

*Before the*  
**Office of the United States Trade Representative**  
Washington, D.C.

*In re* Request for Comments Regarding the  
Work of the North American  
Competitiveness Committee

Docket No. USTR-2023-0005

**COMMENTS OF  
THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

Pursuant to the request for comments published by the Office of the United States Trade Representative in the Federal Register at 88 Fed. Reg. 39,502 (June 16, 2023), the Computer & Communications Industry Association (CCIA) submits the following comments for the work of the North American Competitiveness Committee. CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For over 50 years, CCIA has promoted open markets, open systems, and open networks.<sup>1</sup>

**I. INTRODUCTION**

The North American Competitiveness Committee (“Committee”), established in the U.S. Mexico Canada Agreement (USMCA), is positioned to be an effective forum to maximize the competitive benefits of a more integrated North American market, and ensure that companies operating in North America are able to avail themselves of the advantages guaranteed by the agreement. Per USMCA, the Committee’s work should include identification of “policies to develop a modern physical and digital trade- and investment-related infrastructure” in advancing the movement of goods and provision of services within the free trade area.<sup>2</sup>

Digital services represent a bright spot in the overall bilateral trade among USMCA partners that the U.S. government should proactively support to ensure the agreement serves the best interests of U.S. competitiveness. U.S. digitally-enabled services exports (defined by the Bureau of Economic Analysis as “Potentially ICT-Enabled Services Exports”) to Canada increased from \$38 billion in 2018 to \$46.7 billion in 2022, but the ICT services surplus has dropped from \$1 billion in 2018 to a deficit of -\$2.7 billion in 2022, with the overall digitally-enabled services surplus increasing slightly from \$19.1 billion in 2017 to \$19.9 billion in 2021.<sup>3</sup> U.S. potentially ICT-enabled services exports to Mexico increased from \$11.6 billion in 2018 to \$15.7 billion in

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<sup>1</sup> For more, visit [www.ccianet.org](http://www.ccianet.org).

<sup>2</sup> See USMCA Chapter 26

[https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/26\\_Competitiveness.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/26_Competitiveness.pdf).

<sup>3</sup> <https://apps.bea.gov/iTable/?reqid=62&step=9&isuri=1&product=4#eyJhcHBpZCI6NjIsInN0ZXBzIjpbMSw5LDYsNi0sImRhdGEiOltbInByb2R1Y3QiLCI0Ii0sWyJUYWJsZUxpc3QiLCIzNTkiXSxbIkZpbHRlcl8jMSIsWyIxIiwIiMSIsIjIiXV0sWyJGaWx0ZXJfZmMiLFsiMCJdXSxbIkZpbHRlcl8jNCIsWyIyIiwidCIxV0sWyJGaWx0ZXJfZmIiLFsiMCJdXV19.>



Further, the Americas Partnership for Economic Prosperity (APEP), pursued by all three USMCA countries, reflects the importance of building upon free trade agreements to promote regional competitiveness and resilience. As the White House has stated regarding APEP, “[o]ur workers, our companies, and our people benefit from our close economic ties and deep partnership with our closest neighbors.”<sup>7</sup>

These same principles apply to USMCA—as a bloc that remains together and committed to one another through the agreements within the agreement that guarantees fair market access for goods and services, the three countries serve as a unit to ensure each individually remains resilient and competitive globally.

## II. ONLINE CONTENT REGULATIONS AND QUOTA REQUIREMENTS

One of the most distortive sets of policies affecting U.S. companies’ competitiveness in the digital sector is the effort, now enacted in Canada and under consideration in Mexico, to institute industry transfer payments that extract revenues from U.S. suppliers and redistribute them to local content-related industries, at the expense of U.S. workers and suppliers alike. Such policies are inconsistent with USMCA provisions designed to preclude discrimination in favor of local content, and where content could originate from U.S. firms and their workers, the competitiveness of U.S. content production is directly affected.

### *Canada’s Online Streaming Act.*

The Canadian Parliament passed Bill C-11, the Online Streaming Act, on April 27, 2023, and the bill subsequently received Royal Assent and entered into law. The law is an amendment to Canada’s Broadcasting Act and introduces a new legislatively-defined category of “online [broadcasting] undertakings” which the Canadian Radio-television and Telecommunications Commission (CRTC) is directed to regulate so as to ensure that such undertakings, “contribute in an appropriate manner to the creation and presentation of Canadian programming” and “clearly promote and recommend Canadian programming.” While the law does not include explicit prescriptions as to how the CRTC should achieve these goals, it empowers the CRTC to take a range of actions to require currently unlicensed foreign suppliers to create preferences for Canadian content, including but not limited to: funding obligations; preferences regarding “discoverability” and display of content on an online service, and content quotas (akin to obligations that currently apply to licensed Canadian broadcasters). Further, the law does not sufficiently delineate between professionally-developed television, movie, and music programming and user-generated and amateur content, potentially enveloping platforms completely separate from the broadcasting landscape and imposing requirements for discoverability algorithms, content quotas, and funding.

Further, the definition of “Canadian Content”—the range of works eligible for preferential treatment and funding—could prove deeply problematic for U.S. and other foreign suppliers. The current definitions for Canadian Content, applicable to traditional broadcasters and now likely to be extended to online content—generally disincentivize foreign suppliers’ participation in production in Canada.<sup>8</sup> This is achieved through a range of requirements, including that IP

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<sup>7</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/27/fact-sheet-biden-harris-administration-advances-americas-partnership-for-economic-prosperity/>.

<sup>8</sup> <https://www.scribd.com/document/638251923/Bill-C-11-Economic-Impact-PPT> (Showing the government’s projections for revenue coupled with assumptions for definitions of Canadian content).

rights be owned by Canadian entities and individuals for content to be deemed “Canadian”. This outdated framework should be revised if a system of preferences is to be extended to online, whose services, whose attractiveness depends on expansive libraries whose growth is affected under rigid production requirements.

Although the law does not discriminate against online content distributors on the basis of nationality, it is explicitly preferential and discriminatory with regard to origin of the *content* itself, implicating the USMCA performance requirements for investment, and treatment of digital products generally<sup>9</sup>—two rules designed to enhance the competitiveness of content creation. With respect to investment—as all major U.S content companies have some level of investment in Canada—the law’s requirement to “make the greatest practical use of Canadian creative and other human resources” is an explicit local content requirement that USMCA Parties committed to avoid through the agreement’s investment rules.<sup>10</sup>

The discriminatory treatment of non-Canadian content harms North American competitiveness two ways.

First, it hinders U.S. suppliers’ ability to access the Canadian market, as they would be required to fund and promote Canadian content that they could not themselves create and release due to requirements and preferences for the IP rights to be Canadian-owned. Further, it impinges on *how* U.S. online services suppliers are able to provide services in the Canadian market by imposing discoverability requirements that could impact the algorithms used in the market to preference Canadian content, and undermine the delivery of user-generated content altogether.

Second, it also hinders the ability of online content suppliers to develop, export, and import content from around the globe through their own investments in Canada. This, in turn, harms Canadian content industry participants who are incentivized to limit their interaction with foreign suppliers, despite the funding and international distribution channels they could otherwise benefit from.

The folly of these new policies is evident from the fact that production is booming in Canada currently, with the majority of funding coming from non-Canadian sources that are already adding significant value to the sector and helping protect Canadian heritage through film, TV, and music. Ninety percent of all growth in movies, television, and streaming production in Canada can be attributed to global production and investment.<sup>11</sup> In the music and podcasting industries, foreign online suppliers offer a key resource to boost Canadian artists and producers and serve as a venue for Canadian digital exports. Foreign streaming services—by definition—facilitate a great deal of Canada’s cultural exports by exposing global audiences to Canadian

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<sup>9</sup> USMCA Article 19.4 (“No Party shall accord less favorable treatment to a digital product created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of another Party, or to a digital product of which the author, performer, producer, developer, or owner is a person of another Party, than it accords to other like digital products.”).

<sup>10</sup> USMCA Article 14.10.1 (b). (“No Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking: (a) to export a given level or percentage of goods or services; [or] (b) to achieve a given level or percentage of domestic content.”).

<sup>11</sup> [https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/2022-10-04\\_TRCM\\_Brief\\_MPA\\_e.pdf](https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/2022-10-04_TRCM_Brief_MPA_e.pdf).

content (through music, film, and TV).<sup>12</sup> The Online Streaming Act threatens this strong partnership and could weaken competitiveness for both U.S. online content suppliers and Canadian content creators alike.

The process for implementing the Online Streaming Act and its subsequent regulations has engendered confusion and contradiction for industry and the general public alike—an outcome directly related to USMCA’s Chapter 26 goal to “enhance a predictable and transparent regulatory environment.” Following the Parliament’s approval and the receipt of Royal Assent, a deeply convoluted implementation process followed that has complicated the process of engagement and input for interested parties, including industry and the general public.<sup>13</sup>

CCIA recommends that the Competitiveness Committee discuss concerns with the process as part of its efforts to develop activities that “enhances a predictable and transparent regulatory environment.”<sup>14</sup> So far, the Canadian government has not provided a predictable regulatory environment for U.S. online content suppliers, who will be subjected to still-to-be-determined local content requirements, resulting in an uncertain business landscape for foreign participants.<sup>15</sup>

### ***Mexico’s Online Content Requirements.***

Concerningly for U.S. content and online streaming suppliers, similar approaches have been developing in Mexico over the past several years as well. In September 2020, Senator Ricardo Monreal presented a legislative proposal that seeks to reform the Federal Telecommunications Act and require a 30 percent local content quota for over-the-top (OTT) platforms operating in Mexico, which was subsequently approved by the Senate.<sup>16</sup> A local content quota for OTT platforms would violate Mexico’s commitments under Articles 14.10 and 19.4.1 of USMCA. Local content requirements also limit free expression and consumer choice, distort the growing audiovisual market, and stifle investment and competitiveness.

The draft bill would also expand the Federal Telecommunications Institute (IFT) licensing requirement for restricted TV and audio services to cover OTT services — even those operating

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[https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/TRCM\\_Brief\\_DigitalMediaAssociation\\_e.pdf](https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/TRCM_Brief_DigitalMediaAssociation_e.pdf);  
[https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/TRCM\\_SM-C-11\\_Brief\\_Spotify\\_e.pdf](https://sencanada.ca/Content/Sen/Committee/441/TRCM/briefs/TRCM_SM-C-11_Brief_Spotify_e.pdf);  
<https://www.statista.com/outlook/dmo/digital-media/digital-music/music-streaming/canada#users>.

<sup>13</sup> Fifteen days after the bill received Royal Assent, on May 12, the CRTC issued a roadmap and three separate consultations, several of which addressed overlapping concerns and policy questions, with deadlines for the general public to respond by June 12 and June 27. The CRTC moved forward with this roadmap and these proposals despite the fact that the Canadian Government had not yet issued its Policy Direction with guidance for the regulator to implement the law—a Policy Direction that was finally published in draft form on June 10, just two days before the deadline for two of the three consultations issued by the CRTC. The Policy Direction issued by the Canadian Government was published as part of a separate consultation with a deadline for comments of July 25—which falls nearly a month after the third of CRTC’s consultations. It is unclear how the CRTC plans to bring the Policy Direction’s guidance into its proposals, and reconcile possibly contradictory outcomes. *See* <https://crtc.gc.ca/eng/industr/modern/plan.htm>; <https://canadagazette.gc.ca/rp-pr/p1/2023/2023-06-10/html/reg1-eng.html>.

<sup>14</sup> [https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/26\\_Competitiveness.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/26_Competitiveness.pdf) at 26-1.

<sup>15</sup> <https://variety.com/2023/tv/global/disney-originals-canada-paused-2023-1235644426/> (Showing that one U.S. supplier has halted the commissioning of original content in Canada).

<sup>16</sup> <https://www.todotvnews.com/en/ott-platforms-must-offer-30-national-content-in-mexico/>.

from abroad. Imposing such onerous new licensing requirements on OTT services would be inconsistent with USMCA Article 18.14.1 on applying requirements of public telecommunications to value-added services which are not public telecom services. Such a change could significantly affect the competitiveness of both Mexican and U.S. OTT providers, by saddling them with unnecessary requirements motivated by an unprincipled goal of a “level playing field” with traditional telecommunications suppliers.

A second bill also proposed by Senator Ricardo Monreal establishes amendments to the Cinematography Law that similarly set a 15%-10% national content quota requirement for OTT services. Mexico’s proposed protectionist content obligations implicate the same articles of USMCA referred to above for Canada’s Online Streaming Act.

These content requirement regulations—quotas, funding, and discoverability requirements—harm both the U.S. online streaming and content creation industries. Canadian video streaming revenues from subscriptions—which would likely not include those from free services on platforms that could be implicated by Canada’s new law—are estimated to be \$2.17 billion in Canada in 2023,<sup>17</sup> while revenues from OTT video services are estimated to be \$2.4 billion in Mexico in 2023.<sup>18</sup> Revenue for music streaming is estimated to reach \$401.9 million in Canada and \$269.2 million in Mexico in 2023.<sup>19</sup> These obligations for local content stand to restrict digital exports in both markets while also restricting the output of U.S. content creators, including the 2.4 million employed in the film and television industries and the 2.5 million employed in the music industry.<sup>20</sup>

The competitiveness of two crucial U.S. industries—technology and culture—that serve as global powerhouses are compromised by policies pursued by allies that have agreed to ensure fair market access for both sets of services suppliers through USMCA. As such, these policies and trade barriers warrant the attention of the USMCA Competitiveness Committee to “improve the movement of goods and provision of services within the free trade area” and encourage the “swift movement of goods and the provision of services throughout the region.”<sup>21</sup>

### **III. MEXICO’S FINANCIAL SERVICES CLOUD RESTRICTIONS**

Mexico’s unduly restrictive regulations on the use by financial institutions of third-party cloud computing hinder access to Mexico’s market for both these services, as detailed by USTR in the 2023 National Trade Estimate Report.<sup>22</sup> The rules impair the competitiveness of two key U.S. export industries—digital and financial services.

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<sup>17</sup> <https://www.statista.com/outlook/dmo/digital-media/video-on-demand/video-streaming-svod/canada>.

<sup>18</sup> <https://www.statista.com/outlook/amo/media/tv-video/ott-video/mexico#revenue>.

<sup>19</sup> <https://www.statista.com/outlook/dmo/digital-media/digital-music/music-streaming/canada>;  
<https://www.statista.com/outlook/dmo/digital-media/digital-music/music-streaming/mexico>.

<sup>20</sup> [https://www.motionpictures.org/wp-content/uploads/2023/01/MPA\\_US\\_Economic\\_Contribution\\_2021\\_Final.pdf](https://www.motionpictures.org/wp-content/uploads/2023/01/MPA_US_Economic_Contribution_2021_Final.pdf); <https://www.riaa.com/reports/the-u-s-music-industries-jobs-benefits-economists-incorporated/>.

<sup>21</sup> [https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/26\\_Competitiveness.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/26_Competitiveness.pdf) at 26-1 and 26-2.

<sup>22</sup> <https://ustr.gov/sites/default/files/2023-03/2023%20NTE%20Report.pdf> at 283 (“Mexico issued regulations in 2021 relating to the use of cloud service suppliers by electronic payment fund institutions. The United States continues to be concerned by the length, complexity, and uncertainty of the approval process for electronic payment

Regulations of National Banking and Securities Commission and the Central Bank of Mexico, issued in 2021, require Electronic Payment Fund Institutions (IFPEs) above a certain threshold to obtain time-consuming prior approval for the use of U.S. cloud computing services; and require that any such outsourced service be supplemented by redundant facilities operated either by the IFPE itself (defeating the whole rationale of cloud computing) or cloud supplier headquartered in a different jurisdiction (introducing a highly complex and, expensive, and unnecessary form of redundancy). As a result, the regulations favor both local and third-country suppliers, who are the only entities that satisfy the jurisdictional diversity requirement. Since apart from U.S. firms, the major investors in cloud services in Mexico are Chinese (e.g., Huawei), this policy implicitly favors such untrustworthy suppliers, to the detriment of U.S. suppliers.

Mexico's restrictive cloud services regulations extend further to rules of the Comisión Nacional Bancaria y de Valores (CNBV) which mandate that the largest of financial institutions in Mexico obtain full prior authorization for the use of cloud services owned by a foreign entity or supplied from abroad for each workload—putting U.S. cloud suppliers at a competitive disadvantage as compared to local rivals. The process is markedly slower than comparable markets in the Latin America region. This process is also significantly slower than the notification procedure afforded to entities using a domestic cloud supplier that has a data center in Mexico—this group includes not only domestic manufacturers but Huawei as well. The approval process via notification procedure for those that are domestic cloud suppliers or adhere to the data localization requirement—which should be prohibited by USMCA—is reportedly 20% faster than that of the authorization required of entities using foreign cloud suppliers.<sup>23</sup>

Through lengthy approval processes and redundancy built in through de facto data localization mandates, the Mexican regulations on cloud services appear to contravene the commitment Mexico made alongside the United States and Canada in the USMCA Competitiveness chapter that the Competitiveness Committee discuss activities that “encourages the swift movement of goods and the provision of services throughout the region.”<sup>24</sup>

U.S. cloud services and financial services represent an essential source of exports for the U.S. economy, and Mexico's arbitrary restrictions for data centers and retention undermine the ability of U.S. providers to maximize their production and take full advantage of the North American market facilitated through USMCA. Mexican financial institutions' competitiveness is also affected, as the rules adversely affect their ability to access the most secure and technological advanced services that only U.S. cloud suppliers offer.

The current cloud infrastructure in Mexico is split between U.S. and Chinese companies, with projects planned by U.S. suppliers in the coming years that would benefit from certainty and the fair market access guaranteed by the USMCA.<sup>25</sup> The cloud services market in Mexico—which prominently features U.S. suppliers—is booming. The cloud market was estimated at \$6.3 billion

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fund institutions that seek to use secure, U.S.-based cloud computing services instead of local data centers, raising questions as to the extent to which the approvals are being conditioned on using local computing facilities.”).

<sup>23</sup> [https://www.nftc.org/wp-content/uploads/2023/06/AFTE-Mexico-Letter\\_June-2023.pdf](https://www.nftc.org/wp-content/uploads/2023/06/AFTE-Mexico-Letter_June-2023.pdf).

<sup>24</sup> [https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/26\\_Competitiveness.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/26_Competitiveness.pdf) at 26-1.

<sup>25</sup> See <https://www.cloudinfrastructuremap.com/#/>.

in 2021, and projected to reach \$27 billion by 2027.<sup>26</sup> Meanwhile, financial services exports—largely supported by digital services such as cloud services and infrastructure—are one of the United States’ largest generators of exports in the services sector and a growth sector for services exports.<sup>27</sup> The financial services industry generated \$3.1 billion from exports to Mexico in 2021.<sup>28</sup>

As early adopters of cloud computing, the adverse effect of these rules on U.S. financial firms seeking to use this advantage in the Mexican market is notable. For a sector, which employs over 7.6 million workers in the United States, limiting opportunities in a major neighboring market will have an unmitigated negative impact on U.S. productivity in the sector.<sup>29</sup>

Given the ubiquity of cloud services in the financial services industry and the close link between the two sectors,<sup>30</sup> there would be significant harms for both financial services and cloud computing—two key strengths of the U.S. economy and of U.S. exports—that would come from this policy remaining. In particular, smaller cloud companies and financial entities that rely on cloud companies would suffer from the onerous requirements and redundancies, thereby putting a dent into the competitiveness of both sectors in the United States. Additionally, as the United States and Canada seek to combat the growing influence of China in the digital space—and the cloud sector in particular—ensuring that U.S. and Canadian cloud suppliers are able to access the North American market with more preferential treatment under USMCA than to companies such as Huawei, is paramount to promoting North American competitiveness.

#### IV. DIGITAL SERVICES TAXES

Canada continues its plans to proceed with a digital services tax (DST) as part of its annual Budget, starting in 2024. This has prompted USTR’s concern through the 2023 National Trade Estimate Report and comments filed with the Canadian government.<sup>31</sup> The tax, like its counterparts elsewhere globally, disproportionately targets U.S. suppliers and limits digital services providers’ ability to thrive in the Canadian market compared to similar services that are not subject to the tax.

Canada proposes to impose a 3 percent tax on “digital services reliant on the engagement, data and content contributions of Canadian users” including revenue derived from online

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<sup>26</sup> <https://www.megaport.com/blog/state-of-cloud-in-mexico/>.

<sup>27</sup> <https://www.trade.gov/sites/default/files/2023-06/National-Export-Strategy-2023.pdf> at 13.

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<https://apps.bea.gov/iTable/?reqid=62&step=9&isuri=1&product=4#eyJhcHBpZCI6NjIsInN0ZXBzIjpbMSw5LDEwLDddLCJkYXRhIjpbWyJwcm9kdWN0IiwuNCJdLFsiVGFiVGVMaXN0IiwuMzA1ODMiXSxbIiRlYm91dG9uZGFyeSIjIjMwNjMwIiI1dfQ==>.

<sup>29</sup> <https://www.ibisworld.com/industry-statistics/employment/finance-insurance-united-states/>.

<sup>30</sup> <https://home.treasury.gov/system/files/136/Treasury-Cloud-Report.pdf>.

<sup>31</sup> <https://ustr.gov/sites/default/files/2023-03/2023%20NTE%20Report.pdf> at 60-61 (“As the United States noted in comments to Canada, most DSTs have been designed in ways that discriminate against U.S. companies, as they single out U.S. firms for taxation while effectively excluding national firms engaged in similar lines of business. Further, Canada’s proposed DST would create the possibility of significant retroactive tax liabilities with immediate consequences for U.S. companies. The United States has expressed serious concerns that Canada continues to pursue a unilateral DST.”);

<https://ustr.gov/sites/default/files/USTR%20Cmts%20on%20Canadian%20DST%20Proposal.2022.02.22.pdf>.

marketplaces, social media, and online advertising.<sup>32</sup> The thresholds would be set at firms who collect global revenue of 750 million Euros or more per year, and in-scope revenue associated with Canadian users of more than \$20 million per year.<sup>33</sup> The Government of Canada previously estimated<sup>34</sup> that this tax will bring in approximately \$2.5 billion CAD (about \$1.9 billion USD) over 3 years, the overwhelming majority of which is expected to come from U.S. suppliers.

Despite the OECD agreement on a global solution, and the clear commitment not to proceed with any new measures, Canadian policymakers have reiterated that they intend to move forward with the DST if the OECD framework is not in place by Jan. 1, 2024.<sup>35</sup> Canada also declined to support the agreement reached by 138 countries on July 12, 2023 to extend the pause on DSTs to allow for more time to implement the global tax deal.<sup>36</sup>

By moving forward, Canada would be providing a framework for other countries to follow, possibly leading to a domino effect that would hinder U.S. firms' competitiveness not only on the North American continent but globally.

By imposing a discriminatory tax that hits certain digital services while sparing non-U.S. suppliers and competitors, Canada's proposal imposes a cost on accessing its market that restricts the ability of the United States to maximize its exports. Further, competing non-digital suppliers—such as brick-and-mortar sellers—could be spared taxation while U.S. digital services providers—such as e-commerce providers—are subjected to it. This could lead to U.S. digital exports experiencing obstacles that hinder competitiveness in the digital trade space, and warrants attention from the USMCA Competitiveness Committee.

## **V. MEXICO TAX IDENTIFICATION REGISTRATION AND TRADE FACILITATION**

To support the key role that small-and-medium-sized enterprises (SMEs) play in a competitive North American economy,<sup>37</sup> USMCA adopted a stand-alone chapter focused on reducing obstacles to entry and catalyzing trade and growth for SMEs. The inclusion of SMEs in robust trade between USMCA partners is a crucial piece of strengthening U.S. and broader North American competitiveness. As such, the Competitiveness Committee should closely analyze the barriers present in the Mexican market through tax ID and trade facilitation issues that serve as particularly prohibitive for SMEs' exports from the United States and Canada.

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<sup>32</sup> <https://www.canada.ca/en/department-finance/news/2021/12/digital-services-tax-act.html>.

<sup>33</sup> CCIA provided comments on the specifics of the Canada DST, available here: <https://www.ccianet.org/library-items/ccia-comments-on-canada-dst/>.

<sup>34</sup> See p. 117 of Government of Canada Report, available at <https://www.budget.canada.ca/fes-eea/2020/report-rapport/FES-EEA-eng.pdf>.

<sup>35</sup> <https://www.canada.ca/en/department-finance/news/2021/10/statement-by-the-deputy-prime-minister-on-new-international-tax-reform-agreement.html>.

<sup>36</sup> <https://www.canada.ca/en/department-finance/news/2023/07/statement-by-the-deputy-prime-minister-on-international-tax-reform-negotiations.html>; <https://www.oecd.org/tax/138-countries-and-jurisdictions-agree-historic-milestone-to-implement-global-tax-deal.htm>.

<sup>37</sup> <https://ustr.gov/issue-areas/small-business> (“Small businesses are the backbone of the U.S. economy, creating two-thirds of all new jobs in recent decades. Small businesses which export grow faster, add jobs faster, and pay higher wages, accounting for 98 percent of all identified U.S. exporters and supporting nearly four million jobs in communities across America through both direct and indirect exports. Top export destinations for U.S. small business include Canada, Mexico, China, Japan and the United Kingdom.”).

Mexico is a thriving market for U.S. SMEs that look to broaden their customer base for U.S. products abroad. USTR’s most recent data showed that more than 52,000 U.S. SMEs exported goods worth more than \$82 billion to Mexico in 2019.<sup>38</sup> Mexico is a notable market for U.S. exporters for both goods and services, particularly in the digital space, where potentially ICT-enabled services exports have grown for U.S. suppliers from \$7.6 billion in 2010 to \$15.7 billion in 2022.<sup>39</sup>

However, U.S. SMEs seeking access to the Mexican market are experiencing stronger barriers to entry currently compared to the status quo prior to the passage of USMCA.

First, in 2020, Mexico adopted a law that requires U.S. businesses that store inventory in Mexico to obtain a local tax ID with the Tax Administration Service (SAT) and subsequently file monthly tax reports.<sup>40</sup> This obligation alone is not unique, but the process to register and secure this tax ID, dubbed a Registro Federal de Contribuyentes (RFC), costs businesses an exorbitant amount and contains convoluted steps. The RFC process has developed into a significant barrier to entry for U.S. SMEs, as these entities must have a local Mexican address and a local Mexican legal representative that holds 50% of the company’s tax liability to obtain an RFC. The process for companies to register is subject to lengthy delays due to complex bureaucracies, and involves 1) U.S. apostilling of documentation; 2) using a certified translator to ensure all documentation is presented in Spanish; 3) using a Mexican notary for documentation; 4) receiving a SAT appointment, which due to limited availability, industry reports can lead to a wait of anywhere from one month to four months; and 5) registering the RFC in SAT’s offices. These steps are required to be conducted absent digital facilitation, meaning they must be done in-person. This leads to wait times of over five months and costs exceeding \$5,000, not counting the costs associated with adherence to the income tax obligations.

This convoluted process and extensive requirements are an unnecessary burden for SMEs and preference local small business to those from the United States and Canada, who should otherwise be privy to the benefits of USMCA to access and thrive on Mexican customers. The SME chapter of USMCA specifically commits to “promoting SME participation in international trade, as well as business growth in local markets”<sup>41</sup>—meaning that even beyond the protection from foreign discrimination that U.S. SMEs should enjoy, USMCA partners agreed to directly and purposefully catalyze SME engagement in one another’s markets.

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<sup>38</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/april/ustr-sba-and-commerce-convene-first-usmca-small-and-medium-sized-enterprise-dialogue-san-antonio>.

<sup>39</sup> <https://apps.bea.gov/iTable/?reqid=62&step=9&isuri=1&product=4#eyJhcHBpZCI6NjJsInN0ZXBzIjpbMSw5LDYsNl0sImRhdGEiOltbInByb2R1Y3QiLCI0I0sWYyJUYWJsZUxpc3QiLCIzNTkiXSxbIkZpbHRlcl8jMSIsWyIxIiwilSjMiLCI0IiwilNSIsIjYiLCI3IiwilOCIsIjkiLCIxCiIsIjExIiwilMTiLCIxCiMyJdXSxbIkZpbHRlcl8jMiIsWyIwIiwilMSIsIjIiXV0sWyJGaWx0ZXJfIzMiLFI0IiwilMCJdXSxbIkZpbHRlcl8jNCIsWyIwIl1dLFsiRmlsdGVyXyYyMl1ixbIjAiXV1dfQ==>.

<sup>40</sup> <https://www.mayerbrown.com/en/perspectives-events/publications/2020/06/mexico-required-notice-to-rfc-of-partners-and-shareholders>.

<sup>41</sup> USMCA Article 25.2  
[https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/25\\_Small\\_and\\_Medium-Sized\\_Enterprises.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/25_Small_and_Medium-Sized_Enterprises.pdf).

Given the impact these obligations have on U.S. and Canadian SMEs alike, a discussion regarding best methods to address and remove this barrier from Mexico's market should take place at the Competitiveness Committee. A more streamlined taxation registration process would solidify North American competitiveness by support small business entrance to the Mexican market while also increasing the Mexican government's annual revenue—a more streamlined and welcoming tax registration process would lead to more SMEs investing in exports to Mexico, which would lead to more small business activity in Mexico and, in turn, more taxes paid by these entities. One short-term solution that should be up for discussion among Competitiveness Committee members is better guidelines from the Mexican government for residents abroad that are seeking registration for an RFC at Mexican consulates abroad. While the Regulation of the Federal Tax Code (RCFF) notes this method as possible, the government has never issued secondary regulations detailing how this process would occur.

Second, the Government of Mexico's failure to fully adhere to the customs obligations to which it committed in USMCA—and implementing new customs barriers in the time since the pact was signed—is undermining U.S. SMEs' ability to benefit from the deal in the manner promised them.

Industry reports a significant uptick in inspections and overlapping and simultaneous requests for information from multiple agencies as a condition of clearing customs. Industry further reports that SAT's customs automation interface repeatedly fails, which has lengthened the time for goods to cross the border even further, as SMEs also are forced to navigate an uptick in security incidents near the border that have complicated the transfer of goods and threatened the security of employees and business operations.

The free flow of goods and services on a fair and reasonable basis is one of the key tenets underpinning USMCA, and this exchange of goods serves to strengthen the region's competitiveness—as SMEs would be encouraged to expand into the full North American market, increasing revenue and hiring more workers—while simultaneously solidifying regional supply chains. The Competitiveness Committee should therefore consider the customs obligations and obstructive process for small exporters, with an eye to Mexico fully implementing its commitments in the USMCA's Custom Administration and Trade Facilitation Chapter, including those focused on expediting the release of goods, transparent customs procedures, information exchanges with traders, leveraging information technology, and the adoption and maintenance of a single window.

## **VI. CONCLUSION**

The trade barriers that exist in USMCA markets warrant attention and addressing these obstacles would help ensure all Parties to the agreement receive maximum benefits. The tenets of the agreement are to ensure that the competitiveness of each member country as well as the North American bloc as a whole are catalyzed through fair and open market access to one another's economies. Ensuring the commitments of USMCA are adhered to by the participants should be discussed by the USMCA Competitiveness Committee as part of its efforts to promote digital trade in North American economies.