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USMCA Joint Review: Background on Prior Negotiations and Selected Issues for Congress

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USMCA Joint Review: Background on Prior Negotiations and Selected Issues for Congress

In 2026, the United States, Canada, and Mexico are scheduled to conduct a review of the United States-Mexico-Canada Agreement (USMCA) that could result in the revision or phasing out of the agreement. The review is the first of its kind in any U.S. Free Trade Agreement (FTA). Congress was heavily involved in shaping U.S. priorities during the negotiation of USMCA. Congress also approved USMCA and enacted legislation in 2020 to implement the agreement. In its oversight capacity, Congress may request consultations with the executive branch regarding USMCA implementation and the review process. Members of Congress may also consider whether—and, if so, to what extent—congressional priorities raised during the 2017-2019 USMCA negotiations have been addressed and/or implemented, and whether to pursue any changes to USMCA as part of the review process. Congress could also assess the advantages and disadvantages of comprehensive FTAs for the U.S. economy and the lessons learned from the negotiation, implementation, and review of USMCA.

A key trade policy issue for Congress at the time of USMCA negotiations related to President Trump's threats to potentially withdraw from the trilateral 1994 North American Free Trade Agreement (NAFTA), and what that might imply about shared or overlapping congressional-executive authorities on U.S. trade policy. Other issues that were a focus of congressional attention included adding a clause requiring periodic reviews of USMCA, the first such provision in a U.S. FTA; making changes to the rules for duty-free trade of automotive products; modernizing the agreement by including digital trade provisions and updating intellectual property rights protections; changing and removing some investor-state dispute settlement provisions; enhancing provisions related to labor and environment standards; modifying government procurement provisions; and determining whether to retain NAFTA's binational dispute settlement mechanism. In response to concerns expressed by some Members and other policymakers, USMCA included a new nonmarket economy clause that requires a party to notify the other parties of any efforts to enter into an FTA with a nonmarket economy such as China.

In August 2017, the United States, Mexico, and Canada officially launched the “renegotiation and modernization” of NAFTA. At the time of its negotiation in the 1990s, NAFTA was the most comprehensive free trade agreement (FTA) that the United States had negotiated. It eliminated nearly all tariffs and most nontariff barriers on trade within North America, and it contained novel provisions that influenced subsequent U.S. trade policy and U.S. FTAs.

The negotiation and approval of NAFTA was widely debated in Congress, with proponents arguing that the agreement would help generate jobs and reduce income disparity, while opponents warned that the agreement would result in companies moving operations to Mexico, leading to U.S. job losses. U.S. stakeholder opinions on NAFTA remained divided more than two decades after the agreement went into effect. The renegotiation of NAFTA ultimately resulted in USMCA.

Congress approved USMCA and enacted its implementing legislation under rules set out in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA-2015; P.L. 114-26, Title 1), which expired in 2021. In May 2017, the Trump Administration notified Congress of its intent to begin trade talks with Canada and Mexico, as required by TPA-2015. Negotiations officially began on August 16, 2017. In November 2018, the United States, Mexico, and Canada signed USMCA. In December 2019, the three parties signed a protocol to amend the agreement text, in part due to congressional pressure to revise certain provisions. In 2020, Congress passed, and the President signed, the United States-Mexico-Canada Agreement Implementation Act (P.L. 116-113), and USMCA entered into force on July 1, 2020, replacing NAFTA. The negotiations that led to that moment, and Congress's role in them, help provide a roadmap of issues now facing Congress as the United States, Canada, and Mexico embark on a review of USMCA that could result in the revision or phasing out of the agreement. For additional information on the USMCA joint review process and the role of Congress, see CRS Report R48787, *USMCA Joint Review: Process and Role of Congress*.

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Introduction

In 2026, the United States, Canada, and Mexico are scheduled to conduct a review of the United States-Mexico-Canada Agreement (USMCA), which could result in significant changes to or a phaseout of the agreement. The review is the first of its kind in any U.S. free trade agreement (FTA), and potential outcomes remain unclear.

The U.S. Constitution grants Congress the power to regulate foreign commerce; Congress approved USMCA and enacted legislation to implement the agreement. Members of Congress may consider whether Congress must approve significant changes to or U.S. withdrawal from USMCA. Congress was heavily involved in shaping U.S. priorities during the negotiation of USMCA; Members of Congress may assess whether—and, if so, to what extent—congressional priorities raised during the 2017-2019 USMCA negotiations have been addressed or implemented. The USMCA Implementation Act also contains congressional consultation requirements related to the review of USMCA; Members may consider whether to pursue changes to USMCA or to formally include congressional views on USMCA as part of the review process and record.

USMCA is the successor agreement to the trilateral 1994 North American Free Trade Agreement (NAFTA).¹ At the time of its negotiation, NAFTA was the most comprehensive FTA that the United States had negotiated. It eliminated nearly all tariffs and most nontariff barriers on trade within North America, and contained novel provisions that influenced subsequent U.S. trade policy and U.S. FTAs.² It was the first of a new generation of U.S. FTAs that set rules and disciplines on issues of importance to the United States, including intellectual property rights protection, services trade, dispute settlement procedures, investment, labor, and the environment.

In August 2017, the United States, Mexico, and Canada officially launched the “renegotiation and modernization” of NAFTA and, in November 2018, signed the renegotiated agreement, called USMCA.³ In December 2019, the three parties signed a protocol to amend the agreement text, in part due to congressional pressure to revise certain provisions.⁴ In 2020, Congress approved, and the President signed, the USMCA Implementation Act (P.L. 116-113), and USMCA entered into force on July 1, 2020, replacing NAFTA.⁵ Congress approved USMCA and enacted its implementing legislation under rules set out in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, also known as Trade Promotion Authority (TPA-2015; P.L. 114-26), which expired in 2021.⁶

Mexico and Canada are two of the United States’ largest trading partners.⁷ USMCA continued the duty-free North American trade for most products, and maintained most of the nontariff barrier market opening measures that were established in NAFTA. USMCA included new provisions,

¹ Office of the U.S. Trade Representative (USTR), “Trilateral Statement on the Conclusion of NAFTA Round One,” August 20, 2017.

² See CRS In Focus IF10047, *North American Free Trade Agreement (NAFTA)*.

³ White House, “Remarks With Prime Minister Justin P.J. Trudeau of Canada and President Enrique Peña Nieto of Mexico at a Signing Ceremony for the United States-Mexico-Canada Agreement in Buenos Aires, Argentina,” November 30, 2018. During and after negotiations, the agreement was referred to by various names such as “renegotiated NAFTA,” “NAFTA 2.0,” and USMCA.

⁴ Protocol of Amendment to the Agreement between the United States of America, the United Mexican States, and Canada, December 10, 2019.

⁵ For more information, see CRS In Focus IF10997, *U.S.-Mexico-Canada (USMCA) Trade Agreement*.

⁶ See CRS In Focus IF10038, *Trade Promotion Authority (TPA)*.

⁷ See CRS In Focus IF11175, *U.S.-Mexico Trade Relations*; and CRS In Focus IF12595, *U.S.-Canada Trade Relations*.

such as a mandatory review of the agreement (“Sunset Clause”/“Joint Review” Provision), a new digital trade chapter (“Digital Trade”), new enforcement mechanisms and significant revisions to labor and environmental provisions (“Labor Provisions and the Rapid Response Mechanism” and “Environment”), and a provision related to FTAs with nonmarket economies (“Nonmarket Economy Clause”). Other areas that were a focus of congressional attention included the rules for duty-free trade in the automotive sector (“Automotive Rules of Origin”), intellectual property rights (“Intellectual Property Rights”), investment provisions (“Investment Provisions”), government procurement (“Government Procurement”), and a binational dispute settlement mechanism (“Binational Dispute Settlement”). This report does not cover agricultural issues discussed during the renegotiation of NAFTA.⁸ For additional information on the USMCA joint review process and the role of Congress, see CRS Report R48787, *USMCA Joint Review: Process and Role of Congress*, and CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*.

Background

NAFTA

NAFTA negotiations began as bilateral talks between the United States and Mexico. The United States and Canada had previously concluded a bilateral FTA, the U.S.-Canada Free Trade Agreement (P.L. 100-449), which went into force in 1989. The negotiation and approval of NAFTA was widely debated in Congress, with proponents arguing that the agreement would help generate jobs and reduce income disparity, while opponents warned that the agreement would result in companies moving operations to Mexico, leading to U.S. job losses.⁹

U.S. stakeholder opinions on NAFTA remained divided more than two decades after the agreement went into effect. For example, many business representatives argued that U.S. economic integration with Canada and Mexico under NAFTA benefitted the U.S. economy, while labor groups and some consumer advocacy groups argued that NAFTA resulted in outsourcing and lower wages that negatively affected the U.S. workforce and industrial base.¹⁰ A 2016 report by the U.S. International Trade Commission provided a summary of the findings from studies on the impact of NAFTA on the U.S. economy. The report stated that, in general, NAFTA led “to a substantial increase in trade volumes for all three countries; a small increase in U.S. welfare; and little to no change in U.S. aggregate employment, but noticeable changes in wages at the state level in the footwear, textiles, and plastics industries.”¹¹

Given changes in the global economy since NAFTA’s negotiation, such as the rise of digital trade, some stakeholders acknowledged that NAFTA would benefit from being updated or

⁸ For information on agricultural issues during the USMCA negotiations, see CRS Report R45661, *Agricultural Provisions of the U.S.-Mexico-Canada Agreement*; CRS Report R45038, *Efforts to Address Seasonal Agricultural Import Competition in the NAFTA Renegotiation*; CRS In Focus IF11149, *Dairy Provisions in USMCA*; and “What Retaliatory Tariffs Were Imposed on U.S. Agriculture in 2018 and 2019?” in CRS Report R48548, *Retaliatory Tariffs on U.S. Agriculture and USDA’s Responses: Frequently Asked Questions*.

⁹ For more information, see CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*.

¹⁰ See, for example, John G. Murphy, *First in a Series: Growth and Opportunity for North America*, U.S. Chamber of Commerce, August 16, 2017; Daniel Griswold and Clark Packard, *How Trade Agreements Have Enhanced the Freedom and Prosperity of Americans*, Cato Institute, August 27, 2024; Robert E. Scott, *NAFTA’s Legacy Growing U.S. Trade Deficits Cost 682,900 Jobs*, Economic Policy Institute, December 17, 2013; and Dan Kaufman, “How NAFTA Broke American Politics,” *New York Times*, updated September 6, 2024.

¹¹ United States International Trade Commission (USITC), *Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures*, Publication Number: 4614, June 2016.

“modernized” to reflect such changes and include commitments negotiated in more recent U.S. FTAs. The United States, Canada, and Mexico were all parties to the proposed Trans-Pacific Partnership (TPP), signed in 2016 among 12 countries; some experts viewed TPP as a potential avenue for modernizing NAFTA through a separate FTA.¹² President Trump withdrew the United States from TPP in January 2017. The remaining TPP members concluded the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which retains most of TPP’s provisions.¹³ Some USMCA provisions, such as those in the new digital trade chapter, appear to draw from or build on those negotiated in TPP.¹⁴

The First Trump Administration’s Trade Policy Approach

In NAFTA and other U.S. FTAs, and the proposed TPP, the United States negotiated measures to decrease tariffs and promote economic integration with and among FTA partners. The first Trump Administration took a critical view of past U.S. trade policies. One Administration official spoke of unraveling and reshaping global supply chains, and developing a “robust domestic supply chain that will spur job and wage growth.”¹⁵ A key objective for the Trump Administration in renegotiating NAFTA was to reduce U.S. trade deficits with Canada and Mexico.¹⁶ While changes in trade policy may impact bilateral trade deficits, economic studies find that trade agreements have a small effect on the overall U.S. trade deficit relative to macroeconomic factors such as domestic savings, investment, and government deficits.¹⁷ Some experts noted that certain U.S. positions during USMCA negotiations had the explicit or implicit goals of (1) promoting the ability of the United States to make decisions and develop policies unilaterally regarding its own economic affairs and/or (2) rolling back previous U.S. commitments in specific areas (e.g., government procurement, dispute settlement, seeking stricter requirements for duty-free trade).¹⁸ During the renegotiation of NAFTA, which resulted in USMCA, the Trump Administration initially reached a preliminary bilateral agreement in principle with Mexico, prompting observers to question whether the final negotiations might result in two separate bilateral agreements.¹⁹ Ultimately, the three countries negotiated USMCA as a trilateral deal.

¹² Joe Barnes, *The Trans-Pacific Partnership Agreement: The Stakes for Mexico and the United States*, Baker Institute, September 17, 2014.

¹³ For more details, see CRS In Focus IF12078, *CPTPP: Overview and Issues for Congress*.

¹⁴ See, for example, Robert Lighthizer, *No Trade Is Free: Changing Course, Taking on China, and Helping America’s Workers* (Broadside Books, 2023), pp. 228-229. For more details, see CRS In Focus IF12078, *CPTPP: Overview and Issues for Congress*.

¹⁵ Shawn Donnan, “Trump’s Top Trade Adviser Accuses Germany of Currency Exploitation,” *Financial Times*, January 31, 2017.

¹⁶ USTR, “Summary of Objectives for the NAFTA Renegotiation,” July 17, 2017, p. 4; and “Opening Statement of USTR Robert Lighthizer at the First Round of NAFTA Renegotiations,” August 16, 2017.

¹⁷ Council on Foreign Relations, “The U.S. Trade Deficit: How Much Does It Matter?,” April 23, 2025; and Gary Clyde Hufbauer and Zhiyao (Lucy) Lu, *Macroeconomic Forces Underlying Trade Deficits*, Peterson Institute for International Economics, March 31, 2016.

¹⁸ Simon Lester and Inu Manak, “The Rise of Populist Nationalism and the Renegotiation of NAFTA,” *Journal of International Economic Law*, vol. 21, no. 1 (March 2018), pp. 151-169.

¹⁹ William Alan Reinsch et al., *NAFTA or US-Mexico Trade Agreement*, Center for Strategic and International Studies, August 27, 2018; and Duncan Wood et al., “US-Mexico Deal Means Very Little Without Canada,” *The Hill*, August 29, 2018.

Potential NAFTA Withdrawal and U.S. Tariff Policies During the First Trump Administration

Prior to and during the renegotiation of NAFTA, President Trump in his first term made several pledges to withdraw from NAFTA, which would have ended duty-free trade in North America.²⁰ Legal observers at the time debated whether the President has authority to withdraw unilaterally from NAFTA or other FTAs without congressional involvement,²¹ a question that is analyzed in a separate CRS report.²² Some Members of Congress wrote a letter to then-U.S. Trade Representative (USTR) Robert Lighthizer stating that withdrawing from NAFTA or imposing “unnecessary restrictions on trade” with Canada and Mexico would have “devastating economic consequences.”²³ During the 115th Congress, some Members introduced H.Res. 132, which urged President Trump to initiate the renegotiation of NAFTA and consider withdrawing from the agreement if renegotiations were not “satisfactorily completed” within one year.

President Trump also imposed or proposed tariffs on key Canadian and Mexican industries. In May 2019, President Trump announced that in order to address an emergency at the U.S. southern border related to immigration and narcotics, he would invoke the International Emergency Economic Powers Act (IEEPA) to impose tariffs on all Mexican goods, starting at 5% in June 2019 and increasing up to 25% in October 2019.²⁴ In June 2019, before the tariffs went into effect, President Trump announced that the tariffs were “indefinitely suspended” after reaching an agreement with Mexico.²⁵

Separately, President Trump invoked Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862) to impose tariffs on global U.S. imports of steel and aluminum in 2018 and investigate global imports of vehicles and auto parts—all key North American industries.²⁶ Section 232 allows the President to impose restrictions on imports, such as tariffs, if the Secretary of Commerce determines that the imports “threaten to impair” U.S. national security. Then-USTR Lighthizer subsequently described the imposition of Section 232 tariffs on Canada and Mexico as “critical to changing the dynamics and paving the way for a successful conclusion to the negotiations” and “the single most controversial trade decision President Trump made.”²⁷

²⁰ See, for example, Gary Clyde Hufbauer, *Can Trump Terminate NAFTA?*, Peterson Institute for International Economics, October 10, 2017; and Andrew Restuccia, Doug Palmer and Adam Behsudi, “Trump Says He Will Withdraw from NAFTA, Pressuring Congress to Approve New Trade Deal,” *Politico*, December 2, 2018.

²¹ Bryan Riley, “Can a President Unilaterally Terminate NAFTA? These Legal Experts Say ‘No Way,’” National Taxpayers Union, February 13, 2019.

²² CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*, pp. 27-31.

²³ Sen. Joni Ernst, “Senators Stress Economic Benefits of NAFTA to New U.S. Trade Rep,” press release, May 15, 2017.

²⁴ White House, “Statement from the President Regarding Emergency Measures to Address the Border Crisis,” May 13, 2019.

²⁵ President Donald Trump (@realDonaldTrump), “I am pleased to inform you that The United States of America has reached a signed agreement with Mexico. The Tariffs scheduled to be implemented by the U.S. on Monday, against Mexico, are hereby indefinitely suspended,” X post, June 7, 2019, <https://x.com/realDonaldTrump/status/1137155056044826626>. See “Joint Declaration and Supplementary Agreement Between the United States of America and Mexico,” signed June 7, 2019.

²⁶ CRS In Focus IF13006, *Section 232 of the Trade Expansion Act of 1962*. President Trump did not impose tariffs on automotive products during his first term. In 2025, he imposed 25% tariffs on vehicles and auto parts, with certain exemptions for USMCA-compliant goods. See CRS Insight IN12545, *Section 232 Automotive Tariffs: Issues for Congress*.

²⁷ Lighthizer, *No Trade Is Free: Changing Course, Taking on China, and Helping America’s Workers*, p. 235.

After the United States imposed steel and aluminum tariffs, in 2018, Mexico and Canada imposed retaliatory tariffs on U.S. goods.²⁸ Some Members of Congress criticized the imposition of tariffs on Canada, Mexico, and other allies such as the European Union.²⁹ Canadian and Mexican officials questioned the legality of the Section 232 tariffs on steel and aluminum.³⁰ In June 2018, the Canadian House of Commons adopted a motion opposing the “illegitimate tariffs imposed by the U.S. government against Canadian steel and aluminum workers.”³¹ In May 2019, the three countries announced a deal to remove Section 232 tariffs on Canadian and Mexican steel and aluminum and all related retaliatory tariffs.³²

The United States also signed several bilateral side letters to USMCA (ancillary documents) with Canada and Mexico related to Section 232 tariffs.³³ The USMCA side letters with Canada and Mexico on Section 232 state that the United States “shall not adopt or maintain a measure imposing tariffs or import restrictions” on goods or services of Canada or Mexico under Section 232 “for at least 60 days after imposition of a measure” to allow time for the parties to negotiate an “appropriate outcome.”³⁴ Canada and Mexico also have side letters with the United States outlining preemptive Section 232 auto tariff exclusions for imports from both countries (covering, from each country, 2.6 million passenger vehicles annually, all light trucks, and a certain annual value of auto parts).³⁵ The side letters also note that for automotive goods that do not meet USMCA rules, “the customs duty applied by the United States shall not exceed” the U.S. most-favored-nation (MFN) applied rate in effect on August 1, 2018.³⁶

In 2025, during the second Trump Administration, President Trump reinstated Section 232 tariffs on Canadian and Mexican steel and aluminum products.³⁷ In 2025, President Trump imposed Section 232 tariffs on automotive imports from all trading partners, with some exceptions for

²⁸ Government of Canada, “Archived - Updated - Countermeasures in Response to Unjustified Tariffs on Canadian Steel and Aluminum Products,” modified June 19, 2025; and Gobierno de México, “Decreto por el que se modifica la Tarifa de la Ley de los Impuestos Generales de Importación y de Exportación, el Decreto por el que se establece la Tasa Aplicable durante 2003, del Impuesto General de Importación, para las mercancías originarias de América del Norte y el Decreto por el que se establecen diversos Programas de Promoción Sectorial,” *Diario Oficial de la Federación*, June 5, 2018. For more details, see “What Retaliatory Tariffs Were Imposed on U.S. Agriculture in 2018 and 2019?” in CRS Report R48548, *Retaliatory Tariffs on U.S. Agriculture and USDA’s Responses: Frequently Asked Questions*, by Benjamin Tsui and Stephanie Rosch.

²⁹ See, for example, House Ways and Means Chairman Kevin Brady, “Brady Statement on Administration’s Action on Steel and Aluminum Tariffs,” press release, May 31, 2018; Senate Finance Committee Chairman Orrin Hatch, “Hatch Statement on Administration Aluminum, Steel Tariff Announcement,” press release, May 31, 2018.

³⁰ See, for example, Mike Blanchfield, “Mexico Won’t Ratify New NAFTA If U.S. Keeps Tariffs on Steel and Aluminum,” *Canadian Press*, March 4, 2019; and Mike Blanchfield, “Freeland Says Lifting U.S. Tariffs Must Be Part of Ratification of New NAFTA,” *Canadian Press*, April 3, 2019.

³¹ Parliament of Canada, House of Commons, “House of Commons Debates,” 42nd Parl., 1st sess., Volume 148, Number 312, June 11, 2018, p. 20608.

³² USTR, “United States Announces Deal with Canada and Mexico to Lift Retaliatory Tariffs,” press release, May 17, 2019. In 2025, the United States eliminated exemptions for all countries, including Canada and Mexico. See CRS Insight IN12519, *Section 232 Tariffs on Steel and Aluminum*.

³³ See “MX-US Side Letter on 232 Dispute Settlement,” “MX-US Side Letter on 232 Process,” “MX-US Side Letter on 232,” “CA-US Side Letter on 232 Process,” “Side Letter Text on 232 CA-US Response,” November 30, 2018, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

³⁴ “CA-US Side Letter on 232 Process” and “MX-US Side Letter on 232 Process.”

³⁵ “Side Letter Text on 232 CA-US Response” and “MX-US Side Letter on 232.”

³⁶ “Side Letter Text on 232 CA-US Response” and “MX-US Side Letter on 232.” For more information, see CRS In Focus IF12082, *USMCA: Automotive Rules of Origin*. MFN tariff rates are applied to goods imported from members of the World Trade Organization (WTO) that are not traded under an FTA.

³⁷ For more details, see CRS Insight IN12519, *Section 232 Tariffs on Steel and Aluminum*.

goods that comply with USMCA rules.³⁸ President Trump also has taken various other tariff actions targeted at key North American sectors or that specifically cover Canada or Mexico.³⁹ Whether Section 232 tariffs on Canada and Mexico are consistent with U.S. trade agreement obligations is a matter of debate.⁴⁰

Congressional and Executive Authorities over Trade Agreements

The U.S. Constitution authorizes the President to make treaties with the advice and consent of the Senate, while authorizing Congress to lay and collect duties, and to regulate trade with foreign countries.⁴¹ Congress has on occasion delegated authorities to the executive branch to negotiate trade agreements and adjust tariff rates.⁴² In its report on the USMCA Implementation Act (P.L. 116-113), the Senate Finance Committee asserted that “the ability of the United States to enter into any trade agreement—as well as update and modernize any existing agreement—requires Congress’s assent under the Constitution.”⁴³

As noted above, the Trump Administration negotiated and implemented USMCA under time-limited trade promotion authority (TPA) granted in TPA-2015 for use through July 1, 2021. Under TPA, Congress establishes U.S. trade negotiating objectives in key areas, as well as consultation and notification requirements for the executive branch during trade negotiations.⁴⁴ If the President satisfies these objectives and requirements, implementing legislation for a trade agreement may receive expedited treatment in Congress. While rare, there have been past cases where some Members were dissatisfied with the final FTA text that had been negotiated and Congress suspended or delayed the application of TPA for implementing legislation until congressional concerns were addressed.⁴⁵ In its report on the USMCA Implementation Act in 2020, the Senate Finance Committee stated that TPA “represents a compact between Congress and the Administration, by which Congress guarantees it will vote on a trade agreement entered into by the Administration without amendment and the Administration guarantees close consultation with Congress during the negotiation, approval, and implementation of the trade agreement in order to achieve the objectives that Congress identifies.”⁴⁶ In January 2020, Congress enacted the USMCA Implementation Act through TPA’s expedited procedures. Since TPA’s expiration in

³⁸ For more details, see CRS Insight IN12545, *Section 232 Automotive Tariffs: Issues for Congress*.

³⁹ For more information, see CRS Report R48549, *Presidential 2025 Tariff Actions: Timeline and Status*; CRS In Focus IF12595, *U.S.-Canada Trade Relations*; and CRS In Focus IF11175, *U.S.-Mexico Trade Relations*.

⁴⁰ See CRS In Focus IF12995, *International Trade Agreements and U.S. Tariff Laws*.

⁴¹ U.S. Const. art. II, §2, cl. 2; and U.S. Const. art. I, §8, cl. 3.

⁴² CRS In Focus IF10038, *Trade Promotion Authority (TPA)*; and CRS In Focus IF11400, *Presidential Authority to Address Tariff Barriers in Trade Agreements under Trade Promotion Authority (TPA)*.

⁴³ U.S. Congress, Senate Committee on Finance, *United States-Mexico-Canada Agreement Implementation Act*, report to accompany H.R. 5430, 116th Cong., 2nd sess., S.Rept. 116-283, October 21, 2020, p. 4.

⁴⁴ See, for example, Bipartisan Congressional Trade Priorities and Accountability Act (TPA-2015), P.L. 114-26, §103(b), 129 Stat. 319, 334 (2015).

⁴⁵ In the case of the U.S.-Colombia FTA, for example, some Members initially opposed passage, amid continued concerns over worker rights and violence against unions (e.g., “Pelosi, Hoyer, Rangel, and Levin Statement on Trade,” press release, June 29, 2007). After the Bush Administration pushed consideration of implementing legislation in 2008, without fully resolving congressional concerns, the House approved a resolution (H.Res. 1092) withdrawing it from TPA treatment. The FTA was ultimately approved during the Obama Administration in 2011, after the signing of an Action Plan Related to Labor Rights.

⁴⁶ S.Rept. 116-283, p. 4.

2021, successive U.S. Administrations have neither formally sought TPA reauthorization nor pursued and completed the negotiation of comprehensive FTAs akin to USMCA.⁴⁷

Typically, FTA obligations have been finalized upon conclusion of the agreement, allowing the Administration and Members of Congress time to consider the content of the FTA and to confer on what statutory changes and administrative actions may be necessary for implementation.⁴⁸ At the direction of Congress, USMCA also underwent key changes following its initial conclusion and signing by the three parties. Certain Members played a central role in securing revisions that resulted in a Protocol of Amendment to the USMCA. In the 116th Congress, the Senate Finance Committee explained (*italics added for emphasis*):

One of the rationales for TPA is to enhance the Administration’s effectiveness during negotiations by giving trading partners confidence that the agreement reached is the agreement that Congress will vote on, subject to minor changes if any, including changes that might be implemented through side letters. *However, TPA does not preclude the Administration from going back to a trading partner and requesting changes to an agreement, in consultation with Congress.*⁴⁹

This was the case with USMCA. In June 2019, then-House Speaker Nancy Pelosi appointed a working group of House Democrats to conduct negotiations with the Trump Administration “regarding changes to USMCA required to secure their support.”⁵⁰ At that time, those Members contended that “moving forward with implementing legislation absent the agreement of Democratic leadership would almost certainly be taken as a failure to fulfill the consultation requirements of TPA.”⁵¹ In December 2019, the House Democrats’ Trade Working Group and the Administration reached a deal on provisions in four areas of USMCA commitments—enforcement, labor, environment, and access to medicines.⁵² Some provisions, such as those related to labor, went beyond the negotiating objectives laid out in TPA-2015.⁵³ Subsequently, the three USMCA countries signed the Protocol of Amendment to the USMCA, and implementing legislation for the trade deal was then submitted to Congress for passage.

⁴⁷ FTAs typically cover “substantially all the trade” between trading partners (see, e.g., Article XXIV of the 1994 General Agreement on Tariffs and Trade), with market access commitments on trade in goods, agriculture, and services, and various rules including on investment, technical barriers to trade, intellectual property rights, labor and environmental standards, and dispute settlement. In the past decade, U.S. Administrations have instead negotiated and entered into certain limited scope trade agreements that have not required statutory changes to enter into effect. For more on debates over authorities to enter into recent trade deals, see CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*.

⁴⁸ Before Congress formally considers implementing legislation for a concluded FTA, committees have typically conducted a “mock markup” to provide input to the Administration. Though the process is not required by statute, many in Congress consider such mock markups as “valuable opportunities to engage in the development of implementing legislation” and “an important way to reinforce the requirement in TPA 2015 that provisions in the legislation be ‘strictly necessary or appropriate’ to implement” the FTA. Senate Finance noted that “the lack of a mock markup for USMCA was an exceptional situation that should not be a precedent for the future consideration of FTA implementing bills by Congress.” S.Rept. 116-283, p. 8.

⁴⁹ S.Rept. 116-283, p. 6.

⁵⁰ S.Rept. 116-283, p. 6.

⁵¹ Letter from Members of New Democrat Coalition to USTR Robert Lighthizer, July 8, 2019; and Sabrina Rodriguez, “New Democrats Warn Lighthizer: Don’t Send USMCA Yet,” *Politico*, July 8, 2019.

⁵² For a summary, see U.S. Congress, House Committee on Ways and Means, *United States-Mexico-Canada Agreement Implementation Act*, report to accompany H.R. 5430, 116th Cong., 1st sess., H.Rept. 116-358, part 1, December 19, 2019, pp. 3-11; and Chairman Richard E. Neal, House Committee on Ways and Means, “Improvements to the USMCA Secured by Democrats in the ‘December 10 Agreement,’” December 2019, <https://larson.house.gov/sites/evo-subsites/larson.house.gov/files/Improvements%20to%20the%20USMCA.pdf>.

⁵³ For example, see CRS Report R46842, *Worker Rights Provisions and U.S. Trade Policy*.

The consultative, notification, and reporting requirements in TPA were designed to achieve greater transparency for Congress in U.S. trade negotiations and to sustain the role of Congress in shaping trade policy. Like the negotiating objectives, congressional consultation requirements in TPA-2015 had evolved and expanded since the negotiation of NAFTA and other U.S. FTAs subject to earlier iterations of TPA.⁵⁴

Selected Issues Facing Congress

“Sunset Clause”/“Joint Review” Provision

USMCA is scheduled to terminate 16 years after its entry into force (July 1, 2036), unless all three USMCA parties confirm that they wish to continue the agreement through a “joint review” process.⁵⁵ The first joint review is scheduled for July 2026.

While negotiating the USMCA terms, officials in the first Trump Administration proposed a five-year “sunset clause” and stated that the President would decide whether or not to continue the agreement five years after the agreement went into effect.⁵⁶ A USTR official argued the sunset clause would prevent agreements from becoming “out of date” and that “it takes a fair amount of political pressure in order to get nations to come together and work on these agreements.”⁵⁷ Canadian and Mexican officials opposed the initial U.S. “sunset clause” proposal, maintaining it would create uncertainty for investment and other economic activity.⁵⁸ The three parties eventually agreed on a 16-year term for USMCA, with a required joint review to decide whether to renew the agreement.⁵⁹

The sunset clause proposal and the subsequent establishment of a joint review provision was controversial among Members of Congress. Some Members argued that a mandatory review clause could create uncertainty that may discourage private investment and harm U.S. businesses.⁶⁰ Other Members questioned whether the sunset clause provision may circumvent congressional authorities related to trade agreements.⁶¹ Then-USTR Lighthizer argued that the

⁵⁴ For example, TPA-2015 included provisions requiring the appointment of a Chief Transparency Officer at USTR; the release of negotiating text to the public 60 days prior to its signing; and the submission of the final text of draft implementing legislation and the accompanying Statement of Administrative Action to Congress 30 days prior to introduction. See CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*.

⁵⁵ USMCA, art. 34.7. For more details, see CRS Report R48787, *USMCA Joint Review: Process and Role of Congress*.

⁵⁶ U.S. Congress, House Committee on Ways and Means, *Hearing on U.S. Trade Policy Agenda*, committee print, 115th Cong., 2nd sess., March 21, 2018, 115-FC08, pp. 25-26.

⁵⁷ U.S. Congress, Senate Committee on Finance, Subcommittee on International Trade, Customs, and Global Competitiveness, *Modernization of the North American Free Trade Agreement (NAFTA)*, 115th Cong., 1st sess., November 20, 2017, S.Hrg. 115-412 (Washington: GPO, 2018), p. 7.

⁵⁸ Gary Hufbauer and Steven Globerman, *The United States–Mexico–Canada Agreement: Overview and Outlook*, Fraser Institute, November 2018, p. 3.

⁵⁹ USMCA, art. 34.7.

⁶⁰ See, for example, U.S. Congress, House Committee on Ways and Means, *Hearing on U.S. Trade Policy Agenda*, 115th Cong., 2nd sess., March 21, 2018, 115-FC08, pp. 25, 72, 89, 95; and U.S. Congress, Senate Committee on Finance, Subcommittee on International Trade, Customs, and Global Competitiveness, *Modernization of the North American Free Trade Agreement (NAFTA)*, S.Hrg. 115-412, p. 7.

⁶¹ U.S. Congress, House Committee on Ways and Means, *Hearing on the 2019 Trade Policy Agenda: Negotiations with China, Japan, the EU, and UK; new NAFTA/USMCA; U.S. Participation in the WTO; and other matters*, hearing transcript, 116th Cong., 1st sess., June 19, 2019, pp. 119-121.

joint review process allows Congress to exert greater oversight than “eternal” FTAs that lack a mechanism for periodic review.⁶²

Given the expiration of TPA-2015, there are no TPA authorities in place ahead of the forthcoming USMCA joint review. The USMCA Implementation Act specifies how the President and USTR must engage with Congress in the joint review process, including consultation requirements.⁶³ In its report on the USMCA Implementation Act, the House Ways and Means Committee stated it “intends to be heavily engaged in any decisions with respect to sunset and expects consultation to be timely and robust.”⁶⁴ The Senate Finance Committee stated that the joint review provision “does not change the constitutional structure of the United States with respect to the conduct of trade policy” and that “the United States cannot withdraw from a congressionally approved trade agreement without the consent of Congress.”⁶⁵ A separate CRS report discusses legal debates over whether the President has unilateral authority to decide the position of the United States regarding whether to extend the term of USMCA in the joint review process.⁶⁶

Automotive Rules of Origin

The North American auto industry became highly integrated under NAFTA.⁶⁷ NAFTA’s rules of origin (ROO) included a 62.5% North American content requirement for vehicles to qualify for duty-free trade. Under the rules of the World Trade Organization (WTO), vehicles that did not meet NAFTA rules were subject to the United States’ MFN tariff of 2.5% on passenger vehicles, 25% on light trucks, and varying tariff levels on auto parts.

Modifying the ROO for automotive products was a key topic during the USMCA negotiations. The Trump Administration’s stated negotiating objective for ROO was to “ensure that the benefits of NAFTA go to products genuinely made in the United States and North America” and ensure that the agreement’s ROO “incentivize the sourcing of goods and materials from the United States and North America.”⁶⁸ In opening remarks at the first round of NAFTA renegotiations, then-USTR Lighthizer highlighted the United States’ automotive trade deficit with Mexico and stated that ROO, “particularly on autos and auto parts, must require higher NAFTA content and substantial U.S. content.”⁶⁹ At least one subcommittee held hearings where witnesses discussed the potential effects of auto ROO changes on costs for producers and consumers and the competitiveness of the U.S. auto industry.⁷⁰ Some Members introduced a resolution urging the Trump Administration to increase the North American content requirement for vehicles from 62.5% to 90% (115th Congress, H.Res. 132).

Auto ROO are stricter under USMCA than they were under NAFTA, which already included the strictest ROO of any U.S. FTA.⁷¹ For example, USMCA requires 75% North American content

⁶² U.S. Congress, House Committee on Ways and Means, *Hearing on the 2019 Trade Policy Agenda: Negotiations with China, Japan, the EU, and UK; new NAFTA/USMCA; U.S. Participation in the WTO; and Other Matters*, hearing transcript, p. 120.

⁶³ CRS Report R48787, *USMCA Joint Review: Process and Role of Congress*.

⁶⁴ H.Rept. 116-358, p. 35.

⁶⁵ S.Rept. 116-283, p. 18.

⁶⁶ CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*, pp. 31-32.

⁶⁷ For more details, see CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*.

⁶⁸ USTR, *Summary of Objectives for the NAFTA Renegotiation*, p. 6.

⁶⁹ USTR, “Opening Statement of USTR Robert Lighthizer at the First Round of NAFTA Renegotiations.”

⁷⁰ U.S. Congress, Senate Committee on Finance, Subcommittee on International Trade, Customs, and Global Competitiveness, *Modernization of the North American Free Trade Agreement (NAFTA)*, S.Hrg. 115-412, pp. 20-21.

⁷¹ For more details, see CRS In Focus IF12082, *USMCA: Automotive Rules of Origin*.

for vehicles and certain key parts and 70% of a vehicle's steel and aluminum to originate in North America. USMCA also contains wage requirements, stipulating 40%-45% of North American auto content be made by workers earning at least \$16 per hour (for the first time in a U.S. FTA).

After the conclusion of USMCA, Mexico and Canada officially disputed the U.S. interpretation of the calculation method for North American regional value content (RVC). The dispute involves the treatment of material in core motor vehicle parts. The Mexican and Canadian governments argued that if a core part qualifies for USMCA, 100% of its value should count toward the larger RVC calculation (referred to as "roll up"). USTR argued that the overall RVC calculation should exclude the value of materials in core parts that are not sourced from a USMCA country ("non-originating"). Mexico and Canada contended that these flexibilities were negotiated to help North American motor vehicle producers meet the RVC requirements. In December 2022, a USMCA dispute settlement panel ruled against the United States.⁷² USMCA does not provide any mechanism to appeal dispute settlement panel decisions. To date, the three countries have not resolved the issue.

Digital Trade

USMCA is the first comprehensive U.S. FTA to take effect with advanced commitments on digital trade, such as rules related to data localization, cross-border data flows, source code transfer, and limited liability for internet platforms for third-party content.⁷³ NAFTA was implemented in 1994, before the internet was widely adopted, and did not contain any such commitments. Following NAFTA, many U.S. FTAs contained e-commerce chapters with commitments on nondiscrimination and nontaxation of digital products and digital trade facilitation, among other provisions intended to reduce barriers to cross-border e-commerce. U.S. FTAs have contained more expansive sets of rules on digital trade beginning with USMCA, initially signed in 2018, and the U.S.-Japan Digital Trade Agreement (DTA), signed in 2019. The digital trade chapter in USMCA and the U.S.-Japan DTA built on a negotiating template for digital trade issues first developed by the United States for TPP negotiations. In general, the provisions in the USMCA digital trade chapter are subject to USMCA dispute settlement procedures.

During the negotiation of USMCA, USTR named certain objectives on digital trade, including those related to open cross-border data flows and prohibiting the forced transfer of source code.⁷⁴ One issue that emerged during negotiations was the digital trade chapter's prohibition of liability of internet intermediaries (Article 19.17), which limits liability for suppliers of internet services for third-party content. This provision has similarities to U.S. law in Section 230 of the Communications Act of 1934 (47 U.S.C. §230), as added in 1996 by the Communications Decency Act of 1996 (Title V of P.L. 104-104) and subsequently amended.⁷⁵ There are a number of phrasing differences between Section 230 and Article 19.17, some of which could lead to substantive differences in their scope. Some lawmakers expressed concerns about including a liability shield in trade agreements and committing the United States to uphold the provision internationally at a time when some Members sought to change the scope of Section 230 liability

⁷² The USMCA panel report is available at <https://ustr.gov/sites/default/files/enforcement/FTA/USMCA%2031/USMCAAutomotive%20ROO.pdf>.

⁷³ For more information, see CRS In Focus IF12347, *Digital Trade and Data Policy: Key Issues Facing Congress* and CRS In Focus IF10997, *U.S.-Mexico-Canada (USMCA) Trade Agreement*.

⁷⁴ USTR, *Summary of Objectives for the NAFTA Renegotiation*, p. 9.

⁷⁵ For more information on Section 230 of the Communications Decency Act, see CRS Report R46751, *Section 230: An Overview*.

protection in U.S. law.⁷⁶ Members' concerns over the inclusion of USMCA's limited liability provision were raised later in the negotiations, and the provision was ultimately included in USMCA's digital trade chapter.⁷⁷ Some U.S. stakeholders and Members of Congress expressed support for the digital trade chapter because setting strong standards could help U.S. firms address foreign barriers to digital trade and reinforce U.S. leadership in the technology sector, among other reasons.⁷⁸

Debate in Congress over the limited liability provision during USMCA negotiations preceded similar debate over other topics in U.S. digital trade policy during the Biden Administration. Until 2023, the United States generally promoted the free flow of data in its trade agreements, including provisions to limit data localization, with some exceptions. The Biden Administration reassessed these policies by withdrawing support for certain provisions related to cross-border data flows in digital trade talks at the WTO in 2023. Then-U.S. Trade Representative Katherine Tai attributed the changes to a need for space to address the domestic regulatory environment governing data flows and the technology sector.⁷⁹

Intellectual Property Rights

The USMCA chapter on intellectual property (IP) rights aims to protect and enforce these rights in the three parties' markets. The chapter sets minimum standards for IP protection across the three parties. NAFTA contained the first IP chapter in a U.S. FTA. USMCA retains NAFTA's core IP provisions and expands on some protections.⁸⁰ For example, USMCA

- provides that the parties must grant a copyright term for works authored by natural persons of at least 70 years plus the author's lifetime (increased from 50 years-plus-lifetime under NAFTA);
- expands the enforcement of IP rights to include measures relating to copyright infringement online, criminal penalties for trade secret theft, and *ex officio* authority for customs officials to seize counterfeit or pirated goods; and
- strengthens due process and transparency requirements for geographical indications (GI) protection.⁸¹

Certain IP provisions, particularly those related to pharmaceuticals, were the subject of much debate by Members of Congress during USMCA negotiations. Changes to IP provisions were part

⁷⁶ John D. McKinnon and Brody Mullins, "Nancy Pelosi Pushes to Remove Legal Protections for Online Content in Trade Pact," *Wall Street Journal*, December 4, 2019.

⁷⁷ Steven Overly and Cristiano Lima, "Online Companies' Liability Shield Survives Final USMCA Deal," *Politico Pro*, December 10, 2019.

⁷⁸ For example, see Coalition of Services Industries (CSI) statement on Senate Passage of the USMCA Implementing Bill, January 16, 2020; Anupam Chander, "The Coming North American Digital Trade Zone," Council on Foreign Relations, October 9, 2018; Michael Beckerman, "Passing USMCA Will Help US Companies Address Global Threats to Digital Trade," *The Hill*, January 10, 2020; and Joint Economic Committee, "Digital Trade in the U.S.-Mexico-Canada Agreement," December 21, 2018.

⁷⁹ Remarks by U.S. Trade Representative Katherine Tai, Aspen Security Forum, December 7, 2023.

⁸⁰ For more information on the IP provisions in USMCA, see CRS Report R44981, *The United States-Mexico-Canada Agreement (USMCA)*, and CRS In Focus IF11314, *USMCA: Intellectual Property Rights (IPR)*.

⁸¹ Geographical indications (GIs) are geographical names to protect the quality and reputation of a distinctive product from a region (e.g., Chiapas coffee, Canadian whiskey, Florida oranges). The United States aims to address GI protections that may impede U.S. access to foreign agricultural markets by protecting terms viewed as "common" (e.g., Parmesan cheese). For more information, see CRS In Focus IF10033, *Intellectual Property Rights (IPR) and U.S. Trade Policy*.

of the December 2019 USMCA protocol of amendment.⁸² USMCA parties originally negotiated a 10-year period of regulatory exclusivity for biologic drugs (drugs made from living organisms).⁸³ This provision was removed due to concerns among some Members of Congress.⁸⁴ U.S. law currently provides 12 years of exclusivity for biologics, while the exclusivity periods are eight years in Canada and five years in Mexico. Some policymakers were concerned that adopting the negotiated 10-year data exclusivity period would have hampered congressional efforts to lower drug prices.⁸⁵ The final USMCA text dropped that provision, a move some industry groups claimed could adversely affect U.S. medical innovation and reduce pressure on Mexico and Canada to raise IP standards in the pharmaceutical sector.⁸⁶ Some civil society groups argued that the provision, if adopted, could have harmed access to medicines.⁸⁷

In its 2026 “Special 301” report—an annual review of certain U.S. trading partners’ laws, policies, and practices on IP protection and enforcement—USTR stated that it continued to monitor and enforce implementation of Mexico and Canada’s IP commitments in USMCA.⁸⁸ In its 2026 “Special 301” designations of countries, USTR moved Mexico from the “Priority Watch List” to the “Watch List,” a milder category of concern, due to Mexico’s “substantial actions” to address “significant IP concerns,” including “amending regulations, making public commitments, and preparing and taking other measures on areas such as pharmaceutical IP, Internet service provider liability, criminal enforcement, and border enforcement.”⁸⁹ USTR noted that outstanding concerns remained on Mexico, including high levels of copyright piracy and counterfeiting and limited related IP enforcement. USTR continued to designate Canada on the “Watch List,” citing Canada’s “lack of” IP enforcement, particularly at the border and against online piracy, among other issues.⁹⁰

Investment Provisions

The United States has used the investment chapters of FTAs and bilateral investment treaties (BITs) to establish investment rules and norms that generally obligate parties to reduce restrictions on foreign direct investment and ensure nondiscriminatory treatment of investors and investment. Other obligations include to set limits on expropriation of investments—both direct and indirect (measures equivalent to expropriation or nationalization)—and provide for “prompt,

⁸² Protocol of Amendment to the USMCA, December 10, 2019.

⁸³ During a period of exclusivity, the relevant regulatory authority (e.g., the Food and Drug Administration) may not approve a generic or biosimilar version of a drug or biologic.

⁸⁴ Regulatory exclusivity prevents the regulatory authority from approving a generic drug or biosimilar or precludes a competing firm from using the reference product’s data to obtain regulatory approval for a period of time. As such, regulatory exclusivities provide an additional form of protection that may overlap with, or in some cases run beyond, the term of any applicable patents. U.S. law provides a general exclusivity period of 5 years for chemical drugs and 12 years for biologics. For more information, see CRS In Focus IF12744, *Patent Law: An Introduction and Issues for Congress*; and CRS Report R46679, *The Role of Patents and Regulatory Exclusivities in Drug Pricing*.

⁸⁵ See, for example, Rep. Jan Schakowsky, “House Members Urge Administration to Take Action to Lower Drug Prices in USMCA Talks,” press release, July 11, 2019.

⁸⁶ Pharmaceutical Research and Manufacturers of America (PhRMA), “PhRMA Statement on the United-Mexico-Canada Agreement,” December 10, 2019. For more information, see CRS In Focus IF11314, *USMCA: Intellectual Property Rights (IPR)*.

⁸⁷ Burcu Kilic, “Pharmaceutical-Related Patent Provisions,” in *NAFTA 2.0*, Public Citizen, January 21, 2019.

⁸⁸ The Special 301 review is mandated by Section 182 of the Trade Act of 1974 (19 U.S.C. §2242). USTR, *2026 Special 301 Report*, April 2026, p. 25.

⁸⁹ USTR, *2026 Special 301 Report*, April 2026, pp. 8, 13, 86-87.

⁹⁰ USTR, *2026 Special 301 Report*, April 2026, p. 79.

adequate, and effective compensation” when expropriation occurs.⁹¹ These obligations typically have been enforced through an investor-state dispute settlement (ISDS) mechanism, which has enabled foreign investors to bring claims directly against their host states for violations of those agreements and treaties, for those claims to be arbitrated by independent tribunals, and for awards in the form of monetary compensation or and/or restitution of property.⁹² These ISDS provisions were included in NAFTA and most other U.S. FTAs.⁹³

TPA-2015 included among the principal negotiating objectives for foreign investment:

to reduce or eliminate artificial or trade distorting barriers to foreign investment, while ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States, and to secure for investors important rights comparable to those that would be available under United States legal principles and practice.⁹⁴

It included various directives to implement this objective, including that USTR aim “to improve mechanisms used to resolve disputes between an investor and a government.”

Nevertheless, ISDS has been contested. Supporters of ISDS argue that the mechanism is a reciprocal right ensuring critical protections to U.S. investors overseas and does not give foreign investors in the United States additional substantive rights relative to U.S. law, and that decisions under ISDS cannot require a country to change its laws or regulations.⁹⁵ Critics assert that investors should not have additional procedural rights under ISDS to challenge governments through a venue outside of the country’s courts, and that the mere threat of ISDS can hinder regulatory actions by governments, such as to protect public health or the environment. Some Members of Congress, for example, criticized existing ISDS provisions for making it “less risky for employers to relocate jobs offshore, while simultaneously threatening democratic policymaking at home and abroad.”⁹⁶

During the NAFTA renegotiation process, then-USTR Lighthizer indicated some skepticism of the existing investment provisions. For example, while testifying before the House Ways and Means Committee, he questioned why foreign investors in the United States should have more procedural rights than U.S. investors in the U.S. legal system; voiced concern that ISDS outcomes could “overrule the entire U.S. [court] system”; and posited that ISDS promoted outsourcing in some cases by providing investors with “political risk insurance.”⁹⁷

⁹¹ See, for example, the U.S. 2012 Model BIT, the template that the U.S. government used to negotiate BITs. <https://2009-2017.state.gov/documents/organization/188371.pdf>.

⁹² See, for example, Chapter 11 of the U.S.-Panama Trade Promotion Agreement; Bipartisan Trade Promotion Authority Act of 2002, P.L. 107-210, §2102(b)(3)(G), 116 Stat. 933, 995; TPA-2015, §102(b)(4)(G), 129 Stat. at 324.

⁹³ North American Free Trade Agreement (NAFTA), Dec. 17, 1992, Can.-Mex.-U.S., art. 1116, 32 I.L.M. 289 (1993). An exception is the U.S.-Australia FTA, which, however, provides for revisiting the inclusion of ISDS if “there has been a change in circumstances affecting the settlement of disputes.” See art. 11.16.

⁹⁴ TPA-2015, §102(b)(4)(G), 129 Stat. at 324.

⁹⁵ See, for example, U.S. Chamber of Commerce, *Securing the Benefits of Cross-Border Investment: International Agreements and Dispute Settlement*, 2024.

⁹⁶ H.Res. 132 (115th Congress). See also Letter from Sen. Warren to USTR Robert Lighthizer, September 19, 2017, archived January 29, 2026, at <https://perma.cc/4ZP2-RS5L>.

⁹⁷ U.S. Congress, House Committee on Ways and Means, *U.S. Trade Policy Agenda*, 115th Cong., 2nd sess., p. 13. “Political risk insurance” is insurance against certain government actions, typically expropriation, that might result in the significant reduction in the value of an investment. Such insurance is available through the private sector and also through public entities. The U.S. Development Finance Corporation (DFC), a wholly owned U.S. government corporation, is an example of an entity that provide this kind of insurance. See CRS In Focus IF11436, *U.S. International Development Finance Corporation (DFC)*.

During the hearing, some Members of Congress indicated that they disagreed with Lighthizer’s characterization and preferred to retain ISDS provisions in a renegotiated NAFTA.⁹⁸ Some Members also sent a letter to USTR warning that “ISDS provisions at least as strong as those contained in the existing NAFTA must be included in a modernized agreement to win Congressional support.”⁹⁹ Some private stakeholders expressed their desire that such provisions remain as well. For example, the American Petroleum Institute expressed their support for “strong investment protections and ... ISDS, including rules that restrict expropriation of investments and that provide for prompt, adequate and effective compensation if expropriation does occur.”¹⁰⁰

During the NAFTA renegotiation, the Canadian government sought “comprehensive” protections for investors and investments that are “backed by an effective dispute settlement mechanism” and do not “undermine the government’s right to regulate in the public interest,” including regarding the environment.¹⁰¹ The Canadian government noted that U.S. investors had challenged the application of certain Canadian environmental measures under ISDS, and Canada had been found liable for breaching its NAFTA obligations.¹⁰² Based on a 2019 U.S. International Trade Commission (USITC) analysis of ISDS cases filed under NAFTA, Canada was subject to the most claims.¹⁰³ In a 2019 summary of USMCA negotiated outcomes, the Canadian government pointed to state-to-state dispute settlement—which, if successful would not result in the award of damages—as the “only recourse” for investment disputes with the United States under USMCA; to highlight the significance of this outcome, the Canadian government stated that since 1994, U.S. investors received C\$205 million (about \$149 million) in damages and settlement from cases against Canada under NAFTA.¹⁰⁴

By some accounts, Canada sought to use, as a “starting point” of ISDS talks in the NAFTA renegotiation, the trade agreement it signed with the European Union in October 2016, but was unsuccessful in doing so.¹⁰⁵ The Canada-EU trade agreement established a permanent standing body to resolve disputes and a permanent standing appellate body, features the Canadian government stated were aimed at addressing concerns that the prevailing ISDS approach led to

⁹⁸ U.S. Congress, House Committee on Ways and Means, *U.S. Trade Policy Agenda*, 115th Cong., 2nd sess., pp. 21, 66-67, 103, 109.

⁹⁹ U.S. Congress, Senate Committee on Finance, “GOP to USTR: Maintain Key NAFTA Provision,” press release, March 21, 2018.

¹⁰⁰ American Petroleum Institute, *North American Oil and Natural Gas Industry Positions on NAFTA*, <https://www.api.org/~media/files/policy/trade/api-amexhi-capp-1st-position-paper-on-nafta.pdf>.

¹⁰¹ Government of Canada, “North American Free Trade Agreement: Initial Environmental Assessment,” December 2018.

¹⁰² Government of Canada, “North American Free Trade Agreement: Initial Environmental Assessment.”

¹⁰³ Based on data accessed in 2019, of the 61 ISDS cases filed under NAFTA, Canada was the subject of 26 claims, all by U.S. investors; Mexico was subject to 19 claims, 17 by U.S. investors and 2 by Canadian investors; and the United States was subject to 16 claims, 15 by Canadian investors and 1 by a Mexican investor. See USITC, *U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, April 2019, pp. 196-197. See also United Nations Conference on Trade and Development (UNCTAD), Investment Dispute Settlement Navigator, <https://investmentpolicy.unctad.org/investment-dispute-settlement>.

¹⁰⁴ Government of Canada, “Investment Chapter Summary” of USMCA, July 10, 2019, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/investment-investissement.aspx?lang=eng>. Some more recent estimates of payments by Canada are higher. See, for example, Canadian Centre for Policy Alternatives (CCPA), “NAFTA Investor Lawsuits Cost Canada More than \$376 Million and Remain a Threat: Report,” April 15, 2021. Currency rate \$1 USD=\$1.38 CAD.

¹⁰⁵ Daniel Garcia-Barragan et al., “The New NAFTA: Scaled-Back Arbitration in the USMCA,” *Journal of International Arbitration* vol. 36, no. 6 (2019): 739–754.

inconsistent decisions and perceived bias in the system.¹⁰⁶ The parties also agreed to work toward the creation of a multilateral investment court system with an appellate mechanism in lieu of traditional ISDS mechanisms.¹⁰⁷

In contrast, Mexican officials reportedly wanted to retain the ISDS provisions in the renegotiated NAFTA.¹⁰⁸ Mexico has sought to build up its energy sector, including to attract investments in renewable energy.¹⁰⁹ Mexico may have sought to maintain ISDS for disputes between U.S. investors to signal the country's openness to investment and stability in the investment climate as well as to reverse any negative perceptions about disputes between investors and the Mexican government.¹¹⁰ Before the conclusion of USMCA, in January 2018, Mexico signed onto an international institutional and legal framework for ISDS cases, possibly to further signal its attitudes on investment.¹¹¹

As a result of the negotiations, USMCA eliminated ISDS provisions between the United States and Canada.¹¹² USMCA maintains a limited form of ISDS between the United States and Mexico, which is only available for a limited set of claims alleging a breach of national treatment, a breach of most-favored-nation treatment, or for direct expropriation; and requires the exhaustion of remedies in domestic courts or 30 months to pass from the initiation of domestic court proceedings before seeking recourse to ISDS (unless doing so is “obviously futile”).¹¹³ A more expansive form of ISDS, similar to the provisions in NAFTA is still available for covered government contracts within the oil and gas, power generation, telecommunication, transportation, and infrastructure sectors (see **text box**).¹¹⁴ For example, the expanded form of ISDS covers other protections in the investment chapter (e.g., indirect expropriation) and lifts the requirement for exhaustion of remedies and reduces the waiting period for filing an ISDS claim to six months from the events triggering the claim. Recourse to ISDS remains available between Canadian investors in Mexico and Mexican investors in Canada via CPTPP.¹¹⁵

¹⁰⁶ Government of Canada, “Canada-European Union Comprehensive Economic and Trade Agreement – Canadian Statement on Implementation,” https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/canadian_statement-enonce_canadien.aspx?lang=eng#a13.

¹⁰⁷ Comprehensive Economic and Trade Agreement, chap. 8, October 30, 2016.

¹⁰⁸ Robert Howse, “Developments in USMCA Dispute Settlement,” USMCA Forward 2024, Brookings, March 6, 2024.

¹⁰⁹ International Trade Administration, *Mexico Country Commercial Guide*, “Renewable Energy” section, February 12, 2026.

¹¹⁰ See, for example, the dispute involving the Mexican government's shutdown of Vulcan Materials Company's port facilities. Vulcan Materials Company, “Statement on the Illegal Occupation of Vulcan's Property in Mexico,” March 21, 2023; Congressman Gary Palmer, “Palmer Leads Letter Condemning Mexican Government for Actions Against Vulcan Materials,” September 25, 2024; Sen. Bill Hagerty, “Hagerty, Kaine Urge Mexican Government to Cease Unfair Treatment of U.S.-Based Vulcan Materials Company,” April 23, 2025; and the House-passed H.R. 7084 (119th Congress).

¹¹¹ International Centre for Settlement of Investment Disputes (ICSID), “Mexico Signs the ICSID Convention,” January 11, 2018.

¹¹² CRS In Focus IF11167, *USMCA: Investment Provisions*.

¹¹³ USMCA, chap. 14, annex 14-D.

¹¹⁴ USMCA, chap. 14, annex 14-E.

¹¹⁵ The scope of ISDS is narrower in CPTPP compared to the proposed TPP, for example, by not allowing recourse to ISDS for claims by private companies relating to their investment contracts with governments. Treatment of ISDS was a central issue in the TPP negotiations, which coincided with a ISDS claim brought by Philip Morris Asia against Australia for damages to brand recognition resulting from Australia's introduction of public health legislation requiring plain packaging for tobacco products. *Philip Morris Asia Limited v. The Commonwealth of Australia* (PCA Case No. 2012-12); ISDS case information available through UNCTAD, Investment Dispute Settlement Navigator, (continued...)

Energy and ISDS: NAFTA Renegotiations, Mexico's Energy Sector Reforms

In general, about one-third of total ISDS cases globally involve energy supplies and extractive industries, representing the sectors most commonly featuring in ISDS cases.¹¹⁶ During USMCA deliberations, advisory committees that are a part of the formal USTR-managed system for providing public and private stakeholder input in U.S. trade negotiations submitted reports including comments on ISDS. For instance, the Industry Trade Advisory Committee (ITAC) on Energy and Energy Services voiced disappointment on “sectoral limits to ISDS in Mexico and the elimination of ISDS for Canada.”¹¹⁷ While welcoming USMCA’s support for U.S. energy interests, it held that USMCA should not be a precedent for energy-related provisions in future U.S. trade agreements.¹¹⁸ The ITAC previously had stated that NAFTA contained “the full suite of ISDS investor provisions” and “allowed the United States energy industry to mitigate the risks associated with large scale, capital intensive and long-term projects”; and called for USMCA to have “a more inclusive list of energy sources,” including coal and uranium. In contrast, the labor-focused advisory committee viewed the narrowing of ISDS in USMCA as an improvement over NAFTA, reflecting some of the criticisms noted above in the ISDS, while the environment-focused environmental policy advisory committee membership was mixed in its views.¹¹⁹

In the forthcoming USMCA review, actions taken by the Mexican government in its energy sector could factor into potential discussions on whether to retain, further curtail, or expand ISDS among the parties. In 2013, Mexico undertook constitutional reforms that opened Mexico’s energy sector significantly to private investors. Since 2018, Mexico’s energy policy has focused on restructuring its sector to favor state-owned companies, with various measures adopted to this end.¹²⁰ For example, the Mexico government enacted legislation in 2021 to require Mexico’s national grid operator to prioritize the supply of electricity generated by the state-owned Federal Electricity Commission (CFE) over electricity generated by private companies, and in 2025 to require that at least 54% of electricity for the national grid be CFE-supplied, leaving up to 46% to be supplied by the private sector.¹²¹ These moves reverse prior measures to open Mexico’s energy sector private sector participation.¹²² USTR has identified such measures in its annual assessment of foreign trade barriers.¹²³ How the reforms ultimately affect U.S. investment in Mexico is an open question.

In 2022, USTR requested consultations with Mexico under USMCA’s general government-to-government dispute settlement provisions of the country’s energy policies, claiming that they are inconsistent with its obligations on market access, investment, and state-owned enterprise under USMCA.¹²⁴ In the 119th Congress, legislation has

<https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/421/philip-morris-v-australia>. See also, for example, Thomas J. Bollyky, “TPP Tobacco Exception Proves the New Rule in Trade,” Council for Foreign Relations, February 4, 2016.

¹¹⁶ UNCTAD, “Facts and Figures on Investor-State Dispute Settlement Cases,” International Investment Agreements (IIA) Issues Note, No. 3, 2024.

¹¹⁷ Addendum to NAFTA renegotiation report by the Industry Trade and Advisory Committee (ITAC) on Energy and Energy Services, October 25, 2018, https://ustr.gov/sites/default/files/files/agreements/FTA/AdvisoryCommitteeReports/ITAC_6_REPORT-Energy_and_Energy_Services_Addendum.pdf.

¹¹⁸ NAFTA renegotiation report by the ITAC on Energy and Energy Services, September 27, 2018, <https://ustr.gov/sites/default/files/files/agreements/FTA/AdvisoryCommitteeReports/ITAC%206%20REPORT%20-%20Energy%20and%20Energy%20Services.pdf>.

¹¹⁹ Report on NAFTA renegotiations by the Labor Advisory Committee on Trade Negotiations and Trade Policy, September 27, 2018, <https://ustr.gov/sites/default/files/files/agreements/FTA/AdvisoryCommitteeReports/Labor%20Advisory%20Committee%20on%20Trade%20Negotiations%20and%20Trade%20Policy%20%28LAC%29.pdf>; and Report on NAFTA renegotiations by the Trade and Environment Policy Advisory Committee, September 27, 2018, <https://ustr.gov/sites/default/files/files/agreements/FTA/AdvisoryCommitteeReports/Trade%20and%20Environment%20Policy%20Advisory%20Committee%20%28TEPAC%29.pdf>.

¹²⁰ USTR, *2026 National Trade Estimate Report on Foreign Trade Barriers*, March 2026, p. 357.

¹²¹ USTR, *2026 National Trade Estimate Report on Foreign Trade Barriers*, March 2026, p. 357; and International Trade Administration (ITA), “Mexico’s 2024-2025 Energy Reform: Implications for Private Sector Participation in Power Sector,” April 10, 2025.

¹²² ITA, “Mexico’s 2024-2025 Energy Reform: Implications for Private Sector Participation in Power Sector,” April 10, 2025.

¹²³ USTR, *2026 National Trade Estimate Report on Foreign Trade Barriers*, March 2026, p. 357. See also U.S. Department of State, *2025 Investment Climate Statements: Mexico*.

¹²⁴ USTR, “United States Requests Consultations Under USMCA Over Mexico’s Energy Policies,” July 22, 2022.

been introduced “to hold Mexico accountable for violating energy commitments” under USMCA.¹²⁵ H.R. 5926 would require USTR to request the establishment of a dispute resolution panel with Mexico; and also to request, during the forthcoming joint review of USMCA, for Mexico to provide nondiscriminatory access for U.S. energy companies consistent with its USMCA obligations.

Labor Provisions and the Rapid Response Mechanism

Concerns of some Members of Congress about the protection of worker rights and enforceability of USMCA were prominent issues in the renegotiation of NAFTA and congressional debate over the final USMCA.¹²⁶ Labor provisions in U.S. FTAs had evolved significantly since NAFTA, moving from a side agreement to integral chapters within U.S. FTAs, grounded in internationally recognized labor rights and with provisions subject to dispute settlement procedures.¹²⁷ NAFTA’s labor side agreement was an innovation that made important strides toward promoting North American labor cooperation.¹²⁸ At the same time, some experts and stakeholders criticized its shortcomings in coverage and implementation, spurring expanded provisions in subsequent U.S. FTAs and the NAFTA renegotiation.¹²⁹ USTR’s USMCA negotiating objectives for labor provisions indicated an aim to update NAFTA to generally reflect recent U.S. FTA practice, consistent with TPA-2015 requirements.¹³⁰

In the final agreement, USMCA included new commitments on worker rights that went beyond TPA-2015 and past U.S. FTAs. As previously discussed, in the House Democrats’ negotiations with the first Trump Administration, securing additional provisions related to enforcement of the labor chapter and worker rights in Mexico were among their top priorities.¹³¹ Compared to past U.S. FTAs, USMCA expands obligations on worker rights, such as commitments to address violence against workers and to ban the import of goods produced by forced labor.¹³² It includes an Annex to the labor chapter, committing Mexico to implement labor laws and reforms.¹³³ Negotiated changes to dispute settlement (DS) procedures included provisions to prevent a USMCA party from blocking the formation of a panel in state-to-state DS, and to require the development of rules of evidence.¹³⁴ Some Members of Congress also sought updated language in labor chapter obligations to remove perceived hurdles to potential enforcement actions, based in part on past U.S. experience losing to Guatemala in a labor-related dispute.¹³⁵ In 2017 an arbitral

¹²⁵ Rep. Jodey Arrington, “Arrington Introduces Bill to Hold Mexico Accountable for Energy Investment Violations,” November 10, 2025.

¹²⁶ Rep. Richard Neal, “Neal Sends Letter to Lighthizer Outlining Democrats’ Concerns with the Renegotiated NAFTA,” press release, April 9, 2019.

¹²⁷ CRS Report R46842, *Worker Rights Provisions and U.S. Trade Policy*.

¹²⁸ Lance Compa, “Trump, Trade, and Trabajo: Renegotiating NAFTA’s Labor Accord in a Fraught Political Climate,” *Indiana Journal of Global Legal Studies*, vol. 26, no. 1 (2019), pp. 263-304.

¹²⁹ See, for example, discussions in U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Mexico’s Labor Reform: Opportunities and Challenges for an Improved NAFTA*, hearing, 116th Cong., 1st sess., June 25, 2019; and *Enforcement in the New NAFTA*, hearing, 116th Cong., 1st sess., May 22, 2019.

¹³⁰ USTR, *Summary of Objectives for the NAFTA Renegotiation*, July 17, 2017.

¹³¹ Rep. Nancy Pelosi, “Transcript of Speaker Pelosi Press Conference Announcing New USMCA Agreement,” press release, December 10, 2019; and Chairman Richard E. Neal, House Committee on Ways and Means, “Improvements to the USMCA Secured by Democrats in the ‘December 10 Agreement,’” December 2019, <https://larson.house.gov/sites/evo-subsites/larson.house.gov/files/Improvements%20to%20the%20USMCA.pdf>.

¹³² USMCA, chap. 23; for more detail, see CRS In Focus IF11308, *USMCA: Labor Provisions*.

¹³³ USMCA, annex 23-A.

¹³⁴ For a summary of changes, see H.Rept. 116-358, pp. 4-6.

¹³⁵ See H.Rept. 116-358, p. 5.

panel requested by the United States under the Dominican Republic-Central America FTA (CAFTA-DR) found that Guatemala had failed to enforce certain labor laws, but not “in a manner affecting trade.” The U.S. loss to Guatemala fueled some Members’ concerns over the perceived limitations of existing FTA language,¹³⁶ leading to specific changes in the USMCA labor and DS chapters.¹³⁷

Since the 1990s, effective enforcement has been an issue in debates over U.S. FTA labor provisions. Labor advocates have generally criticized FTA enforcement as “slow and cumbersome” and over-reliant on the political will of governments.¹³⁸ In its report on the USMCA Implementation Act, the House Ways and Means Committee assessed that “state-to-state dispute settlement by itself has not provided sufficient leverage to ensure that U.S. trading partners live up to their labor commitments.”¹³⁹ In response, some Members of the House sought to supplement DS procedures with the creation of a novel “rapid response” mechanism (RRM) aimed at addressing complaints over the denial of certain worker rights at individual facilities in Mexico (see **text box**).¹⁴⁰ In 2024, then-USTR officials framed the RRM in particular as “key to the overwhelming bipartisan support for the passage of the USMCA in the U.S. Congress.”¹⁴¹ To date, USTR has invoked the mechanism in about 40 cases to review facilities in Mexico, including in industries such as automotive, garments, mining, food manufacturing, and services.¹⁴²

USMCA Rapid Response Labor Enforcement Mechanism

The U.S.-Mexico RRM (Annex 31-A of USMCA) provides for the enforcement of worker rights at individual facilities in the United States and in Mexico, in contrast to state-to-state dispute settlement, which deals with complaints over a government’s failure to uphold labor obligations. Canada and Mexico have a separate bilateral mechanism for addressing worker rights; there is no RRM between Canada and the United States. The U.S.-Mexico RRM allows a government to take action regarding a worksite in the territory of another country if it believes that workers are being denied the right to organize and bargain collectively. Covered facilities are those that (1) are in a “priority sector,” involving manufactured goods, services, or mining; and (2) produce goods or supply services traded between the parties or that compete in the territory of the other party. Agriculture is not covered. For Mexico, a claim can be brought with respect to an alleged denial of rights under legislation that complies with Annex 23-A. For the United States, a claim can be brought only with respect to a covered facility under an enforced order of the National Labor Relations Board; labor experts contend such conditions mean that

¹³⁶ The U.S.-Guatemala labor dispute had set a precedent as the first to have been adjudicated through FTA dispute settlement in U.S. FTAs and globally. See CRS In Focus IF10972, *Labor Enforcement Issues in U.S. FTAs*.

¹³⁷ This included, for example, creating a rebuttable presumption that alleged violations of labor obligations occur in “a manner affecting trade or investment,” unless the other party demonstrates otherwise.

¹³⁸ For example, AFL-CIO, *The Trans-Pacific Partnership: Four Countries that Don’t Comply with U.S. Trade Law*, 2015, p. 1.

¹³⁹ H.Rept. 116-358, p. 6.

¹⁴⁰ Members of the House Ways and Means Committee also asserted support for the RRM in minority views of H.Rept. 116-358, p. 56, characterizing the mechanism as follows: “USTR negotiated a fair, narrow, and transparent rapid response mechanism to hold Mexico accountable for high labor standards and prevent Mexican companies from giving themselves an advantage by tolerating poor labor conditions. At the same time, this labor enforcement mechanism preserves U.S. sovereignty and the rights of U.S. companies. No labor union meddling or harassment is permitted—the U.S. government is in charge of the entire government-to-government process. While holding Mexico accountable, USTR achieved important safeguards for our companies.”

¹⁴¹ USTR, “Fact Sheet: The USMCA Rapid Response Mechanism Delivers for Workers,” press release, February 9, 2024.

¹⁴² For a list and outcomes, see <https://ustr.gov/trade-topics/enforcement/dispute-settlement-proceedings/fta-dispute-settlement/usmca/chapter-31-annex-facility-specific-rapid-response-labor-mechanism>.

in practice the RRM has limited applicability to U.S.-based facilities.¹⁴³ In 2019, some Members of Congress had framed these conditions as “important safeguards for [U.S.] companies.”¹⁴⁴

Following a complaint by a member country and review by the responding country, a dispute panel of independent labor experts may be convened to conduct verifications of compliance; adverse panel determinations may result in imposing tariffs/penalties on the facility and blocking entry of imports in some cases. In a Senate committee report, the process was described as a mechanism to support labor reforms undertaken by Mexico, emphasizing its stated purpose was “to ensure a remediation of a Denial of Rights ... [and] not to restrict trade.”¹⁴⁵

Further, within P.L. 116-113, Congress authorized funds for monitoring and enforcing USMCA labor obligations and established new interagency cooperation mechanisms.¹⁴⁶ For example, the act allocated \$180 million over four years (2020-2023) to the Department of Labor’s International Labor Affairs Bureau (ILAB) for “worker-focused capacity building” and other technical assistance projects to assist Mexico’s implementation of labor reforms. Such provisions were motivated in part by congressional views that “obligations in trade agreements are valuable only if they are actively monitored and enforced” and the United States “has failed to effectively monitor the labor provisions in trade agreements.”¹⁴⁷ Within TPA-2015, Congress directed the executive branch “to work to strengthen the capacity of United States trading partners to carry out obligations under trade agreements” and “to provide technical assistance to that country if needed” (§102(c)). Some labor experts have raised concerns during the Trump Administration’s second term regarding the reduced funding for ILAB—viewed as playing “a critical role in USMCA implementation”—and termination of some technical assistance projects, including in Mexico.¹⁴⁸

The Labor Advisory Committee for Trade Negotiations and Trade Policy, which is part of the statutorily established U.S. trade advisory committee system, assessed in 2025 that “USMCA negotiations contained important improvements over previous free trade agreements in the area of labor rights.”¹⁴⁹ Labor experts have generally framed the RRM as one of USMCA’s most important accomplishments, with one group calling it a “massive improvement to complaint

¹⁴³ See Desirée LeClercq, “Biden’s Worker-Centered Trade Policy: Whose Workers?” *International Economic Law and Policy* blog, May 16, 2021.

¹⁴⁴ Per minority views of H.Rept. 116-358, p. 56: “While holding Mexico accountable, USTR achieved important safeguards for our companies. The agreement explicitly provides that no U.S.-based facility can be subjected to the mechanism unless that company is already in trouble under U.S. law because it is the subject of an adverse National Labor Relations Board order. Agriculture producers are not included.”

¹⁴⁵ S.Rept. 116-283, p. 8.

¹⁴⁶ For example, the Interagency Labor Committee for Monitoring and Enforcement was established to coordinate U.S. government monitoring of labor compliance, including implementation of Mexico’s labor reforms, and to review petitions for the RRM and request that USTR take enforcement actions. Congress also mandated the creation of an Independent Mexico Labor Expert Board to monitor and evaluate Mexico’s compliance and advise the committee.

¹⁴⁷ H.Rept. 116-358, pp. 5-6.

¹⁴⁸ For example, the nonprofit organization Solidarity Center faced termination of two DOL-funded projects in Mexico, which represented a combined total of \$30 million, and the Center was also viewed as playing a “pivotal role” in 18 of the 40 cases filed under the USMCA RRM. See Independent Mexico Labor Expert Board (IMLEB), *Report to the Interagency Labor Committee (ILC) and the United States Congress*, October 6, 2026, pp. 50-52. In 2026, ILAB announced some funding related to labor law enforcement in Mexico; see “U.S. Department of Labor Awards \$23.4M to Strengthen Labor Law in Mexico, Fuel American Jobs, Wage Growth,” news release, January 12, 2026.

¹⁴⁹ The Labor Advisory Committee consults with and makes recommendations to the Secretary of Labor and USTR on policy matters concerning labor and trade negotiations and on the operation of trade agreements. See “RE: Labor Advisory Committee comments on the Operation of the Agreement between the United States of America, the United Mexican States, and Canada (USTR-2025-0004),” October 29, 2025, <https://comments.ustr.gov/s/commentdetails?rid=WBP29Y7GR6>.

mechanisms in previous trade agreements that took decades to resolve and had no real teeth.”¹⁵⁰ At the same time, some experts and stakeholders contend there are shortcomings in RRM outcomes and implementation in both the United States and Mexico,¹⁵¹ and some Members remain concerned that Mexico has not fully implemented USMCA labor commitments.¹⁵²

Environment

NAFTA was the first U.S. FTA to include environmental provisions, which were added through a side agreement called the North American Agreement on Environmental Cooperation before ratification.¹⁵³ As part of that agreement, the United States, Canada, and Mexico established the North American Commission for Environmental Cooperation (CEC), a small secretariat charged with supporting compliance.¹⁵⁴

As discussed earlier, following the 2018 signing of USMCA, some Members of Congress sought changes to the environmental provisions.¹⁵⁵ Subsequent negotiations with the Administration resulted in changes to the environmental and other provisions of the agreement that were added as a Protocol of Amendment to USMCA in December 2019.¹⁵⁶ USMCA includes an environmental chapter¹⁵⁷ that sets out a variety of environmental obligations and requires each party to fulfil their obligations under seven multilateral environmental agreements.¹⁵⁸ The USMCA Implementation Act created an Interagency Environment Committee for Monitoring and Enforcement,¹⁵⁹ analogous to the labor chapter, and established environment-focused attachés at the U.S. Embassy in Mexico to monitor Mexico’s compliance with the agreement.¹⁶⁰ In addition, the USMCA Implementation Act included a recapitalization of the North American Development Bank, which provides loans and grants to public and private entities for environmental and infrastructure projects on both sides of the U.S.-Mexico border.¹⁶¹

¹⁵⁰ IMLEB, *Report to the Interagency Labor Committee (ILC)*, p. 44.

¹⁵¹ For a range of views, see Daniel Rangel and Lori Wallach, *Closing the Gap: Evaluating Rapid Response Labor Mechanism Outcomes and Charting a Path Through the 2026 USMCA Review*, ReThink Trade, September 25, 2025; Business Roundtable, “Request for Comments on the Operation of the Agreement between the United States of America, the United Mexican States, and Canada (USMCA or the Agreement), Docket No. USTR-2025-0004,” October 31, 2025; David LaRoss, “Analysts See Canada, Mexico Defending USMCA ‘Status Quo’ in 2026 Review,” *Inside U.S. Trade*, December 17, 2025; and Mark Rowlinson and Simon Archer, “Advancing Worker-Centred Trade: Labour Rights, Migrant Workers and the CUSMA Rapid-Response Labour Mechanism,” in *Making the Most of the CUSMA Review*, Canadian Centre for Policy Alternatives, May 2024, pp. 15-16.

¹⁵² In its October 2025 report, the IMLEB made a determination that Mexico is not in compliance with its USMCA labor obligations. See IMLEB, *Report to the Interagency Labor Committee (ILC)*, p. 52.

¹⁵³ North American Agreement on Environmental Cooperation (NAAEC), U.S.-Can.-Mex., September 14, 1993, 32 I.L.M. 1480 (1993); CRS In Focus IF10166, *Environmental Provisions in Free Trade Agreements (FTAs)*; CRS Report R46793, *USMCA: Legal Enforcement of the Labor and Environment Provisions*.

¹⁵⁴ NAAEC, Part 3.

¹⁵⁵ See, for example, Letter from House Ways and Means Democrats to USTR Robert Lighthizer, April 17, 2019.

¹⁵⁶ Protocol of Amendment to the USMCA, December 10, 2019.

¹⁵⁷ USMCA, chap. 24.

¹⁵⁸ USMCA, art. 24.8.

¹⁵⁹ USMCA Implementation Act §811, codified at 19 U.S.C. §4711.

¹⁶⁰ USMCA Implementation Act §822, codified at 19 U.S.C. §4732.

¹⁶¹ For more information, see CRS In Focus IF10480, *The North American Development Bank*.

As part of the joint review process, some Members have urged the Trump Administration to improve enforcement of the environment chapter and strengthen commitments by adding, for example, a mechanism similar to the labor RRM.¹⁶²

Government Procurement

FTA government procurement provisions set standards and parameters for government purchases of goods and services.¹⁶³ Government procurement chapters typically extend national and nondiscriminatory treatment among parties and promote transparency in the tendering process. During the USMCA negotiations, discussions about potential changes to the government procurement chapter were contentious, particularly between the United States and Canada.¹⁶⁴ The government procurement chapter in USMCA only applies to procurement between Mexico and the United States and carries over much of the NAFTA government procurement chapter's coverage for U.S.-Mexico procurement. It is the first U.S. FTA not to include procurement commitments for all parties. Currently, procurement between the United States and Canada is covered by the WTO Government Procurement Agreement (GPA), which contains similar obligations to those in USMCA; Mexico is not a member of the GPA.¹⁶⁵ Government procurement between Canada and Mexico is covered by CPTPP.¹⁶⁶

Binational Dispute Settlement

Unlike other U.S. FTAs, NAFTA contained a binational dispute settlement mechanism related to antidumping (AD) and countervailing duty (CVD) laws ("NAFTA Chapter 19"). USMCA effectively replicates this mechanism in Chapter 10 ("Trade Remedies"), which provides disciplines for settling disputes arising from a party's statutory amendment of its AD or CVD laws, or from a party's AD or CVD final determination on the goods of an exporting party.¹⁶⁷ The dispute settlement system originated during the 1989 United States-Canada Free Trade Agreement, and it was retained under NAFTA. The United States sought to eliminate the NAFTA Chapter 19 dispute settlement mechanism during the USMCA negotiations.¹⁶⁸ By contrast, Canada and Mexico expressed support for retaining the mechanism, with Canada drawing a "red line" firmly opposing its elimination.¹⁶⁹ At the end of the negotiations, the three countries agreed to retain the mechanism in USMCA. All three countries have filed disputes under USMCA Chapter 10.¹⁷⁰ Canada has utilized NAFTA Chapter 19 and USMCA Chapter 10 dispute mechanisms to challenge U.S. antidumping and countervailing duties on Canadian softwood

¹⁶² See, for example, Letter from Sen. Sheldon Whitehouse et al. to USTR Jamieson Greer, March 17, 2026.

¹⁶³ For more information on U.S. government procurement and international trade, see CRS Report R47243, *U.S. Government Procurement and International Trade*.

¹⁶⁴ Alexander Panetta, "USMCA Procurement Chapter: What Canada's Absence Means," *Politico*, October 10, 2018.

¹⁶⁵ For more information, see WTO, "Agreement on Government Procurement," https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm.

¹⁶⁶ See CRS In Focus IF12078, *CPTPP: Overview and Issues for Congress*.

¹⁶⁷ See USMCA, chapter 10. For more information on trade remedies, see CRS In Focus IF10018, *Trade Remedies: Antidumping and Countervailing Duties*.

¹⁶⁸ USTR, *Summary of Objectives for the NAFTA Renegotiation*, p. 14.

¹⁶⁹ Anshu Siripurapu, "Trudeau: Chapter 19, Cultural Exemptions Are NAFTA Red Lines for Canada," *Inside U.S. Trade*, September 4, 2018.

¹⁷⁰ USMCA Secretariat, "Chapter 10 (Trade Remedies) Disputes," updated December 22, 2025.

lumber.¹⁷¹ Some U.S. lumber groups have called for the elimination of Chapter 10 as part of the joint review.¹⁷²

Nonmarket Economy Clause

USMCA Article 32.10 places notification obligations on USMCA parties that enter FTA negotiations with a “nonmarket country.” Article 32.10 defines a nonmarket country as one that a USMCA party “has determined to be a nonmarket economy for purposes of its trade remedy laws” with which a USMCA party does not already have an FTA.¹⁷³ Article 32.10 both requires a USMCA party to—no later than 30 days before signing an FTA with a nonmarket country—provide the other parties with the opportunity to review the full text of the FTA. Article 32.10 also allows the other parties to respond to such an FTA by terminating USMCA with six months’ notice and replacing it with a bilateral agreement, similar to the withdrawal process outlined in USMCA Article 34.6.

During the USMCA negotiations, experts attributed Article 32.10’s inclusion in USMCA to reported U.S. concerns about FTA negotiations between Canada and China.¹⁷⁴ Some experts did not see the process that was ultimately included in Article 32.10 as a significant impediment to these negotiations, as the withdrawal processes triggered by a party’s FTA with a nonmarket country do not appear to be substantively different from the general withdrawal process outlined in Article 34.6.¹⁷⁵

Additional Considerations for the 119th Congress

Congress may consider USMCA implementation and the scheduled 2026 joint review in the context of broader U.S. trade policy toward Canada and Mexico. The second Trump Administration has imposed or proposed U.S. tariffs on trading partners, including Canada and Mexico, that have raised tensions with both countries.¹⁷⁶ Congress has constitutional authority over foreign commerce and tariffs, and some Members have introduced legislation that would expand, modify, or restrict the President’s authority to impose tariffs in general or against FTA partners in particular, or which would give Congress an opportunity to assess proposed tariff actions, including whether they comply with international commitments.¹⁷⁷

Joint Review. As detailed above, Congress actively engaged with the first Trump Administration to ensure USMCA negotiations reflected congressional priorities. Members of Congress now may assess whether—and, if so, to what extent—congressional priorities have been addressed or implemented, particularly in light of current U.S. tariffs, some of which include exemptions for goods covered by USMCA, while others do not. As part of the joint review, Congress could seek to require the Administration to pursue changes to USMCA or, alternatively, ensure the

¹⁷¹ For more details, see CRS Report R48781, *U.S.-Canada Softwood Lumber Trade: Current Issues for Congress*.

¹⁷² U.S. Lumber Coalition, “U.S. Lumber Coalition: USMCA Extension Should Be Conditioned on Elimination of Binational Panel Review Process,” press release, November 4, 2025.

¹⁷³ USMCA art. 32.10, full text available at https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/32_Exceptions_and_General_Provisions.pdf.

¹⁷⁴ David A. Gantz, “Important New Features in the USMCA,” Baker Institute, May 5, 2020.

¹⁷⁵ Simon Lester et al., “The Canada-China FTA in Peril Part I: The USMCA ‘Non-Market Country’ Provision,” *Georgetown Journal of International Affairs*, February 28, 2019.

¹⁷⁶ See CRS Report R48787, *USMCA Joint Review: Process and Role of Congress*; CRS In Focus IF11175, *U.S.-Mexico Trade Relations*; and CRS In Focus IF12595, *U.S.-Canada Trade Relations*.

¹⁷⁷ See CRS In Focus IF12995, *International Trade Agreements and U.S. Tariff Laws*.

continuation of existing provisions. Congress is constitutionally empowered to regulate commerce with foreign nations and could potentially enact legislation addressing whether revisions to USMCA require congressional approval.¹⁷⁸

Oversight of U.S. Tariff Policy and USTR. Members may assess whether—and, if so, how—broader U.S. tariffs promote or hinder the implementation of USMCA, including the issues highlighted in this report, many of which USTR has raised as potential U.S. priorities for the joint review.¹⁷⁹ Congress also may consider whether to use other legislative tools to influence U.S. trade policy, including U.S. tariffs on Canadian and Mexican goods. For example, Congress could act through consideration of appropriations, authorizations, or legislative directives for USTR.¹⁸⁰ Congress also may consider whether to bolster or curb presidential authorities related to the imposition of tariffs on imports from Canada and Mexico, such as those under Section 232, by amending existing authorities or passing new legislation.¹⁸¹ For example, Congress could consider legislation to codify higher tariff rates on Canada and Mexico to further incentivize compliance with USMCA rules; require congressional approval for current or future tariff actions; or exempt USMCA-compliant goods, or Canadian and Mexican goods more generally, from current or potential tariffs imposed under Section 232 or other authorities to emphasize continued duty-free trade in North America under USMCA.

Implications for Future U.S. Trade Policy. USMCA was the last comprehensive FTA implemented by the United States. As part of its oversight of U.S. trade policy, Congress could assess the advantages and disadvantages of comprehensive FTAs for the U.S. economy and the lessons learned from the negotiation, implementation, and review of USMCA.

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¹⁷⁸ For more information, see CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*.

¹⁷⁹ Remarks by USTR Jamieson Greer, “Opening Statement for House Ways and Means and Senate Finance Committees,” December 16 and 17, 2025.

¹⁸⁰ For more details, see CRS Report R48884, *Office of the U.S. Trade Representative: Overview and Issues for Congress in Brief*; and CRS Report R48733, *Trade-Related Agencies: FY2026 Appropriations, Commerce, Justice, Science, and Related Agencies (CJS)*.

¹⁸¹ For more information, see CRS Report R48435, *Congressional and Presidential Authority to Impose Import Tariffs*.

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