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## USMCA UPDATE: TRILATERAL TRADE AGREEMENT PRESERVED

October 3, 2018

### KEY POINTS:

- The United States, Mexico, and Canada reached a trilateral accord, the US-Mexico-Canada Agreement (**USMCA**), that **will replace NAFTA upon ratification** by the parties.
- While there are **some unconventional provisions in the USMCA, much of the modernized text was lifted from** or inspired by the Trans-Pacific Partnership (**TPP**) and **overall** the agreement reached late Sunday **allows most sectors to continue to benefit from** the nearly 25-year-long **integration of North American supply chains, if often with increased costs**. The **reduction of uncertainty is positive**.
- However, **no commitment** was made to **abandon** Section 232 **national-security-based tariffs on steel and aluminum or the pending 232 on autos and parts**.
- The **spotlight is now on obtaining legislative approval** in the three countries.

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### **NAFTA IS DEAD, BUT TRILATERAL INTEGRATION SURVIVES**

Late the evening of Sunday, September 30, Canada joined the trade agreement reached in August between the United States and Mexico in an effort to revise the NAFTA, now renamed the [United States-Mexico-Canada Agreement \(USMCA\)](#). The accord comes after **over a year of contentious negotiations**, resulting in a draft text traversing 34 chapters and a dozen side letters. The September 30 “deadline” was set to allow for **signature prior to the Mexican inaugural December 1** while following the US Trade Promotion Authority (TPA) law.

By reaching a deal, the three leaders managed to **preserve North American integration, increasing operating costs in some sectors but also overall certainty**. Canadian Prime Minister Trudeau [said](#) it was “**a good day for Canada**”, Mexican President Peña Nieto [tweeted](#) calling the new deal a “**win-win-win agreement**” and President Trump [praised](#) the new agreement as “**the most important trade deal we’ve ever made by far.**”

### **WHEN AND WHERE ARE WE SIGNING USMCA?**

The US Congress, Mexican Senate and Canadian Parliament have received drafts of the USMC text for review. The **details of a trilateral signing ceremony** – possible under TPA 60 days after notification of the text -- **have not been confirmed**, as each country's stakeholders digest USMCA content. A venue **under consideration** is **the G-20 Summit in Buenos Aires, Argentina**, which begins November 30, one day before the inaugural of Mexican President Lopez Obrador. **Legislative approval is required subsequently for ratification and entry into force.**

### **WHAT IS IN THE USMCA?**

- **Key elements of NAFTA are preserved** under the new USMCA – first and foremost the **single market** for most **services**, as well as **agricultural and industrial goods**. US dairy and wine gained additional market access in Canada, while Canada saved its cultural protections.
- **Biologic drugs received ten years of data protection**, more than under TPP.
- **Dispute settlement is enforceable, including for trade remedies.**
- **Customs and digital trade** provisions were **modernized** in line with TPP. **De minimis** levels doubled for both Mexico and Canada. **Limitation on data localization**, including for financial services, is significant.
- While the United States sought to limit Canadian and Mexican access to its procurement markets with a US “dollar for dollar” proposal, **government procurement commitments were safeguarded between the United States and Mexico** in the USMCA. Canada is not included in the procurement chapter, meaning **Canada's commitments will derive from the WTO Government Procurement Agreement**, unusual for a multilateral deal.
- Similarly, **Canada took on no ISDS** (Investor-State Dispute Settlement) **commitments** in the USMCA, trumpeted by Trudeau and Foreign Minister Freeland in a Monday press conference as a cost-saving measure for the Canadian taxpayer. As expected, **ISDS with Mexico is limited, with broader protections afforded to energy, telecommunications and infrastructure investments**. It is unclear how long-time ISDS supporters in the US Congress will respond.
- An echo from TPP, the USMC has a **chapter (33) on “Macroeconomic Policies and Exchange Rate Matters.”** As in TPP, **transparency requirements are a key feature**, but with a higher frequency of reporting and an oversight committee. The parties may avail themselves of dispute settlement only due to a failure to comply with transparency obligations. Of concern, a new requirement for **quarterly reports on “exports and imports, no later than 90 days after the end of each quarter.”**
- In a true innovation, **Article 32.10 deters FTAs with “Non-Market” countries** (read: China). While the withdrawal provisions are identical to those foreseen

under both NAFTA and the USMCA – withdrawal possible after six-month notice – the non-market economy (NME) flag has not gone unnoticed. Of note, Canada and Mexico have both asserted third party rights in ongoing WTO NME litigation.

- The contentious **sunset clause did remain** in the final agreement. However, the compromise text includes a **termination clause only 16 years after entry into force** unless the parties confirm continuation of the USMCA in writing. Parties will undertake a **review of the agreement six years after entry** into force. There is no overt link to the export/import report required in Chapter 33, but this should be monitored.
- **Labor and environmental commitments are enforceable**, with an annex on **collective bargaining in Mexico** linking entry into force with specific legislative actions to be taken “before January 1, 2019.” The Trump **Administration hopes this feature, plus the weakening of ISDS will encourage Democratic support** of the USMCA.
- The heart of the USMCA talks has consistently been autos. Now **cars and trucks must have 75% regional value content** (up from 62.5%) to earn duty-free market access. In a move designed to shift jobs to the United States (and Canada) **40-45% of vehicles must be built by workers earning \$16+/hour. Mexico and Canada agreed to tariff-rate quotas (TRQs) to avoid application of expected auto 232 tariffs** on most auto/parts exports to the United States; trucks are exempted.
- Side letters give North American trading partners **60 days to negotiate a resolution of future national security (232) cases**, but existing 232 tariffs on steel/aluminum remain. Minister Freeland said, “Canada has some momentum now having concluded this deal, and we are definitely looking to take advantage of that momentum to intensify conversations about steel and aluminum.” Similarly, Minister Guajardo said that Mexico would seek the removal of US 232 tariffs over the next two months.

### **TIMELINE**

The expected timelines are in the attached deck.

Mexican President-elect Lopez Obrador has pledged to support the agreement as negotiated. Trudeau’s Liberals enjoy a majority in the Canadian Parliament. Thus, the USMCA should meet approval in both countries despite misgivings regarding some elements of the final deal and resentment over perceived bullying tactics by the Trump Administration throughout the talks.

Meanwhile, there are many questions about the timing of US congressional consideration of the USMC. Strictly following TPA rules pushes voting into 2019, when Democrats could hold the majority in the House of Representatives, and perhaps a stronger showing in the Senate. Senate Finance Committee Chairman [Hatch](#) and Ranking Member [Wyden](#) have issued statements expressing measured optimism about the new deal, saying they look forward to reviewing the final details.

Congress has 60 days to review the USMCA before Trump can sign it, so we will learn more soon about congressional positions on the pact. If Democrats have a particularly strong showing in the November 6 midterms, the temptation to press for passage in 2018 will be strong. However, obtaining approval yet this year may prove impossible given the timing challenges.

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