



October 5, 2018

Proposed U.S.-Mexico-Canada (USMCA) Trade Agreement

Overview

On September 30, 2018, the United States and Canada reached an agreement for Canada to join the preliminarily agreed upon pact with Mexico to update and revise the North American Free Trade Agreement (NAFTA) and to rename it the U.S.-Mexico-Canada Agreement (USMCA). Pursuant to trade promotion authority (TPA), the preliminary agreement with Mexico was notified to Congress on August 31, 2018, in part to allow for the signing of the agreement prior to Mexico’s president-elect Andreas Manuel Lopez Obrador taking office on December 1, 2018. This product provides preliminary comparative analysis between the two agreements. For information on NAFTA’s current provisions, see CRS Report R44981, *NAFTA Renegotiation and Modernization*, by M. Angeles Villarreal and Ian F. Fergusson.

Key Provisions

USMCA, comprised of 34 chapters and 12 side letters, retains most of NAFTA’s chapters, making notable changes to market access provisions for autos and agriculture products, and to rules such as investment, government procurement, and intellectual property rights (IPR). New issues, such as digital trade, state-owned enterprises, and currency misalignment are also addressed.

Market Access

Motor Vehicles. While NAFTA phased out tariffs on automotive imports among the three countries, subject to rules-of-origin (ROO) requirements of 62.5% content for autos, light trucks, engines, and transmissions, and 60% for all other vehicles and automotive parts, USMCA tightens ROO by including:

- New motor vehicle ROO and procedures, including product-specific rules, and requiring 75% North American content;
- Wage requirements stipulating 40%-45% of auto content be made by workers earning at least \$16 per hour;
- Requirement that 70% of a vehicle’s steel and aluminum must originate in North America;
- Provision aiming to streamline ROO certification enforcement;

In addition, side letters exempt up to 2.6 million vehicles from Canada and Mexico annually from potential Section 232 auto tariffs.

Dairy. In a move that the U.S. dairy farmers have applauded, USMCA increases U.S. dairy access up to 3.59% of Canada’s dairy market, but it does not dismantle Canada’s supply-management system. Canada also removed its “Class 7” pricing for ultra-high filtration (UHF)

milk. In return, the United States expanded import quota levels for Canadian dairy and sugar products.

Table 1. Proposed USMCA Select Changes to NAFTA

Sector	USMCA	NAFTA
Autos	75% ROO; wage requirement; 2.6 million car quota for zero tariffs. (side letter)	62.5% ROO; no wage requirement; no quota
IPR protection	Biologics: 10 years Copyright: 70 years	No commitments 50 years
Government Procurement	U.S.-MEX only; CAN to use WTO GPA	Trilateral commitments
Digital Trade	Cross-border data flows; restricts data localization	No commitments
Investor-State Dispute Settlement (ISDS)	Not applicable to U.S.-CAN disputes; U.S.-MEX disputes restricted	Trilateral commitments
State-owned enterprises	SOEs to adhere to market forces	No commitments

Source: CRS from USMCA Agreement.

Dispute Settlement

USMCA maintains the NAFTA state-to-state mechanism for most disputes arising under the agreement. It also retains the binational dispute settlement mechanism to review trade remedy disputes. However, USMCA would: eliminate investor-state dispute settlement (ISDS) for Canada after the termination of NAFTA; maintain ISDS only between the United States and Mexico for claimants regarding government contracts in the oil, natural gas, power generation, infrastructure, and telecommunications sectors; and maintain U.S.-Mexico ISDS in other sectors provided the claimant exhausts national remedies first.

Intellectual Property Rights (IPR)

NAFTA was the first free trade agreement (FTA) to include an IPR chapter. USMCA retains NAFTA’s core protections for copyrights, patents, including exclusivity periods for test data, trade secrets, trademarks, and geographical indications, as well as specific enforcement requirements. USMCA provisions include:

- 10 years of data protection for biologics;
- Copyright term extended to 70 years;

- Prohibitions on circumvention of technological protection measures;
- Criminal and civil penalties protections for trade secret theft, including by state-owned enterprises and cyber-theft; and
- Copyright safe-harbor provisions on ISP liability.

Energy

USMCA removes NAFTA's energy chapter, which recognizes Mexico's constitutional prohibitions on foreign investment or ownership of Mexico's energy sector. USMCA would, in effect, "lock in" the current legal framework for private energy projects in Mexico.

TPA: Key TPA Dates and Deadlines for USMCA

- August 30, 2018: Notification to Congress of intent to sign agreement with Mexico.
- September 30, 2018: United States and Canada conclude negotiations; USMCA draft text released. Advisory committee reports released.
- November 30, 2018: Agreement expected to be signed.
- Sixty days after signing: List of required changes to U.S. law due to Congress.
- At least 30 days prior to introduction of implementing legislation: Final agreement text, draft Statement of Administrative Action due.
- 105 days after signing: International Trade Commission (ITC) report due.

Source: CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Ian F. Fergusson.

Note: Canada and Mexico have their own ratification processes.

Labor and the Environment

NAFTA side agreements on worker rights and the environment were the first of their kind associated with an FTA. USMCA revises and incorporates both chapters into the body of the agreement and provides the same dispute mechanism as other parts of the agreement. USMCA requires parties to:

- Adopt and maintain in statutes and regulation the International Labor Organization (ILO) Declaration of Rights at Work.
- Enforce their own labor and environmental laws, and not to waive or derogate from these laws in a manner involving trade or investment.
- Prohibit the most harmful fisheries subsidies and include provisions related to illegal trafficking, marine species, air quality, marine litter, and sustainable forestry.

In addition, it commits Mexico to specific legislative actions to provide for the effective recognition of the right to collective bargaining.

Government Procurement (GP)

NAFTA contained a GP chapter, which set standards and parameters for government purchases of goods and services and opportunities for firms of each nation to bid on certain contracts for specified government agencies above a set

monetary threshold on a reciprocal basis. The USMCA GP chapter only applies to U.S.-Mexico procurement, while Canada remains covered by the more recent and comprehensive World Trade Organization Government Procurement Agreement (GPA). However, the monetary threshold for the GPA is higher at \$180,000 as compared to NAFTA's \$25,000, thus reducing Canada's opportunities to bid on U.S. contracts.

E-Commerce, Data Flows, and Data Localization

NAFTA was implemented in the early days of the Internet, and does not contain digital provisions. USMCA includes new digital trade provisions similar to those in the proposed Trans-Pacific Partnership (TPP), including prohibiting customs duties on electronically-transmitted products, and limits on source code disclosure requirements. USMCA contains broader provisions on cross-border data flows and restrictions on data localization requirements than TPP.

New Provisions

Additional provisions in USMCA not in NAFTA include:

- Binding obligations on currency misalignment and misalignment. The parties agreed to "achieve and maintain a market-determined exchange rate regime," and to "refrain from competitive devaluation, including through intervention in the foreign exchange market."
- A sunset clause requiring a joint review and agreement on renewal at year 6 or the agreement will expire after 16 years.
- A new chapter on State-Owned Enterprises (SOE), to require SOE's to act in accordance with commercial considerations and require the State to provide non-discriminatory treatment to competitors.
- *De Minimis* customs threshold for duty free treatment set at \$117 (C\$150) for Canada and Mexico. Tax-free threshold set at \$50 for Mexico and C\$40 (about \$31) for Canada.
- Allows a party to withdraw from the agreement if another party enters into an FTA with a country it deems to be a non-market economy (e.g., China).

Issues for Congress

As the USMCA comes before Congress, some issues include:

- The timetable for consideration.
- Whether USMCA meets TPA's negotiating objectives and other requirements.
- The impact of certain provisions that would further restrict or manage trade such as auto ROO.
- Whether it achieves the President's stated goal of increasing domestic manufacturing.
- Its impact on U.S. trade liberalization.
- Whether it represents a template for U.S. trade agreements going forward.

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