II

113TH CONGRESS
1ST SESSION

S. 1788

To make it a negotiating principle of the United States in negotiations for bilateral, plurilateral, or multilateral agreements to seek the inclusion of provisions that promote Internet-enabled commerce and digital trade.

IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2013

Mr. THUNE (for himself and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To make it a negotiating principle of the United States in negotiations for bilateral, plurilateral, or multilateral agreements to seek the inclusion of provisions that promote Internet-enabled commerce and digital trade.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Digital Trade Act of 2013".

SEC. 2. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—Congress makes the following findings:

(1) The Internet has become an unprecedented medium for competition, trade, free expression, and access to information.

(2) The Internet is a driver of the global economy and must remain open, stable, and secure.

(3) Trade in Internet-enabled services and transfers of data and other digital information have become increasingly critical drivers of the economic growth of the United States. The United States International Trade Commission found in a July 2013 report, entitled ''Digital Trade in the U.S. and Global Economies, Part 1'', that ''U.S. exports of digitally enabled services (one measure of international digital trade) grew from $282.1 billion in 2007 to $356.1 billion in 2011, with exports exceeding imports every year''.

(4) The United States is the global leader in Internet-enabled platforms, networks, and services. Certain liability protections for those entities under the law of the United States, which promote innovation and creativity and allow for cooperative efforts to address harmful activity, have been critical to the growth of the Internet economy in the United States.

(5) According to McKinsey & Company, more than $3/4$ of the value added by the Internet is in traditional industries.

(6) Internet-enabled commerce and digital trade benefits small- and medium-size enterprises by providing unparalleled access to global markets.

(7) Proposals have been put forward by some trading partners of the United States to restrict the flow of lawful information across borders. Those proposals would cause increased government control over the Internet and could create a fragmented Internet.

(8) Localization barriers to trade are frequently used to protect, favor, or stimulate domestic industries at the expense of industries in other countries. Those localization requirements harm the competitiveness of and end-users in the United States.

(9) Restrictive policies regarding the flow of information across borders are nontariff barriers that are harmful to innovation and economic advancement. Those policies impede trade in digital products and services and constrain the ability of United States companies from many sectors to effectively operate across borders.

(10) Cross-border data flows are critical to manufacturers, institutions of higher education, hospitals, retailers, financial services firms, laboratories, and many other organizations that use the Internet to improve their productivity and manage global networks of customers, suppliers, researchers, and employees.

(11) The free flow of information across borders provides choices and reduces costs to consumers worldwide.

(12) The position of the United States Government has been and is to advocate for the free flow of information across borders.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) agencies in the executive branch, including the Office of the United States Trade Representative, should be staffed with experts and leaders to fulfill the mission of promoting an open, global Internet that facilitates commerce and digital trade; and

(2) private sector stakeholders should have the opportunity to formally inform efforts of agencies in the executive branch related to digital trade.

SEC. 3. NEGOTIATING PRINCIPLES FOR INTERNET-ENABLED COMMERCE AND DIGITAL TRADE.

It shall be a negotiating principle of the United States in negotiations for a bilateral, plurilateral, or multilateral agreement, and in multi-stakeholder fora, to seek the inclusion of binding and enforceable provisions that promote and enhance Internet-enabled commerce and digital trade, including provisions—

(1) preventing or eliminating barriers to the movement of electronic information across borders, including by encouraging interoperability of data protection regimes and eliminating barriers to accessing, processing, transferring, or storing information;

(2) ensuring transparency in measures affecting the free flow of information within and across borders;

(3) continuing the current practice of not imposing customs duties on electronic transmissions;

(4) prohibiting measures that condition market access or other commercial benefits on localization of data, infrastructure, or investment;

(5) prohibiting any country from imposing measures that require an entity to use computing infrastructure or services in that country or otherwise

require an entity to access, process, transfer, or store data in the territory of that country;

(6) ensuring that the Internet continues to operate within the successful multi-stakeholder governance model;

(7) ensuring that provisions affecting intermediary liability for Internet-enabled platforms, networks, and services are consistent with the law of the United States;

(8) ensuring digital trade policies contemplate various business activities across all industrial sectors and allow for future technological advancement; and

(9) otherwise eliminating discriminatory treatment of Internet-enabled commerce and digital trade.

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