

ALERT

Update: The Revised USMCA

December 17, 2019

The U.S.-Mexico-Canada implementing package has been delivered to Congress, setting the stage for Congressional approval of the revised agreement.

The following are links to the [text](#) of the agreement, the [protocol of amendment](#) to the USMCA, and updated [fact sheets](#).

***Note: This is an update to an alert that was originally published on December 13, 2019, which appears below.**

The Revised USMCA

December 13, 2019

On December 10, 2019, the United States, Canada, and Mexico signed a protocol to amend the U.S.-Mexico-Canada Agreement (USMCA). They had signed the original USMCA on November 30, 2018. Democrats took control of the House of Representatives on January 3, 2019, and identified several provisions in the agreement that they intended to renegotiate before they were willing to send implementing legislation forward.

Key Changes to the 2018 USMCA

The changes are:

- [Functioning dispute settlement](#). The USMCA signed in 2018 carried over a technical flaw in the dispute settlement mechanism that meant one party could block the formation of a dispute settlement panel. There was bipartisan support for fixing the flaw, and the final agreement ensures that a party being sued can no longer block the formation of a panel to

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Practice Areas

International Trade

hear the dispute.

- Pharmaceutical provisions. The 2018 USMCA included a number of protections for pharmaceutical products. Many of these provisions were included in the text of the Trans-Pacific Partnership and were the subject of debate at the time over whether they should be included in a trade agreement. Similar issues surfaced during the USMCA discussions, and the parties agreed to eliminate or modify several provisions. Significantly, biologics will not receive additional years of exclusive data protection.
- Rules of Origin. The 2018 USMCA included provisions requiring regional automakers to purchase 70% of their steel from USMCA products in order for the autos to be eligible for duty-free treatment under the Agreement. There were concerns that this approach allowed steel from non-USMCA parties to be further worked in the region and count toward the 70% rule. The final agreement clarifies that to be eligible, all steel manufacturing processes, such as initial melting, must occur in the USMCA region. However, this “melted and poured” rule only begins seven years after the USMCA enters into force.
- Labor and Environment. The final agreement also made various changes to labor and environmental provisions. The changes led the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) to endorse the final agreement, the first time the union has done so since the U.S-Jordan Agreement in 2001.

Digital Trade Changes Discussed but Not Modified

There has been bipartisan concern over a provision in the agreement that mirrors the way U.S. law assigns liability between internet platforms and content providers (Section 230). That provision remains in the agreement.

Implementing Legislation

The implementing legislation is in the process of being drafted and may contain important provisions that affect how the agreement is implemented in the United States.

Prospects for Passage

The House could vote on implementing legislation as early as the week of December 17, 2019. Majority Leader McConnell (R-KY) has indicated that he may not schedule a vote in the Senate until January or February. Senator Toomey (R-PA) has been opposed to the 2018 agreement because he prefers the original NAFTA.

The Chamber of Commerce and the Business Roundtable have endorsed the final agreement.

A Democratic fact sheet summarizing changes to the agreement is located [here](#). For more information, please contact one of the authors listed on this alert.