



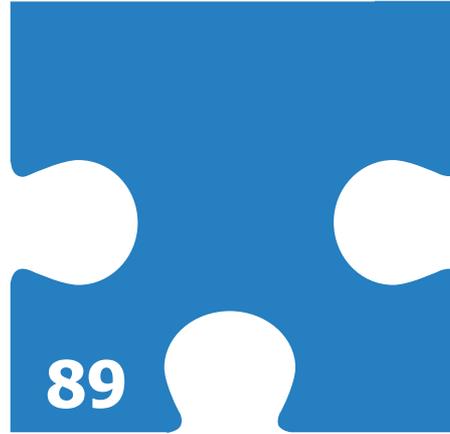
# **US-Mexico-Canada Agreement**

Update, Key Priorities, and Implementation in a  
Post-Pandemic World

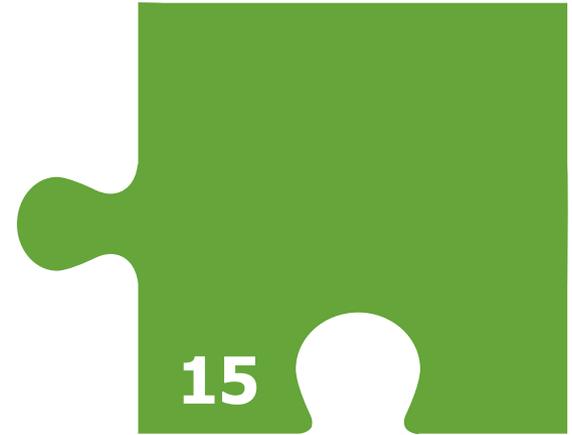
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- Qualified, trusted advisors
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**USA – Washington:** Lane Powell PC

**Venezuela:** D'Empaire

**Vietnam:** VILAF

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# Brief Background



## Negotiation Background

- The renegotiation of NAFTA was a cornerstone of candidate Donald Trump's presidential campaign.
- Negotiations began in late 2017 and lasted for several official and unofficial negotiation rounds.
- Issues that were negotiated at length:
  - Automotive Rules of Origin
  - Dispute Settlement Mechanisms
  - Sunset Provision
- On September 30, 2018 the US, Canada and Mexico reached an agreement on the renegotiation of the North American Free Trade Agreement (NAFTA), producing three new names for the agreement (USMCA, CUSMA, T-MEC)



## Current Status

- As of today, both Canada and Mexico have taken all required steps for entry into force of the USMCA.
- The U.S. has not given notification that it has met its obligations under the agreement, which would set in motion entry into force.
- Earliest date USMCA could enter into force based on notification window is July 1, 2020.
- Bi-Partisan Congressional delegation in the U.S. has called for a delay to the entry into force based on additional time needed for a smooth transition from NAFTA to USMCA.
- Mexican automotive industry organizations and COAC, a CBP advisory body, have both requested a delay on implementation until January 1, 2021.
- The Uniform Regulations governing and implementing many of the changes in the USMCA have not been published, creating uncertainty in the qualification process, especially for automotive industry that is dealing with the greatest changes.

# What's New, in Comparison to NAFTA?



What are the more relevant provisions that have been included in the USMCA?

- The USMCA is a last generation FTA, which involves 34 chapters of which 10 are new and 24 were modernized.
- This new FTA covers matters that were unforeseen or were even non-existent back in the early nineties when NAFTA was first negotiated. These main new matters include the following:

# What's New, in Comparison to NAFTA?



What are the more relevant provisions that have been included in the USMCA?

- Rules of origin (Chapter 4).
  - Strengthening of the rules of origin, seeking to ensure that the benefits of the FTA go to products actually originated, genuinely made in the U.S., Canada and Mexico;
  - ensure that the rules of origin incentivize production in U.S., Canada and Mexico and promote the cooperation to prevent duty evasion, combat customs offenses, and
  - ensure that goods that meet the rules of origin receive the USMCA benefits.

# What's New, in Comparison to NAFTA?



What are the more relevant provisions that have been included in the USMCA?

- Anticorruption (Chapter 27). Prevent and combat bribery and corruption in international trade and investment by promoting integrity among public officials, participation of the private sector and society as a whole and foster cooperation among the three countries.
- Digital Trade (Chapter 19). Promote consumer confidence in digital trade and avoidance of unnecessary barriers to its use and development by the non-discriminatory treatment of digital products, online consumer protection, personal information protection, paperless trading, principles on access to and use of the internet for digital trade, cross-border transfer of information by electronic means, among others.
- Labor (Chapter 23). Adopt and maintain the rights stated in the Declaration 98 of the International Labor Organization on Rights at Work by seeking to ensure the freedom of association of workers and the right to collective bargaining, eradication of all forms of forced labor, abolition of child labor and elimination of any form of employment related discrimination.

# What's New, in Comparison to NAFTA?



What are the more relevant provisions that have been included in the USMCA?

- Good Regulatory Practices (Chapter 28). Promote regulatory quality through greater transparency, objective analysis, accountability, and predictability that can facilitate international trade, investment, and economic growth, while contributing to each Party's ability to achieve its public policy objectives (including health, safety, and environmental goals).
- Intellectual Property Rights (Chapter 20). The protection and enforcement of intellectual property rights that contributes to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations, including a greater enforcement of IP rights as relates to piracy and contraband.
- Small and Medium-Sized Enterprises (“SMEs”) (Chapter 25). Robust cooperation between the Parties to enhance commercial opportunities for SMEs, and among other efforts, in the context of Memoranda of Understanding that exist between Parties on SME cooperation. Each Party shall seek to increase trade and investment opportunities.

# What's New, in Comparison to NAFTA?



What are the more relevant provisions that have been included in the USMCA?

- Macroeconomic Policies and Exchange Rate Matters (Chapter 33). To avoid manipulation of exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage.
- Modified dispute resolution mechanisms.
- Sunset clause: Originally in force for a sixteen (16) years period, renewable for equivalent periods afterwards, but providing for a joint revision mechanism of the Treaty on the sixth year of each term, with an opt-out or withdrawal clause in the event of discrepancy upon such review.
- A Non-market Country FTA provision was foreseen under Chapter 32, whereby a mechanism for consultation amongst the Parties was created in the event any Party initiates negotiations to enter into a new FTA with a non-market economy. .
- In addition the USMCA incorporates in its text, to a degree, certain agreements already subscribed by the Parties, since the original NAFTA negotiation, under the mantle of the WTO.

# Priorities for Each of the Three Countries



## Canada

- Priority #1 for Canada was to preserve an agreement
- negotiations took place under U.S. threat to “rebalance” or withdraw
- while ostensibly separate, negotiations were “loosely” tied to section 232 *Trade Expansion Act* tariffs on steel / aluminum and of threat of tariffs on automobiles and auto parts
- Canada’s posture was largely defensive:
  - E-commerce duty/tax exemption: US proposed duty/tax free under \$800; ultimately agree to C\$150 for duties/ C\$40 for sales tax
  - Canada secured an exemption from potential Section 232 on autos/ autoparts in a side letter to the Agreement
  - Preserved Chapter 19 (anti-dumping/ countervail) and Chapter 20 (general) dispute settlement mechanism – U.S. had sought to eliminate
  - Preserved cultural exemption for Canadian publications, broadcasting, and the distribution or sale of books, magazines, film, video and music.

# Priorities for Each of the Three Countries



## United States

- Main priority for the U.S. was to improve the trade imbalance with Mexico and Canada.
- Negotiation strategy included significant threats to withdraw from NAFTA if U.S. positions were not accepted.
- Implement changes to the automotive rules of origin that would make a significant impact on sourcing from China and other non-NAFTA countries under NAFTA. Changes include:
  - 75 percent of a vehicle's content to come from North America (currently 62.5%)
  - 70 percent of steel, aluminum and glass used in autos be sourced from North America
  - 40 percent of a passenger vehicle's final assembly must be completed by workers making at least an average wage of \$16 USD per hour

# Priorities for Each of the Three Countries



## United States (cont'd)

- Strengthen sovereignty and reliance on U.S. courts for disputes. Successfully eliminated Investor State Dispute Settlement (chapter 11) (as to Canada), but lost on AD/CVD (chapter 19) and state to state dispute settlement (chapter 20) panels.
- Implement changes to labor provisions that will improve conditions for Mexican workers, narrowing the gap with U.S. workers. Changes included enhanced rights to independent unions, inclusion of enforcement provisions, and establishment of interagency accountability and monitoring for Mexican labor laws.
- Implement trade facilitation measures that would modernize NAFTA and improve cross-border trade.

# Priorities for Each of the Three Countries



## Mexico

- Continue with the original principle of free trade amongst the parties derived from the original NAFTA.
- Not accepting the re-imposition of tariffs, quotas, or other mechanisms that would restrict exports to the United States or Canada.
- Maintain and improve dispute resolution mechanisms.
- Include new provisions in the modernisation of the Treaty, similarly to what was achieved under the negotiation of the TPP agreement.
- Facilitate the participation of small and medium-sized enterprises in regional production chains.
- Ensure that this new FTA was negotiated amongst the three parties and not in a bilateral way, e.g., US-Canada and US-Mexico separately to ensure all interests were properly addressed.
- Continue increasing the exportations to the United States and Canada, which since the entry into force of NAFTA have multiplied sevenfold.



- No Customs Duties: USMCA prohibits customs duties/ other similar charges digital products such as software, music, games, videos, and e-books.
- Data Localization/ Cross Border Transfers: Also prohibits parties from requiring the location or use of computing facilities in their jurisdictions as a condition of doing business as well as restrictions on cross border transfers of data, subject to exceptions for “legitimate public policy”.
- Privacy/ Cybersecurity: recognizes the importance of cybersecurity, spam prevention, consumer protection, and protection of personal information, and commits the parties to cooperate to establish appropriate safeguards in these areas.
- Host Liability: establishes protection from liability for internet platforms that host or process third-party content, except for enforcement relating to intellectual property rights and criminal laws.
- Electronic Authentication/ Source Code Protection: prohibits restrictions on electronic authentication/ e-signatures and limit governments’ ability to require disclosure of proprietary computer source code and algorithms.



- How can it be used?
- What aspects of the agreement may be particularly helpful for recovering economies?



Questions?

# Panelists



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