

May 9, 2023

Hon. Mary Ng, P.C. M.P  
Minister of International Trade, Export Promotion, Small Business and Economic Development  
Americas Partnership for Economic Prosperity Consultations  
Global Affairs Canada  
Trade Negotiations- North America (TNP)/ Americas Branch (NDS)  
John G. Diefenbaker Building  
111 Sussex Drive  
Ottawa, ON K1N 1J1

Dear Minister Ng:

The Consumer Technology Association (CTA) thanks you for the opportunity to submit comments in response to the Government of Canada's request for views from stakeholders on the Americas Partnership for Economic Prosperity (APEP).

CTA represents the well over CA\$ 670 billion North American consumer technology industry. A strong majority of our members are small and medium-sized enterprises (SMEs). They and our larger members are innovators, manufacturers, service providers and employers. They also have long-standing and diverse commercial relationships in economies across the Latin American region and therefore have unique perspectives to share on the APEP.

Our industry appreciates your collective efforts to strengthen Canadian trade relationships with allies and key trading partners, roll back prior harmful trade actions, and establish an inclusive approach to trade. We also welcome your actions to promote an inclusive and values-based trade policy, which serves important global objectives like combating the COVID-19 pandemic and ending the scourge of forced labour.<sup>1</sup>

CTA recognizes that Canada is navigating a period of historic uncertainty and upheaval in the international arena, one where our assumptions about globalization, trade, and trading partners have come under close examination. The COVID-19 pandemic, Russia's illegal, immoral, and unprovoked invasion of Ukraine, and China's increasingly harmful non-market economy practices have expedited that examination.

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<sup>1</sup> Bill S-211, <https://www.parl.ca/legisinfo/en/bill/44-1/s-211>.

During these challenging years, CTA and other stakeholders in the business community have long called for greater certainty in the international trade environment by means of stronger relationships between key trading partners, new market access for technology goods and services, robust and durable digital trade rules, and the removal of unfair and harmful trading practices around the world. In part, the entry into force of the Canada-United States-Mexico Agreement (CUSMA) in 2020 responded to this call. This was an important first step. Under the CUSMA, three close trading partners agreed to pursue common values. Importantly, the CUSMA parties confirmed that they would maintain a tariff-free trade environment in North America.

With implementation and enforcement of the CUSMA underway, now is the time to build greater international consensus and momentum around key elements of the CUSMA by promoting them in relationships with other allies and trading partners. A fully realized APEP that includes Canada as a participant could deliver important outcomes to improve economic resilience, diversify supply chains, lower costs, harness the digital economy, and improve environmental and labour standards. Such an approach would establish a more durable and sustainable set of trade relationships not just in North America but throughout the Americas.

More, robust and sustainable engagement with our democratic partners in the G7 will bolster Canadian trade leadership globally. But even more necessary and urgent is Canadian trade leadership across the Western Hemisphere. The APEP can be a powerful counterpart to your ongoing work with the G7 and other allies. It can serve as a durable and sustainable forum for aligning the values of dynamic and growing economies in the Latin American region with those of Canada, Mexico, and the United States.

While CTA understands that the APEP is not intended to be a free trade agreement and that Canada does not expect the negotiations to include broad market access commitments, CTA urges Canada to consider engaging with the APEP partners on targeted market access opportunities that would facilitate the achievement of Canada's (and the region's) trade policy priorities. For example, without any market access benefits, it may be difficult for the developing members of the APEP to fully make general, unilateral commitments on framework rules and principles when they stand to get nothing in return. It is also difficult to establish and spread robust digital trade rules when access to better telecommunications networks and technology products is constrained by high tariff barriers. For these reasons, we urge Canada to use the APEP to pursue targeted tariff relief on consumer technology products in key growth markets in the Americas and beyond. For the APEP to truly succeed, it must be a venue for opening new markets and negotiating high standard, binding, and enforceable trade commitments, like Canada's existing trade agreements in the region.

In the remainder of this letter, CTA provides additional detail on its suggested priorities for Canada in the APEP negotiations.

### **CTA Urges Canada to Expand the WTO Information Technology Agreement Through APEP.**

Where possible, the APEP should be a launch pad for targeted market access negotiations, including accessions to existing plurilateral WTO agreements and the potential negotiation of new plurilateral agreements. For the consumer technology industry, greater participation in the WTO Information

Technology Agreement (ITA) is a high priority. Unfortunately, participation by countries in the Americas is mixed. Table 1 identifies the American countries that participate in ITA-1 and ITA-2. Notably, many American ITA-1 signatories did not join ITA-2. And some of the largest economies in the hemisphere – notably Argentina, Chile, Mexico, and Brazil – are not part of either ITA-1 or ITA-2. We therefore urge the Government of Canada to pursue commitments from APEP parties to full participation in both ITA agreements.

*Table 1: APEP countries by ITA status. Those bolded are not signatories to ITA-2.<sup>2</sup>*

APEP Country	Signatory to ITA-1	Signatory to ITA-2
<b>Barbados</b>	No	No
Canada	Yes	Yes
<b>Chile</b>	No	No
Colombia	Yes	Yes
Costa Rica	Yes	Yes
Dominican Republic	Yes	Yes
<b>Ecuador</b>	No	No
<b>Mexico</b>	No	No
Panama	Yes	Yes
Peru	Yes	Yes
United States	Yes	Yes
<b>Uruguay</b>	No	No

*Table 2: Select non-APEP countries in the Americas by ITA status.*

Country	Signatory to ITA-1	Signatory to ITA-2
Argentina	No	No
Bolivia	No	No
Brazil	No	No
Cuba	No	No
El Salvador	Yes	Yes
Guatemala	Yes	Yes
Honduras	Yes	Yes
Nicaragua	Yes	Yes
Paraguay	No	No
Venezuela	No	No

**CTA suggests that Canada emphasize a strong umbrella structure for the APEP.**

The U.S.-led Indo-Pacific Economic Framework (IPEF) allows partner economies to participate on an “a la carte” basis across its four “pillars” – i.e., they may choose the pillars they wish to participate in, without being required to participate in all four. As APEP is very similar to IPEF in structure, CTA anticipates the self-

<sup>2</sup> Participants on the Expansion of Trade in Information Technology Products - Status of implementation (as of 25 March, 2022), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/IT/1R59.pdf&Open=True>.

selection of pillars will be part of APEP. Nonetheless, CTA strongly encourages the Government of Canada to establish a strong umbrella structure for the APEP to ensure meaningful and substantive connections among the pillars (particularly given the cross-cutting issues that already exist across each pillar, as noted further below). Canada should also continue encouraging countries to join the full suite of APEP pillars.

It is important to create incentives for partners to participate across APEP pillars. As alluded to above, in the absence of market access commitments, Latin American economies may have limited incentives to sign on to high-standard principles and obligations. If market access commitments remain outside the scope of APEP, the Government of Canada should instead seek to create effective incentives by conditioning participation in some pillars (or access to certain benefits within them) on participation in some or all of another pillar. Moreover, agreement to overcome important non-tariff barriers on regulatory alignment and regulatory coherence should be considered, as these can be just as important as market access, and thus can create strong incentives for countries to participate in all APEP pillars.

A framework for connection among pillars is also important for policy coherence. The subject matters of the APEP pillars identified by the U.S. Government (regional competitiveness, resilience, shared prosperity, and inclusive and sustainable investment)<sup>3</sup> already have numerous natural linkages, such that any agreement between Canada and its partners in one pillar will have an important bearing on whether and how they can achieve agreement in another. The APEP must have a strong coordinating mechanism through which the various elements of the negotiations across different pillars can be informed by one another.

In addition, it is likely that certain objectives of the APEP will only be achievable through disciplines that cut across pillars or require complementary commitments in more than one pillar. Traditional trade agreements manage these linkages through “general provisions” that apply across all chapters of an agreement, as well as through chapter-specific provisions that cross-reference, modify, or supplement provisions in another chapter. It will be important that the APEP provide for some similar type of linking mechanism.

### **CTA urges Canada to pursue the highest-standard digital economy and digital trade rules.**

CTA strongly urges Canada to work closely with its CUSMA partners to negotiate under the APEP the highest-standard rules on digital trade and the digital economy. These rules should, at their heart, embody the principles of nondiscrimination and the free flow of data across borders. They should be binding and enforceable and advance shared democratic values. Such rules are critical to ensuring that all stakeholders in Canada and its trading partners can take advantage of the benefits of digital trade. A high-standard digital pillar under the APEP should promote a regulatory framework that both supports digital transformation and avoids discriminatory digital policies and other barriers that harm Canadian trade, investment, and workers.

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<sup>3</sup> Joint Declaration on APEP, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/27/joint-declaration-on-the-americas-partnership-for-economic-prosperity/>.

Canada is a champion for high-standard rules to facilitate digital trade, in particular through the Digital Trade chapter of CUSMA and its leadership in the ongoing Joint Statement Initiative (JSI) on e-commerce at the WTO. The rules in CUSMA should be the baseline for the APEP's digital trade provisions, especially considering the tremendous importance of digital trade for businesses both large and small and the growing international trend toward restrictive digital policies. APEP's digital trade provisions should not drop below the floor of CUSMA.

In crafting the digital trade provisions of the APEP, Canada should also incorporate other elements of recent Canadian trade practice, considering the critical linkages these provisions have to digital trade. For example, although the Digital Trade chapter of CUSMA addresses many impediments to the conduct of digital trade, it does not by itself create an obligation on governments to allow foreign suppliers to provide digital services to businesses and consumers into their territories. This basic commitment is instead provided for in the Cross-Border Trade in Services chapter of CUSMA. Given that the APEP will apparently not otherwise feature market access commitments for services, the Government of Canada should incorporate these disciplines within the digital trade portion of the APEP to ensure that digital services suppliers are not excluded from the markets of APEP participant economies or restricted from more activities than third-country competitors.

Important services chapter obligations in this regard include "national treatment" (e.g., CUSMA Art. 15.3), "most-favored-nation treatment" (e.g., CUSMA Art. 15.4), the prohibition against quantitative supplier limitations (e.g., CUSMA Art. 15.5), "local presence" (e.g., CUSMA Art. 15.6), and "payments and transfers" (e.g., CUSMA Art. 15.12). The latter two are especially important for individual entrepreneurs and small businesses, because they ensure that these entities can export digital services from where they sit in Canada without having to establish a physical presence in each market in which they seek to do business. With these provisions, a small business owner can reach customers anywhere in the world from her home; without them, the trade and export potential of the digital economy is effectively neutered.

North America is the world's leading region in the development and deployment of digital services and the technologies that facilitate the delivery of those services. More so than in any other sector of the economy, these services and technologies empower and enable global engagement by individual entrepreneurs and small businesses, allowing them to access and export to foreign markets with limited resources. To realize the benefits of emerging technologies, the APEP should foster collaboration and reduce regulatory/technical barriers to trade for innovative technologies such as AI, IoT, 3D printing, blockchain, and quantum information science.

The global environment for digital trade is becoming increasingly challenging, however, in no small part due to foreign government efforts to onshore more of the economic benefits of this growing trade. Government measures that create these challenges include:

- Sectoral regulation that targets specific economic actors rather than business conduct generally, or that identifies sectors, services, or specific technologies for regulation based on the nationality of predominant service suppliers;
- Restrictive data practices that mandate local storage and/or restrict overseas transfer or access; and

- Rules that restrict the digital activities in which foreign companies can engage, or that compel the establishment of local presence to provide digital service.

These challenges threaten to splinter the global digital economy. Protectionist inclinations on the part of many trading partners – including some traditional Canadian allies – are challenging the openness and free exchange that led to unprecedented global growth and opportunity beginning in the mid-1990s. These restrictive measures threaten Canadian economic interests by diminishing trade opportunities in digitally-enabled services. They also undermine the broader Canadian foreign policy interests in open information exchange.<sup>4</sup> APEP can be an important forum for preventing the spread of such measures in the Western Hemisphere.

In addition to high-standard rules for digital trade, the Government of Canada should also use the APEP negotiations to further reaffirm, develop, and increase participation in other agreements and initiatives relevant to digital trade and technology. These include:

- Cross-border data transfer frameworks, in particular the Global Cross-Border Privacy Rules system;
- The WTO Joint Statement Initiative on E-Commerce; and
- Relevant pathfinder initiatives under the Asia-Pacific Economic Cooperation (APEC) Committee on Trade and Investment.

Moreover, CTA encourages Canada to use the APEP to foster collaboration on digital skills development and the creation of the workforce of tomorrow by committing participating governments to:

- Establish centers within domestic economic development agencies and public universities that will partner with the private sector on programs to upskill students and workers, including those in under-represented communities in tech like women and girls, and to train artisans and small businesses on how to be ecommerce sellers; and
- Work with the World Bank, the Inter-American Development Bank, or the Asian Development Bank in conjunction with the private sector to help small businesses and entrepreneurs develop technical skills, navigate business registration, use digital technologies to transform their business, and connect with local expansion partners.

**Canada should emphasize APEP disciplines related to technical barriers to trade, good regulatory practices, and transparency.**

The APEP must address the myriad non-tariff measures (e.g., technical regulations, conformity assessment practices, duplicative testing requirements, and standards-based measures) that impede trade in non-agricultural products and in services. These measures are challenging for companies operating in foreign markets, growing in prevalence, and particularly difficult for small businesses to navigate and overcome. Several studies indicate that the costs of non-tariff measures are significantly more than the costs of tariffs,

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<sup>4</sup> Canada is a partner in the Declaration for the Future of the Internet, <https://www.state.gov/declaration-for-the-future-of-the-internet>.

especially for developing economies and SMEs. This is particularly so in the consumer technology industry, where innovation is rapid and quickly outstrips the pace at which governments regulate.

Thus, at a minimum, the APEP should include the provisions contained in the CUSMA Technical Barriers to Trade (TBT) chapter and the related Sectoral Annexes.<sup>5</sup> The APEP could also provide opportunities for industry and government to work together to ensure greater alignment of both regulatory and nonregulatory policies for new technologies, to avoid market segmentation among APEP parties, and to keep markets open. We encourage the Government of Canada to seek the elimination of local content requirements and other localization policies (e.g., requirements to locate IT infrastructure or store data locally or to create in-country joint ventures) that interfere with trade and investment in the Americas.

Canada should use the occasion of APEP to go further still, however. TBT-related challenges that frustrate goods trade also increasingly act as barriers to digital trade and services trade. The basic principles of the WTO TBT Agreement and CUSMA TBT Chapter lend themselves equally well to the oversight of standards, regulations, and conformity assessment procedures for services. Thus, good governance principles developed in the trade in goods context (e.g., opportunities for stakeholder participation, non-discriminatory participation, and incorporation of standards developed through inclusive international processes) should be extended to all areas of trade and activity, including the digital economy.

The APEP should also include binding commitments on good governance procedures to promote transparency and accountability in the development and implementation of regulations, particularly as they relate to emerging technologies. We urge the Government of Canada to build on Chapter 28 of the CUSMA on Good Regulatory Practices in the APEP. The APEP should also include services-specific “good governance” provisions that supplement the provisions in CUSMA Chapter 28. In the CUSMA, the former provisions are found in the “development and administration of measures” article of the Services chapter (e.g., CUSMA Art. 15.8), and address matters such as fair administration of licensing procedures, and transparency and timeliness in regulatory processes.

For the APEP to be at least as ambitious as other agreements, the Government of Canada should also ensure that it incorporates the results of the WTO Joint Initiative on Services Domestic Regulation, which the United States and 66 other participants concluded in December 2021. Importantly, the Joint Initiative was one of the first trade agreements to address gender-based discrimination. Incorporating these principles, or suggesting that APEP participants sign on to that initiative, would serve Canada’s inclusive trade policy objectives.

### **Canada should ensure that APEP commitments prioritize supply chain resilience.**

The COVID-19 pandemic revealed numerous issues that can disrupt supply chains for consumer technology products and their inputs. Canada should seek to incorporate lessons learned from these issues by economies and businesses - particularly SMEs - into the APEP. One source of disruption highlighted during

<sup>5</sup> CUSMA - Chapter 11 - Technical barriers to trade, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/11.aspx?lang=eng>. CUSMA - Chapter 12 - Sectoral annexes, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/12.aspx?lang=eng>.

the pandemic was the closure of overseas facilities that produce upstream products or inputs on which production activity or the supply of final products to consumers depend. While the speed with which such facilities can resume operations has a direct bearing on the Canadian economy, the actions that need to be taken to resume production rest with partner governments. These governments may in turn struggle with resources, institutional, or technical constraints that limit their rapid response capabilities. The APEP could help address some of these limitations.

Specifically, Canada could use the framework of the APEP to establish a network of officials or agencies that can move quickly to identify and mitigate shutdowns of supply chain-critical facilities that result from events such as public health emergencies or natural disasters, or other external events. Such a network would create a ready list of contacts within and between governments that can be quickly activated to mitigate supply chain disruptions. This network could be formed under the APEP itself or in coordination with other organizations, such as APEC, the OECD, and the World Bank.

Ideally, designated officials would be able to work across agencies, coordinate across different levels of government, and act as points of contacts for businesses wishing to inform governments of an impending or current facility disruption. The network could also identify long-term areas of collaboration to strengthen the resilience of IT supply chains, from semiconductors to the broader IT ecosystem (e.g., printed circuit boards, displays, batteries/power, etc.).<sup>6</sup> Overall, increasing the combined resiliency of Western Hemisphere supply chains will benefit Canadian businesses and help mitigate over-reliance on inputs from any single region.

### **CTA urges Canada to pursue adherence to international tax frameworks through the APEP.**

Tax measures can have a significant bearing on the international competitiveness of businesses. Canada should use the APEP to articulate and encourage adherence to predictable tax policies that are based on sound international practices and principles. Canada should also seek commitments from APEP partners to refrain from tax measures that disproportionately target Canadian companies as well as taxes on digital services or other aspects of the digital economy in a manner not aligned with multilateral frameworks. CTA also urges Canada to use APEP to get countries to commit to implementing the OECD Inclusive Framework on Base Erosion and Profit Shifting.

### **Canada should leverage the APEP to support circular economy, environment, and climate goals.**

The circular economy provides an opportunity for Canada to simultaneously advance several objectives it has set out for the APEP, including climate change mitigation, supply chain resilience, and trade facilitation. Used goods generally – and used technology products in particular – provide an important source of raw materials that can be recovered and returned into the production process for new goods. Doing so reduces the need for mining, processing, and production of virgin materials, reduces waste, and enhances supply chain resiliency by capitalizing on the supply of critical materials already embedded in ubiquitous consumer products. Resource recovery of this nature does not occur at scale today, due in large part to regulatory

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<sup>6</sup>For example, as identified in the Assessment of Critical ICT Supply Chains report issued by the U.S. Departments of Commerce and Homeland Security: [https://www.dhs.gov/sites/default/files/2022-02/ICT%20Supply%20Chain%20Report\\_2.pdf](https://www.dhs.gov/sites/default/files/2022-02/ICT%20Supply%20Chain%20Report_2.pdf)



impediments. APEP is a forum that could offer new collaborative opportunities to address such impediments for the benefit of Canada and the Western Hemisphere.

Canada should also leverage the APEP to collaborate on building sustainability throughout supply chains, by prioritizing clean/renewable energy, reducing waste, improving recyclability, and encouraging responsible product design. For example, the APEP could address international rules that limit the cross-border movement of both used consumer technologies and resources recovered from them serve as a primary impediment to greater extraction and use of recoverable materials. While these rules are designed to safeguard against the potential harms of uncontrolled trade in waste products, they lack efficient mechanisms to allow safe and lawful movement of materials even among trusted entities.

The APEP also provides an opportunity to explore the creation of “resource recovery lanes” among trusted partners, within which individual companies could be certified to operate based on their willingness to adhere to standards set out by participating governments. Such a program among APEP partners could be developed in stages, for example, by initially covering only certain materials and by expanding over time to include other materials or non-APEP governments, with a long-term objective of creating cost parity between the use of recovered vs. virgin raw materials.

#### **Canada should seek commitments on streamlined customs procedures & trade facilitation in the APEP.**

Canadian businesses, particularly SMEs, benefit when the movement of goods across international borders is simple and streamlined. In this regard, the APEP should include binding commitments to:

- Avoid unnecessary trade import licenses for imports of digital hardware and software;
- Share information on seizures between governments and the private sector;
- Create a green lane for *de minimis* shipments that arrive with greater advance data;
- Implement a unified entry process through a Single Window from all government PGAs;
- Maintain authorized economic operator (AEO) programs (and, ideally, expand them to include trusted trader programs for individual sellers that do business via trusted ecommerce marketplaces); and
- Allow entities to secure advanced rulings for supply chains free of forced labour.

AEO programs are an invaluable means of trade facilitation that serve a variety of complementary objectives, including enhancing exporter competitiveness, building more resilient supply chains, making more effective use of limited customs resources, and facilitating low-risk trade. AEO programs are even more useful when coordinated internationally, allowing participants to receive border facilitation benefits in partner economies. Within the Western Hemisphere at present, Canada has AEO mutual recognition arrangements with Mexico, Peru and the U.S.<sup>7</sup> Canada should use the APEP to extend these arrangements into the Latin American region, where there is both a significant need for trade facilitation and tremendous opportunity for export growth.

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<sup>7</sup> Partners in Protection – Mutual Recognition webpage on the Government of Canada’s website. <https://www.cbsa-asfc.gc.ca/security-securite/pip-pep/mutrec-recmut-eng.html>.

**Conclusion.**

CTA is pleased to provide the above specific recommendations on possible Canadian negotiating objectives and positions for the APEP. We look forward to serving as a resource for the Government of Canada during the APEP negotiations.

Sincerely,



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