

US-Mexico-Canada Agreement Advantages Over NAFTA Relating To Intellectual Property, Agriculture and Automotive Manufacturing

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Passage of the United States-Mexico-Canada Agreement (USMCA) has recently been characterized by the media as a political issue, with President Trump pushing for a vote by year's end and House Speaker Nancy Pelosi not committing to a timetable for calling the vote. The USMCA was originally signed by United States President Donald Trump, Mexican President Enrique Peña Nieto and Canadian Prime Minister Justin Trudeau on November 30, 2018. However, to become effective, the USMCA needs to be ratified, and the enabling legislation passed by the respective legislatures of each country. Mexico became the first country to ratify the agreement on June 19, 2019. The United States and Canada have not yet ratified the USMCA, with Canada indicating that it would only ratify the USMCA in tandem with the United States.

After the USMCA goes into effect, it will completely replace the North American Free Trade Agreement (NAFTA). Many of the USMCA's provisions are carried over from NAFTA, however, there are several important differences, particularly with respect to digital trade and provisions affecting the dairy and automotive industries. The following highlights several important advantages of the USMCA, with many of these requirements being phased in over several years:

Intellectual Property

- Requires a minimum copyright term of seventy (70) years after the life of the author, or seventy-five (75) years after the date of the first authorized publication for works with a term that is not based on the life of a person;
- Provides a minimum term of fifteen (15) years of protection for industrial designs and ten (10) years of data protection for agricultural chemicals and biologic medicines;
- Prohibits customs duties from being imposed on the importation or exportation of digital products that are distributed electronically, such as e-books, games, music, software, videos, etc;
- Provides limitations on a government's ability to require a company to disclose its proprietary computer source code or algorithms;
- Limits civil liability for internet companies that host third-party content online; and
- Provides for certain civil and criminal protections against the misappropriation of trade secrets, including by state-owned enterprises.

Agricultural Products

- All food and agricultural products that have a tariff rate of zero under NAFTA will remain at zero under the USMCA;
- Canada will provide increased tariff rate quotas on dairy and poultry products exported from the United States into Canada, including butter, cheese, cream, milk and other dairy products, and chicken, eggs and turkey;
 - Tariff rate quotas allow a lower tariff rate to be imposed on quantities of a given product that are imported within the quota amount and a higher tariff rate to be imposed on all quantities exceeding the quota amount;

- Canada will eliminate milk price classes 6 and 7
 - These milk price classes allow certain Canadian dairy products to be sold at reduced prices, thereby underselling United States dairy producers that sell products into Canada and other countries.

Automotive Manufacturing

- Establishes a regional value content (RVC) requirement that seventy-five percent (75%) of an automobile's components be made in North America in order to qualify for a tariff rate of zero;
- Establishes a new labor value content (LVC) rule that requires forty to forty-five percent (40-45%) of an automobile's components to be made by workers earning at least \$16 per hour; and
- Requires that at least seventy percent (70%) of an automaker's steel and aluminum be sourced from North America.

According to the United States International Trade Commission, the USMCA would increase employment by 176,000 jobs (a 0.12 percent increase) and increase U.S. real GDP by \$68.2 billion (a 0.35 percent increase). Accordingly, the USMCA is generally receiving broad bipartisan support and the only question remains whether political considerations will further delay and perhaps jeopardize the ratification process.

If you have any questions about the USMCA and its effect on your company's implementation of its international trade strategies, including structuring and documenting distribution and agent agreements to export U.S. products, supply chain documentation, and partnering with foreign based distributors, suppliers and joint venturers, please contact Gary Biehn (biehng@whiteandwilliams.com; 215.864.7007) or another member of the International Group.

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