DIGITAL TRADE: CALIFORNIA, MEXICO, AND NAFTA 2.0

By K.C. Fung

Abstract: *Renegotiating NAFTA presents an important opportunity to include digital trade. A modernization of NAFTA should provide for the free flow of data and information across borders and the balanced protection of intellectual property, while avoiding forced localization of digital assets and custom duties on electronically transmitted content. This can provide benefits to both the United States and Mexico. The state of California and the University of California, as important actors in the global innovative economy, can offer important and useful bridges in digital trade between the two countries.*

The North American Free Trade Agreement (NAFTA) was negotiated 25 years ago (USTR 2017a, 2017b), before the digital age. On May 18, 2017, the current administration notified Congress the intent to renegotiate NAFTA. The new trade talks can in fact represent a great opportunity to modernize the agreement and include provisions related to various aspects of digital trade.

The focus on digital trade is particularly relevant for the state of California and the University of California (UC). According to Quirk-Silva (2017), California in 2015 was the sixth largest economy in the world. The California economy is tied to trade, tourism, innovation activities, and the movement of human capital and finance (CalChamber 2017, Quirk-Silva 2017). California's top export destination continued to be Mexico in 2016, with an export value of $25.26 billion, about 16% of all California exports. Computers and electronic products remained California's largest exports to Mexico. U.S. service exports to Mexico and Canada more than tripled from $27 billion in 1993 to $92 billion in 2014. In addition, Mexican tourists spent $3.2 billion in California (CalChamber 2017).

California and the UC are leaders in innovation and activities related to intellectual property rights (IPRs) such as patents, copyrights, and trademarks. According to the Silicon Valley Institute for Regional Studies (2017), California accounted for close to 25% of U.S. internet-related jobs, about 22% of software jobs, and more than 40% of motion picture jobs. According to Joint Venture Silicon Valley (2017), $9.3 billion of venture capital investment flowed to Silicon Valley and an additional $13.8 billion went to San Francisco companies in 2016. In 2015, according to the University of California (2016), 1,745 new inventions were disclosed by UC researchers in 2015, with

520 U.S. patents and 795 foreign patents issued. There were 12,203 active inventions in UC's portfolio as of FY2015. Also, 934 startups have been founded on UC patents since 1980, with 85 startups formed in 2015 from UC inventions alone.

Digital Trade and NAFTA

Digital trade broadly includes e-commerce and related aspects such as IPRs and privacy. There are many digital issues that should be examined with a new NAFTA (USTR 2017a, Internet Association 2017, CalChamber 2017, Copyright Alliance 2017, The Software Alliance 2017). Here we will discuss briefly four topics.

First, for NAFTA 2.0, the agreement should allow the free flow of data and information across countries digitally, subject to some concerns such as privacy. The ability to transfer and access information across borders is important for the economies of the United States and Mexico as well as for research in North America (Internet Association 2017). In general, governments should only be allowed to restrict the free flow of information for legitimate public policy objectives. The UC system is an important part of this endeavor. For example, the National Science Foundation awarded UC San Diego and UC Berkeley a grant to establish the Pacific Research Platform (PRP), a science-driven data freeway. PRP will link West Coast research universities and allow data to move a thousand times more quickly. It may be possible that such data can be transmitted to universities in other countries (such as Mexico) in the future in a secured way (University of California 2017).

Second, there should be no forced localization of digital assets. Firms should not be required in general to store or manage data locally. Forced localization tends to hurt consumers and businesses and threatens the open nature of the internet (Elms and Nguyen 2017, Internet Association 2017, Beckerman 2017).

Third, an updated NAFTA should pledge not to impose custom duties on electronically transmitted content, encouraging free flow of videos, games, software, and music. The World Trade Organization has a temporary ban on imposing duties on digital content. New NAFTA provisions can ensure that this will continue, at least in North America.

Fourth, NAFTA should promote balanced protections for copyrights, patents, trademarks, and industrial designs related to digital trade. For example, creators of phonograms should be given the exclusive rights to reproduction and communication of their works (Technet 2017, Internet Association 2017, Elms and Nguyen 2017). However, to encourage research, teaching, news reporting, etc., fair use and some limitations of IPRs need to be considered. Furthermore, some "safe harbors" for internet service providers (ISPs) should be provided so that ISPs are not always held responsible for all potentially infringing materials on their platforms.

Conclusion

Renegotiating NAFTA, done properly, can be an opportunity to modernize the agreement to include digital trade. This can provide benefits to both the United States and Mexico. The state of California and UC, as important actors in the global innovative economy, can provide important and useful bridges in digital trade between the two countries.

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