



Leveraging the USMCA: How to Maximize Profits from Digital Trade in North America

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Overview: This trade brief aims to inform business owners in North America of issues that they face in digital trade. Based on the review of the USMCA, the brief provides recommendations as to how to strategize business and benefit from the new agreement. The first series of the brief will deal with trade in digital services and trade in tangible goods through eCommerce, and the second series will address trade in digital products and other sectors.

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The United States-Mexico-Canada Agreement (USMCA) will enter into force on July 1, 2020. The new agreement will increase digital trade in North America as it offers a number of innovations to digital trade.¹ Digital trade refers to “digitally-enabled transactions of trade in goods and services that can either be digitally or physically delivered.”² Per this definition, there are four categories of digital trade:

- **Trade in digital services:** FinTech, business services, telecommunication, and IT services
- **Trade in tangible goods through eCommerce:** online retail
- **Trade in digital products:** digital media
- **Other sectors:** investment

I. TRADE IN DIGITAL SERVICES

This section covers FinTech, business services, telecommunication, and IT services.

1. Challenges and how the USMCA addresses them

Business owners in this category should be mindful of four issues.

a. Restrictive data policy

Cross-border trade in digital services relies on the ability to transfer, analyze, and store data. Among digital technologies such as blockchain, data analytics, and IoT, cloud computing is probably the most relevant to digital services. Cloud computing services include data backup and recovery, and data analysis (IaaS),³ development tools, business intelligence services, and database management (PaaS),⁴ and office solutions such as accounting, invoicing, sales tracking, performance monitoring, inter-office communication and planning (SaaS).⁵

Thus, business owners cannot fully benefit from cloud computing as well as other internet services if there is restrictive data policy where they want to export services. Among such data policy, data localization rules require exporting businesses to have physical data centers in an importing country to store data. This is a huge cost to business owners.

The USMCA ensures free data flows across borders.⁶ The USMCA eliminates data

¹ Anupam Chander, *The Coming North American Digital Trade Zone*, COUNCIL ON FOREIGN RELATIONS (Oct. 9, 2018), <https://www.cfr.org/blog/coming-north-american-digital-trade-zone>.

² *Digital Trade*, OECD, <https://www.oecd.org/trade/topics/digital-trade/> (last visited June 18, 2020).

³ See Shawn Freeman, Cloud Computing for Small Businesses: What You Need to Know, FORBES (Dec. 18, 2020 8:00 AM), <https://www.forbes.com/sites/theyec/2018/12/18/cloud-computing-for-small-businesses-what-you-need-to-know/#388159c160e5>.

⁴ See *id.*

⁵ See *id.*

⁶ Agreement between the United States of America, the United Mexican States, and Canada, art. 19.11(1), Dec.

localization requirements.⁷ Furthermore, the agreement also eliminates local presence requirements that mandate a local office in the territory.⁸ This also applies to financial services and, thus, to FinTech.⁹

However, there are two exceptions. First, a country may implement a measure that restricts cross-border data flows, if there is overriding public policy concern.¹⁰ While “public policy” is a broad concept, the agreement prohibits an arbitrary, excessive or discriminatory measure.¹¹ Second, local presence requirements may still apply according to each country’s national laws.¹² These national laws can be found in Annexes I and II of each country.

- U.S.: [I](#) and [II](#)
- Mexico: [I](#) and [II](#)
- Canada: [I](#) and [II](#)

b. Disclosure or transfer of technology and trade secrets

Business owners may be forced by an importing country to disclose or transfer technology or trade secrets as a condition to do business in its territory. Laws or practices of this kind are huge barriers in trade in digital services. This is because service providers such as FinTech and business services heavily rely on computer software and technologies.

The USMCA bans such measures.¹³ The agreement also prohibits any excessive or discriminatory conditions or conditions that diminish value of trade secrets when a government allows licensing them.¹⁴ Yet, note that a governmental authority may require a company to make available source codes for administrative or judicial proceedings, if not unauthorized.¹⁵

13, 2019, *available at* <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> [hereinafter USMCA].

⁷ *Id.* art. 19.12 (The agreement further stipulates that “[n]o Party shall require a covered person to use or locate computing facilities in that Party’s territory as a condition for conducting business in that territory.”).

⁸ Such residency requirements may have the effect of data localization. The USMCA stipulates that “[n]o Party shall require a service supplier of another Party to establish or maintain a representative office or an enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.” *Id.* art. 15.6.

⁹ *Id.* art. 17.5(3).

¹⁰ *Id.* art. 19.11(2).

¹¹ Such a measure should not be “a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade” or “impose restrictions on transfer of information greater than are necessary to achieve the objective.” *Id.*

¹² *Id.* art. 15.7.

¹³ Under the Chapter 19, each of the countries shall not “require the transfer of, or access to, a source code of software owned by a person of another [country,] or to an algorithm expressed in that source code, as a condition for the import, distribution, sale or use of that software, or of products containing that software, in its territory.” *Id.* art. 19.16(1).

¹⁴ *Id.* art. 20.76.

¹⁵ *Id.* art. 19.16(2). Article 20.77(1) prohibits unauthorized disclosure of a trade secret by government officials in civil, criminal, and regulatory proceedings where trade secrets may be submitted to authorities.

c. Lack or inadequate enforcement of cybersecurity and consumer protection

The lack of cybersecurity and consumer protection law or enforcement is another threat to cross-border trade in digital services. This is because FinTech and business services rely on clients' confidential information. Thus, they want to ensure that cybersecurity laws are in place to prevent malicious intrusions on electronic networks. Business owners may also want to see consumer protection laws in an importing country that effectively address deceptive or fraudulent activities. Without such measures, digital distrust among customers may eventually drive away the service providers.

For cybersecurity, under the USMCA, the countries agree to collaborate to minimize cybersecurity risks.¹⁶ Yet, how each country will comply with this provision remains much to be seen.

For consumer protection, the countries agree to adopt appropriate legal frameworks.¹⁷ Among others, they agree that APEC Cross-Border Privacy Rules (CBPR) is a valid legal framework that regulates cross-border information transfers.¹⁸ It gives certification to companies which satisfy data privacy protection requirements.¹⁹ These requirements include risk-based protections, an audit of compliance by an Accountability Agent, consumers' grievance system, and disclosure to consumers of their privacy practices.²⁰ Whether the countries opt into this framework remains to be seen.

d. Varying legal frameworks for online transactions

The sale or purchase of digital services mostly take place electronically. Therefore, different online transactions systems can burden business owners.

The USMCA addresses this problem in following ways. First, the countries agree to adopt a uniform, legal framework for electronic transactions.²¹ This will reduce unnecessary costs arising from compliance with multiple legal frameworks. Second, the countries not only acknowledge legal validity of electronic authentication and signature but also recognize flexibility of the forms of such methods.²² Third, the agreement allows businesses and consumer to bring a legal claim that an online transaction is enforceable before courts or

¹⁶ *Id.* art. 19.15.

¹⁷ *Id.* art. 19.7 (2). As for financial services in particular, the agreement ensures that it should not be interpreted to require each country to "disclose information related to the financial affairs or accounts of individual customers of financial institutions or cross-border financial service suppliers." *Id.* art. 17.8.

¹⁸ *Id.* art. 19.8 (6).

¹⁹ *What Is the Cross-Border Privacy Rules System?*, APEC (Apr. 15, 2019), <https://www.apec.org/About-Us/About-APEC/Fact-Sheets/What-is-the-Cross-Border-Privacy-Rules-System>.

²⁰ *Id.*

²¹ USMCA art. 19.5. Article 19.6 (4) also provides that "[e]ach Party shall encourage the use of interoperable electronic authentication."

²² It bans any measures that "prohibit parties . . . from mutually determining the appropriate authentication methods or electronic signature for that transaction." *Id.* art. 19.6(2).

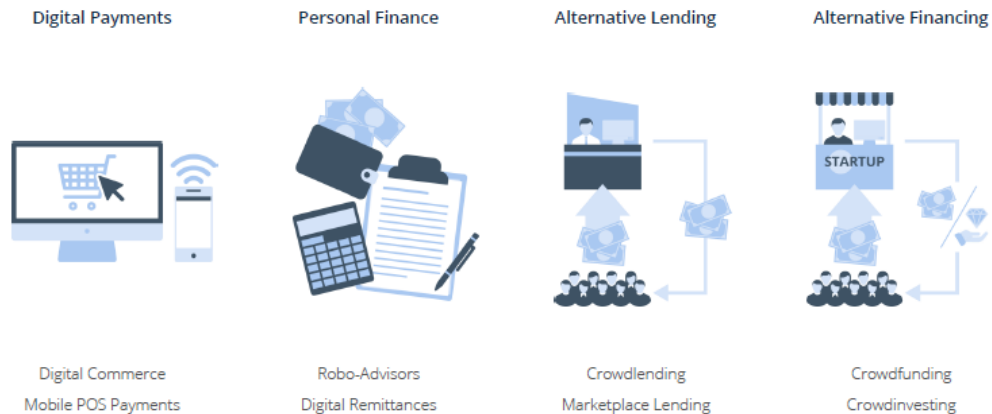
governmental bodies.²³

2. Industry Trends

a. FinTech

FinTech combines financial services with digital technologies. It consists of four segments: digital payments, personal finance, alternative lending, alternative financing.²⁴

Figure 1: FinTech Segments²⁵



Source: Statista

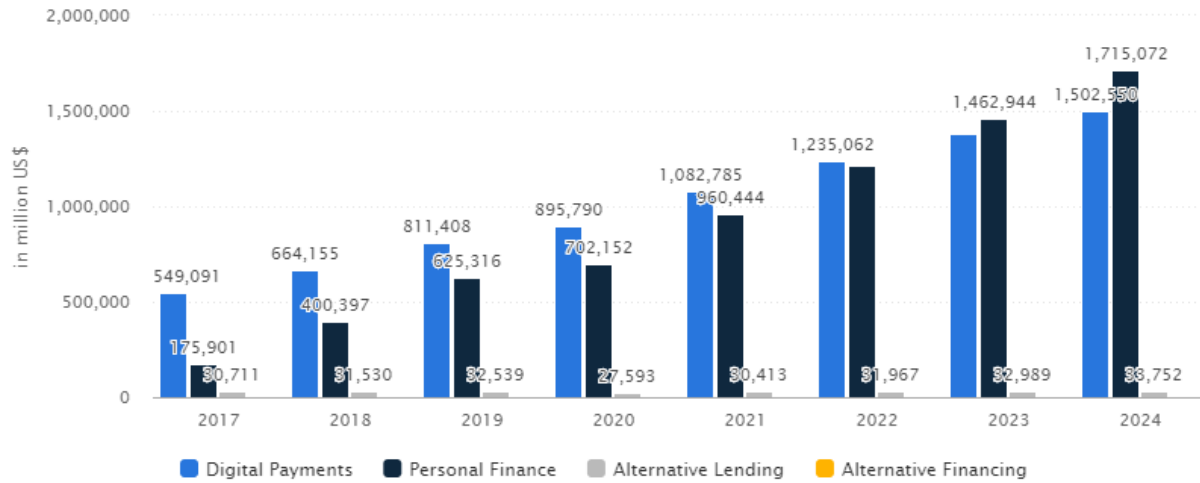
Based on Figures 1–3, all the three countries have seen, and is expected to continue, an increase in the transactional value of digital payments and personal financing whereas alternative lending and financing remain at the nascent stage albeit with a slight increase.

²³ *Id.* art. 19.6 (2)(b).

²⁴ KSENIA STRIAPUNINA, STATISTA, FINTECH REPORT 2019 4 (2019).

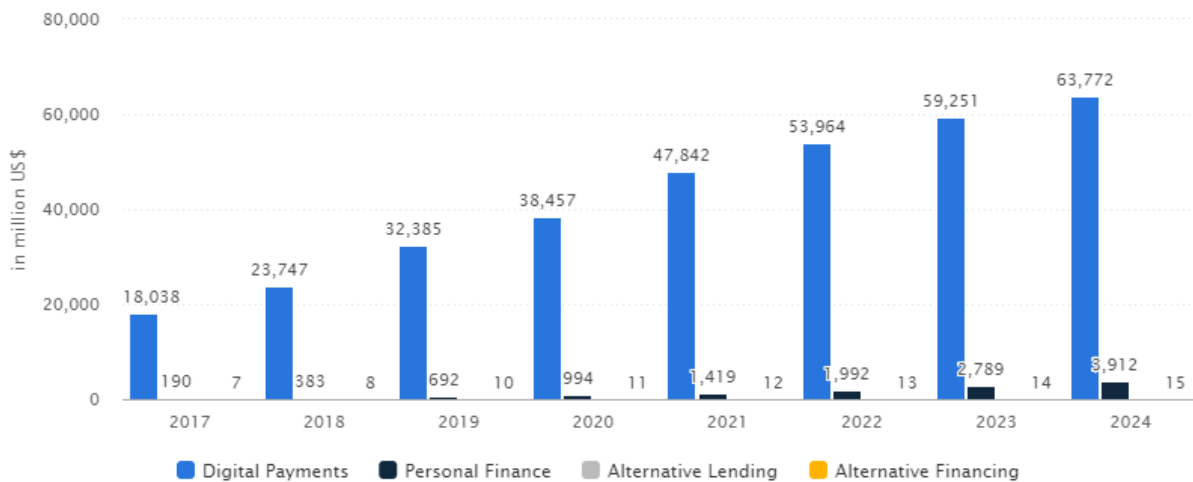
²⁵ Mobile POS payments refer to what is commonly known as “mobile wallets.” *Id.* at 22. Robo-advisors are asset management services that offer automated online portfolios, and digital remittances refer to cross-border payments among individuals. *Id.* at 34. Crowdlending is online brokering platform that enables small and medium-sized enterprises (“SMEs”) to get loans from investors, and marketplace lending is online platforms where private users may request for loans to find investors. *Id.* at 48. Crowdfunding is a method of financing independent from financial institutions, and crowd investing refers to transactions where a number of parties invest together in equity shares or profit-related returns. *Id.* at 61.

Figure 2: U.S. FinTech Transaction Value²⁶



Source: Statista (forecast adjusted for expected impact of Covid-19)

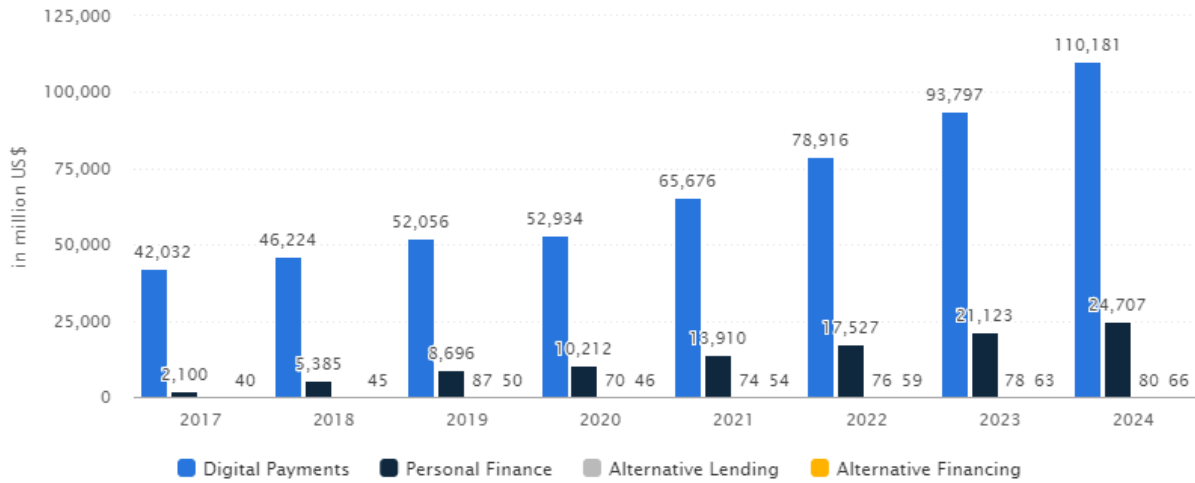
Figure 3: Mexico FinTech Transaction Value



Source: Statista (forecast adjusted for expected impact of Covid-19)

²⁶ FinTech – worldwide, STATISTA, <https://www.statista.com/outlook/295/100/fintech/worldwide> (last visited July 02, 2020)

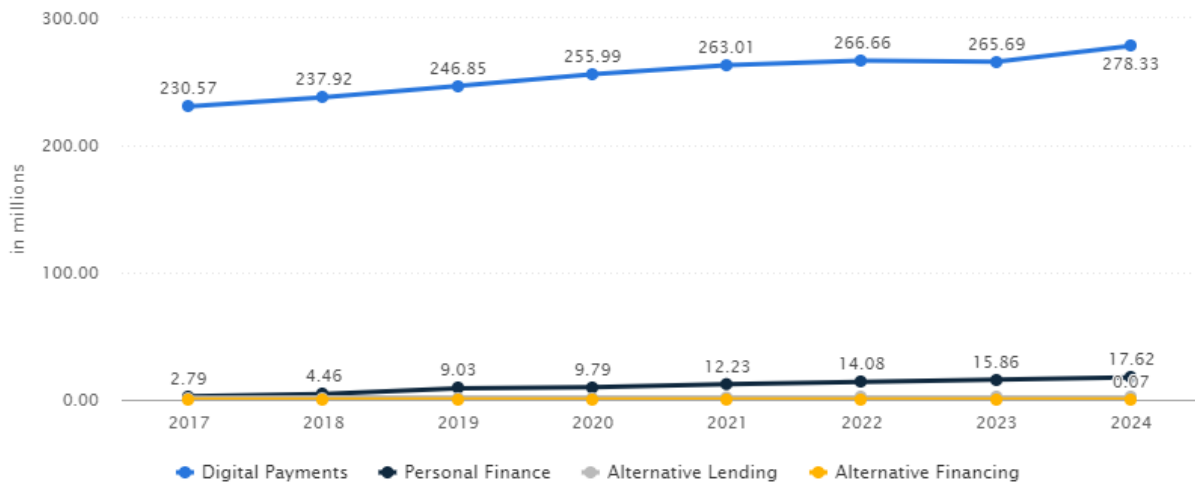
Figure 4: Canada FinTech Transaction Value²⁷



Source: Statista (forecast adjusted for expected impact of Covid-19)

Despite the forecast that personal finance will have the highest transactional value in the FinTech industry, Figure 4 shows that the number of personal finance users in the U.S. is much lower than that of digital payments. This suggests that the use of personal finance is not as prevalent as digital payments. Figures 5–6 forecast that the vast majority of FinTech users are in digital payments in Canada and Mexico, much like the U.S.

Figure 5: U.S. FinTech Number of Users²⁸

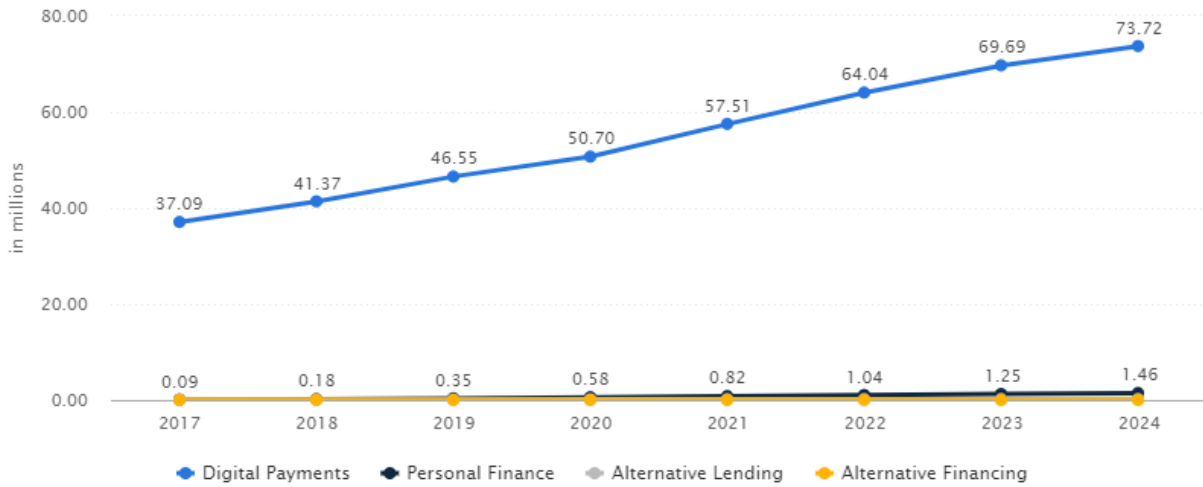


Source: Statista (forecast adjusted for expected impact of Covid-19)

²⁷ *Id.*

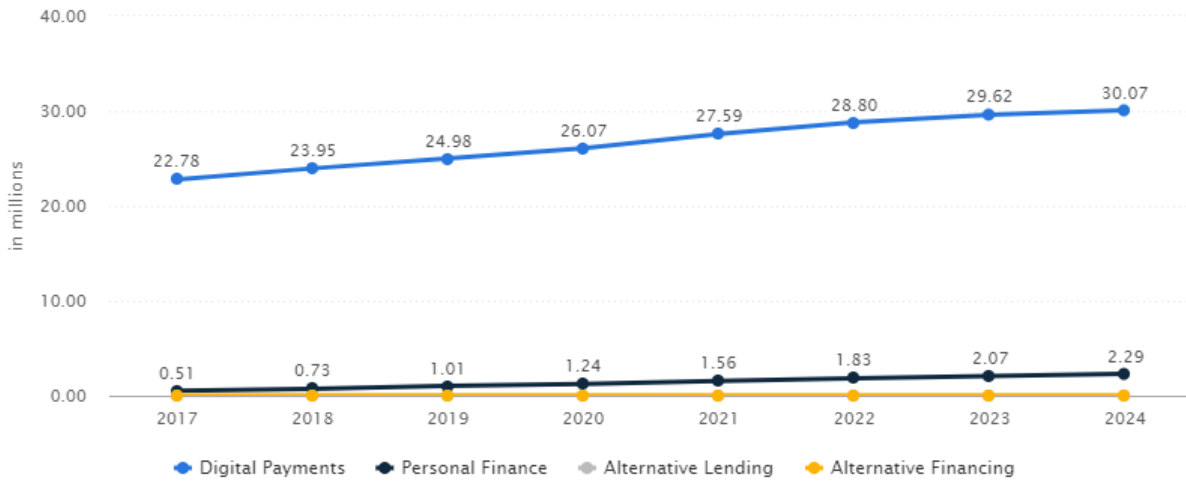
²⁸ *Id.*

Figure 6: Mexico FinTech Number of Users²⁹



Source: Statista (forecast adjusted for expected impact of Covid-19)

Figure 7: Canada FinTech Number of Users³⁰



Source: Statista (forecast adjusted for expected impact of Covid-19)

While data of trade flows represented in Table 1 are not confined to FinTech but include traditional forms of financial services, the data may generally inform cross-border supply and demand of financial services in the region. The table shows that the export and import among the North American countries have grown between 2014 and 2017.³¹ While in the U.S. the export to Mexico did not particularly increase, the export to Canada has steadily

²⁹ *Id.*

³⁰ *Id.*

³¹ Note that financial services represented in Figures 7–9 do not include trade flows of insurance services, which are part of financial services pursuant to the definition of the USMCA. See USMCA art. 17.1.

increased. For Canada, while, correspondingly, the country has increased its import from the U.S., the export to the U.S. somewhat fluctuated. Finally, for Mexico, while the trade flows have not been as active as the other countries, it has increasingly imported and exported globally.

Table 1: North America Trade Flows of Financial Services

	United States				Canada				Mexico	
	Canada		Mexico		United States		Mexico		Worldwide	
	Import	Export	Import	Export	Import	Export	Import	Export	Import	Export
2014	1,897	6,554	344	1,474	3,783	4,745	25	37	1,430	127
2015	1,797	6,039	316	1,387	3,915	4,771	28	50	1,347	137
2016	2,020	6,442	362	1,502	5,585	4,397	27	43	1,809	154
2017	2,236	6,964	360	1,426	5,760	4,586			2,172	349
2018										444

Thousand US Dollars

Source: International Trade Center

b. Business Services

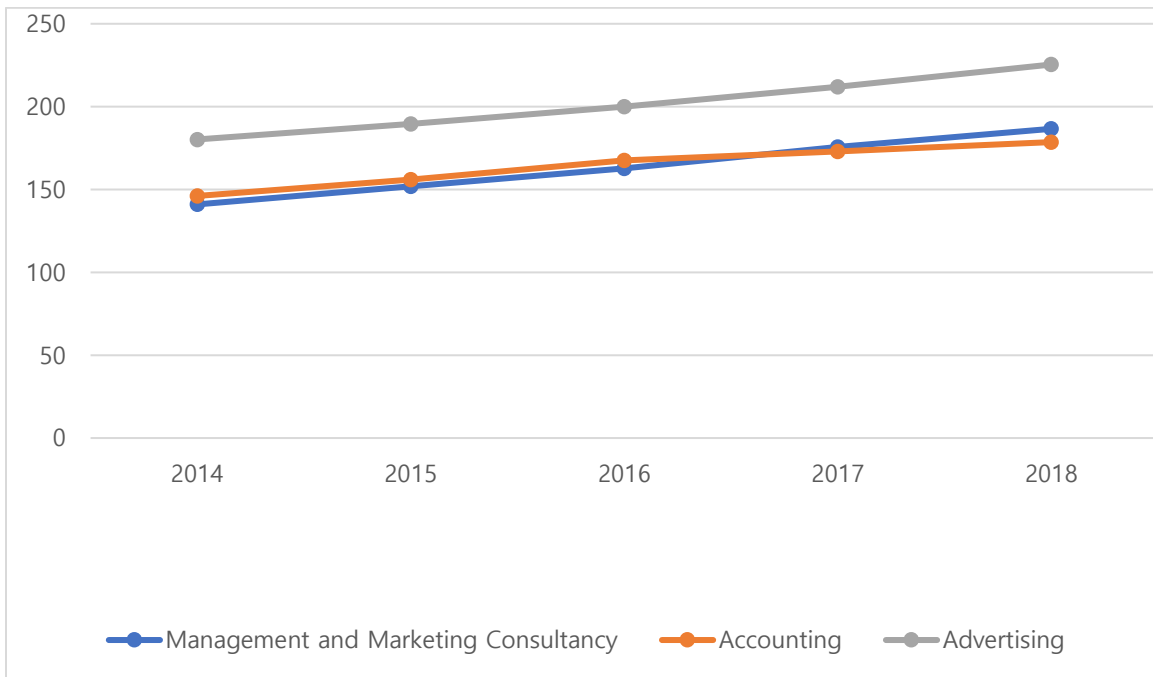
Online business services include management and marketing consultancy, accountancy, advertising, and other office support services. While the vast majority of the services take place in the U.S., there is a rise in the number of new businesses in Mexico and Canada.³² Given Figure 8, the U.S. saw growth in all the sectors. Per Figure 9, in Canada, accounting services take the vast majority of the revenue while all the three major business services have steadily grown. For Mexico, accounting services have recorded average growth rate at 2.1% between 2014 and 2019, reaching \$25 billion for market size value.³³ For management consulting services in Mexico, average growth rate between 2015 and 2020 is 1.3%, with the market size being \$25 billion.³⁴ Figure 10 shows that Mexico has seen steady growth in the industry value of advertising services.

³² Eddie Gonzales, *Global Management Consultants*, IBISWORLD (Dec. 2019).

³³ *Accounting, Auditing & Related Services in Mexico*, IBISWORLD (June 2019), <https://www.ibisworld.com/mx/industry/accounting-auditing-related-services/19/>.

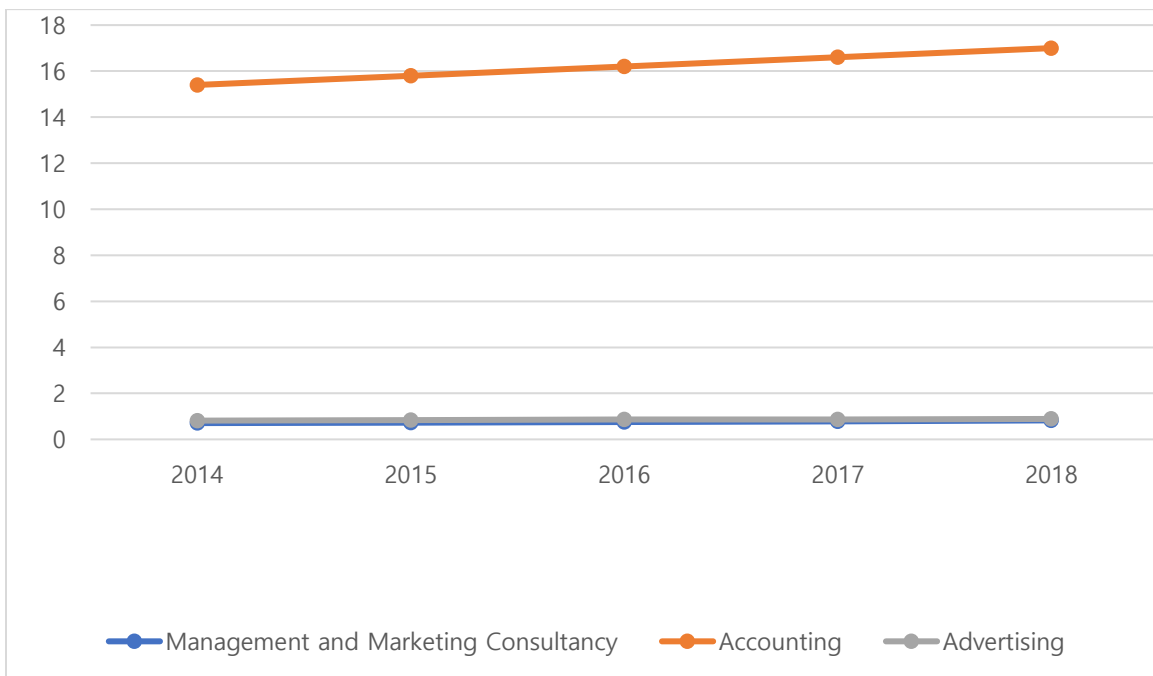
³⁴ *Management Consulting in Mexico*, IBISWORLD, (May 2019), <https://www.ibisworld.com/mx/industry/management-consulting/18/>.

Figure 8: U.S. Business Services Revenue



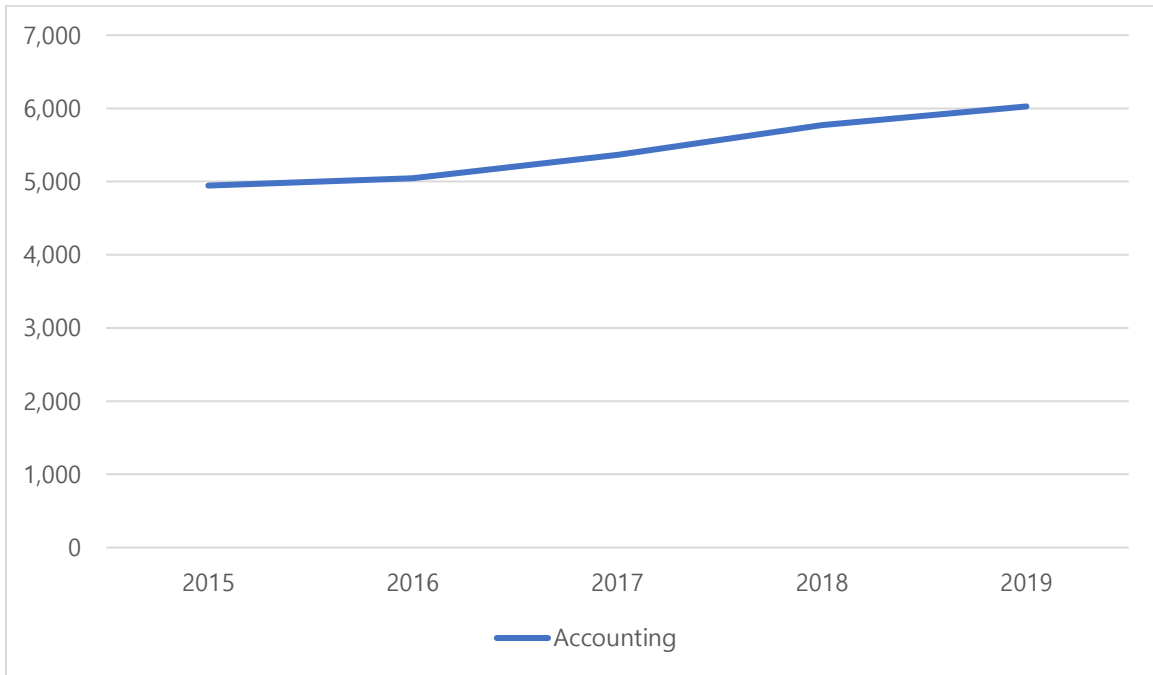
Billion US Dollars
Source: Marketline

Figure 9: Canada Business Services Revenue



Billion US Dollars
Source: Marketline

Figure 10: Mexico Advertising Services Industry Value



Million US Dollar
Source: Marketline

Given Table 2,³⁵ the U.S. and Canada have seen a steady increase in the import and export between them. Given the global trade flows in Canada, U.S. business services take the vast majority of the trade both in the import and export in Canada. For Mexico, the table shows that the import of business services is disproportionately high compared to its export.

Table 2: North America Trade Flows of Business Services

	United States				Canada				Mexico	
	Canada		Mexico		United States		Worldwide		Worldwide	
	Import	Export	Import	Export	Import	Export	Import	Export	Import	Export
2014	2,891	5,709	688	1,007	7,591	8,032	10,633	11,934	109	2
2015	2,926	5,883	688	1,082	7,441	7,588	9,864	11,239	118	2
2016	2,926	6,813	853	1,286	7,754	8,672	10,509	12,424	126	2
2017	3,097	7,755	732	1,522	8,033	9,261	10,875	13,279	133	2

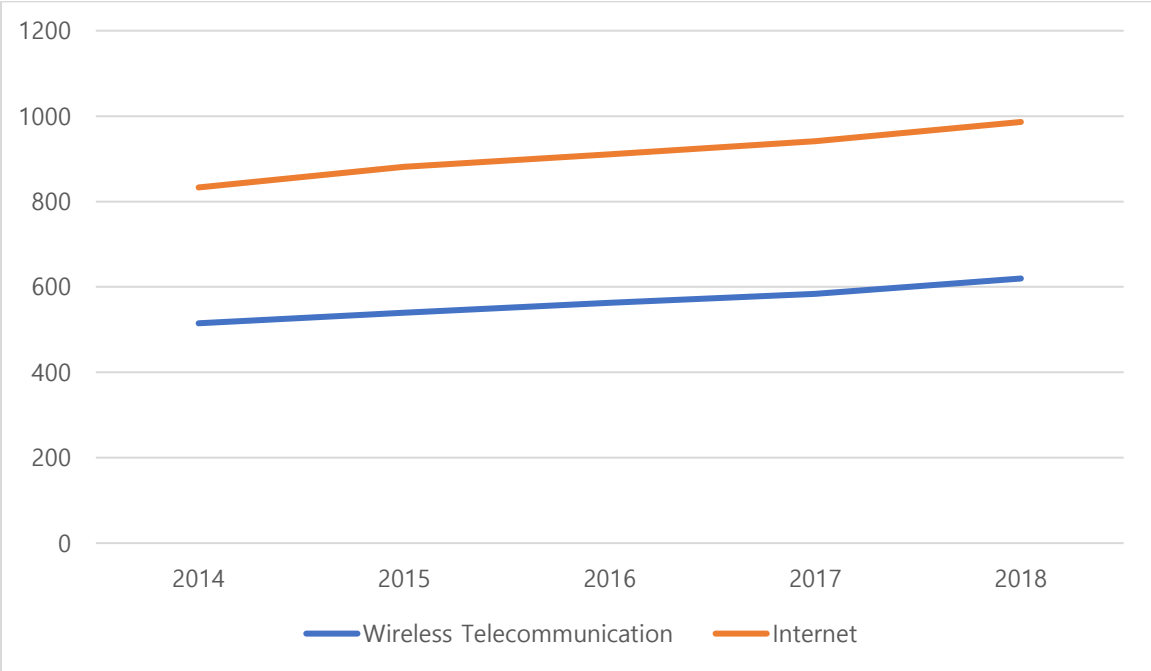
Thousand US Dollars
Source: International Trade Center

c. Telecommunication

³⁵ The data include legal, accounting, management consulting, and public relations services, and advertising, market research, and public opinion polling services.

Telecommunication sector includes wireless or cellular telecommunication service and internet services that provide narrowband and broadband internet connections.³⁶ Given Figure 11, in North America, the number of subscribers to both wireless telecommunication and internet services has steadily increased. According to Figure 12, the vast majority of services are provided by U.S. companies.

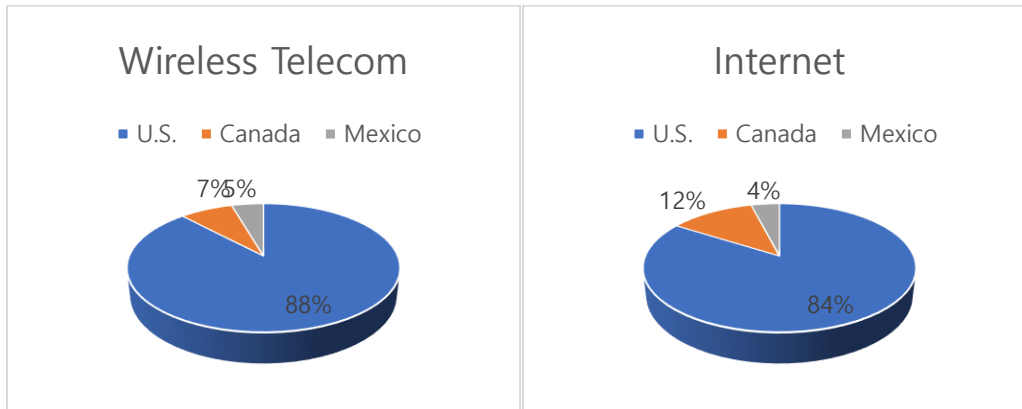
Figure 11: North America Number of Subscribers



Million
Source: Marketline

³⁶ MARKETLINE NORTH AMERICA WIRELESS TELECOMMUNICATION 10 (2018); *see also* MARKETLINE, INTERNET ACCESS 8 (2018).

Figure 12: North America Geography Share of Telecommunication Value



Source: Marketline

Table 3 shows that trade flows of telecommunication services in North America have decreased over time. Overall, the three countries have seen decline in both import and export. Yet, Canada has seen an increase in its global export while the export to the U.S. has decreased.

Table 3: North America Trade Flows of Telecommunication Services

	United States				Canada				Mexico	
	Canada		Mexico		United States		Worldwide		Worldwide	
	Import	Export	Import	Export	Import	Export	Import	Export	Import	Export
2014	348	676	553	328	715	1,142	1,505	1,894	147	183
2015	432	614	536	379	700	865	1,618	1,841	157	159
2016	323	557	360	316	326	940	1,052	1,862	126	99
2017	283	560	355	270	333	977	1,075	1,936	89	53

Thousand US Dollars

Source: International Trade Center

d. IT Services

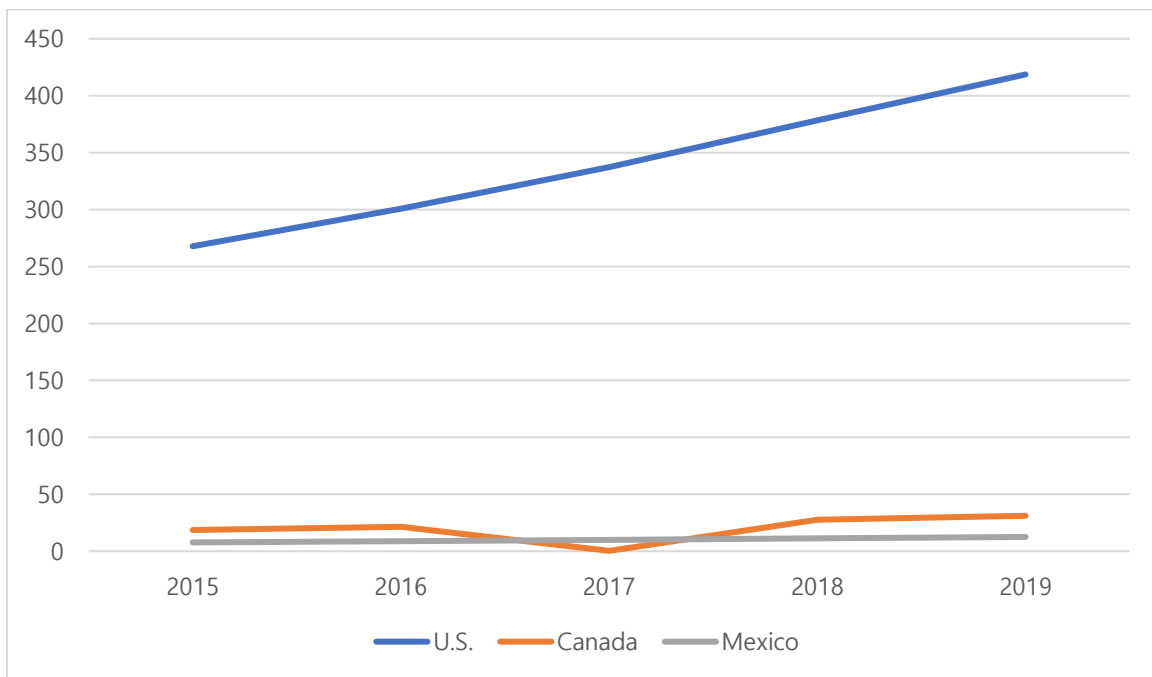
IT services consist of application and infrastructure services.³⁷ Application services

³⁷ MARKETLINE, NORTH AMERICA IT SERVICES 7 (2018).

include application development, application management, and application performance monitoring.³⁸ Infrastructure services include cloud computing, data center and hosting services, IT management, security, and storage.³⁹

Figure 13 shows that from 2014 to 2018 North America has seen steady growth in the industry value of IT services, although the growth rate dropped by a half from 21% in 2014 to 10% in 2018.⁴⁰ Figure 14 shows that the U.S. took more than 90% of the services in the region in 2019 with Canada coming next.

Figure 13: U.S. Industry Value in IT Services



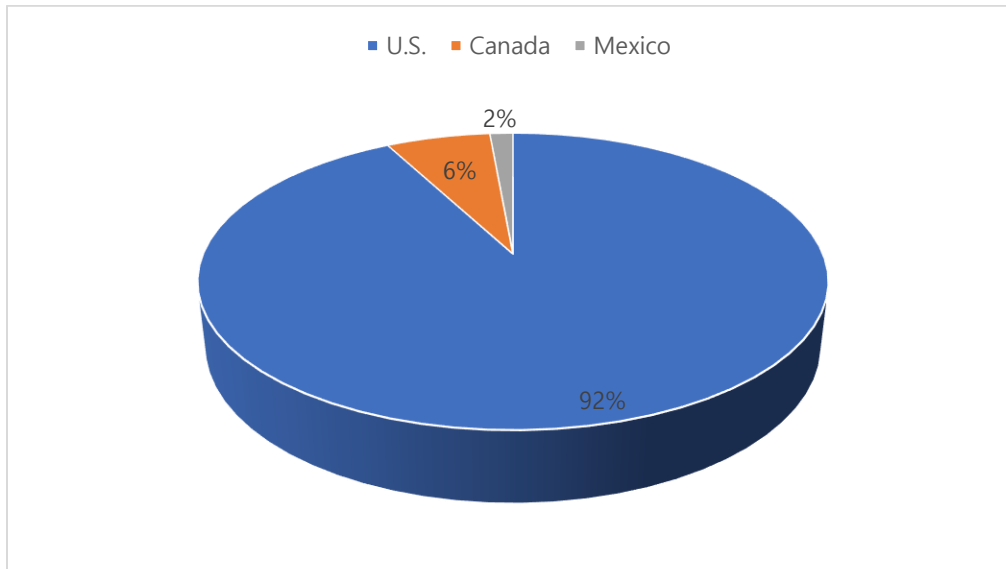
Source: Marketline

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *See MARKETLINE, supra note 32.*

Figure 14: North America Geographical Share in IT Services



Source: Marketline

Table 4 shows different directions in the trade flows for each country. For the U.S., whereas the import from Canada declined, the export to Canada grew. While the value of the trade flows between the U.S. and Mexico is significantly lower than those between the U.S. and Canada, they have grown both in the import and export over time. For Canada, although the import and export vis-à-vis the U.S. took about a half of the total import and export, the trade flows have declined over time. While the global trade flows in Canada have fluctuated, in 2017, the country saw growth in both import and export. Compared to the U.S. and Canada, the trade flows in Mexico remain greatly low.

Table 4: North America Trade Flows of IT Services

	United States				Canada				Mexico	
	Canada		Mexico		United States		Worldwide		Worldwide	
	Import	Export	Import	Export	Import	Export	Import	Export	Import	Export
2014	4,506	1,668	437	449	1,902	4,623	3,197	5,771		
2015	3,607	1,863	452	508	1,466	3,600	2,766	4,851		
2016	3,684	2,243	535	646	1,389	3,654	2,681	5,091	51	7
2017	3,901	2,807	572	921			2,821	5,515	88	27

Thousand US Dollars

Source: International Trade Center

II. TRADE IN TANGIBLE GOODS THROUGH ECOMMERCE

This section covers online retail industry.

1. Challenges and how the USMCA addresses them

Other than varying legal frameworks for online transactions already explained above, the online retail industry using eCommerce should be mindful primarily of two issues.

a. Intermediary liability

Online retail industry relies on marketplace platforms such as Amazon, Alibaba Group, and eBay as well as social media platforms such as Facebook and Twitter.⁴¹ Online retail business owners as well as this group of service providers should be concerned about legal liability arising from the platforms.

The USMCA has limited exemption of these service providers from “liability for harms related to information stored, processed, transmitted, distributed, or made available by the service.”⁴² Note that this general exemption will not apply in Mexico until the date of three years after the agreement enters into force.⁴³

However, the exemption may not apply when content on the platforms implicate intellectual property infringement.⁴⁴ To avoid legal claims by intellectual property owners whose rights have been infringed,⁴⁵ the service providers must keep in mind the following.

First, avoid controlling, initiating, or directing IP infringements.⁴⁶ Thus, they can still operate without fear of infringement claims even if the platforms just do the following with respect to infringing content:

- Transmitting, routing, or providing connections,
- Caching through automated process, or
- Storing, referring, or linking users to infringing material on their platform, as long as they do not receive financial benefit for the infringing activity and quickly remove or disable the access to such material.⁴⁷

⁴¹ UNCTAD, DIGITAL ECONOMY REPORT 2019 40–41 (2019), https://unctad.org/en/PublicationsLibrary/der2019_en.pdf.

⁴² USMCA, art. 19.17.

⁴³ *Id.* annex 19-A.

⁴⁴ *Id.* art. 19.17(4).

⁴⁵ *Id.* art. 20.88 (1). IP owners may also have legal claim to obtain expeditiously from the service providers information in their possession identifying the alleged infringer. *Id.* art. 20.88(8).

⁴⁶ *Id.* art. 20.88 (1), (3), (6). Removing or disability such access should not be interpreted to impose any duty to actively monitor their service and seek facts indicating infringements. *Id.* art. 20.88(7).

⁴⁷ *Id.* art. 20.88 (1)(b).

Second, adopt general policies that protect IP rights. This includes a policy that regulates repeat infringers and other technical measures that protect and identify copyrighted material.⁴⁸

Third, check laws or regulations of a nation where they wish to operate. Despite the two precautions above, the service providers may be still responsible for IP infringements on their platforms. Such scenarios may include when there is:

- Legal liability of platforms created primarily for enabling infringement,
- Pre-established monetary damages for the failure to forward notices of infringement,
- Legal requirement to remove within a certain time any reproductions of infringing material and notify the public of the infringement,
- Legal requirement to remove or disable access to material upon being aware of a court's decision on the infringement, or
- Exceptions to the limited exemption in the USMCA.⁴⁹

b. Delivery services

Online retail relies on efficient delivery services. Generally, the USMCA prohibits policy that discriminates against foreign delivery services. For example, under the agreement, a country cannot:

- Subsidize domestic services not under postal monopoly;⁵⁰
- Require a universal-basis delivery service in exchange for an authorization or license to operate in its territory; ⁵¹
- Impose fees or charges to fund a universal service on a foreign supplier not providing a universal service;⁵² or
- Require a supplier not under postal monopoly to contract, or prevent such a supplier from contracting, with another supplier to supplement a segment of the delivery service.⁵³

2. Industry Trends - Online retail

Online retail relies on eCommerce, which enables sales made from the website of a national store in another country.⁵⁴ There are several factors that facilitate online retail.

⁴⁸ *Id.* art. 20.88(6).

⁴⁹ *Id.* annex 20-B-2.

⁵⁰ *Id.* annex 15-A-5(1)

⁵¹ *Id.* annex 15-A-7.

⁵² *Id.* annex 15-A-7.

⁵³ *Id.* annex 15-A-9.

⁵⁴ ALEXANDRA ROTAR, STATISTA, ECOMMERCE REPORT 2020 17 (2020).

Figure 15: Factors that Facilitate Online Retail⁵⁵



- **Mobile commerce:** The advance of mobile wallets and mobile-only platforms increases online purchases.⁵⁶
- **Online marketplaces:** eBay and Amazon offer various infrastructure services to retailers and shoppers, making it easier for online purchases to take place.⁵⁷
- **Simplification of checkout and payment methods:** Shoppers can purchase items with minimal number of clicks.⁵⁸ The methods often feature social logins with Facebook profiles or PayPal accounts.
- **Innovative delivery services:** Customized delivery times, drone delivery services, and monitoring delivery status increase convenience.⁵⁹

⁵⁵ *Id.* at 12-13.

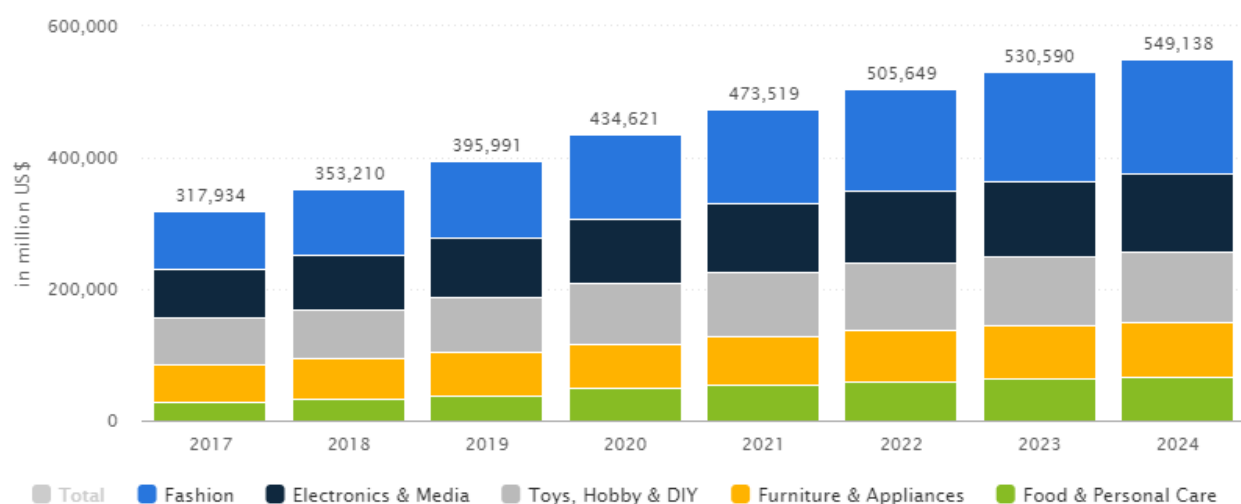
⁵⁶ *Id.* at 12.

⁵⁷ *Id.*

⁵⁸ *Id.* at 13.

⁵⁹ *Id.*

Figure 16: North America eCommerce Revenue Forecast⁶⁰



Source: Statista (forecast adjusted for expected impact of Covid-19)

All the online retail industries represented in Figure 17 are expected to increase in terms of revenue in North America despite Covid-19 pandemic.

III. RECOMMENDATIONS

Based on the USMCA provisions and existing national laws in each country, here are recommendations that can prepare business owners of digital services and online retail for cross-border trade in the region.

1. Implement data transfer policy in your company

Although there is no data localization requirement under the countries' national laws, and the USMCA bans it, the countries may still impose other requirements on data transfer since the USMCA allows them for a legitimate public policy concern.

- **Mexico:** Requires consent of the data subjects and safeguards ensuring that third parties also protect data.⁶¹
- **Canada:** Requires notice of data transfer to data subjects and safeguards ensuring

⁶⁰ eCommerce – worldwide, STATISTA, <https://www.statista.com/outlook/243/100/ecommerce/worldwide> (last visited July 02, 2020)

⁶¹ See Ley General de Protección de Datos Personales en posesión de sujetos obligados, art. 22, 65–71, Diario Oficial de la Federación, 26-1- 2017 (Mex.); Ley Federal de Protección de Datos Personales en posesión de los particulares (LFPDPP), art. 8, 36, 37, 5-7- 2010 (Mex.).

that third parties will also provide a comparable level of protection.⁶²

- **U.S.:** Imposes legal liability for misuse of data and sector-specific restrictions for financial services.⁶³

Check out more [specific requirements](#) under national laws.

2. Distinguish your business in cross-border trade with technology and trade secrets

The USMCA strengthens national policy of the countries that protects ownership, license, and confidentiality of trade secrets.⁶⁴ Since the USMCA bans disclosure or transfer of trade secrets, business owners may venture into foreign markets with distinguishable technology or business information.

3. Comply with national data security requirements

The USMCA does not seek to override existing national laws for cybersecurity and consumer protection. Although it remains much to be seen how the countries implement APEC CBPR, business owners must ensure that their policy is aligned with national laws.⁶⁵

- **Mexico:** Business owners must have physical and technical security measures to protect personal data. Additionally, they must designate a personal data officer.⁶⁶
- **Canada:** Canada imposes similar requirements except that the laws do not mandate specific technical requirements. The laws require appointment of a personal data officer within organizations.⁶⁷
- **U.S.:** Similarly, businesses must have technical, physical, and organizational measures to protect sensitive personal information. A few states such as Massachusetts impose more specific security requirements. Sector-specific requirements exist for financial services. Except health-related entities, there is no requirement to appoint a personal data officer.⁶⁸

Check out more [specific requirements](#) under national laws.

⁶² See Personal Information Protection and Electronic Documents Act, S.C. 2000, c 5 (Can.).

⁶³ See 15 U.S.C. §§ 41–58 (2018).

⁶⁴ See *Intellectual Property and Technology*, DLA PIPER, <https://www.dlapiperintelligence.com/goingglobal/intellectual-property/index.html?t=trade-secrets&s=ownership-licenses> (last visited, June 25, 2020).

⁶⁵ See *generally Data Protection Laws of the World*, DLA PIPER (Jan. 28, 2019), <https://www.dlapiperdataprotection.com/index.html?t=world-map&c=MX&c2=CA>.

⁶⁶ See *id.*

⁶⁷ See *id.*

⁶⁸ See *id.*

4. Save business costs with digital payments

Digital payments make it easier to sell or purchase goods or services online. The USMCA ensures to minimize risks in electronic transactions. This just strengthens existing national laws of the countries that have already recognized validity of electronic signatures.⁶⁹ While digital payments system incurs payment processing costs such as POS terminals, card acceptance fees, cybersecurity fraud prevention costs, and chargebacks, a survey reveals that on average they cost 50% less than non-digital payments.⁷⁰ This gives more reason why business owners are encouraged to use digital payments in cross-border trade.

5. Utilize online marketplaces and other platforms for sales and marketing

The USMCA seeks to minimize legal risks of online platform providers with some exceptions. The exemption in the USMCA tends to be broader than the ones under national laws, although there are some exceptions that the USMCA allows under national laws. This means that business owners are encouraged to use the platforms.

- **Mexico:** Mexico did not particularly create intermediaries' liability or exemption. Thus, the USMCA will give legal certainty to intermediaries. Yet, note that the exemption will apply for three years after the agreement enters into force.⁷¹
- **Canada:** While intermediaries are generally exempt already, they may be liable if the primary function is to enable copyright infringement or when they authorize infringing acts carried out by their users. A copyright holder can report an infringement by sending a notice. Once an intermediary receives the notice, it must promptly forward it to the accused subscriber. Intermediaries are also required to maintain a record of the user who owns the electronic location where copyright infringement occurred.⁷²
- **U.S.:** Intermediaries may be liable for criminal activities on their platforms.⁷³ For IP infringement, the exemption is available only to an intermediary that does not receive a financial benefit for the infringing activity. Moreover, they must implement and

⁶⁹ See Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 (2018); Uniform Electronic Transactions Act of 1999; Ley de firma electronica avanzada, art 4, 7, 8, Diario Oficial de la Federación [DOF], 11-1-2012 (Mex.); Código de Comercio [CCOM], art. 96–99, 13-12-1889, ultimas reformas DOF 28-3-2018 (Mex.); Electronic Commerce Act S.O. 2000 c 17 (Can.); Secure Electronic Signature Regulations, SOR/2005-30) (Can.).

⁷⁰ *Accepting Digital Payments Costs Less*, Authorize.Net (Sep. 13, 2018), authorize.net/resources/blog/accepting-digital-payments-cheaper.html.

⁷¹ See Ley Federal del Derecho de Autor (LFDA), Diario Oficial de la Federación [DOF] 10-6-1996, últimas reformas DOF 10-6-2013 (Mex.).

⁷² See Copyright Modernization Act, S.C. 2012, c 20, § 31.1 (Can.).

⁷³ See Allow States and Victims to Fight Online Sex Trafficking Act of 2017, H.R. 1865, 105th Cong. (2017-2018).

publicize both notice and takedown systems that remove alleged infringing content and repeating infringers.⁷⁴

Check out more [specific requirements](#) under national laws.

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⁷⁴ See Digital Millennium Copyright Act 1998, 17 U.S.C. §512 (2018); Communications Decency Act 1996, 47 U.S.C. § 230(c) (2018).