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United States-Mexico-Canada Free Trade Agreement (USMCA)

A Primer On Next Steps As The Process Shifts Back To Domestic Political Discourse

As we previously reported, Mexico and the United States announced on August 27, 2018, that they had reached a bilateral deal to replace the North American Free Trade Agreement (NAFTA). Subsequently, on September 30, Canada and the United States announced that they had reached their own bilateral deal consistent with the terms of the earlier bilateral agreement between Mexico and the United States. The new tripartite agreement will be called the United States-Mexico-Canada Agreement (USMCA or the Agreement). The text of the USMCA may be accessed on the website of the United States Trade Representative (USTR) via this [link](#). The USMCA will enter into force only after it is approved by the legislatures of each of the three countries.

The original NAFTA was signed by the three Parties on December 17, 1992, was passed by the U.S. Congress on November 17-20, 1993, and entered into effect on January 1, 1994. We anticipate that the USMCA could be signed by the three Parties by the end of 2018. For example, Mexico's Minister of Economy, Ildefonso Guajardo, has announced Mexico's intention that USMCA be signed on November 29, 2018, when the presidents of the United States, Mexico, and Canada will meet in Buenos Aires. Following signature, attention will shift to each of the Parties' legislatures for debate and consideration over the course of 2019, before entering into force in either late 2019 or early 2020. Actual timing, of course, will depend on how quickly any concerns arising from consideration by each legislature may be resolved.

UNITED STATES

The U.S. Congress extended President Trump's "fast track" Trade Promotion Authority under the Trade Priorities and Accountability Act (TPA) of 2015, which means that the USMCA may be approved and implemented under expedited legislative procedures.



Pursuant to TPA, the text of an agreement must be published on the USTR website at least 60 days before the President enters into (that is, signs) the Agreement. The text of the USMCA was posted on the USTR website on September 30, 2018.

Within 60 days after entering into the USMCA, the President is required to inform Congress of the changes to existing laws that would be required in order to bring the United States into compliance with this Agreement. In addition, subsequently to the signing, the Administration will also develop implementing legislation. Within 105 days from the signing, the International Trade Commission (ITC) must prepare a public report on the economic impact of the Agreement.

Once the Trump Administration has developed implementing legislation and the ITC has completed its report, the Administration will submit the implementing legislation to Congress for automatic introduction and referral to the House Ways and Means Committee and the Senate Finance Committee, each of which maintains primary jurisdiction in Congress over trade matters (collectively, The Trade Committees). The Trade Committees then have 45 session days to report the implementing legislation back to the floor.

The implementing legislation then proceeds to the floor of each chamber for a yes or no vote, where it could take days or months for approval. Under TPA, the chambers may not modify or amend the Agreement or its implementing legislation. Each chamber may pass the implementing legislation (with no modifications) by a simple majority vote. Because no amendments may be made, after both chambers approve the legislation, it may be signed by the President and enter into force.

Senator John Cornyn (R-TX) indicated that USMCA may not get a Congressional vote until early 2019 after the November midterm elections, making implementation of the Agreement more likely later in 2019.

Importantly, the political landscape in the U.S. Congress may change significantly after the midterm elections. Democratic control of either chamber could increase the time under which the Agreement is considered in Congress, which would further delay the USMCA from coming into force.

MEXICO

For the USMCA to enter into force in Mexico, it must first be ratified by the Senate. Unlike the process in the United States and Canada, Mexico does not require implementing legislation to transform the USMCA into domestic law. Under the Mexican legal system, international treaties automatically become domestic law upon ratification by the Senate. The Senate cannot make changes to a treaty, it can only pass or reject a treaty in its entirety pursuant to the text that stands at the time of signing.

The text of the USMCA has been transmitted to the Senate in its English version and is currently being translated into Spanish. The relevant Senate committee is already working on an agenda for the hearings that will take place. If the translation and review process were concluded soon enough, the USMCA could be available for consideration before the end of the first legislative session in mid-December. The second legislative session runs from February 1 to April 30.

Although the USMCA will be thoroughly scrutinized in the Senate, the likelihood of approval is very high, because the three main political parties represented in the Senate have expressed their support for approving the treaty. In particular, MORENA, the party of the incoming President, which holds 42 percent of the seats in the Senate, is satisfied with the results of the negotiations because, following the July elections, one of its trade experts joined and played a key role in Mexico's negotiating team.

Nevertheless, there are a number of sensitive issues that are expected to emerge when the USMCA is discussed in the Senate. According to representatives of MORENA, special focus will be paid to energy and labor conditions. In parallel



to the pressure that MORENA will exert on labor issues during the hearings, two key advisory committees in the United States (*i.e.*, the Advisory Committee for Trade Policy and Negotiations and the Labor Advisory Committee on Trade Negotiations and Trade Policy) have expressed to the U.S. Congress and USTR the need for legislation in Mexico that would implement the USMCA labor rules. In the view of those two committees, such legislation must be enacted by Mexico before President Trump signs the USMCA. Whether this will affect the timing of legislative approval of USMCA in Mexico remains an open question.

CANADA

In Canada, the ratification process begins with the USMCA being tabled by the Minister of Foreign Affairs in the House of Commons for a period of 21 days. The Agreement must be tabled in both official languages and must be accompanied by a brief Explanatory Memorandum. During that period, the Agreement will be considered and debated. Subsequent to this, the Canadian government will table the implementing legislation for consideration by both full chambers of the Canadian Parliament. If both the House of Commons and the Senate approve of the implementing legislation, the implementing legislation must then receive royal assent to be ratified in Canada.

Based on other major trade deals signed by Canada in the last two years, it may take close to a year for USMCA to be implemented. For example, Canada recently entered into the Comprehensive Economic and Trade Agreement (CETA) with the European Union. CETA was tabled in the House of Commons on October 3, 2016, was signed on October 30, 2016, and provisionally entered into force on September 21, 2017. If action on USMCA proceeds on a similar timeline, USMCA likely will not be implemented in Canada until Fall 2019.

In sum, intensive negotiations between representatives from the United States, Mexico, and Canada resulted in provisional acceptance of a new trade agreement between the Parties. The process now shifts back to domestic political discourse, and this process is expected to continue well into 2019.

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