

Overview of the Announced United States-Mexico-Canada Agreement

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After more than a year of sometimes contentious negotiations, the United States, Mexico and Canada agreed on the terms of an update to the North American Free Trade Agreement (NAFTA). Perhaps reflecting the attitude of the U.S. Administration, the words “free trade” are nowhere to be found in the title of the new United States-Mexico-Canada Agreement (USMCA). And in fact, there are many provisions in the USMCA that are designed more to control internal behavior of the parties than to ensure unfettered trade. Canada and Mexico made concessions to continue to allow their economies to be integrated with that of the far larger U.S. These concessions go so far as to include a provision whereby the other two NAFTA parties could withdraw after six months to form a bilateral agreement if one of the parties were to enter into a free trade agreement with a so-called non-market economy country such as China, which is seen by the U.S. as its principal geo-strategic and economic challenger in the coming decades.

A successful negotiation was by no means a sure thing, and Canada and Mexico, weighing the risk of an economic downturn, apparently took seriously the threats of the U.S. to terminate NAFTA without an agreed replacement. Once Mexico accepted some of the U.S. terms for modifications in rules of origin applicable to autos and auto parts, and the U.S. backed away from its insistence on five-year sunset of any new agreement, it became possible for those two countries to announce an agreement in principle late in August. This put pressure on Canada not to be left out and so to acquiesce to U.S. demands for increased access to Canada’s protected dairy market. Canada held fast to its position, but ultimately when the U.S. signaled its willingness to leave in place the so-called Chapter 19 dispute resolution process for appeals of U.S. antidumping and countervailing duty decisions, the negotiations moved quickly to a conclusion before the October 1 deadline imposed by the U.S. Interestingly, the market share for U.S. dairy products accepted by Canada is only slightly higher than that included in the Trans Pacific Partnership (TPP) that the U.S. had abandoned early in the current administration.

In terms of providing stable conditions for business investment, as noted the U.S. proposal for a five-year sunset clause was not accepted. Instead the new agreement has an initial 16-year term that is extendable in conjunction with reviews by the parties after six years.

As made public, the USMCA comprises most of the chapters of NAFTA, plus several others, many of which were found in the TPP. Among the most important differences from NAFTA are chapters on Labor and Environment, both of which were touched upon in side agreements subsequent to publication of the original NAFTA, but which were not covered in NAFTA itself and which were often criticized as weak and unenforceable.

The USMCA also includes chapters on Digital Trade, Small and Medium-Sized Enterprises, Competitiveness and Anticorruption. The Digital Trade Chapter is in fact seen as an improvement over the TPP in that the ban on data localization requirements extends to financial services. There are also significantly updated rules of origin covering not just autos, but also textiles, chemicals and other sectors. One noteworthy provision on Intellectual Property (IP) affords 10-year data protection

for the data used in the development of biologic drugs, and another sets a 70-year term after the death of the author for copyright protection.

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