

USMCA: Implementation and Considerations for Congress

January 30, 2020

On January 29, 2020, the President [signed](#) into law the United States-Mexico-Canada Agreement (USMCA) Implementation Act, [H.R. 5430](#), which approves and implements USMCA. Once USMCA enters into force, the obligations in that Agreement will replace the Parties' obligations under the North American Free Trade Agreement (NAFTA). This Sidebar discusses how USMCA's obligations and other provisions become binding on the United States; explains how USMCA will supersede NAFTA; and identifies several considerations for Congress.

When Does USMCA Enter into Force?

USMCA's obligations become legally binding after the Agreement enters into force (with some exceptions, as discussed below). Before USMCA may enter into force, the Parties must comply with several steps. First, under paragraph 2 of the [USMCA Protocol](#), each Party must submit a written notification to the other Parties to show that it has completed all processes required by its domestic laws to approve the Agreement. USMCA will enter into force "on the first day of the third month" after the third Party submits its notification. The precise date of entry into force therefore remains in flux, as it depends on the ability of each Party to complete all required approval and implementation procedures.

Before the United States may submit its notification to the other USMCA Parties, the President and Congress must complete several steps. First, under the [Bipartisan Congressional Trade Priorities and Accountability Act \(TPA\)](#), Congress must approve and the President must sign the implementing legislation, a process that is [now complete](#). Second, under the [USMCA Implementation Act](#), at least thirty days prior to the Agreement's entry into force, the President must notify Congress that he "has determined that [the other Parties have] taken measures necessary to comply with those provisions of the [A]greement that are to take effect on the date on which the [A]greement enters into force." After completion of these steps, USMCA may enter into force for the United States, and after all Parties complete their domestic processes, the Agreement's obligations legally bind them under international law.

Congressional Research Service

<https://crsreports.congress.gov>

LSB10399

What Must the United States Do After Congressional Approval but Prior to USMCA's Entry into Force?

Several USMCA obligations apply prior to the Agreement's entry into force due to norms imposed by international law as well as language in the Agreement. Respecting these obligations may require congressional or executive action before the date that USMCA enters into force. Although it may be difficult for a Party to enforce these norms and obligations prior to USMCA's entry into force, a breach of such norms and obligations could delay the effective date of the Agreement.

Under [principles of customary international law](#), after signing the USMCA, the United States is obligated not to act in ways that may “defeat the object and purpose of” the Agreement. This obligation finds its basis in the concept of “good faith,” or the protection of legitimate expectations of the Parties to a proposed agreement. For example, where the United States' USMCA tariff schedule indicates it will eliminate tariffs on the date that USMCA enters into force (see [Annex 2-B](#)), to raise them prior to such date may potentially breach the obligation not to defeat the purpose of the Agreement. In other words, the international obligation not to defeat the object and purpose of a proposed agreement often imposes an obligation to refrain from certain actions (as opposed to requiring affirmative legislative enactments). The United States may not face enforcement actions for breach of USMCA pre-ratification, although it may face political consequences (e.g., the other USMCA Parties may insist on renegotiation of, or refuse to approve, USMCA).

The text of USMCA also imposes positive obligations on the Parties to undertake certain acts prior to its entry into force. For instance, [Article 5.16](#) requires the Parties, “by entry into force of this Agreement, [to] adopt or maintain through their respective laws or regulations, Uniform Regulations regarding the interpretation, application, and administration” of the Agreement's Chapters on Rules of Origin, Origin Procedures, Textile and Apparel Goods, and Customs Administration and Trade Facilitation. This provision implies that the Parties may need to amend or review their laws and regulations to ensure that they have such “Uniform Regulations” *before* USMCA enters into force. Similarly, the Parties must create a roster of individuals eligible to serve as panelists for State-to-State disputes under USMCA Chapter 31 “by the date of entry into force” ([Article 31.8](#)), indicating that the Parties must take steps to designate such individuals *prior* to when USMCA becomes legally binding. (For more on the USMCA's dispute settlement mechanism, see this CRS [In Focus](#).) To this end, the [Statement of Administrative Action](#) accompanying the USMCA implementing legislation states that the U.S. Trade Representative (USTR) intends to consult with Congress while it considers nominees to add to the roster before USMCA enters into force.

It is unclear whether those USMCA obligations that must be satisfied “by the date of entry into force” could ultimately force a delay of USMCA's entry into force. For example, although [Article 31.8](#) appears to require designation of a roster prior to entry into force, USMCA also states that failure to complete a roster may not prevent a Party from requesting establishment of a panel to resolve disputes under Chapter 31. Such a provision suggests the Parties might point to an incomplete roster to delay the Agreement's entry into force, but they might also agree to permit USMCA to enter into force despite this deficiency.

As a practical matter, by passing the USMCA Implementation Act, the United States has authorized most of the necessary legislative changes and authorized the Executive to take the actions required to implement the USMCA obligations that must take effect when it enters into force (i.e., those obligations that do not have a phase-in period). To address any additional legislative changes required to implement USMCA, the USMCA Implementation Act requires USTR to submit a report to Congress within 180 days after the Agreement's approval (i.e., 180 days after January 29, 2020) detailing any remaining “technical or conforming amendments” that Congress must make.

What Must the United States Do After USMCA Enters into Force?

Once USMCA enters into force, all provisions become legally binding upon the Parties as a matter of international law. Some obligations, however, are subject to a phase-in period, and the Parties need not bring their legislation or regulations into conformity until the end of such period. For example, a [new rule of origin](#) for certain goods applies “[b]eginning on January 1, 2023 or three years after entry into force of this Agreement, whichever is later.” Additionally, the [Annex](#) to the Digital Trade Chapter states that Article 19.17 “shall not apply with respect to Mexico until the date of three years after entry into force of this Agreement.” Despite the delayed application of these provisions, they are legally binding as of the date of USMCA’s entry into force to the extent that the precise date of their applicability is contingent on the date of entry into force. Prior to the date of applicability, however, no Party may challenge another Party’s alleged failure to fulfill those obligations before a dispute settlement panel.

To satisfy the USMCA’s obligations that are subject to a phase-in period, the United States may need to enact, modify, or maintain laws and regulations consistent with such obligations and refrain from enacting or amending its laws and regulations or applying them in a manner inconsistent with such obligations. To this end, the [USMCA Implementation Act](#) provides for implementing actions to satisfy obligations that apply only after USMCA enters into force, while also specifying that, “to the maximum extent feasible,” such actions must “be prescribed within 1 year after such effective date.” Further, the President may proclaim certain actions to ensure that the United States complies with its obligations. For example, the President may [modify or continue tariff duty rates](#) or proclaim rules of origin as part of the Harmonized Tariff Schedule of the United States.

Despite the USMCA’s obligations on the United States, as indicated in the [USMCA Implementation Act](#), “No provision of the USMCA, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States, shall have effect.” In other words, USMCA’s provisions cannot be enforced domestically if they conflict with U.S. law. Moreover, because USMCA does not affect Congress’s constitutional authority to legislate, Congress may legislate in a manner that may lead to measures inconsistent with USMCA obligations. If Congress were to pass laws that are inconsistent with USMCA, however, the other USMCA Parties may ultimately be permitted to deny the Agreement’s benefits to the United States, such as by imposing higher tariffs or other penalties.

Transitioning from NAFTA to USMCA

If USMCA enters into force, it will supersede NAFTA as stated in the [USMCA Protocol](#) and P.L. 116-113, § 601. However, USMCA allows certain NAFTA provisions to apply to specified claims brought under NAFTA for a limited period after USMCA enters into force. First, with respect to State-to-State disputes relating to antidumping or countervailing duty investigations carried out by one NAFTA Party on goods imported from another NAFTA Party, [Article 34.1.4](#) allows Chapter 19 of NAFTA to govern such disputes provided that a Party’s administrative authority issues a final determination in a trade remedies case before USMCA enters into force. Second, for entities or individuals that claim preferential tariff treatment under NAFTA, [Article 34.1.6](#) indicates that the relevant NAFTA provisions (Chapter 5) may apply to such claims after USMCA enters into force. Finally, for certain claims brought by investors against a NAFTA Party involving investments established or acquired while NAFTA was in force and that still exist when USMCA enters into force, [Article 14-C.1](#) permits the relevant NAFTA provisions to apply for three years after NAFTA is terminated. (This rule does not apply with respect to investors from Mexico and the United States with regard to claims involving government contracts that investors may bring under the USMCA [investor-State dispute settlement mechanism](#).)

Finally, as part of a transition from NAFTA to USMCA, one of the NAFTA side agreements—the North American Agreement on Labor Cooperation—will be terminated upon USMCA’s entry into force, and will be replaced by the [USMCA’s Labor Chapter](#). The other side agreement—the North American Agreement on Environmental Cooperation (NAAEC)—will remain partially in place, as the [new side agreement](#) on environmental cooperation builds on and modifies the NAAEC by express reference to its substance and entities (e.g., the Commission for Environmental Cooperation, which administers and enforces the side agreement).

Considerations for Congress

Within 180 days after January 29, 2020, [USTR must submit a report to Congress](#) that describes the “technical and conforming amendments to” U.S. law that are necessary to bring U.S. law into conformity with the USMCA Implementation Act. Upon receipt and review of such a report, Congress may consider whether it agrees with the proposed amendments and make inquiries to USTR or any relevant agencies (e.g., through hearings or consultations) before deciding whether to approve such amendments. If Congress decides to adopt any amendments, it may also consider whether direct legislative enactment of such amendments or delegation to an agency would most effectively achieve the relevant implementation objective.

After USMCA enters into force, Congress may consider whether any of its legislative proposals may bring the United States out of compliance with the United States’ USMCA obligations. As noted, approval of USMCA does not deprive Congress of its constitutional authority to legislate. However, if Congress legislates in a manner that is inconsistent with U.S. obligations under USMCA, a dispute settlement panel may ultimately permit the other USMCA Parties to deny certain USMCA benefits to the United States.

Should Congress believe that a legislative proposal may potentially be inconsistent with a USMCA obligation, it may consider several options: (1) refrain from enacting such proposal; (2) amend the proposal to conform with USMCA; (3) request the Executive Branch to raise the issue with the other USMCA Parties to seek a side letter or other appropriate agreement among the Parties stating that the legislative proposal is not incompatible with the Agreement; or (4) request the Executive Branch to seek a new reservation or amendment to USMCA that would permit adoption of the proposal. The final option may be the most difficult to achieve, as requesting late reservations or amendments requires the Parties to reapprove the Agreement.

Author Information

<Contact Name>

<Position>

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.