



December 4, 2019

To: Members of the Subcommittee on Trade of the House Committee on Ways and Means

As a non-profit research and advocacy organization focused on promoting pro-innovation policies that support the growth of tech startups, we appreciate your interest in twenty-first century trade agreements and the inclusion of digital trade provisions that are integral to advancing a modern global economy. Beyond core concerns like access to capital and qualified talent, startups need certainty in digital trade in order to compete in the increasingly global tech ecosystem. Engine is pleased to see the inclusion of forward-thinking, startup friendly digital trade rules in the U.S.-Japan trade agreement.

When NAFTA was signed in 1992, the Internet was not as pervasive as it is today, with many of today's most popular tech platforms not yet in existence or in their nascent stages.¹ Fast forward to the current decade—in 2016, the Internet had an estimated economic impact of \$4.2 trillion and the digital economy amounted to almost 7 percent of U.S. GDP as of 2017.² While the growth of digital trade has provided innumerable benefits to the global economy, the advent of a new trading platform has also brought with it the usual difficulties of a country-by-country patchwork of burdensome laws, trade barriers, and confusion for companies seeking to expand their reach across the globe. Cementing common-sense digital provisions with a basis in U.S. law would provide certainty to American startups seeking to expand their ventures globally without the fear of onerous, costly lawsuits and with legal, unambiguous certainty.

Currently, most multilateral trade agreements and negotiations lack expansive digital or e-commerce provisions. While similar, solid digital provisions are included in the USMCA, currently in the final stretch of negotiations, the inclusion of the digital provision in the U.S.-Japan agreement represents a solid first step in making these provisions a mainstay in any future negotiations. Enshrining U.S. digital law in trade agreements is crucial on a number of fronts. Many other nations with which the United States and its companies engage in trade, including those with more protectionist belief systems, do not share similar philosophies regarding elements like privacy, intellectual property, and cybersecurity. Moreover, an increasing number

¹ Anupam Chander, Council on Foreign Relations, *The Coming North American Digital Trade Zone* (Oct 9, 2018), available at: <https://www.cfr.org/blog/coming-north-american-digital-trade-zone>.

² Congressional Research Service: *Digital Trade and U.S. Trade Policy* (May 21, 2019), available at: <https://fas.org/sgp/crs/misc/R44565.pdf>.

of U.S. trading partners are actively taking steps in their countries to target U.S. companies, limiting the free flow of data and implementing unfair taxation regimes.

It is clear that the growth of digital trade has brought with it the erection of new trade barriers, which must be surmounted when considering any trade agreement. In her testimony to the Joint Economic Committee in 2018, Rachel Fefer from the Congressional Research Service highlighted a number of barriers appearing in the field, including localization requirements, tariffs on digital goods and services, limits on cross-border data flow, online content filtering, and cybersecurity concerns.³ The U.S.-Japan agreement is strong on many of these fronts. Included in its robust digital chapter are provisions to ensure cross-border data transfers, prohibit discriminatory data localization measures, give access to government data, prevent the disclosure of source code, encourage government collaboration regarding cybersecurity, and provide intermediary liability protections regarding third party content on Internet platforms.⁴ Those provisions mirror language included in USMCA and should become the guidepost for all future trade agreements. They provide necessary certainty for startups seeking to expand their reach across the globe without restricting Congress' ability to update current laws

The U.S. must remain vigilant to combat efforts by other nations to erect roadblocks through trade barriers that could inhibit the success of startups. Efforts like discriminatory data localization laws which mandate data be stored, managed, or processed locally are often insurmountable for companies with thin margins that are just taking off. Placing liability on platforms for user-generated content could box startups out of international competition over the fear of costly litigation, and the weakening of encryption protocols to require backdoors into content also threatens the security of startup platforms. Any one, or combination of these efforts could undermine the ability of startups to continue to push their reach beyond the United States. Instead, reducing global trade barriers permits American startups to better access other markets with greater ease, minimizing regulatory burdens that serve as barriers for small businesses and startups to compete internationally.⁵

Startups are responsible for much of the innovation and economic growth in the United States. As digital trade has expanded, so too has the reach of startups into the economies of other nations. Including common-sense digital free trade provisions in the U.S.-Japan agreement, USMCA, and future trade agreements is crucial to ensuring that U.S. startups are able to continue to compete globally. Startups are able to thrive when trade rules support their efforts for international growth. As the expansion of the Internet has provided startups with inexpensive and

³ Testimony available at: https://www.jec.senate.gov/public/_cache/files/360bf9b8-a1d2-48e8-8114-539a654df7e4/fefer testimony us digital trade.pdf.

⁴ Office of the U.S. Trade Representative, *Fact Sheet on U.S.- Japan Digital Trade Agreement* (Oct. 2019), available at: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/october/fact-sheet-us-japan-digital-trade-agreement>.

⁵ Engine, *Primer: Trade* (2019), available at: <https://www.engine.is/news/primer/trade>.

easy access to consumers in other nations, it has also provided the need for expanded trade rules with U.S. partners as the digital economy continues to flourish. In order to thrive, startups must remain focused on efforts to grow their ventures—not on navigating overly burdensome regulatory efforts to limit their growth, which could impede their ability to serve as our nation’s innovators.⁶

Engine appreciates the opportunity to provide these comments and the Subcommittee’s demonstrated interest in digital trade in both the U.S.-Japan agreement and future trade agreements. We look forward to the Subcommittee’s further efforts on this topic and remain committed to engaging with members on how digital trade rules broadly affect the startup ecosystem.

⁶ Engine comments to USTR regarding Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico, available at: <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/59948eaaf14aa120d903ec57/1502908075361/Engine+-+NAFTA+submission.pdf>.