

Testimony before the United States Congress Joint Economic Committee

Ambassador Robert W. Holleyman  
President & CEO, C&M International & Partner, Crowell & Moring LLP

**Hearing on "*The Need for U.S. Leadership on Digital Trade*"**  
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Chairman Paulsen, Ranking Member Heinrich, and members of the Committee, thank you for the opportunity to testify on a topic that is of critical importance to the United States' economic future. Digital issues and trade have been central to my work for nearly three decades.

I have three brief points that I'd like to make today and then look forward to our discussion.

**THE STAKES ARE HIGH:**

First, United States' leadership on digital trade is not simply a priority of "tech" companies, or for executives in regional tech hubs. It is an imperative for all Americans to compete in the 21<sup>st</sup>-century global economy. It is important to traditional manufacturers; to small businesses integrated into global supply chains; to farmers using weather and planting data; entrepreneurs developing the next revolutionary technology; and to small, "mom-and-pop" operations looking to take advantage of the global e-commerce opportunities and new markets enabled by the Internet. All of us now live in a world shaped by the immense opportunities provided by a global, digital economy.

I share the view of your Vice Chairman, Senator Lee, from this Committee's hearing last fall on the gains from free digital trade for the U.S. economy. He stated that "we are swiftly approaching the point at which the word 'digital' will be an unnecessary adjective for trade." I couldn't agree more. So-called "digital" issues underpin all aspects of our economy. They drive the fastest-growing, most competitive sectors of the U.S. economy.

I just returned this past weekend from travel in Hong Kong and Beijing. And I can tell you, first-hand, that innovative companies abroad – competitors to U.S. firms and American workers – are acting swiftly to gain a next-generation advantage in the digital space, in areas ranging from mobile payments to cloud computing to content delivery. They are capturing an increasing market share in the world's fastest growing economies.

And as the digital economy is evolving at an exponentially rapid pace, so, too, is the global policy and regulatory landscape. Foreign governments – both allies and adversaries – are actively establishing their leadership by charting new regulatory regimes and rules that will help define who wins and who is left behind in the digital economy. In many cases, they are erecting barriers that – if left unchecked – may significantly harm the ability of companies based in the U.S. to access global markets and customers.

Breaking down barriers to digital trade is essential to opening markets for America's most innovative, thriving industries, and is foundational to the future competitiveness of the United

States, our economy and workers. This was central to my work as Deputy United States Trade Representative. To assess digital trade and quantify the impact of digital trade barriers, in January of 2017, following recommendations from USTR's Digital Trade Working Group, which I chaired, Ambassador Mike Froman directed the United States International Trade Commission to undertake a three-part study on the global outlook for digital trade.

The ITC delivered its first report in August of last year. While it outlined the substantial economic impact and business opportunities provided by digital trade, it also catalogued numerous policy trends that are inhibiting American competitiveness in the field. These include common trade challenges like market access barriers, investment limitations, and lax protection for intellectual property. The ITC also reported on a series of unique challenges to digital trade: new, protectionist walls being erected to carve up the global marketplace and provide advantages to local, favored players. The ITC identified problems related to foreign provisions on data protection and data localization, cybersecurity, trade-distorting privacy measures, and source code disclosure requirements.

## LEVERAGE OUR TRADE POLICY & NEGOTIATIONS

This leads to my second point: the United States must use our trade might to break down these emerging barriers that inhibit U.S. firms from competing on a level playing field. I commend Ambassador Lighthizer and the Office of the United States Trade Representative for continuing to shine a light on restrictive, protectionist barriers to digital trade erected by other countries, in its annual National Trade Estimate report. We started this practice in the Obama Administration to call attention to and put laser-like focus on digital barriers, recognizing that the U.S. needed to act quickly to identify and combat barriers to digital trade before they become enshrined. We also appreciated the strong bipartisan Congressional interest in digital trade, as this hearing and its predecessor shows.

Unfortunately, the broader approach that this Administration has taken on trade is not only causing deep uncertainty within the American business community, it is crowding out the attention that could be focused on digital trade and our economic future. We need allies like Canada, Mexico and Japan to join us in establishing the rules of the road for the digital economy. We need our allies in fighting against the rise of digital barriers. It is hard to set the course for our future economy when we are fighting over new tariff taxes.

The U.S. must demonstrate leadership by flexing the muscle of American trade policy on issues related to digital trade in all our negotiations with trade partners. The digital trade-related provisions negotiated in the Trans-Pacific Partnership created a new paradigm for a 21<sup>st</sup>-century trade agreement that creates a level, fair, competitive landscape for the digital economy. Eleven of our would-be trading partners from the TPP – ranging from Japan and Australia, to Mexico and Singapore – continue to advance high-standard digital trade through their adoption of the new Comprehensive and Progressive Agreement for Trans-Pacific Partnership, or CPTPP.

The TPP, and now CPTPP, contain a series of provisions we dubbed "the Digital Two Dozen" – which can serve as a template for our future trade negotiations. USTR has advanced substantially similar provisions in the NAFTA negotiations with Canada and Mexico. We must continue to do so and secure this new model for the future of digital trade in North America and beyond.

While the Administration looks to country-specific trade negotiations, we also know that the digital economy and barriers to digital trade are growing faster than any one or series of bilateral trade negotiations can address. To truly shift the paradigm and assert American leadership on digital trade, therefore, we must look beyond bilateral negotiations. We must be bold and expansive in our thinking. It is time for a new, plurilateral initiative, bringing together likeminded allies and partners, and focused on setting a harmonized, market-oriented framework for digital trade. Such a new initiative could be modeled on our successful efforts to negotiate and then expand the Information Technology Agreement. U.S. leadership in this area helped reduce barriers and costs and expand the markets for IT products and services globally – to the benefit of U.S. companies. A new digital trade negotiation, championed by the United States, and likely in concert with our NAFTA and TPP trading partners, could ensure that our nation leads in setting the rules for the digital economy and digital trade as we have done before in the ITA.

## LEADERSHIP ON DATA FLOWS, DATA PROTECTION, & PRIVACY

Finally, the United States must take a firm stance to ensure that the free flow of data, which is foundational to the digital economy, is regulated in a measured, smart way. As the ITC noted in its report, “fully half of all global trade in services now depend[s] on access to cross-border data flows.” And among all the emerging policy issues that caused concern, the most-cited measure impeding digital trade was forced data localization.

If “data is the new oil,” fueling the growth of digitally-intensive industries and trade, then we have to regulate the movement of this 21<sup>st</sup>-century fuel with a balanced, thoughtful approach. One that respects personal privacy protections and security, first and foremost; but one that also ensures that protected and general data can cross borders, since the digital economy is truly global, integrated, and, in some respects, borderless.

Right now, however, it is widely acknowledged that the European Union is setting the rules of the road for data privacy, with last month’s implementation of the EU General Data Protection Regulation (GDPR). Let’s be clear: the GDPR is a European model, focused on the protection of European citizens. It’s also a model that the EU would like to see exported to markets all around the world.

While the GDPR has advanced the discussion around privacy, we know that privacy protection is not simply of interest to European citizens. We know that privacy matters to Americans and others globally; we know, too, that it can be advanced and respected as a foundational part of the global digital economy. With that in mind, the United States helped launch the APEC Cross-Border Privacy Rules alongside twenty other nations within the Asia-Pacific Economic Cooperation forum, or APEC, nearly a decade ago. The CBPRs were created to ensure the protection of personal, private information; but, in a balanced way that is also pro-growth, pro-innovation, and ensures that we can all harness the opportunities and benefits of the digital economy. As the ITC report notes, U.S. companies favor the APEC approach because it “sets a high standard of privacy across member countries without ‘interrupting or threatening the flow of data that fuel economic growth.’”

The United States does not take a backseat role to any nation or group of nations in our commitment to personal privacy. At the same time, we should not allow others to unilaterally set a single set of rules for how our citizens and our businesses must operate in the global, digital economy. The U.S. helped create and launch the APEC CBPRs. Today, we must redouble our efforts to advance their cause, secure greater adoption, and show real U.S. leadership – and a true American voice – in the unfolding landscape around privacy, the digital economy and our economic future. This is an essential effort to ensure that digital trade can grow, flourish and advance personal privacy.

The stakes are high; but, with U.S. leadership, the opportunities are immense. We must seize the opportunity to shape the policy landscape around digital trade, and in so doing, to define our future.

Thank you.