

NAFTA renegotiation signals little change for HE so far

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The United States-Mexico-Canada Agreement appears to maintain the status quo for now where higher education is concerned, but things could change with the inauguration of Mexico's new left-wing president, Andrés Manuel López Obrador, and US President Donald Trump's approach to migration.

In his United States presidential campaign in 2016, Donald Trump announced his intention to withdraw from the Trans-Pacific Partnership (TPP) and to potentially withdraw from the North American Free Trade Agreement (NAFTA), a trilateral agreement between Canada, Mexico and the US which has been in effect since 1994.

Trump kept his promise to end the US' participation in the TPP and in January 2017 signed an executive order to withdraw from the agreement.

However, in the commercial interests of the major economic industries of the US, he agreed to begin the renegotiation of NAFTA. Talks took place between August 2017 and September 2018. The new agreement, which is to be revised and ratified by the three countries, includes important changes regarding rules of origin, wages, the review or renewal mechanisms, agriculture and e-commerce.

The chapters related to higher education systems (international trade of education services and migration rules for professionals) remain unchanged. Therefore, if the new United States-Mexico-Canada Agreement (USMCA) is ratified, we can expect the impact that NAFTA has had on higher education and the legal migration of professionals, mainly from Mexico, to stay in line with current trends.

Migration of professionals under NAFTA

In chapters 12 and 16, NAFTA established rules for regulating foreign investment in the education sector of signatory countries and commerce in professional services under the "temporary movement of natural persons" mode of supply. The agreement granted most favoured nation status to providers of professional services and favoured the gradual elimination of quantitative restrictions in each country.

In addition to these principles, the treaty developed a way of regulating professional services, described in Annex 1210.5 of NAFTA, and included a list of 63 professions that are subject to it.

The American government established a new visa category, under the treaty, for the temporary immigration of Mexican and Canadian professionals, which can be employed upon request of public or private sector enterprises. These visas are known as Trade NAFTA (TN) visas.

Both common and country specific regulations were established for the TN visas of Mexico and Canada. One of the main differences for Mexico is that the American government set a maximum quota of 5,000 visas per year during the first decade of the treaty (1994-2004), with the quota being eliminated afterwards.

A second difference is that Mexican professionals had to apply for and receive their visa in US consulates located in Mexico. Canada didn't face such limitations. In both cases, TN visas have a maximum period of validity of three years. They may be renewed continuously, but this must be done every three years.

From 1997 to 2017 a total of 102,461 TN visas were granted to Mexicans. There has been a clear upward trend in recent years: more than half of these visas (53.5%) were authorised in the period from 2014 to 2017. The current number of TN visas for Mexicans substantially surpasses other visas authorised for highly qualified jobs.

According to 2017 data, Mexican professionals were granted 15,993 TN visas, 2,322 H-1B visas (for specialty occupations that require high skills), 8,945 J-1 visas (for academic exchange) and 571 O-1 visas (for individuals with extraordinary ability or achievements). According to estimations, between 35,000 and 40,000 Mexican professionals work in the US under TN status.

NAFTA also established general rules for authorising the migration of independent professionals. The specific requirements are agreed by the NAFTA Free Trade Commission, a body consisting of the trade ministers of Mexico, the US and Canada.

Under this framework, the parties agreed that in order to have mutual recognition of professional degrees and conferral of licences for professional practice, professional guilds in the three countries should generate agreements to have compatible

requirements with regard to professional practices and to involve competent education and labour authorities to give their institutional support to the normative process of evaluation, accreditation and certification.

In the trilateral meetings in which professional bodies, government and education authorities participated, the lack of mechanisms for the accreditation of university programmes in Mexico was identified as the main obstacle to free trade of independent professions. In 2000 Mexico began a process of accreditation that was compatible with the US and Canada.

However, despite the efforts of the different professional guilds of Mexico with regard to the recognition of diplomas and the authorisation of professional practice, progress has been minimal. Only the colleges of architects, engineers and accountancy have been able to subscribe and register mutual recognition agreements endorsed by the authorities of the three countries of NAFTA.

Foreign investment in the higher education market

NAFTA considered the option of facilitating the international trade of education services and Mexico established two formal limitations to it. First, any foreign investor should comply with the authorisation rules that the governmental authorities had set for the operation of private investors in the education sector.

Second, foreign investment could not be higher than 49% of its Mexican counterpart, except if the Mexican authority in this matter, the National Commission of Foreign Investment, agreed it.

After NAFTA some foreign investors have shown an interest in private education in Mexico. The main investment case is that of the group Laureate International Universities. In 2000 the Laureate group, back then known as Sylvan Learning Systems, acquired 80% of Universidad del Valle de México (UVM). Additionally, in 2008, Laureate took control of Universidad Tecnológica de México (UNITEC).

Currently the group UVM-UNITEC has more than 150,000 students on more than 40 campuses in the main cities of the country, representing approximately 15% of the total enrolment of private universities in Mexico and the biggest concentration of private enrolment in the country.

On a lower scale, other American investors have a presence in the private higher education system in Mexico. Vanta Education group, formerly Apollo Global, acquired most of the [property] of the Universidad Latina in 2008. Universidad Latina has approximately 40,000 students distributed on campuses and in schools in several cities in Mexico.

Another mode of foreign investment is represented by the Arkansas State University, which opened a campus in 2017 in the city of Queretaro with a capacity of approximately 5,000 students.

Outlook

In 2018, Andrés Manuel López Obrador, a leftist politician, won the presidential elections in Mexico. He will take office on 1 December and even though he has not specified a national policy regarding foreign investment, he has a positive attitude towards the trade relationship with the US, leading optimists to suppose that the trade openness achieved under NAFTA and renewed through USMCA will be maintained on the same terms.

However, a more rigorous strategy regarding the authorisation of foreign suppliers of higher education services cannot be ruled out.

Likewise, regardless of Trump celebrating the trilateral trade agreement, the application of more rigorous requirements to the current visa scheme for Mexico's professional temporary workers cannot be ruled out either, particularly in light of Trump's view about Mexican migration to the US.

These policies, regarding foreign suppliers in Mexico and professional migration to the US, might be subject to change in the coming years. Hence we must wait to know if the new treaty changes with them or it remains untouched.

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