

USMCA: Welcome Trade Reform in an Uneasy Economic Climate

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July 1, 2020, will mark the official start of the long-heralded United State-Mexico-Canada Agreement (USMCA) as it replaces the 1994 North American Free Trade Agreement (NAFTA). The USMCA will modernize free trade between United States, Canada, and Mexico, beyond the legacy 26-year-old pact. It is viewed as a necessary and timely update to the incumbent agreement that reflects the changing environment of trade across the three member countries.

Shared Victories. Every member country can claim a win for some aspect of the USMCA. Particular areas of focus included the automotive and dairy sectors, dispute settlement mechanisms, labor and environmental concerns, intellectual property rights, and customs facilitation. A report from the International Trade Commission predicts that the USMCA will have a positive impact on all three member countries. U.S. Real GDP is expected to increase by \$68.2 billion. U.S. employment is expected to increase by \$176,000 jobs. Exports to Canada are expected to increase by 5.9%. Exports to Mexico are expected to increase by 6.7%. These are welcome numbers in an economic climate that has been as volatile as it has uncertain in recent months.

NAFTA Status Quo. The USMCA maintains the status quo of NAFTA for most issues and operations. There remains tariff-free trade between the three member countries. The agreement leaves Section 232 tariffs for steel and aluminum largely untouched. Those impacted by Section 301 tariffs for goods from China will have no direct relief but may continue to explore the financial advantages to moving supply chains to the USMCA countries. Certain key issues for the transportation sector also remain largely the same, including: the Mexican Truck program, immigration (specifically the B-1 Visa Program), cabotage, and the movement of empties.

USMCA Advancements. Relative improvements under the USMCA range from broad-based change in processes and systems to narrow sector- or issue-specific updates. Collectively, these elements of the USMCA represent the most tangible evidence of modernization under the agreement.

- Customs Facilitation. The provisions of USMCA are designed to facilitate trade by: (1) establishing higher *de minimis* levels for low-value shipments; strengthening the transparency and predictability of customs rules and regulations, especially for small and medium-sized enterprises; and (3) encouraging the use of “best practices” to speed the flow of goods through customs checkpoints.

- Technological Change. Technology and collaboration drive many of the structural benefits under USMCA, for example: countries will permit the electronic submission of filings; data points will be

harmonized; a “single window” will be developed by each country for use with all governmental agencies in that country; self-filers will have greater access to make entries without customs brokers; and advanced rulings will be free and publicly available.

- Rules of Origin. The USMCA made several significant changes to NAFTA’s rules of origin, the most notable being for automotive products, textiles, chemicals, pharmaceuticals, electronics, and energy. Most significantly, rules of origin for automotive products are more stringent. To receive preferential treatment under the USMCA, three specific rules of origin must be met by the automotive product: (1) an increased overall regional value content must be satisfied; (2) a part-specific regional value content must be satisfied; and (3) a newly created labor value content rule must be satisfied (a certain percentage of vehicle content must be made by workers earning at least USD \$16 per hour). Further, automakers must annually certify that 70 percent of the steel and aluminum used in their vehicles originates from one of the three member countries.

- Certificates of Origin. Like NAFTA, the USMCA will require that for goods to claim preferential treatment in the United States for products from Canada and Mexico, a certificate of origin must be provided. However, the process for obtaining the certificate of origin is administratively less burdensome. Previously, under NAFTA, only exporters or producers were permitted to complete certificates of origin. However, under the USMCA, an importer will now also be able to complete the certificate of origin. Further, there is no longer a prescribed form that is required to be satisfied by the certificate of origin. Instead, the USMCA lists out specific information to be included but does not require a set form.

- Marking Rules. Imports into the United States must identify non-U.S.-origin goods with their country of origin. Historically, the rules for marking goods from Canada and Mexico under Part 102 of the Customs Regulations have sometimes differed from the NAFTA rules of origin. An importer was required to satisfy both requirements in order to qualify for preferential treatment. The USMCA, however, eliminates the legal authority for Part 102’s NAFTA marking rules. This creates at least the opportunity for uniform determinations of origin and marking and thereby eliminating scenarios where an imported good may qualify as “originating” while being “marked” differently.

- Intellectual Property. The USMCA provides a significant expansion of the intellectual property protections compared to those provided under NAFTA. Parties can no longer limit the term of protection for trade secrets and must adopt criminal penalties for misappropriation. The USMCA requires new notification systems and procedures for asserting patent rights and challenging patent validity. Trademarks are provided with a renewable, 10-year period of protection (as in U.S. law), and the Agreement removes certain administrative requirements to enable easier protection and enforcement. Implementing these intellectual property protections supports technological innovation to benefit both producers and users, while promoting a balance of rights and obligations.

Key Efficiencies. A common thread throughout all the major provisions in the USMCA is the move toward a more efficient importation and exportation of goods throughout the member countries. Uniformity of rules, self-filing, and increased ability to utilize electronic data submissions all provide a more efficient process to facilitate trade. The net effect is intended to be lower costs for market participants thus lower barriers to entry for those seeking to participate in trade. Further, efficient processes are intended to remove governmental bottlenecks in order to streamline the entry of goods and accommodate the modern characteristic of cargoes (such as e-commerce).

Impact Across the USMCA Region. Industry at large stands to see great opportunity through the implementation of the USMCA. Uncertainty over NAFTA's future is gone, as is the guessing as to what will happen once NAFTA is no longer in force. All industries in member countries can confidently plan North American operations based on the provisions of the USMCA. It is apparent that this particular time in world history can benefit from needed and timely change. On the heels of the COVID-19 pandemic, there is at least the potential that valuable cross-border trade will grow in both activity and ease at this moment when economic improvement is greatly needed.

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