

## U.S.-Mexico-Canada Agreement Announced

October 9, 2018

### Introduction

On Sunday, September 30, President Trump reached an agreement with the governments of Canada and Mexico to revise and modernize the North American Free Trade Agreement (NAFTA). Publishing the text of the new agreement just hours before the deadline under Trade Promotion Authority (TPA), the new agreement, known as the U.S.-Mexico-Canada Agreement (USMCA), generally will keep the same framework as the existing NAFTA while making important changes for certain sectors to reflect the priorities of President Trump as well as new developments since the pact was first made nearly 25 years ago.

The full text of the agreement can be found [here](#). Some of the most significant changes include:

- Modernizing NAFTA to take account of the digital economy that arose in the years since NAFTA entered into force in 1994, and providing 10 years of data protection for biologic medicines;
- Changing the “rules of origin” for automobiles to require that 75 percent of the content of an automobile must originate in North America, up from 62.5 percent, and that 40-45 percent of auto content must be made by workers earning at least \$16 per hour;
- Phasing out the “investor-state dispute settlement” or “ISDS” mechanism for Canada and limiting it for Mexico except for four sectors that face high fixed costs and political sensitivity: the oil and gas, transportation, infrastructure and telecommunications sectors;
- Incorporating binding provisions against currency manipulation;
- Bringing labor obligations into the core of the agreement and making them fully enforceable, including requiring Mexico to take specific legislative actions to provide for the effective recognition of the right to collective bargaining; and
- Improving the dairy market access to Canada, a key outcome for the agricultural community.

Some of the most controversial provisions the Trump administration originally proposed did not make it into the final text, including provisions concerning seasonal

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produce, eliminating binding dispute settlement, removal of the “Chapter 19” dispute settlement mechanism for trade remedy decisions, eliminating or capping the number of TN visas for Canadian and Mexican professionals and a hard expiration date or “sunset” for the agreement. The USMCA does include a modified sunset provision that provides the agreement will terminate after sixteen years unless six years after the agreement enters into force the “head of government” affirms in writing that it wishes to extend the agreement for another sixteen years. These six-year reviews continue while the agreement remains in force.

## **Next Steps**

President Trump and his Mexican and Canadian counterparts are expected to sign the USMCA on the margins of the G20 summit meeting in Buenos Aires, scheduled to begin November 30. There has been some speculation that the lame duck Congress could try to consider USMCA in December after the signing, perhaps by adding it to a must-pass funding bill and abandoning TPA procedures the administration has followed to date in an attempt to avoid the political complications that would result in the event the Democrats take control of the House of Representatives and/or the Senate in 2018. We believe this is highly unlikely, however, and there is no realistic expectation that Congress will consider the USMCA until 2019.

President Trump has suggested he may withdraw from NAFTA in order to force Congress to pass USMCA. To withdraw from NAFTA, the President would provide formal notice to Congress of his intent to do so, and he would be empowered to withdraw the United States from NAFTA six months after that notice. What strategy the administration will use to pass USMCA in the next Congress remains to be seen, as the outcome of the mid-term elections will no doubt have a profound impact on that strategy.

For more information regarding the coming deadlines under TPA, please see our interactive TPA timeline [here](#).

Below are summaries of the USMCA’s key provisions as well as a round-up of the public comments on the agreement from Members of Congress and the private sector.

## **Key Provisions**

### **Autos**

Under the existing NAFTA, 62.5 percent of the content of finished autos must originate from within the NAFTA countries. One of President Trump’s highest priorities for the re-negotiation of NAFTA was to increase domestic production of autos and auto parts. To achieve this goal, the President sought to significantly increase the regional value content requirement as well as establish a requirement for the use of U.S. inputs, according to public reports.

Ultimately, the USMCA increases the regional value content requirement from 62.5 percent to 75 percent. The agreement also establishes a labor value content rule for the first time in a trade agreement. Under the labor value content rule, 40-45 percent of auto content must be made by workers earning at least \$16 per hour.

A detailed fact sheet from the United States Trade Representative (USTR) regarding manufacturing and regional content value can be found [here](#).

## **Auto Tariffs under Section 232**

On May 30, 2018, the Trump administration launched an investigation under section 232 of the Trade Expansion Act of 1962 to determine whether imports of autos and auto parts represent a threat to American national security. Since the initiation of this investigation, President Trump has threatened tariffs of 20 to 25 percent on imports of autos and auto parts from Canada and Mexico, similar to the additional duties that were levied on imports of Canadian and Mexican steel and aluminum under the same authority. To avoid this outcome, Canada and Mexico sought guarantees as part of the USMCA negotiation that they would not be subject to tariffs on auto exports to the United States under section 232.

In side agreements to the USMCA, the United States agreed to refrain from imposing tariffs on Canadian and Mexican autos and auto parts for the next 60 days as well as to exclude the current production levels of Canada and Mexico from any action under section 232. Specifically, the United States agreed in a side **letter** with Canada that if a threat to American national security is found under section 232, then the U.S. will not take action on the importation of 2.6 million Canadian passenger vehicles, \$3.24 billion in Canadian auto parts or any Canadian light vehicles. In a **letter** with Mexico, the U.S. agreed that it would similarly not take action on importation of 2.6 million Mexican passenger vehicles, \$108 billion in Mexican auto parts or any Mexican light trucks. Mexico and Canada also retain their WTO rights to challenge a Section 232 measure.

## **Currency Manipulation**

The USMCA is the first trade agreement to include obligations regarding currency transparency and manipulation, and because it is a chapter of the agreement itself rather than a side letter, the obligations in the agreement are enforceable under the USMCA's dispute settlement provisions. In addition to affirming global currency practices included in the Articles of Agreement of the International Monetary Fund, the parties agreed to a number of reporting and consultation requirements such as public disclosure of foreign exchange data and regular consultations with each other to consider "the macroeconomic and exchange rate policies of each Party." The agreement aims to help reinforce macroeconomic and exchange rate stability.

A detailed fact sheet from the USTR including information on the new currency chapter can be found [here](#).

## **Dairy**

A top priority, not only, for President Trump but for the members of Congress representing dairy farmers across the country was to increase market access for U.S. dairy exports into Canada, which protects its own dairy producers through a complex supply management system. The President, at rallies, on social media and in other public remarks, frequently has cited high Canadian tariffs on U.S. exports of dairy products. The USMCA marginally opens the Canadian market for American dairy by eliminating the Canadian Class 7 program to protect milk powders and proteins and expanding the U.S. share of the Canadian market for dairy, poultry and eggs an additional 3.59 percent, a small improvement over the Trans-Pacific Partnership (TPP) which offered additional market share of 3.25 percent.

The agricultural provisions also eliminate trade restrictions on cheese under certain names or geographic indicators between the U.S. and Mexico through a side-letter. All

food and agricultural products that have zero tariffs under the North American Free Trade Agreement (NAFTA) will remain at zero tariffs.

A detailed fact sheet from the USTR regarding dairy can be found [here](#).

## **De Minimis**

Under the USMCA, Canada agreed to raise its de minimis level from \$20CD to \$150CD and Mexico agreed to raise its de minimis level from \$50USD to \$100USD. The United States also agreed to a minimum de minimis level of \$100 USD, although its current de minimis level is \$800. The USMCA also included a footnote that appears to provide that the USMCA parties may amend their de minimis commitments to ensure reciprocal de minimis levels (i.e., if one party lowers their de minimis level, the other party may reduce their de minimis level to meet that threshold despite the party's specific commitment levels.

## **Dispute Settlement Mechanisms**

How the USMCA countries and the companies based in those countries will resolve disputes following the implementation of the agreement has been a long-standing and controversial topic of the negotiations. In fact, the creation of what became Chapter 19 in the original NAFTA was among the highest priorities for Canada at the time, too. Canada insisted on maintaining the provisions, which established independent panels to arbitrate disputes about antidumping and countervailing duties, in the new agreement and was successful. NAFTA Chapter 19 will remain largely intact in the USMCA.

However, the USMCA phases out the “investor-state dispute settlement” or “ISDS” mechanism for Canada and limits it for Mexico except for four sectors that face high fixed costs and political sensitivity: the oil and gas, transportation, infrastructure, and telecommunications sectors.

The new agreement also addresses disputes in the new Financial Services Chapter (Chapter 17), which includes specific procedures related to investor-state dispute settlement claims “ISDS” with Mexico including provisions regarding expertise of arbitrators and other special procedural mechanisms.

## **Intellectual property**

The issues negotiated within the intellectual property chapter and by its stakeholders are often among the most controversial of any trade agreement, touching on the full panoply of intellectual property (IP) rights and exceptions across a variety of industries. The USMCA extends these rights in some areas, building from previous U.S. free trade agreements.

For example, the USMCA provides 10 years of regulatory data protection for biologic medicines. Although this period is short of the 12 years established in U.S. law, it is greater than the period negotiated in the TPP and the periods currently in place in both Mexico and Canada.

The USMCA would also increase the term of copyright protection in Canada. Under the agreement, the copyright term shall be “not less than the life of the author and 70 years from the author’s death.” This will bring the Canadian copyright term up to the

U.S. term. Current Canadian copyright term is only 50 years from the end of the year that the last living author died.

The agreement also allows Canada to maintain its current liability protections for internet service providers (ISPs) in the case of copyright infringement. Known as “notice-and-notice,” the system only requires ISPs to notify its customers of an infringement allegation by a copyright owner. The agreement does include important enforcement provisions, such as criminal penalties for the unauthorized recording of movies and other IP and trade secret theft.

For additional information regarding provisions affecting geographic indications, and other IP manufacturing sectors, a detailed fact sheet from the USTR including information on the new IP chapter can be found [here](#).

## **Labor**

Issues of workers’ rights remain one of the highest priorities for Democrats within U.S. trade agreements, seeking enforceable labor obligations in the core of the agreement. The position of organized labor will be a key factor in determining whether a significant portion of the Democratic caucus in the House and Senate is supportive of the USMCA.

On September 27, before the trilateral deal was announced, the Advisory Committee for Trade Policy and Negotiations, reported to USTR that additional legislative action is required in Mexico to implement its constitutional labor reform passed in 2017. Upon the release of the USMCA text, the final provision in the labor chapter, (Annex 23-A Section 8), states an expectation that Mexico should adopt legislation regarding collective bargaining before January 1, 2019. This remains consistent with requests from U.S. and Canadian union leaders that labor standards in Mexico be brought up before entering the agreement.

Consistent with recent American free trade agreements, the labor chapter of the USMCA brings key labor obligations into the core of the agreement, making them fully enforceable. These obligations require the Parties to adopt and maintain in law and practice labor rights as recognized by the International Labor Organization, and include new provisions to take measures to prohibit the importation of goods produced by forced labor. In addition, and as described in the summary on the autos chapter, the USMCA requires new trade rules of origin to drive higher wages by requiring that 40-45 percent of auto content be made by workers earning at least \$16 USD per hour.

A detailed fact sheet from USTR including key points regarding labor can be found [here](#).

## **Steel and Aluminum Tariffs under Section 232**

One chapter or side letter not found in the texts published by USTR is any agreement to lift the tariffs on steel and aluminum that President Trump imposed on imports of those products from Canada and Mexico earlier this year under section 232 of the Trade Expansion Act of 1962. These tariffs will remain in place, and talks to ease or remove them are on a separate track, according to administration officials.

## **Sunset clause**

One of the administration's more controversial proposals at the start of the negotiations survived, albeit in a modified form. The United States originally proposed that the agreement expire after 5 years unless certain conditions were met. Despite protestations from Canada, Mexico, and much of the American business community, the USMCA is also the first trade agreement to include a sunset provision. Under Article 34.7, the agreement will terminate 16 years after the date of its entry into force unless the parties agree to renew for another 16-year term. In order to facilitate this review process, the agreement establishes a schedule of meetings between the parties to begin 6 years after entry into force.

While the sunset clause establishes a structured review process and defaults to expiration of the agreement after 16 years, the USMCA also maintains the existing NAFTA mechanism for withdrawal: a 6-month notice to the other parties.

## **Stakeholder Press Releases**

[Click here](#) for stakeholder and Congressional press releases.