

NATIONAL FOREIGN TRADE COUNCIL, INC.

1625 K STREET, NW, WASHINGTON, DC 20006-1604

TEL: (202) 887-0278

FAX: (202) 452-8160



Testimony of Jake Colvin

Vice President, Global Trade and Innovation, National Foreign Trade Council and
Executive Director, Global Innovation Forum

U.S. International Trade Commission Investigation No. TPA-105-008, Economic Impact of
Trade Agreements Implemented under Trade Authorities Procedures, 2021

Thank you for the opportunity to testify today to inform the U.S. International Trade Commission's investigation of the Economic Impact of Trade Agreements (FTAs) Implemented Under Trade Authorities Procedures.

The National Foreign Trade Council (NFTC) is dedicated to making America more successful in the global economy by ensuring the adoption of competitive tax and trade policies and strengthening the global rules-based trading system. NFTC and its members have significant interests in ensuring a healthy U.S. economy and promoting America's global leadership.

NFTC's members derive substantial value from U.S. trade agreements, which enhance market access for U.S. goods and services abroad, ensure rules are nondiscriminatory and not more trade-restrictive than necessary, and strengthen investor protections and dispute resolution procedures among many other benefits.

My testimony today will focus specifically on the value of digital trade and e-commerce provisions in WTO and FTA agreements to U.S. firms. It is informed by the work of the Council's Global Innovation Forum, which connects small businesses with policymakers to explore the opportunities and address the challenges associated with engaging in the global marketplace in the digital age.

Creating enabling environments for digitally-enabled trade through FTAs

Large and small American businesses rely on access to a global e-commerce ecosystem to reach international customers and operate their businesses on a global basis. This ecosystem includes digitally-enabled payments solutions, shipping and logistics services, e-commerce channels, cloud-based productivity software, social media, search engines, and messaging and video platforms.

To give one example, NFTC's Global Innovation Forum profiled Dana Donofree, the Founder & CEO of AnaOno, a Pennsylvania-based small business that sells innovative, soft bras for those affected by breast cancer or recovering from surgery.¹ She described how she uses social

¹ AnaOno is Using Digital Platforms to Remind Their Community That They Are Not Alone, available at <https://globalinnovationforum.com/anaono-covid19/>

media and video tools to connect a global community of survivors, and payments tools, e-commerce platforms, cloud-based software and express delivery services to reach customers and fulfill orders from around the world.

Market access commitments in sectors relevant to e-commerce (including computer, telecommunications, payments, advertising, logistics and distribution services), digital trade commitments that enable cross-border communication and exchange, and high-standard customs and trade facilitation provisions, which enable fulfillment of transactions involving physical goods, provide certainty to businesses seeking customers and partners in foreign markets.

Free trade agreements are most economically significant where they foster this entire ecosystem, enabling businesses to choose from their preferred global digital tools and services. To date, USMCA is the most comprehensive U.S. FTA in this regard. The agreement includes market access commitments and rules governing digital trade and trade facilitation that are, in many respects, gold standards in guaranteeing nondiscriminatory access to digital tools and e-commerce-related services.

I would like to use the rest of my time to expand on three significant pillars of trade commitments that encourage digitally-enabled trade in the United States and around the world to the benefit of American businesses.

Prohibitions on customs duties on electronic transmissions

U.S. firms derive significant value from the existence of existing prohibitions on customs duties on electronic transmissions.

The moratorium on customs duties on electronic transmissions, which has governed the conduct of members of the World Trade Organization since 1998, has been an important backstop to keep calls, digital music and movies, social media, Research & Development, and other electronic transmissions free from tariffs, burdensome customs procedures, and government control.

In its investigation, I encourage the ITC to analyze the economic consequences of imposing customs duties on electronic transmissions, given recent steps by a handful of governments and International Organizations to explore the possibility of charging tariffs and imposing customs formalities at the border on intangible goods.

For example, in 2018, Indonesia took concrete steps to place tariffs on “intangible goods,” potentially including software, video, audio, e-books and other electronically-delivered products. In outlining its plan, Indonesia indicated it would require importers to submit a “Digital Declaration” to its Customs Authority whenever a digital product was sold over the internet from abroad, including personal information such as Name, Address, Country of Origin, Description of Goods, Tariff Code, Customs Value, and a certification that the company is liable for the accuracy of the information.

Separately, the World Customs Organization (WCO), in a November 2018 communication to members on the "role of customs in taxation of intangible goods," outlined its intent to explore ways that national customs authorities could increase their role in the taxation and regulation of products and services supplied over the Internet. The WCO suggested governments should develop new capabilities to monitor the contents of electronic transmissions, including via "big data mining (for example by analyzing websites and social media)" and by pursuing information from electronic platforms, Internet Service Providers and payment gateways to gain details on the nature of each cross-border electronic transmission.

In March 2020, the delegations of India and South Africa to the WTO circulated a paper asserting that developing countries "require the implementation of active industrial policies to get some benefits of E-commerce, including the use of tariff policies for the digital sector," in effect calling for digital import substitution policies propped up by new internet tariffs.²

If one or more countries were to impose tariffs on electronic transmissions from the United States, the costs and compliance burdens would be significant for U.S. companies and especially for small businesses.

In terms of the direct impact, companies would face the additional cost of the tariff, as well as a potentially untenable burden to comply with these digital import declarations. In addition, companies would have to consider the intrusiveness of digital inspections by local customs authorities, which could gain the authority to look into the contents of software, proprietary company data, medical and financial records, social media, search history, streaming services, electronic wallets and other transmissions. The potential for foreign governments to monitor and inspect electronic transmissions would dramatically increase risks and uncertainty for companies transmitting data.

We anticipate that any action to impose new costs on U.S. transmissions could potentially lead to economic retaliation by the United States and a further deterioration of the economic relationship with the country in question.

Provisions in U.S. FTAs, such as Article 19.3, Customs Duties, in the U.S.-Mexico-Canada Agreement,³ provide additional certainty to companies doing business in countries covered by those commitments. Unlike the temporary WTO moratorium, these FTA commitments are permanent prohibitions and are enforceable under the terms of the respective agreements. These provisions would become even more critical as a means of forestalling new internet tariffs between FTA partners if the WTO moratorium were to lapse.

Trade facilitation commitments

Trade facilitation and customs commitments are particularly critical in enabling physical e-commerce and omni-channel retail. These commitments streamline border clearance

² Work Programme On Electronic Commerce, The E-Commerce Moratorium: Scope and Impact, Communication from India and South Africa, World Trade Organization, WT/GC/W/798, available via <https://docs.wto.org/>

³ See Article 19.3 of the U.S.-Mexico-Canada Agreement, available at <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19-Digital-Trade.pdf>

processes, reducing the complexity and cost of compliance and the time required to release goods after they arrive in a country. Customs and trade facilitation provisions are the keys that unlock the potential of global e-commerce for goods.

The WTO Agreement on Trade Facilitation (TFA) was a critical global milestone, setting a roadmap for countries to improve their customs procedures and enable global goods trade. We support efforts by countries, organizations such as the Asia Pacific Economic Cooperation (APEC) forum, and donor community-led efforts to enable the full implementation of these commitments globally.

U.S. FTAs include additional facilitative measures that further enable U.S. access to foreign markets and support cross-border e-commerce. USMCA, for instance, provides for simplified clearance processes for low-value shipments under \$2,500, requires electronic payments and the prompt release of goods prior to a final determination and payment, and establishes a harmonized single-window system to enable the electronic submission of documentation through a single entry point among other facilitative provisions.

Globally, the OECD highlights that enacting trade facilitative measures disproportionately benefits smaller companies. “Trade facilitation reforms reduce fixed and variable trade costs, helping [micro, small and medium-sized enterprises] not only become importers and exporters, but also helping MSMEs that already export and import increase their volumes,” the group notes.⁴

Information Technology Agreement

The Information Technology Agreement (ITA) and 2015 expansion are landmark deals that lower the cost of adopting technology tools and support American businesses and jobs. While I am aware that the Commission is exploring the impact of the ITA on U.S. manufacturing and R&D competitiveness, and has already conducted extensive analysis of the economic impact of the ITA and expansion agreements, I want to emphasize the economic significance of the ITA in enabling overseas consumers and businesses to access American firms’ goods and services.

The ITA has helped to radically decrease costs for mobile phones and other connected devices globally. According to the WTO, in 2016, import prices of ICT goods were approximately 66 percent cheaper than they were in 1996.⁵ The International Telecommunications Union (ITU) also reports that the cost of cellular voice, text and data services have been declining globally at a rapid pace. Economies including Bangladesh, Bhutan, China, India, Ethiopia, Myanmar, Nepal, and South Sudan have reduced the cost of mobile-cellular baskets to less than US\$3 per month.⁶

⁴ Trade Facilitation and the COVID-19 Pandemic, Organization for Economic Cooperation and Development (OECD), 22 April 2020, available at <http://www.oecd.org/coronavirus/policy-responses/trade-facilitation-and-the-covid-19-pandemic-094306d2/>

⁵ 20 Years of the Information Technology Agreement, World Trade Organization, available at: https://www.wto.org/english/res_e/publications_e/ita20years2017_e.htm

⁶ Measuring the information society report 2018, International Telecommunications Union (ITU), available at: <https://www.itu.int/pub/D-IND-ICTOI-2018>

These lower hardware and telecommunications services costs have dramatically improved access to the internet, enabling individuals and micro and small businesses from around the world to get online for the first time. The proportion of internet users globally increased from under 17 percent in 2005 to over 53 percent in 2019.⁷ In 2019, an estimated 4.1 billion people used the internet.⁸

While nearly 60 percent of households have internet access at home, less than half have a computer.⁹ The wide availability of mobile devices, facilitated by the ITA, has been critical in bringing a new generation of individuals and businesses online.

These new internet users are potential new customers for American firms, to the extent local rules permit and facilitate their ability to access American goods and services.

COVID-19 has made digitally-enabled trade more economically significant

Digitally-enabled trade has become even more economically significant for American businesses during the pandemic, who have relied on e-commerce and digital services and tools to an unprecedented extent.

During the pandemic, many micro and small businesses turned exclusively to digital tools and global e-commerce to generate sales and manage their operations. Fifty-one percent of small businesses reported increasing online interactions with their clients, while 36 percent of personal businesses that use online tools indicated that they are conducting all their sales online in response to the crisis.¹⁰

These small businesses are being challenged to develop a professional online presence, accept trusted digital payments, pay suppliers digitally, and ensure efficient receipt of goods amid the COVID-19 pandemic.

For many small businesses, international e-commerce sales have provided a lifeline, helping them to manage uncertainty, stay afloat and meet the demands of the new normal. A survey of Canadian firms found that, for 55 percent of small businesses who had an existing online presence, their sales rose or stayed the same during the pandemic.¹¹

Ms. Donofree of AnaOno described how, because of COVID-19, "there is a world now where consumers are being forced...to do their shopping online and trust online services." She outlined how she uses online communication and social media platforms to an unprecedented extent "as

⁷ Measuring digital development Facts and figures 2019, International Telecommunications Union (ITU), available at: <https://www.itu.int/en/mediacentre/Documents/MediaRelations/ITU%20Facts%20and%20Figures%202019%20-%20Embargoed%205%20November%201200%20CET.pdf>

⁸ ITU 2019

⁹ ITU 2019

¹⁰ State of Small Business Report, available at <https://dataforgood.fb.com/wp-content/uploads/2020/05/SMBReport.pdf>

¹¹ COVID-19 impact felt by 81 per cent of Canadian small business owners: CIBC Poll, available at <http://cibc.mediaroom.com/2020-05-04-COVID-19-impact-felt-by-81-per-cent-of-Canadian-small-business-owners-CIBC-Poll>

direct communication lines back to our consumers who are looking for quick, reliable sources of information as they continue to shop."¹²

Other businesses are seeing demand increase for the goods and services.

Maxeme Tuchman, founder of Caribu, a Florida-based technology company, offers a family video-calling app that integrates children's books and activities. She saw demand skyrocket during the pandemic. "Our greatest digital tools are the app stores –It's our retail stores," she said. "That is how we have reached [approximately] 200 countries and territories. Being able to reach all of those places and have people easily download the product has allowed us to get to that global reach."¹³

NFTC strongly supports efforts to strengthen the policy framework that supports the global e-commerce ecosystem, including at the WTO, where the pandemic has created new urgency for like-minded members to agree on an ambitious set of commitments.

Such efforts should guarantee nondiscriminatory market access for computer and related services and the broader suite of services that enable e-commerce including financial, distribution, telecommunications and logistics as well as high-standard digital trade commitments. Countries should also agree to permanent prohibitions on customs duties on electronic transmissions.

Experiences with e-commerce tools and platforms during the pandemic also argue strongly in favor of ensuring widespread adoption by countries of the Information Technology Agreement (ITA) to reduce costs of technology essential to businesses.

Enacting new trade facilitation measures that reduce administrative burdens and keep physical e-commerce flowing is also critical. As the OECD notes, "in the current extremely challenging context, trade facilitation measures...offer a solid basis for dematerialising a significant part of the border process, so as to ensure that physical interactions between Customs and other border officials and traders are kept to a minimum."¹⁴

Thank you for the opportunity to testify today.

¹² Digital Tools and COVID-19, Global Innovation Forum, available at <https://globalinnovationforum.com/jsi-webinar-takeaways/>

¹³ Leveraging Digital Tools to Take Your Small Business Global, Global Innovation Forum, available at <https://globalinnovationforum.com/takeaways/leveraging-digital-tools-small-business-global>

¹⁴ Trade facilitation and the COVID-19 pandemic, Organization for Economic Cooperation and Development, 22 April 2020, available at: <http://www.oecd.org/coronavirus/policy-responses/trade-facilitation-and-the-covid-19-pandemic-094306d2/>