



ELECTRONIC FRONTIER FOUNDATION

Protecting Rights and Promoting Freedom on the Electronic Frontier

May 18, 2017

The Honorable Robert Lighthizer
U.S. Trade Representative
600 17th St. NW
Washington, DC 20006

Dear Ambassador Lighthizer,

The Electronic Frontier Foundation (EFF) is the leading nonprofit organization defending civil liberties in the digital world. Founded in 1990, EFF champions user privacy, free expression, and innovation through impact litigation, policy analysis, grassroots activism, and technology development. We work to ensure that rights and freedoms are enhanced and protected as our use of technology grows.

We write to congratulate you on your appointment to the position of United States Trade Representative. You have openly acknowledged various failings of previous U.S. trade policy, and committed yourself to forging a new path that avoids the missteps of the past. We wish you all the best in that important endeavor.

The American people's dissatisfaction with trade deals of the past, such as NAFTA, does not merely lie in their effects on the American manufacturing sector and its workers. Another of the key mistakes of previous U.S. trade policy, we respectfully submit, has been the closed and opaque character of trade negotiations.

During your confirmation hearing you acknowledged this problem, stating in response to a question from Senator Ron Wyden:

I will also look forward to discussing with you ways to ensure that USTR fully understands and takes into account the views of a broad cross-section of stakeholders, including labor, environmental organizations, and public health groups, during the course of any trade negotiation. My view is that we can do more in this area to ensure that as we formulate and execute our trade policy, we receive fulsome input and have a broad and vigorous dialogue with the full range of stakeholders in our country.

We could not agree more. In fact, this week we have taken out an advertisement in POLITICO's Morning Trade newsletter, which makes five very specific and actionable recommendations that would allow your office to make good on the ideals that you have expressed. Those recommendations, which flow out of a multi-stakeholder meeting that EFF and OpenTheGovernment.org hosted in Washington D.C. in January, are as follows:

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1. Publish U.S. textual proposals on rules in ongoing international trade negotiations

USTR should immediately make available on its website the textual proposals related to rules that it has already tabled to its negotiating partners in the context of the TTIP, TiSA, and any other bilateral, regional, or multilateral trade and investment negotiations it undertakes.

2. Publish consolidated texts after each round of ongoing negotiations

USTR should impose as a prerequisite to any new or continuing trade negotiations that all parties agree to publish consolidated draft texts on rules after each negotiating round, including negotiations conducted on the entire agreement or a specific element or chapter and among trade ministers or other officials of every party to such negotiations or of a subgroup of the parties to such negotiations.

3. Appoint a "transparency officer" who does not have structural conflicts of interest in promoting transparency at the agency

USTR should immediately appoint a transparency officer who does not have any structural conflicts of interest in promoting transparency at the agency.

4. Open up textual proposals to a notice and comment and public hearing process

USTR should initiate on-the-record public notice and comment and public hearing processes—at least equivalent to that normally required for other public rulemaking processes—at relevant points during the generation of government positions.

5. Make Trade Advisory Committees more broadly inclusive

If proposed U.S. texts and draft texts from negotiations are made publicly available, the main official advantage of the Trade Advisory Committee system – access to that information – would disappear. However, if Trade Advisory Committees are to be retained in addition to public notice and comment and public hearing processes, then resources must be devoted to making membership and effective participation in these committees more accessible to all affected stakeholder groups, including non-industry groups.

We contend that reforms such as those recommended above are absolutely essential if the American people are to “buy in” to any new or renegotiated trade agreements, such as NAFTA and the Korea-U.S. Free Trade Agreement. Absent meaningful reforms that allow the public to see what is being negotiated on their behalf, and to participate in developing trade policy proposals, the public will reject new agreements just as they rejected failed agreements of the past, such as the Trans-Pacific Partnership and the Anti-Counterfeiting Trade Agreement.

Conversely, given a real voice in trade policy development, there is the potential for trade agreements of the future to become more inclusive, better informed, and more popular—all of which are essential if America is to retain and strengthen its global economic leadership in the digital age.

We would welcome the opportunity to discuss the above recommendations in more detail with yourself or any member of your staff over the coming months. Please do not hesitate to reach out to us to schedule such a discussion.

Again, congratulations on your appointment and we look forward to working with you productively to develop U.S. trade policy in an open, inclusive, and transparent environment that works both for our world-leading innovative industries, and for the American public.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ernesto Falcon', written over a circular stamp or seal.

ELECTRONIC FRONTIER FOUNDATION
Jeremy Malcolm
Ernesto Falcon