



# DIGITAL TRADE AND INNOVATION IN A 21ST-CENTURY USMCA

BSA | The Software Alliance welcomes the modernized digital trade and intellectual property (IP) rules in the United States-Mexico-Canada Agreement (USMCA). Concluded some 25 years ago, shortly after the development of the World Wide Web, the North American Free Trade Agreement (NAFTA) was not crafted with today's digital economy in mind. The USMCA — boasting the most advanced digital trade and IP provisions of any trade agreement — will help drive innovation and growth across North America for years to come.

The North American innovation ecosystem is responsible for many of the world's software-powered technologies, from artificial intelligence (AI) and cloud computing, to smart devices and autonomous vehicles. The USMCA's digital trade rules serve as an important model to address the 21st Century digital challenges facing American innovators, entrepreneurs, and exporters in North America and beyond. Today, the software industry accounts for over \$1 trillion in US GDP and 11 million American jobs that pay wages substantially higher than the national average.<sup>1</sup>

Cross-border data transfers are at the very core of today's digital economy. The US International Trade Commission's report on the USMCA correctly concluded that "[m]aintaining free international data transfers is important for firms in all parts of the economy because industries increasingly rely on data to efficiently produce and supply their products and services."

The USMCA's data transfer provisions — the strongest in any trade agreement — ensure that data can be transferred freely for business purposes



The ability to transfer data across borders is key to America's future job market, economic prosperity, and technological progress.

across North America, while prohibiting any unnecessary restrictions or disguised barriers to trade. The USMCA also prohibits data localization mandates — allowing companies to compete abroad and hire American workers.

Data transfers are important for the development of AI, industrial IoT, and cybersecurity solutions. Every economic sector depends upon the seamless transfer of data across borders: From automotive manufacturing and construction, to film production and the health sciences, American engineers use computer-aided design software to collaborate on and visualize new products. Likewise, services relying on data transfers allow farmers around the world to optimize seeding, irrigation, and harvesting to maximize yields and export opportunities.<sup>2</sup>

The USMCA's digital trade provisions extend beyond data transfers to protection of source code and algorithms, promoting open government data, and calling for risk-based approaches to cybersecurity. Taken together, the digital trade and IP provisions described below will help secure the conditions for future American leadership and innovation.

<sup>1</sup> [www.software.org/reports/2017-us-software-impact/](http://www.software.org/reports/2017-us-software-impact/)

<sup>2</sup> For more on the importance of data transfers in every sector, see *Cross-Border Data Flows*, [www.bsa.org/files/policy-filings/BSA\\_2017CrossBorderDataFlows.pdf](http://www.bsa.org/files/policy-filings/BSA_2017CrossBorderDataFlows.pdf)

The USMCA's Digital Trade and IP chapters create the conditions for American ingenuity and creativity to thrive in a digital future — promoting the development of transformative technologies, new kinds of jobs, and opportunity and choice for our citizens.

<b>1992 NAFTA</b> 22 chapters, including:	<b>2019 USMCA</b> 34 chapters, including:
<ul style="list-style-type: none"> <li>✔ Trade in Services</li> </ul>	<ul style="list-style-type: none"> <li>✔ Trade in Services</li> </ul>
<ul style="list-style-type: none"> <li>✘ Annex on Information and Communication Technology</li> </ul>	<ul style="list-style-type: none"> <li>✔ Annex on Information and Communication Technology               <ul style="list-style-type: none"> <li>» Protects commercial encrypted technologies</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>✘ Digital Trade</li> </ul>	<ul style="list-style-type: none"> <li>✔ Digital Trade               <ul style="list-style-type: none"> <li>» Promotes the protection of privacy and cross-border data transfer frameworks</li> <li>» Prohibits unnecessary restrictions on cross-border data transfers</li> <li>» Restricts data localization mandates</li> <li>» Protects source code and algorithms</li> <li>» Calls for “risk-based” approaches to cybersecurity</li> <li>» Promotes AI-powered technologies through open government data</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>✘ 21st Century IP Chapter</li> </ul>	<ul style="list-style-type: none"> <li>✔ 21st Century IP chapter               <ul style="list-style-type: none"> <li>» Includes a copyright framework geared to the digital economy — with safe harbors for legitimate enterprises that do not directly benefit from online infringement</li> <li>» Sets standards against the circumvention of technological protection measures that often protect software and other works</li> </ul> </li> </ul>