to preserve and modernize the NAFTA so that it continues to serve as a platform for leveraging technology to increase U.S. economic growth and job creation. Modernization of the NAFTA is a unique opportunity to achieve the highest possible standards in important trade policy areas, such as digital trade, which will benefit American workers and companies, spur innovation, and drive growth.

The United States' economy is fundamentally linked with those of Canada and Mexico. $1 million in goods crosses the U.S.-Mexico border every minute, and $1.5 million per minute moves back and forth with Canada. NAFTA is an integral part of U.S. economic success because of the longstanding trilateral trade relationship and the number of industries, companies, and people that depend so heavily on the trade relationship that the United States has with Canada and Mexico. It is, therefore, in the interest of the U.S. economy that the NAFTA provisions that have led to this success be preserved and strengthened and that new or updated provisions not only do not disadvantage the ability of U.S. companies to do business at home and within NAFTA countries, but enable and accelerate U.S. economic success.

All three parties have shown they can agree on 21st century provisions through the participation in the Trans-Pacific Partnership (TPP) Agreement negotiations. We agree with the Administration that elements of the TPP Agreement can serve as building blocks for an expeditious NAFTA modernization and note the recent comments in that regard by senior USTR[1] and Commerce[2] officials. We welcome indications from the Administration that it will build on these positive aspects of the TPP, in accordance with the TPA objectives, in the NAFTA modernization negotiations.

Economic Costs and Benefits to U.S. Producers of Tariff and Non-Tariff Barrier Reduction

The production of technology goods and services (like most modern goods and services) is the result of complex, global supply chains that companies develop in multiple locations around the world to tap innovation, maximize cost efficiencies, and respond to supply and demand. In the process of creating a finished product, components of that product are potentially imported and exported multiple times across multiple countries before a final product is created – 70% of global trade is trade in intermediate goods and services and in capital goods.

The intertwining of hardware, software, and services that our companies enable supports U.S. efforts to integrate into these "global value chains." Technology companies employ over 6.9 million Americans – 5% of private sector employment – and account for 7.5% of U.S. GDP. Technology products and services drive growth and job creation in virtually every sector of the economy, supporting our manufacturers, automakers, energy firms, construction firms, financial firms, healthcare providers, farmers and ranchers and other U.S. industries to be more competitive, at home and abroad. U.S. competitiveness, jobs in all sectors, and businesses of all sizes and types now depend on companies being able to move digital information rapidly and freely, including across borders, to support their businesses and reach customers in foreign markets.

The technology sector also makes significant contributions in the United States to innovation, education programs, skills and knowledge development, and products that improve the lives of citizens at all social and economic levels. ITI members are leaders in the provision of technology skills training to American youth, members of traditionally disadvantaged groups, rural Americans, and adults transitioning from other careers, including veterans.

In addition, the technology sector plays a key role in United States' foreign trade and in supply chains across North America and beyond. In 2016, total U.S. exports of technology goods

1 https://insidetrade.com/daily-news/lighthizer-says-renegotiated-nafta-could-go-beyond-tpp-provisions

2 https://www.bloomberg.com/news/articles/2017-05-03/ross-says-tpp-could-form-starting-point-for-u-s-on-nafta-talks

exceeded $202.1 billion. Mexico and Canada were the two biggest importers of those goods with $42.8 billion and $24.2 billion in imports, respectively, and U.S. tech exports to Mexico have increased nearly 70% since 2006. The U.S. is a major supplier of semiconductors across North America, while Mexico and Canada are leading producers of other important inputs, such as computer and audio-visual equipment, for manufacturing here in the United States.

The United States is also a world leader in services trade, and[3] U.S. services are important components of supply chains across every industry. In 2015, U.S. exports of potentially ICT-enabled services (services that are provided over ICT networks) were $398.7 billion, including $27.1 billion to Canada and $8.7 billion to Mexico. The United States ran a surplus of over $161.5 billion in potentially ICT-enabled services trade in 2015[4].

We recently submitted public comments to inform the Department of Commerce's report on trade deficits and emphasized the importance of addressing barriers to trade. To that end, a modernized NAFTA should both address existing barriers to trade in Canada and Mexico, but also include binding, enforceable rules that prevent governments from imposing new barriers to trade, which could have positive impacts on our trade balances with both countries. A barrier-free North American trading environment that is rules-based, open, transparent, and built for an economy that is increasingly digital plays to the strengths and export competitiveness of U.S. companies in all sectors. We make our recommendations below with increasing U.S. exports and trade overall in North America in mind.

ITI urges all three governments to seek a comprehensive, 21st century outcomes, particularly regarding digital trade, that will modernize the agreement commensurate with the technological progress and innovation of the more than 20 years since NAFTA's entry into force. Such outcomes will position the three economies to continue to benefit from integration, cement their fundamentally important and intertwined political and economic relationships, and increase export opportunities for U.S. companies in all sectors and of all sizes. We are encouraged by the apparent readiness of industries in all three countries to embrace provisions that would support this outcome.

3 The Bureau of Economic Analysis (BEA) defines ICT services as telecommunications services, computers service, and charges for the use of intellectual property associated with computer software. "Potentially ICT-enabled services" include these ICT services as well as other services that are often delivered remotely over ICT networks, such as insurance, financial services, and selected other services. For details, see Grimm, *Trends in U.S. Trade in Information and Communications Technology (ICT) Services and in ICT-Enabled Services,* May 2016. https://www.bea.gov/scb/pdf/2016/05%20May/0516_trends_%20in_us_trade_in_ict_serivces2.pdf.

4 https://www.bea.gov/scb/pdf/2016/12%20December/1216_international_services.pdf

Digital Trade

As the 2015 TPA legislation highlighted, digital trade, which is trade where the Internet and Internet-based technologies play a particularly significant role in ordering, producing, or delivering products and services[5], is fundamental to the U.S. economy. All companies now rely on digital technologies and the data flows to reach markets overseas and run their global business operations. As a result, a key component of promoting economic growth and job creation today is to address barriers and facilitate digital trade. Our understanding is that both Mexico and Canada and their respective industries share our desire to use NAFTA to grow and facilitate digital trade.

Accordingly, ITI recommends negotiating a digital trade chapter in a modernized NAFTA that builds on the TPP e-commerce chapter and includes provisions that:

- Promote a free and open Internet in order to support the digital needs of U.S. manufacturers and service providers and enabling innovative new U.S. businesses;
- Require parties to allow data to move freely across borders, enabling U.S. firms in all sectors to transfer and access data as it best makes sense for their businesses;
- Prohibit tariffs or taxes, and other discriminatory barriers on cross-border data flows and digital products, providing market access for U.S. products and services sold electronically;
- Prohibit requirements to localize data, production, or physical infrastructure, allowing US companies to make decisions about investment based on what is most efficient for their companies;
- Prohibit requirements that companies transfer technology, source code, algorithms, or encryption keys;
- Require the parties to adopt or maintain legal frameworks that promote protections for consumers and personal information, and to implement mechanisms to ensure compatibility of these frameworks, including, but not limited to, the Asia-Pacific Economic Cooperation (APEC) forum's Cross Border Privacy Rules (CBPRs) system;
- Require the parties to cooperate on trade-related cybersecurity issues, including to ensure that measures they take to enhance cybersecurity rely on risk management-based approaches that avoid prescribed standards for individual technologies and incorporate meaningful consultation with the private sector to encourage innovative, flexible, and cost-effective solutions;
- Prohibit the extension of telecommunications and broadcasting regulatory and licensing requirements to online services and applications and ensuring that any regulation of online services and applications is no more trade restrictive than necessary to achieve a legitimate regulatory objective; and

5 https://www.usitc.gov/publications/332/pub4485.pdf

- Ensure the adoption of "intermediary liability" protections, so that governments cannot make innovative U.S. online services liable for activity by third parties that they do not control.

Expected Impact: A core objective for a modernized NAFTA should be to ensure that as many people and companies as possible can participate in and benefit from trade in North America. To that end, the above recommendations on digital trade would give individuals and SMEs more opportunities to trade their products and services and grow their businesses via the Internet. We anticipate the digital trade provisions of a modernized NAFTA will make it possible for more companies of all sizes to participate in North American trade; create virtuous cycles and network effects of economic activity, innovation, and job creation; and therefore increase U.S. exports and improve U.S. trade balances with Canada and Mexico. In addition, all of the recommendations above would promote the flow of data between Canada, Mexico and the United States – and that flow of data is critical to future competitiveness of U.S. technology and technology-enabled companies.

Market Access and National Treatment

Duty-free, barrier-free trade in technology products is vital for manufacturers, farmers, ranchers, services providers, and small businesses alike. Technology inputs make U.S. companies across every industry more competitive in the United States and globally. And U.S. manufacturers and agricultural firms can produce and export more goods when both they and the U.S. services providers upon which they rely can transfer data seamlessly across borders. This is true for large and small enterprises, including the many micro-enterprises that now participate in global value chains and access global markets via global e-commerce and other Internet-based platforms. Access to lower cost, state-of-the-art technology hardware is necessary for any company of any size in any sector to compete in today's global economy.

Therefore, we recommend that the market access chapter of a modernized NAFTA include provisions that:

- Maintain or expand on the NAFTA's elimination of tariffs, border taxes and fees, or other charges to technology products and inputs in order for U.S. companies throughout the value chain to continue to benefit from the trade agreement;
- Require the parties to join the WTO Information Technology Agreement (ITA), its recent expansion, and any future expansion of the agreement. Currently, Mexico is neither a signatory to the ITA nor ITA expansion. Under the TPP Agreement, Mexico did not fully commit to joining the ITA, and the ITA expansion negotiations concluded after the TPP negotiations concluded. A modernized NAFTA would be the best opportunity to bring Mexico fully on board as an ITA participant;

- Mexican participation in ITA and ITA expansion would enable U.S. companies to export more products into Mexico at lower cost, as they would then not have to generate certificates of origin to obtain the NAFTA preferential rate of duty.

- Clarify that the provisions of the market access chapter fully apply to imports and exports of remanufactured goods and used technology hardware. There was consensus in the TPP on this issue, which the TPP market access chapter reflected. We would strongly advocate including the TPP clarification on remanufactured goods and used equipment in the market access chapter of a modernized NAFTA;
- Maintain the existing NAFTA rules of origin. ITI advocates for maintaining the integrated production platforms in North America that have strengthened the competitiveness of U.S. companies in global markets. The rules of origin within NAFTA are already the most stringent of any free trade agreement. ITI supports changes to simplify the processes for all parties for confirming origin; however, industry supply chains depend on the current NAFTA rules of origin, and any changes would potentially disrupt existing production and hurt the U.S. economy. Further, ITI urges the Administration to avoid country-specific content requirements in the NAFTA government procurement chapter; and
- Prohibit tariffs, border taxes, or fees on digital products, ensuring market access for U.S. companies providing goods and services sold or delivered electronically.

Expected Impact: The further elimination of tariffs in Canada and Mexico on technology products would help increase U.S. exports to both markets and improve the U.S trade balance with both countries. The certainty that the national treatment provisions apply to remanufactured goods and used equipment would bolster U.S. remanufacturing, which would enable more U.S. exports of remanufactured equipment to Canada and Mexico. This industry is highly labor-intensive according to the U.S. International Trade Commission[6] and would likely create more jobs with this certainty.

Customs and Trade Facilitation Issues

ITI strongly advocates that a modernized NAFTA eliminate burdensome customs regulations and other red tape that technology products face at the border in order to lower the time, cost, and uncertainty of moving goods through and across all three NAFTA markets.

In this regard, we recommend that the customs and trade facilitation chapter in a modernized NAFTA use the TPP Customs and Trade Facilitation Chapter as a building block and include provisions that:

- Reflect or build on the WTO Trade Facilitation Agreement (TFA) Category A provisions, such as those concerning simplifying and expediting customs clearance for all three

[6] https://www.usitc.gov/publications/332/pub4356.pdf

markets, including for low value shipments; aligning customs regulations and procedures across all three markets; and expanding participation in and access to trusted trader programs;

- Commit Canada and Mexico to raise their *de minimis* levels for duty-free entry of low value shipments to at least $800, in order to match or exceed the level set in U.S. law.[7] We view this issue as significant opportunity to increase e-commerce trade into Canada and Mexico;
    - For example, Canada's *de minimis* threshold remains at CAD 20 (approximately USD $15), the lowest of any industrialized country and among the lowest in the entire world.
    - This low threshold, which has not been adjusted since the 1980s, creates an unnecessary barrier to trade through increased transaction costs for Canadian businesses, and restricts consumer choice and competition.
- Streamline and simplify customs procedures for cross-border shipments; and
    - Mexico's Customs Agency seeks to modify the simplified imports model via couriers (amendments to the current Foreign Trade Rule 3.7.3. and proposed new Rule 3.7.35) by increasing the value-added tax and duty for express shipments, in addition to several new requirements, such as reporting the HS code of every product contained in an express shipment and monthly reports listing tax IDs for customers and shipment invoices. This builds on an April 2015 change to the Customs Law Rules that would require documented support of the valuation of any imported merchandise. As written, the article makes imports cumbersome and sometimes impossible, as it asks for documents that are non-existent, confidential, or issued after the import. Importers and customs expeditors continue to express concern with this requirement, not only because of the burden it imposes on companies, but also because of its potential to become a barrier to trade.
- Ensure that existing infrastructure and protocols exist to facilitate communications between regulatory authorities and customs authorities.
    - Reliance on a single-window based program would help reduce confusion and border delays related to regulatory product scope, which is often not fully aligned with tariff codes.
    - The TPP Agreement included a commitment to endeavor to provide a single window for completing import and export procedures (see TPP Agreement Article 5.6.2).
    - Given the close cooperation of the United States, Canada, and Mexico on customs and trade facilitation issues, we would advocate that a modernized NAFTA go further than the single window commitments in both the TFA and the TPP.

[7] https://www.cbp.gov/newsroom/national-media-release/de-minimis-value-increases-800

Expected Impact: Streamlined and efficient customs and trade facilitation measures in North American would produce substantial increases in U.S. exports to both Canada and Mexico, particularly if Canada and Mexico were to increase their *de minimis* levels to $800. The highly integrated North American market relies on efficient supply chains, logistics, and border crossings. High costs of border crossings can increase the cost of final goods by 15%, and every additional day at the border can reduce trade by 1%. For U.S. exports to Canada and Mexico to grow, a modernized NAFTA must reduce the time, cost, and uncertainty of importing and exporting goods in North America.

Technical Barriers to Trade

We advocate that a modernized NAFTA build on the TBT Chapter of the TPP Agreement and include the Information and Communications Technology (ICT) Annex.

In this regard, we recommend that the TBT Chapter in a modernized NAFTA include provisions that:

- Recognize the benefits of reliance on voluntary, industry-led international standards;
- Recognize that international standards are developed by a diverse set of standards setting bodies, including industry-led fora and consortia, that engage in standardization activity widely recognized and adopted by the marketplace across national and regional borders;
    - Recognition of standardization activity should depend on those who establish and use standards, that is market participants, and not governments or multilateral organizations. If the bodies producing such standards adopt procedures consistent with WTO Technical Barriers to Trade (TBT) Committee Decision including, among other things, transparency, openness, impartiality and consensus, they are by definition "recognized bodies," as that term is used in annex B, paragraph 2, of the WTO TBT Agreement, and the documents they produce are by definition international standards.
- Require the parties to consider alignment with each other's regulations that are based on global best practices or norms, prior to amending existing requirements or promulgating new requirements;
- Require the parties to use existing international standards as the basis for their technical regulations, when international standards exist and are appropriate to meet regulatory objectives;
- Require the parties to support existing international agreements concerning regulatory or conformity assessment issues;
- Recognize international certification and test reports, when applicable, and avoidance of in-country testing and certification requirements;

- This includes extending Mexico's agreement on the equivalence of safety standards from Mexico, the United States, and Canada, and to accept product safety certificates based on the North American product safety standard for IT equipment, making reference to the latest Mexican Safety Standards (some of them still under review).
- Currently, there is an agreement in place by which Mexico agrees to accept products tested in the U.S. to meet a North American safety standard. The latest draft of these safety regulations (NOM019) does not provide reference to this agreement. US manufacturers would like to ensure that they do not have to retest and recertify their products to meet a unique set of product safety requirements in Mexico. NAFTA 2.0 should ensure a smooth transition to aligned North American standards and mutual acceptance of testing and certification for product safety and other technical areas.
- In addition, the parties should fully implement the existing U.S. – Mexico Telecom Mutual Recognition Agreement (MRA). The MRA should be updated to reference the latest Mexican telecom standards issued since 2015. Both parties should strongly encourage laboratories from both countries to participate in the MRA.

* Require parties to accept the least trade restrictive conformity assessment process, based on a risk proportionate approach to regulation;
  - For example, Mexico must address rules including its Law of Standards and Metrology, to support streamlined conformity assessment models including Supplier's Declaration of Conformity (SDoC). In the ICT Annex to the TBT Chapter of the TPP Agreement, Mexico received an exception from adhering to a general commitment to accept SDoC for EMC because of this law.
  - Mexico is regulating the energy efficiency of products through a variety of often duplicative and conflicting regulations, including the secondary regulation of the Law on Sustainable Energy and the new Law on Energy Transition, and official standards for specific products (such as NOM-032 for printers and draft NOM 029 for external power supplies), as well as country-specific tests and labels that impose additional costs and burdens on manufacturers.
  - Diverging specifications and the resulting fragmentation of requirements place a large burden on the tech sector's ability to commercialize electronic products. Concerns include unique and excessive test requirements as well as lack of mutual recognition agreements for laboratory test results.
  - A separate Mexican Metrology law requires annual re-testing, which is not done anywhere else in the world. Globally, industry tests and registers products once; only re-testing when a product is modified. This is unnecessarily burdensome for manufacturers and should be addressed at the federal level via adoption of regionally and globally aligned requirements.

- Require acceptance of electronic labeling (e-labeling), by which technology products can electronically provide compliance markings and statements attesting to their compliance to standards, technical specifications, codes and regulations and;
    - This might be through a product's on-screen display or by other electronic methods such as application of a QR code that provides a link to the most up-to-date labeling information.
- Reaffirm that standards organizations that are setting technical regulations/national standards should have policies and practices that adhere to the Code of Conduct established in the WTO TBT Agreement, Annex 3.

Expected Impact: A TBT Chapter that includes the above provisions would promote further regulatory alignment in North America, reduce market segmentation, and create greater opportunities to export U.S. technology products to Canada and Mexico, which would benefit U.S. trade balances with both countries. It would also promote wider acceptance of international standards that are based on U.S. voluntary industry standards.

Trade in Services

The NAFTA entered into force in 1994, just as the United States, Mexico and Canada were completing the first ever multilateral trade negotiations on services in the Uruguay Round. It embraced the rules that were achieved in the Round, but NAFTA services are done a negative list basis, so the coverage is more comprehensive than the market access obtained in the GATS. Services now drive U.S. exports, and a modernized NAFTA should recognize and facilitate that reality. In 2016, U.S. services exports to Mexico were $31.1 billion, with a $7.6 billion U.S. export surplus, and $29.6 billion to Canada, with a $25 billion U.S. export surplus. Services exports to Mexico and Canada since NAFTA entered into force 23 years ago have grown by 216% and 225%, respectively. ITI advocates that a modernized NAFTA build on this strong foundation by 1) using the TPP Agreement services chapter as a building block; 2) updating the negative lists of non-conforming measures for all three parties to reflect the services market access that was negotiated in the TPP Agreement; and 3) eliminating any remaining non-conforming measures to the maximum extent possible.

In addition, NAFTA contains a very broad cultural carve-out for Canada that enables it to restrict impose the provision of U.S. audiovisual, entertainment, and other similar content in Canada.

ITI recommend that the services chapter in a modernized NAFTA include provisions that:

- Prevent the parties from discriminating against new services – in other words, services yet to be conceived;
- Prohibit the parties to require companies to establish a local presence as a condition for market access;

- Reduce burdensome licensing and registration requirements and recognizing licensing and registration regimes in the other parties;
- Prohibit barriers on cross-border payments and financial transactions;
- Ensure full market access across all three parties for computer and computer-related services; and
- Ensure that companies can distribute audiovisual and media content digitally, without government-mandated local content requirements, national treatment restrictions, and market access restrictions.

Expected Impact: A modernized NAFTA that reflects the above perspectives and those on digital trade would enhance U.S. services export competitiveness and increase exports of both ICT services and ICT-enabled services. We anticipate that the United States would export even more services to Canada and Mexico, thereby improving the U.S. trade balances with both countries.

Intellectual Property Rights (IPR)

Strong and balanced enforcement and protection of IPR is critical to the U.S. economy and companies excelling in innovation, research, and development. Mexico currently lacks some important elements of its copyright system – including no liability 'safe harbors' for online service providers and a narrow, fixed set of copyright exceptions inadequate for an economy that is increasingly digital.

We recommend that the IPR chapter of a modernized NAFTA incorporate many elements of the TPP Agreement's IPR chapter, including provisions that:

- Promote balanced copyright rules that include both copyright protections and limitations and exceptions that underpin digital technologies and ongoing U.S. innovation;
- Require parties to adopt strong copyright safe harbors from liability for online service providers, where they have systems in place to address online infringement;
- Establish civil remedies and criminal penalties for trade secret theft and ensuring non-discriminatory patent eligibility for innovations across areas of technology; and
- Prohibit parties from requiring the registration of licensing agreements, granting of compulsory licenses, and invalidating patents for lack of exploitation of patented inventions, as such antiquated provisions fail to recognize the commercial realities of the global market place and have a chilling effect on commerce.

Expected Impact: U.S. technology companies and companies that rely on digital technologies are significant beneficiaries of strong and balanced protection and enforcement of intellectual property rights. A modernized NAFTA that reflects the above recommendations would strengthen U.S. competitiveness and export performance. An overly strict copyright regime of that does not include limitations and exceptions, such as permitting 'fair use' of copyrighted material, would impair the U.S. economy and U.S. innovation leadership. In the United States, industries that benefit from fair use and other provisions generate $4.5 trillion in annual revenue and employ 1 in 8 U.S. workers. However, foreign trading partners often lack such limitations and exceptions, which can limit the export strength and competitiveness of these U.S. companies.

Government Procurement

Governments are some of the largest buyers of technology products. A modernized NAFTA should maintain and expand access to government procurement markets in Canada and Mexico, so that U.S. tech companies can increase their exports to government buyers. Market access opportunities for U.S. companies are growing as governments seek to modernize, become more efficient and productive, and provide more online services to citizens. This creates significant opportunities for U.S. companies to compete and sell their technology products and services to governments.

To this end, we recommend that the government procurement chapter in a modernized NAFTA include provisions that:

- Continue Article 1003, National Treatment and Non-Discrimination, of NAFTA, which assures that goods originating from NAFTA parties are treated no less favorably than the most favorable treatment from goods originating from other NAFTA parties. The technology industry is global in nature with global supply chains, sources of production, and consumers. Technology companies have spent decades establishing secure supply chains to meet requirements set in U.S. law and the Government Procurement chapter of NAFTA. Any change to this chapter in the renegotiations should take into consideration the reliance that industries have put into the existing agreement's requirements and the potential harm changes would have on the ability of companies to export to Canada and Mexico; and
- Commit the parties to explore ways to facilitate procurement of innovative technology products and services, such as high-performance servers and cloud computing services, which did not exist when NAFTA was negotiated.

Expected Impact: We anticipate that any changes to the favorable treatment of goods from signatory countries under NAFTA could limit the ability of the both the U.S. government to procure goods needed to perform a variety of functions, as well as U.S. companies to provide products and services to the Mexican and Canadian governments. A forward-looking Government Procurement chapter would help make U.S. companies and exporters more competitive and increase their ability to sell products and services to all three governments.