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The United States-Mexico-Canada Agreement (USMCA)

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; how the North American motor vehicle industry is being affected by the more stringent rules of origin 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 1994 North American Free Trade Agreement (NAFTA).¹ Congress, in both its legislative and oversight capacities, was active in issues related to renegotiation of NAFTA and continues to be active in the implementation of USMCA and other trade policy issues related to 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).

Key issues for Congress in the debate surrounding the renegotiation of NAFTA and passage of USMCA included labor and environmental provisions, digital trade, intellectual property rights (IPR) protection, changes to rules of origin 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 an agreement.

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.

Overview of NAFTA

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.

Key NAFTA provisions included the following:

- **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.² NAFTA helped "lock in" Mexico's trade and investment liberalization and ensured basic protections for U.S. and Canadian investors in Mexico.³
- **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

¹ 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.

² Mexico's average tariff on all imports from the United States in 1993 was 10%, compared to the U.S. tariff of 2.07%.

³ Prior to NAFTA U.S. businesses were very restricted in investing in Mexico under Mexico's former *Law to Promote Mexican Investment and Regulate Foreign Investment*.

the greatest challenges in trade, often resulting in increased costs and product loss and disrupting integrated supply chains.⁴

- **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).⁵ NAFTA liberalized certain service sectors in Mexico, particularly financial services, which significantly opened its banking sector.⁶
 - **Financial Services.** Under NAFTA, Canada extended an exemption granted to the United States, under the Canada-United States Free Trade Agreement (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 are available on a flat-rate pricing basis; and the right to choose, purchase, or lease terminal equipment best suited to their needs.⁷ 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.⁸
- **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

⁴ See CRS Report R44875, *The North American Free Trade Agreement (NAFTA) and U.S. Agriculture*, by Renée Johnson.

⁵ 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.

⁶ Hufbauer and Schott, *NAFTA Revisited*, p. 28.

⁷ GAO, *Report to Congress*, September 1993, pp. 38-39.

⁸ Office of the United States Trade Representative (USTR), *Description of the Proposed North American Free Trade Agreement*, August 12, 1992, p. 29.

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.⁹ 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 to establish a new type of relationship among NAFTA partners.¹⁰ 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.

NAFTA Background

In 1992, the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA), which had been negotiated by President George H. W. Bush and his counterparts in Canada and Mexico. In December 1993, President William J. Clinton signed the NAFTA Implementation Act into law (**P.L. 103-182**). The agreement entered into force on January 1, 1994. NAFTA was widely debated because it was the first U.S. FTA involving 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 included provisions on intellectual property rights (IPR) protection, services trade, agriculture, dispute settlement procedures, investment, labor, and the environment. NAFTA also 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).

NAFTA's market-opening provisions gradually eliminated nearly all tariff and most nontariff barriers on goods and services produced and traded within North America. Prior to NAFTA, average applied U.S. duties on imports from Mexico averaged about 2.07% and over 50% of U.S. imports from Mexico entered duty free. In contrast, U.S. goods and services faced significantly higher tariff, nontariff, and investment barriers in Mexico. After the agreement entered into force, trade among NAFTA partners more than tripled, forming integrated production chains among all three countries. NAFTA expanded 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. Critics of NAFTA and subsequent U.S. FTAs contend that

⁹ 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.

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

it resulted in adverse employment trends, downward pressure on U.S. wages, and that it did not do enough to improve labor standards and environmental conditions abroad.

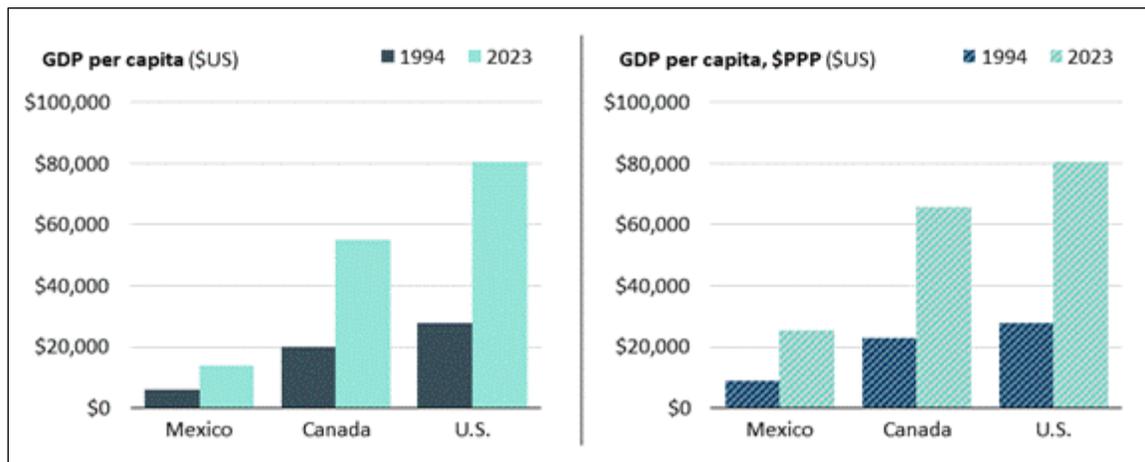
NAFTA accelerated ongoing trade and investment trends at the time of its negotiation. The U.S.-Canada Free Trade Agreement (CUSFTA) was already in effect and Mexico was undergoing significant liberalization efforts and shifting away from protectionist trade policies that had been in effect since the 1930s. Mexico's former restrictive Law to Promote Mexican Investment and Regulate Foreign Investment restricted foreign participation in Mexico's economy; about two-thirds of Mexican economic activity was not open to majority foreign ownership prior to NAFTA. U.S. businesses were prohibited from majority ownership in any investments under these restrictions, which failed to increase income levels or economic growth. NAFTA helped lock in Mexico's efforts at the time to liberalize its economy.

Note: For more information, see CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal.

Economic Trends

The income disparity between Mexico and its USMCA partners remains large, even after NAFTA's entry into force in 1994. In 1994, for example, Mexico's per capita GDP (\$5,856) was equal to 21% of U.S. per capita GDP (\$27,788). In 20-23, nearly 30 years later, this percentage went down 17% (\$13,927 in Mexico compared to \$80,474 in the United States) (see **Figure 1**).

Figure 1. Per Capita GDP Compared Among USMCA Countries



Source: Created by CRS with data from the Economist Intelligence Unit Ltd. (EIU).

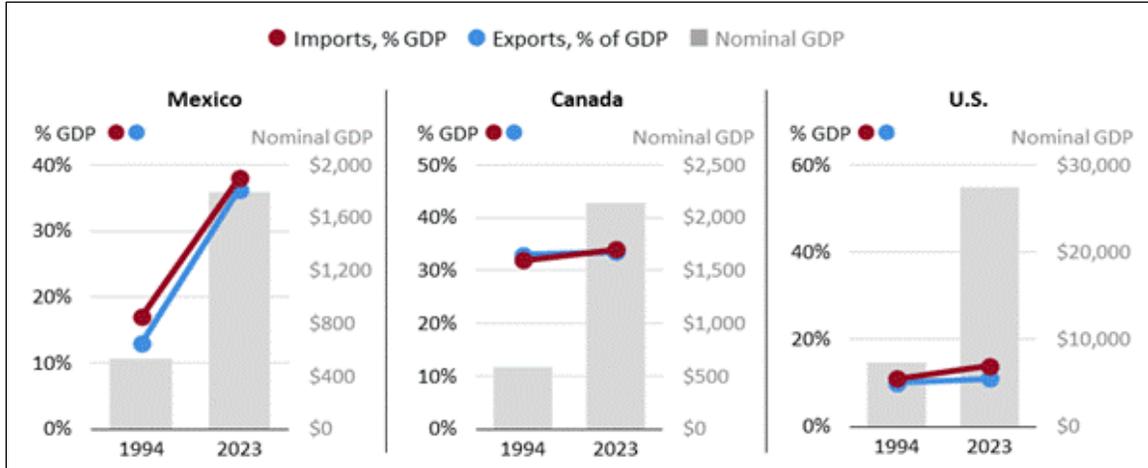
Notes: PPP refers to purchasing power parity, which reflects the purchasing power of foreign currencies in U.S. dollars.

Trade Trends

NAFTA had the most significant effect on Mexico, as demonstrated by the reliance of the Mexican economy on trade. Mexico's exports of goods and services as a percentage of GDP, for example, increased significantly, from 13% in 1994 to 36% in 2023 (see **Figure 2**). The U.S. economy relies far less on trade with exports of goods and services equaling only 11% of GDP in

2023. While Canada relies more on trade, the changes between 1994 and 2022 have been minimal.

Figure 2. Imports and Exports of Goods and Services (% GDP) Compared



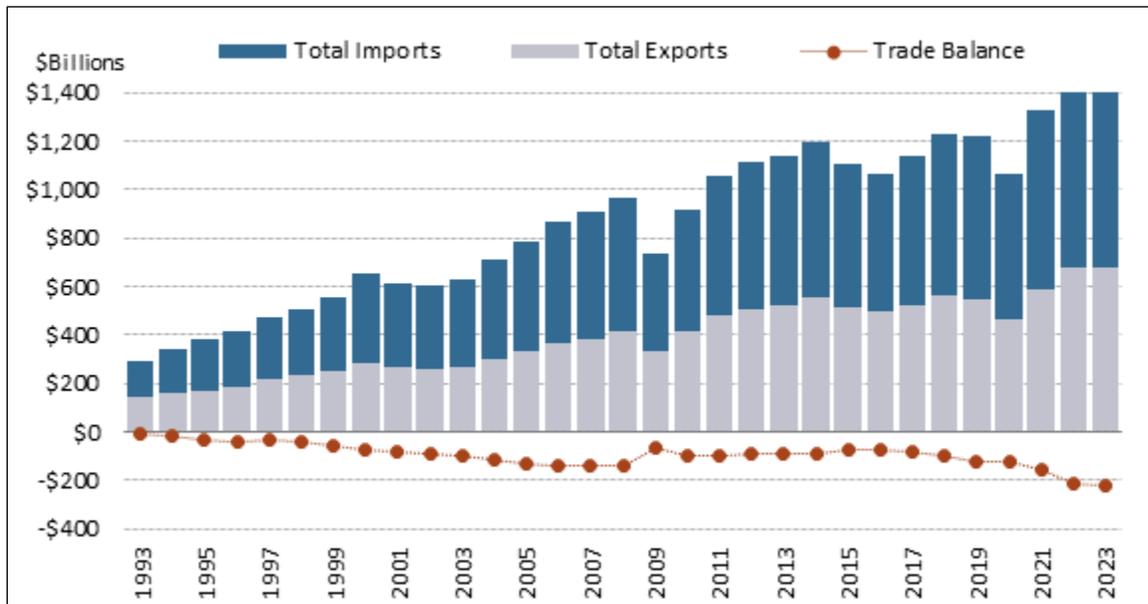
Source: Created by CRS with data from Economist Intelligence Unit Ltd.

U.S. trade in goods with NAFTA partners increased after the agreement entered into force, with imports increasing more rapidly than exports. U.S. total exports of goods to NAFTA/USMCA partners increased from \$165.1 billion in 1994 to \$677.2 billion in 2023, while imports of goods increased from \$178.4 billion to \$896.7 billion during the same time period (see **Figure 3**).

In services, U.S. exports to NAFTA/USMCA partners increased from \$38.1 billion in 1999 to \$120.8 billion in 2023, while U.S. services imports increased from \$27.7 billion in 1999 to \$94.2 billion in 2023. The United States has had a services trade surplus with Canada and Mexico since at least 1999.¹¹ In 2023, the services trade surplus was \$26.5 billion. By comparison, the U.S. goods trade deficit in 2023 reached a low of \$219.5 billion (see **Figure 4**).

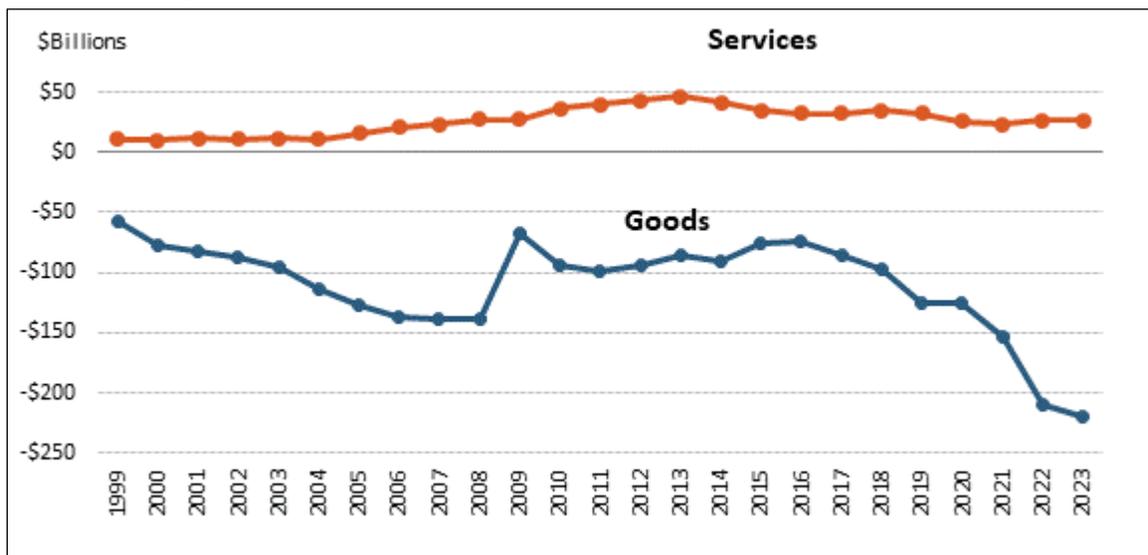
¹¹ Trade services data in this report is from the U.S. Bureau of Economic Analysis at <https://www.bea.gov>, which provides data for the years 1999-2022.

Figure 3. U.S. Merchandise Trade with USMCA Partners: 1993-2023



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 4. U.S. Trade Balance with USMCA Partners: 1999-2023



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

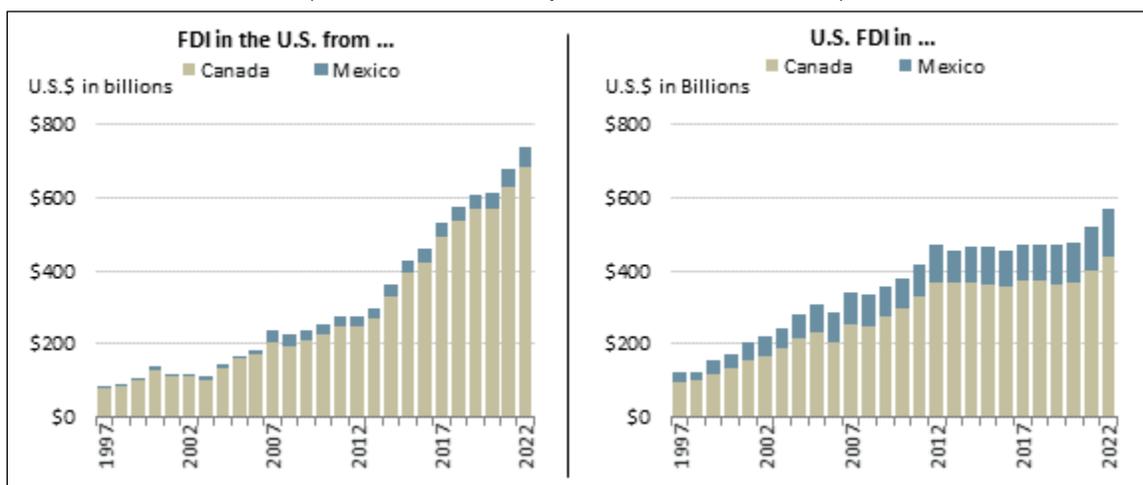
U.S. Investment with Canada and Mexico

Foreign direct investment (FDI) has been an integral part of the U.S. economic relationship with Canada and Mexico for many years. Two-way investment between Canada and the United States has increased markedly, both in terms of the stock and flow of investment. The United States is the largest single investor in Canada with stock of FDI reaching \$438.8 billion in 2022, up from a stock of \$96.6 billion in 1997 (see **Figure 5**). Investment from the United States represents about

half of the total stock of FDI in Canada from global investors. The United States was the largest destination for Canada’s total FDI in 2022, with a stock of \$683.8 billion, a significant increase from \$78.6 billion in 1997 (by ultimate beneficial owner).

In Mexico, the United States is also the largest source of FDI. The stock of U.S. FDI in Mexico increased from \$24.1 billion in 1997 to \$130.3 billion in 2022 (see **Figure 5**). Mexican FDI in the United States, while substantially lower than U.S. investment in Mexico, has also increased rapidly under NAFTA/USMCA, from \$4.1 billion in 1997 to \$54.0 billion in 2022 (by ultimate beneficial owner).¹²

Figure 5. Foreign Direct Investment Positions Among NAFTA Partners: 1993-2022
(historical-cost basis, by ultimate beneficial owner)



Source: CRS based on latest available 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), which was authorized through July 1, 2021 (P.L. 114-26).

Under TPA 2015, the President was required to consult with Congress before giving the required 90-day notice of his intention to start negotiations.¹³ 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 Negotiations.¹⁴ The Office of the United States Trade

¹² Foreign direct investment data in this section is derived from data from the Bureau of Economic Analysis online database at <http://www.bea.gov>, accessed on September 25, 2023.

¹³ CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Christopher A. Casey and Cathleen D. Cimino-Isaacs.

¹⁴ 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.

Representative (USTR) held public hearings prior to the release of the negotiating objectives and received more than 12,000 public comments.¹⁵

In order to use TPA expedited procedures, 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 Provisions

USMCA, comprising 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. It includes new provisions, including digital trade, state-owned enterprises, anticorruption, and currency misalignment. The following selective topics provide an overview of USMCA provisions.¹⁶

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

¹⁵ 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>.

¹⁶ 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>.

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 (see “Motor Vehicle Industry” below), which must use the net-cost method.¹⁷ 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. Most Favored Nation (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.

Motor Vehicle Industry

USMCA raised the regional value content requirements for the motor vehicle industry formerly required under NAFTA. NAFTA required 62.5% North American content for autos, light trucks, engines and transmissions; and 60% for automotive parts.

USMCA’s more restrictive rules of origin in the motor vehicle industry include

- product-specific rules requiring 75% North American content;
- wage requirements stipulating 40%-45% of North American auto content be made by workers earning at least \$16 per hour (for the first time in any U.S. trade agreement);
- a requirement that 70% of a vehicle’s steel and aluminum must originate (melted and poured) in North America; and
- a provision aiming to streamline the enforcement of manufacturers’ rules of origin certification requirements.

Agriculture

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.¹⁸ USMCA agriculture provisions include the following:

- 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 the following:

¹⁷ For more information, see CRS In Focus IF10754, *Rules of Origin*, by Liana Wong and CRS Report RL34524, *International Trade: Rules of Origin*, by Liana Wong.

¹⁸ For more information on USMCA and agriculture, see CRS Report R44875, *The North American Free Trade Agreement (NAFTA) and U.S. Agriculture*, by Renée Johnson.

- transparent and timely application and approval process for crops using biotechnology;
- procedures for import shipments containing a low-level presence of an unapproved crop produced with biotechnology; and
- establishment of a working group on agricultural biotechnology.

NAFTA and Agriculture

NAFTA set out 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, U.S.-Canada FTA provisions continue to apply on trade with Canada. 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. Some products continue to be subject to high above-quota tariffs, such as U.S. dairy and poultry exports to Canada. Regarding U.S.-Mexico agriculture trade, NAFTA eliminated most non-tariff barriers in agricultural trade, either through their conversion to tariff-rate quotas (TRQs) or ordinary tariffs. Tariffs were phased out over a period of 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. Prior to NAFTA, however, approximately one-fourth of U.S. agricultural exports to Mexico (by value) were subjected to restrictive import licensing requirements.

For more information on NAFTA and agriculture, see CRS Report R44875, *The North American Free Trade Agreement (NAFTA) and U.S. Agriculture*, by Renée Johnson.

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. 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.¹⁹ Trade facilitation measures in trade agreements aim to simplify and streamline customs procedures to allow the easier flow of trade across borders and thereby reduce the costs of trade. 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.²⁰

Under USMCA, parties affirm their rights and obligations under the WTO TFA. 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 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

¹⁹ CRS Report R44777, *WTO Trade Facilitation Agreement*, by Rachel F. Fefer and Vivian C. Jones.

²⁰ *Ibid.*

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.²¹

Energy

USMCA does not have an energy chapter and moved 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, aim to help protect private U.S. energy projects in Mexico.

U.S. and Canadian investors in Mexico's energy sector are 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.²² It has operational autonomy, in addition to its own assets. Mexican President Andrés Manuel López Obrador, however, has made efforts to reverse some of the 2013 energy reforms, which could be a violation of its USMCA commitments.²³

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.²⁴

Government Procurement

FTA government procurement provisions set standards and parameters for government purchases of goods and services.²⁵ Government procurement chapters typically extend national and nondiscriminatory treatment among parties and promote transparency in the tendering process. The schedule of commitments 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.

²¹ 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.

²² 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.

²³ On July 20, 2022, the United States requested consultations with Mexico under USMCA over a series of efforts by the Mexican government to reverse reforms undertaken in 2013 to liberalize the country's energy sector. Canada later joined as a party in these consultations. For more information, see Office of the United States Trade Representative, *United States Requests Consultations Under the USMCA Over Mexico's Energy Policies*, Press Release, July 20, 2022.

²⁴ Canadian Labour Congress, "13 Facts You Need to Know About the United States-Mexico-Canada Agreement (USMCA)," October 18, 2018.

²⁵ For more information of U.S. government procurement and international trade, see CRS Report R47243, *U.S. Government Procurement and International Trade*, by Andres B. Schwarzenberg.

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 the following:

- 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. 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. 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).²⁶

Investment

U.S. FTAs, including bilateral investment treaties (BITs), maintain core investor protections reflecting U.S. law, such as obligations for governments to provide investors from FTA or BIT countries with nondiscriminatory treatment, a minimum standard of treatment, and protections against uncompensated expropriation, among other provisions.²⁷

USMCA provisions, in general, track those of NAFTA and other U.S. FTAs, with the exception of the elimination of some investor-state dispute settlement (ISDS) provisions (See “Investor-State Dispute Settlement (ISDS)” below). 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

²⁶ See CRS In Focus IF12078, *CPTPP: Overview and Issues for Congress*, by Cathleen D. Cimino-Isaacs.

²⁷ See CRS In Focus IF11167, *USMCA: Investment Provisions*, by Christopher A. Casey and M. Angeles Villarreal and CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar.

relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.”²⁸

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” (due process) and “full protection and security” (police protection) do not create additional substantive rights. 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.

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 was 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; it is also a core provision in U.S. bilateral investment treaties (BITs). Generally, ISDS tribunals are composed of three lawyer-

²⁸ USMCA Article 14.5.4.

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, USMCA ended ISDS between Canada and the United States, and between Canada and Mexico. U.S. and Mexican investors are not able to bring USMCA arbitration claims against Canada, nor are Canadian investors able to bring such claims against the United States or Mexico. Canada and Mexico are maintaining ISDS among themselves through CPTPP.

For ISDS between the United States and Mexico, USMCA maintains similar provisions applicable under NAFTA regarding government contracts that belong to five covered sectors, including oil and gas, power generation, telecommunications, transportation, and infrastructure. 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 covered sectors. For all other foreign investors, USMCA ISDS provisions are more limited than those of NAFTA. Investors must first defend their claims in local courts before initiating arbitration. Direct expropriation claims, including claims of violation of national treatment, will continue to be eligible for arbitration for United States and Mexican investors under USMCA, provided that the claimants 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.

Services

The United States has a highly competitive services sector and has made services trade liberalization a priority in its negotiations of FTAs, including USMCA. USMCA continues NAFTA’s inclusion of core obligations in services trade in a separate services trade chapter. It 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 the following:

- 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.²⁹ 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 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.

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.³⁰

²⁹ USMCA, Annex 15-A.

³⁰ 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.

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.³¹

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 the following:

- 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 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 the Mexican government to its 2013 Constitutional reforms, which established a telecommunications regulatory framework to encourage competition, investment and an independent regulatory regime, in addition to 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 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

³¹ USMCA Article 17.18.

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 flow 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 was the model for the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement that came into effect in 1995.³² IPR chapters in trade agreements include provisions on patents, copyrights, trademarks, trade secrets, geographical indications (GIs), and enforcement. U.S. FTAs contain obligations in general that have followed the TPA negotiating objective that agreements should reflect U.S. law.

Patents

Patents protect new innovations, such as pharmaceutical products, chemical processes, business technologies, and computer software. USMCA provisions largely track with 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

³² See CRS In Focus IF10033, *Intellectual Property Rights (IPR) and International Trade*, by Shayerah I. Akhtar and Liana Wong.

- that an invention is new, involves an inventive step, or is capable of industrial application.
- **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 their 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.
 - **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 final USMCA text does not have provisions on data exclusivity for biologic drugs. USMCA parties originally negotiated a ten-year period of data exclusivity for biologic drugs, but later removed these provisions due to concerns among some Members of Congress.³³ U.S. 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 chemicals and biologics. Some policymakers were concerned that the negotiated ten-year data exclusivity period would have caused prescription drug prices to rise to unaffordable levels. Industry stakeholders claim that the changes to USMCA do not protect 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.

³³ Rachel Cohrs, “Biologic Exclusivity Provision Stripped from Revised USMCA Deal,” *Modern Healthcare*, December 10, 2019.

intellectual property and could adversely affect U.S. jobs and U.S. medical innovation.³⁴

Copyrights

Copyrights provide artistic and literary creators 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.
- **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.”
- **“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:

- **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.”³⁵
- **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

³⁴ Ibid.

³⁵ For more information on these marks, see World Intellectual Property Organization (WIPO), “Collective Marks as a Tool for Development,” at <https://www.wipo.int/collective-marks/en/>, and https://www.wipo.int/sct/en/comments/pdf/sct21/cert_uk.pdf.

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., Mexican Tequila, Canadian Whisky). 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.” 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.
- 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)

USMCA includes a new chapter on SOEs, requiring SOEs to act in accordance with commercial considerations and to provide nondiscriminatory treatment to other USMCA 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.³⁶

NAFTA included provisions on SOEs, but they were limited in scope.³⁷ They allowed 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 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.

U.S. government and business stakeholders raised concerns during USMCA 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 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.³⁸ Indirect expropriation occurs when a state's regulatory actions could take effective control of—or interfere with—an investment.

Labor

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 countries due to a lack of adequate standards. NAFTA marked the first time that worker rights provisions were associated with an FTA.³⁹ 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.

Worker rights provisions in U.S. trade agreements have evolved significantly since NAFTA.⁴⁰ 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, see Text Box). 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

³⁶ 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>.

³⁷ 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 select a majority of board members.

³⁸ 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.

³⁹ NAFTA's labor provisions were in a side agreement called the North American Agreement on Labor Cooperation (NAALC).

⁴⁰ See CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Cathleen D. Cimino-Isaacs and M. Angeles Villarreal.

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 the party's statutes or regulations.
- 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.
- Prohibit imports of goods made by forced labor, and commit to protections regarding violence against workers, migrant workers, and workplace discrimination.
- Recognize the sovereign right of each party to establish its own levels of labor law enforcement activities in the territory of another party.
- Acknowledge a party's right to exercise discretion with regard to labor obligations.

USMCA Amendment: Labor Provisions

After USMCA negotiations had been completed, several Members of Congress remained concerned about the agreement's enforcement mechanism. They argued that the original text was not strong enough to protect worker rights and they pressed with the Administration to negotiate amendments to the agreement with Mexico and Canada. Key amendments included 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 Commitments

USMCA Annex 23-A in the labor chapter commits Mexico to enact legislative action in regard to its labor laws, similar to the Mexican government’s May 2019 reforms. 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.

USMCA implementing legislation creates a new interagency committee, labor attachés, and reporting requirements to Congress on Mexico’s implementation of labor reforms.

Mexico’s 2019 Labor Reforms

On May 1, 2019, Mexico’s president codified a labor reform bill that secured stronger worker’s rights adjacent to labor standards set forth by USMCA Chapter 23 on labor, and Annex 23-A, which addresses worker representation in collective bargaining in Mexico. The reforms include new enforcement mechanisms to ensure free and fair union elections, and also created an independent labor court system called the Federal Center for Conciliation and Labor Reform (CFCRL) to resolve future disputes between union workers and employers. The reform brought changes to Mexico’s existing protectionist contract system, which allowed workplace leadership to sign collective bargaining agreements (CBAs) with unrepresentative unions without consent from employees. Notably, the reform further required all pre-existing CBA’s to be dissolved and/or subject to vote through secret ballot for approval by May 1, 2023. According to the Mexican government, approximately 29,000 unions have been legitimized through the government of Mexico as a result of the reforms, with an additional 1,200 still in progress. The Mexican government also confirmed that 747 new collective contracts have been registered in accordance with the new labor model, as of August 2023. The Mexican Labor Department intends to nullify all unaccounted-for labor contracts, which as of May 2023, was approximately 20,000 contracts.

Sources: CRS In Focus IFI I 308, USMCA: Labor Provisions, by M. Angeles Villarreal and Cathleen D. Cimino-Isaacs; Gobierno de Mexico, “Contratos Colectivos de Trabajo (CCT),” at <https://centrolaboral.gob.mx/listado-cct-nuevos-reforma/>.

Environment

As with labor and worker rights, NAFTA was the first U.S. FTA associated with environmental protection. The North American Agreement on Environmental Cooperation (NAAEC) required all parties to enforce their own environmental laws, and contained 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.

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. 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 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 require the control, reduction, and eventual elimination of subsidies that lead to overfishing or overcapacity. The USMCA does not contain language on climate change.

USMCA Amendment: Environmental Provisions

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

- 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

Dispute settlement provisions in 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”). Similar to NAFTA, 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).⁴¹
- Establishment of a dispute settlement panel.

Panels are composed of five members; each side appoints two and 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 USMCA panel), but cannot bring the dispute to multiple fora.

Under NAFTA, a party had the ability to block a panel chair—and, consequently, a panel—from forming, which was seen by some as a shortcoming of the agreement. Only three state-to-state dispute resolution panels were completed under NAFTA (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.⁴² 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

⁴¹ The expression “good offices” denotes conciliation and mediation before resorting to arbitration. For more information, see USMCA Chapter 31 on Dispute Settlement at <https://ustr.gov/issue-areas/enforcement/dispute-settlement-proceedings/fta-dispute-settlement/usmca/chapter-31-disputes>.

⁴² 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 CRS In Focus IF10645, *Dispute Settlement in the WTO and U.S. Trade Agreements*, by Christopher A. Casey and Cathleen D. Cimino-Isaacs.

USMCA Free Trade Commission, which acts as a secretariat for the agreement, as an intermediate step to resolve disputes.

Some USMCA 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 on the goods of an exporting party.⁴³ The dispute settlement system originated during the Canada-United States Free Trade Agreement (CUSFTA) and it was retained under NAFTA.

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,⁴⁴ the aggrieved partner may request a judgment from a binational panel rather than through the legal system of the defending party.⁴⁵

The United States sought to eliminate the Chapter 19 dispute settlement mechanism during the USMCA negotiations.⁴⁶ By contrast, Canada and Mexico expressed support for retaining the mechanism, with Canada drawing a "red line" firmly opposing its elimination.⁴⁷ 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.

⁴³ 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.

⁴⁴ 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 force. The GATT was incorporated with revisions into the WTO agreements.

⁴⁵ CRS In Focus IF10645, *Dispute Settlement in the WTO and U.S. Trade Agreements*, by Ian F. Fergusson.

⁴⁶ USTR, *Summary of Objectives for the NAFTA Renegotiation*, p. 14.

⁴⁷ "Trudeau: Chapter 19, cultural exemptions are NAFTA red lines for Canada," *Inside U.S. Trade*, September 4, 2018.

Currency Manipulation

For the first time in a U.S. FTA, 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, policymakers 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.⁴⁸ 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.⁴⁹

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 did not have a specific chapter on regulatory practices. 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.⁵⁰

NAFTA and USMCA provisions on regulatory practices may have influenced the United States, Canada, and Mexico to increase cooperation on economic and security issues through various endeavors such as the North 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.

⁴⁸ 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.

⁴⁹ Ibid.

⁵⁰ USTR, *Summary of Objectives for the NAFTA Renegotiation*, July 17, 2017, p. 7.

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 finally been resolved.

USMCA generally retains NAFTA trucking provisions. It grants Mexican commercial trucks authority to operate in the United States, but does not allow trucks to 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 had authority under NAFTA to operate in the United States 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.⁵¹ NAFTA did not include a separate chapter related to transparency or anticorruption, but it did 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.

USMCA has a new chapter on anticorruption 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 USMCA’s Final Provisions chapter 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.

⁵¹ Transparency International, “Anti-Corruption and Transparency Provisions in Trade Agreements,” *Anti-Corruption Helpdesk*, 2017.

Issues for Congress

Key issues for Congress include how well USMCA is meeting expectations, the enforceability of USMCA commitments, particularly labor provisions, the role of the Congress and the President in trade negotiations, and how the agreement may affect broader U.S. relations with Canada and Mexico.

Congressional Oversight Role

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 the implications of these changes more closely. It may examine whether USMCA met the congressional objectives and requirements under TPA-15 and whether the change in trade policy under USMCA will be used in future trade negotiations.⁵² Although numerous policymakers contend that USMCA contains groundbreaking provisions, others believe that USMCA rolls back some liberalization commitments, such as the rules of origin in the motor vehicle industry, that it could negatively affect certain industries and U.S. businesses, and that it should not become a template for future trade agreements.⁵³

Congress may consider whether to expand its oversight role on implementation of new USMCA provisions and in enforcement of ongoing trade issues. It may examine whether new provisions pertaining to labor are raising labor standards as intended. Organized labor in the United States has long argued that labor enforcement in trade agreements needs to be strengthened in order to protect 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.”⁵⁴

New provisions regarding more restrictive rules of origin (ROO) in the motor vehicle industry may also be of interest to Congress. USMCA’s auto ROO are likely the most stringent in any U.S. FTA and the only ones that have a wage requirement.⁵⁵ The cost of compliance may result in unintended consequences if manufacturers find it more beneficial to pay duties rather than pay the additional cost of complying with the new rules. If manufacturers decide to pay tariffs rather than adhere to the regional value content requirements, it could lead to less North American content and more content from third countries, including China, in U.S. auto production. Policymakers may monitor the full effects of these new rules as they are fully implemented. According to a July 2023 report by the U.S. International Trade Commission, the full effect of the ROOs will likely not be apparent until the agreement is fully implemented in 2027 or later.⁵⁶

⁵² For more information on Trade Promotion Authority and the role of Congress in trade policy, see CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Christopher A. Casey and Cathleen D. Cimino-Isaacs, CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*, by Christopher T. Zirpoli, and CRS In Focus IF12327, *U.S. Trade Policy: Future Direction and Key Economic Debates*, by Andres B. Schwarzenberg.

⁵³ See for example, Senator Pat Toomey, “I’ll Vote Against This Antitrade Agreement,” Op-Ed, *Wall Street Journal*, December 19, 2019.

⁵⁴ Anne Kim, “The Truth About USMCA’s Labor Provisions, Domestic policy reforms can more effectively help American workers,” *Washington Monthly*, December 21, 2019.

⁵⁵ For more information on rules of origin in motor vehicles, see CRS In Focus IF12082, *USMCA: Automotive Rules of Origin*, by Liana Wong and Kyla H. Kitamura.

⁵⁶ United States International Trade Commission, *USMCA Automotive Rules of Origin: Economic Impact and Operation, 2023 Report*, Publication Number 5443, July 2023.

As noted above, USMCA removed 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, the issue of the value of more open government procurement versus Buy American policies may come to the fore.⁵⁷ Disagreement over the value and content of ISDS and whether it should be included in future trade agreements likely will persist, despite the 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.⁵⁸ The U.S. International Trade Commission (ITC) conducted an investigation into the likely economic impacts of USMCA, a required element of the TPA process. 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 the ITC report, USMCA is expected to have a minimal, but positive effect on the U.S. economy.⁵⁹

Sixth Anniversary Review of USMCA

Article 34.7 of USMCA states that the agreement shall terminate 16 years after its entry into force, "unless each party confirms it wishes to continue this Agreement for a new 16-year term," in accordance to USMCA procedures.⁶⁰ These procedures state that in July 2026, the sixth anniversary of USMCA's entry into force, the USMCA Free Trade Commission shall meet to review the agreement and any recommendations submitted by USMCA parties, and decide on any appropriate actions. Policymakers may monitor the role of Congress in the outcome of the July 2026 meeting, any recommended actions, and the effect of any recommendations on overall economic and political relations with Canada and Mexico. North America has a highly integrated manufacturing sector and any changes to USMCA could affect regional competitiveness.

⁵⁷ Isabelle Icsó, "USTR backs U.S. withdrawal from WTO procurement agreement," *World Trade Online*, February 26, 2020.

⁵⁸ John Brinkley, "USMCA is not the Magnificent Trade Deal Trump Says It Is," *Forbes.com*, October 8, 2018.

⁵⁹ 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.

⁶⁰ USMCA, Article 34.7 of Chapter 34 on Final Provisions.

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