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Labour Mobility and Trade Agreements: Canadian vs. American Approaches from NAFTA to TPP

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Labour Mobility and Trade Agreements:

Canadian vs. American Approaches from NAFTA to TPP

Carleton UNIVERSITY

Canada's Capital University

High-skilled temporary foreign workers

General Agreement on Trade in Services Mode 4

- Business visitors
- Intra-corporate transferees (ICTs)
  - Senior management and specialized knowledge
  - Minimum one year employed with parent firm

- Investors
- Professionals
  - Normally bachelor’s degree or higher

Canada's Temporary Entry Trade Provisions

	NAFTA	GATS	Chile	Costa Rica	Peru	Colombia	Panama	Honduras	Korea	EU
	1994	1995	1997	2002	2009	2011	2013	2014	2015	2016
Business Visitors	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Investors	✓	✓	✓		✓	✓	✓		✓	✓
ICTs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
List of Professionals	Moderate	Limited	Broad	Limited	Broad	Broad	Limited	✗	Broad	Broad
Spouse Family	✗	✗	✗	✓	✓	✓	✗	✓	✗	✓

Total Canadian FTAs: 13 with 44 countries

Temporary Entry Provisions with 37 countries

Excluded: Ukraine, Israel, Jordan, European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland)

American TPP Public Relations Materials

"While the other 11 TPP Parties have agreed** upon country-specific reciprocal commitments on access for each other's business persons, **the United States is not undertaking any commitments in this area**. Nor will any TPP provision require changes to U.S. immigration law, regulations, policy, or practice, as our system already operates in a manner consistent with the temporary entry chapter. In addition, **TPP will explicitly affirm the ability of TPP Parties to regulate the entry of foreign nationals into their territory"

What can we learn from TPP moving forward?

1. **Should the TPP-11 now improve the temporary entry chapter?**
2. **Can Canada expect to work with the US to modernize temporary entry in NAFTA?**
3. **What are the implications of neighbours and friends following such divergent paths on temporary entry?**

Question 1: Should the TPP-11 improve the temporary entry chapter?

Answer: No.

Ambitious	Moderate	Minimal
Australia	Brunei	Singapore
Canada	Japan	New Zealand
Chile	Malaysia	
Mexico		
Peru		
Vietnam		

2. Can Canada expect to work with the US to modernize temporary entry in NAFTA?

Answer: Worth a try, but it's a long shot

US Temporary Entry Commitments in Trade Agreements

	NAFTA	GATS	Jordan	Chile	Singapore
	1994	1995	1999	2004	2004
Business Visitors	✓	✓	✓	✓	✓
Investors	✓	✗	✓	✓	✓
ICTs	✓	✓	✓	✓	✓
List of Professionals	✓	✓	Short	Short	Short
Cap	5,500 Mexico	65,000	✗	1,400	5,400
Spouse/Family	✗	✗	✗	✗	✗

Temporary Entry Provisions with 5 + 1

Excluded: Bahrain, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Korea, Morocco, Nicaragua, Oman, Panama, Peru

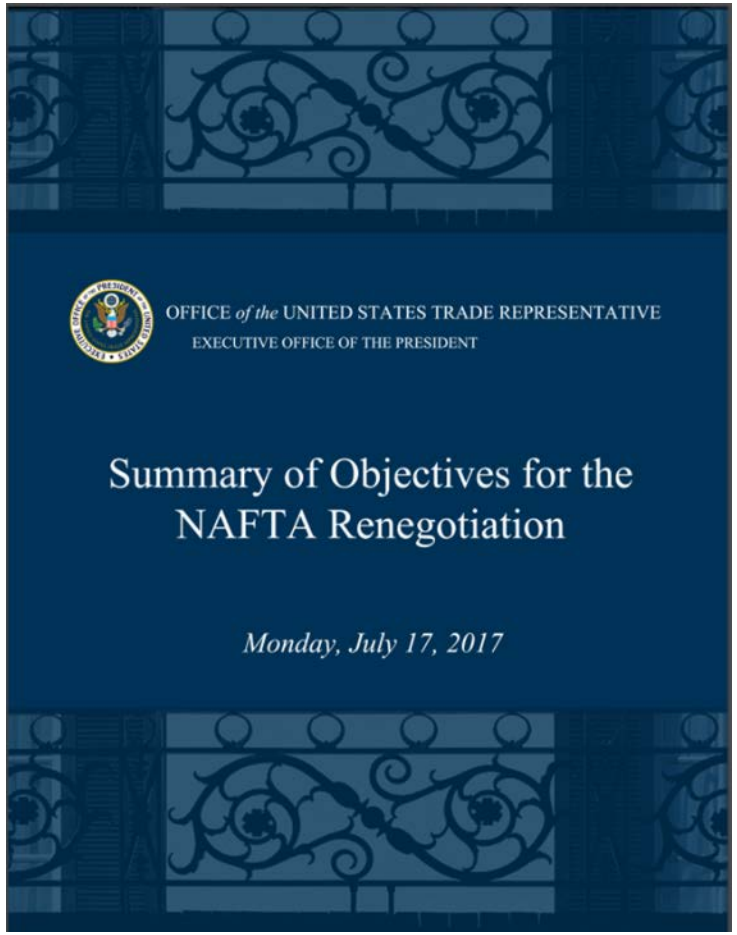
US FTAs after 2004 explicit in exclusion of TE

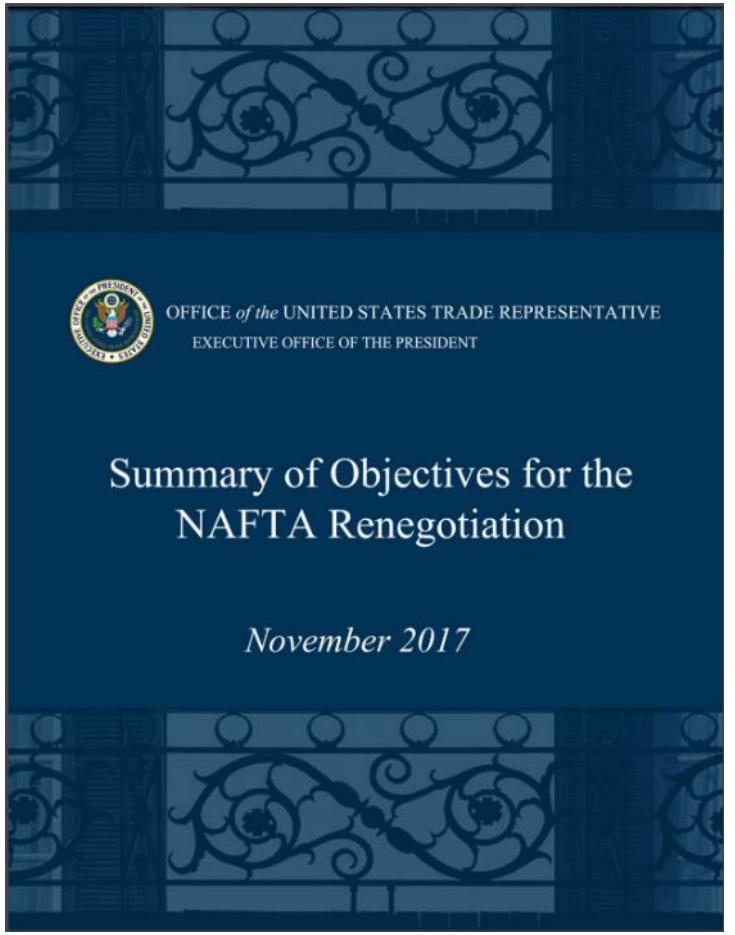
KORUS Services Chapter 12.1:

7. “Nothing in this Chapter or any other provision of this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, including admission or conditions of admission for temporary entry”

NAFTA 2.0? It's The Economy, Stupid!

SOVEREIGNTY





US temporary entry visas 1997-2015

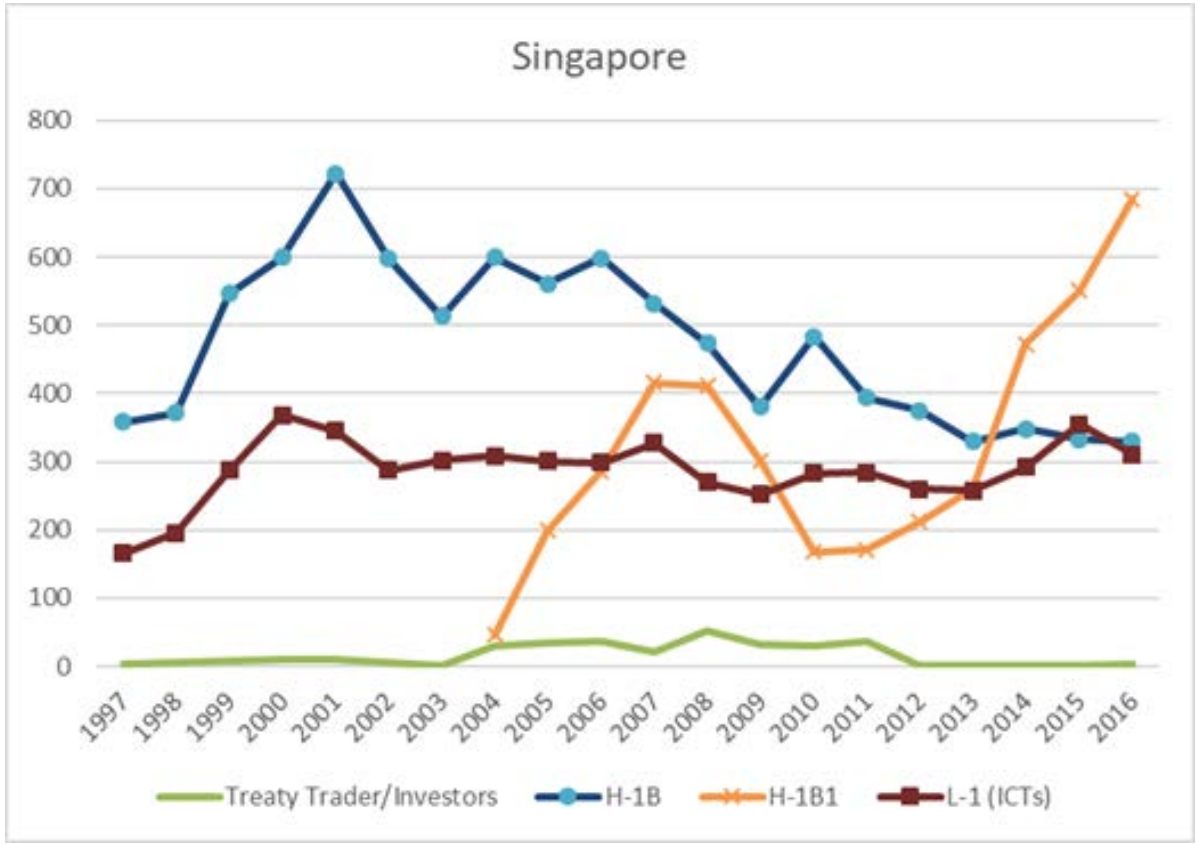
FTA specific categories

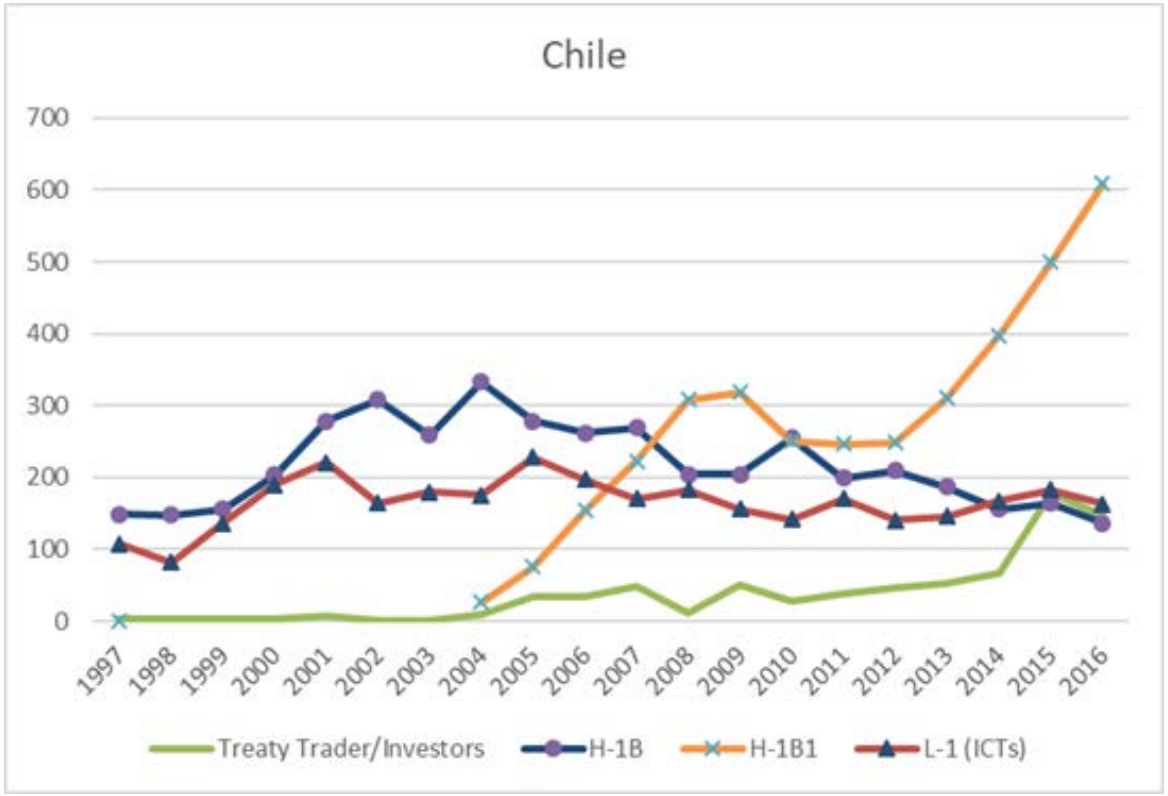
Country	In force	Visa Categories
Mexico	1994	TN
Canada	1994	Excluded
Singapore	2004	H-1B1
Chile	2004	H-1B1
Australia	2005	E-3
Spousal visas excluded for all countries		

Other trade and high-skill visas

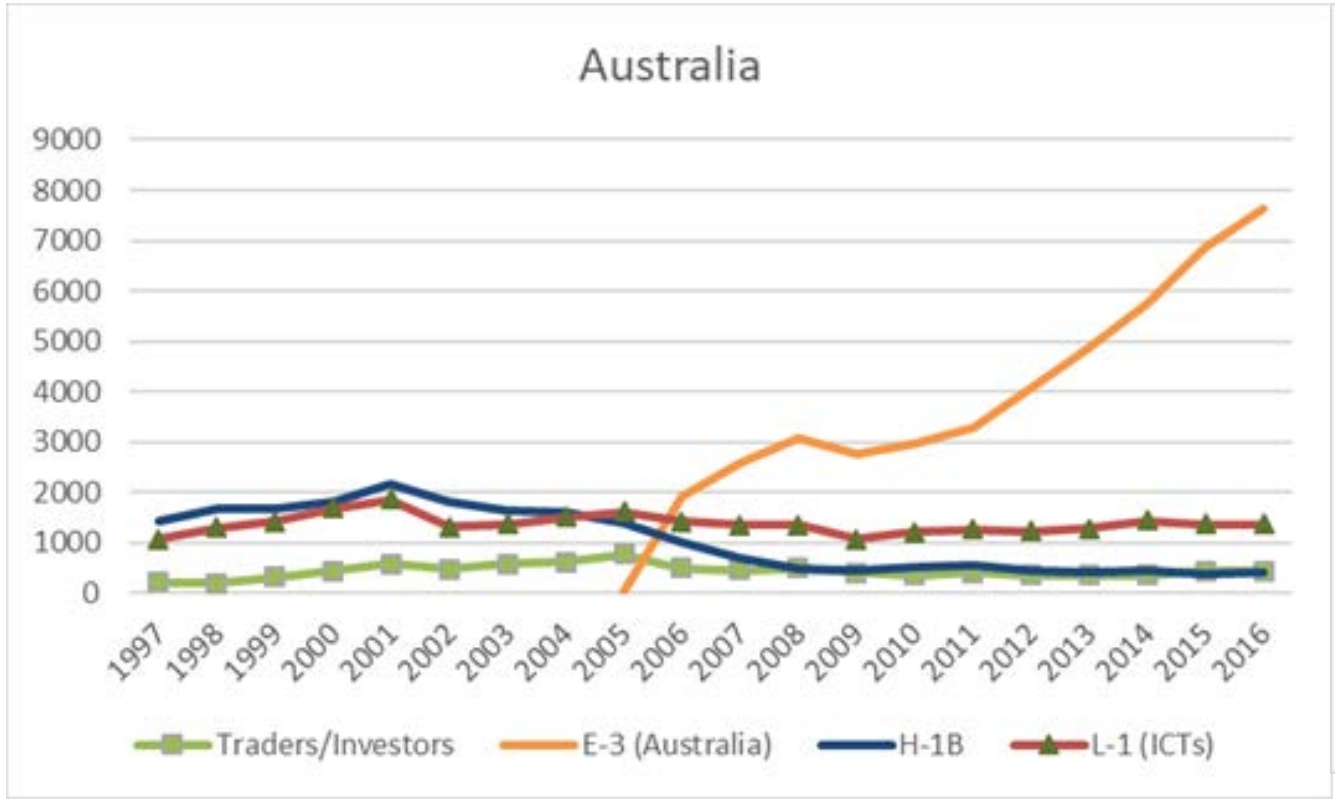
Visa Category	Criteria
L-1	Intra-corporate transferees
E1 and E2	Treaty traders and investors
H-1B	High-skilled professional

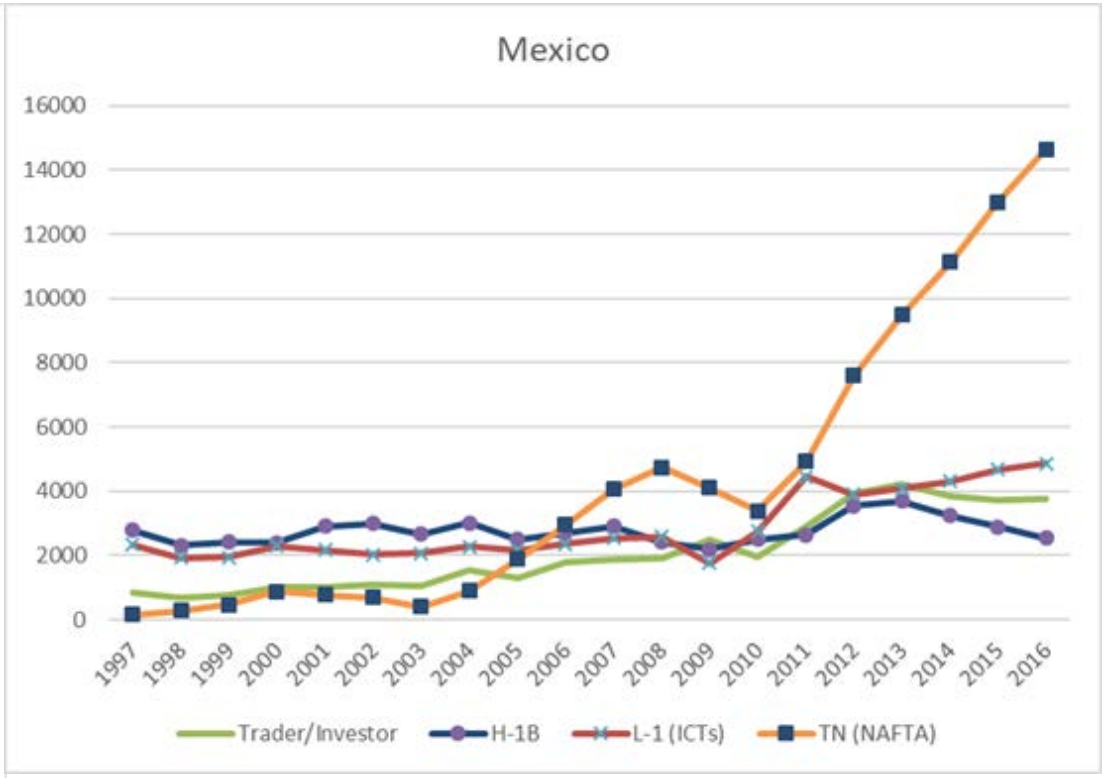
Singapore and Chile





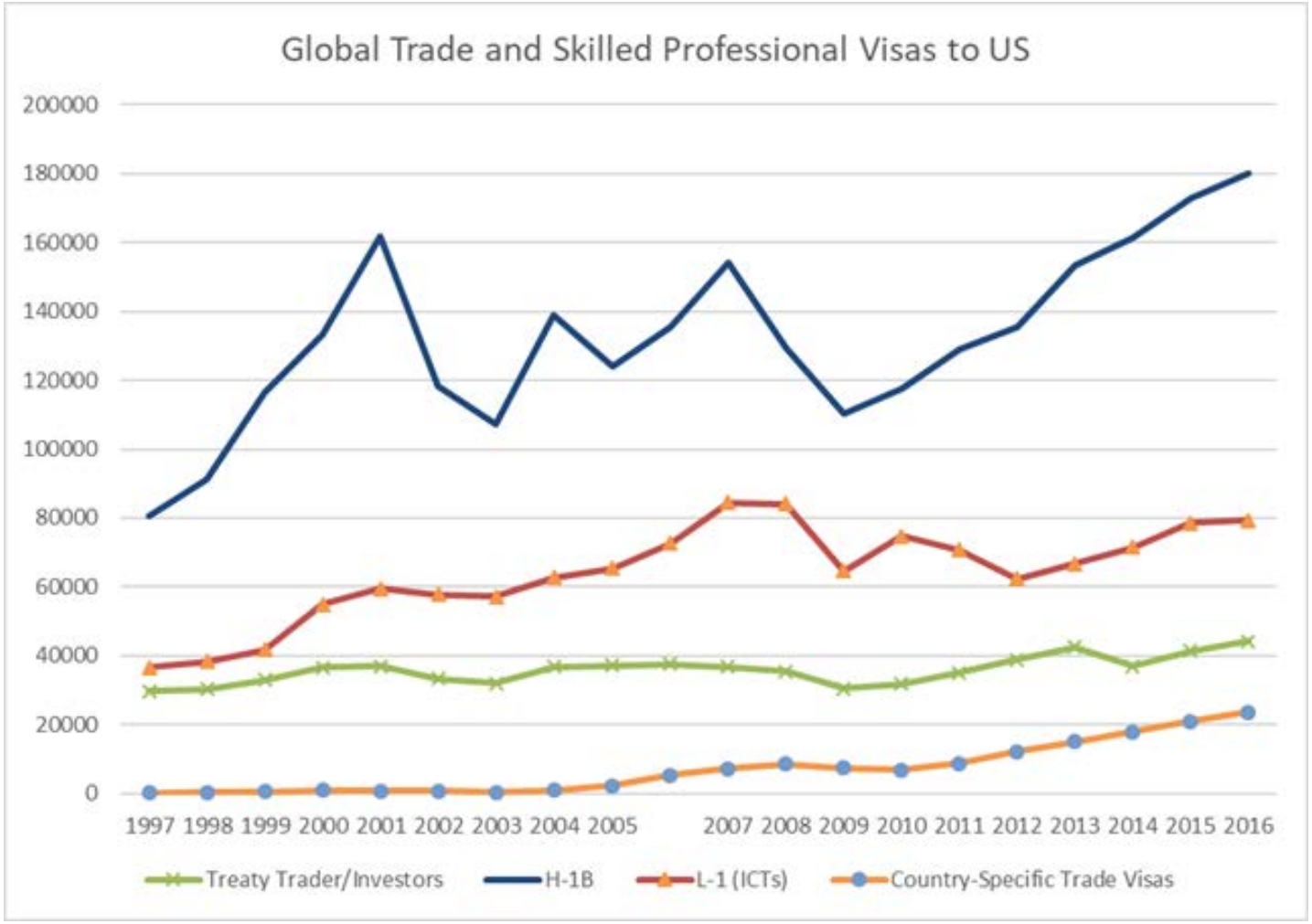
Australia and Mexico





Note: Differences in scale

US trade and high-skilled visas issued globally



3. What are the implications for Canada-US of such divergent policies?

Answer: Uncertain and ongoing

OVERHAULING THE TEMPORARY FOREIGN WORKER PROGRAM

#canadiansfirst

LIMITING ACCESS
CANADIAN WORKERS COME 1st

- New Labour Market Impact Assessment
- Cap on Low-Wage TFWs per Work Site
- Reduced duration of Work Permits

BETTER LABOUR MARKET INFORMATION

- New Quarterly Job Vacancy Survey
- New Annual National Wage Survey
- Enhanced Job Matching Service

STRONGER ENFORCEMENT & TOUGHER PENALTIES

- More Investigations & Detection of Abuse
- Blacklist, Suspension & Revocation
- Fines for Employers who Break the Rules

New Application Fee : $1,000

Government of Canada / Gouvernement du Canada

Canada