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SUMMARY

The United States-Mexico-Canada Agreement (USMCA) entered into force on July 1, 2020, replacing the North American Free Trade Agreement (NAFTA), which had been in effect since January 1, 1994. Congress, in both its legislative and oversight capacities, was active in numerous trade policy issues related to renegotiation of NAFTA and continues to be active in the implementation of USMCA. The renegotiation of NAFTA began 90 days after the May 2017 notice that the Trump Administration sent to Congress of its intent to begin talks with Canada and Mexico to renegotiate and modernize NAFTA, as was required by the 2015 Trade Promotion Authority (TPA). Negotiations officially began on August 16, 2017, and were concluded on September 30, 2018. The USMCA was signed on November 30, 2018. The agreement was approved by the House of Representatives (H.R. 5430) on December 19, 2019, by a vote of 385-41, and by the Senate on January 16, 2020, by a vote of 89-10. The agreement was signed into law on January 29, 2020 (P.L. 116-113) and entered into force five months later.

NAFTA was particularly significant because it was the most comprehensive free trade agreement (FTA) negotiated at the time, contained several groundbreaking provisions, and was the first of a new generation of U.S. FTAs later negotiated. NAFTA established trade liberalization commitments and set new rules and disciplines for future FTAs on issues important to the United States, including intellectual property rights protection, services trade, dispute settlement procedures, investment, labor, and the environment. NAFTA's market-opening provisions gradually eliminated nearly all tariff and most nontariff barriers on merchandise trade among the three trading partners. At the time of NAFTA negotiations, average applied U.S. duties on imports from Mexico were 2.07%, while U.S. businesses faced average tariffs of 10%, in addition to nontariff and investment barriers, in Mexico. The U.S.-Canada FTA, which had been in effect since 1989, was suspended under NAFTA.

USMCA, comprised of 34 chapters and 12 side letters, retains most of NAFTA's market opening measures and other measures, while making notable changes to motor vehicle rules of origin, dispute settlement provisions, government procurement, investment, and intellectual property rights (IPR) protection. It also modernizes provisions on services, labor, and the environment. New trade issues, such as digital trade, state-owned enterprises, anticorruption, and currency misalignment, also have specific commitments. Key issues for Congress in the debate surrounding USMCA included worker rights protection in Mexico, IPR provisions and rules of origin changes, the enforceability of labor and environmental provisions, as well the constitutional authority of Congress over international trade and its role in revising, approving, or withdrawing from the agreement. Congress was also active in considering U.S. negotiating objectives and the extent to which USMCA made progress in meeting them, as required under TPA.

Key issues for Congress in the implementation phase of USMCA include: how the new importing requirements under USMCA are being phased in; whether the new rules of origin for the motor vehicle industry are being implemented as planned; how the North American motor vehicle industry is being affected by the more stringent requirements; how well Mexico is implementing labor law reforms to provide more worker rights protection; how well the funding provided by USMCA legislation is ensuring effective implementation of Mexico's labor reforms; how well the new labor enforcement measures, including the rapid response mechanism, are working; and, among other issues, the extent to which USMCA's updated dispute resolution procedures are improving the enforcement of the agreement's provisions.

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Introduction

The United States-Mexico-Canada Agreement (USMCA) is a free trade agreement among the United States, Mexico, and Canada that entered into force on July 1, 2020, replacing the North American Free Trade Agreement (NAFTA) that had been in effect since January 1, 1994.[1] Congress, in both its legislative and oversight capacities, was active in numerous trade policy issues related to renegotiation of NAFTA and continues to be active in the implementation of USMCA. Implementing legislation for USMCA was passed by the House on December 19, 2019, by a vote of 385-41, and by the Senate on January 16, 2020, by a vote of 89-10. The legislation was signed into law on January 29, 2020 (P.L. 116-113).

Joint Statement Regarding First Meeting of USMCA Free Trade Commission (FTC)

"Today the United States, Canada, and Mexico held the first-ever USMCA FTC meeting. While this renewed Agreement is less than a year old, our countries are neighbors and friends, and have a longstanding shared history built on mutual respect and cooperation. The USMCA commits us to a robust and inclusive North American economy that serves as a model globally for competitiveness, while prioritizing the interests of workers and underserved communities. The Parties recognize that trade policies should foster broad-based and equitable growth, spur innovation, protect our shared environment, and have a positive impact on people from all walks of life. To accomplish this, the United States, Mexico, and Canada recommit to fully implementing, enforcing, and fulfilling the Agreement's terms and high standards throughout the life of the USMCA."

Joint Statement from United States Trade Representative Katherine Tai, Canadian Minister of Small Business, Export Promotion, and International Trade Mary Ng, and Mexican Secretary for Economy Tatiana Clouthier, May 18, 2021.

Source: USTR, at https://ustr.gov/about-us/policy-offices/press-office/press-releases.

Key issues for Congress in regard to renegotiation of NAFTA and passage of USMCA included protection of worker rights, the enforceability of labor and environmental provisions, intellectual property rights (IPR), changes to rules of origin changes in the motor vehicle industry, the economic effects of the agreement, as well as the constitutional authority of Congress over international trade and its role in revising, approving, or withdrawing from the agreement. Also of interest to Congress were U.S. negotiating objectives and the extent to which the proposed agreement made progress in advancing them, as required under TPA.

While the United States Trade Representative's (USTR) negotiating objectives included many goals consistent with TPA, USTR also sought, for the first time in U.S. trade negotiations, to reduce the U.S. trade deficit with NAFTA countries, among other specific objectives. U.S. objectives appeared to seek to "rebalance the benefits" of the agreement, echoing President Trump's statements that NAFTA was a "disaster" and the "worst agreement ever negotiated."[2] Some U.S. negotiating positions could be seen to have the explicit or implicit goal of promoting U.S. economic sovereignty and/or rolling back previous liberalization commitments in specific areas, such as periodically reviewing and potentially "sunsetting" the agreement, questioning the validity of binational dispute settlement, enhancing government procurement restrictions, and increasing U.S. and North American content in the auto rules of origin, among other positions.[3] Trump Administration officials also spoke of

[1] For more information, see CRS In Focus IF10047, *North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal, and CRS In Focus IF10997, *U.S.-Mexico-Canada (USMCA) Trade Agreement*, by M. Angeles Villarreal and Ian F. Fergusson.

[2] CBS News, Trump Calls NAFTA a Disaster, September 25, 2016, https://www.cbsnews.com/news/trump-calls-nafta-a-disaster/; *Politico*, "The Real Game Trump is Playing on NAFTA," February 26, 2018, https://www.politico.com/magazine/story/2018/02/26/donald-trump-nafta-negotiations-217085.

[3] Simon Lester and Inu Manak, "The Rise of Populist Nationalism and the Renegotiation of NAFTA, *Journal of*

unraveling North American and global supply chains as a way of attempting to divert trade and investment from Canada and Mexico to the United States.[4] Mexican and Canadian negotiators viewed such proposals as counterproductive to the spirit and mutual economic benefits of NAFTA and repeated their positions to modernize NAFTA. The differences between views on modernizing the agreement and U.S. proposals led to perceived tensions in the negotiations.

Many policymakers and industry representatives viewed the renegotiation of NAFTA as an opportunity to form a new agreement that incorporated elements of more recent U.S. FTAs that have entered into force or were negotiated, such as the U.S.-Korea FTA (KORUS) and the proposed Trans-Pacific Partnership.[5] The U.S. and global economies had changed significantly since NAFTA's entry into force in 1994, especially due to technology advances. The widespread use of the commercial internet, for example, dramatically affected consumer habits and commercial activities, such as e-commerce, data flows, and supply chain management. Negotiators also sought updated provisions in other areas, including IPR, labor, and the environment. The increased role of state-led or state-supported firms in trade competition globally, particularly involving China, with private sector firms was also an issue of debate and focus of new rules-setting.

This report provides a brief overview of NAFTA, the role of Congress in the renegotiation process, key provisions in USMCA, as well as issues related to implementation of the agreement. For more information on NAFTA, please see CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal and Ian F. Fergusson.

NAFTA Overview

NAFTA negotiations were first launched under President George H. W. Bush. President William J. Clinton signed into law the NAFTA Implementation Act on December 8, 1993 (P.L. 103-182). NAFTA entered into force on January 1, 1994. It is significant because it was the first FTA among two wealthy countries and a lower-income country and because it established trade liberalization commitments that led the way in setting new rules for future trade agreements on issues important to the United States. These include provisions on intellectual property rights (IPR) protection, services trade, agriculture, dispute settlement procedures, investment, labor, and the environment. NAFTA addressed policy issues that were new to FTAs and was influential in concluding major multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO). The United States now has 14 FTAs with 20 countries.

NAFTA's market-opening provisions gradually eliminated nearly all tariff and most nontariff barriers on goods and services produced and traded within North America. At the start of NAFTA, average applied U.S. duties on imports from Mexico were 2.07%; over 50% of U.S. imports from Mexico entered duty free.[6] In contrast, the U.S. goods and services faced higher tariff, nontariff, and investment barriers in Mexico.[7] Trade among NAFTA partners has more than tripled since the

International Economic Law, 2018, March 2018.

[4] James Pethokoukis, "Does Trump want to somehow get rid of global supply chains?, *AEI Ideas,* January 31, 2017, http://www.aei.org/publication/does-trump-want-to-somehow-get-rid-of-global-supply-chains/.

[5] For more information on the Trans-Pacific Partnership (TPP), see CRS In Focus IF10000, *TPP: Overview and Current Status*, by Brock R. Williams and Ian F. Fergusson.

[6] Executive Office of the President, *Study on the Operation and Effects of the North American Free Trade Agreement,* July 1997, pp. 6-7.

[7] Most of the market-opening measures resulting from NAFTA were between the United States and Mexico, and

agreement entered into force, forming integrated production chains among all three countries. Many trade policy experts and economists give credit to NAFTA for expanding trade and economic linkages among the parties, creating more efficient production processes, increasing the availability of lower-priced and greater choice of consumer goods, and improving living standards and working conditions.[8] Others blame NAFTA and subsequent U.S. FTAs for disappointing employment trends, a decline in average U.S. wages, and for not having done enough to improve labor standards and environmental conditions abroad.[9]

Another important element of NAFTA is that it helped "lock in" trade and investment liberalization efforts taking place at the time, especially in Mexico. NAFTA was instrumental in developing closer U.S. relations with both Mexico and Canada and it accelerated ongoing trade and investment trends. At the time that NAFTA was implemented, the U.S.-Canada Free Trade Agreement (CUSFTA) was already in effect and U.S. tariffs on most Mexican goods were low. Mexico had the highest level of trade barriers among the three countries. From the 1930s through part of the 1980s, Mexico maintained a strong protectionist trade policy in an effort to be independent of any foreign power and as a means to promote domestic-led industrialization.[10] In 1991, for example, U.S. businesses were very restricted in investing in Mexico. Under Mexico's restrictive *Law to Promote Mexican Investment and Regulate Foreign Investment,* about a third of Mexican economic activity was not open to majority foreign ownership.[11] Mexico's failed protectionist policies did not result in increased income levels or economic growth, and the income disparity with the United States remains large, even after NAFTA (see **Table 1**).

NAFTA coincided with Mexico's unilateral trade liberalization efforts. After NAFTA, the United States and Canada gained greater access to the Mexican market, which was the fastest-growing export market for U.S. goods and services at the time.[12] NAFTA also opened up the U.S. market to increased imports from Mexico and Canada, creating one of the largest free trade areas in the world. Since NAFTA, the three countries have made efforts to cooperate on issues of mutual interest, including trade and investment, and also in other, broader aspects of the relationship, such as regulatory cooperation, industrial competitiveness, trade facilitation, border environmental cooperation, and security.

Canada and Mexico, because the United States and Canada had a free trade agreement at the time that had been in effect since 1989.

[8] For example, see Gary Clyde Hufbauer, Cathleen Cimino, and Tyler Moran, *NAFTA at 20: Misleading Charges and Positive Achievements*, Peterson Institute for International Economics, Number PB14-13, May 2014; and U.S. Chamber of Commerce, *NAFTA Triumphant: Assessing Two Decades of Gains in Trade, Growth, and Jobs*, October 2015.

[9] For example, see AFL-CIO, *NAFTA at 20*, March 2014; and Robert E. Scott, Carlos Salas, Bruce Campbell et al., *Revisiting NAFTA: Still Not Working for North America's Workers*, Economic Policy Institute, Briefing Paper #173, September 28, 2006.

[10] For more information on Mexico's trade policies, see CRS Report R40784, *Mexico's Free Trade Agreements*, by M. Angeles Villarreal.

[11] CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal and Ian F. Fergusson.

[12] United States International Trade Commission (USITC), *Potential Impact on the U.S. Economy and Selected Industries of the North American Free-Trade Agreement*, USITC Publication 2596, January 1993.

Table 1. Selected Economic Indicators for Mexico, Canada, and the United States

(1994 and 2020)

	Mexico		Canada		United States	
	1994	2020	1994	2020	1994	2020
Population (millions)	90	129	29	38	262	331
Nominal GDP (US$ billions)[a]	528	1,073	580	1,644	7,287	20,894
Nominal GDP, PPP Basis (US$ billions)[b]	813	2,420	656	1,828	7,287309	20,894
Per Capita GDP (US$)	5,856	8,319	20,090	43,553	27,788	63,123
Per Capita GDP in $PPP	9,017	18,771	22,735	48,425	27,788	63,123
Exports of goods and services (% of GDP)	13%	40%	33%	29%	10%	10%
Imports of goods and services (% of GDP)	17%	38%	32%	31%	11%	13%

Source: Compiled by CRS based on data from Economist Intelligence unit (EIU) online database.

a. Nominal GDP is calculated by EIU based on figures from World Bank and World Development Indicators.

b. PPP refers to purchasing power parity, which reflects the purchasing power of foreign currencies in U.S. dollars.

Review of Key NAFTA Provisions

Key NAFTA provisions included tariff and nontariff trade liberalization, rules of origin, commitments on services trade and foreign investment, IPR protection, government procurement rules, and dispute resolution. Labor and environmental provisions were in separate NAFTA side agreements. NAFTA provisions and rules governing trade were groundbreaking in a number of areas, particularly in regard to enforceable rules and disciplines that were included in a trade agreement for the first time. There were almost no FTAs in place worldwide at the time, and NAFTA influenced subsequent agreements negotiated by the United States and other countries, especially at the multilateral level, in light of the then-pending Uruguay Round of major multilateral trade liberalization negotiations.

The market opening that occurred after NAFTA expanded the significance of trade for Mexico's economy. In 1994, Mexico's exports and imports equaled 14% and 18%, respectively, of GDP, while in 2019, these percentages increased to 40% and 38%. For the United States, trade is less significant for the economy, with the value of imports and exports equaling 10% and 13%, respectively, of GDP in 2020 (see **Table 1**).

Key NAFTA provisions included:

- **Market Opening.** NAFTA eliminated nearly all tariffs and most nontariff barriers on goods produced within North America. It removed Mexico's restrictive tariffs, quotas, and import licenses on products from the United States and Canada.[13] NAFTA helped "lock in" Mexico's trade and investment liberalization and ensured basic protections for U.S. and Canadian investors in Mexico.[14]

[13] Mexico's average tariff on all imports from the United States in 1993 was 10%, compared to the U.S. tariff of 2.07%.

[14] Prior to NAFTA U.S. businesses were very restricted in investing in Mexico under Mexico's former restrictive *Law to Promote Mexican Investment and Regulate Foreign Investment*.

- **Agriculture.** NAFTA eliminated tariffs and tariff-rate quotas (TRQs) on most agricultural products. It maintained TRQs with high over-quota tariffs for U.S. exports of dairy, poultry, and egg products to Canada. NAFTA addressed sanitary and phytosanitary (SPS) measures and other types of agricultural non-tariff barriers. SPS regulations are often regarded by agricultural exporters as one of the greatest challenges in trade, often resulting in increased costs and product loss and disrupting integrated supply chains.[15]
- **Investment**. NAFTA removed significant investment barriers in Mexico, ensured basic protections for NAFTA investors, and provided a mechanism for the settlement of disputes between investors and a NAFTA country. NAFTA provided for national and "nondiscriminatory treatment" for foreign investment by NAFTA parties in certain sectors of other NAFTA countries. The agreement included country-specific liberalization commitments and exceptions to national treatment. Exemptions from NAFTA included the energy sector in Mexico, in which the Mexican government reserved the right to prohibit private investment or foreign participation.
- **Services Trade**. NAFTA services provisions established a set of basic rules and obligations in services trade among partner countries. The agreement granted services providers certain rights concerning nondiscriminatory treatment, cross-border sales and entry, investment, and access to information. However, there were certain exclusions and reservations by each country. These included maritime shipping (United States), film and publishing (Canada), and oil and gas drilling (Mexico).[16] NAFTA liberalized certain service sectors in Mexico, particularly financial services, which significantly opened its banking sector.[17]
    - **Financial Services**. Under NAFTA, Canada extended an exemption granted to the United States, under the CUSFTA, to Mexico in which Mexican banks would not be subject to Canadian investment restrictions. In turn, Mexico agreed to permit financial firms from another NAFTA country to establish financial institutions in Mexico, subject to certain market-share limits applied during a transition period ending by the year 2000.
    - **Telecommunications Services.** NAFTA partners agreed to exclude provision of, but not the use of, basic telecommunications services in the agreement. NAFTA granted a "bill of rights" for the providers and users of telecommunications services, including access to public telecommunications services; connection to private lines that reflect economic costs and available on a flat-rate pricing basis; and the right to choose, purchase, or lease terminal equipment best suited to their needs.[18] NAFTA did not require parties to authorize a person of another NAFTA country to provide or operate telecommunications transport networks or services. Nor did it bar a party from maintaining a monopoly provider of public networks or services.[19]

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[15] See CRS Report R44875, *The North American Free Trade Agreement (NAFTA) and U.S. Agriculture*, by Renée Johnson.

[16] United States General Accounting Office (GAO, now called Government Accountability Office), "North American Free Trade Agreement: Assessment of Major Issues, Volume 2," *Report to the Congress*, September 1993, pp. 35-36.

[17] Hufbauer and Schott, *NAFTA Revisited*, pp. 28.

[18] GAO, *Report to Congress*, September 1993, pp. 38-39.

[19] Office of the united States Trade Representative (USTR), *Description of the Proposed North American Free Trade Agreement*, August 12, 1992, p. 29.

- **Intellectual Property Rights (IPR) Protection**. NAFTA was the first U.S. FTA to include a chapter on IPR protection provisions. It built upon the then-ongoing Uruguay Round negotiations that would create the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement in the WTO and on various existing international intellectual property treaties. The agreement set specific enforceable commitments by NAFTA parties regarding the protection of copyrights, patents, trademarks, and trade secrets, among other provisions.
- **Dispute Resolution**. NAFTA's provisions for preventing and settling disputes regarding enforcement of commitments under the agreement were built upon provisions in the CUSFTA. NAFTA created a system of arbitration for resolving disputes that included initial consultations, taking the issue to the NAFTA Trade Commission, or going through arbitral panel proceedings.[20] NAFTA included separate dispute settlement provisions for addressing disputes related to investment and over antidumping and countervailing duty determinations.
- **Government Procurement**. NAFTA opened up a significant portion of federal government procurement in each country on a nondiscriminatory basis to suppliers from other NAFTA countries for goods and services. It contained some limitations for procurement by state-owned enterprises.
- **Labor and Environment**. NAFTA marked the first time that labor and environmental provisions were associated with an FTA. Some stakeholders viewed it as an opportunity for establishing a new type of relationship among NAFTA partners.[21] Labor and environmental provisions, which were in separate side agreements, included language to promote cooperation on labor and environmental matters as well as provisions to address a party's failure to enforce its own labor and environmental laws. Perhaps most notable, at the time, were the side agreements' dispute settlement processes that, as a last resort, could impose monetary assessments and sanctions to address a party's failure to enforce its laws.

Trade Trends

U.S. trade with NAFTA partners increased after the agreement entered into force, increasing more rapidly than trade with most other countries. The U.S. trade deficit with Canada and Mexico has fluctuated since NAFTA's entry into force given other economic factors, such as economic growth and exchange rates, which are key variables affecting trade and trade balances.

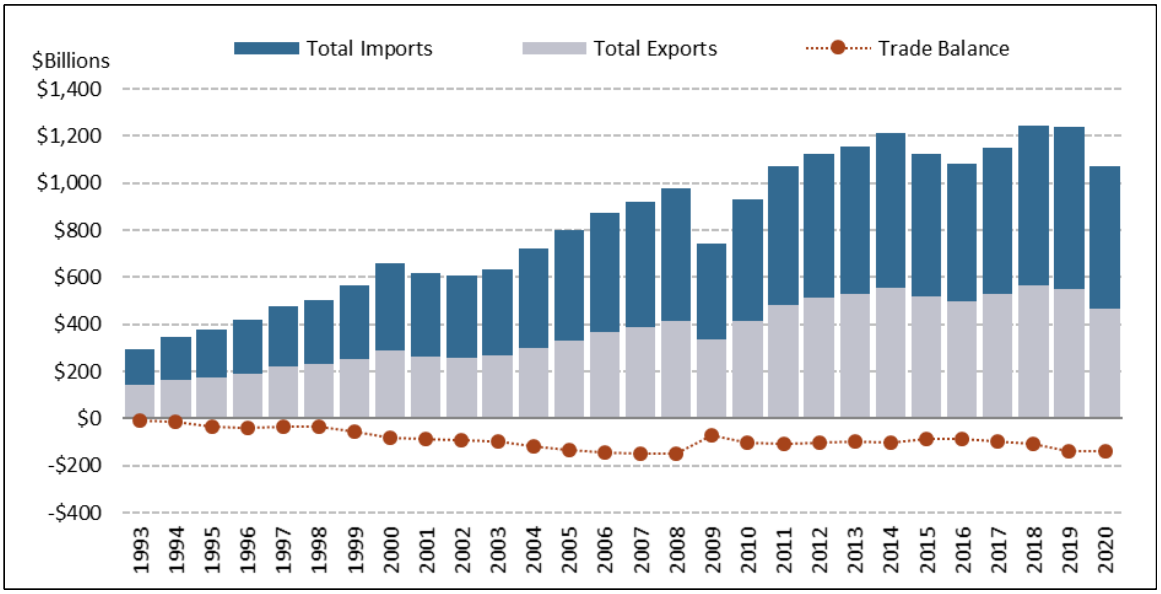
U.S. total merchandise imports from NAFTA partners increased from $150.9 billion in 1993 to $687.3 billion in 2019 (355%), while merchandise exports increased from $141.8 billion to $550.3 billion (288%) during the same time period (see **Figure 1**). In 2020, these figures decreased substantially, reflecting the economic downturn due to the Coronavirus Disease 2019 (COVID 19) pandemic. U.S. goods and services imports from USMCA partners decreased from $941.9 billion in 2019 to $780.0 billion in 2020, while U.S. exports decreased from $652.5 billion to $544.8 billion. The United States had a services trade surplus with Canada and Mexico of $30.6 billion in 2020 (see **Figure 2**).

[20] If the parties are unable to resolve the issue through consultations, they may take the dispute to the NAFTA Trade Commission, which is composed of Ministers or cabinet-level officers designated by each country. A party may also request the establishment of an arbitral panel, which may make recommendations for the resolution of the dispute.

[21] Woodrow Wilson International Center for Scholars, *NAFTA at 10: Progress, Potential, and Precedents*, pp. 20-30.

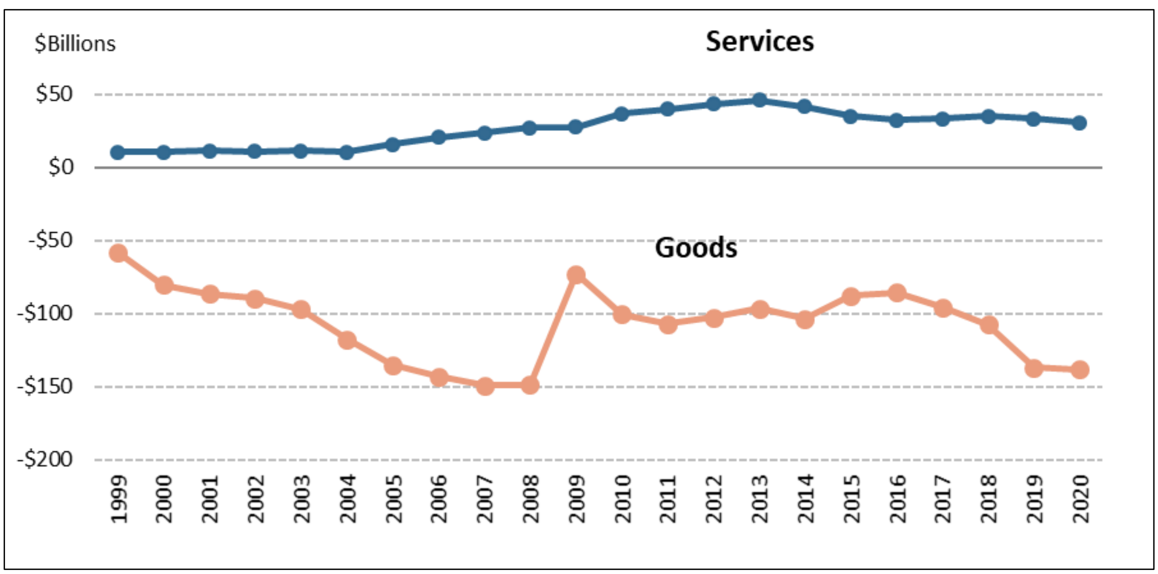
Figure 1. U.S. Merchandise Trade with NAFTA Partners: 1993-2020

(billions of nominal dollars)



Source: Compiled by CRS using trade data from the U.S. International Trade Commission's Interactive Tariff and Trade Data Web, at http://dataweb.usitc.gov.

Figure 2. U.S. Trade Balance with USMCA Partners



Source: Compiled by CRS using data from the U.S. Bureau of Economic Analysis.

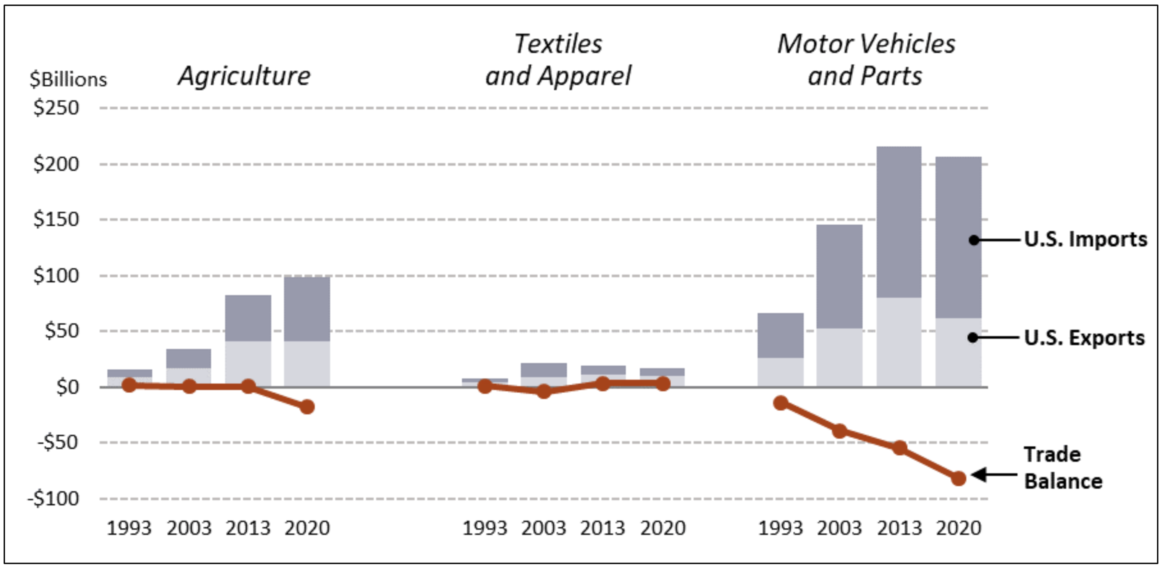
Merchandise Trade in Selected Industries

NAFTA and the elimination of Mexican trade barriers were instrumental in the initial integration of the North American motor vehicle industry. The sector experienced some of the most significant changes in trade following the agreement and ranks first among leading exports to and imports from NAFTA countries as shown in **Figure 3**. Agriculture trade also expanded after

NAFTA, but to a lesser degree than the motor vehicle industry. The trade balance in agriculture also has a far lower trade deficit. The U.S. textiles and apparel sectors experienced adjustment costs since NAFTA, with a significant expansion in U.S. imports in the first ten years after the agreement entered into force. In 2020, the United States had a trade surplus in of $3.5 billion in textiles and apparel trade with Canada and Mexico. These trade trends indicate that NAFTA achieved many of the trade and economic benefits that proponents claimed it would bring, although there have been adjustment costs. However, it is difficult to isolate the effects of NAFTA on trade in specific industries because other factors, such as economic growth and currency fluctuations, also affect trade.

Figure 3. U.S. Trade with NAFTA Partners in Selected Industries

(billions of nominal dollars)



Source: Compiled by CRS using data from the U.S. International Trade Commission, U.S. Department of Agriculture (USDA), International Trade Administration's Office of Textiles and Apparel.

Notes: For motor vehicles and parts, data from 1997 to 2020 for motor vehicles and parts includes North American Industry Classification System (NAICS) codes 3361, 3362, and 3363. For agriculture, data includes "agricultural products" as defined by USDA.

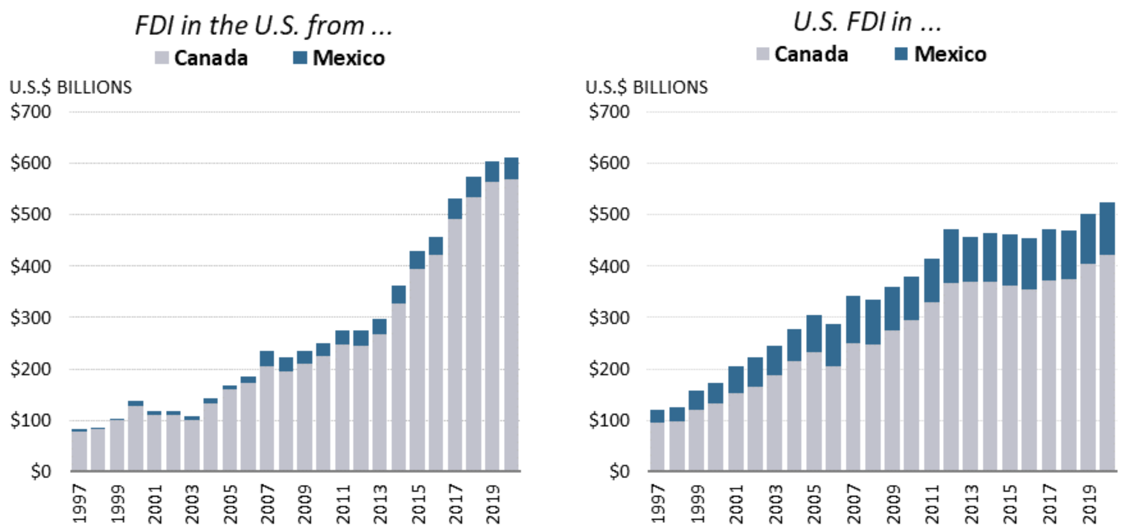
U.S. Investment with Canada and Mexico

Foreign direct investment (FDI) has been an integral part of the economic relationship between the United States and NAFTA partners for many years. Two-way investment between Canada and the United States has increased markedly since NAFTA, both in terms of the stock and flow of investment. The United States is the largest single investor in Canada with a stock of FDI into Canada reaching $422.2 billion in 2020, up from a stock of $96.6 billion in 1997 (see **Figure 4**). U.S. investment represents about half of the total stock of FDI in Canada from global investors. The United States was the largest destination for Canadian FDI in 2020, with a stock of $569.8 billion, a significant increase from $78.6 billion in 1997 (by ultimate beneficial owner). These trends highlight the changing view of FDI among Canadians, from one that could be considered fearful or hostile to FDI as vehicles of foreign control over the Canadian economy, to one that is more welcoming of new jobs and technologies that result from FDI.

In Mexico, the United States is the largest source of FDI. The stock of U.S. FDI in Mexico increased from $24.1 billion in 1997 to $101.1 billion in 2020 (see **Figure 4**). Some economists contend that Mexico's economic and energy sector reforms have added resilience to the Mexican economy in recent years. However, investor unease persists due to domestic policy uncertainty over the international economy and the López Obrador Administration's efforts to expand the state's role in the energy sector. USMCA's investment provisions may remove some of this uncertainty as there could be legal challenges and commercial retaliations from the United States if Mexico breaches USMCA provisions.[22] Mexican FDI in the United States, while substantially lower than U.S. investment in Mexico, has also increased rapidly, from $4.1 billion in 1997 to $42.1 billion in 2020 (by ultimate beneficial owner).[23]

Figure 4. Foreign Direct Investment Positions Among NAFTA Partners: 1993-2020

(historical-cost basis, by ultimate beneficial owner)



Source: CRS based on data from U.S. Department of Commerce, Bureau of Economic Analysis.

USMCA Negotiation Process and TPA

Under Article II of the Constitution, the President has the authority, with the advice and consent of the Senate, to make treaties. Under Article I, Section 8, Congress has the authority to lay and collect duties, and to regulate foreign commerce. The President sought expedited treatment of the implementing legislation for USMCA under the Bipartisan Comprehensive Trade Promotion and Accountability Act of 2015 (TPA 2015).[24]

Under TPA 2015, which was authorized through July 1, 2021, the President was required to consult with Congress before giving the required 90-day notice of his intention to start negotiations.[25] The Trump Administration's consultations included meetings between then-U.S. Trade Representative Robert Lighthizer and Members of the House Ways and Means Committee and Senate Finance Committee and with Members of the House and Senate Advisory Groups on

[22] Economist Intelligence Unit, *Mexico*, Country Report, generated November 12, 2021.

[23] Foreign direct investment data in this section is derived from data from the Bureau of Economic Analysis online database at http://www.bea.gov.

[24] P.L. 114-26.

[25] CRS In Focus IF10297, *TPP-Trade Promotion Authority (TPA) Timeline*, by Ian F. Fergusson.

Negotiations.[26] The Office of the United States Trade Representative (USTR) held public hearings prior to the release of the negotiating objectives and received more than 12,000 public comments.[27]

In order to use the expedited procedures of TPA, the President was required to notify and consult with Congress before initiating and during negotiations, and adhere to several reporting requirements following the conclusion of any negotiations resulting in an agreement. The President also was required to conduct the negotiations based on the negotiating objectives set forth by Congress in the 2015 TPA authority. See the box below for the dates on which these requirements were met.

Key Dates for USMCA and TPA

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

USMCA

USMCA, comprised of 34 chapters and 12 side letters, retains most of NAFTA's market-opening commitments, while making notable changes to market access provisions for autos and agriculture products, and to rules and disciplines, such as on investment, government procurement, and IPR. New issues, such as digital trade, state-owned enterprises, anticorruption, and currency misalignment, are also addressed. On December 10, 2019, USMCA parties agreed to a Protocol of Amendment to USMCA.[28] The revisions included modifications to key elements of the original text regarding dispute settlement, labor and environmental provisions, intellectual property rights protection, and steel and aluminum requirements in the motor vehicle industry rules of origin. The following selective topics provide an overview of USMCA provisions.

[26] These groups were created by TPA to provide additional opportunities for consultation with the committees of jurisdiction, as well as other committees with jurisdiction over potential subject matter in the trade agreement.

[27] Office of the United States Trade Representative, *Summary of Objectives for the NAFTA Renegotiation*, July 17, 2017, p. 2, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/july/ustr-releases-nafta-negotiating.

[28] The Protocol of Amendment to the United States-Mexico-Canada Agreement is available at https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/protocol-amendments.

Rules of Origin

Rules of origin in FTAs help ensure that the benefits of the FTA are granted only to goods produced by the parties that are signatories to the FTAs rather than to goods made wholly or in large part in other countries. Under USMCA, most goods that contain materials from non-USMCA countries may only be considered as North American if the materials are sufficiently transformed in the USMCA region to go through a Harmonized Tariff Schedule (HTS) change in tariff classification (called a "tariff shift"). In many cases, goods must have a minimum level of North American content in addition to undergoing a tariff shift. USMCA requires that the regional value content of most goods is not less than 60% if the "transaction-value" method is used, or not less than 50% if the "net-cost" method is used. Regional value content may be calculated using either method. The transaction-value method, which is simpler, is based on the price of the good, while the net-cost method is based on the total cost of the good less the costs of royalties, sales promotion, and packing and shipping. Producers generally have the option to choose which method they use, with some exceptions, such as the motor vehicle industry, which must use the net-cost method.[29] If a U.S. import does not meet the minimum content level under USMCA rules-of-origin requirements, it will enter the United States under another import program or at U.S. MFN tariff rates.

An Annex to the rules of origin chapter in USMCA has product-specific rules for different industries, including for motor vehicles and parts. The U.S. proposal on tightening rules of origin in the motor vehicle industry was viewed as one of the more contentious issues in the USMCA negotiations.

Motor Vehicle Industry

NAFTA phased out U.S. tariffs on motor vehicle imports from Mexico and Mexican tariffs on U.S. and Canadian products as long as they met the rules of origin requirements of 62.5% North American content for autos, light trucks, engines and transmissions; and 60% for automotive parts. Some tariffs were eliminated immediately, while others were phased out in periods over 5 to 10 years. The agreement phased out Mexico's restrictive auto decrees, which for many years imposed high import tariffs and investment restrictions in Mexico's auto sector, and opened the Mexican motor vehicle sector to trade with and investment from the United States.[30]

USMCA tightens NAFTA auto rules of origin by including:

- New motor vehicle rules of origin and procedures, including product-specific rules, and requiring 75% North American content.
- For the first time in a trade agreement, wage requirements stipulating 40%-45% of North American auto content be made by workers earning at least $16 per hour.
- A requirement that 70% of a vehicle's steel and aluminum must originate (melted and poured) in North America.

[29] CRS Report RL34524, *International Trade: Rules of Origin*, by Vivian C. Jones.

[30] Beginning in the 1960s, Mexico had a restrictive import substitution policy in which the government sought to supply the entire Mexican market through domestically produced automotive goods. The series of auto decrees established import tariffs as high as 25%, had high restrictions on foreign auto production, prohibited imports of finished vehicles, imposed high domestic content requirements and had export requirements in which a certain amount of exports was required for every dollar of imports.

- A provision aiming to streamline the enforcement of manufacturers' rules of origin certification requirements.

In addition, side letters exempt from potential Section 232 tariffs the following items from Canada and Mexico:

- 2.6 million passenger vehicles each from Canada and Mexico on an annual basis.
- Light trucks imported from Canada or Mexico.
- Auto part imports amounting to U.S. $32.4 billion from Canada and U.S. $108 billion from Mexico in declared customs value in any calendar year.

USMCA auto rules of origin will be phased in beginning in early 2021 to provide importers and producers time to adjust to the more restrictive measures.[31]

During the negotiations, vehicle and parts manufacturers generally supported retaining the current rules of origin under NAFTA, whereas labor groups sought to require a higher percentage of regional content, which they believed would reduce the share of parts produced in non-NAFTA countries. Some observers state that "it is unclear" whether the auto rules of origin in the USMCA meet the requirements under the World Trade Organization's Article XXIV of the General Agreement on Tariffs and Trade.[32] Article XXIV states that duties and other commerce regulations between parties of a customs union "should not on the whole be higher or more restrictive" than the rate of the duties and regulations "applicable in the constituent territories prior to the formation of such union."[33]

Some economists and other experts believe that the higher North American content requirement in USMCA will likely have unintended consequences. They contend that trade in motor vehicles within North America may not be able to meet the new requirements and may be ineligible for USMCA benefits. The Congressional Budget Office (CBO) estimated that USMCA's stricter rules of origin for motor vehicles and new wage requirements will result in a decline in duty-free imports of motor vehicles and parts into the United States.[34] A portion of that decline would be replaced by domestic production while a portion would be replaced by imports subject to duties. CBO estimates that U.S. importers of autos and parts not meeting the higher rules of origin requirements will pay approximately $3 billion in duties over the next decade.[35] Other economists also contend that it would be more cost efficient for manufacturers of motor vehicles and motor vehicle parts to pay the MFN tariff[36] of about 2.5%, rather than meet the cumbersome rules-of-origin requirements. They argue that a change in rules poses a significant risk to North American

[31] U.S. Customs and Border Protection, *United States-Mexico-Canada Agreement (USMCA), Implementing Instructions*, CBP Publication Number 1118-0620, June 30, 2020, https://www.cbp.gov/sites/default/files/assets/documents/2020-Jun/USMCA Implementing Instructions - 2020 Jun 30 %28Finalv1%29.pdf.

[32] See Jana Titievskaia and Marian Dietsch, *U.S.-Mexico-Canada Agreement (USMCA): Potential Impact on EU Companies*, European Parliament Research Service, At A Glance, December 2018; and Maria Curi, "EU think tank questions USMCA's compliance with WTO obligations," *World Trade Online*, January 16, 2019.

[33] See paragraph 5 of Article XXIV of the General Agreement on Tariffs and Trade, at https://www.wto.org/english/tratop_e/region_e/region_art24_e.htm.

[34] Congressional Budget Office (CBO), *CBO Estimate for* H.R. 5430, *the United States-Mexico-Canada Agreement Implementation Act*, Cost Estimate, December 16, 2019.

[35] Ibid.

[36] Most-Favored Nation (MFN) Tariffs are what countries promise to impose on imports from other members of the World Trade Organization (WTO), unless the country is part of a preferential trade agreement such as a free trade agreement (FTA). In practice, MFN rates are the highest (most restrictive) that WTO members charge one another.

auto production, because it is likely that the new content requirements will raise production costs, resulting in higher auto prices, reduced U.S. demand, lower auto exports, and more rapid substitution of machines for workers.[37] Auto manufacturers in Mexico are concerned that they may lose market share to Asian manufacturers.[38] For example, because the rules of origin in the U.S.-South Korea FTA are much lower than those in the USMCA, it is possible that some motor vehicle producers would shift production to South Korea, especially in light trucks.[39]

Even with these concerns, some motor vehicle producers support USMCA and say that complying with the new rules of origin may be challenging, but probably manageable.[40] Others contend that the new rules will hurt demand for vehicles and parts, reduce U.S. production, and cause significant job losses.[41] Some also contend that production in the United States has the potential to increase under the agreement, although it is not clear whether this would increase U.S. jobs.[42] Auto industry representatives reacted favorably to the conclusion of the negotiations and generally agree with changes modernizing the agreement, such as updating border customs procedures (i.e., trade facilitation measures), digital trade provisions, and IPR protection.[43]

Agriculture[44]

USMCA partners agreed to maintain NAFTA's market opening provisions and add several other non-market access provisions in the agriculture and sanitary and phytosanitary standards (SPS) chapter. NAFTA's agriculture provisions included tariff and quota elimination, SPS measures, rules of origin, and grade and quality standards.[45]

USMCA agriculture provisions include:

- regulatory alignment among the parties;
- protection for proprietary formulas for pre-packaged foods and food additives (limited to furthering "legitimate objective[s]," which is not defined);
- SPS rules based on "relevant scientific principles;" and
- greater transparency in SPS rules.

Biotechnology provisions in USMCA affecting agriculture include:

- Transparent and timely application and approval process for crops using biotechnology.

[37] See for example, Mary E. Lovely and Jeffrey J. Schott, *The USMCA: New, Modestly Improved, but Still Costly*, Peterson Institute for International Economics, December 17, 2019.

[38] Personal communication with motor vehicle representatives and government officials in Mexico City on September 25-29, 2017.

[39] KORUS's rules of origin in motor vehicles range from 35-55%. See CRS Report RL34330, *The U.S.-South Korea Free Trade Agreement (KORUS FTA): Provisions and Implementation*, coordinated by Brock R. Williams.

[40] Sarah Foster and Andrew Mayeda, "USMCA Content Rules will Raise Production Costs, Automakers Warn," *Automotive News Canada*, November 16, 2018.

[41] Ibid.

[42] Sarah Foster and Andrew Mayeda, "USMCA Will Add to Costs, Could Eliminate Jobs," *Bloomberg News*, November 15, 2018.

[43] Ben Miller, "Automakers React Positively to Announcement of US/Canada/Mexico Trade Deal," October 1, 2018.

[44] For more information on USMCA outcomes, see CRS In Focus IF10996, *Agricultural Provisions of the U.S.-Mexico-Canada Agreement*, by Jenny Hopkinson.

[45] See CRS In Focus IF10682, *NAFTA Renegotiation: Issues for U.S. Agriculture*, by Renée Johnson, and CRS Report R44875, *The North American Free Trade Agreement (NAFTA) and U.S. Agriculture*, by Renée Johnson.

- Procedures for import shipments containing a low-level presence of an unapproved crop produced with biotechnology.
- Establishment of a working group on agricultural biotechnology.

In the USMCA negotiations on agriculture, a principal U.S. demand was for additional market access to Canada's supply-management-restricted dairy, poultry, and egg markets. This system places a tariff-rate quota on imports of those products into Canada. While most of the in-quota tariff levied is 0%, out of quota tariffs (TRQ) can reach 313.5% for dairy products. Canada was not willing to abolish supply management, but did allow a yearly expansion of the TRQ for dairy products; an expansion of duty-free quota for poultry from 47,000 tons to 57,000 tons in year six, and a subsequent 1% annual increase for 10 years. The TRQ for eggs would increase to 10 million dozen annually. In return, the United States is providing more access to Canadian dairy, sugar, peanuts and cotton. U.S. tariffs for peanuts and cotton are to be phased-out over five years, and TRQs for dairy and sugar products are to be increased. The United States also negotiated changes to Canadian wheat grading system and providing national treatment for beer, wine, and spirits labeling and sales. A U.S. proposal to allow trade remedies to be used for seasonal produce was not adopted

NAFTA set separate bilateral undertakings on cross-border trade in agriculture, one between Canada and Mexico, and the other between Mexico and the United States. As a general matter, CUSFTA provisions continued to apply on trade with Canada.[46] Under CUSFTA, Canada excluded dairy, poultry, and eggs for tariff elimination. In return, the United States excluded dairy, sugar, cotton, tobacco, peanuts, and peanut butter. Although NAFTA resulted in tariff elimination for most agricultural products and redefined import quotas for some commodities as tariff-rate quotas (TRQs),[47] some products continued to be subject to high above-quota tariffs, such as U.S. dairy and poultry exports to Canada. Canada maintains a supply-management system for these sectors that effectively limits U.S. market access. These products were also exempt from Canada-Mexico trade liberalization. NAFTA also addressed SPS measures and other types of nontariff barriers that may limit agricultural trade. SPS regulations continue to be regarded by agricultural exporters as challenging to trade and disruptive to integrated supply chains.[48]

In conjunction with agricultural reforms underway in Mexico at the time, NAFTA eliminated most nontariff barriers in agricultural trade with Mexico, including import licensing requirements, through their conversion either to TRQs[49] or to ordinary tariffs. Tariffs were phased out over 15 years with sensitive products, such as sugar and corn receiving the longest phase-out periods. Approximately one-half of U.S.-Mexico agricultural trade became duty-free when the agreement went into effect in 1994. Prior to NAFTA, most tariffs in agricultural trade between the United States and Mexico, on average, were fairly low, though some U.S. exports to Mexico faced tariffs as high as 12%. However, approximately one-fourth of U.S. agricultural exports to Mexico (by value) were subjected to restrictive import licensing requirements.[50]

[46] Governments of Canada, the United Mexican States, and the United States of America, *Description of the Proposed North American Free Trade Agreement*, August 12, 1992, p. 12.

[47] Tariff-rate quotas (TRQs) allowed NAFTA partners to export specified quantities of a product to other NAFTA countries at a relatively low tariff, but subjected all imports of the product above a pre-determined threshold to a higher tariff.

[48] CRS In Focus IF10682, *NAFTA Renegotiation: Issues for U.S. Agriculture*, by Renée Johnson.

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[50] Business Roundtable, *NAFTA: A Decade of Growth*, p. 35.

Customs and Trade Facilitation

Customs and trade facilitation relates to the efficient flow of legally traded goods in and out of the United States and other countries. Enforcement of U.S. trade laws and import security are other important components of customs operations at the border. NAFTA's chapter on customs procedures included provisions on certificates of origin, administration and enforcement, and customs regulation and cooperation. More recent agreements have modernized provisions in regard to customs procedures and trade facilitation. The World Trade Organization (WTO) Trade Facilitation Agreement (TFA), the newest international trade agreement in the WTO, entered into force on February 22, 2017. Two-thirds of WTO members, including the United States, Canada, and Mexico, ratified the multilateral agreement.[51] Trade facilitation measures aim to simplify and streamline customs procedures to allow the easier flow of trade across borders and thereby reduce the costs of trade. There is no precise definition of trade facilitation, even in the WTO agreements. Trade facilitation can be defined narrowly as improving administrative procedures at the border or more broadly to also encompass behind-the-border measures and regulations. The TFA aims to address trade barriers, such as lack of customs procedural transparency and overly burdensome documentation requirements.[52]

Under USMCA, parties affirm their rights and obligations under the TFA of the WTO. USMCA provisions also include commitments to administer customs procedures in such ways as to facilitate trade or the transit of a good while supporting compliance with domestic laws and regulations. Parties commit to create a Trade Facilitation Committee to cooperate on trade facilitation and adopt additional measures if necessary. Other provisions include measures for online publication of information and resources related to trade facilitation, communications mechanisms, establishment of enquiry points to respond to enquiries by interested persons, rules for issuing written advance customs rulings, procedures for efficient release of goods in order to facilitate trade between the parties, expedited customs procedures for express shipments, automated risk analysis and management procedures, creation of a single-access window system to enable electronic submission through a single entry point for importation into the territory of another party, and transparency procedures. Given the magnitude and frequency of U.S. trade with USMCA partners, the more updated customs provisions in USMCA could have a significant impact on companies engaged in trilateral trade.[53]

The USMCA sets *de minimis* customs threshold for duty-free treatment at US$800 for the United States, C$150 (about US$117) for Canada, and US$117 for Mexico. Shipment values up to these levels would enter with minimal formal entry procedures. The tax-free threshold would be set at C$40 (about US$31) for Canada and US$50 for Mexico. Proponents of the higher *de minimis* thresholds contend that these changes will facilitate North American trade by allowing low-value parcels to be shipped across international borders tax and tariff free and with simple customs forms.[54] Some Members and other stakeholders raised concerns about a footnote that would have allowed the United States to decrease its threshold to a reciprocal *de minimis* amount in an amount no greater than the Canadian or Mexican threshold. They contended that lowering the

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[51] CRS Report R44777, *WTO Trade Facilitation Agreement*, by Rachel F. Fefer and Vivian C. Jones.

[52] Ibid.

[53] The World Trade Organization's (WTO's) Trade Facilitation Agreement (TFA), if fully ratified, could also affect trade facilitation among NAFTA parties. Ninety-eight out of a necessary 109 countries have ratified the agreement.

[54] Gary Clyde Hufbauer and Euijin Jung, *Higher De Minimis Thresholds: A Win in the USMCA*, Peterson Institute for International Economics, October 15, 2018.

current U.S. threshold could come at a cost to U.S. consumers and express carriers.[55] In the end, the footnote was dropped in the final text of the agreement.

Energy

USMCA does not have an energy chapter and moves some of NAFTA's energy provisions to other parts of the agreement. The USMCA adds a new chapter specifically recognizing Mexico's constitutional prohibitions on foreign investment or ownership of Mexico's energy sector. Other provisions in the USMCA, such as the investor-state dispute settlement (ISDS) provisions in regard to Mexico's energy sector, would help protect private U.S. energy projects in Mexico.

NAFTA included explicit country-specific exceptions and reservations, including the energy sector in Mexico. In NAFTA's energy chapter, the three parties confirmed respect for their constitutions. This was of particular importance for Mexico and its 1917 Constitution, which established Mexican national ownership of all hydrocarbons resources. Under NAFTA, the Mexican government reserved to itself strategic activities, including investment and provisions in such activities, related to the exploration and exploitation of crude oil, natural gas, and basic petrochemicals. Mexico also reserved the right to provide electricity as a public service within the country. Despite these exclusions from NAFTA, energy remains a central component of U.S.-Mexico trade.[56]

Existing U.S. and Canadian investors in Mexico's energy sector would remain protected by USMCA's investment provisions. Although there were some concerns during the negotiations about the need to protect U.S. contracts in Mexico's energy sector, Mexico appears to be legally bound by its 2013 constitutional energy reforms in the energy sector. In 2013, the Mexican Congress approved constitutional reforms to restructure Mexico's state-owned oil company, PEMEX, as a "state productive company," which means that despite being owned by the state, it competes in the market like any private company.[57] It has operational autonomy, in addition to its own assets. These reforms opened Mexico's energy sector to production-sharing contracts with private and foreign investors while keeping the ownership of Mexico's hydrocarbons under state control.[58] Following the reforms, Mexico adopted new procurement rules to increase efficiency and effectiveness in the procurement process.

In regard to Canada, negotiators addressed a so-called "proportionality" provision contained in the energy chapters of both CUSFTA and NAFTA, which required Canada to export a fixed share of its energy production to the United States even in times of energy shortages. USMCA eliminated this commitment.[59]

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[55] Akin Gump, Struss Hauer & Feld LLP, *The New United States-Mexico-Canada Agreement (USMCA) Raises Canada's and Mexico's De Minimis Thresholds, but the Reciprocal Treatment Provision Poses Risks to U.S. Express Carriers and Consumers*, International Trade Alert, October 25, 2018.

[56] See CRS Report R43313, *Mexico's Oil and Gas Sector: Background, Reform Efforts, and Implications for the United States*, coordinated by Clare Ribando Seelke, and CRS Report R44747, *Cross-Border Energy Trade in North America: Present and Potential*, by Paul W. Parfomak et al.

[57] Organisation for Economic Co-operation and Development (OECD), *Fighting Bid Rigging in Public Procurement: A Review of the Procurement Rules and Practices of PEMEX in Mexico*, 2016, p. 11.

[58] Ibid., p. 9.

[59] Canadian Labour Congress, "13 Facts You Need to Know About the United States-Mexico-Canada Agreement (USMCA)," October 18, 2018.

Government Procurement

The NAFTA government procurement chapter set standards and parameters for government purchases of goods and services. Government procurement chapters typically extend national and nondiscriminatory treatment among parties and promote transparency in the tendering process. The schedule of commitments, set out in an annex to the chapter, provides opportunities for firms of each nation to bid reciprocally on certain contracts for specified government agencies over a set monetary threshold. The United States and Canada also have made certain government procurement opportunities available through similar obligations in the plurilateral WTO Government Procurement Agreement (GPA). Mexico is currently not a member of the GPA.

The USMCA government procurement chapter only applies to procurement between Mexico and the United States. It is the first U.S. FTA not to include procurement commitments for all parties. Procurement opportunities between the United States and Canada continue to be covered by the plurilateral WTO GPA, as long as both countries remain members of the agreement. USMCA carries over much of the NAFTA government procurement chapter's coverage for U.S.-Mexico procurement. Core provisions include:

- Promote transparency in the tendering process through online tender information and descriptions.
- Provide online application and documentation processes without cost to the applicant.
- Provide for publication of post-award explanations of procurement decisions.
- Exclude government procurement from the financial services chapter.
- Exclude textile and apparel procured by the Transportation Security Administration (TSA) under the "Kissell Amendment."
- Allow Mexico to set aside annual procurement contracts of $2.328 billion, annually adjusted for inflation, to Mexican suppliers.
- Allow for coverage of build-operate-transfer (BOT) contracts. (As Mexico has taken an exception to this provision, the United States will extend this coverage to Mexico when Mexico reciprocates.)

The exclusion of Canada is a break from previous government procurement chapters in U.S. FTAs. As noted above, procurement opportunities in each country for U.S. and Canadian firms will continue to be covered by the GPA, which was revised and updated in 2014. The national treatment and transparency provisions are common to both the GPA and USMCA, as are the provisions modernizing the agreement to provide for online tendering. The differences primarily are with the schedules and the thresholds. In some areas, the GPA provides a more open procurement market. For example, the GPA covers 75 U.S. government entities, including 35 U.S. states, whereas USMCA covers 52 U.S. federal entities and does not cover state procurement. The GPA has a higher monetary threshold than USMCA for procurement of goods and services ($180,000 v. $80,317), but a lower construction procurement threshold ($6.9 million v. $10.4 million).[60] In addition, while the USMCA uses a negative list approach for services (all services included unless specifically excluded), Canada—though not the United States—maintains a positive list (only services specifically enumerated are covered) for services in the

[60] "Procurement Thresholds for Implementation of the Trade Agreements Act of 1979," 82 *Fed. Reg.* 58248, December 11, 2017.

GPA. Government procurement between Canada and Mexico will continue to be covered by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP-11).

Some industry groups criticized the exclusion of Canada and financial services from the agreement. The Automotive and Capital Goods Advisory Committee (ITAC-2) maintained that excluding countries sets a bad precedent for future FTAs, that there was a "not inconceivable" chance that the United States could withdraw from the GPA, leaving no reciprocal access to the Canadian procurement market, and that other countries with FTAs with Canada would have greater access to the Canadian procurement market than that provided by the GPA.[61] The Services ITAC (ITAC-10) expressed concern that continued access to government procurement for financial services under USMCA has been called into doubt by the exclusion of that sector from the agreement. ITAC-10 noted that, under NAFTA coverage, U.S. insurance providers cover two-thirds of Mexican government employees.[62]

Supporters of expanded procurement opportunities in FTAs argue that the reciprocal nature of the government procurement provisions in FTAs allows U.S. firms access to major government procurement market opportunities overseas. In addition, supporters claim open government procurement markets at home allow government entities to accept bids from partner country suppliers, potentially making more efficient use of public funds. Other stakeholders contend that public procurement should primarily benefit domestic industries. The Buy American Act of 1933, as amended, limits the ability of foreign companies to bid on government procurements of manufactured and construction products. Buy American provisions periodically are proposed for legislation, such as infrastructure projects requiring government purchases of iron, steel, and manufactured products.[63] Such restrictions are waived for products from countries with which the United States has FTAs or to countries belonging to the GPA.

Investment

NAFTA removed significant investment barriers, ensured basic protections for NAFTA investors, and provided a mechanism for the settlement of disputes between investors and a NAFTA country. U.S. FTAs, including NAFTA and bilateral investment treaties (BITs), maintain core investor protections reflecting U.S. law, such as obligations for governments to provide investors with nondiscriminatory treatment, a minimum standard of treatment, and protections against uncompensated expropriation, among other provisions.[64] Since NAFTA, investment chapters in FTAs and the U.S. model BIT clarified certain provisions, including commitments to affirm more clearly a government's right to regulate for environmental, health, and other public policy objectives.

USMCA provisions, in general, track those of NAFTA, with the exception of the elimination of some investor-state dispute settlement (ISDS) provisions in NAFTA's investment chapter (See "Investor-State Dispute Settlement (ISDS)"). During the negotiations of the USMCA, the U.S.

[61] "USMCA Agreement: Addendum to the Earlier (September 28, 2018) Report of the Industry Trade Advisory Committee on Automotive Equipment and Capital Goods, October 2018," https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/advisory-committee.

[62] "A Trade Agreement with Mexico and possibly Canada," Report of the Industry Trade Advisory Committee on Services, September 27, 2018, https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/advisory-committee.

[63] U.S. manufactured products have been defined in regulation as containing at least 50% domestic content.

[64] See CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar.

business community strongly opposed reported U.S. proposals to scale back or eliminate NAFTA ISDS provisions. The American Petroleum Institute (API), for example, stated that strong ISDS provisions protect U.S. business interests and that weakening or eliminating NAFTA's ISDS would "undermine U.S. energy security, investment protections and our global energy leadership."[65] On the other hand, U.S. labor and civil society groups welcomed the Administration's more skeptical approach to ISDS. The 2015 TPA called for "providing meaningful procedures for resolving investment disputes," which may affect congressional consideration of an agreement.[66]

USMCA clarifies language related to national treatment and most-favored-nation treatment. In determining whether an investment is afforded national treatment in the context of expropriation, a "like circumstances" analysis can be used. Under the article, "like circumstances… depends on the totality of the circumstances including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives."[67]

Minimum Standard of Treatment (MST)

USMCA, like NAFTA, requires parties to provide MST to investments in accordance with applicable customary international law, including fair and equitable treatment and full protection and security. It defines the applicable standard of treatment for a covered investment as the customary international law MST of aliens, and that "fair and equitable treatment" and "full protection and security" do not create additional substantive rights. However, the USMCA clarifies that a party's action (or inaction) that may be inconsistent with investor expectations is not, on its own, a breach of MST, even if loss or damage to the investment follows.

Performance Requirements

USMCA prohibits parties from imposing specific "performance requirements" in connection with an investment or related to the receipt of an advantage in connection with it. These include prohibitions on performance requirements, such as to export a given level or percentage of goods, achieve a given level or percentage of domestic content, or transfer a particular technology. A new feature includes prohibitions on performance requirements related to the purchase, use, or according of a preference to a technology of the party (or of a person of the party), and related to certain royalties and license contracts.

Denial of Benefits

USMCA's denial of benefits article, among other things, permits a party to deny the investment chapter's benefits to an investor that is an enterprise of another party (and to the investments of that investor) if that enterprise is owned or controlled by a person of a non-party or of the denying party or does not have "substantial business activities" in the territory of any party *other* than the party denying benefits. This article presumably is intended to address some stakeholder concerns that the chapter could be used to afford shell companies access to its protections.

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[65] American Petroleum Institute (API), *API Supports NAFTA Modernization that Retains Strong Protections for U.S. Investors*, February 20, 2017, http://www.api.org/news-policy-and-issues/news/2018/02/20/api-supports-nafta-modernization-that-protect-us-investors.

[66] P.L. 114-26, §102 (b)(4)(f).

[67]USMCA Article 14.5.4

Government Right to Regulate

Unlike NAFTA, USMCA contains a provision stating that, except in rare circumstances, nondiscriminatory regulatory action by a party to protect legitimate public welfare objectives (e.g., in public health, safety, and the environment) do not constitute indirect expropriation. The USMCA includes a statement that nothing in the Investment Chapter shall be construed to prevent a government from regulating in a manner sensitive to "health, environmental, and other regulatory objectives," as long as the action taken is otherwise consistent with the chapter.

Investor-State Dispute Settlement (ISDS)

ISDS has been a controversial aspect of the NAFTA investment chapter. It is a form of binding arbitration that allows private investors to pursue claims against sovereign nations for alleged violations of the investment provisions in trade agreements. It was included in NAFTA and is in nearly all other U.S. FTAs that have been enacted since then, and is also a core provision in U.S. bilateral investment treaties (BITs). Generally, ISDS tribunals are composed of three lawyer-arbitrators: one chosen by the claimant investor, one by the respondent country, and one by mutual decision between the two parties. Most cases follow the rules of the World Bank's Centre for Settlement for Investor Dispute or the United Nations Commission on International Trade Law.

ISDS provisions in USMCA substantially revise longstanding provisions in NAFTA, other U.S. FTAs, and current BITs that were actively sought by past Administrations. Significantly, ISDS between Canada and the United States is ended under the new agreement. U.S. and Mexican investors would not be able to bring arbitration claims under USMCA against Canada, nor would Canadian investors bring such claims against the United States or Mexico. With respect to Mexico and the United States, USMCA limits ISDS to claimants regarding government contracts in natural gas, power generation, infrastructure, transportation, and telecommunications sectors; or in other sectors provided the claimant exhausts national remedies first. Canada and Mexico are maintaining ISDS among themselves through CPTPP.

USMCA continues ISDS in three circumstances:

- Legacy claims from existing investments are eligible for arbitration under NAFTA ISDS provisions for three years from the date of NAFTA termination.
- Direct expropriation claims, including claims of violation of national treatment, will continue to be eligible for arbitration for United States and Mexican investors, provided that they exhaust domestic remedies first. Indirect expropriation, in which an action or series of actions by a party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure, is no longer covered.
- Government contracts in certain covered sectors (oil and gas, power generation, telecommunications, transportation, and infrastructure) are eligible for arbitration under USMCA ISDS. This use of ISDS is designed to protect investors in heavily regulated industries whose investments may be affected by the presence of state-owned enterprises in the sector.

Supporters argue that ISDS is important for protecting investors from discriminatory treatment and are modeled after U.S. law. They also argue that trade agreements do not prevent governments from regulating in the public interest, with clear exceptions for these actions, as well as for national security and for prudential reasons; ISDS remedies are limited to monetary penalties; and ISDS cannot force governments to change their laws or regulations. Critics counter that companies use ISDS to restrict governments' ability to regulate in the public interest (such as for environmental or health reasons), leading to "regulatory chilling" even if an ISDS outcome is not in a company's favor. The United States, to date, has never lost a claim brought against it under ISDS in a U.S. investment agreement.

Services

The United States has a highly competitive services sector and has made services trade liberalization a priority in its negotiations of FTAs, including NAFTA and USMCA.[68] USMCA continues NAFTA's inclusion of core obligations in services trade in a separate chapter. Because of the complexity of the issues, USMCA also covers services trade in other related chapters, including financial services and telecommunications, as did NAFTA. USMCA retains NAFTA's "negative list" in which all services are covered under the agreement unless specifically excluded from it, or unless parties reserved a service to domestic providers at the time of the agreement. This approach generally is considered to be more comprehensive than the "positive list approach" used in the WTO General Agreement on Trade in Services (GATS), which requires each covered service to be identified. The negative list approach also implies that any new type of service that is developed after the agreement enters into force is automatically covered unless it is specifically excluded.

Key provisions of the services chapter in USMCA include:

- Nondiscriminatory treatment of services from partner-country providers in like circumstances, including national treatment and MFN treatment.
- No limitations on the number of service suppliers, the total value or volume of services provided, the number of persons employed, or the types of legal entities or joint ventures that a foreign service supplier may employ.
- Prohibition on locality requirements that a service provider maintain a commercial presence in the country of the buyer.
- Support of mutual recognition of professional qualifications for certification of service providers.
- Transparency in the development and application of government regulations.
- Allowance for payments and transfers of capital flows "freely and without delay" that relate to the provision of services, with permissible restrictions in some cases for bankruptcy and criminal offences.

Express Delivery

NAFTA did not contain commitments on express delivery; however, the United States made market access of express delivery services a priority in its more recent FTA negotiations. USMCA addresses express delivery in a chapter annex.[69] The commitments on express delivery focus, in particular, on cases where a government-owned and operated postal system provides express delivery services competing with private sector providers. USMCA stipulates that the postal system cannot use revenue generated from its monopoly power in providing postal services to cross-subsidize an express delivery service. USMCA also requires independence between express

[68] For more information, see CRS Report R43291, *U.S. Trade in Services: Trends and Policy Issues*, by Rachel F. Fefer, and CRS Report R44354, *Trade in Services Agreement (TiSA) Negotiations: Overview and Issues for Congress*, by Rachel F. Fefer.

[69] USMCA, Annex 15-A.

delivery regulators and providers, prohibits the requirement of providing universal postal service as a prerequisite for express delivery, and prohibits fees on express delivery providers for the purpose of funding other such providers. In addition, USMCA specifies a threshold level for the customs *de minimis*, a critical commitment for express delivery providers and small businesses as shipments valued below the *de minimis* receive expedited customs treatment and pay no duties or taxes.

De Minimis Threshold

The *de minimis* threshold for assessing customs duties on imported goods was a new issue in the USMCA negotiations, one which affects several negotiating areas such as customs, services, and e-commerce. The issue involves the threshold customs valuation assessed among the three USMCA nations for goods entering the country (mailed, delivered by courier, transported by distributors, etc.) without charging duty or sales tax. The United States has sought increased thresholds from its trading partners. The United States currently exempts duties for shipments under US$800 (P.L. 114-125, §901), a level that has remained the same after USMCA. Canada raised its level from C$20 to C$40 (about US$31), while Mexico's remains at US$50. Both Canada and Mexico raised the duty-free treatment for express shipments up to US$117 (C$150). A footnote in the original USMCA text allowed the U.S. threshold to be lowered to achieve reciprocity, a controversial provision to some Members of Congress. The footnote was dropped in the final USMCA text.

Temporary Entry for Business Purposes

In addition to cross-border trade in services, a person supplying the service may travel to and provide certain services in the location where the service is performed. USMCA retains NAFTA's commitments on temporary entry for service professionals, such as accountants, architects, legal, and medical providers, and other business personnel, in order to facilitate such trade. As temporary entry has been a controversial issue in the context of previous trade agreements, the USMCA chapter on temporary entry largely replicates NAFTA's provisions. USMCA does not place new restrictions on the number of entrants or expand the list of eligible professionals, as many businesses and other service providers had hoped.

Financial Services

Financial services, including insurance and insurance-related services, banking and related services, as well as auxiliary services of a financial nature, are addressed in a separate USMCA chapter as in previous U.S. FTAs. The financial services chapter adapts relevant provisions from the foreign investment chapter and the cross-border trade in services chapter. The prudential exception in both USMCA and NAFTA provides that nothing in the FTA would prevent a party to the agreement from imposing measures to ensure the integrity and stability of the financial system. As with NAFTA and other FTAs, USMCA distinguishes between financial services traded across borders and those sold by a provider with a commercial presence in the home country of the buyer. In the case of providers with a foreign commercial presence, the USMCA applies the negative list approach with commitments applying generally except where noted; in the case of cross-border trade, the language limits coverage to a positive list of specific banking and insurance services as defined by each country.[70]

A key USMCA provision that drew attention during the debate relates to the prohibition on data localization requirements. Financial services firms rely on cross-border data flows to ensure data security, create efficiencies and cost savings through economies of scale, and utilize internet cloud services that are often provided by U.S. technology firms. Localization requirements

[70] See USMCA Annex 17-A for a complete listing of insurance, banking, and other financial services covered by the cross-border trade in financial services disciplines.

imposed by countries could require companies to have in-country servers and data centers to store data. These types of regulations can create additional costs and may serve as a deterrent for firms seeking to enter new markets or a disguised barrier to trade. Localization supporters, though, claim they increase local control, privacy protection, and data security.

NAFTA allowed the transfer of data in and out of a party in the ordinary course of business. USMCA strengthens the language to protect the free flow of data and removes the carve-out provided that a party's financial regulatory authorities have "for regulatory and supervisory purposes, immediate, direct, complete, and ongoing access" to data located in another party's territory.[71] Canada has a one-year transition period to implement the data localization prohibition.

USMCA also includes commitments on electronic payment card services. It requires that each party allow for the supply, by persons of other parties, of electronic payment services for payment card transactions, defined by each country, generally including credit and debit cards. The provisions on card services, however, allow for certain preconditions of access, including requiring a representative or office within country.

Other new USMCA financial services provisions include:

- Excluding government procurement from financial services disciplines.
- Modifying investor-state dispute settlement (ISDS) through a bilateral annex on Mexico-United States Investment Disputes in Financial Services.
- Allowing a financial institution from one party with a presence in a second party to have access to the latter's payment and clearance system.
- Protecting source code and algorithms and prohibiting on forced technology transfer in the digital trade section.

Telecommunications

The telecommunication chapter in NAFTA required regulatory transparency; interconnection among providers; reasonable and nondiscriminatory access to network infrastructure and government-controlled resources like spectrum bandwidth for reasonable rates; and protection of the supplier's options for employing technology. The USMCA telecommunications chapter adopts these provisions and is the first U.S. FTA to cover mobile service providers. The chapter promotes cooperation on charges for international roaming services and allows regulation for mobile roaming service rates. Other provisions aim to ensure that suppliers can resell and unbundle services, and that suppliers can furnish value-added services. The chapter promotes the independence of regulators. It does not cover television or radio broadcast or cable suppliers and does not contain the provision in NAFTA recognizing the importance of international standards for global compatibility and interoperability.

The chapter has the effect of binding Mexico to its 2013 Constitutional reforms in telecommunications, by guaranteeing the independence of the regulatory commission, nondiscriminatory repurchase rates, and interconnection obligations. USMCA does not affect Canadian restrictions on foreign ownership of telecommunications common carriers.

Digital Trade

NAFTA was negotiated and came into effect at the dawn of the consumer Internet age, and did not contain provisions to address barriers and rules and disciplines on digital trade. Congress

[71] USMCA Article 17.18.

established principal negotiating objectives in TPA-2015 on digital trade in goods and services, as well as on cross-border data flows. The objectives included equal treatment of electronically delivered goods and services, as compared to physical products, protection of cross-border data flows, and prevention of data localization regulations, as well as prohibitions on duties on electronic transmissions.

The USMCA digital trade chapter broadly covers all industries, but explicitly excludes government procurement or provisions on data held or processed by governments of the parties. It also does not include financial services, which has separate obligations in the financial services chapter. Overall, the chapter aims to promote digital trade and the free flow of information, and to ensure an open Internet. While the majority of the obligations related to digital trade are found in the digital trade chapter, there are relevant provisions in other chapters, including financial services, IPR, and telecommunications.

Key provisions of the USMCA digital trade chapter:

- Ensure nondiscriminatory treatment of digital products.
- Prohibit cross-border data flows restrictions and data localization requirements.
- Prohibit requirements for source code or algorithm disclosure or transfer as a condition for market access, with exceptions.
- Prohibit customs duties or other charges for electronically transmitted products.
- Require parties to have online consumer protection and anti-spam laws, and a legal framework on privacy.
- Promote cooperation on cybersecurity, and risk-based strategies and consensus-based standards over prescriptive regulation in combating cybersecurity risks and events.
- Prohibit imposition of liability for harms against Internet services providers or users related to information stored, processed, transmitted, distributed, or made available by the service, with the exclusion of ISP liability for intellectual property rights (IPR) infringement.
- Promote publication of open government data in machine readable format for public usage.

Intellectual Property Rights (IPR)

NAFTA was the first FTA to contain an IPR chapter, which in turn was the model for the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement that came into effect a year later in 1995.[72] IPR chapters in trade agreements include provisions on patents, copyrights, trademarks, trade secrets, geographical indications (GIs), and enforcement. NAFTA predated the widespread use of the commercial Internet, and subsequent IPR chapters in U.S. FTAs contain obligations more extensive than those found in TRIPS and NAFTA. In general, they have followed the TPA negotiating objective that agreements should "reflect a standard of protection similar to that found in U.S. law." The Trump Administration's NAFTA renegotiation objectives reflect TPA-2015.

[72] See CRS In Focus IF10033, *Intellectual Property Rights (IPR) and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

Patents

Patents protect new innovations, such as pharmaceutical products, chemical processes, business technologies, and computer software. These provisions largely track provisions in more recent U.S. FTAs:

- **Patentable subject matter.** USMCA provides that patents be made available for any invention, whether product or process, in all field of technology, provided that an invention is new, involves and inventive step, or is capable of industrial application. Patent protection for new uses, methods, or processes of a known product were included in the USMCA, but were removed by the Protocol of Amendment.
- **Patent and regulatory term extension.** Provides an extension for "unreasonable" delays in the patent examination or regulatory approval processes. NAFTA allowed countries to provide such an extension but did not define unreasonable. USMCA defines unreasonable for patent delays as five years after the filing of the application, or three years after a request for examination has been made.
- **Patent linkage.** Mandates notification to the patent holder when a generic manufacturer seeks to rely on an originator's test data for marketing approval, and obligates the marketing authority to prevent a generic manufacturer from seeking market approval without the rights holder's consent. It provides flexibility on the notification system and the procedures (e.g., judicial or administrative proceedings, and remedies, such as preliminary injunctions) for a patent holder to assert his rights, as well as for a party to challenge the patent's validity. This provision was not in NAFTA, but has been in more recent U.S. FTAs. The USMCA Protocol of Amendment allows parties to provide for "effective rewards," such as a period of market exclusivity, for a successful challenge to the validity or a finding of non-infringement of a patent.
- **Protection of test data.** Protects test data that patent holders submit for regulatory approval for pharmaceuticals on which generics may later rely. These provisions were not in NAFTA. USMCA provisions are described below.
    - ***Chemical-based (small-molecule) drugs.*** USMCA provides five years of data exclusivity for new drugs, and three years for new formulations of existing drugs.
    - ***Biologics***. The USMCA Protocol of Amendment removed a ten-year period of data exclusivity for biologic drugs originally negotiated in USMCA. U.S.

IPR Highlights in USMCA

Digital enforcement. Extends IPR enforcement, including for copyrights, to the digital environment.

Trade secrets. Requires criminal procedures and penalties for trade secret theft, including cybertheft; also clarifies that SOEs are subject to trade secret protection requirements.

Internet Service Providers (ISPs). Requires "notice and takedown" to address ISP liability while allowing an alternative system to remain for Canada (e.g., "notice and notice").

Trademarks. Extends trademark protection to sounds and to "collective marks" and removes administrative requirements to enable easier protection and enforcement of trademarks.

Geographical indications (GIs). Requires administrative procedures for recognizing and opposing GIs, including guidelines for determining when a name is common. Also, for GIs that a Party protects through international agreements, includes requirements on transparency and opportunity to comment or oppose GI recognition.

law provides 12 years of data exclusivity for biologics, while Canada provides a total of eight years of biologics exclusivity and Mexico provides a five-year exclusivity period for both chemical and biologics.[73] Some policymakers were concerned that the negotiated ten-year data exclusivity period would have caused the prices of prescription drugs to rise to unaffordable levels. Industry stakeholders claim that the changes to USMCA do not protect U.S. intellectual property and could adversely affect U.S. jobs and U.S. medical innovation.[74]

Copyrights

Copyrights provide creators of artistic and literary works with the exclusive right to authorize or prohibit others from reproducing, communicating, or distributing their works. USMCA attempts to balance copyright protections while protecting the free flow of information, and addresses digital trade through the following:

- **Extension of copyright terms.** Extends copyright terms from 50 years after death of the author, or 50 years from the publication (the WTO standard) to a 70-year period. Extends to 75-years corporate works. Among the USMCA parties, only Canada maintains the 50-year term.
- **Technological protection measures.** Prohibits circumventing technological protection measures (TPMs), such as encryption, or altering or disabling rights management information (RMI).
- **Limitation and exceptions.** Confines "limitations and exceptions to "certain special cases that do not conflict with the normal exploitation of the work….and do not unreasonably prejudice the legitimate interests of the rights holder." USMCA does not contain additional language that was in the TPP to "endeavor to achieve an appropriate balance" between users and rights holders in their copyright systems, including digitally, through exceptions for legitimate purposes (e.g., criticism, comment, news reporting, teaching, research). The "appropriate balance" language speaks to "fair use," exceptions in copyright law for media, research, and teaching. Rights-holder groups have criticized such provisions in the FTA context, while open Internet groups sought to have the fair-use provision inserted into USMCA.
- **"Safe harbor."** Protects internet service providers (ISPs) against liability for digital copyright infringement, provided ISPs address intermediary copyright liability through "notice and takedown" or alternative systems (e.g., "notice and notice" in Canada). Rights-holder groups sought to limit what they considered "overly broad safe harbor provisions," while technology and business groups favored retention.

Trademarks

Trademarks protect distinctive commercial names, marks, and symbols. USMCA includes provisions on trademark protection and enforcement and provides for the following:

[73] CRS Report R44489, *The Trans-Pacific Partnership (TPP): Key Provisions and Issues for Congress*, coordinated by Ian F. Fergusson and Brock R. Williams.

[74] Rachel Cohrs, "Biologic Exclusivity Provision Stripped from Revised USMCA Deal," *Modern Healthcare*, December 10, 2019.

- **Sound and scent marks.** Extends trademark protection to sounds and requires "best efforts" to register scents. (Under NAFTA, a party could require that marks be "visually perceptible" in order to be registered.)
- **Certification and collective marks.** Provides trademark protections to "certification marks" (e.g., such as the Underwriters' Laboratory or Good Housekeeping Seal) and adds protection for "collective marks." Certification marks are usually given for "compliance with defined standards," while collective marks are usually defined as "signs which distinguish the geographical origin, material, mode of manufacture or other common characteristics of goods or services of different enterprises using the collective mark."[75]
- **Well-known trademarks.** Extends specific protections for "well-known marks" to dissimilar goods and services, whether or not registered, so long as the use of the mark would indicate a connection between the goods or services and the owner of the well-known mark and the trademark owner's interests are likely to be damaged by the use.
- **Domain names.** Requires each party to have a system for managing its country-code top level domains (ccTLDs) and to make available online public access to a database of contact information for domain-name registrants. USMCA requires parties to make available appropriate remedies when a person registers or holds, with "bad faith intent to profit," a domain name that is identical or confusingly similar to a trademark. This provision is intended to protect against what is often referred to as "cybersquatting."

Trade Secrets

Trade secrets are confidential business information (e.g., formula, customer list) that are commercially valuable. USMCA parties agreed to require criminal and civil procedures and penalties for trade secret theft, prohibition on impeding licensing of trade secrets, protections for trade secrets during the litigation process, and penalties for government officials who wrongfully disclose trade secrets, including through cyber theft and by state-owned enterprises (SOEs).

Geographical Indications (GIs)

GIs are geographical names that protect the quality and reputation of a distinctive product from a region (e.g., Ontario ice wine, Florida oranges). In FTA negotiations, the United States has sought to limit GI protections that can improperly constrain U.S. agricultural market access in other countries by protecting terms viewed as "common." This goal may be complicated by the recent Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union, which provides additional protections for GIs in Canada. USMCA

- Protects GIs for food products that Canada and Mexico have already accepted as a consequence of trade agreements with the European Union.
- Provides transparency and notification requirements, and objection procedures, for new GIs.

[75] For more information on these marks, see WIPO, "Certification Marks," http://www.wipo.int/sme/en/ip_business/collective_marks/certification_marks.htm; and WIPO, "Collective Marks," http://www.wipo.int/sme/en/ip_business/collective_marks/collective_marks.htm.

- Sets forth guidelines to determine whether a term is customary in the common language.

IPR Enforcement

Like previous U.S. FTAs, the USMCA commits parties to provide civil, criminal, and other national enforcement for IPR violations, such as copyright enforcement in the digital environment, criminal penalties for trade secret theft and camcording, and *ex-officio* authority to seize counterfeit trademark and pirated copyright goods at the border. The provisions of the chapter, in turn, are enforceable through the state-to-state dispute settlement chapter.

Cultural Exemption

Since the U.S.-Canada FTA, Canada has taken an exclusion on cultural industries from national treatment and MFN treatment. This exclusion reflects the Canadian government's attempts to promote a distinctly Canadian culture and the fear that, without its support, American culture would come to dominate Canada. Thus, the government imposes Canadian content ("Cancon") requirements on radio and television broadcasts, cable and satellite diffusion, the production of audio-visual material, film or video recording, and on various print media. The U.S. entertainment industry, in particular, has long sought to have this provision eliminated. In the end, Canada prevailed and the exclusion remains in USMCA, although a provision was inserted allowing the United States and Mexico to take reciprocal action.

State-Owned Enterprises (SOEs)

NAFTA includes provisions on SOEs, but they are limited in scope.[76] They allow parties to maintain or establish SOEs, while requiring that any enterprise owned or controlled by a federal, provincial, or state government must act in a manner consistent with that country's NAFTA obligations when exercising regulatory, administrative, or other government authority, such as the granting of licenses. NAFTA committed parties to ensure that any SOEs accord nondiscriminatory treatment in the sale of goods or services to another party's investment in that territory.

USMCA includes a new chapter on SOEs, requiring SOEs to act in accordance with commercial considerations and to provide nondiscriminatory treatment to other USCMA country firms. The provisions update NAFTA by ensuring that SOEs compete on a commercial basis, and that the advantages SOEs receive from their governments, such as subsidies, do not have an adverse impact on U.S. workers and businesses. The renegotiations addressed potential commercial disadvantages to private sector firms from state-supported competitors receiving preferential treatment.[77]

U.S. government and business stakeholders raised concerns during the negotiations about competing with companies linked to the state through ownership or influence. As a result, they support new specific disciplines in USMCA to address such competition. Some legal analysts

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[76] The definition of a State-Owned Enterprise in the agreement is an enterprise principally engaged in commercial activities and in which a party's government directly or indirectly owns more than 50% of capital share, controls more than 50% of voting rights, holds the power to control the enterprise through any other ownership interest including indirect or minority ownership, or holds the power to selects a majority of board members.

[77] USTR, *Updating the North American Free Trade Agreement (NAFTA)*, available at https://ustr.gov/sites/default/files/TPP-Upgrading-the-North-American-Free-Trade-Agreement-NAFTA-Fact-Sheet.pdf.

contend that USMCA limits the definition of expropriation so as to protect against "direct" expropriation only, and that it does not protect interests against indirect expropriation.[78] Indirect expropriation occurs when a state's regulatory actions could take effective control of—or interfere with—an investment.

Labor

NAFTA marked the first time that worker rights provisions were associated with an FTA. NAFTA's labor provisions were in a side agreement called the North American Agreement on Labor Cooperation (NAALC). It contained 11 "guiding principles" pertaining to worker rights. Other provisions involved technical assistance, capacity building, and separate dispute procedures, along with a labor cooperation mechanism. Full dispute resolution procedures apply only to a country's "persistent pattern of failure" in trade-related cases to enforce its own laws regarding child labor, minimum wage, and occupational safety and health. Issues such as freedom of association and the right to organize are limited to ministerial consultations.

The rationale for including labor provisions in U.S. FTAs is to help ensure that countries not derogate from labor laws to attract trade and investment and that liberalized trade does not give a competitive advantage to developing countries due to a lack of adequate standards. Worker rights provisions in U.S. trade agreements have evolved significantly since NAFTA.[79] More recent U.S. FTAs incorporated internationally recognized labor principles requiring parties to adopt and maintain in their statutes and regulations core labor principles of the International Labor Organization (ILO) (ILO Declaration). They also require countries to enforce their labor laws and not to waive or derogate from those laws to attract trade and investment. These provisions are enforceable under the same dispute settlement procedures that apply to other provisions of the FTA, and violations are subject to the same potential trade sanctions.

ILO Declaration on Fundamental Principles and Rights at Work (1998)

- Freedom of association.
- Effective recognition of the right to collective bargaining.
- Elimination of all forms of compulsory or forced labor.
- Effective abolition of child labor.
- Elimination of discrimination in respect of employment and occupation.

USMCA includes components of more recent U.S. FTAs that strengthen labor provisions and provide recourse to the same dispute settlement mechanism as other parts of the agreement. Unlike NAFTA, it requires parties to not only enforce their own laws, but also to adopt and maintain specific laws related to the ILO Declaration. It requires parties to

- Adopt and maintain in statutes and regulation, and practices, worker rights as stated in the ILO Declaration of Rights at Work, in addition to acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
- Not waive or otherwise derogate from its statues or regulations.

[78] Julie Bedard, David Herlihy, and Timothy G. Nelson, *The United States-Mexico-Canada Agreement Significantly Curtails Foreign Investment Protection*, Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates, October 2, 2018.

[79] See CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Cathleen D. Cimino-Isaacs and M. Angeles Villarreal.

- Not fail to effectively enforce labor laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between parties.
- Promote compliance with labor laws through appropriate government action such as appointing and training inspectors or monitoring compliance and investigating suspected violations.

USMCA also prohibits imports of goods made by forced labor, and adds new commitments related to violence against workers, migrant worker protections, and workplace discrimination. The agreement maintains language stating that each party retains the right to exercise reasonable enforcement discretion and to make *bona fide* decisions with regard to the allocation of enforcement resources provided that the exercise of that discretion is not inconsistent with the labor obligations. The agreement also states that nothing in the labor chapter shall be construed to empower a party's authorities to undertake labor law enforcement activities in the territory of another party.

USMCA Annex 23-A in the labor chapter commits Mexico to enact legislative action in regard to its labor laws, similar to the May 2019 reforms, specifying that absent such action a delay in USMCA's entry into force could be possible. Specifically, Annex-23A commits Mexico to

- Eliminate all forms of forced or compulsory labor.
- Protect the right of workers to organize, form, and join the union of their choice.
- Prohibit employer interference in union activities, discrimination, or coercion against workers.
- Provide for the exercise of a personal, free, and secret vote of workers for union elections and agreements.
- Establish and maintain independent and impartial bodies to register union elections and resolve disputes relating to collective bargaining agreements.
- Establish independent labor courts.

While Mexico enacted these labor law reforms in 2019, and undertook constitutional reforms in the past, several Members of Congress remained concerned about Mexico's ability to fully implement and enforce its laws. They argued that the original text of the USMCA on labor and dispute settlement was not strong enough to protect worker rights and they negotiated with the Administration to amend the agreement.

Key changes in the amended USMCA include the following:

- Prevention of panel blocking in the Dispute Settlement Chapter of USMCA. Ensures the formation of a panel in dispute cases where a party refuses to participate in the selection of panelists.
- "In a Manner Affecting Trade and Investment." Shifts the burden of proof by stating that an alleged violation affects trade and investment, unless otherwise demonstrated.
- Rapid Response Mechanism. Adds a new rapid response mechanism to provide for an independent panel investigation of denial of certain labor rights at "covered facilities," as opposed to a government inspection.
- Mexico's Labor Reform Monitoring. USMCA implementing legislation creates a new interagency committee, labor attachés, and reporting requirements to Congress on Mexico's implementation of labor reforms.

- New or amended provisions on Rules of Procedure for dispute settlement, forced labor, and violence against workers.

Environment

NAFTA was the first U.S. FTA to include a side agreement related to the environment. As with the chapter on labor, environment provisions in U.S. FTAs have evolved significantly over time. The NAFTA side agreement—the North American Agreement on Environmental Cooperation (NAAEC)—required all parties to enforce their own environmental laws, and contains an enforcement mechanism applicable to a party's failure to enforce these laws. NAAEC included a consultation mechanism for addressing disputes with a special dispute settlement procedure. Subsequent FTAs included a similar environmental chapter within the main text of the agreement, including a country's obligations to enforce their own laws.[80]

More recent U.S. FTAs added an affirmative obligation for FTA partner countries to adhere to multilateral environmental agreements (MEAs) and allowed for environmental disputes under the FTAs to access the main dispute settlement provisions of the agreement. These obligations generally were reflected in the TPA-2015 negotiating objectives. The USMCA environment chapter obligates each party to:

- Not fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction to attract trade and investment.
- Not waive or derogate from such laws in a manner that weakens or reduces the protections afforded in those laws to encourage trade or investment.
- Ensure that its environmental laws and policies provide for and encourage high levels of protection.
- Strive to improve its levels of environmental protection.
- Require parties to adopt and maintain statutes and regulations consistent with multilateral environmental agreements to which each is a party.
- Recognize the sovereign right of each party to establish its own levels of domestic environmental protection, its own regulatory priorities, and to adopt or modify its priorities accordingly.
- Acknowledge a party's right to exercise discretion with regard to enforcement resources.
- Provide for the resolution of disputes.
- Provide a mechanism to implement the agreement.

USMCA directly or implicitly addresses obligations under major Multilateral Environmental Agreements (MEAs). It also includes obligations and encouragements to protect the ozone layer, protect the marine environment from ship pollution, encourage conservation and sustainable use of biodiversity, encourage sustainable fisheries management and requires the control, reduction, and eventual elimination of subsidies that lead to overfishing or overcapacity. The USMCA does not contain language on climate change.

The Protocol of Amendment to USMCA clarified some of the existing language in the agreement and addressed some perceived shortcoming in the original USMCA text, such as:

[80] For more information, see CRS In Focus IF10166, *Environmental Provisions in Free Trade Agreements (FTAs)*, by Richard K. Lattanzio and Ian F. Fergusson.

- Asserting the presumption that an environmental dispute affects trade and investment unless a respondent party can prove otherwise.
- Requiring each party specifically to adopt, maintain, and implement laws, regulations and other measures to fulfill the following MEAs to which they are a party:
    - Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)
    - Montreal Protocol on Substances that Deplete the Ozone Layer
    - International Convention for the Prevention of Pollution from Ship (MARPOL)
    - Ramsar Convention on Wetlands
    - Convention on Antarctic Marine Living Resources
    - International Whaling Convention
    - Inter-American Tropical Tuna Convention

The USMCA, as originally signed, only made explicit reference to CITES, MARPOL, and the Montreal Protocol. USMCA implementing legislation creates an Interagency Environment Committee for Monitoring and Enforcement, analogous to the labor chapter, and establishes environment-focused attachés in Mexico City to monitor compliance with the agreement. In addition, the implementing legislation includes measures for authorizing grants under the U.S.-Mexico Border Water Infrastructure Program, the Trade Enforcement Trust Fund and a recapitalization of the North American Development Bank (NADB).

Dispute Settlement

NAFTA and other U.S. FTAs, as well as the WTO, provide for the resolution of disputes arising under the agreement. These provisions are in addition to procedures with regard to investor-state dispute resolution (see "Investor-State Dispute Settlement"). The USMCA dispute settlement provisions are designed to resolve disputes in a cooperative manner. A party first seeks redress of a grievance through a request for consultation with the other party. These steps include:

- Initial consultations between the parties.
- Good offices, conciliation, or mediation (if no resolution).
- Establishment of a dispute settlement panel.

Panels are composed of five members, of whom each side appoints two. A chair is appointed by mutual consent of the parties. Failing that, the disputing party selected by lot makes the decision. After the panel renders its decision, the unsuccessful party is expected to remedy the measure or practice under dispute. If it does not, the aggrieved party may seek compensation, suspension of benefits, or fines. In cases in which a dispute is common to both WTO and FTA rules, a party can choose the forum in which to bring the dispute (i.e., at the WTO or before a NAFTA panel), but cannot bring the dispute to multiple fora.

Under NAFTA, only three state-to-state dispute resolution panels were completed (between 1994 and 2001). Because the United States was able to block a panel chair, a fourth case (Restrictions on Sugar from Mexico) was never considered.[81] The ability of a party to block a panel chair—

[81] For more information, see CRS In Focus IF11418, *USMCA: A Legal Interpretation of the Panel-Formation Provisions and the Question of Panel Blocking*, by Nina M. Hart.

and, consequently, a panel—from forming exposed an issue in the panel selection process, which has not been used since.

The protocol of amendment to USMCA addressed the panel blocking issue by inserting language that would eliminate the ability of a responding party to block the establishment of a panel through refusal to participate in the panel establishment procedure. It revised the guidelines for the Rules of Procedure for panels to give the parties the right to submit testimony, the right to test the veracity of submitted testimony, the right to submit anonymous testimony, and for the panel to accept agreed stipulations prior to a hearing, among other issues. In order to speed up dispute settlement, the amendment eliminated the consultative role of the USMCA Free Trade Commission, which acts as a secretariat for the agreement, as an intermediate step to resolve disputes.

In addition, some chapters or sections are not subject to dispute settlement including the:

- Good Regulatory Practices chapter;
- Competition Policy chapter;
- Competitiveness chapter;
- Small and Medium-Sized Enterprise chapter;
- Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices section of the Publications and Administration chapters; and
- Macroeconomic Policies and Exchange Rate Matters Chapter other than transparency and reporting obligations that have not been resolved through consultations.

Binational Review Panels for Trade Remedies

Unlike other U.S. FTAs, NAFTA contained a binational dispute settlement mechanism, which USMCA retains. USMCA provides disciplines for settling disputes arising from a party's statutory amendment of its antidumping (AD) or countervailing duty (CVD) laws, or from a party's AD or CVD final determination[82] on the goods of an exporting party. The dispute settlement system originated during the Canada-United States Free Trade Agreement (CUSFTA) and it was retained under NAFTA. It was a priority negotiating issue for the Canadian government.

The binational panel mechanism provides for a review of USMCA parties' final administrative determinations in AD/CVD investigations in lieu of judicial review in domestic courts. In cases in which an aggrieved USMCA country maintains that a partner did not preserve "fair and predictable disciplines on unfair trade practices," or asserts that a partner's amendment to its AD or CVD law is inconsistent with the WTO Antidumping or Subsidies Agreements,[83] the aggrieved

[82] In Canada, AD/CVD investigations on imports are conducted by the Canada Border Services Agency (CBSA, which makes dumping and subsidy determinations) and the Canadian International Trade Tribunal (CITT, which determines injury to Canadian industries). In Mexico, both injury (i.e., to Mexican industries) and dumping/subsidy determinations are made by the Secretaría de Economía, Unidad de Practicas Comerciales Internacionales. U.S. injury determinations are made by the International Trade Commission (ITC), and the International Trade Administration of the Department of Commerce investigates and determines the existence and amount of dumping/subsidies.

[83] The WTO Antidumping Agreement's official title is the *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade*; and the Subsidies Agreement's title is the *Agreement on Subsidies and Countervailing Measures*. NAFTA pre-dated the entry-into-force of the agreement establishing the WTO by one year. At the time of the NAFTA negotiations, the multilateral General Agreements on Tariffs and Trade (GATT) was in

partner may request a judgment from a binational panel rather than through the legal system of the defending party.[84]

The United States sought to eliminate the Chapter 19 dispute settlement mechanism during the USMCA negotiations.[85] By contrast, Canada and Mexico expressed support for retaining the mechanism, with Canada drawing a "red line" firmly opposing its elimination.[86] At the end of the negotiations, the three countries decided to retain the system. NAFTA Chapter 19 is effectively replicated in the Trade Remedies Chapter of the USMCA.

Currency Manipulation

NAFTA did not have provisions related to currency manipulation. For the first time in a U.S. trade agreement, USMCA includes obligations to guard against currency manipulation. The parties agreed to "achieve and maintain a market-determined exchange rate regime," and to "refrain from competitive devaluation, including through intervention in the foreign exchange market." However, only transparency and reporting requirements are subject to dispute settlement procedures.

The June 2015 TPA included, for the first time, a principal trade negotiating objective addressing currency manipulation. While neither Canada nor Mexico have been accused of currency manipulation in the past, the inclusion of a currency manipulation chapter could serve as a precedent for including such provisions in future FTAs. Over the past decade, some Members of Congress and policy experts have been concerned that foreign countries may use exchange rate policies to gain an unfair trade advantage against the United States, or are "manipulating" their currencies. Specifically, the concern is that other countries may purposefully undervalue their currencies to boost exports, making it harder for other countries to compete in global markets. They argue that U.S. companies and jobs have been adversely affected by the exchange rate policies adopted by China, Japan, and other countries "manipulating" their currencies.[87] Some economists are skeptical about currency manipulation and whether it is a significant problem. They raise questions about whether government policies have long-term effects on exchange rates, whether it is possible to differentiate between "manipulation" and legitimate central bank activities, and the net effect of alleged currency manipulation on the U.S. economy.[88]

Regulatory Practices

Nontariff barriers, including discriminatory and unpredictable regulatory processes, can be an impediment to market access for U.S. goods and services exports. NAFTA included broad provisions on regulatory practices in several chapters, including the Customs Procedures, Financial Services, and Energy chapters, but does not have a specific chapter on regulatory practices. NAFTA may have influenced the United States, Canada, and Mexico to increase cooperation on economic and security issues through various endeavors such as the North

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force. The GATT was incorporated with revisions into the WTO agreements.

[84] CRS In Focus IF10645, *Dispute Settlement in the WTO and U.S. Trade Agreements*, by Ian F. Fergusson.

[85] USTR, *Summary of Objectives for the NAFTA Renegotiation*, p. 14.

[86] "Trudeau: Chapter 19, cultural exemptions are NAFTA red lines for Canada," *Inside U.S. Trade*, September 4, 2018.

[87] See CRS In Focus IF10049, *Exchange Rates and Currency Manipulation*, by Rebecca M. Nelson, and CRS Report R44717, *International Trade and Finance: Overview and Issues for the 115th Congress*, coordinated by Mary A. Irace and Rebecca M. Nelson.

[88] Ibid.

American Leaders' Summits, the North American Trusted Traveler Program, the U.S.-Canada Beyond the Border Action Plan, and the U.S.-Mexico High Level Regulatory Cooperation Council.[89]

USMCA has a new, separate chapter on regulatory practices with commitments to promote regulatory quality through greater transparency, objective analysis, accountability, and predictability to facilitate international trade, investment, and economic growth. The chapter states that the application of good regulatory practices can support the development of compatible regulatory approaches among the parties, and reduce or eliminate unnecessarily burdensome, duplicative, or divergent regulatory requirements. Such commitments could complement ongoing efforts and include increased transparency in the development and implementation of proposed regulations, opportunities for public comment in the development of regulations, and/or the use of impact assessments and other methods to ensure regulations are evidence-based and current.[90]

Trucking

NAFTA provided Mexican commercial trucks full access to four U.S.-border states by 1995 and full access throughout the United States by 2000. The implementation of NAFTA trucking provisions was a major trade issue between the United States and Mexico for many years because the United States delayed its trucking commitments. The two countries cooperated to resolve the issue over time and engaged in numerous talks regarding safety and operational issues. By 2015, the trucking issue had been resolved.

USMCA generally retains NAFTA trucking provisions. NAFTA granted Mexican commercial trucks authority to operate in the United States, but they cannot operate between two points within the country. This means that they can haul cross-border loads but cannot haul loads that originate and end in the United States. USMCA caps the number of Mexican-domiciled carriers that can receive U.S. operating authority and continues the prohibition on Mexican-based carriers hauling freight between two points within the United States. Mexican carriers that already have authority under NAFTA to operate in the United States will continue to be allowed to operate in the United States.

Anticorruption

The United States has been influential in including commitments to combat corruption in international trade into its FTAs by incorporating chapters on transparency and anticorruption into the agreements. Although it has been part of U.S. policy for many years, the use of these types of provisions has evolved over time with anticorruption commitments becoming progressively stronger.[91] NAFTA does not include a separate chapter related to transparency or anticorruption, but it does include several provisions that were considered groundbreaking at the time, including binding rules and disciplines on and removal of barriers to foreign investment. It was not until the proposed TPP that anticorruption provisions were specifically included as a U.S. FTA chapter. Earlier agreements such as the U.S.-Chile FTA included anticorruption provisions related to government procurement, but none in the transparency chapter.

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[89] See section on North American Cooperation in CRS Report 96-397, *Canada-U.S. Relations*, by Ian F. Fergusson and Peter J. Meyer.

[90] USTR, *Summary of Objectives for the NAFTA Renegotiation*, July 17, 2017, p. 7.

[91] Transparency International, "Anti-Corruption and Transparency Provisions in Trade Agreements," *Anti-Corruption Helpdesk*, 2017.

USMCA has a new chapter on anti-corruption in which the parties affirm their resolve to prevent and combat bribery and corruption in international trade and investment. The scope of the chapter is limited to measures to prevent and combat bribery and corruption in regard to any matter covered by the agreement.

"Sunset" Provision in Review and Term Extension

In the Final Provisions chapter of USMCA, parties commit to a review of the agreement on the sixth anniversary of the agreement's entry into force. If all parties agree to continue the agreement after six years, it shall remain in force for another 16 years. If a party does not confirm its wish to extend the term of the agreement for another 16-year period, parties shall conduct a joint review of the agreement every year. The agreement only specifies that a "party" would review the agreement; it does not state whether it would be the President or Congress that reviews the agreement. This may be of interest to Congress as it considers what its role would be in reviewing the USMCA and in the next authorization of TPA. Some industry observers contend that the sunset provision may have a detrimental effect on investor confidence and affect long-term investments. Others believe that the provision will not have an effect as parties can choose to review an agreement at any time.

Implementation of USMCA

The implementation of USMCA has raised a number of issues for U.S. policymakers and other stakeholders, such as labor advocates and U.S. energy and motor vehicle companies. The implementation of the labor provisions, which include the novel rapid response mechanism meant to resolve labor disputes rapidly, is one of the primary areas of interest for some Members of Congress. Other key issues include the implementation of motor vehicle rules of origin, as well as current proposals under the López Obrador government to scale back some of the 2013 energy reforms, which could adversely affect U.S. energy companies. Some observers have suggested that the United States use USMCA as "leverage" to persuade Mexico to allay U.S. labor concerns, adopt policies that can further North American economic integration, including in the energy sector, encourage supply chain relocation to Mexico, and enhance regional competitiveness.[92]

Labor Issues

The first USMCA labor complaint was filed on March 23, 2021, against the United States by migrant worker women and a binational coalition of civil society organizations. Months later, the United States filed two complaints against facilities in Mexico under USMCAs novel rapid-response mechanism; the first complaint was initiated by the AFL-CIO and other groups on May 10, 2021, against Tridonex, an auto parts factory located in Mexico, and the second was initiated by USTR on May 12, 2021, against a General Motors (GM) facility in Mexico. The Rapid Response Labor Mechanism under USMCA allows for a facility-specific, rapid labor dispute resolution process. The process can be initiated under USMCA if a party believes in good faith

[92] Peterson Institute for International Economics, *Supply Chain Relocation to Mexico and North American Economic Competitiveness,* Virtual Conference, October 21, 2021, https://www.piie.com/events/supply-chain-relocation-mexico-and-north-american-economic-competitiveness.

that "workers at covered facilities are being denied the right of free association and collective bargaining."[93]

Mexican Female Migrant Laborers Dispute U.S. Visa Process

The first USMCA labor complaint was lodged by women organized with *Centro de los Derechos del Migrante* (CDM) against the United States for alleged gender-based discrimination against Mexican migrant workers in the recruitment and hiring processes for U.S. jobs in agriculture.[94] CDM submitted the complaint to Mexico's Labor Ministry asking the Mexican government to initiate a state-to-state dispute against the United States.[95] CDM was joined by a binational coalition of civil society organizations, along with two Mexican migrant women. CDM is a non-profit organization that defends migrant workers' rights.[96] The complaint states that women applying for visas in the United States are being disproportionately channeled into obtaining H2B labor visas instead of H2A agricultural visas, which does not allow them access to higher paying jobs in agriculture. The complaint alleges that the United States is not enforcing the provision of the USMCA agreement, which protects workers to "exercise their labor rights in a climate free from violence, threats, and intimidation."[97] In June 2021, the complainants met with the U.S. and Mexican governments in separate meetings to discuss the complaints.[98] The dispute appears not to have moved beyond the consultation phase of the dispute resolution mechanism.[99]

Tridonex Mexico Facility and Workers' Right to Organize Freely

On May 10, 2021, the AFL-CIO, the Service Employees International Union (SEIU), the Sindicato Nacional Independiente de Trabajadores de Industrias y de Servicios Movimiento (SNITIS), and Public Citizen filed a complaint against the Tridonex factory in Tamaulipas, Mexico.[100] It was the first complaint filed under the novel rapid response mechanism of USMCA. The complaint purported that workers had been denied the right to organize with SNITIS, a Mexican labor union, by the company and current union. According to the AFL-CIO, over 600 workers were fired from their positions at Tridonex, as a result of attempting to organize with

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93 USMCA Article 31-A2.

94Centro de los Derechos Del Migrante, Inc., *Migrant Worker Women File First Complaint Against the U.S. Government Under the United States-Mexico-Canada Agreement*, Press Release , March 23, 2021, https://cdmigrante.org/migrant-worker-women-file-first-complaint-against-the-us-government-under-the-united-states-mexico-canada-agreement/.

95 Amended Petition on Labor Law Matters Arising in the United States submitted to the Labor Policy and Institutional Relations Unit through the General Directorate of Institutional Relations in the Secretariat of Labor and Social Welfare of the Mexican government, March 23, 2021, available at https://cdmigrante.org/wp-content/uploads/2021/03/USMCA-Amended-Peition-and-Appendices_March-23-2021_reduced.pdf.

96 Maria Curia, "Mexican Migrant Women File First USMCA Labor Complaint Against U.S.," *World Trade Online*, March 24, 2021.

97 See USMCA Article 23.7 and Amended Petition on Labor Law Matters at https://cdmigrante.org/wp-content/uploads/2021/03/USMCA-Amended-Peition-and-Appendices_March-23-2021_reduced.pdf.

98 "Migrant Advocacy Group Set to Discuss USMCA Complaint with Mexican, U.S. Labor Officials," *World Trade Online*, June 4, 2021.

99 As of December 15, 2021, the U.S. Department of Labor does not have information available on its website regarding the Mexican migrant worker complaint under USMCA alleging discrimination. See https://www.dol.gov/agencies/ilab/our-work/trade/labor-rights-usmca.

100 The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), *AFL-CIO, SEIU, SNITIS and Public Citizen Announce Filing of First USMCA 'Rapid Response Mechanism' Labor Case to Fight for Mexican Workers Denied Independent Union Representation*, Press Release, May 10, 2021.

SNITIS. In August, USTR announced that it had reached an agreement with Tridonex, under which the company would provide six months of back pay to at least 154 workers who were dismissed from the plant.[101] In addition, Tridonex agreed to provide its employees with workers' rights training and make other managerial arrangements to better support the rights of its workers. The Mexican government also agreed to assist in the training programs and to monitor the union status of the facility.[102]

U.S.-Mexico Announcement Regarding Settlement of U.S. Complaint Regarding Workers' Rights Denial at GM Mexican Facility

On July 8, 2021, the United States and Mexico announced for the first time under USMCA's Rapid Response Labor Mechanism a course of remediation which seeks to provide the workers of the GM facility in Silao, Mexico with the ability to vote on whether to approve their collective bargaining agreement and to remediate the denial of the right of free association and collective bargaining to workers at the facility. The announcement came after an investigation into complaints that workers' rights had been violated. The joint announcement states that the remediation "reflects the shared intent of the United States and Mexico that trade benefit workers." The action follows the request sent by the United States to Mexico on May 12, 2021, for review of concerns regarding an April 2021 vote on a collective bargaining agreement for workers at the facility. Mexico agreed to commence discussion on a remediation plan. As part of the remediation, Mexico agreed to:

- ensure a new vote at the facility;
- have federal inspectors present at the facility to prevent and address any intimidation or coercion;
- permit international observers from the ILO and from a Mexican autonomous institution to be at the vote;
- investigate and, as appropriate, sanction anyone responsible for any violation of law related to the April 2021 vote or subsequent votes; and
- monitor an email address and create a hotline to receive and respond to complaints from workers about the voting process.

According to a statement by USTR, this course of remediation "is the result of the commitment of the U.S. and Mexican Governments to workers' rights and represents a success for the workers in the facility." The resolution was seen by numerous observers as an early test of USMCA's rapid response mechanism that was designed to quickly investigate and resolve labor complaints under the agreement without a labor dispute settlement panel. If the terms of the remediation plan are not followed, further action could still be taken by the United States.

Sources: Office of the United States Trade Representative, *United States and Mexico Announce Course of Remediation for Workers' Rights Denial at Auto Manufacturing Facility in Silao* , Press Release, July 8, 2021; Doug Palmer, "U.S., Mexico Settle First Labor Complaint Under USMCA," *Politico,* July 8, 2021.

USTR Complaint against a General Motors Mexican Facility

On May 12, 2021, USTR announced that the United States asked Mexico to review whether workers at a GM facility in Mexico are being denied the right of free association and collective bargaining.[103] USTR stated that the action would help protect worker rights in both the United States and Mexico and support Mexico's efforts to implement its recent labor law reforms. The request was in regard to a vote of whether to legitimize the facility's current labor union. USTR alleged that the events at the GM facility involved a violation of Mexico's Federal Labor Law the Presidential Decree of April 2019. An agreement for remediation was reached by the two countries in July 2021, which called for a revote that would be overseen by the Mexican Labor

[101] Office of the United States Trade Representative, *United States Reaches Agreement with Mexican Auto Parts Company to Protect Workers' Rights*, Press Release, August 10, 2021.

[102] Ibid.

[103] Office of the United States Trade Representative, *United States Seeks Mexico's Review of Alleged Worker's Rights Denial at Auto Manufacturing Facility*, Press Release, May 12, 2021.

Ministry and observers from the International Labor Organization (ILO) to help ensure fairness. In August, the vote was held with voters deciding to leave the union.[104]

USMCA implementing legislation included $210 million to the Department of Labor's Bureau of International Labor Affairs (ILAB) for USMCA-implementation activities. Out of this amount, $180 million would be used over four years for USMCA-related technical assistance projects and $30 million over eight years for the capacity of ILAB to monitor USMCA compliance, including the necessary expenses of additional full-time employees for the Interagency Committee and labor attachés in Mexico.[105] **Table 2** lists four technical assistance projects that began after USMCA's entry into force.

Table 2. Select Technical Assistance Projects in Mexico

(After USMCA's Entry Into Force)

Project/Grantee	Amount	Description	Dates
Mexico Auto Employers Pan American Development Foundation	$3,000,000	Bring automotive sector employers into compliance with the country's labor law reforms, improve working conditions in the automotive supply sector by raising awareness, supporting employers to implement provisions, proactively adopting policies for compliance, and strengthening relations between employers and workers.	11/01/2020 – 06/30/2025
Strengthening Workers' Ability to Exercise their Labor Rights in Mexico American Center for International Labor Solidarity (Solidarity Center)	$10,000,000	Build the capacity of workers, support worker engagement and organizing, strengthen democratic worker organizations in the aerospace, mining, and call center industries through technical assistance, skills development, and pro bono advisory and legal services. The project will also create space for analysis and exchange of ideas to improve labor law reform implementation.	12/31/2020 – 06/30/2025
Improving Workers' Occupational Safety and Health in Selected Supply Chains in Mexico International Labor Organization/Vision Zero Fund	$5,000,000	Improve the occupational safety and health of workers in selected supply chains with a focus on COVID-19, female workers, and workers in vulnerable conditions. Help Mexico meet its labor obligations under the USMCA.	01/01/2021 – 12/31/2024
Mexico Awareness Raising Partners of the Americas	$10,000,000	Support the government of Mexico to design, execute, and sustain effective communication strategies that inform workers, unions, and employers of the legal ramifications of the country's labor law reforms.	01/01/2021 – 06/30/2025

Source: U.S. Department of Labor, Bureau of International Affairs, https://www.dol.gov/agencies/ilab/country/ilab-mexico.

Notes: This table does not include projects related to improve worker rights protection that were implemented prior to USMCA's entry into force. Projects prior to July 1, 2020 include at least 14 projects beginning in 2002 related to the elimination of child labor and discrimination, gender equality, raising of awareness, strengthening labor law enforcement, and strengthening workers' ability to exercise their labor rights in Mexico.

[104] Office of the United States Trade Representative, *Biden Administration Reaches Agreement with Mexico on GM Silao Rapid Response Action and Delivers Results for Workers*, Fact Sheet, July 2021.

[105] U.S. Department of Labor, Bureau of International Labor Affars, *Labor Rights and the United States-Mexico-Canada Agreement (USMCA)*, https://www.dol.gov/agencies/ilab/our-work/trade/labor-rights-usmca.

Motor Vehicle Rules of Origin

A major implementation issue regarding USMCA's updated rules of origin for the motor vehicle industry is whether non-originating material in core auto parts (e.g., engines and advanced batteries) deemed originating (100% North American content) should be included in the calculation of the regional value content (RVC) in larger parts or motor vehicles. In August 2021, the Mexican and Canadian governments, which argue that total value of core parts deemed originating should be counted, formally requested consultations with the United States, which asserts that non-originating parts should not be included in the larger RVC calculation. In September, Mexican President Andrés Manual López Obrador stated that he believed that the three countries would be able to settle their differences over how to interpret USMCA auto rules of origin without establishing a dispute settlement panel. He added that the trading partners are in consultations to resolve the dispute.[106]

Mexico's Energy Policies

Mexican President López Obrador is seeking a constitutional reform that would shift control of Mexico's energy market that is open to private investment back to the government. Policymakers and other stakeholders argue that such an action would violate Mexico's USMCA commitments. The measure would be a significant change to Mexico's previous constitutional reforms from 2013, which opened the energy sector to private investment and helped spur U.S. and other international energy companies to invest heavily in Mexico. U.S. stakeholders have criticized the proposal as anticompetitive and contend that it would go against Mexico's USMCA commitments. In a November 3, 2021, letter to USTR Ambassador Katherine Tai, Commerce Secretary Gina Raimondo, Energy Secretary Jennifer Granholm, and Secretary of State Antony Blinken, 40 Members of the House of Representative stated their concerns about reports of escalating efforts by the Mexican government to exclude private companies from its energy sector and argued that these efforts represent a violation of Mexico's USMCA commitments.[107] The lawmakers noted recent media reports alleging that the Mexican government has suspended the permits of several U.S.-owned fuel storage terminals.[108]

In September 2021, Talos Energy Inc., a Texas-based energy company, filed a Notice of Dispute with Mexico under USMCA over Mexico's decision to grant authority over a major oil field to the state-controlled company PEMEX. In a press release issued by the energy company, the "aim is to resolve the dispute amicably through consultations and negotiations and avoid the need for further legal action, including arbitration."[109] It is not clear whether USMCA's provisions on U.S.-Mexican investment disputes would be used if the case moves forward past the consultation phase. According to the dispute, a consortium of U.S. companies has invested nearly $350 million developing the field, while Mexico's state-owned oil company PEMEX failed to drill in its part of

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[106] "López Obrador: Dispute Panel Unlikely in USMCA Clash Over Auto Rules," *World Trade Online*, September 2, 2021.

[107] Letter from Representatives Clay Higgins, Jeff Duncan, Brett Guthrie, et al. to USTR Katherine Tai, Secretary of Commerce Gina Raimondo, Secretary of State Anthony Blinken, and Secretary of Energy Jennifer Granholm, November 3, 2021.

[108] Garrett Downs, "Forty GOP Lawmakers Urge Administration to Address Energy Irritants with Mexico," *World Trade Online*, November 4, 2021.

[109] Talos Energy, "Talos Energy Files Notices of Dispute Regarding Zama in an Effort to Achieve a Mutually Beneficial Resolution," press release, September 3, 2021.

the field.[110] In July, a group of 20 lawmakers from the House of Representatives and the Senate called on President Biden to address the issue with Mexican President López Obrador.[111] Talos Energy states in its dispute that the aim is to resolve the dispute amicably through consultations and avoid the need for further legal action.[112] According to a journal article, PEMEX does not have the nearly $2 billion needed to develop the oil field.[113]

Selected Trade Issues Regarding North American Trade

Other major issues regarding North American trade relations that may be of interest to Congress include the advancement of the USMCA Competitiveness Committee, the U.S. proposed tax credits for electric vehicles, U.S.-Canada trade issues on softwood lumber and potato imports, among others.

USMCA Competitiveness Committee

USMCA Chapter 26 established the creation of a new North American Competitiveness Committee to promote further North American economic integration and enhance the competitiveness of North American Exports. The Committee is pursuing initiatives in various priority areas. Recommendations from stakeholders include specific areas to focus on, which include preparing workers for a competitive future, deploying technologies to move digital and physical products and services more efficiently, and increased cooperation and coordination on IPR, export controls, supply chains, energy, and regulatory cooperation to confront China's increasing presence in the region.[114] On December 15, 2021, senior officials of the U.S., Mexican, and Canadian governments joined leading industry and academic experts from all three countries with the goal of advancing North American competitiveness and developing an agenda for the USMCA Competitiveness Committee.[115] It was the first major event of the Committee. Assistant USTR Daniel Watson described the committee as a unique feature in U.S. trade agreements that establishes a permanent form for the three countries to work together. The Committee is in the early stages of development and is currently focused on hearing from a range of stakeholders to develop its agenda, which includes an emphasis on boosting workforce development across North America.[116]

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[110] For more information, see Government of Canada, Global Affairs, Canada, *Minister Ng Meets with U.S. Trade Representative Katherine Tai*, Readout, November 30, 2021; Margaret Spiegelman, "U.S. Energy Company Files USMCA Investor Dispute Notice with Mexico," *World Trade Online*, September 7, 2021.

[111] Letter from Senators John Cornyn, James Inhofe, Ted Cruz, et al. to President Joseph R. Biden Jr, July 20, 2021.

[112] Talos Energy Inc., "Talos Energy File Notices of Dispute Regarding Zama in an Effort to Achieve a Mutually Beneficial Resolution," press release, September 3, 2021, https://jusmundi.com/en/document/other/en-talos-energy-inc-and-talos-international-holdings-scs-v-united-mexican-states-notice-of-dispute-press-release-friday-3rd-september-2021#other_document_21139.

[113] Max De Haldevang, "Talos Files Dispute Notice Against Mexico over Zama," *Bloomberg*, September 3, 2021.

[114] Matthew Rooney and Andrea Durkin, *North American Competitiveness in the World: George W. Bush Institute Recommendations for the U.S.-Mexico-Canada Agreement Competitiveness Committee*, George W. Bush Presidential Center, February 23, 2021.

[115] For more information, see George W. Bush Institute and NASCO, "USMCA and Workforce Development: Building a Competitive North America," December 15, 2021, https://www.bushcenter.org/exhibits-and-events/events/2021/12/usmca-and-workforce-development.html.

[116] Margaret Spiegelman, "USMCA Competitiveness Committee Meets with an Eye on Worker Development," *World Trade Online*, December 16, 2021.

Proposed U.S. Electric Vehicle Tax Credits

The United States is proposing a tax credit for electric vehicles, which would allow certain tax credits for purchasers and manufacturers of electric vehicles in the United States.[117] The governments of Canada, Mexico, and several other countries have raised concerns that the proposed tax credits for U.S.-manufactured electric vehicles would harm the North American motor vehicle industry and violate certain U.S. commitments under both the USMCA and the World Trade Organization (WTO).[118] They claim that the proposed U.S. tax credits for U.S.-manufactured electric vehicles would harm the North American motor vehicle industry.

On December 2, 2021, the Mexican Secretary of the Economy Tatiana Clouthier announced that Mexico will retaliate, potentially with tariffs, if the United States implements incentives for domestic-made electric vehicles.[119] She stated in a September 2021 letter that the proposed incentives, including the tax credits of $4,500 if a vehicle is assembled at unionized U.S. facilities and $500 if it has at least 50% domestic content and U.S.-made batter sales, run counter to USMCA RVC rules.[120] On October 22, 2021, Canada's Minister of Small Business, Export Promotion, and International Trade, Mary NG, wrote a letter to U.S. House and Senate leaders stating that the proposed tax credits "would undermine decades of United States-Canada cooperation to foster a mutually beneficial integrated automotive production and supply chain."[121]

Foreign-owned motor vehicle manufacturers in the United States, including Toyota Motor Corporation, Volkswagen AG, Daimler AG, Honda Motor Company, Hyundai Motor Company, and BMW AG, oppose the proposed provision that would provide additional tax credits if the final assembly of the vehicle is at a facility in the United States operating under a union-negotiated collective bargaining agreement. They argue that the provision would violate USMCA and other trade agreements because it would disproportionately benefit General Motors, Ford Motor, and Chrysler-parent Stellantis NV, which assemble vehicles in the United States in union-represented plants. Foreign motor vehicle manufacturers are reportedly nearly all unionized outside the United States but not domestically.[122]

Canadian Softwood Lumber

Trade in softwood lumber traditionally has been one of the most controversial topics in the U.S.-Canada trading relationship.[123] The dispute revolves around different pricing policies and forest management structures in the two countries. It has been an ongoing dispute for many years. In May 2021, 96 Members of the House of Representative urged USTR Tai to pursue a new

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[117] For more information, see CRS Report R46923, *Tax Provisions in the "Build Back Better Act:" The House Ways and Means Committee's Legislative Recommendations*, coordinated by Molly F. Sherlock.

[118] See Andy Blatchford, Sabrina Rodriguez, and Gavin Bade, "Electric Vehicles Spark Discord at Biden's Trilateral Summit," *Politico*, November 18, 2021; Steven Chase and Brent Jang, "Canadian Delegates Head to Washington to Fight Made-in-U.S. Vehicle Credits, Softwood Duties," *The Globe and Mail*, December 1, 2021; Maya Averbuch, "Mexico Threatens Retaliation in Electric Cars Dispute," *Bloomberg Government*, December 2, 2021.

[119] Margaret Spiegelman, "Clouthier: Mexico Could Impose Tariffs if U.S. Goes Ahead with EV Incentives," *World Trade Online*, December 2, 2021.

[120] Margaret Spiegelman, "Canada, Mexico Warn U.S. Proposed EV tax Credits Could Violate USMCA," *World Trade Online*, October 22, 2021.

[121] Ibid.

[122] David Shepardson, "U.S. House Plan Would Give Electric Vehicles Boost but Faces Opposition," *Reuters*, October 29, 2021.

[123] See CRS Report 96-397, *Canada-U.S. Relations*, by Peter J. Meyer and Ian F. Fergusson.

agreement with Canada on softwood lumber.[124] On May 24, 2021, the Department of Commerce (DOC) issued a preliminary ruling in twin AD/CVD reviews on Canadian softwood lumber imports. On December 2, 2021, DOC determined that producers and exporters of certain softwood lumber products from Canada received countervailable subsidies and moved to raise duties on Canadian softwood lumber.[125] The Canadian government has pushed back on the claim and has stated it is willing to negotiate an agreement "that's a good agreement for Canada."[126]

Issues for Congress

Policymakers faced numerous significant issues in the debate and approval of USMCA. Key issues Congress examined included the modernized and revised certain provisions of the agreement, especially on labor and the enforceability of USMCA labor provisions, the role of the Congress and the President in the NAFTA renegotiation, whether the agreement made progress in advancing TPA's negotiating objectives, the possible economic impact, especially in the auto industry, and how the agreement may impact broader U.S. relations with Canada and Mexico, two of the United States' largest trading partners. Some lawmakers contend that the renegotiations resulted in a positive outcome on balance that will enhance relations with NAFTA partners through a modernized agreement. Other lawmakers expressed concerns about specific aspects of the agreement, including labor, investment, and IPR, and some Members negotiated with the President to amend the agreement. What follows are a few selected areas of potential congressional interest.

Congressional Oversight Role and USMCA Implementation

USMCA contains key significant changes from past U.S. FTAs, including digital trade, ISDS, labor and the environment, rules of origin for motor vehicles and parts, dispute settlement, government procurement, and the sunset provision to review the agreement after six years. As implementation of the agreement moves forward, Congress may examine these issues more closely, including in terms of whether they should be a model for future agreements. Although numerous policymakers contend that USMCA contains groundbreaking provisions, such as those on digital trade and worker rights enforcement and the environment, others believe that USMCA rolls back some liberalization commitments in previous U.S. FTAs and may result in diminishing trade instead of liberalizing it.[127]

Congress may consider an oversight role on implementation of these and other provisions. For example, policymakers may continue to examine whether the labor provisions in FTAs, such as USMCA, are effective in enhancing worker rights. Organized labor in the United States has long argued that labor enforcement in trade agreements needs to be strengthened in order to protect

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124 Letter from 96 Members of the House of Representatives to The Honorable Katherine Tai, United States Trade Representative, May 17, 2021.

125 Department of Commerce, International Trade Administration, "Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review, 2019," December 2, 2021.

126 Margaret Spiegelman, "Canada Pushes Back on U.S. Lumber Tariff Hike, Potato Import Approach," December 1, 2021.

127 See for example, Senator Pat Toomey, "I'll Vote Against This Antitrade Agreement," Op-Ed, *Wall Street Journal*, December 19, 2019.

U.S. workers, but others argue that domestic policy might be "the most direct, and most effective, way to improve workers' lot, especially in advanced countries like the United States."[128]

Implementation of the provisions on the motor vehicle auto rules of origin raise other issues. As stated earlier, economic studies and industry observers have concluded that the more restrictive rules of origin on autos and auto parts may result in higher prices, lower U.S. exports, and adversely affect U.S. and Mexican auto employment. Policymakers may monitor how the rules of origin are implemented, as well as the effects on the North American motor vehicle industry as the new rules of origin are implemented. Some analysts contend that the new rules could raise compliance and production costs and lead to higher prices, which could possibly negatively affect U.S. vehicle sales. The net impact, however, may be more limited, depending on the capacity of U.S. automakers and parts manufacturers to shift suppliers and production locations and the ability to absorb higher costs, according to some observers.[129]

As noted above, USMCA will remove bilateral U.S. government procurement (GP) obligations with regard to Canada. GP obligations between the United States and Canada continue under the WTO Government Procurement Agreement (GPA), but if the United States withdraws from the GPA,[130] the issue of the value of more open government procurement versus Buy American policies may come to the fore. Disagreement over the value and content of Investor-State Dispute Settlement (ISDS) and whether it should or should not be included in future trade agreements likely will persist, despite their new restrictions in USMCA.

Economic and Broader Considerations

The full effects of the USMCA on North American trade relations are not expected to be significant because nearly all U.S. trade with Canada and Mexico that meets rules of origin requirements was already conducted duty and barrier free under NAFTA. The USMCA maintains NAFTA's tariff and non-tariff barrier eliminations. Many economists and other observers believe that USMCA is not expected to have a measurable effect on U.S. trade and investment with Mexico or Canada, jobs, wages, or overall economic growth, and that it would probably not have a measurable effect on the U.S. trade deficit.[131] The U.S. International Trade Commission (ITC) conducted an investigation into the likely economic impacts of USMCA, a required element of the Trade Promotion Authority (TPA) process.[132] The ITC study, published in April 2019, stated that the elements of USMCA that would have the most significant effects on the U.S. economy are those related to digital trade and the new rules of origin applicable to the automotive sector. USMCA's new international data transfer provisions, absent in NAFTA, are expected to positively impact industries that rely on such data transfers. The new more restrictive, auto rules of origin may result in an increase in U.S. production, but also lead to a small increase in prices and a small decrease in the consumption of vehicles in the United States. Overall, according to

[128] Anne Kim, "The Truth About USMCA's Labor Provisions, Domestic policy reforms can more effectively help American workers," *Washington Monthly*, December 21, 2019.

[129] Nick Lichtenberg, "USMCA 'Manageable' Changes Auto Compliance, Production Costs: Moody's," *Bloomberg First Word*, October 10, 2018.

[130] Isabelle Icso, "USTR backs U.S. withdrawal from WTO procurement agreement," *World Trade Online*, February 26, 2020.

[131] John Brinkley, "USMCA is not the Magnificent Trade Deal Trump Says It Is," *Forbes.com*, October 8, 2018.

[132] CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Ian F. Fergusson.

the ITC report, USMCA is expected to have a minimal, but positive effect on the overall U.S. economy.[133]

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Disclaimer

[133] United States International Trade Commission, *U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, Publication Number: 4889, April 2019.