



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

Overview

On November 30, 2018, President Trump and the leaders of Canada and Mexico signed the United States-Mexico-Canada Agreement (USMCA). Concluded on September 30, 2018, USMCA would revise and modernize the North American Free Trade Agreement (NAFTA). Pursuant to trade promotion authority (TPA), the Administration notified Congress of its intention to enter into an agreement with Mexico, and with Canada if it was willing to join. On September 30, 2018, the United States Trade Representative (USTR) announced that the three countries had reached an agreement on a USMCA trade deal that would revise, modernize, and replace NAFTA upon ratification. On May 30, 2019, the Administration submitted a draft Statement of Administrative Action (SAA) to implement the proposed USMCA and a copy of the legal text, in accordance with TPA procedures. This product provides preliminary comparative analysis between the two agreements. For information on NAFTA’s current provisions, see CRS Report R44981, *NAFTA Renegotiation and the Proposed United States-Mexico-Canada Agreement (USMCA)*, by M. Angeles Villarreal and Ian F. Fergusson.

Key Provisions

USMCA, composed 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 would tighten 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 would 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 would increase U.S. dairy access up to 3.59% of Canada’s dairy market, but it would 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 I. 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 would maintain the NAFTA state-to-state mechanism for most disputes arising under the agreement. It would also retain 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 would retain 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.

The proposed 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

Although USMCA would remove NAFTA's energy chapter, it would add a new chapter with provisions recognizing Mexico's constitution and the Mexican government's direct ownership of hydrocarbons. Existing foreign investors in the energy sector would likely remain protected by similar provisions as those in NAFTA. Mexico appears to be legally bound by its 2013 constitutional energy reforms in the energy sector.

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 is signed.
 - January 29, 2019: List of required changes to U.S. law delivered to Congress.
 - At least 30 days prior to introduction of implementing legislation: Final agreement text, draft Statement of Administrative Action due.
 - April 18, 2019: International Trade Commission (ITC) report released (extended due to government shutdown).
 - May 30, 2019: Draft Statement of Administration Action (SAA) and text of the agreement submitted to Congress.
-

Labor and the Environment

NAFTA side agreements on worker rights and the environment were the first associated with an FTA. USMCA would revise and incorporate provisions and provide the same dispute mechanism as other parts of the agreement. USMCA would require parties to:

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

USMCA would commit Mexico to legislative actions in regard to the effective right to collective bargaining. On May 1, 2019, Mexico enacted a labor reform bill aimed at enhancing Mexican worker rights.

Government Procurement (GP)

NAFTA 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 provisions would only apply 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.

E-Commerce, Data Flows, and Data Localization

NAFTA does not contain digital provisions. The proposed USMCA includes new digital trade provisions, including prohibiting customs duties on electronically transmitted products and limits on source code disclosure requirements. USMCA contains broad provisions on cross-border data flows and restrictions on data localization requirements.

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; in lieu of mutual agreement at the time, USMCA would expire 16 years later.
- 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 a \$117 (C\$150) for Canada and Mexico. Tax-free threshold set at \$50 for Mexico and C\$40 (about \$31) for Canada.
- Allowing 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

Some issues for Congress include:

- The TPA timetable for consideration.
- Whether USMCA meets TPA's negotiating objectives or other requirements and modernizes NAFTA.
- Whether or how provisions on labor, environment, pharmaceuticals, and enforcement could be changed or enhanced to meet congressional concerns.
- How USMCA would affect future U.S. FTAs given its reduced commitments such as ISDS, GP, sunset clause, and *de minimis* levels.

Ian F. Fergusson, Specialist in International Trade and Finance

M. Angeles Villarreal, Specialist in International Trade and Finance

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.