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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). USMCA would revise and modernize the North American Free Trade Agreement (NAFTA), in place since 1994. Pursuant to trade promotion authority (TPA), the Administration notified Congress of its intention to enter into USMCA.

On December 10, 2019, the United States, Canada, and Mexico agreed to a protocol of amendment to the proposed USMCA. The revisions include modifications to key elements of the original text regarding dispute settlement, labor and environmental provisions, intellectual property rights (IPR) protection, and steel and aluminum requirements in the motor vehicle industry rules of origin. Amendments also provide for a facility-specific rapid response labor mechanism to address worker rights provisions. On December 13, 2019, the Trump Administration submitted to Congress the proposed USMCA implementing legislation. On the same day, the United States-Mexico Canada Implementation Act (H.R. 5430) was introduced in the House of Representatives. On December 16, the companion bill was introduced in the Senate (S. 3052). The House Ways and Means Committee approved the legislation on December 17, 2019, and the full House approved the bill on December 19, 2019, by a vote of 385-41. The Senate Finance Committee approved the legislation on January 7, 2020.

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, to rules such as investment, government procurement, and intellectual property rights (IPR), and to labor and the environment. 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 the following.

- New motor vehicle ROO and procedures, including product-specific rules and requiring 75% North American content.
- Wage requirements stipulating that 40%-45% of auto content be made by workers earning at least \$16 per hour.
- A requirement that 70% of a vehicle’s steel and aluminum must originate in North America (changes to USMCA require that steel be melted and poured in North America).

- Streamlining of ROO certification enforcement.

Dairy. 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; 70% steel and aluminum requirement; steel must be melted and poured in region; wage requirement.	62.5% ROO; no wage requirement; no steel and aluminum requirement.
IPR protection	Biologics: No commitments (10 years in original text) Copyright: 70 years	Biologics: No commitments Copyright: 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. The revised USMCA removed language allowing a party to block the formation of a dispute settlement panel.

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 revised USMCA removed provisions on biologic data protection, among other changes.

The proposed USMCA provisions include

- 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: 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.
 - 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.
 - December 13 and 16, 2019: Implementing legislation introduced in House and Senate.
 - 90 legislative day deadline for Congress to vote.
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Labor and Environment

USMCA would revise NAFTA and incorporate provisions to provide the same dispute mechanism as other parts of the agreement. USMCA would require parties to

- Adopt, maintain, enforce, and not derogate from statutes and regulation regarding the International Labor Organization (ILO) Declaration of Rights at Work.
- Adopt, maintain, enforce, and not derogate from environmental laws, including seven multilateral environment agreements;
- Revisions to USMCA include shifting the burden of proof to the responding party that a complaint affects trade and investment unless otherwise demonstrated.

- USMCA changes include a rapid response mechanism for worker rights complaints at covered facilities, Mexican labor reform monitoring, creation of a new interagency committee on labor with reporting requirements to Congress, and enhanced anti-worker violence and forced labor provisions.

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 USMCA Provisions

- Binding obligations on currency misalignment and misalignment.
- 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).
- *De Minimis* customs threshold for duty free treatment set a \$117 for Canada and Mexico. Tax-free threshold set at \$50 for Mexico and C\$40 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 nonmarket economy (e.g., China).

Issues for Congress

Some issues for Congress include

- Whether TPA procedures and notification requirements have been followed.
- Whether USMCA meets TPA's negotiating objectives.
- Whether modified provisions on labor, environment, pharmaceuticals, and enforcement meet congressional concerns.
- How USMCA would affect future U.S. FTAs given its reduced commitments such as ISDS, GP, and *de minimis* levels and expanded revisions on worker rights.

See also, CRS In Focus IF11391, *USMCA: Amendment and Key Changes*, by M. Angeles Villarreal and Ian F. Fergusson

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