

Congress of the United States
Washington, DC 20515

November 3, 2025

The Honorable Jamieson Greer
United States Trade Representative
600 17th Street NW
Washington, DC 20508

**Re: Request for Public Comments Relating to the Operation of the Agreement
Between the United States of America, the United Mexican States, and Canada
(Docket Nos. USTR–2025–0004 and USTR–2025–0005)**

Dear Ambassador Greer:

We, the undersigned Members of Congress, submit this comment urging you to eliminate or revise United States-Mexico-Canada Agreement (USMCA) provisions that would preempt our authority to pass laws and implement policies that regulate Big Tech companies and other monopolistic firms. This would strengthen the U.S. economy by ensuring that our markets are competitive and well-functioning for U.S. workers, innovators, small businesses, and consumers.

Today, just a handful of companies—Amazon, Google, Apple, and Meta—control much of the internet infrastructure. They have achieved monopoly power by crushing and acquiring rivals, creating network effects, and leveraging vast amounts of user data to cement their dominant positions. Their power allows them to gatekeep access to markets and information, harming workers, independent businesses, entrepreneurs, ordinary investors, consumers, journalists, and entire communities. For example, Amazon preferences placement of its own products over the products of small businesses on its platform, Google and Meta extract revenue from news organizations as a condition of featuring content, and all the Big Tech companies impose non-compete agreements restricting where workers can earn a living.

This situation is not a coincidence. For decades, federal authorities failed to enforce our existing antitrust laws, and Congress similarly failed to update those laws to adapt to the digital economy. Polling shows that across partisan divides, the American public has grown increasingly aware and unhappy with Big Tech abuses.¹ Congress has begun to answer the need for action. In 2019, the House Judiciary Committee launched a 16-month bipartisan investigation into the practices of Big Tech companies, issued a 450-page report documenting those practices,² and introduced a

¹ American Economic Liberties Project, *New Poll: Super Majority of Americans Believe Google Has Too Much Power; Want Search Engine Competition* (Sept. 19, 2023), available at <https://www.economicliberties.us/press-release/new-poll-super-majority-of-americans-believe-google-has-too-much-power-want-search-engine-competition/>.

² Committee on the Judiciary, *Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations* (2020), available at <https://templatelab.com/competition-in-digital-markets/>.

slate of bipartisan bills that impose structural reforms to reign in the power of Big Tech.³ Earlier this year, Members of Congress formed the Monopoly Busters Caucus to prioritize the advancement of stronger antitrust laws.

In response to efforts in the United States and around the world to promote competition, privacy and online safety, Big Tech companies have turned to a different avenue to absolve themselves of responsibility in the marketplace: international trade agreements. These companies were successful in lobbying for inclusion of expansive new constraints on government oversight during the 2018 renegotiation of the North American Free Trade Agreement (NAFTA). What they dubbed “digital trade” provisions in the resulting USMCA Chapter 19 deem certain laws and policies as unfair trade practices, thereby preempting the current and future policy space of the U.S. Congress and state legislatures to enact domestic laws.

The USMCA included a novel provision that requires a review of the agreement by its signatory countries every six years and a decision whether to extend its duration. The first such mandatory review must be completed by July 1, 2026 by which time the three countries must determine if they will extend the pact beyond its current 2036 expiration date and potential changes for the agreement going forward. Three categories of present and future U.S. policy would be at risk if the existing USMCA Chapter 19 is extended without change: Anti-monopoly, consumer protection, and data privacy.

First, USMCA Article 19.4 (non-discrimination treatment of digital products provision) conflicts with most **anti-monopoly policies** both inside and outside the United States. The provision bans policies that accord “less favorable treatment” to foreign digital products than to domestic products. The provision is worded so broadly that it deems any law or policy that has a greater *effect* on a foreign entity to be an illegal trade barrier, even when the policy applies to domestic and foreign firms equally. This differs from previous U.S. pacts with E-Commerce chapters, which required a showing of intent to discriminate in order to indict a facially-neutral policy with a disproportionate effect on foreign firms or products. Some strong anti-monopoly policies enacted in the European Union, Australia, and South Korea and proposed in the United States tend to have a greater effect on U.S. and Chinese companies *because those are the most dominant firms*. These policies include structural and behavioral guardrails that inject competition into digital markets and make Big Tech platforms more accessible and fair, like prohibiting platforms from self-preferencing their own products and services, requiring them to share advertising revenue with news outlets, and forcing them to allow for the download of third-party applications. Big Tech is attempting to weaponize the non-discrimination provision to nullify these policies and promote a global standard of light-touch or no regulation, which entrenches their monopoly power and harms the ability of smaller, innovative American

³ See Brian Fung & Clare Duffy, *House Antitrust Bills Could Change the Internet as We Know It*, CNN (June 23, 2021), available at <https://www.cnn.com/2021/06/23/tech/tech-house-antitrust-bills-explained/index.html> (summarizing the bills and their proposed effect on each of the Big Tech companies).

technology companies to compete. This provision should be updated—as specified in Appendix A—to explicitly permit anti-monopoly policies even if they more greatly impact large and dominant firms.

Second, USMCA Article 19.16 (software secrecy provision) undermines consumer protections, including **right-to-repair laws** and **artificial intelligence (AI) regulations**. This provision prohibits “the transfer of, or access to, a source code of software...or to an algorithm expressed in that source code.” Since this provision was implemented in 2020, six U.S. states have begun adopting right-to-repair laws to even the playing field so that Americans have the necessary tools, parts, and information to repair everything from farm equipment and motorized wheelchairs to phones and cars.⁴⁴ Without these laws, consumers, farmers, and small business owners suffer by paying more and waiting longer to use their devices and equipment. Access to the schematics and diagnostics software necessary to conduct repairs is a central aspect of these laws. This includes requiring access to keys that unlock software locks or digital rights management systems, or even sharing firmware required to maintain products after originators shift to new versions and abandon old ones as obsolete. Unfortunately, the software secrecy provision grants corporations broad new secrecy rights that undercut the access needed to guarantee Americans’ repair rights.

In addition, AI is another area of regulation preempted by this provision. AI is increasingly used to dictate Americans’ access to credit, treatment in the criminal justice system, and opportunities for employment and housing. Some algorithms have reportedly had discriminatory impact on communities of color and resulted in labor law and competition policy violations.⁵ To counter these harms, lawmakers have proposed laws that enable external audits of AI systems, but such audits generally require source code disclosure, which this USMCA provision forbids. The limited exception to the provision does not save these policies; it only covers source code and algorithmic disclosure to governments in the course of “specific” regulatory or judicial proceedings. The World Trade Organization (WTO) already requires countries to provide the sort of “trade secrets” protections that apply to medicine approvals, for instance, which oblige governments not to share confidential information submitted for regulatory approvals to third parties. The software secrecy provision is therefore redundant and should be eliminated entirely.

Third, USMCA Articles 19.11 and 19.12 (data transfers and storage provisions) jeopardize **data security and privacy policies**. These provisions ban governments from in any way limiting data movement between countries or regulating where data may be stored. But since the USMCA was enacted in 2020, Congress, federal agencies, and numerous states have proposed solutions to or enacted data policy, such as forbidding the transfer of U.S. personal data to offshore entities or certain foreign countries, requiring cloud computing government contractors to only store certain

⁴ An additional 12 states have introduced such legislation, and Congress has introduced the REPAIR Act with strong bipartisan support.

⁵ Maya C. Jackson, *Artificial Intelligence & Algorithmic Bias: The Issues with Technology Reflecting History & Humans*, 16 J. BUS. & TECH. L. 299, 309–13 (2021).

types of government data on servers located in the United States, preventing law enforcement agencies from buying people’s personal data from data brokers for criminal prosecution purposes, and limiting which reproductive and sexual health data can be collected and disclosed. These policies are essential to protect Americans’ data from being exploited by Big Tech for mass surveillance in violation of their civil liberties, but they are prohibited by the USMCA data provisions. The storage provision provides no exception to its ban and the data transfers provision replicates exceptions language that has proved useless at the WTO for decades.⁶ These provisions should be re-written—per Appendix B—to protect American privacy rights.

In addition to Chapter 19, other chapters of the UCMCA impose constraints on governments’ abilities to promote competition and fair markets. USMCA Article 21.1 declares the purpose of competition policy “to increase economic efficiency and consumer welfare.” The U.S. government’s failure to enforce anti-monopoly policies in the last half-century was premised on a shift away from ensuring well-functioning, fair markets and towards this ideologically-charged “consumer welfare” standard. This standard is problematic because it mainly focuses on price effects rather than actual market power.⁷ This term and the reference to economic efficiency as the goal of competition policy should be removed from Chapter 21, consistent with the original NAFTA. Similarly, aspects of Article 21.2 unduly favor firms engaged in anti-competitive practices and should be removed.

USMCA Article 15.5, which covers the service sector, adds a “Market Access” provision that forbids anti-monopoly policies that necessarily limit the value or quantity of services, whether they are discriminatory or not, including considerations at the heart of every digital merger review and monopoly investigation. This would allow digital markets to consolidate further and offer lower quality services without consequence. Specifically, the provision forbids governments from taking action that “imposes a limitation on... the total value of service transactions or assets” or “the total number of service operations or the total quantity of service output...” or that “restricts or requires a specific type of legal entity...through which a service supplier may supply a service” with respect to any one company or investor. This language should be eliminated.

Finally, we support the demand by hundreds of consumer, faith, and other civil society organizations conveyed in a June 2025 letter to USTR to remove terms in the USMCA

⁶ Although Article 19.11.2 allows policies that are “necessary” to achieve a legitimate public policy objective under certain circumstances, data shows that countries have been consistently unable to meet these circumstances. See Daniel Rangel, *WTO General Exceptions: Trade Law’s Ivory Tower*, Public Citizen’s Global Trade Watch (Jan. 2022), at 18–26, available at https://www.citizen.org/wp-content/uploads/WTO-General-Exceptions-Paper_-1.pdf (explaining that of the 48 cases where WTO countries tried to use the exception defenses, only 2 succeeded).

⁷ Marshall Steinbaum & Maurice E. Stucke, *The Effective Competition Standard: A New Standard for Antitrust*, 87 U. CHI. L. REV. 595, 598–601 (2020).

Intellectual Property chapter regarding monopoly rights for Big Pharma that extend beyond the rules of the WTO.⁸

We urge you to consider the fixes enumerated in this letter during the upcoming review and we look forward to working with you to preserve our ability to legislate in these critical areas.

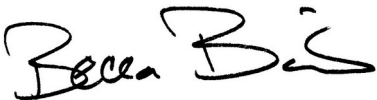
Sincerely,



Pramila Jayapal
Member of Congress



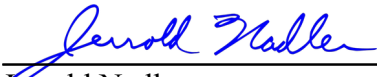
Maggie Goodlander
Member of Congress



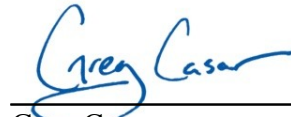
Becca Balint
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Paul D. Tonko
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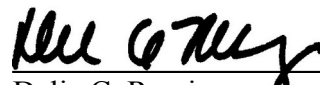
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Member of Congress



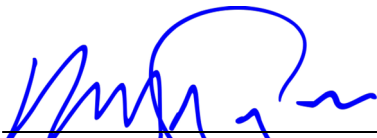
Greg Casar
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Chris Deluzio
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Delia C. Ramirez
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Mark Pocan
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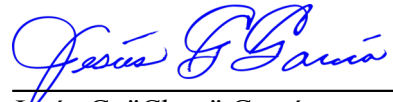


Rashida Tlaib
Member of Congress

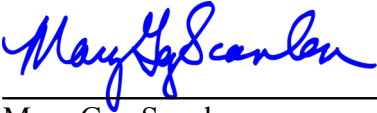
⁸ Letter to Ambassador Jamieson Greer from 686 Labor & Civil Society Organizations on Shared Priorities for the USMCA Review (June 12, 2025), available at https://www.citizenstrade.org/ctc/wp-content/uploads/2025/06/USMCAReview_OrgSignOnLetter_061225.pdf.



Rosa L. DeLauro
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Jesús G. "Chuy" García
Member of Congress



Mary Gay Scanlon
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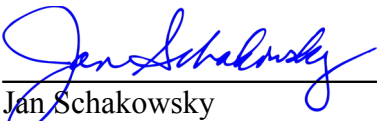
Summer L. Lee
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Ro Khanna
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James P. McGovern
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Jan Schakowsky
Member of Congress

Appendix A

The language in black font is from the U.S.-Korea Free Trade Agreement. It bifurcates between intentionally “de jure” discriminatory policies, which are forbidden, and those that may have a “de facto” differential impact but that do not discriminate based on nationality of an investor, firm, service or product. The text in blue font is our proposed changes to that base text.

1. Neither Party may accord less favorable treatment to some digital products than it accords to other like digital products
 - (a) on the basis that:
 - (i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party, or
 - (ii) the author, performer, producer, developer, distributor, or owner of such digital products is a person of the other Party; or
 - (b) *if the predominant intent is so as* to otherwise to afford protection to other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.²

¹ Digital product means games, music, software and similar products sold online and does not include the underlying platforms and services related to the sale, transmission or operation of such products.

² For greater certainty, a Party has not violated this obligation merely because a Party’s treatment that is the same for domestic digital products and other like digital products may result in differential effects on other Parties’ digital products relative to the digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.

Appendix B

1. The parties commit to ensuring cross-border data flows to facilitate trade in the digital economy and recognize that each Party may have its own regulatory requirements in this regard.
 2. To that end, each Party shall not restrict¹ cross-border data flows taking place between the Parties in the context of activity that is within the scope of this agreement,² by:
 - (a) requiring the use of computing facilities or network elements in its territory for data processing, including by requiring the use of computing facilities or network elements that are certified or approved in the territory of the Party;
 - (b) requiring the localization of data in its territory;
 - (c) prohibiting storage or processing of data in the territory of another Party; or
 - (d) making the cross-border transfer of data contingent upon the use of computing facilities or network elements in its territory.
 3. The Parties recognize that E-commerce is a rapidly evolving area of the economy and that governments are still developing their approaches to mitigating the risks while ensuring that their societies can enjoy its economic and societal benefits. Accordingly, nothing in Articles 1 or 2 shall prevent the Parties from adopting or maintaining a measure to achieve a legitimate public policy objective provided that the measure is not applied in a manner which would constitute a means of arbitrary discrimination between the Parties.³
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¹ For greater certainty, a measure prohibiting or restricting information exchange between specific enterprises or parts of specific enterprises, taken to enforce compliance with a Party's law, that applies regardless of the location of the information does not constitute a prohibition or restriction on the cross-border transfer of information under this paragraph.

² For greater certainty, this Article does not prevent Parties from taking measures to prevent the direct or onward transfer of data to a non-Party to this agreement that accesses or uses such data in a manner that the Party deems to be is unconstrained, arbitrary, or otherwise inconsistent with democratic values and the rules of law.

³ A measure shall be presumed to satisfy the elements of this paragraph unless it is demonstrated that it does not satisfy one or more of the elements.