



## **Dates & Events**

### **TPA**

#### **September 2018**

- 30 The U.S. Trade Representative (USTR) published the full NAFTA text as required under TPA

#### **November 2018**

- 30 The United States, Canada, and Mexico signed the USMCA

#### **January 2019**

- 29 The deadline for USTR to release a report outlining the required changes to U.S. law per the USMCA

#### **March 2019**

- 15 The deadline for the USITC to release a report on the USMCA

### **Implementation**

Legislation can be introduced following the release of the USITC report. [Written comments are due December 20, 2018.](#)

# Trade Update

## ENERGY IN FOCUS - DECEMBER 3, 2018

### **United States-Mexico-Canada Trade Agreement (USMCA)**

On November 30, 2018, President Trump, President Peña Nieto, and Prime Minister Trudeau signed an updated NAFTA agreement after more than a year and a half of negotiations. Rebranded the United States Mexico Canada Free Trade Agreement or USMCA, Mexico's endorsement comes a day before President-elect, Andrés Manuel López Obrador, assumes office, clearing a critical political hurdle for the ratification of the new agreement. Obrador, the head of the left-leaning National Regeneration Movement and a critic of Peña Nieto's energy reforms, took an active role in USMCA's negotiations but only agreed to support the deal so long as it is signed before his Presidency.

#### **Energy Specific Provisions**

The USMCA text was released on September 30, 2018, and while the USMCA does not include a formal energy chapter, in part due to Obrador's influence on the negotiations, Chapter 8 of the agreement which spans only a single page, consists of a "recognition of the Mexican State's direct, inalienable, and imprescriptible ownership of hydrocarbons." On September 27, 2018, The Industry Trade Advisory Committee on Energy and Energy Services released a report on the initial USMCA agreement with Mexico. Negotiating objectives and priorities related to the energy sector included:

#### *Investor-State Dispute Settlement (ISDS)*

The NAFTA Agreement included robust ISDS provisions. ISDS provides an impartial, law-based approach to resolve conflicts and protects foreign investment through unbiased arbitration. The newly renegotiated agreement has scaled back those ISDS provisions considerably. ISDS protections for the oil and gas, infrastructure, energy generation, and telecommunications sectors are recognized and added to USMCA for Mexico, but these protections do not extend to Canada or additional sectors.

#### *Customs*

USMCA preserves NAFTA's preferential tariff rate of zero for oil and gas trade between the United States, Mexico, and Canada. Additionally, USMCA's origin procedures have been updated to be consistent with newer U.S. free trade agreements such as those with Australia, Singapore, and Chile. These agreements place a higher burden of proof on the importer, rather than the exporter, as was the case under NAFTA, to ensure that oil and gas imports qualify for preferential tariff treatment. This change increases flexibility for the certifications that oil and gas importers can provide to customs officials to determine that the oil or gas originated from a USMCA country.

#### *Market Access*

The USMCA includes provisions on "Drawback and Duty Referral Programs" that restrict duty drawback (the refund of duties paid on imported goods from non-USMCA countries that are used by U.S. based-manufacturers for articles that are used in the United States or exported to USMCA countries). Duty drawback is important to American refineries that import crude oil from non-USMCA countries and sell those refined products at home or export them to Canada and Mexico.

#### *Sunset Provisions*

Unlike NAFTA, the USMCA includes a 16-year sunset provision with a 6-year review process at which time the agreement can be extended.

## Road to Ratification

Friday's signatures set in motion the United States' implementation process as outlined by the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. Commonly referred to as Trade Promotion Authority (TPA), Congress has made this process available to the President to implement international trade agreements under expedited legislative procedures including time-limited Congressional consideration and an up-or-down vote with no amendments. An outline of the significant steps that are included in this process is available under the Key Dates section of this update.

### Congressional Timeline

- Following the release of the U.S. International Trade Commission (USTIC) report, implementing legislation is introduced.
- Within 45 days the House Committee on Ways and Means is required to report the bill out of Committee, or it will be automatically discharged.
- Within 15 days of the bill being discharged the House is required to vote on the legislation.
- Within 15 days of the Senate receiving the bill, the Senate Committee on Finance is required to report the bill out of Committee, or it will be automatically discharged.
- Within 15 days of the bill being discharged, the Senate is required to vote on the legislation.

**If implementing legislation is introduced in March of 2019, a vote would be expected to take place in June of 2019.**

## Common Questions

### Can Additional Legislation be attached to the USMCA Implementing Bill?

- Unlike the 2002 Trade Promotion Authority bill, the 2015 TPA bill limits what can be attached to a trade agreement's implementing legislation. The implementing bill can only contain provisions that are ***strictly necessary or appropriate*** to implement the agreement.

### Can Congress Withdraw TPA?

- Congress can withdraw TPA, if the Administration does not meet the requirements of TPA (makes inadequate progress in achieving objectives and consultation requirements). This decision is subjective.
- If the House Committee on Ways and Means or the Senate Committee on Finance determines that the President has not met the conditions prescribed by TPA, either Committee could trigger a Consultation and Compliance Resolution.
- This new resolution provides a mechanism for either the House or Senate to remove expedited procedures for its chamber with respect to that implementing bill.

### Can the President Pull out of NAFTA?

- While the President can invoke articles within NAFTA and in its implementing legislation (H.R. 3405) to pursue withdraw from the agreement and termination of its tariff provisions, there is disagreement over whether the President can unilaterally and entirely withdraw the United States from the agreement without an act of Congress.

### Presidential Authority

- Article 2205 of NAFTA states that, "A Party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other Parties." Invoking article 2205 does not require the United States to withdraw from the agreement; it merely requires notification as a condition for withdrawing.

- Section 201(b)(1) of H.R. 3405 (NAFTA Implementing Legislation) enables the President to modify tariff levels. However, invocation of section 201(b)(1) does require consultation with the USITC followed by the submission of a report to the House Committee on Ways and Means and the Senate Committee on Finance. This action would not affect the non-tariff provisions of the agreement.

#### **Congressional Authority**

- NAFTA's implementing legislation is codified by U.S. law. Congress alone has the power to legislate.

#### **Debated Authority**

- The Trade Act of 1974 delegates Congressional authority to the President to negotiate trade agreements and set tariffs through Congressional-Executive Agreements. Section 125 of the Trade Act of 1974 indicates that any trade agreement entered into under the Act shall be subject to termination in whole or in part upon such due notice at the end of a period specified in the agreement. The Act does not explicitly specify whether the President or the Congress has the authority to withdraw.

#### **About Us**

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