

Before the Office of the United States Trade Representative (USTR)

Docket Nos. USTR-2025-0004 and USTR-2025-0005

**“Request for Public Comments and Notice of Public Hearing
Relating to the Operation of the Agreement Between the United
States of America, the United Mexican States, and Canada”**

Written Comments from American Economic Liberties Project, Center
for Democracy & Technology, Electronic Frontier Foundation, FULU
Foundation, iFixit, Re:Create Coalition, The Repair Association, and
U.S. PIRG.¹

November 3, 2025

As small businesses, consumer, and digital organizations working on right-to-repair policies, we thank the Office of the U.S. Trade Representative (USTR) for the opportunity to submit comments in advance of the joint review of the Agreement between the United States of America, the United Mexican States, and Canada (USMCA) on July 1, 2026.

Our organizations believe that trade agreements must fully preserve the rights of the U.S. Congress, state legislatures, and regulatory agencies to adopt and implement the policies needed so that consumers, farmers, and small business owners have access to the tools, parts, and information necessary to repair their electronics-enabled equipment and devices. As such, there is an urgent need for the United States, Mexico, and Canada to revise the USMCA to modify provisions that could be used to undermine right-to-repair reforms making headway both at the state and federal level in the United States. Specifically, we are referring to USMCA Articles 19.16, 14.10.1(f), and 20.66, which could limit the Parties’ ability to adopt crucial policies to promote and guarantee the right to repair.

This submission includes:

- An explanation on how USMCA Article 19.16, labeled “Source Code” in the Digital Trade chapter of the agreement, could thwart right-to-repair requirements imposed on

¹ This submission was drafted by Daniel Rangel, Research Director at the Rethink Trade program of the American Economic Liberties Project, and Anthony Rosborough, Assistant Professor of Law and Computer Science at Dalhousie University.

manufacturers, including obligations to grant access to diagnostics software and the sharing of digital “keys” needed to fix equipment;

- A related analysis of USMCA Article 14.10.1(f), regarding “Performance Requirements,” since this term could restrict repair requirements imposed on manufacturers for even non-software information and tools, such as schematics; and
- An elaboration on the obstacles to independent repair caused by USMCA Article 20.66 regarding “Technological Protection Measures,” which limits governments’ ability to create exceptions and limitations to copyright anti-circumvention regimes in order to enable the manufacturing and distribution of repair tools.

1. The so-called “Source Code” provision in the USMCA could thwart efforts to require manufacturers to share parts, tools, and information required to repair electronic equipment and devices.

Our organizations are working steadfastly to promote right-to-repair laws across the country both at the federal and the state levels. In the past five years, the right-to-repair movement has achieved important victories with state legislatures passing repair reforms in California, Colorado, Minnesota, New York, Oregon, Texas, and Washington state. Additionally, this year, state legislators have introduced right-to-repair reforms in Alabama, Florida, Illinois, Indiana, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New Jersey, New Mexico, and Virginia, amongst others.²

An essential element of the right-to-repair agenda is guaranteeing consumers and small businesses access to the schematics, diagnostics, and other software-based tools necessary to conduct repairs, including for devices that the manufacturer is abandoning in favor of newer versions. This also includes granting access to diagnostic software and to keys that unlock software locks or digital rights management (DRM) systems. U.S. trade agreements must be consistent with, and not undermine, these policies and the values they are advancing.

Yet USMCA Article 19.16 establishes a broad obligation to protect software source code and algorithms from inspection and disclosure by governments or access by third parties. We are concerned that this “source code” language is being read by some to guarantee corporations broad new secrecy rights over not only software’s source code, but algorithmic specifications and descriptions as well. Indeed, unlike the few other international pacts with similar language regarding source code, USMCA Article 19.16 includes algorithms, which are defined as “*a defined sequence of steps, taken to solve a problem or obtain a result.*” The incredible breadth of the definition of an algorithm in the USMCA means that Article 19.16 could even cover, among other software-based tools, a diagnostic test that is coded into a device’s firmware, the access key

² “Our Mission and History,” The Repair Association, accessed October 21, 2025, <https://www.repair.org/history>.

included in a replaceable component that signals to a device that such component is an “authorized part,” or calibration software required after replacing a damaged component in a smartphone.

As a consequence, this rule could thwart right-to-repair requirements imposed on manufacturers, including obligations to grant access to these and other software and software-based tools needed to fix equipment. The exception included in the second paragraph of USMCA Article 19.16 does nothing to safeguard such policies, as it is related to source code and algorithmic disclosure to governments in the course of regulatory or judicial proceedings. It does not cover horizontal consumer rights regimes that require sharing software and software-related repair tools with third parties. For a more detailed explanation of how this term could be interpreted as prohibiting policies that require device manufacturers to provide access to or disclose software and software-based tools needed to repair electronic devices, see the draft report annexed to these comments.

Keeping language in U.S. trade pacts that could be read as a broad, potentially open-ended ban on any policy that requires firms to give fair access to software’s source code and algorithms would undermine our efforts to ensure that consumers and small businesses can fix their own devices and equipment. Thus, we urge USTR to revise this language to ensure that it does not affect popular and bipartisan repair policies being discussed and adopted across the country by, at a minimum, including a carveout in USMCA Article 19.16 to permit requiring access to software (including source code and “algorithms”) for the purposes of diagnosis, maintenance, or repair.

2. “Performance Requirements” rules in the USMCA could represent an even bigger roadblock to requiring manufacturers to share parts, tools, and information required for repair.

In addition to the so-called “Source Code” provision, we are concerned about the potential implications of USMCA Article 14.10.1(f) for requiring manufacturers to provide consumers and independent repairers with all tools, parts, and information necessary to repair products.

Under this rule, included in the Agreement’s “Performance Requirements” provision, governments are prohibited from imposing or enforcing policies that require a foreign investor *“to transfer a technology, a production process, or other proprietary knowledge to a person in its territory.”* Similar to the “Source Code” term, this obligation could enable manufacturers to challenge right-to-repair requirements by arguing that such requirements compel them to transfer proprietary knowledge or technology to third parties.

This provision is potentially more concerning because it is not circumscribed to software source code or algorithms. It could also encompass general schematics or other product information needed for repair. Accordingly, we urge USTR to, at a minimum, include a carveout explicitly permitting requirements to share technologies and information with consumers and independent repairers for the purposes of diagnosis, maintenance, and repair.

3. The “Technological Protection Measures” term in the USMCA limits governments’ ability to enable the production, importation, and distribution of independent repair tools.

With software-enabled products, repairers routinely need to bypass or circumvent digital locks that control access to crucial device settings and configurations necessary to complete physical repairs. Often this circumvention requires special tools, codes, or software. In general, circumvention of digital locks that control access to software is considered a violation of the Digital Millennium Copyright Act (DMCA). But the Librarian of Congress (LoC) is empowered to grant temporary, case-by-case exceptions permitting the act of digital lock circumvention for certain products and devices.³ The DMCA (and as reinforced by the USMCA), however, does not permit the LoC to create exemptions for the creation and distribution of the tools, software, and other resources or services that are necessary for lawful circumvention nor the import, distribution, or sale of such tools, services, and resources by third-party suppliers. Commonly referred to as “trafficking,” these activities that facilitate otherwise lawful digital lock circumvention are treated as a separate offense from the act of circumvention itself.⁴

The effect is a conflicting framework of rules where it may be legal to circumvent a digital lock in a certain product or device for the purposes of repair, but nevertheless unlawful to create or distribute the practical means of doing so.

In response, several lawmakers have expressed interest in crafting reforms to Section 1201 of the DMCA to empower repairers to create, distribute, and access the tools, codes, or software required to circumvent digital locks and carry out physical repairs, as such actions do not implicate copyright protections and should not be prohibited.

However, the USMCA further complicates this picture by restricting the United States’ legislative discretion to make much-needed changes to the DMCA anti-circumvention law framework to permit and incentivize commercial repairers and suppliers to carry on business without the fear of being held liable under that law. Though the United States has some latitude to enact new exceptions permitting the act of circumvention for the purposes of repair, maintenance, or diagnosis,⁵ such discretion does not extend to any new exceptions permitting

³ “Rulemaking Proceedings Under Section 1201 of Title 17,” U.S. Copyright Office, effective October 28, 2024, <https://www.copyright.gov/1201/>.

⁴ 17 U.S.C. § 1201(a)(2)(“No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that... is primarily designed, ...has only limited commercially significant purpose or use other than..., or is marketed...for use in circumventing a [TPM].”)

⁵ In late 2024, Canada gave Royal Assent to a bill amending its Copyright Act to permit circumvention of digital locks for the sole purpose of “repair, maintenance or diagnosis” of a product or device containing software, but this new exception does not allow offering services the primary purposes of which are to circumvent digital locks, nor the manufacture, sale, import, or distribution of circumvention tools. Though the bill’s initial drafting did extend to trafficking in circumvention services and tools, it was eventually narrowed to remain in compliance with USMCA’s Article 20.66(2). See, e.g., Canada, Bill C-244, 44th Parl., 1st Sess., enacted November 7, 2024, Legisinfo, Parliament of Canada, <https://www.parl.ca/legisinfo/en/bill/44-1/c-244>.

creation and distribution of tools and services that are the practical means of lawful circumvention.

At present, Article 20.66 of the USMCA allows each Party to maintain or adopt exceptions and limitations in the anti-circumvention provisions to certain enumerated situations, such as for non-infringing reverse-engineering activities or to prevent minors from accessing inappropriate online content. This list of enumerated situations is insufficient for two reasons. Firstly, repair, maintenance, diagnosis, and similar interactions with software are not included in Article 20.66(4)'s list. Secondly, the structure of Article 20.66 confines any new exceptions or limitations permitting circumvention only to the act of bypassing a digital lock itself, and not the provision of services or essential tools to practically carry it out.

This explains why, while Article 20.66(4)(h) appears at first blush as though it may afford legislators some latitude to enact new exceptions facilitating the right to repair, it nevertheless falls short:

“...in addition, a Party may provide additional exceptions or limitations for non-infringing uses of a particular class of works, performances, or phonograms, when an actual or likely adverse impact on those non-infringing uses is demonstrated by substantial evidence in a legislative, regulatory, or administrative proceeding in accordance with the Party's law.”

As useful as a general, catch-all provision may be for enacting new copyright reforms permitting software access for repair purposes, it cannot facilitate legal reforms that would support commercial repairers or the third-party suppliers they rely upon to provide specialized tools. Therefore, from the perspective of enabling robust commercial repair, servicing, and aftermarket industries, a number of amendments are required. First, the current exception framework must be clarified so that it explicitly includes repair, maintenance, and diagnosis of lawfully acquired products with embedded software. The amendment should state that the circumvention of digital locks is permitted for these purposes, and that the manufacture, importation, sale, offering, or use of related tools, services, or components for that purpose is permitted.

Secondly, the USMCA's Article 20.66 must be amended to remove the requirement in Article 20.66(4)(h) that additional exceptions must pass a legislative or administrative “adverse impact” review in every case. Repair-oriented exceptions must be automatic and predictable, with deference to the government creating them. This adjustment would provide certainty to repairers and consumers alike rather than leaving them trapped in the present discretionary rule-making regime.

Third, the Article must be amended to clarify that the “anti-trafficking” provision in paragraph 1(b) does not apply when the end-circumvention is lawfully permitted under the exception. This

avoids the present paradox where bypassing digital locks is exempted by the LoC, but providing the means remains prohibited.

By making these changes, Article 20.66 would be aligned with the United States' policy goal of a broad-based right-to-repair ecosystem where consumers, independent repairers, and small businesses have lawful *and practical* access to the parts, tools, diagnostic software, and services necessary to repair, maintain, and prolong the useful life of modern digital products.

4. Conclusion

The USMCA must not stand in the way of widely supported, bipartisan efforts to ensure that consumers, farmers, and small businesses can repair the products they own. Yet, in its current form, several provisions in the agreement risk doing just that—by restricting the ability of governments to require access to software, tools, and information necessary for repair; by locking in excessive protections to manufacturers' proprietary data and technologies; and by constraining Congress's authority to modernize U.S. copyright law in line with domestic policy priorities.

As organizations representing consumers, farmers, and small businesses, we urge the Office of the U.S. Trade Representative to pursue revisions to USMCA Articles 19.16, 14.10.1(f), and 20.66 as part of the 2026 joint review. These changes should, at minimum, include explicit carveouts ensuring that right-to-repair policies—at both the federal and state levels—remain fully consistent with and permitted under U.S. trade commitments. Doing so would reaffirm the United States' leadership in advancing competition and consumer choice while safeguarding the ability of Congress and state legislatures to enact laws that promote fair markets and empower people to fix the things they own.