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Services in the NAFTA

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Abstract

The North American Free Trade Agreement (NAFTA) established an important baseline for North American services trade rules and set a precedent for later U.S. trade agreements. However, since the conclusion of the NAFTA, services trade rules have evolved and technological developments have transformed the operation of global services markets. The ongoing NAFTA renegotiation aims to update this agreement's services trade rules to better reflect current conditions in the North American services market, and given the importance of the United States' trade relationship with its NAFTA partners, such revisions may have a significant impact on U.S. services trade. This paper provides a broad overview of Canada and Mexico's contributions to overall U.S. services trade, compares NAFTA services provisions to provisions in more recent U.S. trade agreements, presents a summary of the proposals for revising and updating the NAFTA's services-related components from public sources, and provides a brief literature review of the possible impact of potential changes.

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Introduction

Services trade is a significant component of the United States' overall trade relationship with its NAFTA partners, generating substantial surpluses and accounting for a large (though slightly decreasing) share of total U.S. cross-border services trade. The NAFTA established an important baseline for North American services trade rules and set a precedent for later U.S. trade agreements, perhaps most notably by including negative-list market access commitments on services trade. However, in the years since the conclusion of the NAFTA, services trade rules have continued to evolve and technological developments have transformed the operation of global services markets. Notably, the advent of the internet and digital communications has increased firms' ability to offer new services to customers and to trade certain services internationally, impacting their competitiveness in the global marketplace. It is important to note that the NAFTA has no provisions that are specific to digital trade, a market segment that has grown rapidly during the past 20 years and that is covered to some extent in several recent trade agreements. The ongoing NAFTA renegotiation aims to update this agreement's services trade rules to better reflect current conditions in the North American services market. As a result, a new, revised NAFTA may have a significant impact on U.S. services trade.

This paper begins with a broad overview of Canada and Mexico's contributions to overall U.S. services trade and the extent of services trade restrictions maintained by these NAFTA partners. The paper continues with a comparison of services provisions in the NAFTA and in more recent U.S. trade agreements, as well as a summary of the proposals contained in public submissions for revising and updating the NAFTA's services-related components. It concludes with a brief review of the available literature on the potential impact of these changes.

An Overview of Services Trade with NAFTA Partners

Services trade is an important component of overall U.S. trade with Canada and Mexico, with the United States posting substantial services trade surpluses with its NAFTA partners throughout 1999–2016. In 2016, the U.S. cross-border private services[1] trade surplus with Canada and Mexico reached a combined $31.0 billion, offsetting a large portion of the $86.8 billion goods deficit with those countries.[2] Further, U.S. affiliate sales of services in Canada and Mexico exceeded U.S. purchases of services from Canadian and Mexican affiliates in the United States in every year during 2004–2015; in 2015, U.S. affiliate sales of services to Canada and Mexico totaled $164.2 billion while U.S. purchases of services from these countries' U.S. affiliates totaled $108.6 billion. The following discussion highlights NAFTA partners' contributions to total U.S. cross-border trade and affiliate transactions in services, and provides specific information on U.S. trade in computer services with Canada and Mexico.

[1] Private services include all services exports except government-provided services.

[2] USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, table 2.3, October 24, 2017 (accessed February 23, 2018); USDOC, BEA, Table 2.2. U.S. International Trade in Goods by Area and Country, Seasonally Adjusted Detail, December 19, 2017 (accessed February 23, 2018).

Cross-Border Trade

NAFTA partners account for a large share of total U.S. services trade, with Canada and Mexico ranking among the eight largest single-country markets for U.S. exports and imports of private services in 2016. In recent years, however, these countries' shares of overall U.S. cross-border trade in private services have decreased. During 1999–2016, the Canadian share of total U.S. private services exports fell from 8.6 percent to 7.3 percent, while Mexico's share dropped from 5.4 percent to 4.3 percent (table 1).

Table 1. Top U.S. export markets for private services in 2016: compound average growth rate (CAGR) and shares of U.S. private services exports, 1999–2016

Country	CAGR 1999–2016, Percent	Percent of total, 2016	Percent of total, 1999
United Kingdom	4.7	8.9	11.4
China	16.5	7.3	1.5
Canada	5.2	7.3	8.6
Ireland	10.7[a]	6.4	4.2[c]
Japan	1.6	5.9	12.7
Switzerland	11.8	4.4	1.9
UK Islands, Caribbean [d]	-4.8[b]	4.3	[e]
Mexico	4.8	4.3	5.4
Germany	3.8	4.3	6.4
Brazil	9.0	3.3	2.1

[a] CAGR, 2006–15.
[b] CAGR, 2013–15.
[c] 2006.
[d] Data on U.S. exports of government goods and services n.i.e. to Ireland and UK Islands, Caribbean are not available for 2016, and as a result, it is not possible to calculate U.S. exports of private services to these countries for that year. For this reason, data for Ireland and UK Islands, Caribbean reflect total services exports.
[e] Data not available.
Source: USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, table 2.2, October 24, 2017 (accessed February 23, 2018).

NAFTA partners also account for a decreasing share of U.S. private services imports, with Canada's share decreasing from 9.2 percent in 1999 to 6.2 percent in 2016, while Mexico's share fell from 5.3 percent to 5.1 percent (table 2).

The decreasing share of U.S. private services trade with NAFTA partners contrasted with particularly large jumps in U.S. private services trade with other major partners, such as Brazil, China, India, Ireland, and Switzerland.

Table 2. Top source markets for U.S. private services imports in 2016: CAGR and shares of U.S. private services imports, 1999–2016

Country	CAGR 1999–2016, Percent	Percent of total, 2016	Percent of total, 1999
United Kingdom	4.1	10.5	14.4
Canada	3.6	6.2	9.2
Germany	6.5	5.9	5.5
Japan	4.1	5.7	7.8
India	18.5	5.3	0.8
Bermuda	9.4	5.1	3.0
Mexico	5.7	5.1	5.3
Switzerland	10.4	4.9	2.4
Ireland	6.7[a]	3.5	2.8[b]
France	4.5	3.4	4.3

[a] CAGR, 2006–16.
[b] 2006.
Source: USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, table 2.2, October 24, 2017 (accessed February 23, 2018).

Travel services[3] dominate U.S. exports of private services to Canada, with 29.8 percent of such exports in 2016 (table 3). However, relatively slow growth in such exports during 1999–2016 (4.3 percent per year), contributed substantially to Canada's declining share of U.S. private services exports. Other services that accounted for large shares of total U.S. private services exports to Canada in 2016 include other business services (18.2 percent), intellectual property charges (14.9 percent), financial services (12.0 percent), and transport services (11.7 percent). In that same year, U.S. imports of private services from Canada were led by travel services (26.5 percent), other business services (24.9 percent), and transport services (18.0 percent). U.S. imports from Canada in all three of these services categories increased at relatively slow rates in recent years.[4]

Overall, U.S. exports of private services to Canada grew at a faster rate (5.2 percent) than U.S private services imports to that country (3.0 percent) from 1999 to 2016, resulting in 8.3-percent average annual growth in the U.S. private services trade surplus with Canada during the period. Among individual services categories, maintenance and repair services was fastest growing segment of U.S. exports to Canada (having increased at an average annual rate of 17.2 percent during 2006–16), while financial services was the fastest growing import segment (posting average annual growth of 10.6 percent during 2006–16). However, this growth occurred from a relatively small base, as maintenance and repair services and financial services respectively accounted for only 3.9 percent and 6.8 percent of U.S. exports and imports of private services to Canada by 2016.

[3] Data on travel services reflect foreign residents' purchases of goods and services, such as food and lodging, while traveling abroad for personal, business, and health and education purposes.
[4] USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, table 2.3, October 24, 2017 (accessed February 23, 2018).

Table 3: U.S. private services trade with Canada by industry, 1999 and 2016

	1999	2016	Share of total, 2016	CAGR 1999–2016
	Million dollars		*Percent*	
Total private services exports	22,671	53,545	100	5.2
Maintenance and repair services n.i.e.	[a]	2,075	3.9	17.2 [b]
Transport	3,752	6,271	11.7	3.1
Travel	7,773	15,936	29.8	4.3
Insurance services	415	1,892	3.5	9.3
Financial services	[a]	6,405	12.0	8.2 [b]
Charges for the use of intellectual property n.i.e.	2,708	7,977	14.9	6.6
Telecommunications, computer, and information services	[a]	3,202	6.0	4.5 [b]
Other business services	[a]	9,789	18.2	6.4 [b]
Total private services imports	16,367	29,696	100	3.0
Maintenance and repair services n.i.e.	[a]	1,465	4.9	6.3 [b]
Transport	3,849	5,356	18.0	2.0
Travel (for all purposes including education)	6,317	7,856	26.5	1.3
Insurance services	278	485	1.6	3.3
Financial services	[a]	2,006	6.8	10.6 [b]
Charges for the use of intellectual property n.i.e.	595	1,378	4.6	5.1
Telecommunications, computer, and information services	[a]	3,751	12.6	4.1 [b]
Other business services	[a]	7,398	24.9	2.5 [b]

[a] Data not available.
[b] CAGR, 2006–16.
Source: USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, table 2.3, October 24, 2017 (accessed February 23, 2018).

U.S. private services trade with Mexico exhibits similar trends (table 4). Travel services accounted for over half (55.3 percent) of total U.S. exports of private services to Mexico in 2016, and such exports grew at a relatively slow rate (3.9 percent per year) during 1999–2016. Other services that accounted for large shares of total U.S. private services exports to Mexico include transport services (12.1 percent), intellectual property charges (11.9 percent), and other business services (8.7 percent). Travel services also dominate U.S. private services imports from Mexico with 66.1 percent in 2016, followed by transport services (12.6 percent) and other business services (11.7 percent). While travel services imports grew at a rate similar to that of overall U.S. private services imports from Mexico from 1999 to 2016, U.S. imports of transport services from Mexico grew at a slower-than-average rate of 3.1 percent and imports of other business services increased at a relatively rapid rate of 8.8 percent per year during the period.[5]

[5] Data on U.S. imports of other business services from Mexico are not available for the years 1999-2005. USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, table 2.3, October 24, 2017 (accessed February 23, 2018).

Table 4: U.S. private services trade with Mexico by industry, 1999 and 2016

	1999	2016	Share of total, 2016	CAGR 1999–2016
	Million dollars		*Percent*	
Total private services exports	14,146	31,550	100	4.8
Maintenance and repair services n.i.e.	[a]	717	2.3	9.4 [b]
Transport	1,588	3,886	12.1	5.4
Travel (for all purposes including education)	9,131	17,459	55.3	3.9
Insurance services	81	413	1.3	10.1
Financial services	[a]	1,507	4.8	6.8 [b]
Charges for the use of intellectual property n.i.e.	1,098	3,748	11.9	7.5
Telecommunications, computer, and information services	[a]	1,086	3.4	6.2 [b]
Other business services	[a]	2,734	8.7	3.9 [b]
Total private services imports	9,499	24,440	100	5.7
Maintenance and repair services n.i.e.	[a]	254	1.0	4.2 [b]
Transport	1,837	3,077	12.6	3.1
Travel (for all purposes including education)	6,007	16,152	66.1	6.0
Insurance services	3	29	0.1	14.3
Financial services	[a]	356	1.5	5.0 [b]
Charges for the use of intellectual property n.i.e.	93	746	3.1	13.0
Telecommunications, computer, and information services	[a]	978	4.0	2.0 [b]
Other business services	[a]	2,848	11.7	8.8 [b]

[a] Data not available.
[b] CAGR, 2006–16.
Source: USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, table 2.3, October 24, 2017 (accessed February 23, 2018).

Affiliate Transactions

As with cross-border trade, U.S. affiliate transactions with Canada are substantial. Among those countries for which data are available, Canada was the second-largest market for U.S. affiliate sales of services and the fourth-largest source of U.S. affiliate purchases of services in 2015.[6] Sales to Canada decreased as a share of total U.S. affiliate sales of services during 2004–15 from 9.7 percent to 8.3 percent. However, purchases of services from Canadian-owned affiliates in the United States increased relatively quickly during the period, with Canada's share of such purchases increasing from

[6] USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, tables 4.4 and 5.4, October 24, 2017 (accessed February 23, 2018).

7.7 percent in 2004 to 10.5 percent in 2015.[7] Affiliates in the retail, wholesale, and professional, scientific, and technical services industries account for the largest shares of U.S. affiliate sales to Canada, with 18.5 percent, 14.6 percent, and 13.7 percent, respectively, in 2015. In that same year, the finance and insurance industry dominated U.S. affiliate purchases from Canada (with 28.3 percent), followed by transportation and warehousing (13.9 percent), and retail (11.5 percent).[8]

U.S. affiliate transactions with Mexico are smaller than those with Canada, but are growing very rapidly. In 2015, Mexico was the twelfth- and seventeenth-largest foreign market for U.S. affiliate sales and purchases of services, respectively.[9] As a result of double-digit compound average growth, Mexico's share of total U.S. affiliate sales of services increased from 2.5 percent to 2.9 percent during 2004–15, while its share of U.S. affiliate purchases grew from 0.5 percent to 0.9 percent.[10] Among the aggregated sectors for which 2015 data are available, retail and wholesale trade accounted for the largest shares (21.7 percent and 10.3 percent, respectively) of U.S. affiliate sales of services to Mexico. However, it is likely that the finance and insurance sector accounts for a significant, if not the largest, share of such sales. Aggregate data on sales by U.S. finance and insurance affiliates to Mexico were suppressed for both 2014 and 2015; however, this sector accounted for 27.8 percent of total U.S. affiliate sales in 2013 and the two segments of this sector for which 2015 data are available—"finance, except depository institutions" and "insurance carriers and related activities"—together accounted for 17.5 percent of total affiliate sales to Mexico in that year. A large number of industry-specific observations on U.S. purchases of services from Mexican-owned affiliates are suppressed, and as such, it is not clear which industries account for the largest shares of such purchases.[11]

Cross-Border Trade and Affiliate Transactions in Computer Services

E-commerce (as defined in recent trade agreements) and digital trade (as covered in recent USITC investigations) are imprecise concepts, and as such, the extent of such transactions between the United States and its NAFTA partners is difficult to quantify. The BEA does publish data on U.S. cross-border trade in computer services, which includes data entry, computer systems analysis, design, and engineering; custom software and programming (including Web design); hardware and software integration; and other computer services, such as maintenance, website management, and repair. These data do not include fees for database services and software usage,[12] nor do they include intellectual property charges and license fees for computer software, which are reported separately. The BEA also

[7] USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, tables 4.2 and 5.2, October 24, 2017 (accessed February 23, 2018).
[8] USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, tables 4.1 and 5.1, October 24, 2017 (accessed February 23, 2018).
[9] This ranking does not include U.S. affiliate purchases from the United States, which reflect purchases from U.S. affiliates with a foreign parent and a U.S. ultimate beneficial owner. Such purchases were $17.4 billion in 2015, higher than purchases from affiliates based in a large number of foreign markets, including Mexico. USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, tables 4.4 and 5.4, October 24, 2017 (accessed February 23, 2018).
[10] USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, tables 4.2 and 5.2, October 24, 2017 (accessed February 23, 2018).
[11] USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, tables 4.1 and 5.1, October 24, 2017 (accessed February 23, 2018).
[12] USDOC, BEA, "Quarterly Survey of Transactions," January 2013, 16; USDOC, BEA, "International Services Surveys," January 2013, 9.

publishes data on affiliate transactions in computer systems design and related services, which includes custom programming, systems design, facilities management, software installation, computer disaster recovery, and other computer-related services. Together, these cross-border trade and affiliate transactions data provide some indication of Canada and Mexico's importance as U.S. digital trade partners.

Canada is a key market for U.S. cross-border exports of computer services, having ranked as the second largest single-country market for such exports in 2016 (with 12.1 percent, or $2.1 billion, of the total), following the United Kingdom (with 13.1 percent). U.S. exports of computer services to Canada grew at a rate of 11.5 percent annually during 2006–16, only slightly slower that the 11.7 percent growth rate recorded for total U.S. computer services exports during the period. Canada is also the second-largest single-country source of U.S. computer services imports, having accounted for 11.2 percent of such imports in 2016, but trailing India (which accounts for 47.4 percent) by a substantial margin. Overall, the United States ran a computer services trade deficit with Canada throughout 2006–16, which stood at $1.2 billion and accounted for 9.8 percent of the total U.S. computer services trade deficit in 2016.[13]

Mexico ranked as the ninth largest market for U.S. exports of computer services in 2016 with 3.7 percent, or $643 million, and accounted for 1.8 percent or $532 million of U.S. imports of computer services in that same year. However, such trade is growing rapidly, with U.S.-Mexico exports and imports of computer services increasing at faster-than-average rates of 17.8 percent and 16.8 percent, respectively, during 2006–2016. Throughout this period, the U.S. trade balance in computer services with Mexico fluctuated between surplus and deficit; in 2016, U.S. trade in computer services with that country yielded a $111 million surplus.[14]

NAFTA partners account for a relatively small share of U.S. affiliate transactions in computer systems design and related services. In 2015, sales of such services by U.S.-owned affiliates in Canada and Mexico respectively accounted for 5.1 percent and 1.5 percent of total U.S. affiliate sales of computer systems design and related services. In that same year, U.S. purchases of computer systems design and related services from Canadian-owned affiliates accounted for 4.5 percent of total U.S. affiliate purchases of such services, while such purchases from Mexican-owned affiliates accounted for less than 0.1 percent.[15]

Services Trade Barriers in NAFTA Partner Countries

World Bank and OECD services trade restriction indicators suggest that the level of non-preferential services trade barriers maintained by NAFTA signatory countries is relatively low. Scores assigned to the barriers maintained by the United States, Canada, and Mexico largely fall within the "virtually open" or less restrictive ranges of these indices and are generally lower than, or close to, other countries' average scores. This suggests that while there is some room to further liberalize services trade barriers among

[13] The overall U.S. trade deficit in computer services totaled $11.7 billion in 2016. USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, table 2.2, October 24, 2017 (accessed March 15, 2018).
[14] USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, table 2.2, October 24, 2017 (accessed March 15, 2018).
[15] USDOC, BEA, Interactive data, International Transactions, Services, &IIP, International Services, tables 4.1 and 5.1, October 24, 2017 (accessed March 15, 2018).

NAFTA member countries, the possible extent of such liberalization—and thus the benefits resulting from a reduction of these remaining barriers—would likely be small.

The World Bank's Services Trade Restrictions Index (STRI), which is based on survey responses collected during 2008–2010, scores the restrictiveness of barriers maintained by 103 countries in five services industries (including breakouts for 18 industry segments) and provides an average score for each country in the index, ranging from 1 (open without restrictions) to 100 (completely closed). These scores suggest that NAFTA services markets are moderately open: overall STRI scores for Canada (28.3) and the United States (25.3) are lower than the world average (32.9), while Mexico's score (36.1) is slightly higher than the global mean, but still closer to "virtually open" (25) than "existence of major/non-trivial restrictions" (50) on the World Bank's point scale.[16] Further, in most industries, NAFTA signatories' scores were either lower, or no more than 10 points higher, than the global average. Exceptions include telecommunications, for which Canada's and Mexico's scores (50 and 37.5, respectively) were substantially higher than the global mean (26.7), and transportation, for which Mexico's score (61.5) was far higher than the average (31.0).[17]

The OECD index, which is updated on a yearly basis, includes scores for 44 countries and 22 industry segments ranging from 0 (least restrictive) to 1 (most restrictive), but does not provide overall country scores. Like the World Bank STRI, the OECD index suggests that in most cases, restrictions in NAFTA cases are lower than, or comparable to, restrictions in the other 44 countries included in the index. However, Mexico posted relatively high scores in the logistics customs brokerage (1.00), broadcasting (0.62), courier (0.45), and commercial banking (0.35) segments, while U.S. scores were relatively high for air transport (0.54), maritime transport (0.37), and courier (0.40) services. Canada did not post a score in any industry segment that exceeded the 44-country average by more than 0.1.

The computer services industry is among the segments for which the OECD index provides discrete scores. These scores suggests that the barriers to trade in computer services maintained by many countries—and by NAFTA partners in particular—are general very low. Specifically, the United States and Canada both posted scores of 0.18 for the computer services segment while Mexico posted a score of 0.19, all lower than the 0.23 average for the countries included in the OECD index.[18]

Services Provisions in the NAFTA and Subsequent U.S. Trade Agreements[19]

Specific provisions on services trade are included in three separate chapters of the NAFTA agreement: cross-border trade in services (Chapter 12), financial services (Chapter 14), and telecommunications (Chapter 13). Additionally, other chapters of the agreement—most notably those on investment

[16] See Borchert, Ingo, Batshur Gootiiz, and Aaditya Mattoo. "Guide to the Services Trade Restrictions Database." World Bank Policy Research Working Paper 6108, Washington: World Bank, 2012. http://documents.worldbank.org/curated/en/878251468178764639/Guide-to-the-services-trade-restrictions-database. 18.
[17] World Bank, Services Trade Restrictions Database, http://iresearch.worldbank.org/servicetrade/ (accessed August 23, 2017).
[18] OECD, Services Trade Restrictiveness Index Regulatory Database, https://qdd.oecd.org/subject.aspx?Subject=063bee63-475f-427c-8b50-c19bffa7392d (accessed August 23, 2017).
[19] The information presented in this section is based on the texts of the NAFTA and other U.S. trade agreements. Links to these texts can be found at https://ustr.gov/trade-agreements/free-trade-agreements.

(Chapter 11) and temporary entry for business persons (Chapter 16)—include provisions that do not specifically pertain to services but that have an important impact on services industries. The evolution of these provisions in subsequent U.S. trade agreements and NAFTA parties' negotiating objectives provide some insight into the type of services provisions that might be included in a revised NAFTA agreement.

Unlike later U.S. FTAs, the NAFTA does not include specific provisions on digital trade and electronic commerce. Provisions on electronic commerce first appeared in the U.S.-Jordan agreement, which entered into force in 2001. The evolution of digital trade provisions, relevant for trade in both services and goods, in later U.S. FTAs is discussed at the end of this section.

Cross-border Trade in Services

Like most recent U.S. TPAs, NAFTA provisions on cross-border services trade include national treatment and MFN obligations, and a provision barring parties from imposing local presence requirements. The NAFTA includes provisions on the licensing and certification of professional services suppliers in the text of its cross-border services chapter while most subsequent agreements include similar (but not identical) provisions in annexes to this chapter.[20] Further, like all subsequent U.S. TPAs (with the exception of the U.S.-Jordan agreement), the NAFTA is a "negative list" agreement as the scope of its services provisions is limited only by the measures included in the agreement's lists of non-conforming measures (NCMs). However, there are also a number of provisions that do not appear in the NAFTA, but that are included in later agreements. Unlike the vast majority of subsequent U.S. trade agreements, the NAFTA cross-border services chapter does not include provisions on market access, does not explicitly address regulatory transparency (except with regard to licensing and certification), does not contain obligations to allow transfers and payments, and does not contain measures on express delivery in either the text of, or an annex to, the chapter.

In the summary of its NAFTA renegotiation objectives, USTR indicates that it aims to retain the NAFTA's negative list structure and include market access obligations, transparency measures, and provisions on delivery services in a revised agreement.[21] Canada's foreign affairs minister did not specifically mention services in her list of negotiating objectives, while Mexico's negotiating objectives reportedly call for unrestricted market access for services and services trade liberalization.[22]

Financial Services

The NAFTA's financial services chapter includes provisions on establishment of financial institutions, cross-border trade, national treatment, MFN treatment, new financial services, data processing (which requires parties to permit the cross-border transfer of electronic or other information that is necessary to an institution's business), and a provision disallowing the imposition of nationality requirements on managers and board members. These are "negative-list" commitments, and as such, are limited only as

[20] One notable difference is the NAFTA's inclusion of an obligation to "…eliminate any citizenship or permanent residency requirement…that it maintains for the licensing or certification of professional service providers…", which does not seem to appear in later agreements .
[21] Office of the United States Trade Representative (USTR), *Summary of Objectives for the NAFTA Renegotiation*, November 2017, 7.
[22] Alexander Panetta, "Canada's 10 NAFTA demands: A list of what Canada wants as talks start this week," *CBCnews*, August 14, 2017, http://www.cbc.ca/news/politics/nafta-canada-demands-list-1.4246498; Gabriel Stargardter, "Mexico sets out NAFTA goals ahead of re-negotiation talks: document," *Reuters*, August 1, 2017, https://www.reuters.com/article/us-usa-trade-mexico-idUSKBN1AH4VW.

indicated in the parties' lists of financial services NCMs, which appear in Annex VII of the agreement.[23] The chapter also includes measures on self-regulatory organizations and transparency, lists exceptions (including for prudential regulations, among others), establishes a financial services committee, and includes provisions on consultations and on investment disputes in financial services. More recent U.S. trade agreements include most of these provisions, in addition to provisions on access to public payment and clearing systems, the impartial and reasonable administration of domestic regulation, and the expedited availability of insurance services. These subsequent agreements also include market access obligations which expand on the NAFTA's provisions on the establishment of financial institutions by, among other things, barring limitations on number of operations and form of establishment and by expanding coverage to natural persons.

Notably, unlike the NAFTA, later U.S. agreements do not include obligations in their financial services chapters on the cross-border transfer of information for data processing purposes. In its current NAFTA negotiating objectives, the USTR expresses support for financial services provisions that obligate countries to permit the cross-border transfer of data and that preclude the imposition of data localization requirements.

In addition to these data transfer provisions, USTR favors improving the predictability and transparency of financial services regulation, and improving the openness and fairness of trade in financial services.[24] Neither Canada nor Mexico specifically addresses financial services in its negotiating objectives.[25]

Telecommunications

In their telecommunications chapters, both the NAFTA and more recent U.S. trade agreements include obligations relating to access to and use of public telecommunications networks and services, the transparency of the parties' measures on such access and use, and measures related to interconnection. NAFTA's telecommunication chapter also includes obligations on the conditions facing providers of enhanced or value-added services, standards-related measures, and provisions on monopolies. These measures were updated and expanded in subsequent agreements, particularly with regard to the provision of information services and public telecommunications services. In addition to those provisions found in the NAFTA, the telecommunications chapters in recent U.S. TPAs also include obligations regarding the independence of regulatory bodies, government-owned telecommunications suppliers, universal service, licenses and authorizations, allocation and use of scarce resources, domestic dispute resolution, technology choice, and submarine cable systems, among other things.

[23] The NAFTA parties' schedules in Annex VII of the agreement include schedules for each NAFTA party divided into three sections. Each country's section A lists current measures that do not conform to NAFTA financial services obligations, and section B lists reservations for future nonconforming measures. Section C of each schedule lists additional financial services commitments undertaken by that party.
[24] Office of the United States Trade Representative (USTR), *Summary of Objectives for the NAFTA Renegotiation*, November 2017, 7-8.
[25] Alexander Panetta, "Canada's 10 NAFTA demands: A list of what Canada wants as talks start this week," *CBCnews*, August 14, 2017, http://www.cbc.ca/news/politics/nafta-canada-demands-list-1.4246498; Gabriel Stargardter, "Mexico sets out NAFTA goals ahead of re-negotiation talks: document," *Reuters*, August 1, 2017, https://www.reuters.com/article/us-usa-trade-mexico-idUSKBN1AH4VW.

USTR supports the inclusion of obligations on regulatory independence, transparency, access to scarce resources and physical facilities, interconnection, and technology choice in a revised NAFTA.[26] Neither Canada nor Mexico has proposed negotiating objectives specific to telecommunications.[27]

Movement of Persons

The NAFTA includes a chapter on the movement of persons that obligates all three parties to grant temporary entry to business persons on a reciprocal basis except in certain circumstances, to provide pertinent information and data to other parties, and to establish a working group on temporary entry. The chapter also includes annexes which, among other things, provide for the temporary entry of business visitors, traders and investors, intra-company transferees, and professionals (provisions that led to the creation of the TN visa), and grant Mexico an additional year to comply with the data provision obligations in the chapter. Both the U.S.-Chile and U.S.-Singapore agreements also include provisions on the movement of persons; however, such measures are absent from all post-2004 U.S. trade agreements.[28]

The USTR's renegotiation objectives do not address movement of persons, and this—together with the absence of commitments on the movement of persons in recent U.S. TPAs—casts doubt on U.S. support for including obligations on movement of persons in a revised NAFTA agreement. By contrast, Canada's Foreign Affairs Minister favors updating and expanding the list of professionals that qualify for less-restrictive temporary entry treatment under the NAFTA. Further, Canada reportedly favors the inclusion of provisions in the revised NAFTA that would require the elimination of U.S. state-level right-to-work legislation (such legislation gives workers a choice regarding whether or not to pay union dues).[29] Mexico reportedly supports the increased integration of NAFTA parties' labor markets. [30]

Investment

Like other U.S. TPAs, the NAFTA does not include provisions that specifically address the supply of services through a commercial presence. However, the NAFTA does include an investment chapter that contains measures impacting such transactions. As with later agreements, the NAFTA investment chapter is based on the U.S. model bilateral investment treaty (BIT) that was in effect at the time of the agreement. Investment provisions in the NAFTA include commitments to offer national treatment and MFN treatment to investors; a commitment to uphold a minimum standard of treatment towards

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[26] Office of the United States Trade Representative (USTR), *Summary of Objectives for the NAFTA Renegotiation*, July 17, 2017, 8.

[27] Alexander Panetta, "Canada's 10 NAFTA demands: A list of what Canada wants as talks start this week," *CBCnews*, August 14, 2017, http://www.cbc.ca/news/politics/nafta-canada-demands-list-1.4246498; Gabriel Stargardter, "Mexico sets out NAFTA goals ahead of re-negotiation talks: document," *Reuters*, August 1, 2017, https://www.reuters.com/article/us-usa-trade-mexico-idUSKBN1AH4VW.

[28] The text of the TPP did include a chapter on the movement of persons; however, the United States had undertaken no specific commitments under this chapter.

[29] Michigan Radio, "In ongoing NAFTA re-negotiations, Canada demands rollback of states' right-to-work laws," September 7, 2017, http://michiganradio.org/post/ongoing-nafta-re-negotiations-canada-demands-rollback-states-right-work-laws (accessed September 8, 2017).

[30] Alexander Panetta, "Canada's 10 NAFTA demands: A list of what Canada wants as talks start this week," *CBCnews*, August 14, 2017, http://www.cbc.ca/news/politics/nafta-canada-demands-list-1.4246498; Gabriel Stargardter, "Mexico sets out NAFTA goals ahead of re-negotiation talks: document," *Reuters*, August 1, 2017, https://www.reuters.com/article/us-usa-trade-mexico-idUSKBN1AH4VW.

foreign investors; a requirement to pay compensation in case of expropriation; and rules governing capital transfers, performance requirements, and nationality requirements for senior managers and boards of directors. The NAFTA also contains investor-state dispute settlement (ISDS) provisions which outline the process by which an investor can submit a claim to binding international arbitration against the host country government, alleging that that government has violated the provisions of the investment chapter. Like provisions on cross-border trade in services, the agreement's provisions on investment are negative list commitments and apply to all industries except as indicated in the parties' lists of NCMs.

In its NAFTA negotiating objectives, the USTR has indicated that it supports eliminating or reducing investment barriers, securing investor rights that are consistent with U.S. law, and ensuring that the rights accorded to domestic investors are at least as substantive as those accorded to investors from Canada or Mexico.[31] Mexico also reportedly favors investment liberalization.[32] Canada's Foreign Affairs Minister has proposed a single and specific investment-related objective: with regard to the ISDS process, she advocates the preservation of governments' right to maintain public interest regulations.[33] Meeting this objective might involve including a provision similar to the TPP measure that allows parties to adopt, maintain, and enforce regulatory objectives pertaining to health, the environment, and other issues.

Digital Trade

The original NAFTA agreement did not include explicit provisions on digital trade; however, since the signing of the US-Singapore FTA in 2003, U.S. TPAs typically include provisions on non-discrimination for digital products and customs duties prohibitions. The U.S.-Singapore FTA explicitly noted that non-discrimination principles would apply to electronic products, including those delivered over the Internet. The U.S.-South Korea (KORUS) agreement also included non-discriminatory and duty free treatment for all digital products, whether transmitted over the Internet or in physical formats. KORUS was the first U.S. FTA that required parties to allow cross border information flows and discouraged cross-border data barriers, although it did not refer directly to data localization.

With regard to the current NAFTA negotiations, the United States and Canada hold similar positions to each other on digital trade (e.g. they support the free flow of online data and prohibitions on data localization) but differ over how local privacy rules could restrict data flows. Further, unlike the United States, Canada and Mexico lack statutory Safe Harbor rules to protect ISP on user content. More generally, Mexico has prioritized initiatives to stimulate its digital economy, such as through e-commerce and financial services digital platforms, and Canada is open to including e-commerce and data provisions in NAFTA.

[31] Office of the United States Trade Representative (USTR), *Summary of Objectives for the NAFTA Renegotiation*, July 17, 2017, 9.

[32] Gabriel Stargardter, "Mexico sets out NAFTA goals ahead of re-negotiation talks: document," Reuters, August 1, 2017, https://www.reuters.com/article/us-usa-trade-mexico-idUSKBN1AH4VW.

[33] Alexander Panetta, "Canada's 10 NAFTA demands: A list of what Canada wants as talks start this week," *CBCnews*, August 14, 2017, http://www.cbc.ca/news/politics/nafta-canada-demands-list-1.4246498.

Public Comments on the NAFTA Renegotiation[34]

A large number of firms and industry associations submitted public comments to the USTR on the current NAFTA negotiations. A substantial share of these comments advocated the inclusion of digital trade provisions in a revised NAFTA, and provided suggestions regarding the content of these provisions. However, interested parties also provided comments pertaining to other services industries and issues, including telecommunications, audiovisual and advertising services, financial services, transportation services, and the supply of services through mode 4, among others. The following discussion provides a very broad overview of the public comments on services-related topics.

Digital Trade

At least 30 companies and industry associations recommended that a revised NAFTA should include specific language prohibiting signatories from implementing digital trade related measures.[35] Examples of such policies include data localization requirements; provisions that hold Internet intermediaries liable for third-party content; tariffs, duties, or other taxes on digitally-delivered content and other digital transmissions; and policies that mandate the disclosure of source code as a precondition for market access. More than 10 commenters also directly called for NAFTA to include a new chapter aimed at reducing restrictions on cross-border e-commerce. At the same time, several public submissions expressed caution regarding provisions that would prohibit NAFTA signatories from restricting digital trade. The most specific submission, from the Electronic Frontier Foundation (EFF), argued that NAFTA is an inappropriate forum for certain digital trade issues, arguing that such issues should instead be addressed in broader multilateral fora or reviewed in conjunction with a broader scope of national issues. EFF also argued that the prohibition of data localization laws could have both positive and negative outcomes.

Other submissions focused on the potential impact of digital trade provisions on specific services industries or tasks. For example, one health organization argued that NAFTA should address digital trade in health technologies while “[meeting] demands for greater privacy and security.” The Center for Democracy & Technology argues that NAFTA should not force members to adopt the U.S. safe harbor system for online service providers and should not extend prohibitions on “circumventing technological protection measures,” arguing that this inhibits research activities.

Telecommunications

Several satellite services providers submitted comments calling for mutual recognition of satellite equipment standards and arguing that NAFTA should prohibit various limits on market access, including non-administrative fees for satellite licenses and the use of orbital locations, foreign ownership limits, requirements to provide a portion of system capacity to domestic commercial and government entities,

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[34] This section presents a summary of publically-available comments submitted in response to the USTR’s May 22, 2017 notice, “Requests for Comments: Negotiating Objectives Regarding Modernization of North American Free Trade Agreement with Canada and Mexico.” These comments are available at https://www.regulations.gov/docket?D=USTR-2017-0006.

[35] For a discussion on measures impacting digital trade, see chapter 8 of USITC, *Global Digital Trade 1: Market Opportunities and Key Foreign Trade Restrictions*, https://www.usitc.gov/publications/332/pub4716_0.pdf.

geographic coverage requirements, and limits on the type of data transmitted via satellite. Additionally, the Telecommunications Industry Association proposed that Mexico should be required to accede to the WTO Information Technology Agreement (ITA) under a revised NAFTA, thus committing that country to the ITA's permanent tariff reductions.

Audiovisual and Advertising Services

More than 10 individuals affiliated with the visual effects (VFX) industry raised complaints regarding Canadian subsidies for VFX services and other content production associated with the motion picture industry. These parties argued that tax subsidies provided by the Canadian federal government and the British Columbia, Ontario, and Quebec governments have led major Los Angeles-based film studios to outsource VFX work to Canadian VFX studios. After VFX content is produced, it is transferred to U.S.-based film studios to be added to the completed film.

Other comments on audiovisual and advertising services addressed a range of issues. The National Association of Broadcasters contended that part of the Canadian corporate tax code "effectively" levies a tariff on U.S. advertising services sold to Canadian businesses, giving Canadian advertisers an unfair advantage. The MPAA argued that Canadian media policies limit U.S. programming in the Canadian market, while Canadian firms have full access to U.S. audiences. Additionally, the Entertainment Software Association (ESA) argued that Mexico should correct a legal "deficiency" that allows software and hardware circumvention products and services to be sold or distributed without criminal penalties.

Financial Services

Like entities in other industries, several banks, insurers, and payment services providers addressed digital trade issues, supporting a prohibition on data localization requirements, and arguing that such a provision should apply to financial services firms due to their reliance on cross-border data flows for payment and investment purposes. Various other issues were also addressed in the comments submitted by financial services firms. One major U.S. bank suggested that NAFTA's financial services chapter should provide for increased regulatory cooperation on anti-money laundering (AML) regulation. A major U.S. insurer called for the strengthening of ISDS to include stronger investor protections for the finance industry, similar to those already afforded to other sectors. The American Insurance Association argued that NAFTA should "strengthen and expand" cross-border insurance trade commitments for "large corporate customers" and should address "anticompetitive advantages enjoyed by state-owned insurers." Further, the Arizona Chamber of Commerce suggested that deregulation in financial and insurance services—as well as healthcare and legal services—could improve trading conditions in the NAFTA region, arguing that Mexico's telecommunications sector deregulation increased market access for U.S. companies.

Transportation Services

Several domestic maritime service providers state that the Jones Act[36] and related legislation should continue to be maintained and that all maritime activities should be excluded from NAFTA to prevent foreign competitors (especially those that receive government subsidies) from gaining access to the U.S.

[36] In the United States, section 27 of the Merchant Marine Act of 1920, 46 U.S.C. 883, 19 CFR 4.80, and 4.80 (b)—also known as the Jones Act—requires that the transport of cargo between U.S. ports be provided on vessels that are built and registered in the United States, and that are owned and crewed by U.S. citizens.

market and negatively affecting the domestic industry. In contrast, the North American Strategy for Competitiveness (NASCO)—a coalition of business, educational, and government entities[37]—recommended a reexamination of the Jones Act and related legislation “where [the parties] are willing to reciprocate thus enabling the flexibility to maximize supply chain and labor efficiencies.”

Other comments that addressed transportation-related issues were varied. The Transportation Communications Union argued that rail cars should be inspected in the United States (adhering to Rail Safety Improvement Act [2008] standards) instead of undergoing truncated inspection in Mexico that bypasses RSIA standards. The AFL-CIO argued that NAFTA’s Annex II should be expanded to prevent other NAFTA members from influencing federal, state, and local transportation policies. Greyhound opposed the reopening of NAFTA cross-border trucking and bus provisions. Additionally, FedEx and the Express Association of America stated that NAFTA should include a chapter recognizing express delivery services “as a specific industry” and remove market access restrictions such as the 2011 Mexican law that prevents U.S.-owned courier firms from operating large trucks on Mexican federal highways.

Mode 4 Services Provision and Movement of Persons

Several firms and industry associations called for an expansion of NAFTA provisions allowing the cross-border transfer of professionals and workers with specialized skills, specifically in extractive industries, insurance, and engineering. One submission specifically advocated the expansion of the TN Occupations List to include “technical and managerial occupations” that are absent in the original NAFTA text.

Other Services-Related Issues

Other comments related to the services sector were varied, addressing issues that affect both large and niche markets. Several commenters, including private individuals and professional associations, called for a revised NAFTA agreement to exempt public services (including healthcare, education, utilities, and corrections) from cross-border competition. The National Retail Federation called for NAFTA to remove a current regulatory barrier that “[prevents] U.S. teleshopping companies from operating in Canada.”

The American Council of Engineering Companies (ACEC) advocated for consistency in regulations affecting engineering services to ensure that all foreign and domestic engineering firms providing services in a given country are treated equally and, as such, are equally competitive. Lastly, two aerial surveying firms reported a market access imbalance between NAFTA members, with Canadian surveying firms being able to overfly the United States but U.S. firms being unable to overfly Canada or Mexico unless they land in either country. These firms also cited permitting delays and import tariffs levied on surveying supplies temporarily imported into Canada or Mexico for the express purpose of providing surveying services.

[37] North American Strategy for Competitiveness (NASCO), “What We Do,” http://nasconetwork.com/whatwedo (accessed May 30, 2018).

A Literature Review of the Potential Impact of a NAFTA Renegotiation on the Services Sector

While there has been some speculation regarding the possible outcomes and impacts of the current ongoing NAFTA renegotiation,[38] the exact content of a revised NAFTA agreement remains unknown. As such, it is difficult to assess the potential impact of such an agreement on services output, trade, and employment. However, it is useful to consider the impact of services liberalization under more recently concluded TPAs, and to highlight those provisions that observers believe are most likely to yield a positive outcome.

Few studies address the impact of the 1994 NAFTA on services trade in particular, and those that do present differing findings. For example, a U.S. Chamber of Commerce paper asserts that greater transparency and increased market access under the NAFTA led to growth in U.S. exports and imports of services to Canada and Mexico during 1993–2014.[39] By contrast, an analysis by the Peterson Institute finds that the NAFTA did little to lower barriers affecting cross-border services trade and that the agreement had little or no impact on services trade among NAFTA parties.[40] The literature does suggest that liberalization under trade agreements has generally contributed to growth in U.S. trade, GDP, and employment. In a 2016 investigation, the USITC concluded that as a whole, U.S. agreements completed under trade promotion authority brought about increases in U.S. GDP and trade, as well as in the employment and wages of both low- and high-skilled workers. This USITC study also reports on the literature on the impact of U.S. trade agreements other than the NAFTA, and finds that, "….the agreements have had small to moderate positive impacts on trade flows, small positive effects on economic welfare, and minimal effects on employment and wages." [41] As such, it seems likely that a revised NAFTA agreement that achieves some measure of services liberalization would have a positive, if small, impact on services trade among the parties.

Observers have identified several services industries in which new or revised NAFTA provisions may benefit the United States. The U.S. telecommunications industry would benefit from a revised agreement that includes provisions addressing Canada's relatively low foreign equity cap and other measures impacting U.S. firms' ability to participate in the Canadian and Mexican markets.[42] Other

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[38] For example, the 47 economists that responded to a recent survey conducted by the National Association for Business Economics (NABE) were about evenly divided between those that anticipated that the NAFTA renegotiation would have a slightly or moderately positive effect, no effect, or a moderately or strongly negative effect. Rugaber, Christopher, "Survey: Economists See No Gain from NAFTA Renegotiation," *Valley Morning Star*, September 25, 2017, http://www.valleymorningstar.com/business/article_16858bbc-fe2f-527c-b898-d72856203af2.html (accessed September 25, 2017).

[39] U.S. Chamber of Commerce, "NAFTA Triumphant: Assessing Two Decades of Gains in Trade, Growth, and Jobs," October 27, 2015, https://www.uschamber.com/sites/default/files/documents/files/nafta_triumphant_updated_2015.pdf, 12.

[40] Gary Clyde Hufbauer, Cathleen Cimino, and Tyler Moran, "NAFTA at 20: Misleading Charges and Positive Achievements," Peterson Institute for International Economics Policy Brief 14-13, May 2014, https://piie.com/sites/default/files/publications/pb/pb14-13.pdf, 15-16.

[41] U.S. International Trade Commission (USITC). *Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2016 Report*. USITC Publication 4614. Washington, DC: USITC, 2016. https://www.usitc.gov/publications/332/pub4614_old.pdf, 127, 261.

[42] Sarah Gray, "Here's What the Trump Administration's NAFTA Negotiations Mean for You," *Fortune*, April 25, 2018, http://fortune.com/2018/04/25/trump-nafta-canada-mexico/, (accessed May 10, 2018). In the

industries in which NAFTA parties continue to maintain restrictions and that may be impacted if liberalization occurs under a revised NAFTA include broadcasting (where the United States may attempt to address Canadian programming quotas); financial services (where the United States may pursue liberalization that would enable U.S. firms to take deposits and acquire banks in the Canadian market); energy (where the United States and Canada may try to capture Mexican reforms within the new agreement); and transportation (where Canada may ask for the revision of, or special consideration under, certain Jones Act provisions).[43] Additionally, it has been argued that liberalization in industries that have become increasingly tradeable since the establishment of the current NAFTA agreement—such as healthcare services—may benefit the United States through increased foreign competition.[44]

NAFTA rules on digital trade may help solidify the U.S. market share for cloud computing in Canada and promote current levels in Mexico by constraining formal and informal market restrictions. In particular, the United States may push to prohibit data localization laws for financial services data, and Canada may seek to have their companies treated as domestic companies for U.S. public procurement contracts. However, some caution that negotiating these rules on a regional basis without China—which accounts for 19 percent of global internet users or double that of North America—may have a limited impact on U.S. firms in this industry.[45]

New provisions regarding *de minimis* levels for the value of goods shipped cross-border that attract duties and/or VAT could have a substantial impact on e-commerce and brick-and-mortar retail establishments. The minimum shipment value before which duties are imposed is about $15 in Canada and about $50 in Mexico, as compared to $800 in the United States.[46] Were Canadian and Mexican *de minimis* levels to increase—as proposed in the U.S. negotiating objectives—retail shipments to NAFTA

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telecommunications sector, Canada reportedly maintains a relatively low foreign equity cap and citizenship requirements on firms' boards of directors which restricts U.S. participation in that market, and there is a lack of transparency in Mexico's infrastructure permitting process. Further, Mexico's telecommunications industry underwent substantial reform during 2013-14, which is not reflected in the 1994 agreement. United States Trade Representative (USTR), *2018 National Trade Estimate Report on Foreign Trade Barriers,* 84, 326. Simon Lester, Inu Manak, and Daniel Ikenson, "Renegotiating the NAFTA in the Era of Trump: Keeping the Trade Liberalization in and the Protectionism Out," August 14, 2017, CATO Working Paper No. 46, 13; Gary Clyde Hufbauer and Euijin Jung, "NAFTA Renegotiation: US Offensive and Defensive Interests vis-à-vis Canada," Peterson Institute For International Economics Policy Brief 17-22, June 2017, 4; Patrick Gorman, "Renegotiating NAFTA Could Impact E-Commerce, Manufacturing," *Chief Executive*, August 18, 2017, https://chiefexecutive.net/renegotiated-nafta-impact-e-commerce-manufacturing/, (accessed September 20, 2017).

[43] Gary Clyde Hufbauer and Euijin Jung, "NAFTA Renegotiation: US Offensive and Defensive Interests vis-à-vis Canada," Peterson Institute for International Economics Policy Brief 17-22, June 2017, 4, 10; Eric Miller, "Remaking NAFTA: Its Origin, Impact and Future," Canadian Global Affairs Institute policy paper, August 2017, 14-16.

[44] Simon Lester, Inu Manak, and Daniel Ikenson, "Renegotiating the NAFTA in the Era of Trump: Keeping the Trade Liberalization in and the Protectionism Out," August 14, 2017, CATO Working Paper No. 46, 13.

[45] The growing global presence of Chinese Internet companies as well as that country's relatively restrictive rules on cybersecurity, censorship, and privacy are a key concern of U.S. firms in the digital trade sector.

[46] Ralph Carter, "Modernizing NAFTA Matters: US Ecommerce Vendors Are at a Disadvantage," *Global Trade*, January 31, 2018, http://www.globaltrademag.com/global-logistics/modernizing-nafta-matters (accessed April 16, 2018). In Canadian dollars, Canada's *de minimis* level stands at $20. Retail Council of Canada, "De Minimis: Ensure a Level Playing Field for Retailers in Canada," n.d. https://www.retailcouncil.org/levelplayingfield (accessed May 8, 2018).

partners from small- and medium-sized U.S. establishments may expand by a large amount, as such a provision would benefit businesses that ship low-value packages.[47]

Other areas in which observers contend that new rules may impact U.S. services providers include investment and the temporary entry of business persons. Measures affecting foreign direct investment can have a substantial effect on services suppliers, as a large share of services trade occurs through affiliates in foreign countries. The current contents of the revised NAFTA's investment chapter are unknown; however, one source reports that U.S. negotiators have proposed scaling back the agreements' investment provisions, particularly those on investor-state dispute settlement (ISDS). While certain groups favor limiting these provisions, there is strong support for the current agreement's ISDS obligations among U.S industry.[48] A lack of strong investment protections may impact investors' perception of risk and affect their willingness to operate in certain markets.[49]

The renegotiation of the NAFTA could lead to a number of different outcomes for the agreement's provisions on the movement of persons, and changes in these provisions—particularly those provisions that led to the creation of the TN visa for workers in certain professions—may have a substantial impact. In a recent letter to USTR Lighthizer, Sen Grassley advocated for the revision of NAFTA provisions on the temporary entry of professionals, arguing that they increase the threat posed by foreigners to high-skilled U.S. workers and limit U.S. control over immigration policy.[50] In contrast, advocates of TN visas contend that the elimination of the program may have negative impacts on U.S. workers and employers.[51] These advocates argue that the increased worker mobility enabled by the TN visa has a positive impact on economic growth and productivity, widens the scope of employment opportunities for U.S. workers, and meets the need for employees in professions (such as nursing) and in geographic areas in which there are shortages.[52] It is also argued that the elimination of the TN visa may have a particularly large impact on IT firms and workers, and may prompt Canadian firms to build their domestic operations or hire a growing number of EU nationals.[53] Although there is some support for the

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[47] Gary Clyde Hufbauer, Euijin Jung, and Zhiyao (Lucy) Lu, "The Case for Raising the *de minimis* Thresholds in NAFTA 2.0," Peterson Institute For International Economics Policy Brief 18-8, March 2018, https://piie.com/system/files/documents/pb18-8.pdf, (accessed April 16, 2018).
[48] M. Angeles Villarreal and Ian F. Fergusson, "NAFTA Renegotiation and Modernization," Congressional Research Service report R44981, February 27, 2018, 24, https://fas.org/sgp/crs/row/R44981.pdf, (accessed May 9, 2018).
[49] Shaun Donnelly and Eva Hampl, "NAFTA 2.0 Needs to Enshrine Investor Protections," *The Hill*, July 28, 2017, http://thehill.com/blogs/pundits-blog/finance/344299-nafta-20-needs-to-enshrine-investor-protections, (accessed August 15, 2017).
[50] Letter from Senator Charles E. Grassley to Ambassador Robert E. Lighthizer, October 23, 2017, https://www.grassley.senate.gov/news/news-releases/grassley-encourages-review-high-skilled-worker-program-nafta-negotiations (accessed April 25, 2018).
[51] Semotiuk, Andy J., "Professional Careers Teeter on the Tight Rope While NAFTA Negotiations Resume," Forbes, November 16, 2017, https://www.forbes.com/sites/andyjsemotiuk/2017/11/16/professional-careers-teeter-on-the-tight-rope-while-nafta-negotiations-stall/#7bae4d6015d7 (accessed April 23, 2018).
[52] Anderson, Stuart, "If NAFTA Goes Away, Treaty's Immigration Benefits Will Disappear," Forbes, April 6, 2018, https://www.forbes.com/sites/stuartanderson/2018/04/06/if-nafta-goes-away-treatys-immigration-benefits-will-disappear/#3d0a0b6946f0 (accessed April 23, 2018); Maurer, Roy, "Sen. Grassley Proposes Limiting TN Visas Through NAFTA Negotiations," Society for Human Resource Management, October 31, 2017, https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/trump-limiting-tn-visas-nafta-negotiations.aspx (accessed April 23, 2018).
[53] Semotiuk, Andy J., "Professional Careers Teeter on the Tight Rope While NAFTA Negotiations Resume," Forbes, November 16, 2017, https://www.forbes.com/sites/andyjsemotiuk/2017/11/16/professional-careers-teeter-on-the-tight-rope-while-nafta-negotiations-stall/#7bae4d6015d7 (accessed April 23, 2018); Jackson, Emily, "'Chaos

broadening of NAFTA visa provisions, it is reportedly unlikely that there will be agreement among the parties on this issue.[54]

Finally, the successful renegotiation of the NAFTA may have important secondary effects. For example, the renegotiation may produce a new template for future negotiations. At the opening of the first NAFTA renegotiating round in August 2017, USTR Lighthizer stated that, "….hopefully we will develop model provisions that can be used for years ahead and that have the flexibility to adapt to future innovations that we can't even imagine at this point."[55] Further, a new NAFTA may encourage non-parties to drift away from China and seek closer relationships with the United States. One observer argues that U.S. engagement—as demonstrated, in one instance, by its continued participation in the NAFTA—provides Asia policymakers with greater leverage in deciding whether to yield to Chinese demands.[56] Another observer suggests that if the new provisions in a revised NAFTA do not benefit Mexico, then that country may be encouraged to pursue trade agreements with China.[57]

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and Confusion': What's at Risk if NAFTA Professional Visas Disappear," Financial Post, December 29, 2017, http://business.financialpost.com/news/economy/chaos-and-confusion-whats-at-risk-if-nafta-professional-visas-are-lost-in-negotiations, (accessed April 23, 2018).

[54] Mike Blanchfield, Canadian Press, "Canadian Aspirations for Labour Mobility Hit U.S. Wall in NAFTA Talks," *todayville*, n.d., https://www.todayville.com/canadian-aspirations-for-labour-mobility-hit-u-s-wall-in-nafta-talks/, (accessed May 8, 2018).

[55] "Opening Statement of USTR Robert Lighthizer at the First Round of NAFTA Renegotiations," USTR press release, August 16, 2017, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/august/opening-statement-ustr-robert-0 (accessed April 16, 2018).

[56] Eric Miller, "America's Asian Allies View NAFTA as Litmus Test for U.S. Leadership," *The Hill*, September 13, 2017 http://thehill.com/opinion/white-house/350450-americas-asian-allies-view-nafta-as-litmus-test-for-us-leadership (accessed September 14, 2017).

[57] Flatworld Solutions "NAFTA Renegotiation by Trump—How Will It Affect Small Businesses?" https://www.flatworldsolutions.com/logistics/articles/trump-nafta-renegotiation-effect-small-business.php (accessed September 20, 2017).

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