

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

January 13, 2017

The Honorable Irving A. Williamson  
Chairman  
U.S. International Trade Commission  
500 E St, S.W.  
Washington, DC 20436

Dear Chairman Williamson,

I am writing to request that the U.S. International Trade Commission (“the Commission”) conduct three investigations under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) regarding the value of new digital technologies for U.S. firms and the impact of barriers to digital trade on U.S. firms’ competitiveness in international markets. These investigations will provide an update and extension of the analysis presented in the Commission’s two recent reports on digital trade, *Digital Trade in the U.S. and Global Economies, Part 1* (July 2013) and *Part 2* (August 2014). Building on this prior work, the requested investigations would address gaps in our understanding of the current digital trade landscape, identify the major trade barriers that U.S. firms in digitally intensive industries face in key foreign markets, and provide additional insight into the global competitiveness of U.S. digitally intensive industries.

The importance of the digital economy to United States, in terms of innovation, job growth, and our nation’s long-term competitiveness motivated this Administration to make tackling digital trade barriers a key priority. We have done this both by proposing comprehensive, high-standard provisions to protect the Internet-enabled economy in our trade agreements, as well as in broader policy engagement with our trading partners, consistent with priorities set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. Because countries are increasingly adopting policies that disrupt global data networks and distort trade flows, it is critical that the U.S. government monitor and address regulatory and other policy barriers to digital trade on an ongoing basis.

These investigations will assist the Office of the U.S. Trade Representative (USTR) in its ongoing examination of the ways in which companies and workers in every sector of the U.S. economy use the Internet and related data networks to deliver innovative products and services abroad. These investigations will also assist in USTR’s assessment of the impact of barriers to trade in important digital products and services, such as cloud data and software services, data analytics, new Internet communication services, and digital services supporting various production processes, as well as to trade in manufactured goods connected by data networks and supported by digitally enabled services.

I therefore request that the Commission conduct three investigations and provide accompanying reports summarizing their analysis and assessment, as described below.

*Report 1:* Based on a review of literature and other available information, I request that the Commission provide a report that, to the extent practicable:

- Describes the broad landscape and recent developments of important business-to-business (B2B) digital technologies used primarily by firms (such as cloud-based data processing, storage, software applications, as well as communications services and digital services related to manufacturing and the Internet of Things);
- Provides an overview of developments in the provision of business-to-consumer (B2C) digital products and services used primarily by consumers and individuals;
- Provides information on the market for digital products and services, both in the United States and in key foreign markets, such as the EU, China, Russia, Brazil, India, and Indonesia, with a particular focus on products and services that can scale globally for the purpose of assessing U.S. firms' global competitiveness;
- Provides up-to-date information on the rate of adoption of digital technologies, domestically and abroad, and documents the importance of data-flows (domestic and cross-border) to a wide range of sectors across the economy; and
- Describes regulatory and policy measures currently in force in important markets abroad that may significantly impede digital trade. Such measures affecting digital trade might include: FDI and other market access restrictions; cross-border data flow limitations (data localization requirements, Internet blocking, censorship, cultural regulations of digital content, and data privacy protections); cybersecurity regulations and limitations on the choice of encryption technologies; ISP regulations, including limitations on ISPs intended to protect IPR; and rules determining liability for third-party content.

The report should be delivered no later than August 29<sup>th</sup>, 2017.

*Report 2:* Based on available information, including a survey of U.S. firms in selected industries particularly involved in digital trade, I request that the Commission provide a second report that:

- Provides qualitative, and to the extent possible, quantitative analysis of measures in key foreign markets (identified in the first report) that affect the ability of U.S. firms to develop and/or supply B2B digital products and services abroad; and
- Assesses, using case studies or other qualitative and quantitative methods, the impact of these measures on the competitiveness of U.S. firms engaged in the sale of digital products and services, as well as on international trade and investment flows associated with digital products and services related to significant B2B technologies.

The report should be delivered no later than October 28<sup>th</sup>, 2018.

*Report 3:* Based on available information, including a survey of U.S. firms in selected industries particularly involved in digital trade, I request that the Commission provide a third report that:

- Provides qualitative, and to the extent possible, quantitative analysis of measures in key foreign markets (identified in the first report) that affect the ability of U.S. firms to develop and/or supply B2C digital products and services abroad; and
- Assesses, using case studies or other qualitative and quantitative methods, the impact of these measures on the competitiveness of U.S. firms engaged in the sale of digital products and services, as well as on international trade and investment flows associated with digital products and services related to significant B2C technologies.

The report should be delivered no later than March 29<sup>th</sup>, 2019.

As we intend to make the Commission's first report available to the public, it should not include confidential business or national security classified information. All confidential business information collected in the course of these investigations should be aggregated such that the individual operations of any one firm would not be revealed.

In accordance with USTR policy on implementing Executive Order 13526, as amended, I direct you to mark or identify as "Confidential," for a period of ten years, such portions of the Commission's second and third reports and related working papers that contain the Commission's analysis of the impact of barriers to digital trade on (1) U.S. imports and exports of digital products and services and (2) the competitiveness of U.S. companies. Consistent with the Executive Order, this information is being classified on the basis that it concerns economic matters relating to national security that impact USTR negotiation and enforcement priorities. USTR intends to treat the Commission's second and third reports as interagency memoranda containing pre-decisional advice subject to the deliberative process privilege.

I request that you submit an outline of the second and third reports as soon as possible to enable USTR officials to provide you with further guidance on their classification, including the extent to which portions of the reports will require classification and for how long. Based on this outline, an appropriate USTR official will provide you with written instructions.

I appreciate the Commission's assistance and cooperation in this matter.

Sincerely,



Ambassador Michael B. G. Froman