

US-Mexico-Canada Agreement Faces Uncertain Path Through U.S. Congress

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The governments of the United States, Mexico, and Canada signed a trade agreement (“USMCA”) in November 2018, which would replace the existing North American Free Trade Agreement (“NAFTA”). The Trump administration has begun seeking support in the U.S. Congress for USMCA. The path for the agreement, however, remains uncertain, with criticisms leveled against USMCA from both Democrats and Republicans.

USMCA will adjust the existing NAFTA trade framework in certain ways, such as increasing the regional content requirement for automotive goods, providing greater market access in Canada for U.S. milk producers, and requiring Mexico to implement measures that will enhance organized labor activities. In addition, the USMCA contains new provisions that were unaddressed by NAFTA, such as those relating to digital technology, state-owned enterprises, foreign exchange rates, and termination in the event that a USMCA member enters into a trade agreement with a non-market economy (e.g., China). (See our prior post [here](#) for more on this topic.) Much of the core of NAFTA remains unchanged or very similar in the USMCA, a fact illustrated by the limited list of legal changes that the Trump administration has identified as necessary to meet U.S. obligations under the USMCA. According to the Trump administration, most U.S. legal changes relate to tariffs and procedures under which tariffs are determined, imposed and reviewed by agencies and courts.

Despite the continuity between USMCA and NAFTA, USMCA’s approval and the timing of its consideration in Congress is uncertain. Speaker Nancy Pelosi and the newly elected democratic majority House of Representatives will have the first say on whether to approve the USMCA. Speaker Pelosi has not endorsed USMCA, and she has identified a number of issues of concern in USMCA, including labor rights, environmental protection, and prescription drugs. In addition, key Republicans and Democrats have stated that the USMCA will not be approved without an agreement from the Trump administration to remove steel and aluminum tariffs imposed on U.S. imports for national security reasons (referred to as “Section 232” tariffs). This demand could be a sticking point to approval because the Trump administration refused to consider lifting the

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Section 232 tariffs in negotiations with the governments of Canada and Mexico. In addition, Republicans have raised concerns about changes to investor-state dispute resolution under the USMCA. The USMCA has, however, gained support from key business interests, such as the Advanced Medical Technology Association, Biotechnology Innovation Organization, Canadian-American Business Council, Household & Commercial Products Association, International Association of Drilling Contractors, National Association of Manufacturers, PhRMA, and the Washington Council on International Trade.

The timing for consideration of USMCA by Congress is uncertain. Under the Trade Promotion Authority (“TPA”) that Congress enacted in 2015, and extended in 2018, Congress must approve or reject the USMCA within 90 days of its introduction in the House. Introduction can occur when the Trump administration submits USMCA to Congress. President Trump recently said the administration plans to submit it “very shortly” to Congress, but doing so would immediately start the clock for Congressional approval. As noted above, it remains far from certain that the USMCA has the support necessary to pass the House of Representatives, let alone that Speaker Pelosi is willing to take up USMCA. If passage is not secured within the 90-day window, the U.S. ratification process could become significantly prolonged and perhaps unattainable, because Congress likely would seek to amend the USMCA, effectively re-opening the negotiating process among the United States, Canada, and Mexico.

In short, whether and when USCMA will be approved by the U.S. Congress remains uncertain at this time.