



Statement of the U.S. Chamber of Commerce

**ON: NAFTA Negotiations
(Negotiating Objectives Regarding Modernization
of the North American Free Trade Agreement
with Canada and Mexico)
docket number USTR-2017-0006**

**TO: Office of the U.S. Trade Representative
and the Trade Policy Staff Committee**

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. In addition to 117 American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

The U.S. Chamber of Commerce appreciates the opportunity to present the following comments to the Office of the U.S. Trade Representative and the Trade Policy Staff Committee on objectives for the forthcoming negotiations with Canada and Mexico regarding modernization of the North American Free Trade Agreement (NAFTA). The Chamber supports this effort to modernize the NAFTA, taking into account technological, economic, and other changes in the U.S., North American, and global economies in recent years.

As background, approximately 14 million American jobs depend on trade with Canada and Mexico. The daily volume of trade between the United States and our two North American neighbors tops \$3.5 billion. Much of this commerce depends on the NAFTA in ways that are not widely appreciated, and the forthcoming negotiations with Canada and Mexico should be conducted in a manner that does not put these millions of American jobs at risk. This goal is eminently achievable. (For more on the NAFTA's record, please see [The Facts on NAFTA](#).¹)

GENERAL PRINCIPLES

Over recent months, the Chamber has offered the following general principles for NAFTA modernization. The Chamber applauds the Trump Administration for embracing these principles in recent comments:

- **First, Do No Harm.** Interrupting the \$1.3 trillion in annual trade across our borders or reverting to the high tariffs and other trade barriers that preceded the NAFTA could put at risk many of the 14 million U.S. jobs that depend on trade with Canada and Mexico. The business and agriculture communities applaud the Administration for making “do no harm” a principal objective of the forthcoming negotiations.
- **Second, Move Quickly.** Uncertainty about the future of America's terms of trade with Canada and Mexico would suppress economic growth and may engender political reactions that undermine U.S. exporters. Comments by U.S. Trade Representative Robert Lighthizer setting the goal of concluding negotiations this year are welcome.
- **Third, Keep the Agreement Trilateral.** Maintaining the NAFTA's three-party framework is critical as transitioning to entirely new bilateral agreements presents real risks. Such a transition could disrupt the flow of commerce and cost jobs. Also, moving to divergent rules—one set for U.S.-Canada trade and another for U.S.-Mexico trade—would add to costs for U.S. companies and erode their global competitiveness. Again, we welcome Ambassador Lighthizer's recent comments signaling support for this goal even in the event that some aspects of the negotiations are conducted in part bilaterally.
- **Fourth, Ensure a Seamless Transition.** As House Ways and Means Committee Chairman Kevin Brady has said, it will be important to proceed “in a manner that retains current benefits in a seamless way that does not disrupt the current agreement.” One way to do this is to use the NAFTA's amendment process (Article 2202), which allows an amendment to become an integral part of the agreement upon mutual agreement. This

¹ U.S. Chamber of Commerce, *The Facts on NAFTA*, March 2017: <https://www.uschamber.com/report/the-facts-nafta-assessing-two-decades-gains-trade-growth-and-jobs>.

approach would simplify and expedite the process — and minimize the risk of disrupting trade.

- **Fifth, Follow TPA.** As Ambassador Lighthizer pledged in his letter of notification to the Congress, the Administration is committed to “consult[ing] closely with Congress in developing our negotiating positions to ensure that they are consistent with Congressional priorities and objectives outlined in section 102 of the Trade Priorities and Accountability Act,” known as TPA. This is most welcome as pursuing the TPA statute’s negotiating objectives and following its consultation procedures is not only a matter of law but will build broader support in Congress and the U.S. business and agriculture communities for this effort.

SPECIFIC OBJECTIVES

Following are some suggestions on measures to be considered in the negotiations to modernize the NAFTA that would benefit American workers and boost U.S. exports of goods and services. The rules in the following areas should be applied in a non-discriminatory manner and applicable to all sectors and products.

Digital Economy and E-commerce

The United States is the world leader in the digital economy, with substantial benefits for American workers and companies as new technologies drive growth and productivity. These benefits are not just for so-called “Internet companies” but also for manufacturers, services providers, and even agricultural firms that use these technologies. U.S. exports rise when other countries adopt policies that allow digital technologies and e-commerce to thrive.

To this end, the United States should seek binding rules in the forthcoming negotiation with Canada and Mexico to ensure that U.S. leadership in the global digital economy is advanced through cutting-edge trade commitments that support innovative products and new services and combat various forms of forced localization. Atop the list of priorities is securing rules for firms in all sectors of the economy the freedom to move data across borders and prohibiting the forced localization of data. Further, U.S. negotiators should update the NAFTA to ensure it is in compliance with global best practices in areas such as non-discriminatory treatment of digital products; domestic electronic transactions; online consumer protection; personal information protection; electronic authorization/signatures; and non-application of customs duties to digital products.

Intellectual Property

The upcoming NAFTA modernization talks are an opportunity to realize a vision of North America as the global innovation engine, building on existing U.S. strength. Intellectual property (IP)-intensive industries employ 45.5 million Americans, accounting for \$6.6 trillion in U.S. GDP and 52% of all U.S. exports. Innovation success is underpinned by IP rights—patents, copyrights, trademarks, and trade secrets—that provide innovators, creators, and importantly

investors, with the legal certainty to make long-term, high-risk, capital intensive investments in innovative and creative activity. The resulting output improves lives around the world.

In 1994, NAFTA took valuable steps to advance IP disciplines throughout North America. Since then, however, progressively stronger IP provisions have been secured in U.S. trade agreements. Gaps in both the scope and implementation of NAFTA disadvantage American industry and U.S. workers in their own region. As the world's leading innovator and home of the world's most advanced creative sector globally, with bigger investments in intellectual capital than any other country, protecting IP is critical to safeguarding American jobs, industry, and national security.

Ensuring full implementation of existing NAFTA rules and upgrading Canadian and Mexican IP laws would give American creators and innovators an expanded regional platform to launch new products and services with the assurance that their IP is protected. In turn, Canada and Mexico would be better able to enjoy the benefits of the research and development investments and creative work taking place in their own markets, which due to a weak IP environment too often are lost to foreign competitors. Likewise, modernizing NAFTA's IP provisions would strengthen the digital economy throughout North America by powering the knowledge sector, which is critical to driving digital growth.

Currently, as highlighted by the U.S. Trade Representative's [Special 301 Report](#) and the U.S. Chamber's [International IP Index](#), Canadian and Mexican IP laws and enforcement do not fully protect U.S. interests in key respects:

- Improving Canada's copyright protection and enforcement should be a priority of U.S. negotiators. Mexico should be a full party to the WIPO Internet Treaties and effectively criminalize and enforce against camcording, and both countries should facilitate digital rights management by content creators by enabling effective use of technological protection measures (TPMs) with appropriate exceptions. Neither country adequately addresses transshipment of counterfeit and pirated goods: Canada has *ex officio* authority allowing customs officials to seek and detain counterfeit and pirated products but declines to apply the policy to transshipments into the United States; Mexican prosecutions and sentencing rarely reach a deterrent level, placing the burden on U.S. border officials to police illicit trade from Mexico.
- For American innovators, the "Promise" doctrine imposed by Canadian courts artificially narrows the scope of patent eligible inventions, contributing to the retrospective invalidation of numerous existing pharmaceutical patents. The doctrine, which has resulted in 28 court decisions invalidating biopharmaceutical patents for lack of utility, is inconsistent with international practice. Mexico has not fully implemented the regulatory data protection provisions of NAFTA relating to pharmaceuticals, and neither country meets the standard in U.S. law of twelve years of regulatory data protection for biologic products. To compensate for patent life lost to patent office and regulatory approval delays, both countries should provide at least five years of patent term restoration that confers full patent rights, e.g., does not permit a "manufacture for export" exception or other exceptions. The judicial systems in both countries should provide effective enforcement of patents and compensation for patent infringement.

The upcoming negotiations are a valuable opportunity to ensure NAFTA's IP chapter reflects the global state of the art. That state of the art includes several essential components:

- Commitment to full national treatment without carve outs.
- Re-commitment to strong base terms of protection for patents, copyrights and related rights, trademarks, and designs, and establishment of a statutory commitment to protect trade secrets.
- Exclusive rights for all forms of IP regardless of business models.
- Guarantee of technology-neutral patent eligibility for all industry sectors strictly based on the international norm of novelty, usefulness, and non-obviousness.
- Clear and carefully-defined rules for exceptions to rights across all forms of IP.
- Rule of law mechanisms that enable IP owners to maintain, commercialize, and defend their rights, including, for example:
 - Prohibition of forced transfer of IP rights and government interference in commercial technology agreements;
 - Strong legal protections against circumvention of technological protection measures for the digital marketplace, with appropriate exceptions;
 - Patent linkage rules that enable pharmaceutical innovators to resolve patent disputes before potentially infringing products enter the market; and,
 - Patent term extension and restoration to address bureaucratic delays.
- Statutory protection for proprietary information, including trade secrets as well as regulatory test data submitted to governments, and establishment of criminal penalties for trade secrets theft, including by means of a computer system.
- Deterrent-level civil and criminal remedies in law, backed up by effective enforcement efforts, to combat trade in counterfeit goods, among other goals, and halt damage to iconic U.S. brands and the jobs that depend upon them.
- Appropriate and effective safe harbor mechanisms for intermediary liability.
- Ensure NAFTA partners implement relevant international IP agreements in domestic law.
- Participation in partnership with the United States in a forward-looking norm-setting agenda through multilateral treaties and trade agreements to ensure that U.S., Canadian, and Mexican IP interests are promoted around the world.

Agriculture

The NAFTA has been a bonanza for U.S. farmers and ranchers, who stress the need to ensure renegotiation does not put at risk their access to the Canadian and Mexican markets. While U.S. agricultural products have generally excellent access to the Mexican market (duty- and quota-free), Canada's dairy and poultry sectors continue to be highly protected. The U.S. dairy sector regards Canada's existing and soon-to-be expanded protectionist policies as specifically designed to block imports from the United States and contends that these policies are in direct violation of Canada's trade commitments under the NAFTA.

The Trump administration should use this opportunity to press Ottawa to reverse this protectionist trend and expand U.S. market access. Elsewhere, non-tariff measures also deserve attention in this process. For example, the NAFTA grants U.S.-produced wine duty-free access

to the Canadian market, but a variety of discriminatory measures, including many at the provincial level, force price markups and deny U.S. products equal access to wine stores, grocery stores, markets, and other points of sale. Restrictions on shipment, transportation and delivery that discriminate against U.S. wine must end.

Finally, the recently concluded Canada-European Union “Comprehensive Economic and Trade Agreement” (CETA) introduces in Canada some of the EU’s preferred “geographical indicators” for cheeses and other farm products. By imposing restrictions limiting the use of generic names such as feta cheese to producers in the country where the name long ago originated (Greece, in this example), U.S. farmers will face new limits on their access to the Canadian market provided under the NAFTA in favor of European producers. The Trump administration should press Canada to hold U.S. agriculture harmless in this situation and secure rules to ensure U.S. farmers are not subject to discrimination.

Customs Procedures and Trade Facilitation

NAFTA modernization has the potential to set the highest standard for modern customs procedures and trade facilitation for U.S. trade agreements. The recent entry-into-force of the WTO Trade Facilitation Agreement has lent momentum to customs modernization efforts worldwide, but the three North American countries should aspire to go much further with binding commitments on removing red tape and outdated regulations faced by U.S. exporters and importers in all three countries. Modern border processes should facilitate the expeditious movement of goods, not bury our exporters in administrative requirements. The Chamber recommends that the Administration work with Canada and Mexico to use customs and trade facilitation provisions in the most recent U.S. trade agreements as a baseline from which to work while aspiring to set an even higher standard. Modernized customs provisions in the NAFTA should include binding commitments on advanced rulings, simplified entry, automation, risk management (including broader implementation of risk-based targeting and enhancement and alignment of trusted trader programs), single window development and interoperability, use of e-signatures, elimination of redundant and outdated regulations, and modernization of the cross-border process for all partnering government agencies. Also, this is a good opportunity to simplify the certificate of origin process in line with recent U.S. trade agreements by transitioning from the NAFTA certificate of origin to a self-certification or qualifying procedure.

De Minimis

Simplifying customs requirements is especially beneficial for small and medium-sized U.S. companies looking to export. Particularly important for such firms are *de minimis* rules, which allow low-value goods to enter into a country duty free under a simplified entry process. Following the U.S. example, Canada and Mexico should commit to increase their *de minimis* value applicable to imports. The *de minimis* levels in Canada and Mexico are stuck at unreasonably low levels (\$20 in Canada and \$50 in Mexico), while the U.S. level is set at \$800, a commercially meaningful level. Increasing Canada’s and Mexico’s *de minimis* value would simplify entry requirements and reduce transaction costs for American small and medium-sized businesses, making them more competitive in the Canadian and Mexican markets.

Express Delivery Services

Companies in the express delivery services (EDS) sector connect U.S. businesses with customers around the globe. This sector directly employs more than one million people in the United States and indirectly supports tens of thousands of American jobs through its supplier network. The growth of e-commerce has multiplied these employment gains, not just in delivery services but also in the firms of all sizes that use them. Recent U.S. trade agreements have included strong rules to facilitate express shipments, but the NAFTA predated these developments and did not cover EDS. The forthcoming negotiations with Canada and Mexico present an opportunity to include these rules and should address pre-arrival clearance, single electronic submission, minimum documentation requirements, expedited release requirements, and a separate process for express shipments, inter alia. Including such provisions in the NAFTA will bring substantial benefits to American exporters and the workers they employ. The Chamber also believes the NAFTA should contain specific commitments addressing the distortions to competition that arise from advantages conferred to public providers of delivery services over their private sector competition.

State-Owned Enterprises

U.S. workers and companies are increasingly disadvantaged by the unfair practices of companies that are owned and assisted by governments. State-owned enterprises (SOEs) engaged in commercial transactions are increasingly distorting competition and allowing governments to circumvent their multilateral and bilateral trade and investment obligations. While neither Canada nor Mexico have acted in ways that have raised significant concerns in this regard, this negotiation represents an opportunity to establish these rules in an important international agreement with a view toward influencing the development of international trade law more broadly going forward.

Specifically, the United States should seek in the forthcoming negotiation with Canada and Mexico to establish rules to ensure governments and their state-owned enterprises do not distort competition or circumvent trade agreement obligations. It is important for the NAFTA to appropriately define an SOE to include situations where the government may have a minority ownership stake but is still able to exercise control effectively. Key provisions should include non-discrimination, constraints on government financing of SOEs, safeguards to ensure regulatory impartiality and enforcement (including for intellectual property rights), and requirements that a SOE's decisions in the marketplace be commercially motivated.

Competition Policy

In recent years, a number of foreign governments have looked to competition policy as an industrial policy tool, using it as a bludgeon to deny U.S. companies the market access ostensibly provided by a trade agreement. The NAFTA did not address antitrust policy, but recent U.S. trade agreements have begun to do so in useful ways. The forthcoming negotiations represent an opportunity to secure commitments from Canada and Mexico to advance U.S. interests in ensuring antitrust investigations are fair, transparent, and are based on sound economic analysis.

Regulatory and Technical Barriers to Trade

Too often, regulations are employed as “behind the border” barriers that put U.S. exports of goods and services at a disadvantage. Since the NAFTA, more recent trade agreements have sought ways to ensure that regulations are crafted in a transparent manner with meaningful stakeholder consultations and measures to take into account impact assessments. It is important for the NAFTA to endorse a science- and risk-based approach to regulation. Without strong rules that govern good regulatory practices, even well-intentioned regulations can deny fair treatment of U.S.-produced goods and services.

It is equally important for the NAFTA to “lock in” product standards across all three countries. The NAFTA should direct regulators to recognize multiple standards that meet a given objective or ensure the acceptance of a common standard meeting regulatory objectives. Without meaningful justification, a regulator’s reliance on divergent product standards risks creating barriers to U.S. exports. Similarly, it is important that conformity assessment approaches be directed to allow greater acceptance of test results across the NAFTA parties.

The forthcoming negotiations with Canada and Mexico represent an opportunity to build on recent cooperation, extend it to additional sectors (including financial services), enshrine good regulatory best practices in an international agreement, and drive the acceptance of common standards across all three countries.

Investment

The NAFTA has benefitted U.S. companies, workers, and investors by opening the Canadian and Mexican markets to U.S. investments and granting important protections for those investments. With regard to market access, a modernized NAFTA should take into account reforms by those two governments since the agreement was negotiated that have opened additional sectors to investment. The modernized agreement should bind reforms enacted by Canada and Mexico since the NAFTA was negotiated, thus affording U.S. investors the ability to invest and to expand investments on a non-discriminatory basis, including in those sectors opened since 1992.

Like those market access provisions, the NAFTA’s investment protections are also squarely in the U.S. national interest. Under the NAFTA, the governments of Canada and Mexico agreed to investment rules that guarantee U.S. investments will not be subject to discriminatory treatment and will be compensated in the unlikely event of expropriation. Critically, these obligations are enforced through Chapter 11’s investor-state dispute settlement (ISDS) provisions, which provide for neutral arbiters to uphold these investment protections. In this regard, the NAFTA should be modernized to ensure that all sectors, including financial services, as well as investment agreements are afforded the same level of protection and enforcement of these key investment protections.

Fundamentally, the NAFTA investment protections are consistent with the due process protections guaranteed in the U.S. Constitution. Decisions that result from investment arbitration cannot overturn the policy decisions, laws, or regulations of any country. All they can do is

award compensation when a government expropriates property or otherwise tramples on the rule of law. It is worth noting that, under trade or investment agreements the United States has entered into with 54 countries, just 13 disputes have been brought against the United States and decided over the past half century, and the United States has not lost a single one.

Meanwhile, ISDS protects U.S. companies from foreign governments' arbitrary actions. It has been invaluable to U.S. companies and their millions of shareholders who otherwise would have been subjected to expropriation or discriminatory treatment simply on the basis of their nationality. U.S. firms have won compensation under ISDS in disputes from Venezuela to Canada. Attempts by the NAFTA partners to eliminate or change ISDS and its investment protections would deny an important mechanism for settling investment disputes and benefit no one but foreign governments engaging in discriminatory practices against U.S. companies.

For these reasons, investment protection and ISDS enjoy broad congressional support and they were endorsed in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. In fact, an attempt to alter this particular congressional priority by amendment was soundly defeated by a vote of 39-60.

Energy

The North American energy sector has been fundamentally transformed in the years since the NAFTA was negotiated. Compared to the world's other major manufacturing centers in Asia and Europe, North America today has the lowest energy costs and the least reliance on imported energy. Technological breakthroughs in the oil and gas sector have been quickly and effectively applied in the United States and made the country less reliant on imported petroleum, though U.S. Gulf Coast refineries remain competitively situated to refine heavy oil from Canada and Mexico. Meanwhile, U.S. exports to Mexico of refined products (gasoline and diesel) and natural gas are rising dramatically.

At the same time, Mexico's energy sector reforms will attract an estimated \$40 billion per year in new investments in the electricity sector and in oil exploration and development over the next two decades, according to the International Energy Agency. Investment in Canada also continues to be strong. Much of the equipment and services supporting those investments can come from the United States, especially if a modernized NAFTA facilitates this commerce.

A modernized NAFTA could help solidify those advances and create advantages for North American industry, advancing market-based integration of the energy sector, including hydrocarbons production, transportation and processing, as well as electricity generation, transmission, and distribution. The agreement should guarantee that trade in hydrocarbons, including natural gas, crude oil, and refined oil products, will be uninhibited between the partners by quantitative measures or tariffs affecting either imports or exports. The NAFTA partners should also agree to facilitate the development of safe cross-border interconnections for electricity and hydrocarbons. A modernized NAFTA should also prohibit local content rules and support common standards and regulations governing the energy sector based on best available practices.

Apparel

The NAFTA textiles and apparel supply chain supports hundreds of thousands of cotton, textiles, apparel, brand, logistics, and retail jobs in the United States and across North America. A top priority for NAFTA negotiations should be to avoid any measures that would limit the currently available flexibilities upon which these supply chains depend and to “do no harm” to the jobs that depend on them. NAFTA modernization does provide an opportunity to tap into new advanced technologies and access globally-sourced materials that are capable of improving the economics of textile and apparel manufacturing in the United States. To incentivize apparel capital investments in the United States, a modernized NAFTA should permit greater flexibility to source inputs for NAFTA qualifying garments. To strengthen and expand this trade and support the jobs that depend on it, flexibilities currently available under the NAFTA must be retained, and negotiators should consider expanding them to include access to cumulation with other U.S. trade agreement partner countries and discrete single transformation measures (to incentivize production of articles, such as sweaters, dresses, baby wear, and swimwear that are no longer made in the Western Hemisphere in significant quantities). Such flexibilities will enable companies to overcome limitations that currently restrict the scalability and competitiveness of co-production in North America and expand trade and demand as well as job opportunities.

Duty Drawback and FTZs

Since the early days of the Republic, U.S. trade law has allowed for the refund of customs duties and other fees paid on imported goods when they are used as inputs in the production of manufactured products that are later exported or when the imported good is substituted for the same or a similar good that is later exported. The aim of this “duty drawback” arrangement is to enhance the competitiveness of U.S. manufacturers that export and thereby create U.S. jobs.

The NAFTA restricts duty drawback and duty deferral for goods traded within North America. By contrast, more recent U.S. trade agreements impose no such restrictions. As a result, a U.S. manufacturer importing and paying duties on foreign components and exporting a finished made-in-the-USA product to Canada or Mexico would be subject to greater production costs than a factory based in Asia, Europe, or elsewhere. U.S. businesses and the workers they employ are thus obliged to compete with firms operating outside of North America that benefit from duty drawback when exporting their goods to Canada and Mexico. Repealing the NAFTA drawback and deferral restrictions would ensure a level playing field for U.S. businesses relative to firms from outside North America.

Separately, more recent U.S. trade agreements permit U.S. free trade zone (FTZ) production to qualify for preferential treatment, but in some circumstances products manufactured in U.S. FTZs do not qualify for duty-free treatment under the NAFTA even when they comply with the agreement’s rules of origin. This results in a playing field skewed against U.S. manufacturing. The NAFTA should be updated in this regard to align it with other, more recent U.S. trade agreements.

Remanufactured Goods

Many equipment manufacturers offer remanufactured products. Remanufacturing uses advanced techniques to bring end-of-life components back to same-as-new condition. A modernized NAFTA should maintain the current agreement's disassembly rule to ensure that components recovered from goods disassembled in a NAFTA party are considered originating as the result of such disassembly. A modernized NAFTA should also contain language stating that any party that maintains measures prohibiting or restricting the importation of used goods will not apply those measures to remanufactured goods.

WTO Information Technology Agreement

In keeping with recent U.S. trade agreements, the NAFTA should require parties to accede to the World Trade Organization (WTO) Information Technology Agreement (ITA). Recently expanded to significantly broader coverage, the ITA has helped deliver a dizzying array of innovative technology products to the world since it was negotiated in 1996. It provides for duty-free trade for several trillion dollars' worth of information and communication technology (ICT) products between countries representing more than 90% of global production. U.S. companies and the workers they employ have benefitted substantially from the expanded global demand for their ICT products and stand to benefit as additional countries join the ITA. Canada was a founding member of the ITA, but Mexico has yet to accede. The NAFTA should require Mexico to accede to the ITA within three years of the new provisions' entry into force.

Procurement

Some have suggested eliminating the NAFTA's procurement chapter. While this might appear to be a pro-"Buy American" move at first glance, it would have the opposite effect: It would lead directly to reduced sales of made-in-USA products and harm the American workers who make them. Rather, the United States must insist on reciprocal access for procurement markets in our trade agreements—as the NAFTA provides today. Indeed, it is incorrect to say that NAFTA's procurement rules have stopped the U.S. government from "Buying American."

Information from the Federal Procurement Data System confirms that, across the entire federal government, just 2% of all contracts were secured by foreign-headquartered companies in FY 2016. Of this sliver, about 80% were Department of Defense contracts, and nearly all of these "foreign" procurements were won and fulfilled by U.S. affiliates of British or other European firms. Just one of the 50 largest contractors to the U.S. government in FY 2016 was a foreign-headquartered firm. Just one Canadian company showed up in the top 100 contractors; no Mexican companies appeared in the list. Meanwhile, companies large and small, operating in sectors from water and wastewater infrastructure to the provision of IT products, make hundreds of millions of dollars in procurement sales in Canada and Mexico. These firms and their workers benefit directly from the access to Canadian and Mexican procurement markets guaranteed by the NAFTA. The agreement's procurement rules must be retained.

Rules of Origin

As negotiated, the NAFTA mandates stringent rules of origin. For example, in the automotive sector, 62.5% of a car or truck must be produced within North America to qualify for duty-free treatment. This is the highest such rule of origin in the world for this sector, and industry experts affirm that raising this percentage would undermine U.S. competitiveness in this sector relative to operations in other world regions. In fact, even a modest increase in the NAFTA rules of origin may lead companies to *reduce* North American content as they opt to disregard the NAFTA's rules of origin in favor of simply paying WTO tariffs. The result in this scenario would be less investment and employment in North America. Manufacturers in some sectors have indicated that the NAFTA's stringent rules of origin already suppress their production in North America.

Separately, the NAFTA's rules of origin include language that combines tariff shift and Regional Value Content (RVC) requirements. Removing the RVC requirement from certain rules of origin would update NAFTA rules to more closely resemble those of more modern U.S. trade agreements and make NAFTA qualification easier for U.S. products. Such a change would reduce the transactional cost of NAFTA certification by eliminating thousands of annual supply chain solicitations. (A package of proposed modifications to the NAFTA's rules of origin along these lines—referred to as Track IV—was agreed upon in principle by U.S., Mexican and Canadian negotiators several years ago and was supported by a 2013 ITC study.)

In other areas, such as medical devices, the NAFTA's rules of origin are simply too complex for the global supply chains that are essential to their production. As a result, a U.S.-based company that manufactures major components and assembles its final product in the United States may be barred from participation in Mexico's public hospital tenders, which represent 70% of the market in that country. Officials from the three countries should consider whether steps can be taken to ease the administrative burden of rules of origin compliance.

Bilateral Trade Deficits

The Chamber aligns itself with the consensus view of economists that neither the broad U.S. trade balance nor the U.S. trade balance with a specific trading partner is an appropriate gauge of whether a particular set of trade policies—or trade agreements—is delivering benefits to the American people. Suggesting that imports are somehow a problem to be solved or that services trade is less important than goods trade would be a mistake, and attempting to chart a course for trade policy on such a basis is likely to lead to the wrong priorities. While foreign trade barriers and discriminatory industrial policies do not fuel the U.S. trade deficit, they do deserve high prioritization for other reasons, as outlined in the Chamber's [recent comments](#) submitted to the Administration in response to the Federal Register notice on the issue.²

² U.S. Chamber of Commerce, comments for “Administration Report on Significant Trade Deficits,” docket number DOC 2017-0003, May 2017:
https://www.uschamber.com/sites/default/files/us_chamber_comments_for_fr_notice_on_substantial_trade_deficits_final.pdf.

CONCLUSION

The Chamber appreciates the opportunity to provide these comments offering guidance from across the breadth of the U.S. business and agriculture communities on priorities for NAFTA modernization. The Chamber looks forward to providing additional input in the months ahead.

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