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NAFTA Renegotiation and Modernization

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Summary

The 115th Congress faces policy issues related to the Trump Administration's renegotiation and modernization of the North American Free Trade Agreement (NAFTA). NAFTA negotiations were first launched in 1992 under President George H. W. Bush and continued under President Bill Clinton. President Clinton signed the agreement into law on December 8 1993 (P.L. 103-182), and NAFTA entered into force on January 1, 1994. It is particularly significant because it was the most comprehensive free trade agreement (FTA) negotiated at the time, contained several groundbreaking provisions, and was the first of a new generation of U.S. FTAs later negotiated. Congress played a major role during its consideration and, after contentious and comprehensive debate, ultimately approved legislation to implement the agreement.

NAFTA established trade liberalization commitments that set new rules and disciplines for future FTAs on issues important to the United States, including intellectual property rights protection, services trade, dispute settlement procedures, investment, labor, and environment. NAFTA's market-opening provisions gradually eliminated nearly all tariff and most nontariff barriers on merchandise trade. At the time of NAFTA, average applied U.S. duties on imports from Mexico were 2.07%, while U.S. businesses faced average tariffs of 10%, in addition to nontariff and investment barriers, in Mexico. The U.S.-Canada FTA had been in effect since 1989.

The Trump Administration has made NAFTA renegotiation and modernization a prominent priority of its trade policy. President Trump has characterized the agreement as the "worst trade deal," and has stated that he may seek to withdraw from the agreement. He has focused on the trade deficit with Mexico as a major reason for his critique. On May 18, 2017, the Trump Administration sent a 90-day notification to Congress of its intent to begin talks to renegotiate NAFTA, as required by the 2015 Trade Promotion Authority (TPA) (P.L. 114-26). Negotiators began the talks on August 16, 2017. They have held eight formal rounds and are continuing talks on technical issues. Contentious issues in the negotiations include auto rules of origin, dispute settlement provisions, agriculture, government procurement, and other issues. Mexico's President-elect, Andrés Manuel López Obrador, who enters into office on December 1, 2018, has stated that he supports NAFTA and would support a previously negotiated agreement. All three North American leaders have expressed interest in reaching a deal over the next several months.

Congress will likely continue to be a major participant in shaping and potentially considering an updated NAFTA. Key issues for Congress in regard to NAFTA renegotiation or modernization include the constitutional authority of Congress over international trade, its role in revising or withdrawing from the agreement, U.S. negotiating objectives, the impact on U.S. industries and the U.S. economy, the negotiating objectives of Canada and Mexico, and the impact on broader relations with Canada and Mexico. The outcome of these negotiations will have implications for the future direction of U.S. trade policy under President Trump.

NAFTA renegotiation presents opportunities to modernize the agreement. For example, the widespread use of the internet has significantly affected economic activities. A renegotiation could incorporate elements of more recent U.S. FTAs, such as digital and services trade and enhanced IPR protection. Many U.S. manufacturers, services providers, and agricultural producers oppose efforts to eliminate NAFTA and ask that the Trump Administration "do no harm" in the NAFTA renegotiation because they have much to lose. Other groups contend that NAFTA renegotiation should include stronger and more enforceable labor protections, provisions on currency manipulation, and stricter rules of origin.

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Introduction

The 115th Congress, in both its legislative and oversight capacities, faces numerous trade policy issues related to the renegotiation and modernization of the North American Free Trade Agreement (NAFTA).[1] First launched under President George H. W. Bush, the NAFTA Implementation Act was signed into law by President William J. Clinton on December 8, 1993 (P.L. 103-182). NAFTA entered into force on January 1, 1994. NAFTA is significant because it was the first free trade agreement (FTA) among two wealthy countries and a low-income country and because it established trade liberalization commitments that led the way in setting new rules and disciplines for future trade agreements on issues important to the United States. These include provisions on intellectual property rights (IPR) protection, services trade, agriculture, dispute settlement procedures, investment, labor, and the environment. NAFTA addressed policy issues that were new to FTAs and for concluding major multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO). The United States now has 14 FTAs with 20 countries.

Another important element of NAFTA is that it helped "lock in" trade and investment liberalization efforts taking place at the time, especially in Mexico. For decades prior to NAFTA, Mexico relied on protectionist trade and investment policies that were intended to foster economic growth and to protect itself from a perceived risk of foreign domination. That approach, however, failed to achieve the intended outcomes. NAFTA was instrumental in developing closer U.S. relations not only with Mexico, but also with Canada, and may have accelerated ongoing trade and investment trends. Since NAFTA, the three countries have made efforts to cooperate on issues of mutual interest, including trade and investment, and also in other, broader aspects of the relationship, such as regulatory cooperation, industrial competitiveness, trade facilitation, border environmental cooperation, and security.

NAFTA's market-opening provisions gradually eliminated nearly all tariff and most nontariff barriers on goods produced and traded within North America. At the start of NAFTA, average applied U.S. duties on imports from Mexico were 2.07% and over 50% of U.S. imports from Mexico entered duty free. In contrast, the United States faced higher tariff, nontariff, and investment barriers in Mexico.[2] Trade among NAFTA partners has more than tripled since the agreement entered into force, forming integrated production chains among all three countries. Many trade policy experts and economists give credit to NAFTA for expanding trade and economic linkages among parties, creating more efficient production processes, increasing the availability of lower-priced and greater choice of consumer goods, and improving living standards and working conditions.[3] Others blame FTAs for disappointing employment trends, a decline in U.S. wages, and for not having done enough to improve labor standards and environmental conditions abroad.[4]

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[1] For more information on NAFTA, see CRS In Focus IF10047, *North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal.

[2] Most of the market-opening measures resulting from NAFTA were between the United States and Mexico, and Canada and Mexico, because the United States and Canada had a free trade agreement at the time that had been in effect since 1989.

[3] For example, see Gary Clyde Hufbauer, Cathleen Cimino, and Tyler Moran, *NAFTA at 20: Misleading Charges and Positive Achievements*, Peterson Institute for International Economics, Number PB14-13, May 2014; and U.S. Chamber of Commerce, *NAFTA Triumphant: Assessing Two Decades of Gains in Trade, Growth, and Jobs*, October 2015.

[4] For example, see AFL-CIO, *NAFTA at 20*, March 2014; and Robert E. Scott, Carlos Salas, and Bruce Campbell, et al., *Revisiting NAFTA: Still Not Working for North America's Workers*, Economic Policy Institute, Briefing Paper #173,

On May 18, 2017, the Trump Administration sent a 90-day notification to Congress of its intent to begin talks with Canada and Mexico to renegotiate and modernize NAFTA, as required by the 2015 Trade Promotion Authority (TPA).[5] Talks officially began on August 16, 2017. President Donald J. Trump had stated his intention to withdraw from or renegotiate NAFTA during his election campaign and has hinted at the possibility of NAFTA withdrawal since he entered into office. He highlights the trade deficit with NAFTA partners as a key issue in his criticism of the agreement.

Congress will likely continue to be a major participant in shaping and potentially considering an updated NAFTA. Key issues for Congress in regard to the renegotiation or modernization include the constitutional authority of Congress over international trade, the role of Congress in revising or withdrawing from the agreement, the U.S. negotiating objectives, the impact on U.S. industries and the U.S. economy, the negotiating objectives of Canada and Mexico, and the impact on trade and broader relations with Canada and Mexico, two of the United States' largest trading partners. The outcome of these negotiations will have implications for the future direction of U.S. trade policy under President Trump.

At the initial negotiating round, parties committed to updating NAFTA's rules and to an expeditious process for concluding the negotiations. Negotiators originally planned seven rounds of talks to be completed by the end of 2017 or early 2018. After making little progress on the more contentious issues in the first four rounds of negotiations, the three countries agreed to extend the negotiations. As of the end of April 2018, eight formal rounds of negotiations had taken place and negotiators reportedly entered into a so-called "permanent round" of talks to resolve contentious issues related to U.S. proposals on automotive rules of origin, seasonal produce, dispute settlement, a sunset clause to reevaluate the agreement every five years, and to negotiate other issues such as labor and intellectual property rights (IPR).[6]

NAFTA Renegotiations Statements

"While a great deal of effort and negotiation will be required in the coming months, Canada, Mexico and the United States are committed to an accelerated and comprehensive negotiation process that will upgrade our agreement and establish 21st century standards to the benefit of our citizens."—From *Trilateral Statement on the Conclusion of the First Round of NAFTA Negotiations*, released on August 16, 2017.

"The successful conclusion of these negotiations will update NAFTA through new rules that will generate important economic opportunities for all three countries, fostering further growth in the region for the benefit of the three NAFTA partners."—From *Trilateral Statement on the Conclusion of the Second Round of NAFTA Negotiations*, released on September 5, 2017.

"Chief Negotiators reaffirmed their commitment to moving forward in all areas of the negotiations, in order to conclude negotiations as soon as possible."—From *Trilateral Statement on the Conclusion of the Fifth Round of NAFTA Negotiations,* November 21, 2017.

"The current NAFTA is a seriously flawed trade deal, the Trump Administration is committed to getting the best possible trade agreement for all Americans. The United States is ready to continue working with Mexico and Canada to achieve needed breakthroughs on these objectives. Our teams will continue to be fully engaged."—From Office of the United States Trade Representative, *USTR Robert Lighthizer Issues Statement on Status of NAFTA Renegotiation,* Press Release, May 14, 2018.

Source: USTR, at https://ustr.gov/about-us/policy-offices/press-office/press-releases.

The final text of the agreement will not be released until after negotiations are concluded. NAFTA parties have agreed that the information exchanged in the context of the negotiations, such as the

September 28, 2006.

[5] See CRS In Focus IF10038, *Trade Promotion Authority (TPA),* by Ian F. Fergusson.

[6] Eric Martin, "NAFTA Negotiations Enter "Permanent Round," *Bloomberg*, April 16, 2018.

negotiating text, proposals of each government, and other materials related to the substance of the negotiations, must remain confidential.

Canada, in its negotiating objectives, pledges to make NAFTA more "progressive" by strengthening labor and environmental provisions, adding a new chapter on indigenous rights, reforming the investor-state dispute settlement process, and protecting Canada's supply-management system for dairy and poultry, among other objectives.[7]

Mexico's set of negotiating objectives prioritizes free trade of goods and services, and includes provisions to update NAFTA, such as working toward "inclusive and responsible" trade by incorporating cooperation mechanisms in areas related to labor standards, anticorruption, and the environment, as well as strengthening energy security by enhancing NAFTA's chapter on energy.[8]

While the Office of the U.S. Trade Representative's (USTR's) NAFTA negotiating objectives include many goals consistent with TPA, USTR also seeks, for the first time in U.S. trade negotiations, to reduce the U.S. trade deficit with NAFTA countries. U.S. objectives appear to seek to "rebalance the benefits" of the agreement, echoing President Trump's statements that NAFTA has been a "disaster" and the "worst agreement ever negotiated."[9] Some U.S. negotiating positions could be seen to have the explicit or implicit goal of promoting U.S. economic sovereignty and/or rolling back previous liberalization commitments in specific areas, such as reviewing the agreement every five years, questioning the validity of binational dispute settlement, enhancing government procurement restrictions, and increasing U.S. and North American content in the auto rules of origin.[10] Trump Administration officials also have spoken of unraveling the North American and global supply chains as a way of attempting to divert trade and investment from Canada and Mexico to the United States.[11] Mexican and Canadian negotiators have viewed such proposals as counterproductive to the spirit of and mutual economic benefits of NAFTA and have repeated their positions to modernize NAFTA with provisions such as those in the TPP. The differences between views on modernizing the agreement and U.S. proposals have led to perceived tensions in the negotiations.

The U.S. and global economy has changed significantly since NAFTA entered into force 23 years ago, especially due to technology advances. The widespread use of the commercial internet since then has dramatically affected consumer habits, commercial activities such as e-commerce, supply chain management, etc. A renegotiation could entail updating NAFTA provisions by incorporating elements of more recent FTAs that have entered into force, such as the U.S.-Korea FTA (KORUS). Negotiators may also seek updated provisions similar to or that may go beyond the Trans-Pacific Partnership Agreement (TPP), an FTA the United States negotiated with 11 other countries, but from which President Trump withdrew after he entered office.[12]

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[7] Alexander Panetta, "Canada's 10 NAFTA Demands: A List of What Canada Wants as Talks Start this Week," *The Canadian Press*, August 14, 2017.

[8] Mexico's Economic Secretariat (Secretaria de Economia), *Mexico's Negotiating Priorities for the Modernization of NAFTA* , Mexico City, Mexico, July 2017.

[9] CBS News, Trump Calls NAFTA a Disaster, September 25, 2016, https://www.cbsnews.com/news/trump-calls-nafta-a-disaster/; *Politico*, "The Real Game Trump is Playing on NAFTA," February 26, 2018, https://www.politico.com/magazine/story/2018/02/26/donald-trump-nafta-negotiations-217085.

[10] Simon Lester and Inu Manak, "The Rise of Populist Nationalism and the Renegotiation of NAFTA, *Journal of International Economic Law*, 2018, March 2018.

[11] James Pethokoukis, "Does Trump want to somehow get rid of global supply chains?, *AEI Ideas*, January 31, 2017, http://www.aei.org/publication/does-trump-want-to-somehow-get-rid-of-global-supply-chains/.

[12] See CRS In Focus IF10000, *TPP: Overview and Current Status*, by Brock R. Williams and Ian F. Fergusson.

Many economists and business representatives generally look to maintain the trade relationship with Canada and Mexico under NAFTA or further improve overall relations and economic integration within the region. However, labor groups and some consumer-advocacy groups argue that the agreement has resulted in outsourcing and lower wages that have had a negative effect on the U.S. economy. Some proponents and critics of NAFTA agree that NAFTA should be modernized and that the three countries should reevaluate the agreement, looking at its strengths and weaknesses, as they look to the future of North American trade and economic relations. These groups, however, have contrasting views on how to revise the agreement.

This report provides a brief overview of NAFTA and the role of Congress in the renegotiation process; it discusses key issues related to the negotiations. It also provides a discussion of policy implications for Congress going forward. It will not examine existing NAFTA provisions and economic relations in depth. For more information on these issues, please see CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal and Ian F. Fergusson.

NAFTA Overview

At the time that NAFTA was implemented, the U.S.-Canada Free Trade Agreement (CFTA) was already in effect and U.S. tariffs on most Mexican goods were low, while Mexico had the highest protective trade barriers among the three countries. From the 1930s through part of the 1980s, Mexico maintained a strong protectionist trade policy in an effort to be independent of any foreign power and as a means to promote domestic-led industrialization.[13] In 1991, for example, U.S. businesses were very restricted in investing in Mexico. Under Mexico's restrictive *Law to Promote Mexican Investment and Regulate Foreign Investment,* about a third of Mexican economic activity was not open to majority foreign ownership.[14] Mexico's failed protectionist policies did not result in increased income levels or economic growth, and the income disparity with the United States remains large, even after NAFTA, as shown in **Table 1**. NAFTA coincided with Mexico's unilateral trade liberalization efforts. For decades prior to NAFTA, Mexico relied on protectionist trade and investment policies that were intended to help foster domestic growth and to protect itself from a perceived risk of foreign domination. This approach, however, failed to achieve the intended outcome. Through NAFTA, the United States and Canada gained greater access to the Mexican market, which was the fastest-growing major export market for U.S. goods and services at the time.[15] NAFTA also opened up the U.S. market to increased imports from Mexico and Canada, creating one of the largest free trade areas in the world.

Table 1. Selected Economic Indicators for Mexico, Canada, and the United States

1994 and 2017

	Mexico		Canada		United States	
	1994	**2017**	**1994**	**2017**	**1994**	**2017**
Population (millions)	92	129	29	37	263	327

[13] For more information on Mexico's trade policies, see CRS Report R40784, *Mexico's Free Trade Agreements*, by M. Angeles Villarreal.

[14] CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal and Ian F. Fergusson.

[15] United States International Trade Commission (USITC), *Potential Impact on the U.S. Economy and Selected Industries of the North American Free-Trade Agreement*, USITC Publication 2596, January 1993.

	Mexico		Canada		United States	
	1994	2017	1994	2017	1994	2017
Nominal GDP (US$ billions)[a]	508	1,148	548	1,627	7,309	19,371
Nominal GDP, PPP Basis (US$ billions)[b]	790	2,372	654	1,671	7,309	19,371
Per Capita GDP (US$)	5,499	8,890	19,914	44,415	27,777	59,332
Per Capita GDP in $PPP	8,555	18,370	22,531	45,630	27,777	59,330
Exports of goods and services (% of GDP)	14%	37%	33%	31%	10%	12%
Imports of goods and services (% of GDP)	18%	39%	32%	34%	11%	15%

Source: Compiled by CRS based on data from Economist Intelligence unit (EIU) online database.

Notes: Some figures for 2017 are estimates.

a. Nominal GDP is calculated by EIU based on figures from World Bank and World Development Indicators.

b. PPP refers to purchasing power parity, which reflects the purchasing power of foreign currencies in U.S. dollars.

Key NAFTA Provisions

Some key NAFTA provisions include tariff and nontariff trade liberalization, rules of origin, commitments on services trade and foreign investment, intellectual property rights (IPR) protection, government procurement rules, and dispute resolution. Labor and environmental provisions are included in separate NAFTA side agreements. NAFTA provisions and rules governing trade were groundbreaking in a number of areas, particularly in regard to enforceable rules and disciplines that were included in a trade agreement for the first time. There were almost no FTAs in place worldwide at the time, and NAFTA influenced subsequent agreements negotiated by the United States and other countries, especially at the multilateral level in light of the then-pending Uruguay Round of major multilateral trade liberalization negotiations.

The market-opening provisions of the agreement gradually eliminated nearly all tariffs and most nontariff barriers on goods produced and traded within North America, mostly over a period of 10 years after it entered into force. Some tariffs were eliminated immediately, while others were phased out in various schedules of 5 to 15 years. Most of the market-opening measures from NAFTA resulted in the removal of tariffs and quotas applied by Mexico on imports from the United States and Canada. The average applied U.S. duty[16] for all imports from Mexico was 2.07% in 1993.[17] Moreover, many Mexican products entered the United States duty-free under the U.S. Generalized System of Preferences (GSP). In 1993, over 50% of U.S. imports from Mexico entered the United States duty-free. In contrast, the United States faced considerably higher tariffs and substantial nontariff barriers on exports to Mexico. In 1993, Mexico's average applied tariff on all imports from the United States was 10% (Canada's average tariff on U.S. goods was 0.37%).[18] Also affecting U.S.-Mexico trade were both countries' sanitary and phytosanitary (SPS)

[16] An average or simple average tariff is an average of a country's tariff rates. This can be calculated in several ways. Most common is the trade-weighted average tariff, which is the average of a country's tariffs, weighted by value of imports. This is calculated as the ratio of total tariff revenue to total value of imports.

[17] Executive Office of the President, *Study on the Operation and Effects of the North American Free Trade Agreement*, July 1997, pp. 6-7.

[18] Ibid. Canadian tariffs on U.S. goods at the time of NAFTA were low due to the U.S.-Canada Free Trade Agreement that had been in effect since January 1, 1989.

rules, Mexican import licensing requirements, and U.S. marketing orders.[19] The market opening that occurred after NAFTA is likely a factor in the significance of trade for Mexico's economy. In 1994, Mexico's exports and imports equaled 14% and 18%, respectively, of GDP, while in 2017, these percentages increased to 37% and 39%. For the United States, trade is less significant for the economy, with the value of imports and exports equaling 15% and 12%, respectively, of GDP in 2017 (see **Table 1**).

NAFTA rules, disciplines and nontariff provisions include the following:

- **Investment**. NAFTA removed significant investment barriers in Mexico, ensured basic protections for NAFTA investors, and provided a mechanism for the settlement of disputes between investors and a NAFTA country. NAFTA provided for national and "nondiscriminatory treatment" for foreign investment by NAFTA parties in certain sectors of other NAFTA countries. The agreement included country-specific liberalization commitments and exceptions to national treatment. Exemptions from NAFTA included the energy sector in Mexico, in which the Mexican government reserved the right to prohibit private investment or foreign participation in the energy sector.[20]
- **Services Trade**. NAFTA services provisions established a set of basic rules and obligations in services trade among partner countries. The agreement granted services providers certain rights concerning nondiscriminatory treatment, cross-border sales and entry, investment, and access to information. However, there were certain exclusions and reservations by each country. These included maritime shipping (United States), film and publishing (Canada), and oil and gas drilling (Mexico).[21] NAFTA liberalized certain service sectors in Mexico, particularly financial services, which profoundly altered its banking sector.[22]
- **Financial and Telecommunications Services**. Under NAFTA, Canada extended an exemption granted to the United States, under the CFTA, to Mexico in which Mexican banks would not be subject to Canadian investment restrictions. In turn, Mexico agreed to permit financial firms from another NAFTA country to establish financial institutions in Mexico, subject to certain market-share limits applied during a transition period ending by the year 2000. In telecommunications, NAFTA partners agreed to exclude provision of, but not the use of, basic telecommunications services. NAFTA granted a "bill of rights" for the providers and users of telecommunications services, including access to public telecommunications services; connection to private lines that reflect economic costs and available on a flat-rate pricing basis; and the right to choose, purchase, or lease terminal equipment best suited to their needs.[23] NAFTA did not require parties to authorize a person of another NAFTA country to provide or operate telecommunications transport networks or services. Nor did it bar a party

[19] Marketing orders and agreements are U.S. Department of Agriculture-sponsored agreements among domestic producers to help provide stable markets for dairy products, fruits, vegetables and specialty crops (see https://www.ams.usda.gov/rules-regulations/moa). Prior to NAFTA, the most significant Mexican exports that were limited by U.S. marketing orders included tomatoes, onions, avocados, grapefruit, oranges, olives, and table grapes.

[20] Ibid, pp. 30-32.

[21] United States General Accounting Office (GAO, now called Government Accountability Office), "North American Free Trade Agreement: Assessment of Major Issues, Volume 2," *Report to the Congress,* September 1993, pp. 35-36.

[22] Hufbauer and Schott, *NAFTA Revisited,* pp. 28.

[23] GAO, *Report to Congress,* September 1993, pp. 38-39.

from maintaining a monopoly provider of public networks or services, such as Telmex, Mexico's dominant telecommunications company.[24]

- **Intellectual Property Rights (IPR) Protection**. NAFTA was the first U.S. FTA to include IPR protection provisions. It built upon the then-ongoing Uruguay Round negotiations that would create the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement in the WTO and on various existing international intellectual property treaties. The agreement set specific enforceable commitments by NAFTA parties regarding the protection of copyrights, patents, trademarks, and trade secrets, among other provisions.
- **Dispute Resolution**. NAFTA's provisions for preventing and settling disputes were built upon provisions in the CFTA. NAFTA created a system of arbitration for resolving disputes that included initial consultations, taking the issue to the NAFTA Trade Commission, or going through arbitral panel proceedings.[25] NAFTA included separate dispute settlement provisions for addressing disputes related to investment and over antidumping and countervailing duty determinations.
- **Government Procurement**. NAFTA opened up a significant portion of federal government procurement in each country on a nondiscriminatory basis to suppliers from other NAFTA countries for goods and services. It contains some limitations for procurement by state-owned enterprises.
- **Labor and Environment**. NAFTA marked the first time that labor and environmental provisions were associated with an FTA. For many, it represented an opportunity for establishing a new type of relationship among NAFTA partners.[26] Labor and environmental provisions were included in separate side agreements. They included language to promote cooperation on labor and environmental matters as well as provisions to address a party's failure to enforce its own labor and environmental laws. Perhaps most notable were the side agreements' dispute settlement processes that, as a last resort, may impose monetary assessments and sanctions to address a party's failure to enforce its laws.

Trade Trends

U.S. trade with NAFTA partners increased rapidly once the agreement took effect, increasing more rapidly than trade with most other countries. U.S. total merchandise imports from NAFTA partners increased from $151 billion in 1993 to $614 billion in 2017 (307%), while merchandise exports increased from $142 billion to $525 billion (270%) (see **Figure 1**). The United States had a trade deficit with Canada and Mexico of $89.6 billion in 2017, compared to a deficit of $9.1 billion in 1993. Services trade with NAFTA partners has also increased. The United States had a services trade surplus with Canada and Mexico of $31.4 billion in 2016 (see **Figure 2**).

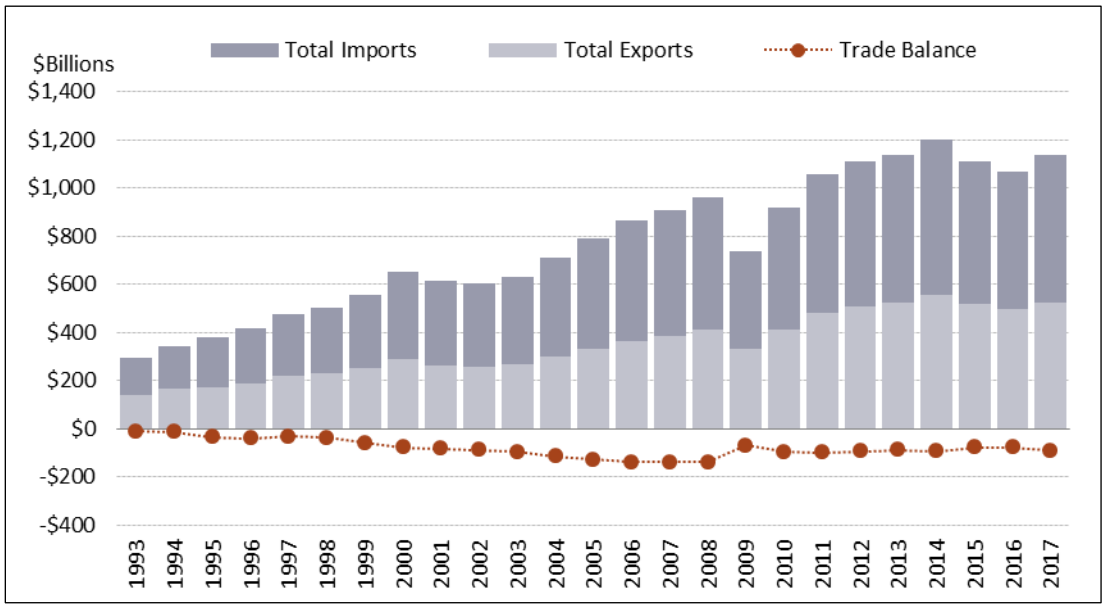
[24] Office of the united States Trade Representative (USTR), *Description of the Proposed North American Free Trade Agreement*, August 12, 1992, p. 29.

[25] If the parties are unable to resolve the issue through consultations, they may take the dispute to the NAFTA Trade Commission, which is comprised of Ministers or cabinet-level officers designated by each country. A party may also request the establishment of an arbitral panel, which may make recommendations for the resolution of the dispute.

[26] Woodrow Wilson International Center for Scholars, *NAFTA at 10: Progress, Potential, and Precedents*, pp. 20-30.

Figure 1. U.S. Merchandise Trade with NAFTA Partners: 1993-2017

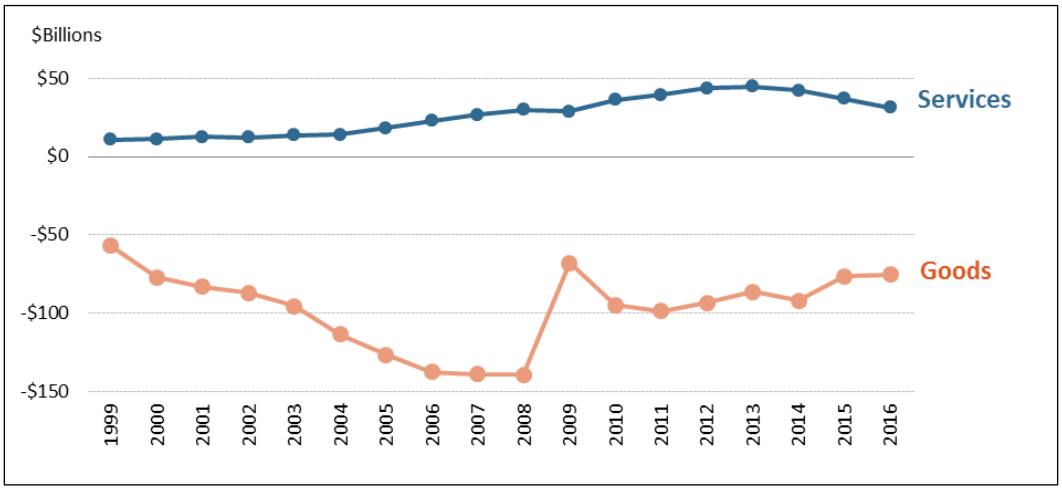
(billions of nominal dollars)



Source: Compiled by CRS using trade data from the U.S. International Trade Commission's Interactive Tariff and Trade Data Web, at http://dataweb.usitc.gov.

Figure 2. U.S. Services and Merchandise Trade Balance with NAFTA Partners

(billions of nominal dollars)



Source: Compiled by CRS using trade data from the U.S. Bureau of Economic Analysis at http://www.bea.gov and the U.S. International Trade Commission's (USITC's) Interactive Tariff and Trade Data Web, at http://dataweb.usitc.gov.

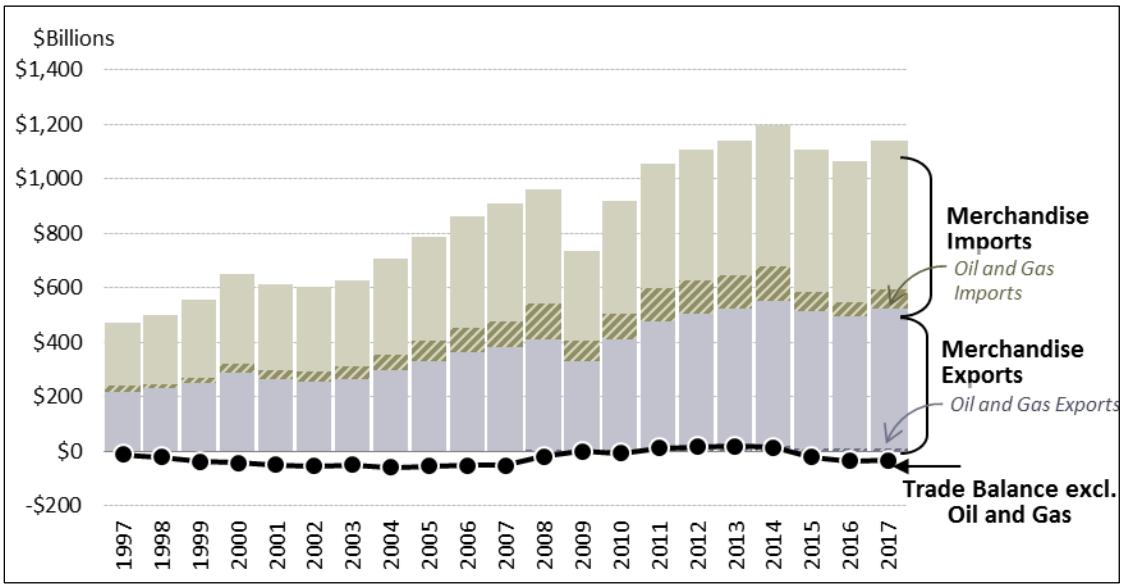
Trade in Oil and Gas

Trade in oil and gas is a significant component of trilateral trade, accounting for 7.2% of total U.S. merchandise trade with Canada and Mexico in 2017. As shown in **Figure 3**, U.S. oil and gas exports to Canada and Mexico increased from $0.9 billion in 1997 to $13.4 billion in 2017, while

imports increased from $22.3 billion to $69.0 billion. If oil and gas products are excluded from the trade balance, the deficit with NAFTA partners is lower than the overall trade deficit. In 2017, the total U.S. merchandise trade deficit with Canada and Mexico was $88.6 billion, while the merchandise deficit without oil and gas products was a significantly lower $33.0 billion.[27]

Figure 3. U.S. Merchandise and Oil and Gas Trade with NAFTA Partners

1997-2017



Source: Compiled by CRS using trade data from the U.S. International Trade Commission's Interactive Tariff and Trade Data Web, at http://dataweb.usitc.gov.

Notes: Oil and gas trade data are at the NAIC 3-digit level, code 211, which include activities related to exploration for crude petroleum and natural gas; drilling, completing, and equipping wells; operating separators, emulsion breakers, desilting equipment, and field gathering lines for crude petroleum and natural gas; and other activities.

Trade in Value Added

Conventional measures of international trade do not always reflect the flows of goods and services within global production chains. For example, some auto trade experts claim that auto parts and components may cross the borders of NAFTA countries as many as eight times before being installed in a final assembly plant in a NAFTA country.[28] Traditional trade statistics include the value of the parts every time they cross the border and count the value multiple times. The Organisation for Economic Co-operation and Development (OECD) and the World Trade Organization (WTO) developed a Trade in Value Added (TiVA) database, which presents indicators that provide insight into domestic and foreign value added content of gross exports by an exporting industry.[29] These statistics provide a more detailed picture of the location where

[27] For more information, see CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal and Ian F. Fergusson.

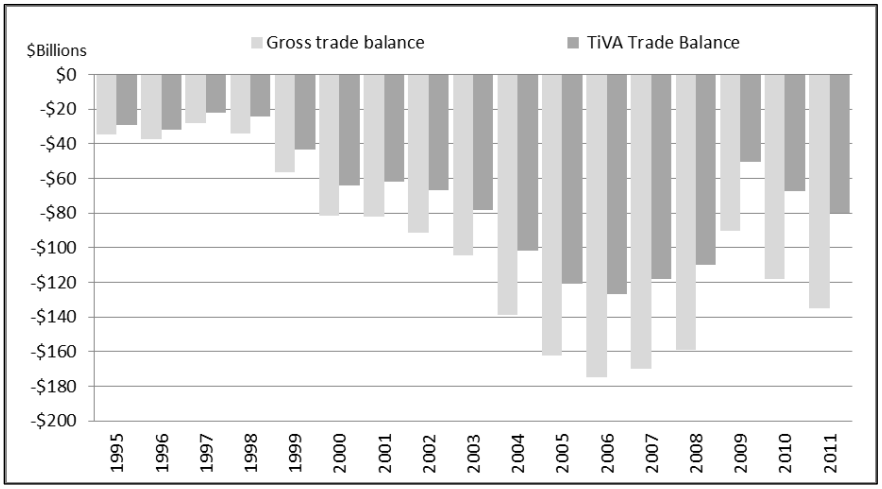
[28] Center for Automotive Research, *NAFTA Briefing: Trade Benefits to the Automotive Industry and Potential Consequences of Withdrawal from the Agreement*, January 2017.

[29] Organisation for Economic Co-operation and Development (OECD) and the World Trade Organization (WTO), *Trade in Value Added*, available at http://www.oecd.org/sti/ind/measuringtradeinvalue-addedanoecd-wtojointinitiative.htm.

value is added during the various stages of production. U.S. trade with Canada and Mexico is diverse and complex since a final good sold in the market could have a combination of value added from all three countries, or from other trading partners. The most recent TiVA data available (2011) for trade in goods and services indicate that the conventional measurement puts the total U.S. trade deficit (including goods and services) with NAFTA countries at $135 billion, while the TiVA methodology puts the deficit at $79.8 billion (see **Figure 4**).

Figure 4. U.S. Total Trade and Value Added Balances with NAFTA Countries: 1995-2011

(billions of nominal dollars)



Source: Compiled by CRS using data from the Organization for Economic Co-operation and Development (OECD)/World Trade Organization (WTO) Trade in Value Added (TiVA) 2016 indicators.

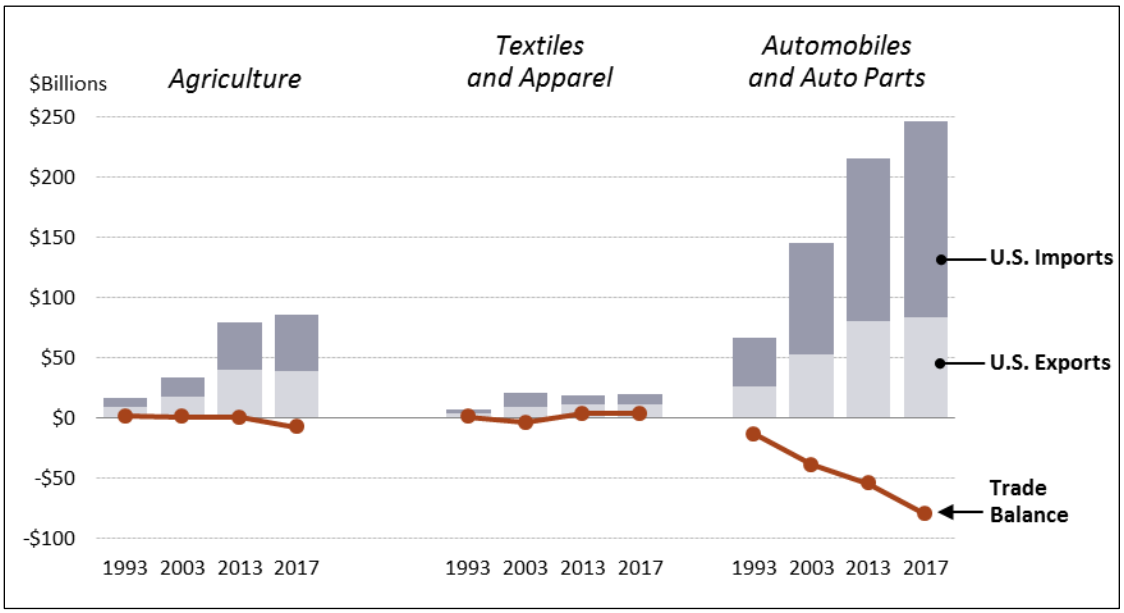
Notes: Data are the most recent available and include trade in goods and services. Totals in this figure may differ from USITC data cited in other sections of this report because of differences in methodology used by different sources.

Merchandise Trade in Selected Industries

NAFTA removed Mexico's protectionist policies in the auto sector and was instrumental in the integration of the motor vehicle industry in all three countries. The sector experienced some of the most significant changes in trade following the agreement. Motor vehicles and motor vehicle parts rank first among leading exports to and imports from NAFTA countries as shown in **Figure 5**. Agriculture trade also expanded after NAFTA, but to a lesser degree than the motor vehicle industry. The trade balance in agriculture also has a far lower trade deficit. Trade trends by sector indicate that NAFTA achieved many of the trade and economic benefits that proponents claimed it would bring, although there have been adjustment costs. It is difficult to isolate the effects of NAFTA to quantify the effects on trade in specific industries because other factors, such as economic growth and currency fluctuations, also affect trade.

Figure 5. U.S. Trade with NAFTA Partners in Selected Industries

(billions of nominal dollars)



Source: Compiled by CRS using data from the U.S. International Trade Commission, U.S. Department of Agriculture, International Trade Administration's Office of Textiles and Apparel.

U.S. Investment with Canada and Mexico

Foreign direct investment (FDI) has been an integral part of the economic relationship between the United States and NAFTA partners for many years. Two-way investment between Canada and the United States has increased markedly since NAFTA, both in terms of stock and flow of investment. The United States is the largest single investor in Canada with a stock of FDI into Canada reaching $363.9 billion in 2016, up from a stock of $69.9 billion in 1993 (see **Figure 6**). U.S. investment represents 49.4% of the total stock of FDI in Canada from global investors. The United States was the largest destination for Canadian FDI in 2016 with a stock of $371.5 billion, a significant increase from $40.4 billion in 1993. Canadian FDI flows into the United States increased to an annual average of $9.9 billion between 2005 and 2015. These trends highlight the changing view of FDI among Canadians, from one that could be considered fearful or hostile to FDI as vehicles of foreign control over the Canadian economy, to one that is more welcoming of new jobs and technologies that result from FDI.

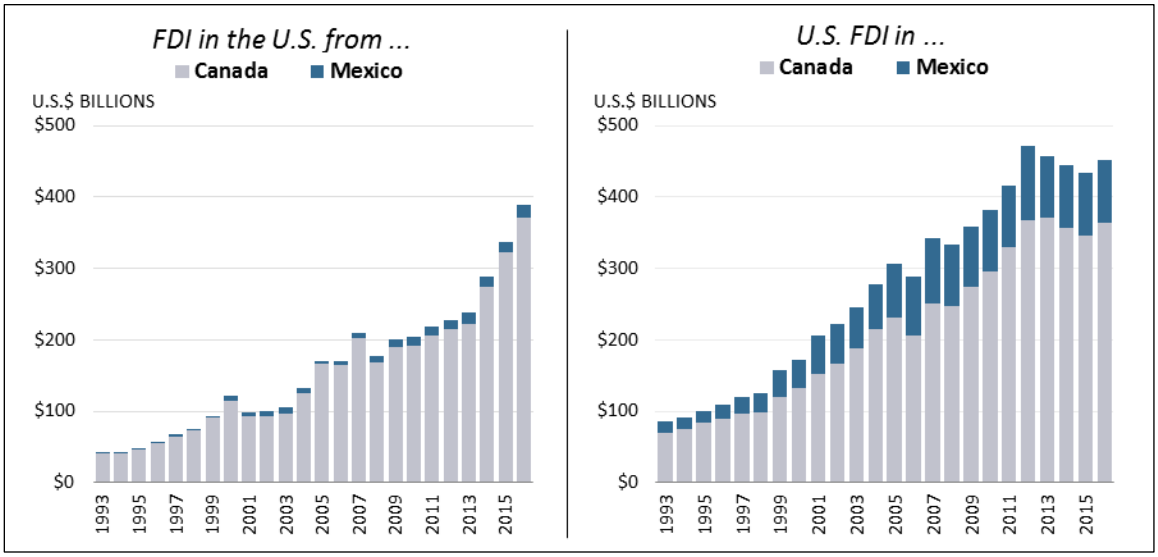
In Mexico, the United States is the largest source of FDI. The stock of U.S. FDI in Mexico increased from $15.2 billion in 1993 to $104.4 billion in 2012 (587%), and then decreased to $87.6 billion in 2016 (see **Figure 6**). Total FDI in Mexico dropped 19% in 2015, mainly due to a decline in investment in the services sector and automotive industry. Other countries in Latin America also experienced similar declines in FDI in 2015. Some economists contend that Mexico's recent economic reforms have added resilience to the Mexican economy and that greater economic growth and investment in Mexico would occur over time as a result.[30] Mexican

[30] "Foreign Investment Dropped 19% Last Year, FDI was US$27 billion but Mexico Ranked No. 2 in Latin America, Behind Brazil," *Mexico Daily News*, June 8, 2017.

FDI in the United States, while substantially lower than U.S. investment in Mexico, has also increased rapidly, from $1.2 billion in 1993 to $16.8 billion in 2016.[31]

Figure 6. Foreign Direct Investment Positions Among NAFTA Partners

Historical-Cost Basis



Source: CRS based on data from U.S. Department of Commerce, Bureau of Economic Analysis.

NAFTA Renegotiation Process

Under Article II of the Constitution, the President has the authority, with the advice and consent of the Senate, to make treaties. Under Article I, Section 8, Congress has the authority to lay and collect duties, and to regulate commerce. Because renegotiation could require changes to U.S. law to take effect, the President may seek expedited treatment of the implementing legislation of a renegotiated NAFTA under the Bipartisan Comprehensive Trade Promotion and Accountability Act of 2015 (TPA), if the agreement advances U.S. trade negotiating objectives and meets specific consultation, notification, and other requirements.[32] On May 18, 2017, the Trump Administration sent a 90-day notification to Congress of its intent to begin talks with Mexico and Canada to renegotiate and modernize the free trade agreement as required by TPA.[33] NAFTA provides, "The Parties may agree on any modification of or addition to this Agreement. When so agreed, and approved in accordance with the applicable legal procedures of each party, a modification or addition shall constitute an integral part of the agreement."[34]

[31] Foreign direct investment data in this section is derived from data from the Bureau of Economic Analysis online database at http://www.bea.gov.

[32] P.L. 114-26.

[33] See CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal and Ian F. Fergusson, and CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Ian F. Fergusson.

[34] North American Free Trade Agreement (NAFTA), Article 2202, https://www.nafta-sec-alena.org/Home/Legal-Texts/North-American-Free-Trade-Agreement.

Under TPA, the President must consult with Congress before giving the required 90-day notice of his intention to start negotiations.[35] The Trump Administration's consultations included meetings between U.S. Trade Representative Robert Lighthizer and members of the House Ways and Means Committee and Senate Finance Committee and with members of the House and Senate Advisory Groups on Negotiations.[36] The Office of the United States Trade Representative (USTR) held public hearings and has received more than 12,000 public comments on NAFTA renegotiation.[37]

In order to use the expedited procedures of TPA, the President must notify and consult with Congress before initiating and during negotiations, and adhere to several reporting requirements following the conclusion of any negotiations resulting in an agreement. The President must conduct the negotiations based on the negotiating objectives set forth by Congress in the 2015 TPA authority. On July 17, 2017, USTR published a summary of the Trump Administration's specific objectives with respect to the negotiations.[38] Negotiations with Mexico and Canada began on August 16, 2017.

At the first round, all parties indicated their intention to conclude the negotiations in a timely fashion; however, key differences on specific issues have proved challenging to the negotiations.

Topics of NAFTA Renegotiation

NAFTA is 23 years old and renegotiation provides opportunities to address issues not currently covered in the original text, such as e-commerce or more enforceable labor and environmental provisions. The following selective topics could be discussed in the context of the renegotiation. Where relevant, a comparison is provided between existing NAFTA provisions and provisions negotiated in the TPP, which was the latest FTA negotiated by the United States. The TPP is relevant to this discussion because Canada and Mexico were participants in the TPP negotiations and expressed an interest in using TPP as a starting point for modernizing and renegotiating NAFTA. Because the three parties have agreed that all information exchanged in the context of the NAFTA negotiations, including the negotiating text, must remain confidential, authoritative information on the status of the negotiations is not yet available.

Trade Deficit Reduction

The Trump Administration, for the first time in the negotiating objectives of an FTA, indicated its aim to improve the U.S. trade balance and reduce the trade deficit with NAFTA countries in the renegotiation of NAFTA.[39] The trade balance with NAFTA partners has fluctuated since the agreement entered into force, increasing from $9.1 billion in 1993 to a high of $139.0 billion in 2008, and then decreasing to $75.3 billion in 2016. President Trump and some officials within his

[35] CRS In Focus IF10297, *TPP-Trade Promotion Authority (TPA) Timeline*, by Ian F. Fergusson.

[36] These groups were created by TPA to provide additional opportunities for consultation with the committees of jurisdiction, as well as other committees with jurisdiction over potential subject matter in the trade agreement.

[37] Office of the United States Trade Representative, *Summary of Objectives for the NAFTA Renegotiation*, July 17, 2017, p. 2, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/july/ustr-releases-nafta-negotiating.

[38] Office of the U.S. Trade Representative, "USTR Announces First Round of NAFTA Negotiations," press release, July 19, 2017, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/july/ustr-announces-first-round-nafta.

[39] Office of the United States Trade Representative (USTR), *Summary of Objectives for the NAFTA Renegotiation*, July 17, 2017, p. 4.

Administration believe that trade deficits are detrimental to the U.S. economy.[40] USTR Robert Lighthizer stated after the second round of negotiations that while he wanted to negotiate an agreement that is approved by Congress, he also wanted to bring down the trade deficit, as part of his mission, in order to help American workers and farmers.[41] Other critics of NAFTA also argue that U.S. free trade agreements (FTAs) have contributed to rising trade deficits with some trade partners.[42]

Economists generally argue that it is not feasible to use trade agreement provisions as a tool to decrease the deficit because trade imbalances are determined by underlying macroeconomic fundamentals, such as a savings-investment imbalance in which the demand for capital in the U.S. economy outstrips the amount of gross savings supplied by households, firms, and the government sector.[43] According to some economists, a more constructive alternative would be to use the NAFTA renegotiation to strengthen Mexico's economy and boost its imports from the United States.[44] Others contend that FTAs are likely to affect the composition of trade among trade partners, but have little impact on the overall size of the trade deficit.[45] They argue that trade balances are incomplete measures of the comprehensive nature of economic relations between the United States and its trading partners, and maintain that trade imbalances are determined by macroeconomic fundamentals and not by trade policy.[46]

Reported Contentious U.S. Proposals

Auto Rules of Origin. Raise regional content requirements from 62.5% to a higher amount, add U.S. content requirement, change method for calculating content.

Sunset Clause. Pact to terminate after 5 years unless renewed by all parties.

Government Procurement. Restrict procurement opportunities through equivalent monetary caps.

Investment. Op-in opt-out, or elimination of investor-state dispute settlement provision.

Dispute Settlement (DS). Eliminate Chapter 19 review of trade remedy decisions; make voluntary Chapter 20 state-to-state DS.

Agriculture. Antidumping remedies for seasonal produce; elimination of Canadian supply management program for dairy, poultry, and eggs.

From this perspective, it is not clear how the Administration would expect to reduce the trade deficit through the renegotiation.

[40] Peter Navarro, a Trump Administration trade official states that trade deficits have a negative effect on GDP and believes that trade deficit reduction is one of four key factors needed to achieve GDP growth. In a *Wall Street Journal* commentary, he stated that trade deficits transfer wealth to other countries and contends that "tough, smart negotiations is [sic] a way to increase net exports—and boost the rate of economic growth." See Peter Navarro, "Why the White House Worries About Trade Deficits," *The Wall Street Journal*, March 5, 2017.

[41] David Lawder, "U.S. Trade Rep Says in NAFTA Talks He Keeps Trump's Views in Mind," *Reuters News*, September 6, 2017.

[42] Public Citizen, *Job-Killing Trade Deficits Surge Under FTAs: U.S. Trade Deficits Grow 462% with FTA Countries, but Decline 7% with Non-FTA Countries*, March 2017.

[43] C. Fred Bergsten, *Trade Balances and the NAFTA Renegotiation*, Peterson Institute for International Economics, Policy Brief, June 2017.

[44] Ibid.

[45] For more information on the U.S. trade deficit, see CRS In Focus IF10619, *The U.S. Trade Deficit: An Overview*, by James K. Jackson.

[46] Ibid.

Rules of Origin

Rules of origin in NAFTA and other FTAs help ensure that the benefits of the FTA are granted only to goods produced by the parties that are signatories to the FTAs rather than to goods made wholly or in large part in other countries. If a U.S. import does not meet NAFTA rules-of-origin requirements, it will enter the United States under another import program. In 2017, 53% of U.S. imports from Canada and Mexico entered duty-free under NAFTA, while 47% entered under other U.S. import programs.[47] In the case of NAFTA, most goods that contain materials from non-NAFTA countries may also be considered as North American if the materials are sufficiently transformed in the NAFTA region to go through a Harmonized Tariff Schedule (HTS) change in tariff classification (called a "tariff shift"). In many cases, goods must have a minimum level of North American content in addition to undergoing a tariff shift. Regional value content may be calculated using either the "transaction-value" or the "net-cost" method. The transaction-value method, which is simpler, is based on the price of the good, while the net-cost method is based on the total cost of the good less the costs of royalties, sales promotion, and packing and shipping. Producers generally have the option to choose which method they use, with some exceptions, such as the motor vehicle industry, which must use the net-cost method.[48]

The Trump Administration reportedly has tabled proposals to increase regional content requirements in motor vehicle manufacturing from the current 62.5% to up to 75%, down from an initial proposal of 85%. The Administration's other proposals include imposing additional U.S. content requirements, and change the method for calculating regional content, including wage rates. In USTR's negotiating objectives, the Administration states that it would "ensure that the benefits of NAFTA go to products genuinely made in the United States and North America." By differentiating goods made in the United States vs. North America, the Administration is seeking a higher percentage of U.S. content in products in order to receive NAFTA benefits. This has been a point of contention with Canada and Mexico since NAFTA does not distinguish between U.S. and North American content. Some observers note that tightening rules of origin would be costly to consumers and introduce inefficiencies for businesses, which could also make goods produced within North America less competitive in global export markets. They also contend that it is cumbersome to comply with complex rules of origin that may add to trade costs. They argue that these additional administrative costs could lead businesses not to take advantage of NAFTA tariff preferences, and rather to import products through most favored nation (MFN) tariffs. In particular, this could be true for small businesses since they lack knowledge on the NAFTA certification system.[49] The U.S. proposal on tightening rules of origin has been viewed as one of the more contentious issues in the negotiations.

Motor Vehicle Industry

NAFTA phased out Mexico's restrictive auto decrees, which for many years imposed high import tariffs and investment restrictions in Mexico's auto sector, and opened the Mexican motor vehicle sector to trade with and investment from the United States.[50] The elimination of Mexican trade

[47] CRS calculations based on imports for consumption data from the U.S. International Trade Commission.

[48] CRS Report RL34524, *International Trade: Rules of Origin*, by Vivian C. Jones.

[49] Caroline Freund, *17-25 Streamlining Rules of Origin in NAFTA*, Peterson Institute for International Economics, Policy Brief, Washington, DC, June 2017.

[50] Beginning in the 1960s, Mexico had a restrictive import substitution policy in which the government sought to supply the entire Mexican market through domestically produced automotive goods. The series of auto decrees established import tariffs as high as 25%, had high restrictions on foreign auto production, prohibited imports of

barriers liberalized North American motor vehicle trade and was instrumental in the integration of the North American motor vehicle industry.[51] NAFTA phased out all tariffs on automotive imports among the three countries, as long as they met the rules-of-origin requirements of 62.5% content for autos, light trucks, engines, and transmissions, and 60% for all other vehicles and automotive parts.

Since NAFTA, North American motor vehicle manufacturing has become highly integrated, with major Asia- and Europe-based automakers constructing their own supply chains within the region.[52] The major recent growth in the North American market occurred largely in Mexico, which now accounts for about 20% of total continental vehicle production.[53] In general, recent investments in U.S. and Canadian assembly plants have involved modernization or expansion of existing facilities, while Mexico has seen new assembly plants.[54]

In general, vehicle and parts manufacturers support retaining the current rules of origin, whereas labor groups seek to require a higher percentage of regional content, which they believe would reduce the share of parts produced in non-NAFTA countries. Economists and other experts contend that if the rules of origin are increased under NAFTA, the United States may not achieve the intended consequences. They say trade in motor vehicles within North America would likely not be able to meet the new requirements and would be ineligible for NAFTA benefits. Industry experts say that it would be more cost efficient for manufacturers of motor vehicles and motor vehicle parts to pay the MFN tariff of about 2.5% rather than meeting the cumbersome rules-of-origin requirements. They argue that a change in rules poses a significant risk to North American auto production, because it is likely that manufacturers would not have the supply to meet the new rules and would not be able to remain competitive in the market.[55] Auto manufacturers in Mexico are concerned that they would lose market share to Asian manufacturers.[56] For example, the rules of origin in the U.S.-Korea FTA are much lower than NAFTA's and it is possible that motor vehicle producers would shift production to South Korea, especially in light trucks.[57]

Auto industry representatives advocate certain changes to enhance the agreement, such as updating border customs procedures (i.e., trade facilitation measures) and IPR protection, and also support the current NAFTA rules of origin. They say that the current rules of origin strike the right supply chain balance, promote exports from North America, and reduce costs. The United Auto Workers union (UAW) has called for a new agreement to provide more benefits to workers in all three signatory countries.[58] The UAW supports renegotiation in order to strengthen labor

finished vehicles, imposed high domestic content requirements and had export requirements in which a certain amount of exports was required for every dollar of imports.

[51] CRS Report R44907, *NAFTA and Motor Vehicle Trade*, by Bill Canis, M. Angeles Villarreal, and Vivian C. Jones.

[52] Similarly integrated motor vehicle supply chains have evolved in Europe and Asia.

[53] In 1986, Mexican production of cars and light trucks accounted for 2.5% of total North American production. Ward's Datasheet, *North America Car & Truck Production, 1951-2016*.

[54] See CRS Report R44907, *NAFTA and Motor Vehicle Trade*, by Bill Canis, M. Angeles Villarreal, and Vivian C. Jones.

[55] Personal communication with motor vehicle representatives and government officials in Mexico City on September 25-29, 2017.

[56] Ibid.

[57] KORUS's rules of origin in motor vehicles range from 35-55%. See CRS Report RL34330, *The U.S.-South Korea Free Trade Agreement (KORUS FTA): Provisions and Implementation*, coordinated by Brock R. Williams.

[58] CRS Report R44907, *NAFTA and Motor Vehicle Trade*, by Bill Canis, M. Angeles Villarreal, and Vivian C. Jones.

and environmental provisions, ensure "fair" trade among all NAFTA parties through more enforceable provisions, and enhance provisions on worker rights protection.[59]

Agriculture

NAFTA's agriculture provisions include tariff and quota elimination, sanitary and phytosanitary (SPS) measures, rules of origin, and grade and quality standards.[60] NAFTA sets separate bilateral undertakings on cross-border trade in agriculture, one between Canada and Mexico, and the other between Mexico and the United States. As a general matter, CFTA provisions continued to apply on trade with Canada.[61] Under CFTA, Canada excluded dairy, poultry, and eggs for tariff elimination. In return, the United States excluded dairy, sugar, cotton, tobacco, peanuts, and peanut butter. Although NAFTA resulted in tariff elimination for most agricultural products and redefined import quotas for some commodities as tariff-rate quotas (TRQs),[62] some products are still subject to high above-quota tariffs, such as U.S. dairy and poultry exports to Canada. Canada maintains a supply-management system for these sectors that effectively limits U.S. market access. These products were also exempt from Canada-Mexico trade liberalization. NAFTA also addressed SPS measures and other types of nontariff barriers that may limit agricultural trade. SPS regulations continue to be regarded by agricultural exporters as challenging to trade and disruptive to integrated supply chains.[63]

In conjunction with agricultural reforms underway in Mexico at the time, NAFTA eliminated most nontariff barriers in agricultural trade with Mexico, including import licensing requirements, through their conversion either to TRQs[64] or to ordinary tariffs. Tariffs were phased out over 15 years with sensitive products such as sugar and corn receiving the longest phaseout periods. Approximately one-half of U.S.-Mexico agricultural trade became duty-free when the agreement went into effect. Prior to NAFTA, most tariffs in agricultural trade between the United States and Mexico, on average, were fairly low, though some U.S. exports to Mexico faced tariffs as high as 12%. However, approximately one-fourth of U.S. agricultural exports to Mexico (by value) were subjected to restrictive import licensing requirements.[65]

The TPP included certain commitments in agriculture that went beyond NAFTA, particularly in regard to SPS provisions, commitments relating to scientifically based human health and animal/plant safety in the trade of agriculture products. NAFTA parties could consider commitments agreed to under TPP that went beyond both NAFTA and World Trade Organization (WTO) commitments, such as science-based and transparent regulatory activities, including the use of risk analysis to improve the scientific basis of SPS regulation, notifications to importers or

[59] United Auto Workers (UAW), *Renegotiating NAFTA,* August 11, 2017.

[60] See CRS In Focus IF10682, *NAFTA Renegotiation: Issues for U.S. Agriculture,* by Renée Johnson, and CRS Report R44875, *The North American Free Trade Agreement (NAFTA) and U.S. Agriculture,* by Renée Johnson.

[61] Governments of Canada, the United Mexican States, and the United States of America, *Description of the Proposed North American Free Trade Agreement,* August 12, 1992, p. 12.

[62] Tariff-rate quotas (TRQs) allowed NAFTA partners to export specified quantities of a product to other NAFTA countries at a relatively low tariff, but subjected all imports of the product above a pre-determined threshold to a higher tariff.

[63] CRS In Focus IF10682, *NAFTA Renegotiation: Issues for U.S. Agriculture,* by Renée Johnson.

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[65] Business Roundtable, *NAFTA: A Decade of Growth,* p. 35.

exporters of shipments detained for SPS issues, or consultative mechanisms to seek quick resolution of such detentions involving perishable products.

U.S. agriculture has a large stake in NAFTA because Mexico is a very significant export market for U.S. agricultural products. Still, renegotiations could provide an opportunity to modernize certain issues affecting U.S. agricultural exporters.[66] Potential options could include liberalizing remaining dutiable agricultural products that are still subject to TRQs and high out-of-quota tariff rates; updating NAFTA's SPS provisions, such as rules regarding the use of agricultural biotechnology; adding provisions regarding the use of geographical indications (GIs), or placing names that identify specific products based on their reputation or origin (see "Intellectual Property Rights (IPR)" section); and addressing outstanding disputes among NAFTA parties, including sugar, tomatoes, and country-of-origin labeling (COOL).[67] Some farm interest groups are urging changes that go beyond those in the TPP. For example, the U.S. Biotech Crops Alliance, composed of 13 groups representing various agricultural sectors, states that NAFTA renegotiation represents an opportunity to build on TPP by reaching agreement on biotech safety determinations and strengthening the protocol on how to treat agricultural shipments with trace amounts of unauthorized biotech traits.[68] The United States reportedly has proposed to open so-called "seasonal products," such as fruit, to dispute-resolution mechanisms that may lead to disputes and possibly tariffs, which could hinder Mexican exports, according to some observers.[69] Mexican officials stated that this could be a deal breaker in the negotiations.[70]

U.S. Proposal to Establish New Rules for Seasonal and Perishable Products

Among the Administration's agriculture-related objectives in NAFTA renegotiations is a proposal to establish new rules for seasonal and perishable products, such as fruits and vegetables, which would establish a separate domestic industry provision for perishable and seasonal products in antidumping and countervailing duties (AD/CVD) proceedings. Some U.S. fruit and vegetable producers, mostly in southeastern states, who claim to be adversely affected by import competition from Mexico, support this proposal. Critics argue that the proposal would make products such as avocados or tomatoes from Mexico more expensive for U.S. consumers.

Source: CRS Report R45038, *Efforts to Address Seasonal Agricultural Import Competition in the NAFTA Renegotiation*, by Renée Johnson.

The United States seeks to dismantle Canada's supply management system for dairy, poultry, and eggs, a goal that eluded U.S. agricultural interests in the TPP negotiations.[71] However, Canada is resisting such calls, with its trade minister Francois-Philippe Champagne commenting, "You know every time someone wants to talk about supply management, I'm happy to talk about [U.S. farm] subsidies."

[66] CRS In Focus IF10682, *NAFTA Renegotiation: Issues for U.S. Agriculture*, by Renée Johnson.

[67] See section on trade issues in CRS Report RL32934, *U.S.-Mexico Economic Relations: Trends, Issues, and Implications*, by M. Angeles Villarreal, and CRS In Focus IF10693, *Amended Sugar Agreements Recast U.S.-Mexico Trade*, by Mark A. McMinimy.

[68] Brett Fortnam, "Ag Groups Seek Biotech Rules in NAFTA that go Beyond TPP Provisions," *Inside U.S. Trade*, June 16, 2017.

[69] Eric Martin, Josh Wingrove, and Andrew Mayeda, "U.S. Demands Risk Scuttling NAFTA Talks," *Bloomberg Politics*, September 28, 2017.

[70] Personal communication with government representatives in Mexico City from September 25-29, 2017.

[71] Office of the United States Trade Representative (USTR), *Summary of Objectives for the NAFTA Renegotiation*, Revised (hereinafter Revised Objectives), November 2017, p. 3.

Services

The United States has a highly competitive services sector and has made services trade liberalization a priority in its negotiations of FTAs, including NAFTA.[72] NAFTA covers core obligations in services trade in its own chapter, but because of the complexity of the issues, it also covers services trade in other related chapters, including financial services and telecommunications. NAFTA contained the first "negative list" services chapter in a U.S. trade agreement, meaning that all services are covered under the agreement unless specifically excluded from it, or unless NAFTA parties reserved a service to domestic providers at the time of the agreement. NAFTA also contains a ratchet clause, which means that if a party liberalizes any nonconforming measure in the future, that action cannot be reversed.

NAFTA parties may consider new services commitments, such as those in TPP, including commitments to remove barriers to electronic payment card services, electronic signatures, mobile telecommunications, international roaming rates, and additional market access in areas such as audiovisual services and allowing firms to transmit data across borders.[73] The following topics could be part of the renegotiation:

- **Financial services.** U.S. financial services firms may seek greater market access in Canada and Mexico, which have reservations to their financial services schedules, as does the United States. At the time of NAFTA, Mexico was in the process of denationalizing its banking sector. Companies such as MasterCard are seeking to guarantee cross-border access to U.S. payments services, such as the ability to process transactions in the United States, and the adoption of electronic signatures.
- **Telecommunications.** U.S. negotiators may seek liberalization of the Canadian telecommunications sector, which contains foreign ownership restrictions and board of director requirements. Canada also imposes cultural content restrictions that require the broadcast and distribution of Canadian-origin content.
- **Express delivery.** NAFTA does not contain language on express delivery, although the United States made market access of express delivery services a priority in recent FTA negotiations. U.S. negotiators are seeking greater access and removal of barriers to e-commerce and express delivery, including raising the *de minimis* customs threshold among the three countries (see below).[74] FedEx has also expressed interest in allowing reciprocal access for trucking services between the United States and Mexico.[75]
- **Labor mobility.** NAFTA partners may seek additional temporary access for their service professionals, such as accounting, architecture, legal, and medical providers, and temporary entry for business personnel. NAFTA partners may also

[72] For more information, see CRS Report R43291, *U.S. Trade in Services: Trends and Policy Issues*, by Rachel F. Fefer, and CRS Report R44354, *Trade in Services Agreement (TiSA) Negotiations: Overview and Issues for Congress*, by Rachel F. Fefer.

[73] For more details, see CRS Report R44489, *The Trans-Pacific Partnership (TPP): Key Provisions and Issues for Congress*, coordinated by Ian F. Fergusson and Brock R. Williams.

[74] Revised Objectives, p, 5.

[75] "Comments of Federal Express Corporation," Docket # USTR-2017-0006, June 2017.

seek greater or mutual recognition of the qualifications of their service professionals.[76]

E-Commerce, Data Flows, and Data Localization

The role of the internet in international commerce has expanded dramatically since the implementation of NAFTA over 20 years ago. While technological advancements have fundamentally changed how firms trade and do business across international borders, new barriers have also emerged, which existing trade rules fail to address. New provisions could provide North American firms more flexibility in where they process and store data relevant to their business, but they also raise questions concerning privacy and unauthorized use of the data.[77] The USTR negotiating objectives for NAFTA largely track those of trade promotion authority and include language for mandating nondiscriminatory treatment of digital products transmitted electronically; prohibiting restrictions on cross-border data flows or imposition of localization requirements for servers; preventing mandated disclosure of source code; and proscribing customs duties for digital products delivered electronically.[78]

These provisions were included in TPP, along with provisions requiring criminal penalties for trade secret theft (especially for cyber theft), safeguards for cross-border electronic card payment services, consumer fraud protection, and coverage of mobile service providers, among others.

De Minimis Threshold

The *de minimis* threshold for assessing customs duties on imported goods is a potential new issue in the NAFTA negotiations, one which affects several negotiating areas such as customs, services, and e-commerce. The controversy surrounds the threshold customs valuation assessed among the three NAFTA nations for goods entering the country (mailed, delivered by courier, transported by distributors, etc.) without charging duty or sales tax. The United States exempts duties for shipments under $800 (P.L. 114-125, §901), while Canada's threshold is C$20 (recently about US$15-16) and Mexico's is $50. U.S. express delivery and e-commerce firms, as well as small businesses that rely on those platforms, have sought to have the *de minimis* threshold raised in NAFTA partner countries. They argue that raising the *de minimis* would expedite shipments, increase sales, and benefit consumers in Canada and Mexico. However, retailers in Canada and Mexico have voiced concerns that raising the threshold would adversely affect retailers and would open the door to increased duty-free shipments from non-NAFTA countries.[79]

U.S. trade negotiating objectives in TPA include language supporting the use of domestic regulation for legitimate policy objectives in the digital space and that they should be nondiscriminatory, transparent, and the least restrictive on trade. TPP required the adoption or maintenance of a legal framework for privacy regimes.[80] Currently, the provinces of Nova Scotia and British Columbia have restrictions on the storage abroad of public health, education, and other public agency data. While USTR has highlighted localization restrictions on procurement opportunities for harmonization of the Canadian government's IT infrastructure under a single platform, the procurement opportunities for government IT infrastructure projects are restricted in

[76] "NAFTA Renegotiations: U.S. Offensive and Defensive Interests vis-a-vis Canada," by Gary Clyde Hufbauer and Euijin Jung, PIIE Briefing 17-2, *A Path Forward for NAFTA,* C. Fred Bergsten and Monica de Bolle, eds., July 2017, Peterson Institute for International Economics, July 2017, p.63 (PIIE Briefing 17-2).

[77] For more information, see CRS In Focus IF10390, *TPP: Digital Trade Provisions*, by Rachel F. Fefer, by Rachel F. Fefer, and CRS Report R44565, *Digital Trade and U.S. Trade Policy*, coordinated by Rachel F. Fefer.

[78] Revised Objectives, p. 8.

[79] "U.S. push for freer NAFTA e-commerce meets growing resistance," by Sharay Angulo, Reuters, August 9, 2017.

[80] TPP, Chapter 14.8.

each of the three NAFTA countries.[81] Canada and Mexico reportedly are resisting U.S. attempts to impose a universal prohibition on data localization.[82]

Intellectual Property Rights (IPR)

As mentioned earlier, NAFTA was the first FTA to contain an IPR chapter, which in turn was the model for the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement that came into effect a year later.[83] IPR chapters in trade agreements include provisions on patents, copyrights, trademarks, trade secrets, geographical indications (GIs), and enforcement. NAFTA predated the widespread use of the commercial internet, and subsequent IPR chapters in U.S. FTAs contain obligations more extensive than those found in TRIPS and NAFTA. In general, they have followed the TPA negotiating objective that agreements should "reflect a standard of protection similar to that found in U.S. law." The President's NAFTA negotiating objectives reflect TPA-2015 and the aims of U.S. negotiators in the TPP (in some instances the negotiated TPP outcomes were less extensive). Based on the Administration's negotiating objectives, the United States may seek additional IPR provisions in the following areas, among other possible issues:

Patents. Patents protect new innovations, such as pharmaceutical products, chemical processes, business technologies, and computer software. Updated patent rules could include the following:

- **Patent term extension.** Extension for "unreasonable" delays in the patent examination or regulatory approval processes. NAFTA allowed countries to provide extension but did not define unreasonable.
- **Patent Linkage.** A regulatory authority, such as the U.S. Food and Drug Administration, cannot grant approval to market a generic pharmaceutical without the patent holder's permission while the drug is under patent.
- **Protection of test data.** Patent holders submit test data for regulatory approval for pharmaceuticals on which generics may later rely. Exclusivity periods, during which these data may not be used by generics, may be discussed regarding the following:
  - ***Chemical-based (small-molecule) drugs***: In TPP, all three countries agreed on five years of data exclusivity for new drugs, and three years for new formulations of existing drugs; and
  - ***Biologics***: The United States may seek 12 years of data exclusivity for biologics. Canada provides a total of 8 years of biologics data exclusivity while Mexico provides a regulatory 5-year period for both chemical and biologics. TPP included provisions for an 8-year period of exclusivity or, alternatively, 5 years coupled with "other measures ... to deliver a comparable outcome in the market."[84]

Copyright. Copyrights provide creators of artistic and literary works with the exclusive right to authorize or prohibit others from reproducing, communicating, or distributing their works. Debate

[81] USTR, 2017 National Trade Estimate Report, p. 71.

[82] "Progress lags on thorny NAFTA issues; anti-corruption chapter closed," *Inside U.S. Trade*, February 2, 2018.

[83] See CRS In Focus IF10033, *Intellectual Property Rights (IPR) and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

[84] CRS Report R44489, *The Trans-Pacific Partnership (TPP): Key Provisions and Issues for Congress*, coordinated by Ian F. Fergusson and Brock R. Williams.

exists over balancing copyright protections while protecting the free flow of information, with digital trade raising new issues:

- **Extension of copyright terms.** NAFTA provides life of creator plus 50 years, or 50 years from publication for most works. In other FTAs, the United States has sought an extension of these copyright terms to 70-year periods.
- **Penalties.** Negotiations may include penalties for circumventing technological protection measures (TPMs), such as encryption.
- **"Fair use."** TPP contained new language, consistent with the 2015 TPA, to "endeavor to achieve an appropriate balance" between users and rights holders in their copyright systems, including digitally, through exceptions for legitimate purposes (e.g., criticism, comment, news reporting, teaching, research). The "appropriate balance" language has been criticized by rights-holder groups, and the United States reportedly has tabled language seeking to restrict exceptions for fair-use.[85]
- **"Safe harbor."** More recent FTA provisions protect internet service providers (ISPs) against liability for digital copyright infringement, provided ISPs address intermediary liability through "notice and takedown" or alternative systems (e.g., "notice and notice" in Canada). Rights-holder groups are seeking to limit what they consider "overly broad safe harbor provisions," while technology and business groups favor retention. The revised U.S. negotiating objectives include a proposal to limit non-IPR civil liability for third-party content consistent with nondiscriminatory measures for public policy objectives.[86]

Trade Secrets. Trade secrets are confidential business information (e.g., formula, customer list) that are commercially valuable. In a first for a U.S. trade agreement, TPP parties agreed to require criminal procedures and penalties for trade secret theft, including through cyber theft and by state-owned enterprises (SOEs).

Geographical Indications (GIs). GIs are geographical names that protect the quality and reputation of a distinctive product from a region (e.g., Champagne, Florida oranges). The United States may seek to address GI protections that can improperly constrain U.S. agricultural market access in other countries by protecting terms viewed as "common." Some U.S. industries, for example, are concerned that the European Union is using GIs to impose restrictions on the use of common names such as parmesan, feta, and provolone cheeses, which limit U.S. companies from marketing these foods using these common names. This goal may be complicated by the recent Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union, which provides additional protections for GIs in Canada.

Enforcement. The United States may seek commitments on civil, criminal, and other national enforcement for IPR violations, such as copyright enforcement in the digital environment, criminal penalties for trade secret theft and camcording, and *ex-officio* authority to seize counterfeit trademark and pirated copyright goods at the border. Mexico and Canada have voiced a willingness to negotiate on more enforceable IPR provisions.

[85] "New NAFTA Pits Silicon Valley Against Hollywood Over Copyright," Bloomberg BNA *International Trade Reporter*, December 21, 2017.

[86] Revised Objectives, p. 8.

Investment

NAFTA removed significant investment barriers, ensured basic protections for NAFTA investors, and provided a mechanism for the settlement of disputes between investors and a NAFTA country. U.S. FTAs, including NAFTA and bilateral investment treaties (BITs) maintain core investor protections reflecting U.S. law, such as obligations for governments to provide investors with nondiscriminatory treatment, a minimum standard of treatment, and protections against uncompensated expropriation, among other provisions.[87] Since NAFTA, investment chapters in FTAs and the U.S. model BIT clarified certain provisions, including commitments to affirm more clearly a government's right to regulate for environmental, health, and other public policy objectives. All three countries may have an interest in revising the NAFTA investment chapter to reflect more recent agreements.

One controversial aspect of the NAFTA investment chapter is the investor-state dispute settlement (ISDS) mechanism. ISDS is a form of binding arbitration that allows private investors to pursue claims against sovereign nations for alleged violations of the investment provisions in trade agreements. It is included in NAFTA and nearly all other U.S. trade agreements that have been enacted since then. Generally, ISDS tribunals are composed of three lawyer-arbitrators: one chosen by the claimant investor, one by the respondent country, and one by mutual decision between the two parties. Most cases follow the rules of the World Bank's Centre for Settlement for Investor Dispute or the United Nations Commission on International Trade Law. Fifty-nine ISDS actions have been as part of NAFTA, with the majority coming after 2004.[88]

NAFTA Record on Investor State Dispute Settlement (ISDS) Cases

- 59 cases adjudicated under Chapter 11
- 23 (39%) decided in favor of state (on merits/no jurisdiction); 10 (17%) decided in favor of investor; 8 (13%) settled
- 7 (12%) discontinued or breach found but no damages; pending 11 (19%)
- Individual cases initiated against United States: 16; Canada 25; Mexico 18
- 10 decisions favorable to U.S. government as respondent; 0 decisions unfavorable; 3 settled; 1 discontinued; 2 pending
- 6 decisions favorable to Canadian government as respondent; 5 unfavorable; 5 settled; 4 discontinued; 5 pending
- 8 decisions favorable to Mexican government as respondent; 5 unfavorable; 2 discontinued; 3 pending
- Home countries of claimants in cases initiated against United States: Canada (15); Mexico (1)
- Respondent governments in cases initiated by U.S. investors: Canada (25); Mexico (16)

Source: United Nations Conference on Trade and Development (UNCTAD).

Supporters argue that ISDS is important for protecting investors from discriminatory treatment. They also argue that trade agreements do not prevent governments from regulating in the public interest; ISDS remedies are limited to monetary penalties; and ISDS cannot force governments to change their laws or regulations. Critics counter that companies use ISDS to restrict governments' ability to regulate in the public interest (such as for environmental or health reasons), leading to "regulatory chilling" even if an ISDS outcome is not in a company's favor. The United States, to date, has never lost a claim brought against it under ISDS in a U.S. investment agreement. The USTR's negotiating objectives for NAFTA do not mention ISDS.

[87] See CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar.

[88] *Ibid*.

Protections Common to U.S. Investment Agreements

Market access for investments.

Nondiscriminatory treatment of foreign investors and investments compared to domestic investors and investments (national treatment) and to those of another country (most-favored-nation treatment).

Minimum standard of treatment (MST) in accordance with customary international law, including fair and equitable treatment and full protection and security.

Prompt, adequate, and effective compensation for expropriation, both direct and indirect, recognizing that, except in rare circumstances, nondiscriminatory regulation is not an indirect expropriation.

Timely transfer of funds into and out of the host country without delay using a market rate of exchange.

Limits on performance requirements that, for example, condition approval of an investment on using local content.

Investor-State Dispute Settlement (ISDS) for binding international arbitration of private investors' claims against host country governments for violation of protections in Investment Chapter, along with requirements for transparency of ISDS proceedings.

Exceptions may be included for essential security interests and prudential reasons, among others.

The United States reportedly has proposed to make ISDS an opt-in, opt-out system, with each party determining whether to accept cases from the other. However, the plan would still allow the companies of an opt-out party to bring arbitration action against parties that opt in.[89] The United States reportedly also has proposed to limit eligibility to claims involving direct expropriation. Complainants could no longer seek arbitration for indirect expropriation—enactment of laws or regulations that compromise the value of the investment.[90] Canadian negotiators are reportedly planning to propose eliminating ISDS provisions during the seventh round of negotiations.[91]

The U.S. business community strongly opposes U.S. proposals to scale back or eliminate NAFTA ISDS provisions. The American Petroleum Institute (API), for example, states that strong ISDS provisions protect U.S. business interests and that weakening or eliminating NAFTA's ISDS would "undermine U.S. energy security, investment protections and our global energy leadership."[92] U.S. labor and civil society groups have welcomed the Administration's more skeptical approach to ISDS. The 2015 TPA called for "providing meaningful procedures for resolving investment disputes," which may affect congressional consideration of an agreement.[93]

Energy

In most sectors, NAFTA removed significant trade and investment barriers and ensured basic protections for NAFTA investors. The agreement, nonetheless, included explicit country-specific exceptions and reservations. In NAFTA's energy chapter, the three parties confirmed respect for their constitutions. This was of particular importance for Mexico and its 1917 Constitution, which established Mexican national ownership of all hydrocarbons resources. Under NAFTA, the Mexican government reserved to itself strategic activities, including investment and provisions in

[89] "U.S. Nafta Proposal Fails to Move Mexico, Canada," *Wall Street Journal*, January 29, 2017.

[90] "What NAFTA Renegotiating Objectives Mean for Arbitration," by Caroline Simson, *Law360*, November 22, 2017.

[91] Jenny Leonard, "Sources: Canada to propose eliminating ISDS in NAFTA; USTR to agree," *Inside U.S. Trade's World Trade Online*, February 22, 2018.

[92] American Petroleum Institute (API), *API Supports NAFTA Modernization that Retains Strong Protections for U.S. Investors*, February 20, 2017, http://www.api.org/news-policy-and-issues/news/2018/02/20/api-supports-nafta-modernization-that-protect-us-investors.

[93] P.L. 114-26, §102 (b)(4)(f).

such activities, related to the exploration and exploitation of crude oil, natural gas, and basic petrochemicals. Mexico also reserved the right to provide electricity as a public service within the country. Despite these exclusions from NAFTA, energy remains a central component of U.S.-Mexico trade.[94]

In the NAFTA renegotiations, the United States may seek to lock in Mexico's recent energy reforms, provide greater access to Mexico's oil sector, and enhance bilateral cooperation on energy production and security. Mexico also may seek to enhance NAFTA's energy chapter. In 2013, the Mexican Congress approved the Peña Nieto Administration's constitutional reform proposals for the energy sector. The reforms restructured Mexico's state-owned oil company, PEMEX, as a "state productive company," which means that despite being owned by the state, it competes in the market like any private company.[95] It has operational autonomy in addition to its own assets. These reforms opened Mexico's energy sector to production-sharing contracts with private and foreign investors while keeping the ownership of Mexico's hydrocarbons under state control.[96] Following this reform, Mexico adopted new procurement rules to increase efficiency and effectiveness in the procurement process. U.S. industry groups are calling for the United States to use NAFTA's so-called ratchet mechanism in regard to Mexico's energy reforms, which would prevent the reforms from being reversed and grant protection to U.S. investors.[97]

In regard to Canada, negotiators may address a so-called "proportionality" provision contained in the energy chapters of both CFTA and NAFTA. This provision provides that a domestic restriction on Canadian energy exports cannot reduce the proportion of exports delivered to the United States. The chapter also prohibits pricing discrimination between domestic consumption and exports to the United States. Some Canadians maintain that this provision restricts the ability of Canada to make energy policy decisions and may seek to change this provision.

Government Procurement

The NAFTA government procurement chapter sets standards and parameters for government purchases of goods and services. The schedule of commitments, set out in an annex to the chapter, provides opportunities for firms of each nation to bid on certain contracts for specified government agencies over a set monetary threshold on a reciprocal basis. The United States and Canada also have made certain government procurement opportunities available through similar obligations in the plurilateral WTO Government Procurement Agreement (GPA). Mexico is currently not a member of the GPA.

Supporters of expanded procurement opportunities in FTAs argue that the reciprocal nature of the government procurement provisions in FTAs allows U.S. firms access to major government procurement market opportunities overseas. In addition, supporters claim open government procurement markets at home allow government entities to accept bids from partner country suppliers, potentially making more efficient use of public funds.

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[94] See CRS Report R43313, *Mexico's Oil and Gas Sector: Background, Reform Efforts, and Implications for the United States*, coordinated by Clare Ribando Seelke, and CRS Report R44747, *Cross-Border Energy Trade in North America: Present and Potential*, by Paul W. Parfomak et al.

[95] Organisation for Economic Co-operation and Development (OECD), *Fighting Bid Rigging in Public Procurement: A Review of the Procurement Rules and Practices of PEMEX in Mexico*, 2016, p. 11.

[96] Ibid, p. 9.

[97] U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Modernization of the North American Free Trade Agreement (NAFTA)*, 115th Cong., 1st sess., July 18, 2017 (Testimony of Dennis Arriola, Executive Vice President, Sempra Energy).

However, other stakeholders contend that public procurement should primarily benefit domestic industries. The Buy American Act of 1933, as amended, limits the ability of foreign companies to bid on procurements of manufactured and construction products. Buy American provisions periodically are also proposed for legislation such as infrastructure projects requiring government purchases of iron, steel, and manufactured products.[98] Such restrictions are waived for products from countries with which the United States has FTAs or to countries belonging to the GPA. The Trump Administration has made it a priority to support strong Buy American and Hire American policies in government procurement. The U.S. trade negotiating objective for government procurement in TPA seeks "transparency in developing guidelines, rules, regulations, and laws for government procurement," but does not address market access goals. USTR's original NAFTA negotiating objectives largely echo these goals by stating general commitments, such as support for "predictable and nondiscriminatory rules" that ensure procurement "will be handled under fair procedures" and maintain existing exceptions, domestic preferential purchasing programs, and the ability to provide for labor, environmental, and other criteria in contracting requirements.

While pursuing increased market access to procurement contracts for U.S. firms in the NAFTA countries, the United States is seeking to "ensure reciprocity in market access opportunities for U.S. goods, services, and suppliers, in Canada and Mexico."[99] The U.S. proposal reportedly would cap procurement access to the U.S. market at the dollar value of procurement access available in Canada and Mexico. Given that the size of the procurement markets in Canada and Mexico are substantially smaller than that of the United States, this proposal, in effect, would reduce the amount of procurement available to be bid on by Canadian and Mexican firms. The United States is also seeking to exclude subfederal—state and local government—procurement, as it did in the TPP. Aside from the business impact of the proposal, one observer noted its implementation "would likely create an administrative nightmare for federal agencies and the nearly 30,000 contracting officers in the federal procurement system,"[100] as they potentially would need to be mindful not to breach the caps. Mexico responded with a proposal to restrict U.S. access to Mexican procurement. This proposal was reportedly meant to show that U.S. firms would be adversely affected by straight reciprocity.[101]

If the provisions of the government chapter were to be weakened, reduced opportunities would primarily fall on U.S.-Mexican procurement, as Mexico is not a party to the WTO GPA. The United States and Canada, as members, continue to be obligated under the provisions of the 2014 revision of the GPA, which has commitments greater than that of the NAFTA procurement chapter. For example, GPA covers procurements from 37 U.S. states and the Canadian provinces. For its part, Canada has sought to open additional markets access to the procurement of all NAFTA parties. In particular, Canada has sought access for pass-through procurement—procurements funded by the federal government, but tendered by states or localities, making some exempt from international trade obligations.

Chapters 19 and 20 Dispute Settlement Provisions

NAFTA's dispute settlement provisions were innovative at the time the agreement was negotiated. Under Chapter 20, the agreement created an enforceable state-to-state mechanism, for the first time in an FTA, to resolve disputes arising from the agreement. This dispute settlement mechanism has rarely been used, in part because the provisions of NAFTA substantially overlap

[98] U.S. manufactured products have been defined in regulation as containing at least 50% domestic content.

[99] Revised Ojectives, p. 15.

[100] Jane Heilman Grier, "NAFTA Procurement: Capping Access?," *Perspectives on Trade,* October 4, 2017.

[101] "Mexico tables procurement proposal based on reciprocal effective access," *Inside U.S. Trade,* November 24, 2017.

with those of the WTO, which came into force a year after NAFTA. WTO dispute settlement has been used extensively—over 500 cases brought involving WTO members—due to perceived advantages including an appellate mechanism and a growing body of precedent. If NAFTA is revised with provisions not in WTO agreements, NAFTA panels may be used more and their ability to function properly may be examined in any renegotiation. The United States reportedly has proposed to replace the existing state-to-state dispute settlement with nonbinding, advisory panels, leaving a party to determine whether to adhere to its findings.[102]

Alone among current U.S. FTAs, NAFTA contains a binational dispute settlement mechanism (Chapter 19) that provides disciplines for settling disputes arising from a NAFTA party's statutory amendment of its antidumping (AD) or countervailing duty (CVD) laws, or as a result of a NAFTA party's AD or CVD final determination[103] on the goods of an exporting NAFTA party. Chapter 19 provides for binational panel review of final determinations in AD/CVD investigations conducted by NAFTA parties *in lieu of* judicial review in domestic courts. In cases in which a NAFTA partner did not preserve "fair and predictable disciplines on unfair trade practices," or asserts that a NAFTA partner's amendment to its AD or CVD law is inconsistent with the World Trade Organization (WTO) Antidumping or Subsidies Agreements,[104] the aggrieved NAFTA partner may request a judgment from a binational panel rather than through the legal system of the defending party.[105]

Chapter 19 Panels Involving the United States

As of February 2017, the United States and its industries had been a party to 95% of all Chapter 19 panel reviews (139 panels), as either the importing or exporting country. In 71% of these panels (99 panels), the United States was the importing country and investigating authority. In these 99 cases, panels reviewed 47 U.S. decisions regarding U.S. imports from Canada and 52 U.S. decisions regarding U.S. imports from Mexico. Panels issued a ruling in one-third of these cases. Two-thirds of the cases were terminated by one or both of the parties before the panel made a determination.

As the exporting country, U.S. industries requested 40 panel reviews of another party's investigatory decisions. These panels included 20 reviews of Canadian decisions and 20 of Mexican decisions. Two-thirds of these panels completed their review and issued a ruling. The remaining one-third were terminated by one or both of the involved parties before the panel ruled.

Source: Evaluated and compiled by CRS using information from the NAFTA Secretariat, available at https://www.nafta-sec-alena.org/Home/Dispute-Settlement.

The dispute settlement system in NAFTA Chapter 19 originated during the Canada-United States Free Trade Agreement (CFTA) negotiations that culminated in 1988. The system reportedly resulted from an impasse in negotiations over the United States' refusal to provide Canada with

[102] "U.S. Is Said to Propose Gutting NAFTA Dispute Tribunals," *Bloomberg BNA International Trade Reporter*, October 19, 2017.

[103] In Canada, AD/CVD investigations on imports are conducted by the Canada Border Services Agency (CBSA, makes dumping and subsidy determinations) and the Canadian International Trade Tribunal (CITT, determines injury to Canadian industries). In Mexico, both injury (i.e., to Mexican industries) and dumping/subsidy determinations are made by the Secretaría de Economía, Unidad de Practicas Comerciales Internacionales. U.S. injury determinations are made by the International Trade Commission (ITC), and the International Trade Administration of the Department of Commerce investigates and determines the existence and amount of dumping/subsidies.

[104] The WTO Antidumping Agreement's official title is the *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade*; and the Subsidies Agreement's title is the *Agreement on Subsidies and Countervailing Measures*. NAFTA pre-dated the entry-into-force of the agreement establishing the WTO by one year. At the time of the NAFTA negotiations, the multilateral General Agreements on Tariffs and Trade (GATT) was in force. The GATT was incorporated with revisions into the WTO agreements.

[105] CRS In Focus IF10645, *Dispute Settlement in U.S. Trade Agreements*, by Ian F. Fergusson.

an exemption from the normal operation of U.S. AD/CVD laws. The provision of an option to dispute each other's proposed changes to unfair trade laws and to challenge the outcomes of AD/CVD investigations was important to Canada's final acceptance of the CFTA.[106] Mexico also supported including the provision during the negotiation of NAFTA.

The Trump Administration stated in its summary of objectives for NAFTA renegotiation that it will seek to eliminate the Chapter 19 dispute settlement mechanism.[107] Canada and Mexico support keeping Chapter 19 in the agreement. Canadian Prime Minister Trudeau has stated that a fair dispute resolution system was essential for any trade pact signed by Canada, including a renegotiated NAFTA, while the Mexican Congress has urged Mexico's negotiators to reject the Trump Administration's proposal to scrap the Chapter 19 dispute resolution mechanism.[108] Supporters of Chapter 19 assert that the process "offer[s] exporters and domestic producers an effective and direct route to make their case and appeal the results of trade remedy investigations before an independent and objective binational panel" and that it provides for "efficient and impartial review of trade remedy determinations."[109] Some legal observers mention that the panel process has functioned mainly without difficulty, noting that there have only been major disagreements in a limited number of cases, and that dissents have been few.[110] Critics mention, among other things, that there is effectively no appellate review process within the NAFTA dispute settlement system,[111] and that the panels are generally composed of individuals who have little panel experience and may not be experts in the AD/CVD laws or in the legal system of the country whose determination is under review.[112] They also mention that, despite a mandated 315-day deadline for panel reviews, there have been years-long delays prior to the panel process, mostly due to difficulties in finding and agreeing on panelists for the binational panels.[113] Some critics also allege that Chapter 19 decisions have created their own body of AD/CVD laws that national judges are encouraged to view as persuasive authority.[114]

Labor

U.S. FTAs include provisions on labor and the environment in an attempt to ensure that liberalized trade does not give a competitive advantage to developing countries due to a lack of adequate labor and environmental standards. Worker rights provisions in U.S. trade agreements have evolved over time.[115] NAFTA marked the first time that worker rights provisions were

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[106] David A. Gantz, "The United States and NAFTA Dispute Settlement.- Ambivalence, Frustration, and Occasional Defiance," University of Arizona Legal Studies Discussion Paper, No. 06-26, June 19, 2009, published in Cesare Romano, ed., *The Sword and the Scales: The United States and International Courts and Tribunals,* Cambridge University Press, 2009, p. 376, available at http://www.ssrn.com (hereinafter referred to as Gantz).

[107] USTR, *Summary of Objectives for the NAFTA Renegotiation,* p. 14.

[108] Dave Graham and Peter Cooney, "Mexico Congress Backs Motion Defending NAFTA Dispute Mechanism," *Reuters*, July 26, 2017.

[109] NAFTAnow.org website, http://www.naftanow.org/dispute/default_en.asp.

[110] Donald McRae and John Siwiec, "NAFTA Dispute Settlement: Success or Failure," Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de Mexico (UNAM).

[111] Gantz, p. 376. See also Table 11.1, "United States' Attitudes toward Dispute Settlement under the North American Free Trade Agreement" for a list of pros and cons from various U.S. perspectives at the time.

[112] Gantz, p. 378.

[113] Gantz, p. 382.

[114] Edward D. Re, *International Judicial Tribunals and the Courts of the Americas: A Comment with Emphasis on Human Rights Law*, 40 *St. Louis University Law Journal* 1091 (1996).

[115] For more information, see CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Ian F. Fergusson and M. Angeles Villarreal.

associated with an FTA by including labor provisions in a side agreement, the North American Agreement on Labor Cooperation (NAALC), that required all parties to enforce their own labor laws, as well as provisions to encourage greater cooperation. The side agreement includes a consultation mechanism for addressing labor disputes and a special labor dispute settlement procedure. The enforcement mechanism applies mainly to a party's failure to enforce its own labor laws. Under provisions of the 2002 TPA, seven subsequent FTAs included a similar provision within the main text of the agreement.

Internationally recognized labor principles were included in FTAs with Peru, Colombia, Panama, and South Korea, which required parties to adopt and maintain in their statutes and regulations core labor principles of the International Labor Organization (ILO) (ILO Declaration). They also required countries to enforce their labor laws and not to waive or derogate from those laws to attract trade and investment. These provisions are enforceable under the same dispute settlement procedures that apply to other provisions of the FTA, and violations are subject to the same potential trade sanctions.

***ILO Declaration on Fundamental Principles and Rights at Work* (1998)**

- freedom of association;
- effective recognition of the right to collective bargaining;
- elimination of all forms of compulsory or forced labor;
- effective abolition of child labor; and
- elimination of discrimination in respect of employment and occupation.

The United States may seek to strengthen NAFTA provisions related to the protection of worker rights by adopting these provisions from TPP, which were agreed to by all three NAFTA countries. These provisions largely track the Administration's NAFTA negotiating objectives, although the NAFTA objectives also call for "initiatives to prohibit" trade in goods produced by forced labor, as well as provisions to allow public stakeholders to raise concerns directly with NAFTA governments over alleged derogation from commitments. USTR reportedly has shared new U.S. proposals on labor in NAFTA renegotiations with certain advisors and policymakers, but has not put forward that text.

Concerns over NAFTA labor provisions are often discussed in the context of Mexico's record on worker rights. While Mexico has enacted labor laws and undertaken constitutional reforms, the challenge has been to enforce those laws. In TPP, the United States signed separate labor consistency plans with Vietnam, Malaysia, and Brunei. The consistency plans would have committed those countries to undertake specific legal reforms and implement other measures concerning worker rights. Some stakeholders are advocating a similar plan for Mexico in conjunction with a revised NAFTA, although the United States was unable to negotiate one with Mexico in TPP. However, according to the USTR, Mexico had agreed to develop "parallel reforms" to make its labor laws consistent with TPP labor provisions in protecting collective bargaining and reforming its system for administering labor justice.[116]

Environment

NAFTA was the first U.S. FTA to include a side agreement related to the environment. As with the chapter on worker rights, environment provisions in U.S. FTAs have evolved over time. The NAFTA side agreement—the North American Agreement on Environmental Cooperation

[116] For more information, see https://medium.com/the-trans-pacific-partnership/labour-66e8e6f4e8d5#.qbrdwn6pn.

(NAAEC)—requires all parties to enforce their own environmental laws, and contains an enforcement mechanism applicable to a party's failure to enforce these laws. NAAEC includes a consultation mechanism for addressing disputes with a special dispute settlement procedure. Seven subsequent FTAs, negotiated under the 2002 TPA, included a similar environmental chapter within the main text of the agreement.[117]

The President's NAFTA negotiating agenda largely tracks recent FTAs (South Korea, Panama, Peru, and Colombia), the 2015 TPA, and TPP. It seeks to require NAFTA parties to adopt and maintain statutes and regulations consistent with multilateral environmental agreements to which each is a party; not to fail to effectively enforce their environmental laws through a sustained or recurring course of action in a matter affecting trade or investment between the parties; and not to waive or derogate from their environmental laws to encourage trade or investment.

NAFTA parties may also seek provisions to combat endangered species trade; combat illegal, unreported, and unregulated (IUU) fishing; prohibit fishing subsidies; and support inclusive and transparent policymaking in the future through rules requiring publication of laws and regulations, and facilitate public input into the process. U.S. negotiating objectives do not mention climate change policies, but Canada reportedly has proposed to integrate country commitments in support of the Paris Agreement and to prevent weakening of climate change policies to attract investment.[118]

Customs and Trade Facilitation

Customs and trade facilitation relates to the efficient flow of legally traded goods in and out of the United States. Enforcement of U.S. trade laws and import security are other important components of customs operations at the border.

NAFTA's chapter on customs procedures includes provisions on certificates of origin, administration and enforcement, and customs regulation and cooperation. More recent agreements have modernized provisions in regard to customs procedures and trade facilitation. The World Trade Organization (WTO) Trade Facilitation Agreement (TFA), the newest international trade agreement in the WTO, entered into force on February 22, 2017. Two-thirds of WTO members, including the United States, Canada, and Mexico, ratified the multilateral agreement.[119] Trade facilitation measures aim to simplify and streamline customs procedures to allow the easier flow of trade across borders and thereby reduce the costs of trade. There is no precise definition of trade facilitation, even in the WTO agreements. Trade facilitation can be defined narrowly as improving administrative procedures at the border or more broadly to also encompass behind-the-border measures and regulations. The TFA aims to address trade barriers, such as lack of customs procedural transparency and overly burdensome documentation requirements.[120]

NAFTA renegotiation discussions may build on and set standards for implementation of the WTO TFA. Talks could address customs automation procedures, examination of *de minimus* levels for

[117] For more information, see CRS In Focus IF10166, *Environmental Provisions in Free Trade Agreements (FTAs)*, by Richard K. Lattanzio and Ian F. Fergusson.

[118] William Mauldin, Paul Vieira, and Dudley Althaus, "Canada Takes Tough Line in NAFTA Talks," *Wall Street Journal*, September 5, 2017.

[119] CRS Report R44777, *WTO Trade Facilitation Agreement*, by Rachel F. Fefer and Vivian C. Jones.

[120] Ibid.

expedited customs processing,[121] creation of a single-access window at one entry point, automated risk analysis and targeting, expeditious responses to requests for information on quotas or country of origin markings, special customs procedures for express shipments, or publicly available customs laws. Given the magnitude and frequency of U.S. trade with NAFTA partners, more updated customs provisions in NAFTA could have a significant impact on companies engaged in trilateral trade.[122]

Currency Manipulation

NAFTA does not have provisions related to currency manipulation. Over the past decade, some Members of Congress and policy experts have been concerned that foreign countries are using exchange rate policies to gain an unfair trade advantage against the United States, or are "manipulating" their currencies. Specifically, the concern is that other countries may purposefully undervalue their currencies to boost exports, making it harder for other countries to compete in global markets. They argue that U.S. companies and jobs have been adversely affected by the exchange rate policies adopted by China, Japan, and other countries "manipulating" their currencies.[123] Some economists are skeptical about currency manipulation and whether it is a significant problem. They raise questions about whether government policies have long-term effects on exchange rates, whether it is possible to differentiate between "manipulation" and legitimate central bank activities, and the net effect of alleged currency manipulation on the U.S. economy.[124]

The June 2015 TPA included, for the first time, a principal trade negotiating objective addressing currency manipulation. The Trump Administration included a negotiating objective to address currency manipulation in a modernization of NAFTA, in line with TPA negotiating objectives. The USTR's summary of the negotiating objectives states a goal of ensuring that "NAFTA countries avoid manipulating exchange rates in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage."[125] The U.S. auto industry also supports adding currency manipulation provisions to NAFTA.[126] Mexico has stated that it is open to including a declaration in NAFTA that it would not manipulate its currency.[127] Although few U.S. stakeholders have raised concerns specifically regarding Mexico and Canada's currency policies, new provisions in the NAFTA modernization could serve as a template for future FTA negotiations, similar to TPP.

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[121] *De Minimus* level refers to the value of a shipment of merchandise imported by one person on one day that generally may be imported free of duties and taxes. This level was raised from $200 to $800 under the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125).

[122] The World Trade Organization's (WTO's) Trade Facilitation Agreement (TFA), if fully ratified, could also affect trade facilitation among NAFTA parties. Ninety-eight out of a necessary 109 countries have ratified the agreement.

[123] See CRS In Focus IF10049, *Debates over Currency Manipulation*, by Rebecca M. Nelson, and CRS Report R44717, *International Trade and Finance: Overview and Issues for the 115th Congress*, coordinated by Mary A. Irace and Rebecca M. Nelson.

[124] Ibid.

[125] USTR, *Summary of Objectives for the NAFTA Renegotiation*, July 17, 2017, p. 17.

[126] "NAFTA Renegotiation: What are Ford's Priorities?," *@Ford Online*, May 24, 2017.

[127] Andrew Mayeda and Nacha Cattan, "Mexico Open to 'Rebalancing' Trade Amid U.S. NAFTA Overhaul," *Bloomberg*, June 6, 2017.

Regulatory Practices

Nontariff barriers, including discriminatory and unpredictable regulatory processes, can be an impediment to market access for U.S. goods and services exports. NAFTA includes broad provisions on regulatory practices in several chapters, including the Customs Procedures, Financial Services, and Energy chapters, but does not have a specific chapter on regulatory practices. NAFTA may have influenced the United States, Canada, and Mexico to increase cooperation on economic and security issues through various endeavors such as the North American Leaders' Summits, the North American Trusted Traveler Program, the U.S.-Canada Beyond the Border Action Plan, and the U.S.-Mexico High Level Regulatory Cooperation Council.[128]

The United States may seek to modernize NAFTA with commitments to facilitate market access and promote greater compatibility among U.S., Canadian, and Mexican regulations. Such commitments could complement ongoing efforts and include increased transparency in the development and implementation of proposed regulations, opportunities for public comment in the development of regulations, and/or the use of impact assessments and other methods to ensure regulations are evidence-based and current.[129]

State-Owned Enterprises (SOEs)

NAFTA includes provisions on SOEs, but they are limited in scope. NAFTA provisions allowed parties to maintain or establish SOEs, while requiring that any enterprise owned or controlled by a federal, provincial, or state government must act in a manner consistent with that country's NAFTA obligations when exercising regulatory, administrative, or other government authority, such as the granting of licenses. NAFTA committed parties to ensure that any SOEs accord nondiscriminatory treatment in the sale of goods or services to another party's investment in that territory.

A possible area for NAFTA renegotiations could include discussions on SOEs to address issues similar to or beyond those negotiated in more recent FTAs.[130] These could include updated provisions to ensure that SOEs compete on a commercial basis, and that the advantages SOEs receive from their governments, such as subsidies, do not have an adverse impact on U.S. workers and businesses. Renegotiations could address potential commercial disadvantages to private sector firms from state-supported competitors receiving preferential treatment.[131]

Trucking

The renegotiation of NAFTA may address trucking provisions. The implementation of NAFTA trucking provisions was a major trade issue between the United States and Mexico for many years because of U.S. delayed implementation of its trucking commitments under the agreement. NAFTA provided Mexican commercial trucks full access to four U.S. border states in 1995 and full access throughout the United States in 2000. Citing safety concerns, the United States

[128] See section on North American Cooperation in CRS Report 96-397, *Canada-U.S. Relations*, coordinated by Ian F. Fergusson and Peter J. Meyer.

[129] USTR, *Summary of Objectives for the NAFTA Renegotiation*, July 17, 2017, p. 7.

[130] For more information, see CRS Report R44489, *The Trans-Pacific Partnership (TPP): Key Provisions and Issues for Congress*, coordinated by Ian F. Fergusson and Brock R. Williams.

[131] USTR, *Updating the North American Free Trade Agreement (NAFTA)*, available at https://ustr.gov/sites/default/files/TPP-Upgrading-the-North-American-Free-Trade-Agreement-NAFTA-Fact-Sheet.pdf.

delayed the implementation of these provisions for many years. The two countries cooperated to resolve the issue over time and engaged in numerous talks regarding safety and operational issues. By 2015, the trucking issue had been resolved. The International Brotherhood of Teamsters later filed a lawsuit over the implementation of the trucking provisions and may want to revise NAFTA's trucking provisions under a potential renegotiation.

Anticorruption

The United States has been influential in including commitments to combat corruption in international trade into its FTAs by incorporating chapters on transparency and anticorruption into the agreements. Although it has been part of U.S. policy for many years, the use of these types of provisions has evolved over time with anticorruption commitments becoming progressively stronger.[132] NAFTA does not include a separate chapter related to transparency or anticorruption, but it does include several provisions that were considered groundbreaking at the time, including binding rules and disciplines on and removal of barriers to foreign investment. It was not until the TPP that anticorruption provisions were specifically included as a U.S. FTA chapter. Earlier agreements such as the U.S.-Chile FTA included anticorruption provisions related to government procurement, but none in the transparency chapter. CAFTA-DR was negotiated several years later and contains anticorruption provisions in the transparency chapters that apply to the whole agreement.

Both the United States and Mexico included anticorruption provisions in their negotiating objectives for NAFTA modernization. On issues related to anticorruption, the United States seeks to

- secure provisions committing each party to criminalize government corruption, take steps to discourage corruption, and provide adequate penalties and enforcement tools in the event of prosecution of persons suspected of engaging in corrupt activities;
- require companies to maintain accurate books and records, which facilitate the detection and tracing of corrupt payments;
- encourage the establishment of codes of conduct to encourage ethical standards among public officials; and
- require parties to disallow the deduction of corrupt payments for income tax purposes.[133]

Mexico's set of negotiating objectives includes provisions such as working toward "inclusive and responsible" trade by incorporating cooperation mechanisms in areas related to anticorruption.[134] The Mexican public may support efforts to address corruption, a top concern among the population and a barrier to investment in the country.[135]

[132] Transparency International, "Anti-Corruption and Transparency Provisions in Trade Agreements," *Anti-Corruption Helpdesk*, 2017.

[133] Office of the United States Trade Representative, Executive Office of the President, *Summary of Objectives for the NAFTA Renegotiation*, November 2017.

[134] Mexico's Economic Secretariat (Secretaria de Economia), *Mexico's Negotiating Priorities for the Modernization of NAFTA* , Mexico City, Mexico, July 2017.

[135] Alfredo Corchado, "Specter of Corruption Looms Over Mexico as NAFTA Talks get Rolling," *Dallas Morning News*, August 14, 2017.

Issues for Congress

There are a number of significant issues for Congress in the renegotiation and modernization of NAFTA. Key issues Congress may examine include how best to revise and modernize the agreement, estimate the economic impact and broader strategic aspects of NAFTA, and examine its role in U.S. relations with Canada and Mexico, two of the United States' largest trading partners. Some lawmakers have expressed concern that the Trump Administration's statements and actions on trade have the potential to harm North American trade relations, especially in regard to Mexico, and have stated that they would like to see a positive outcome to the negotiations that would enhance relations with NAFTA partners through a modernized agreement. Other lawmakers have expressed concerns about specific aspects of the agreement, including labor, with a goal of revision, as well as including TPP-like provisions to update NAFTA. What follows are a few selected areas of potential congressional interest in more detail.

Roles of Congress and the President in NAFTA Renegotiations

A possible issue for Congress relates to the roles of Congress and the President in the modernization of the agreement or possible withdrawal. A key issue related to the renegotiation is the extent to which the President advances U.S. negotiating objectives as approved by Congress in 2015, as part of the broader TPA, in addition to TPA's requirements for close congressional-executive branch consultations throughout the negotiations and with respect to other TPA requirements. The entry into force of a renegotiated or modernized NAFTA would likely be considered by Congress under TPA.[136] TPA provides expedited procedures for automatic introduction of the implementing bill submitted by the President, attempts to ensure that both chambers will consider and vote on the bill, prohibits amendment, and limits debate if the President advances TPA's principal trade negotiating objectives and meets various consultative, notifications, and other requirements. TPA currently is in effect until July 1, 2021.

President Trump has repeatedly stated that he would consider withdrawing from NAFTA if negotiators fail to reach an agreement that is favorable to the United States. It is not clear, though, whether the President has the legal authority for withdrawing from an agreement without the consent of Congress. If President Trump attempts to withdraw from the agreement, it is possible that Congress would attempt to challenge or delay the effort. The question of who has the authority for terminating NAFTA, a congressional-executive agreement, has been debated by lawmakers, legal experts, and others.[137]

TPA's requirement that the President fulfill consultation and reporting obligations helps preserve the congressional role in trade agreements by giving Congress the opportunity to influence the agreement before it is finalized. Should Congress determine that the President has failed to meet these and other requirements, it may decide that the implementing bill is not eligible to be considered under TPA rules. It would implement this decision by adopting a joint "procedural disapproval" resolution in both houses of Congress.[138] The President could proclaim (i.e., declare)

[136] See CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Ian F. Fergusson, and CRS Legal Sidebar, Renegotiation of the North American Free Trade Agreement: What Actions Do Not Require Congressional Approval, by Brandon Murrill, http://www.crs.gov/LegalSidebar/details/1724.

[137] For more information, see CRS Report R44630, *U.S. Withdrawal from Free Trade Agreements: Frequently Asked Legal Questions*, by Brandon J. Murrill.

[138] For more information, see section on "Notification and Consultation," in CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Ian F. Fergusson.

some modifications to NAFTA pursuant to existing statutory authority.[139] NAFTA implementing legislation states that the President may proclaim modifications to certain rules of origin and tariffs under certain circumstances and subject to congressional consultation and layover provisions.[140] It is also possible that the President could negotiate with Canada and Mexico on certain issues related to NAFTA that would not require changes to U.S. law. For example, the United States has numerous Trade and Investment Framework Agreements (TIFAs) with other countries, which include commitments to promote investment and measures to expand and diversify trade, but do not have provisions to change tariffs or require changes to U.S. law.[141] Another example is the recent WTO Trade Facilitation Agreement that did not make any changes to U.S. law.

The consultation and layover provisions are applicable to proclamations concerning

- tariff modification, including acceleration of tariff staging;
- modification of rules of origin specific to carpets and sweaters (Annex 300-B);
- modifications to specific rules of origin (Annex 401);
- automotive tracing requirement (Annexes 403.1, 403.2);
- regional value-content provisions for certain autos (Annex 403.3); and
- modification of rules-of-origin definitions.

NAFTA rules of origin have been periodically amended in the past to reflect changes in industry production practices and sourcing patterns, as well as to ensure consistency following periodic amendments to the World Customs Organization's Harmonized Commodity Description and Coding System.[142] For example, in 2013, NAFTA parties agreed to modifications liberalizing rules of origin by allowing more inputs from countries outside of the NAFTA region through a change in the tariff shift rules and/or by removing or reducing the regional value content requirements. The 2013 modifications affected a wide variety of articles including mineral fuels, plastics, optical and medical instruments, furniture, and smoking pipes. Some tariff phaseouts were also accelerated under NAFTA.[143]

Economic and Broader Strategic Considerations

Congress may examine the economic effects of NAFTA and the economic and broader strategic implications of possible withdrawal from NAFTA. President Trump has repeatedly threatened to withdraw from NAFTA. Some analysts maintain that these statements are not to be taken lightly

[139] North American Free Trade Agreement Implementation Act, P.L. 103-182, §202(q).

[140] Under consultation and layover requirements in Section 103 of the NAFTA Implementation Act, a proclamation by the President to modify rules of origin or tariffs is subject to the following requirements: (1) obtain the advice of the appropriate advisory committee established under section 135 of the Trade Act of 1974 and the USITC; (2) report to the House Ways and Means Committee and the Senate Finance Committee the action proposed, the reasons therefore, and the advice received; and (3) consult with those committees during a period of at least 60 days.

[141] For more information on Trade and Investment Framework Agreements (TIFAs), see USTR website at https://ustr.gov/trade-agreements/trade-investment-framework-agreements.

[142] Government of Canada, *North American Free Trade Agreement (NAFTA)-Rules of Origin*, June 8, 2017, http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/tech-rect.aspx?lang=eng.

[143] For more information, see USITC, *Probable Economic Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin*, Investigation No. TA-103-027, USITC Publication 4438, November 2013.

because the potential cost of such actions could be very significant for the U.S. economy.[144] The United States shares strong economic ties with Mexico and Canada. Any disruption to the economic relationship could have adverse effects on investment, employment, productivity, and North American competitiveness. In addition, Mexico and Canada could consider imposing retaliatory tariffs on U.S. exports if the United States were to withdraw, while at the same time maintaining existing and pursuing new FTAs without the United States.

From a broader strategic standpoint, the outcome of the renegotiations has implications for U.S. trade policy and the relationship with U.S. FTA partners. The results of the renegotiation of NAFTA may signal the future direction of U.S. trade policy and whether the Trump Administration will pursue bilateral agreements with TPP signatories or resume U.S. negotiations on the U.S.-EU Transatlantic Trade and Investment Partnership (T-TIP) FTA.[145]

The outcome of the renegotiations also has implications for the overarching relationship with Canada and Mexico. In general, U.S. relations with its North American partners have been close since NAFTA was negotiated in the early 1990s. Since 2005, the three countries have also made efforts to increase cooperation on economic and security issues through various endeavors, most notably by participating in trilateral summits known as the North American Leaders' Summits, which began in 2005 under the Administration of George W. Bush. Bilateral efforts with Canada and Mexico were pursued by the Obama Administration and built upon the accomplishments of the working groups formed under previous summits. NAFTA renegotiations have the potential to affect progress over the past decade in regard to security, competitiveness, and issues of mutual interest. Mexican officials have suggested that if the Trump Administration adopts trade policies that run counter to Mexican interests, their government may review cooperation in other areas, including migration and security.[146]

If renegotiations create new tariffs or trade barriers, they have the potential of disrupting North American supply chains, which could raise costs for U.S. consumers and possibly make goods and services produced throughout North America less competitive in foreign markets. NAFTA helped develop extensive supply chains throughout the North American region, especially in the auto industry. Many North American manufacturers work together as one integrated production region from cities in Canada, through the United States, and into numerous regions of Mexico. Labor-intensive parts can be manufactured in Mexico, where production costs are lower, while more complex parts are made in the United States. In the motor vehicle industry, for example, according to some estimates, the entire North American auto industry employs more than 1.5 million people and contributes significantly to the U.S. economy.[147] Proponents of renewed trade restrictions contend that they would bring back a share of global production to the United States. Opponents argue that they could cause thousands of lost jobs in all three countries and benefit countries like Germany and Japan, since auto producers might move their factories from Mexico to Germany, Japan, or elsewhere.[148]

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[144] Fred Bergsten, *Mexico and the NAFTA Renegotiations*, Wilson Center, Webcast, Washington, DC, August 15, 2017.

[145] CRS In Focus IF10120, *Transatlantic Trade and Investment Partnership (T-TIP)*, by Shayerah Ilias Akhtar and Vivian C. Jones.

[146] For more information on U.S.-Mexico relations, see CRS Report R42917, *Mexico: Background and U.S. Relations*, by Clare Ribando Seelke.

[147] Matthew Philips and Christina Lindblad, "Trump Threaten to Undo NAFTA's Auto Alley," *Bloomberg*, January 26, 2017.

[148] Ibid.

Mexico's 2018 Presidential Elections and Perspective

On July 1, 2018, Mexico held presidential and legislative elections in which Andrés Manuel López Obrador, or AMLO as he is commonly known, and his leftist MORENA party won by wide margins. AMLO will enter into office on December 1, 2018. He won the presidency with 53.2% of the vote, more than 30 percentage points ahead of his nearest rival. MORENA's coalition also won majorities in both chambers of Mexico's Congress.[149] AMLO has said that he wants NAFTA maintained. Observers maintain that it is too early to tell what impact, if any, the outcome of Mexican elections will have on bilateral trade, the overall relationship with Mexico, and the Mexican economy.[150] Some analysts are concerned that AMLO may be less inclined to continue close bilateral cooperation with the United States and may pursue statist polices that could roll back trade liberalization and economic reform measures of past administrations.[151] Some opponents denounce him as a populist who would seek socialist policies that would set back trilateral economic cooperation.[152] Other analysts contend that AMLO will not be able to bring about fundamental changes and that he will likely be a disappointment for voters because he does not have a solid agenda to reduce poverty and corruption, which could indicate that not much will change in Mexico.[153]

Mexico's current Administration under President Enrique Peña Nieto continued Mexico's open trade policy and repeatedly confirmed its willingness to negotiate with the United States and Canada to modernize NAFTA. At the start of NAFTA renegotiation, Mexico supported an expedited negotiation that maintained the benefits of NAFTA, but which also served as a platform for the modernization of the agreement.[154] Negotiators, however, did not reach agreement on issues such as auto rules of origin, and the talks reached an impasse earlier this year, although technical meetings have continued. On July 17, 2018, Mexican Ambassador to the United States Gerónimo Gutiérrez stated that the top trade officials from the three NAFTA countries would meet in the near future to begin a final push to reach a new agreement by the end of 2018.[155] Ambassador Gutiérrez added that the next high-level ministerial meeting would take place in the next weeks and that President-elect López Obrador would like to see NAFTA negotiations concluded before he enters into office on December 1.[156] President Trump has stated that he may pursue separate bilateral agreements with Mexico and Canada, while Mexican and Canadian officials are stressing that NAFTA talks will remain a three-way negotiation.[157]

López Obrador's position on NAFTA, which he has criticized in the past, appears to have evolved and he seems to favor keeping the agreement in place. In a letter to President Trump on July 23, 2018, López Obrador called on the United States to resume NAFTA negotiations with Mexico and Canada, stating that "prolonging the uncertainty could slow down investments in the medium

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[149] CRS In Focus IF10867, *Mexico's 2018 Elections: Results and Potential Implications*, by Clare Ribando Seelke and Edward Y. Gracia.

[150] See CRS Report R42917, *Mexico: Background and U.S. Relations*, by Clare Ribando Seelke.

[151] Claudio M. Loser, "AMLO's Election Puts Mexico-U.S. Relationship at a Crossroads," *The Hill*, July 10, 2018.

[152] "Mexican Leftist Politician Rising in Polls with Anti-American Rhetoric," *NPR*, March 12, 2017.

[153] Katherine Corcoran, "Fear AMLO's Complacency, Not his Revolutionary Rhetoric," July 2, 2018.

[154] Gabriel Stargardter, "Mexico Sets Out NAFTA Goals Ahead of Renegotiation Talks: Document," *Reuters*, August 9, 2017.

[155] Adam Behsudi, Doug Palmer, and Megan Cassella, et al., "Morning Trade," *Politico Pro Trade*, July 17, 2018.

[156] Rosella Brevetti, "NAFTA Talks Could Conclude by Year End, Mexican Official Says," *Bloomberg Government*, July 17, 2018.

[157] "Mexico, Canada, Stress Common Front in NAFTA Talks," *Associated Press*, July 25, 2018.

and long-term," and could hinder economic growth in Mexico.[158] Jesús Seade, who is expected to be his chief NAFTA negotiator, has suggested that the incoming government would accept an agreement negotiated by the outgoing administration.[159]

Canada and Mexico's Trade Liberalization

A significant issue for congressional consideration is Mexico and Canada's ongoing trade initiatives and how they may affect the United States. In addition to numerous FTAs with other countries, Canada and Mexico are signatories to the TPP, known as the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) since November 2017. Following the withdrawal from the accord by the Trump Administration, the two countries are working with the other nine TPP countries to implement the agreement, without the United States. On January 23, 2018, the 11 parties agreed on a final deal for the CPTPP; it was signed on March 8, 2018. The agreement requires ratification by 6 of the 11 signatories to become effective. Upon ratification, it would provide Canada and Mexico preferential market access in numerous industries to several lucrative Asian markets, especially Japan, and may affect current trade and investment trends with the United States.[160]

According to a June 2017 study, Canada and Mexico could have potential gains from a "TPP-11," mainly because they would have increased access to other markets, especially Japan, without having to compete with U.S. exports.[161] The study projects that Canada's exports to TPP countries, without the United States, would increase by 4.7% by 2035 and that Mexico's would increase by 3.1%. The study states that Canada's agricultural exports, particularly beef, would benefit from access to the Japanese market.[162]

Canada's FTAs

In addition to NAFTA and the CPTPP, Canada is also in the process of negotiating other FTAs. Canada's Comprehensive Economic and Trade Agreement (CETA) with the European Union provisionally came into force on September 21, 2017. This agreement provides preferential market access for goods and certain services (including agriculture) among other provisions such as provisions on geographical indications (GIs)—geographical names that protect the quality and reputation of a distinctive product originating in a certain region. For instance, Canada agreed to recognize GIs on certain cheeses generally viewed as common food names in the United States, leading to concerns among the U.S. dairy industry about U.S. market access in Canada. Canada also has a free trade agreement in force with South Korea and has conducted exploratory discussions on launching FTA negotiations with China. Canada also has FTAs with several countries in Central and South America, and is an observer to the Pacific Alliance.

[158] Letter from Andres Manuel Lopez Obrador, President-elect of Mexico, to Mr. Donald J. Trump, President of the United States of America, July 12, 2018.

[159] CRS In Focus IF10867, *Mexico's 2018 Elections: Results and Potential Implications*, by Clare Ribando Seelke and Edward Y. Gracia.

[160] CRS In Focus IF10000, *TPP: Overview and Current Status*, by Brock R. Williams and Ian F. Fergusson.

[161] Carlo Dade, Dan Ciuriak, and Ali Dadkhah, et al., *The Art of the Trade Deal: Quantifying the Benefits of a TPP Without the United States*, Canada West Foundation, June 2017.

[162] Ibid., pp. 24 and 04.

Mexico's FTAs

Some observers contend that Mexico's trade policy is the most open in the world.[163] It has a total of 11 free trade agreements involving 46 countries. These include agreements with most countries in the Western Hemisphere, as well as agreements with Israel, Japan, and the EU. Mexico is renegotiating to modernize its existing FTA with the EU. Discussions have included government procurement, energy trade, IPR protection, rules of origin, and small- and medium-sized businesses. The eighth round of negotiations took place January 8-17, 2018.[164] Mexico is also a party to the Pacific Alliance, a regional trade integration initiative formed by Chile, Colombia, Mexico, and Peru. The trade bloc's main purpose is for members to forge stronger economic ties and integration with the Asia-Pacific region. In addition to reducing trade barriers, the Alliance has sought to integrate in areas including financial markets and the free movement of people.[165] Earlier this year, the Pacific Alliance admitted Singapore, Australia, New Zealand, and Canada as associate members as a first step to deepening the relationship.[166]

Potential Impact of U.S. Withdrawal from NAFTA

The future direction and ultimate outcome of NAFTA renegotiations have significant implications for the United States for U.S. trade policy; the economies of the United States, Canada, and Mexico; and the broader relationships among all NAFTA parties. Numerous think tanks and economists have written about the possible economic consequences of U.S. withdrawal from NAFTA. For example:

- An analysis by the Peterson Institute for International Economics (PIIE) finds that a withdrawal from NAFTA would cost the United States 187,000 jobs that rely on exports to Mexico and Canada. These job losses would occur over a period of one to three years. By comparison, according to the study, between 2013 and 2015, 7.4 million U.S. workers were displaced or lost their jobs involuntarily due to companies shutting down or moving elsewhere globally. The study notes that the most affected states would be Arkansas, Kentucky, Mississippi, and Indiana. The most affected sectors would be autos, agriculture, and nonauto manufacturing.[167]
- A 2017 study by ImpactEcon, an economic analysis consulting company, estimates that if NAFTA were to terminate, real GDP, trade, investment, and employment in all three NAFTA countries would decline.[168] The study estimates U.S. job losses of between 256,000 and 1.2 million in three to five years, with about 95,000 forced to relocate to other sectors. Canadian and Mexican employment of low skilled workers would decline by 125,000 and 951,000,

[163] CRS Report R40784, *Mexico's Free Trade Agreements*, by M. Angeles Villarreal.

[164] Organization of American States, Foreign Trade Information System (SICE), *Mexico-European Union, Eighth Round of Negotiations to Modernize FTA*, available at http://www.sice.oas.org/TPD/MEX_EU/MEX_EU_e.asp.

[165] CRS Report R43748, *The Pacific Alliance: A Trade Integration Initiative in Latin America*, by M. Angeles Villarreal.

[166] Harry Pearl, "Australia, New Zealand Launch Trade negotiations with Pacific Alliance," *Reuters*, June 30, 2017.

[167] Sherman Robinson et al., *Withdrawing from NAFTA Would Hit 187,000 U.S. Exporting Jobs, Mostly in Heartland*, Peterson Institute for International Economics, November 16, 2017.

[168] Terrie Walmsley and Peter Minor, *Reversing NAFTA: A Supply Chain Perspective*, ImpactEcon, Working Paper, March 2017, pp. 26-27.

respectively.[169] The authors of the study estimate a decline in U.S. GDP of 0.64% (over $100 billion).

- The Coalition of Services Industries (CSI) argues that NAFTA continues to be a remarkable success for U.S. services providers, creating a vast market for U.S. services providers, such as telecommunications and financial services. CSI estimates that if NAFTA is terminated, the United States risks losing $88 billion in annual U.S. services exports to Canada and Mexico, which support 587,000 high-paying U.S. jobs.[170]

Some trade policy experts contend that NAFTA has been a bad deal for U.S. workers and cost the United States nearly 700,000 jobs as of 2010.[171] They contend that renegotiating NAFTA offers new opportunities to update the agreement with a new labor template and updated provisions to raise labor standards and help protect U.S. workers. The Economic Policy Institute (EPI) recommends that the United States seek stronger labor standards and enforcement in the NAFTA renegotiations. It recommends that a new agreement reflect ILO conventions concerning the freedom of association, collective bargaining, discrimination, forced labor, child labor, and workplace safety and health. It also recommends, among other proposals, that the United States seek to eliminate the requirement that labor violations under the agreement must be in a manner affecting trade or investment between the parties or that labor violations must be sustained or recurring.[172]

Canada and Mexico likely would maintain NAFTA between themselves if the United States were to withdraw. U.S.-Canada trade could be governed either by the Canada-U.S. free trade agreement (CUSFTA), which entered into force in 1989 (suspended since the advent of NAFTA), or by the baseline commitments common to both countries as members of the World Trade Organization. If CUSFTA remains in effect, the United States and Canada would continue to exchange goods duty free and would continue to adhere to many provisions of the agreement common to both CUSFTA and NAFTA. Some commitments not included in the CUSFTA, such as intellectual property rights, would continue as baseline obligations in the WTO.[173] However, it is unclear whether CUSFTA would remain in effect, as its continuance would require the assent of both parties.[174]

Tariffs

If the United States withdraws from NAFTA, it presumably would return WTO most-favored-nation tariffs, the rate it applies to all countries with which the United State does not have an FTA. The United States and Canada maintain relatively low simple average MFN rates, at 3.5% and 4.1%, respectively. Mexico has a higher 7.0% simple average rate. However, all countries have higher "peak" tariffs on labor intensive goods, such as apparel and footwear, and some agriculture products.

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[169] Ibid.

[170] Testimony of Christine Bliss, President of Coalition for Services Industries (CSI), House Ways and Means Committee Subcommittee on Trade, July 18, 2017.

[171] Robert E. Scott, Josh Bivens, and Samantha Sanders, *Renegotiating NAFTA: What should the priorities be?*, Economic Policy Institute, December 7, 2017.

[172] Ibid.

[173] Similarly, while NAFTA commitments on government procurement would lapse if the agreement terminated, procurement commitments would continue under the WTO Government Procurement Agreement.

[174] "What If the United States Walks Away from NAFTA," by Dan Cuiriak, *C.D. Howe Institute Intelligence Memo*, November 27, 2017.

Table 2. MFN Tariffs for NAFTA Countries

By percentage, trade weighted reflects 2015 trade

Tariff Type	United States	Canada	Mexico
Simple Average Bound	3.4	6.5	36.2
Agriculture	4.8	15.4	45.0
Non-Agriculture	3.2	5.2	34.8
Simple Average MFN Applied	3.5	4.1	7.0
Agriculture	5.2	15.6	14.6
Non-Agriculture	3.2	2.2	5.7
Trade-Weighted Av. MFN	2.4	3.1	4.5
Agriculture	3.8	12.4	20.1
Non-Agriculture	2.3	2.3	3.5

Source: World Trade Organization, Tariff Profiles 2017.

Of the three NAFTA parties, the United States has the lowest MFN tariffs in most categories. Applied tariffs are higher in Mexico than the United States or Canada, although Canada has double-digit applied agricultural tariffs. The United States and Canada have relatively similar bound and applied tariffs at the WTO. Mexico's bound tariff rates are very high and far exceed U.S. bound rates. Without NAFTA, there is a risk that tariffs on U.S. exports to Mexico could reach up to 36.2% (see **Table 2**).[175] In agriculture, U.S. farmers would face double-digit applied and trade-weighted rates in both Mexico and Canada. Mexico and Canada likely would maintain duty-free treatment between themselves through maintenance of a bilateral NAFTA, or through commitments made in conjunction with the CPTPP (TPP-11)

If the United States withdrew from NAFTA, certain commitments would be affected, such as the following:

- **Services Access.** The three NAFTA countries committed themselves to allowing market access and nondiscriminatory treatment in certain service sectors. If the United States withdrew from NAFTA, it would still be obligated to adhere to the commitments it made for the WTO's General Agreement on Trade in Services. While these commitments were made contemporaneously with NAFTA, given that the NAFTA schedule operated under a negative list basis—all sectors included unless specifically excluded—and GATS on a positive list—specific sectors are listed for inclusion—NAFTA is likely more extensive.
- **Government Procurement.** As noted previously in this report, the NAFTA government procurement chapter sets standards and parameters for government purchases of goods and services. The schedule annexes set forth opportunities for firms of each party to bid on certain contracts for specified government agencies. The WTO Government Procurement Agreement (GPA) also imposes disciplines and obligations on government procurement. Unlike most other WTO agreements, membership in the GPA is optional. Canada and the United States would still have reciprocal obligations as members of the GPA. In fact, since the

[175] Mary Amiti and Caroline Freund, *U.S. Exporters Could Face High Tariffs without NAFTA*, Peterson Institute for International Economics, Trade and Investment Policy Watch, April 18, 2017.

GPA was renegotiated in 2014, commitments between the two are greater than under NAFTA. However, Mexico is not a member of the GPA, and U.S. withdrawal from NAFTA would allow Mexico to adopt any domestic content or buy local provisions. (Since U.S. firms are more competitive in obtaining Mexican contracts than Mexican firms in the United States, this may adversely affect some U.S. domestic firms.)

- **Investment.** Unlike many chapters in NAFTA which have analogous counterparts in the WTO Agreements, the investment chapter in the WTO does not provide the level of protection for investors as does NAFTA, subsequent U.S. trade agreements, or bilateral investment treaties. If the United States withdrew from NAFTA, U.S. investors would lose protections in Canada and Mexico. Countries would have more leeway to block individual investments. U.S. investors would not have recourse to the investor-state dispute settlement (ISDS) mechanism, but would need to deal with claims of expropriation through domestic courts, recourse to government-to-government consultation or dispute settlement. Canada and Mexico likely would maintain investor protection between them through the prospective CPTPP or through maintenance of NAFTA provisions.

Outlook

In August 2017 when NAFTA renegotiations began, trade ministers from the United States, Canada, and Mexico stated that the three governments were committed to "an accelerated and comprehensive negotiation process that will upgrade our agreement and establish 21st century standards to the benefit of our citizens."[176] Negotiations started on August 16 and eight formal rounds of negotiations have taken place as of the end of April 2018. In May, the parties continued a "permanent round" of talks on technical issues and reported contentious issues such as U.S. proposals on automotive rules of origin, seasonal produce, dispute settlement, and a sunset clause to reevaluate the agreement every five years. Negotiators reportedly have yet to begin talks on labor, environment, and IPR.

The outlook on NAFTA renegotiation and modernization is uncertain. Some flexibility may be needed by the United States on key controversial provisions for a final agreement. President Trump has often criticized NAFTA and the trade deficit with Mexico. In July 2018, President Trump stated that U.S. negotiators had some "very good sessions with Mexico, and with the new president of Mexico," and added that there may be a possibility of having separate bilateral agreements with Canada and Mexico.[177] A spokesman for Canada's lead trade negotiator Chrystia Freeland, however, stated that "NAFTA is a trilateral agreement that set a productive framework for trade and investment in North America for the past 24 years," and that negotiators remain focused on modernizing the agreement in a way that benefits the middle class in all three countries.[178]

Potential major revision of a U.S. FTA is unprecedented since the first U.S. FTA was concluded with Israel in the late 1980s. On one hand, NAFTA is 23 years old and, with the U.S. withdrawal from TPP, renegotiation would enable the NAFTA parties to significantly update the agreement in line with current U.S. trade negotiating objectives and more recent U.S. FTAs. Areas of

[176] Office of the USTR, *Trilateral Statement on the Conclusion of NAFTA Round One*, Press Release, August 20, 2017.

[177] Brett Fortnam, "Guajardo to Meet with Lighthizer on July 26; Freeland Not Scheduled to Visit," *World Trade Online*, July 18, 2018.

[178] Ibid.

convergence could include major provisions in TPP to which all countries were party. These provisions would arguably update NAFTA by addressing new trade policy issues and barriers that have surfaced in the global economy since NAFTA was first concluded in 1994. These issues address digital and services trade, state-owned enterprises' roles in commercial activity, enhanced intellectual property rights, and more enforceable labor and environmental commitments, among other issues found in more recent U.S. trade agreements.

On the other hand, there appear to be key areas of difference on major issues addressed in this report. The future direction and ultimate outcome of NAFTA renegotiations have significant policy implications for the United States going forward for U.S. trade policy; the economies of the United States, Canada, and Mexico; and the broader relationships among all NAFTA parties.

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