Testimony of the Information Technology Industry Council (ITI)
To the U.S. International Trade Commission's Investigation of the
United States-Mexico-Canada Agreement
November 16, 2018

Intro
Chairman Johansen, and commissioners: thank you for the opportunity to testify today. My name is Ashley Friedman, and I am Senior Director of Global Policy at ITI. I appreciate the opportunity to provide testimony today on behalf of ITI on the impact of the U.S.-Mexico-Canada agreement (USMCA) on the U.S. economy and the information and communications technology sector.

ITI represents 70 of the leading technology companies from all corners of the technology sector, including hardware, software, digital services, semiconductor, network equipment, internet companies, and companies using technology to enable and grow their businesses.

As you know, the current NAFTA agreement was negotiated 25 years ago, before many of these technologies were as widespread as they are today. While it remains one of the most important trade agreements that the United States has, ITI has supported the administration's aims to update NAFTA to reflect the technological and economic progress of the last 25 years.

Importance of the Tech Sector on U.S. Exports, Jobs, and Competitiveness
The tech sector is the fastest growing industry in the United States, with 5.6 percent average annual growth, which is substantially faster than overall U.S. economic growth. Tech companies employ over 6.9 million Americans – five percent of private sector employment – and account for 7.5 percent of U.S. GDP. In fact, more than 75 percent of economic value created by the internet and digital technologies goes to companies in non-tech industries.

If enacted, USMCA will be the first trade agreement the United States joins that contains a digital trade chapter, creating an environment that fosters innovation and technological advancement. The relentless, fast-paced digitization of industry across all sectors requires dynamic trade policies that allow communities, businesses, and people anywhere to see the benefits of this change. A comprehensive set of digital trade rules would ensure the benefits of these technologies are more widespread, more fairly treated, and more beneficial to both communities and businesses.

Digital trade is not an issue for tech companies alone. For example, a small business in North Carolina using software developed in Toronto can offer accounting services to a client in Guadalajara, who then creates and sells children's toys to a family-run toy store in Washington without burdensome regulations or requirements that could make these services more expensive, and therefore inaccessible to these small businesses.

At the same time, commitments in USMCA's chapters on market access, technical barriers, trade in services, intellectual property, and government procurement have real impacts on the ability of businesses and consumers in all markets to access devices, utilize services, and develop their own innovations.

Potential Digital Trade Outcomes in NAFTA Modernization
At the outset of negotiations, ITI identified key objectives to ensure that a modernized NAFTA will increase exports, promote manufacturing, services, and must provide an enabling policy environment,

not only in the United States, but amongst its two largest trading partners: Canada and Mexico.

This included:

- Maintaining and expanding market access;
- 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 set appropriate limits on the liability of internet intermediaries, platforms, and cloud providers 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 World Trade Organization’s (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.

ITI supported the negotiations throughout, pushing for a trilateral agreement that built on the success of the existing NAFTA and expanded its provisions to set high standards on digital trade and other issues. We cautioned against provisions that would deteriorate the long-term business certainty that a trade agreement should provide or that would reduce market access for companies abroad, especially in government procurement contracts.

Analysis of USMCA

ITI continues to review the USMCA. Overall, we believe it sets a high standard on digital trade, and we are encouraged by language on technical barriers to trade, services, and intellectual property rights.

The USMCA reduces digital trade barriers by facilitating cross-border data flows that allow companies of all sizes and across all industries to access digital services at affordable prices, adding new value to customers by offering or creating new services using data, and leveraging data to create new products or services that can transform ideas into businesses.

The agreement protects against costly tariffs and taxes on technology products and services that enable growth across North America. At the same time, it prevents companies from having to open a local office or store data locally, which increases costs and regulatory burdens, especially for small businesses. The USMCA also includes crucial protections for data-driven business, preventing companies from being required to reveal algorithms, source code, or encryption keys as a condition for doing business.

It also ensures that value added services, like online media or communications offerings, won’t be subject to legacy telecommunications regulations that are ill-fitting or technically infeasible. The USMCA limits intermediaries’ liability for content that is generated on their platforms, extending the benefits of the U.S. Communications Decency Act (CDA) Section 230 to Mexico and Canada, with important carve-outs for law enforcement and similar purposes. These provisions will enable businesses across North

America to leverage interactive computer services to collaborate, communicate, and reach new customers.

The text also calls out key principles for any potential privacy legislation, which includes limitation on data collection, data quality, purpose specification, use limitation, security safeguards, transparency, individual participation, accountability, and a risk-based approach to restrictions on cross-border data flows. It notes the National Institute of Standards and Technology (NIST) Cybersecurity Framework as a model for cybersecurity governance.

The USMCA also strengthens consistency in conformity assessment, certification procedures, and use of international standards for tech devices and other equipment. This reduces delays at the border and duplicative or costly local testing, both of which make products less competitive and digital technologies less accessible.

While the USMCA digital trade chapter sets a high standard for global treatment of digital technologies, it is not the only part of the agreement that is important to tech. We continue to review provisions related to government procurement, customs and trade facilitation, and intellectual property rights.

For example, we are disappointed that Canada was excluded from the USMCA government procurement chapter, and we are working to assess the effect that this will have on our companies, as different rules will apply for each market, whether under the WTO Government Procurement Agreement (GPA) or the USMCA. Even the small differences in commitments between WTO GPA and USMCA could impact U.S. tech companies' abilities to access the Canadian public sector market.

We are also reviewing the de minimis requirements, which slightly increase the tariff levels for goods coming into the country via express shipment, but still require high taxes and fail to account for the many small packages that use traditional post. Higher de minimis levels create more value for an economy, and they support businesses of all sizes to engage in global trade.

Lastly, we are concerned that the lack of balanced copyright language in the USMCA, a deviation from the compromise formed in Trans-Pacific Partnership, challenges the fair use doctrine and balanced treatment found in U.S. law. We believe this was a missed opportunity to extend the protections found in U.S. law to companies doing business in Canada and Mexico that rely on them for growth. As the Office of the U.S. Trade Representative finalizes the legal scrub and the Congress reviews the text of the USMCA, we hope the absence of this language does not change the interpretation of how these protections are extended to the companies and users that rely on them.

Conclusion

The bottom line is that the entire U.S. economy relies on digital technologies and the seamless flow of data across borders, and USMCA's digital trade commitments will nurture that growth and benefit companies of all sizes and industries.

We look forward to working with the administration and Congress to achieve similarly positive results for the tech industry in the other critical areas outlined in this testimony and to ensure that the USMCA sets a high standard for market access and innovation, not only in North America, but around the world.

I thank the chairman and commissioners for allowing ITI to testify today, and for their interest in and examination of this important trade relationship.