

# THE *UNITED STATES-MEXICO-CANADA* AGREEMENT

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President Donald Trump called the North American Free Trade Agreement "one of the WORST Trade Deals ever made." Late Sunday night, the prolonged NAFTA renegotiations ended with the unveiling of the United States-Mexico-Canada Agreement ("USMCA") that will replace NAFTA.

Shortly after the Agreement was finalized, Prime Minister Justin Trudeau told reporters "It's a good day for Canada."

A Joint Statement from United States Trade Representative Robert Lighthizer and Canadian Foreign Affairs Minister Chrystia Freeland describes the USMCA as a new modernized trade Agreement for the 21st century:

"Today, Canada and the United States reached an agreement, alongside Mexico, on a new, modernized trade agreement for the 21st century: the United States-Mexico-Canada Agreement. USMCA will give our workers, farmers, ranchers, and businesses a high-standard trade agreement that will result in freer markets, fairer trade and robust economic growth in our region."

## The Scope Of The Agreement

The 34 Chapters of the USMCA include market access; rules of origin with product specific rules for goods such as automobiles; intellectual property; binational panels to review final antidumping and countervailing duty determinations; safeguards; investment; digital trade; anticorruption; and, state to state dispute settlement. In addition, there are numerous Annexes and Side Letters to the Agreement.

Highlights of some of the contentious negotiating issues are set out below.

# Automobiles

The USMCA contains detailed and complex product specific rules of origin for vehicles. The regional value content requirement for a passenger vehicle or a light truck is 66% under the net cost method, beginning January 1, 2020, increasing to 75% beginning January 1, 2023.

In addition, there is a labour value content rule for passenger vehicles of 30%, beginning on January 1, 2020, increasing to 40% beginning on January 1, 2023. Light trucks or heavy trucks are also subject to a labour value content requirement.

The United States has agreed in a Side Letter that if it imposes national security tariffs pursuant to section 232 of the Trade Expansion Act of 1962 on passenger vehicles (classified under subheadings 8703.21 through 8703.90), light trucks (classified under subheadings 8704.21 and 8704.31), or auto parts, the United States must exclude:

1. 2,600,000 passenger vehicles imported from Canada on an annual basis
2. light trucks imported from Canada; and
3. such quantity of auto parts amounting to 32.4 billion U.S. dollars in declared customs value in any calendar year.

Canada currently exports passenger vehicles, light trucks and auto parts below these thresholds.

During the renegotiations of NAFTA, President Trump constantly threatened to impose tariffs on Canadian automobile exports, saying it would ruin the Canadian economy. If the Side Letter is honoured by the President, the Canadian automotive industry should be unaffected for a number of years by any future US national security tariffs imposed on automobiles.

## Safeguards

The United States has agreed in a Side Letter that it will not adopt or maintain a measure imposing tariffs or import restrictions on goods or services of Canada under section 232 of the Trade Act of 1974, for at least 60 days after imposition of a measure. During that 60-day period, the United States and Canada will seek to negotiate an appropriate outcome based on industry dynamics and historical trading patterns.

If the United States takes an action under section 232 that is inconsistent with the USMCA

or the WTO Agreement, Canada may take a measure of equivalent commercial effect in response. Canada also retains its WTO rights to challenge a Section 232 measure.

Notably, the USMCA did not eliminate or exempt Canada from the US national security tariffs of 25% on steel and 10% on aluminum. The day after the USMCA was sent to Congress, President Trump said the steel tariffs are "staying". Canada's retaliatory tariffs will remain in place until the US exempts Canadian steel and aluminum from its national security tariffs.

## **Binational Panels To Review Final Antidumping and Countervailing Duty Determinations**

A deal breaker for Canada was the maintenance of the NAFTA Chapter 19 binational panels that review final antidumping and countervailing duty determinations. Canada succeeded in maintaining these binational panels in the USMCA.

## **State To State Dispute Settlement**

The USMCA contains a dispute settlement chapter that applies to:

1. the interpretation or application of the agreement
2. actual or proposed measures that a Party considers are inconsistent with an obligation under the Agreement or the failure of a Party to carry out an obligation under the Agreement; or
3. a benefit a Party could reasonably have expected to accrue to it under various Chapters are being nullified or impaired as a result of the application of a measure of another Party that is not consistent with the Agreement.

As with Chapter 20 of NAFTA, USMCA dispute settlement Chapter 31 contains mechanisms for consultations, commission meetings and ultimately the establishment of binational panels chosen from a roster of 30 individuals. The appointment of the roster of panelists is crucial because under NAFTA, the US refused to appoint panelists during the past two decades with the result that there have been no NAFTA Chapter 20 panels established for years.

## **Investment**

Chapter 11 of NAFTA allowed investors of the Parties to make arbitration claims for

damages for violations of investment obligations under the Investment Chapter. Under the USMCA there will be no investor-state arbitration claims against Canada and Canadian investors will not be able to file claims for damages against the USA or Mexico.

## Intellectual Property

The USMCA contains extensive provisions regarding intellectual property rights – trademarks, patents, industrial designs, copyright and related rights, trade secrets, enforcement and border measures.

Examples of changes to NAFTA include a term of copyright of the life of the author plus 70 years rather than 50 years; internet service providers receive protection from liability for third party content; data protection for biologics is extended to 10 years.

## De Minimis Duty Free Value

Currently, Canada's de minimis duty free value is \$20 (CAD). Under USMCA, Canadians can import goods valued at \$150 (CAD) duty free and \$40 without sales tax. Online shoppers will be happy, and Canadian retailers will be displeased.

## Dairy

The US succeeded in obtaining increased access to the Canadian dairy market for American dairy farmers and processors reported to be approximately 3.5% additional market share. Canada also agreed to eliminate its Class 7 dairy pricing policy that curtailed exports of ultrafiltered milk from states such as Wisconsin and New York. Opening up dairy access was a deal breaker for President Trump.

## Conclusion

The fact that the USMCA has finally been negotiated will alleviate investor uncertainty and reduce the tension in the Canada-US trading relationship that has ratcheted up since the G7 Summit in Quebec City.

President Trump is expected to sign the USMCA on November 30th when the 60 days' notice period to Congress expires. However, the USMCA still needs to be implemented by the US, Canada and Mexico. While Prime Minister Trudeau enjoys a majority in the House of Commons, President Trump may be dealing with a Democratic Party controlled House

of Representatives after the mid-term elections in November. Congressional approval of the USMCA by the current House of Representatives or the post-mid-term election House is no sure thing.

Under the President Trump Administration protectionist measures will continue and trade disputes will flourish notwithstanding the USMCA. For now, the seriously negative economic repercussions of "no deal" are gone and Canada's trading relationship with the US is more stable.

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## Authors

### Richard G. Dearden

Partner - Leader, Mexico Country Desk,  
Ottawa

 Email

[richard.dearden@gowlingwlg.com](mailto:richard.dearden@gowlingwlg.com)

 Phone

+1 613-786-0135

 vCard

Richard G. Dearden

### Wendy J. Wagner

Partner - Ottawa

 Email

[wendy.wagner@gowlingwlg.com](mailto:wendy.wagner@gowlingwlg.com)

 Phone

+1 613-786-0213

 vCard

Wendy J. Wagner