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

Overview

The 118th Congress, in both legislative and oversight capacities, may be active in numerous trade policy issues related to the implementation of the United States-Mexico-Canada Agreement (USMCA), which entered into force on July 1, 2020, replacing the 1994 North American Free Trade Agreement (NAFTA). USMCA revised and modernized NAFTA with new provisions such as digital trade and more enforceable labor provisions. Pursuant to trade promotion authority (TPA), the Trump Administration provided the required consultations and notifications to Congress. Congress approved implementing legislation for USMCA in December 2019 (P.L. 116-113).

TPA and Other Key Dates for USMCA

- May 17, 2017: Ninety-day Presidential notification to Congress of intent to begin NAFTA renegotiations.
- July 17, 2017: USTR publishes negotiation objectives.
- August 16, 2017: Negotiations began.
- August 30, 2018: Notification to Congress of intent to sign agreement.
- September 30, 2018: USMCA draft text released. Advisory committee reports released.
- November 30, 2018: USMCA signed.
- January 29, 2019: List of required changes to U.S. law delivered to Congress.
- April 18, 2019: International Trade Commission (ITC) report released.
- May 30, 2019: Draft Statement of Administrative Action (SAA) and text of the agreement submitted to Congress.
- December 13 and 16, 2019: Implementing legislation introduced in House of Representatives (H.R. 5430) and companion bill introduced in the Senate (S. 3052).
- December 19, 2019, and January 7, 2020: Legislation approved by the House of Representatives by a vote of 385-41 and by the Senate by a vote of 89-10.
- January 29, 2020: USMCA signed into law (P.L. 116-113).
- July 1, 2020: USMCA entered into force.

After the initial USMCA was concluded in 2018, some Members of Congress expressed concern over certain key provisions and negotiated with USTR to amend the agreement. On December 10, 2019, the United States, Canada, and Mexico agreed to a protocol of amendment to the original USMCA text. The revisions include modifications 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. The revised agreement provides for a facility-specific rapid response labor mechanism.

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 provisions regarding labor and the environment. New provisions such as digital trade, state-owned enterprises, and currency misalignment are part of the new agreement.

Market Access

Motor Vehicles. NAFTA phased out tariffs on motor vehicle trade among the three countries, subject to specific rules-of-origin (ROO) requirements (see **Table 1**). USMCA tightens these rules by including the following.

- New motor vehicle ROO and procedures, including product-specific rules and requiring 75% North American content.
- Wage requirement that 40%-45% of auto content be made by workers earning at least \$16 an hour.
- Requirement that 70% of a vehicle's steel and aluminum must originate in North America; steel be melted and poured in North America.
- Streamlining of ROO certification enforcement.

Table 1. Select USMCA 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)	Applicable only to certain U.S.-MEX disputes.	Trilateral commitments.
State-owned enterprises	SOEs to adhere to market forces.	No commitments.

Source: CRS from USMCA Agreement.

Dairy. USMCA increased U.S. dairy access to 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.

Dispute Settlement

USMCA maintains the NAFTA state-to-state mechanism for most disputes arising under the agreement and retains the binational dispute settlement mechanism to review trade remedy disputes. New provisions prevent panel blocking by ensuring the formation of a dispute settlement panel. On investor-state dispute settlement (ISDS), which is a form of binding arbitration that allows private investors to pursue claims against sovereign nations, provisions were eliminated for Canada. For Mexico, ISDS remains in place for government contracts in the oil, natural gas, power generation, infrastructure, and telecommunications sectors, and in other sectors if national remedies are exhausted first.

Intellectual Property Rights (IPR)

NAFTA was the first free trade agreement (FTA) to include an IPR chapter. USMCA retains core protections for copyrights, patents, exclusivity periods for test data, trade secrets, trademarks, and geographical indications, as well as specific enforcement requirements. The revised USMCA removes provisions on biologic data protection, among other changes. 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.

Energy

USMCA removed NAFTA's energy chapter, while adding a new chapter with provisions recognizing Mexico's constitution and the Mexican government's direct ownership of hydrocarbons. U.S. investors in the energy sector, however, appear to remain protected by similar provisions as those in NAFTA. In 2022, the United States and Canada launched USMCA disputes against Mexico and are in state-to-state consultations over policies by Mexico's president to undo some of the 2013 market opening energy reforms. Mexico has provided proposals to resolve concerns, but the dispute may be challenging to resolve.

Labor and Environment

USMCA revised NAFTA and incorporate provisions to provide the same dispute mechanism as other parts of the agreement. USMCA requires 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.

USMCA has new provisions that shift the burden of proof to the responding party so that a complaint affects trade and investment unless otherwise demonstrated. USMCA also includes a new 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 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

The USMCA has new digital trade provisions, including prohibiting customs duties on electronically transmitted products and limits on source code disclosure requirements, and broad provisions on cross-border data flows and restrictions on data localization requirements.

Other Key USMCA Provisions

- New binding obligations on currency 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 at \$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

- Oversight of the effective implementation of the new and revised USMCA commitments, including new motor vehicle rules of origin and labor provisions.
- Monitoring of USMCA disputes on energy, motor vehicle rules of origin, labor and tariff-rate quotas.
- Consulting with the executive branch on trilateral trade challenges, such as Mexico's potential ban on genetically modified corn, that are being addressed through dialogue and cooperation.
- How USMCA revisions will affect the future of U.S. trade policy given its reduced commitments in some areas and expanded commitments in others.

See also CRS Report R44981, *The United States-Mexico-Canada Agreement (USMCA)*, by M. Angeles Villarreal.

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