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Chairman Reichert, Ranking Member Pascrell, members of the subcommittee—thank you for the opportunity to present the views of the Coalition of Services Industries (CSI) on how best to modernize NAFTA to maximize the gains for American companies and workers.

For more than three decades, CSI has been the leading industry association devoted exclusively to promoting the international objectives of U.S. services companies and associations. Our members include the vast array of U.S. companies that provide services and digitally enabled services, domestically and internationally, including information and communication technology services, financial services, express delivery and logistics, media and entertainment, and distribution and professional services.

Chairman Reichert, I'd also like to thank you for your leadership of the Congressional Services Caucus. Congressman Marchant, we welcome you as a co-chair of the Congressional Services Caucus; and we thank you both, along with Congressman Meeks, for kicking off the Caucus for the 115th Congress with the letter you sent to United States Trade Representative Lighthizer about the importance of services.

Thank you for your expertise on trade and advocacy for American workers and American services firms, both large and small.

NAFTA BENEFITS TO U.S. SERVICES

NAFTA provides U.S. services companies guaranteed, non-discriminatory market access to Mexico and Canada. This includes the ability to provide services on a cross-border basis, major investment opportunities and strong investment protections, and the opportunity to compete successfully for major government procurement contracts.

Under NAFTA, the United States has maintained a consistent trade surplus in services with both Canada and Mexico. The most recent data indicates that U.S. services exports to Canada totaled $56.4 billion and imports $29.0 billion, producing a $27.4 billion services surplus. Similarly, in Mexico, U.S. exports of services were an estimated $31.1 billion, while imports were $23.5 billion in 2016.

And something remarkable to note with NAFTA—since 1999, the United States has doubled its bilateral services trade surplus with Mexico and quadrupled its surplus with Canada.

In total, U.S. trade with both Canada and Mexico in services exports alone amounts to $88 billion as of 2015. This directly supports 587,000 American jobs, which are well paying jobs, too. Research has shown that jobs in the services sectors that are tradeable, which tend to be in professional services, have produced high skilled and high paying jobs.

NAFTA's rules and specific commitments are responsible for our tremendous services and investment growth in Mexico and Canada. These provisions include the guarantee of non-discriminatory treatment, transparency, and binding dispute settlement and investor-state dispute settlement. As of 2013, U.S. foreign affiliates in Mexico generated approximately $43 billion in sales and $128 billion in sales in Canada. These figures are important to note because while many services can be supplied on a cross-border basis, market penetration in some services sectors, such as financial services, can only be supplied through investing and establishing a commercial presence. At the same time, this foreign investment yields significant benefits back to the United States in the form of generating revenues and supporting U.S. jobs and operations.

NAFTA's investment provisions have also produced significant Canadian and Mexican investment in the U.S., which supports the American economy and its workers. As of 2014, Mexico had invested nearly $18 billion in the U.S. And as of 2015, the United States receives almost half of Canada's global foreign direct investment at $448 billion. The level of both inbound and outbound investment with Canada and Mexico is one of the primary drivers of the North American economic success of NAFTA.

NAFTA has also provided substantial government procurement opportunities for U.S. services firms which has created a "win-win" situation for the United States. For example, nearly two-thirds of all Mexican government employees are insured by a U.S. services supplier. In addition, U.S. firms supply pensions as well as property and casualty insurance directly to the Mexican government. Other major U.S. firms in the financial services and information technology sectors also have benefited from NAFTA's procurement provisions. By contrast, Mexican and Canadian participation in the U.S. Federal procurement system is negligible.

The U.S. is a significant beneficiary of NAFTA's procurement provisions. The Federal Procurement Data System confirms that, across the entire federal government, just two percent of all contracts were secured by foreign-headquartered companies in FY 2016, and these contracts were predominantly awarded to U.S. affiliates of British or European firms. Just one Canadian company showed up in the top 100 contractors to the U.S. Government; not a single Mexican company appeared on the list. NAFTA's procurement chapter provides an important institutional framework of transparency and open bidding procedures for all three countries, where American services providers have taken full advantage.

GENERAL PRINCIPLES

To ensure these benefits to U.S. services firms continue, CSI recommends that four overarching principles govern NAFTA modernization.

First, we must preserve the existing NAFTA framework—which provides a commercially stable and efficiently integrated environment for U.S. services suppliers—and make sure that we "do no harm" to the existing benefits and jobs supported by NAFTA. If the NAFTA negotiations (directly or indirectly), lead to even a one percent loss of U.S. services jobs, this would equate to a loss of 1 million American services jobs.

Second, we must ensure modernization of NAFTA is consistent with the negotiating objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA). CSI strongly supports the Administration's statement in its notification letter to Congress that proper consultation will be conducted through TPA, ensuring that due account is given to the Congressionally mandated objectives for trade negotiations, particularly for services, investment, digital trade, transparency, regulatory cooperation, and enforcement. As you know, it is a Constitutional mandate that Congress regulate foreign commerce with the United States, and TPA is a key legislative manifestation of this responsibility.

Third, to preserve and enhance the benefits that NAFTA provides to the U.S. services sector, it should remain a trilateral agreement with common North American rules. This integration of the North American markets is fundamental to continue to reap the highest level of rewards that we can from NAFTA.

Fourth, we must continue to ensure that U.S. firms can continue to perform and compete to the best of their ability during the NAFTA modernization process. To guarantee this, the process must be carried out in a transparent and efficient manner that minimizes any commercial uncertainty and facilitates trade and investment flows.

NEGOTIATING OBJECTIVES

I will briefly highlight some of CSI's proposed negotiating objectives. As a general proposition, we urge improvements that will have cross-cutting effects to benefit as many American business sectors as possible, and that there be no carve-outs of sectors from any of the protections provided by the improved agreement.

Services and Investment Market Access

Any modernization of NAFTA should ensure continued use of a "negative list" approach and a "ratchet" for any non-conforming measures. These elements already exist in NAFTA and must be carried forward in any negotiation to safeguard U.S. services firms from the reintroduction of barriers in either Canada or Mexico since entry into force.

A modernized NAFTA should also ensure that services and services-related investment market access commitments meet or exceed those agreed to with Canada and Mexico in the Trans-Pacific Partnership (TPP), and/or adopted by Canada and Mexico since NAFTA.

NAFTA should continue to cover any new services that may emerge in the future and the United States must not accept carve-outs for "new" services. Innovative, new services should be protected against future discrimination, as trade agreements should not become obsolete as markets evolve and technology advances. Moreover, the U.S. should reject any effort to maintain Canada's cultural carve-out; NAFTA is the only U.S. FTA currently in force with such a carve-out, which is inconsistent with the principles of free and fair trade and erroneously suggests that cultural promotion and open markets are incompatible.

E-commerce

Modernization of NAFTA provides an ideal opportunity to update the agreement to reflect the digital trade ecosystem which did not exist when NAFTA was negotiated. Therefore, a chapter on e-commerce and digital trade should be added to NAFTA.

Data flows, the lifeblood of a modern economy, have grown by 45 times since 2005 and will have grown by another nine times by 2020. Though practically nonexistent just 15 years ago, data flows now hold more economic value than global goods trade.

Data flows are the foundation for technological advances, such as cloud computing, the Internet of Things, and Artificial Intelligence, all of which are cornerstones of the emerging “Fourth Industrial Revolution.” Data flows provisions are also important for services companies outside of the tech sector, such as in financial services, as these services companies rely on their ability to move and store data on their global platforms. In 2015, U.S. global exports of potentially Information and Communication Technology (ICT)-enabled services (which are provided over ICT networks) alone totaled almost $400 billion. This amounted to a $161.5 billion surplus, and included exports of $27.1 billion to Canada and $8.7 billion to Mexico.

In 2016, after TPA-required consultations, the United States proposed strong data flow and forced data localization provisions in the Trade in Services Agreement (TiSA) negotiations for both services and financial services. CSI supports the use of this language as a building block in the e-commerce and financial services chapters in the NAFTA negotiations to set a high standard for the benefit of all services sectors.

A modernized NAFTA should also include provisions to address intermediary liability/safe harbors relating to third-party content. For matters other than intellectual property and criminal law, consistent with U.S. law, countries should not hold platforms and service suppliers legally responsible for third-party content in an unreasonable manner that prevents them from effectively facilitating transactions and communications among businesses and consumers. For intellectual property, the agreement should ensure that effective legal remedies are available to address online copyright infringement and provide conditional safe harbors for intermediaries. Limitations of liability should also include provisions such as a “good Samaritan” clause that facilitates intermediaries addressing and deterring illegal activity conducted over their networks and services.

Further, NAFTA must streamline and modernize customs processes, such as the use of electronic customs forms, electronic signature and authentication, and secure online payment, in addition to upgraded de minimis levels. CSI believes that these modifications will benefit micro-, small- and medium-sized businesses.

Communications Services

The modernization of NAFTA further provides an opportunity to address limitations on technology choice and disproportionately burdensome regulatory requirements that interfere with the ability of U.S. communications services providers to operate in Canada and Mexico. The NAFTA telecommunications chapter should be updated to ensure non-discriminatory market access, a level playing field, and a pro-investment, pro-competition environment. The chapter should also enable communications services firms to take advantage of opportunities in Canada and Mexico.

Financial services

The preservation of market access, and investment and procurement opportunities achieved under NAFTA are vital to financial services providers. The more that U.S. services firms, including financial services, grow their businesses in Canada and Mexico, the more they are able to use those dividends from foreign earnings and investments back in the U.S., further supporting and expanding American jobs and the American economy.

An area of importance for financial institutions is to ensure they receive the same coverage of investment protections as afforded to other sectors, including minimum standard of treatment, civil strife, and performance requirements. In addition, financial institutions should have access to investor state protections as afforded to other sectors. This includes access to investor-state dispute settlement (ISDS) for breaches of Most Favored Nation (MFN) and National Treatment. These modernizations would put financial services on par with all other sectors of the economy with significant investments in Canada and Mexico.

NAFTA modernization also presents the opportunity to address areas which have historically been overlooked, such as commitments on electronic payment services (EPS), where we must ensure the application of market access commitments to prohibit the imposition of numerical restrictions and a national treatment commitment to ensure non-discrimination with respect to the cross-border delivery of EPS.

Finally, we believe that the Financial Services Committee established under NAFTA should be updated into a more formalized, principles-based entity with an expanded scope to increase regulatory coordination.

Express delivery
For express delivery services providers, modernizing NAFTA means updating inefficient processes that affect the ability to transport American goods from the U.S. and through the North American region. In Mexico, this means addressing processes governing less-than-truckload (LTL) and express delivery services shipments, as well as the elimination of current discriminatory Mexican regulations regarding the operation of foreign-owned express delivery trucks on Mexican federal highways.

Trade facilitation
On trade facilitation, NAFTA must ensure that ambitious, high-standard customs policies are harmonized across Canada and Mexico to promote U.S. e-commerce exports and SME exporting opportunities. This includes substantial increases to Canada and Mexico's customs *de minimis* threshold for express and postal shipments.

Further, any chapter on SMEs in NAFTA should also include a Small Business Committee that reinforces the need to protect entrepreneurs from fraudulent business offerings.

Procurement
The United States must ensure that existing reciprocal market access commitments in government procurement, already provided through NAFTA, remain.

Investment
On investment, it is critical that negotiations preserve and build on the existing framework, and that the same scope of enforceable investor protections is provided for all sectors, including financial services.

CONCLUSION

Thank you again for the opportunity to present CSI's position on NAFTA modernization and the importance of preserving existing benefits to services suppliers under the agreement. Last, I would like to thank the subcommittee for your willingness to engage and your knowledge on our issues. With that, I am happy to answer any questions from the panel.