

U.S. CHAMBER ANALYSIS HIGHLIGHTS IMPORTANCE OF MODERNIZING NAFTA'S IP CHAPTER

Intellectual property (IP) protections should reflect today's global economy

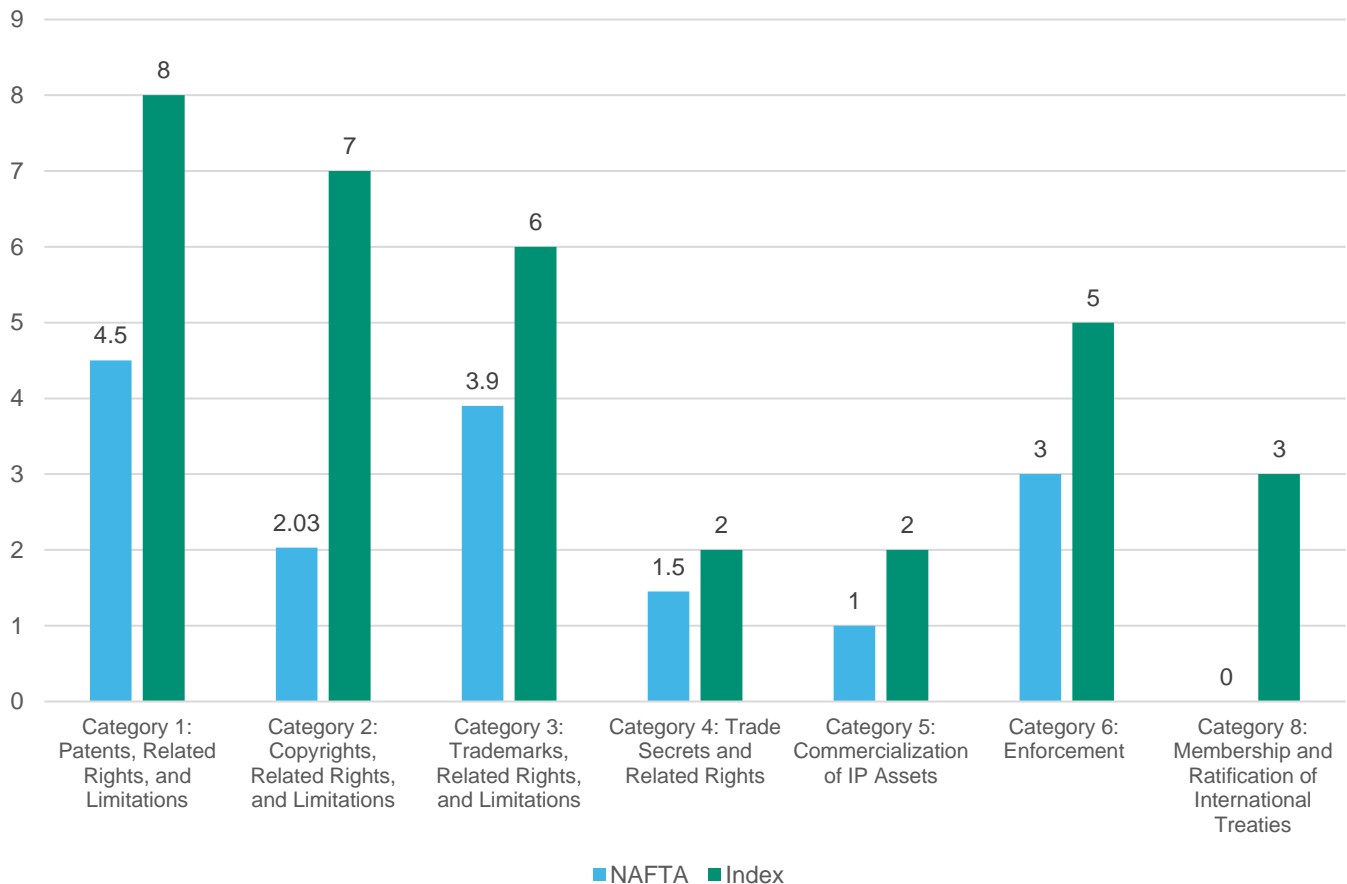


NAFTA 1.0 FAILS TO REACH 50% OF U.S. CHAMBER'S INTERNATIONAL IP INDEX SCORE

Negotiations to modernize the North American Free Trade Agreement (NAFTA) offer an opportunity to harmonize and strengthen IP standards across North America. A more effective IP chapter in an updated NAFTA agreement will support the growth of innovative and creative industries, create jobs, and stimulate economic competitiveness across the continent.

While the IP standards included in the existing NAFTA agreement were considered comprehensive when the agreement was originally negotiated, the rapid evolution of biomedical and technological innovation and the growth of the digital economy require a modernized 21st century IP framework to adequately protect the high-risk, high-capital investments of innovators and creators across North America.

The U.S. Chamber of Commerce's Global Innovation Policy Center (GIPC) commissioned research to benchmark the standards of the initial NAFTA agreement against those included in the U.S. Chamber's 2018 International IP Index (Index). The research reveals that the initial NAFTA agreement no longer offers sufficient IP protections for 21st century innovators and creators, scoring only 15.93 out of a possible 33 points—only 48%.



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The research specifically identifies the following gaps in the existing NAFTA. For further details on each indicator, see the appendix of the study.

Category 1: Patents, Related Rights, and Limitations

- Lack of requirement for a pharmaceutical-related patent enforcement and resolution mechanism
- Patent term restoration undefined
- No requirement for membership in Patent Prosecution Highways (PPHs)
- No reference to the design of patent opposition frameworks

Category 2: Copyrights, Related Rights, and Limitations

- Insufficient term of protection for copyrights
- No provision of mechanisms for expeditious injunctive-style relief and disabling of infringing content online
- No reference to the online enforcement of copyright including web hosting, streaming, and linking
- No reference to frameworks that promote cooperative action against online piracy
- No provision on Digital Rights Management legislation
- No provision on Internet Service Provider (ISP) liability
- No requirement of policies/official guidelines requiring that any proprietary software used on government ICT systems should be licensed software

Category 3: Trademarks, Related Rights, and Limitations

- No requirement for cooperative private action against online sale of counterfeit goods
- Insufficient term of protection for industrial designs

Category 4: Trade Secrets and Related Rights

- Lack of criminal procedures and penalties imposed on unauthorized disclosure, acquisition, or use of a trade secret in a manner contrary to honest commercial purpose
- Insufficient term of protection for regulatory data protection (RDP)

Category 6: Enforcement

- Lack of provision requiring ex officio authority for customs officials and authority to detain goods in transit that are suspected of infringing IP rights
- No requirement for transparency and public reporting by customs authorities of trade-related IP infringement

Category 8: Membership and Ratification of International Treaties

- No requirement to sign and ratify the WIPO Internet Treaties, the Singapore Treaty on the Law of Trademarks, and the Patent Law Treaty

In 2017, the U.S. Chamber analyzed the standards included in the original Trans-Pacific Partnership (TPP) agreement against those included in the Index. While the TPP would have significantly strengthened the IP protection in a number of the signatory countries, the IP chapter in the TPP-12 agreement only achieved a 23.79 Index score. By contrast, the U.S. scores 31.35, while Canada scores 21.08 and Mexico scores 15.64.

To adequately protect North America's innovators and creators and encourage investment in the next generation of technology, negotiators must utilize the NAFTA modernization to go beyond the standards included in the original TPP agreement. Strengthening IP protection through NAFTA will re-establish North America's position of global leadership and propel the region to become one of the most competitive trade blocs in the world.