



OFFICE *of the* UNITED STATES TRADE REPRESENTATIVE
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United States-Mexico-Canada Agreement (USMCA)

Chapter and Annex Fact Sheets

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United States-Mexico-Canada Agreement

Under the leadership of President Donald J. Trump, the United States has reached an agreement with Mexico and Canada to replace the North American Free Trade Agreement (NAFTA). The new United States-Mexico-Canada Agreement (USMCA) is a win for North American workers, farmers, ranchers, and businesses. When finalized and implemented, the agreement will create more balanced, reciprocal trade that supports high-paying jobs for Americans and grows the North American economy.

Agreement highlights include:

- Creating a more level playing field for American workers, including through improved rules of origin for automobiles, trucks, and other products, ambitious provisions on labor rights, and disciplines on currency manipulation.
- Benefiting American farmers, ranchers, and agribusinesses by modernizing and expanding food and agriculture trade in North America.
- Supporting a 21st Century economy through new rules governing intellectual property and digital trade, encouraging fair trade, and lowering trade barriers through trade in services.
- New chapters covering State-Owned Enterprises, Anticorruption, and Good Regulatory Practices, as well as a chapter devoted to ensuring that small and medium-sized enterprises benefit from the Agreement.

This collection of chapter and annex fact sheets summarizes the content of the USMCA and highlights improvements on the Trans-Pacific Partnership text and the original NAFTA.



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National Treatment and Market Access for Goods

New commitments have been included in the Market Access Chapter of the USMCA to address non-tariff barriers related to trade in remanufactured goods, restrictions on cryptographic goods, import licensing, and export licensing.

The new Market Access Chapter will more effectively support trade in goods among the Parties by removing provisions of the North American Free Trade Agreement (NAFTA) that are no longer relevant, updating key references, and affirming commitments that have phased in from the NAFTA.

Specifically, the Market Access Chapter:

- Maintains duty-free treatment for originating goods;
- Maintains the prohibition on export duties, taxes, and other charges and the waiver of specific customs processing fees;
- Adds new provisions for transparency in import licensing and export licensing procedures;
- Prohibits Parties from applying: (a) requirements to use local distributors for importation; (b) restrictions on the importation of commercial goods that contain cryptography; (c) unnecessary restrictions on imports of remanufactured goods; and (d) requirements for consular transactions and their associated fees and charges;
- Updates provisions for duty-free temporary admission of goods to cover shipping containers or other substantial holders used in the shipment of goods;
- Updates the tariff nomenclature in the NAFTA and in each Party's tariff schedule; and
- Removes provisions that allowed for measures and practices that no longer exist.

Key NAFTA Improvements

- Prohibition of requirements to use local distributors for importation; restrictions on the importation of commercial goods that contain cryptography; application to remanufactured goods of any import restrictions for used goods; and consular transactions.
- Provisions on transparency in import licensing and export licensing procedures. Expansion of duty free temporary admission to cover shipping containers.



Rules of Origin and Origin Procedures

The USMCA includes new chapters on rules of origin and on origin procedures, including new product-specific rules for passenger vehicles, light trucks, and auto parts.

These rules, when fully implemented, will help incentivize up to billions annually in additional production. They will help to preserve vehicle and parts production in the region and the United States, and transform supply chains to use more regional and U.S. content, especially content that is key to future automobile production and high-paying jobs.

The rules will close loopholes that allowed vehicles to qualify for duty-free treatment even if vehicle content came from outside North America.

The USMCA encourages the use of high-wage North American labor by establishing a new labor value content rule for a significant portion of vehicle content. This will help ensure that U.S. producers and workers are able to compete on an even playing field and incentivize new vehicle and parts investments in the United States.

The USMCA also includes stronger rules of origin for other industrial products that will increase regional content and help preserve U.S. manufacturing, including new rules for chemicals, steel-intensive products, glass, and optical fiber. These rules will help ensure that only producers who use sufficient amounts of U.S. or regional parts or materials receive preferential tariff benefits.

Finally, as a complement to these improved rules, the USMCA includes new provisions on cooperation and enforcement that will help our governments both implement and strongly enforce these new rules, and work to prevent potential evasion of these rules before it occurs.

Auto Rules of Origin - Key NAFTA and TPP Improvements

NAFTA+

- Increases regional value content for automobiles from 62.5% to 75%, thus incentivizing more auto production in North America.
- Includes a first-of-its-kind labor value content rule that requires a certain percentage of each car (40% for passenger vehicles and 45% for light trucks) to be manufactured in a factory in a NAFTA country where workers make average wages of at least \$16 per hour. This will lead to an increase in U.S. auto parts sales.
- Increases regional value content for core, principal, and complementary auto parts, and requires that core vehicle parts such as engines, transmissions, axles, body panels, suspensions, steering systems, and EV batteries be produced in North America, from locally sourced steel, aluminum, and other key parts and materials.
- Requires more auto production in North America in order to qualify for duty-free treatment by eliminating the NAFTA's "deemed originating" loophole.



TPP+

- The USMCA's auto rules of origin go far beyond those in TPP, including the amount of required regional value content and the introduction of labor value content to encourage high wages.
- The USMCA incentivizes new investments in the United States and North America unlike the TPP rules which encourages investment in other countries.

Other Rules of Origin – Key NAFTA and TPP Improvements

- New and more rigorous rules of origin for optical fiber, steel, glass, titanium, and chemical products.
- New origin procedures that cut red tape.
- New and stronger cooperation and enforcement provisions that will make it easier to detect prevent, and address customs offenses.



Agriculture

The USMCA includes a modernized agriculture chapter that builds on the NAFTA. It includes provisions to reduce the use of trade distorting policies, including prohibiting the use of export subsidies; increasing transparency and consultation regarding the use of export restrictions for food security purposes; and minimizing the use of trade distorting domestic support measures. Canada also will eliminate its discriminatory treatment for grading of U.S. wheat, and the United States and Mexico will cooperate on agricultural grading matters.

The agreement grants U.S. dairy farmers unprecedented access to the Canadian dairy market. In addition, the agreement requires Canada to eliminate its program that allows low priced dairy ingredients to undersell U.S. dairy products in Canada and in third country markets. This has been the top priority for the U.S. dairy industry. Within six months of entry into force of USMCA, Canada will eliminate its milk classes 6 and 7, and Canada will impose penalties if exports occur above specific quantities of skim milk powder, milk protein concentrates or infant formula.

For the first time, the agreement specifically addresses agricultural biotechnology to support 21st century innovations in agriculture. Specifically, the United States, Mexico, and Canada have agreed to provisions to enhance information exchange and cooperation on agricultural biotechnology trade-related matters.

Key NAFTA and TPP Improvements

- Greater dairy market access in Canada than in TPP
- Substantial guaranteed access to Canadian poultry and egg market
- Elimination of Canada's milk classes 6 and 7.
- Canadian commitment to accord non-discriminatory treatment in the grading of U.S. wheat.
- Coverage of all biotechnologies, including new technologies such as gene editing.
- Strong rules for administration of tariff rate quotas, including an obligation not to allocate TRQs to producer groups.
- Mexican commitment not to restrict market access of U.S. cheese products due to the mere use of certain listed individual cheese names.



Alcohol Beverages

The Annex on Distilled Spirits, Wine, Beer and Other Alcohol Beverages Annex contains non-discrimination, transparency, and due process commitments regarding the sale and distribution of alcohol beverages. The Parties agreed to labeling and certification provisions that will help the Parties avoid barriers to trade in wine and distilled spirits. The Parties agreed to continue recognition of Bourbon Whiskey, Tennessee Whiskey, Tequila, Mezcal, and Canadian Whisky as distinctive products.

Key NAFTA and TPP Improvements

NAFTA+

- Canada committed to ensure that British Columbia eliminates its discriminatory treatment of U.S. wine in grocery stores no later than November 1, 2019.
- Expanded the scope of commitments on internal sale and distribution to include beer, as well as wine and distilled spirits.

TPP+

- New disciplines on issues regarding trade in wine and distilled spirits, including third-party certification, allergen labeling, and the use of drawings and quality statements on labels.



Propriety Food Formulas

To meet technical regulations and standards related to prepackaged food and food additives, governments may require information from companies relating to the companies' proprietary formulas. The Proprietary Food Formulas Annex of the USMCA requires each Party to protect the confidentiality of such information in the same manner for domestic and imported products, and to limit such information requirements to what is necessary to achieve legitimate objectives.

Key NAFTA Improvements

- Proprietary food formulas were not specifically addressed in the NAFTA.
- New disciplines will ensure that confidential information is protected for firms when complying with legitimate information requirements of the Parties.



Digital Trade

When the NAFTA was negotiated, the digital revolution was in its infancy and consequently that agreement did not specifically address digital trade. The USMCA includes a new chapter on digital trade that contains the strongest outcomes of any international agreement, and provides a firm foundation for the expansion of trade and investment in innovative products and services in North America.

Key NAFTA and TPP Improvements

- Prohibits the application of customs duties and other discriminatory measures to digital products distributed electronically (e-books, videos, music, software, games etc.).
- Ensures that suppliers are not restricted in their use of electronic authentication or electronic signatures, thereby facilitating digital transactions.
- Guarantees that enforceable consumer protections, including for privacy and unsolicited communications, apply to the digital marketplace.
- Ensures that data can be transferred cross-border, and that limits on where data can be stored and processed are minimized, enhancing and protecting the global digital ecosystem.
- Promotes collaboration in addressing cybersecurity challenges, while seeking to promote industry best practices with respect to network security.
- Protects the competitiveness of digital suppliers by limiting Parties' ability to require disclosure of proprietary computer source code and algorithms.
- Promotes open access to government-generated public data, thereby enhancing its innovative use in commercial applications and services.
- Enhances the viability of Internet platforms that depend on interaction with users by limiting the platform's civil liability with respect to third-party content, except regarding intellectual property enforcement.



Intellectual Property

The USMCA Intellectual Property (IP) chapter provides strong and effective protection and enforcement of IP rights critical to driving innovation, creating economic growth, and supporting American jobs.

The IP chapter:

- **Includes the most comprehensive enforcement provisions of any U.S. trade agreement.** For the first time, a trade agreement requires all of the following: enforcement authorities must be able to stop goods that are suspected of being pirated or counterfeited at all areas of entry and exit; enforcement against counterfeits and piracy occurring on a commercial scale; meaningful criminal procedures and penalties for camcording of movies; confirmation that IP enforcement procedures must be available for the digital environment; civil and criminal penalties for satellite and cable signal theft; broad protection against trade secret theft, including against state-owned enterprises; and other civil, criminal, administrative and border enforcement mechanisms.
- **Establishes the strongest standards of any U.S. trade agreement for protection of trade secrets against misappropriation.** This is the first FTA to require all of the following in order to protect rightsholders from theft of trade secrets, including by state-owned enterprises: civil remedies, criminal remedies, prohibition on impeding licensing of trade secrets, protections for trade secrets during the litigation process, and penalties for government officials who wrongfully disclose trade secrets.
- **Provides strong patent protection for innovators.** The chapter establishes patentability standards and patent office best practices to ensure that U.S. innovators, including small- and medium-sized businesses, are able to protect their inventions with patents.
- **Creates strong minimum standards for pharmaceutical and agricultural innovators that will incentivize new medical treatments and cures and address challenges faced by American farmers.** The chapter establishes a minimum term of data protection of 10 years for a broad scope of biologic drugs – an important step forward in U.S. trade agreements. For agricultural chemicals, the term of protection is also 10 years – twice that of the NAFTA. The chapter also promotes innovation in the pharmaceutical sector by strengthening provisions requiring compensation of applicants for regulatory delays and by requiring Parties to provide for expeditious treatment of patent issues in connection with applications to market pharmaceuticals.
- **Establishes a minimum term of copyright term protection that is closer to U.S. law than NAFTA or TPP.** The chapter requires a minimum copyright term of life of the author plus 70 years, and for those works with a copyright term that is not based on the life of a person, a minimum of 75 years after first authorized publication.



- **Requires effective protection from the circumvention of technological protection measures** to protect works such as digital music, movies, and books through current technologies such as technological protection measures and rights management information identification.
- **Requires full national treatment for copyright and related rights** so that U.S. creators are not deprived of the same protections in a foreign market that domestic creators receive.
- **Establishes appropriate copyright safe harbors** to provide protection for IP and predictability for legitimate enterprises that do not directly benefit from the infringement, consistent with United States law.
- **Provides important procedural safeguards for recognition of new geographical indications (GIs)**, including strong mechanisms designed to prevent issuances of GIs that would block U.S. producers from using common names, as well as a mechanism for consultation between the Parties on future GIs.
- **Enhanced provisions for protecting trademarks, including well-known marks**, to help companies that have invested effort and resources into establishing goodwill for their brands. In addition, includes provisions that will further assist brand owners, such as rules relating to electronic trademarks system, a classification system that is consistent with international standards, and systems to protect against “trademark squatting” on a country-code top-level domain name.
- **Strongest standards for industrial design protection** of any FTA, requiring a minimum term of protection for industrial designs of at least 15 years, which is vital to American manufacturing.

Key NAFTA and TPP Improvements

- ***Patents, Industrial Design, Pharmaceutical Products, and Agricultural Chemicals***
 - Establishes a minimum term of data protection for biologic drugs of 10 years (compared to 5 guaranteed years in TPP).
 - Establishes periods of data protection for new indications (3 years) or new combinations (5 years) for pharmaceutical products.
 - Requires a system for promptly addressing patent issues connected with applications to market pharmaceutical products.
 - Provides critical protections for industrial design patents, including setting a minimum term of 15 years of protection.



- Establishes a minimum term of 10 years of protection for agricultural chemicals – double that of the NAFTA.
- Incentivizes the expeditious review of patent applications and provides compensation for unreasonable patent office and regulatory delays.
- ***Geographical Indications (GIs)***
 - Establishes enhanced due process for domestic GI registration systems, including requiring the examination of applications, opposition procedures, the ability of applicants to specify particular translation or transliteration of protections being sought, and cancellation procedures.
 - Enhanced transparency obligations for opposition and cancellation proceedings for existing GIs, including that administrative decisions be reasonable and in writing.
 - Establishes guidelines for determining whether terms are generic, including consideration of additional factors in making determination, such as whether the product is imported into the Party's territory and whether the term is used in international standards such as those promulgated by the Codex Alimentarius.
- ***Copyright and Related Rights***
 - The Chapter requires a minimum copyright term of life of the author plus 70 years, and for those works with a copyright term that is not based on the life of a person, a minimum of 75 years after first authorized publication.
 - Establishes copyright safe harbors to provide protection for IP and predictability for legitimate enterprises that do not directly benefit from the infringement, consistent with U.S. law.
 - Requires full national treatment for copyright and related rights. Both the NAFTA and TPP had only partial national treatment requirements.
 - Provides for protections against the circumvention of technological protection measures (TPMs) that are more similar to U.S. law than those included in the TPP. TPMs were not addressed in the NAFTA.



- ***Trade Secrets***
 - Includes the strongest and most comprehensive protections against misappropriation of trade secrets, including by state owned enterprises, of any U.S. FTA.
 - Requires civil procedures for trade secrets misappropriation, as well as compensatory damages in civil cases, in addition to criminal remedies.
 - Requires judicial procedures to prevent disclosure of trade secrets during the litigation process.
 - Establishes penalties for government officials for the unauthorized disclosure of trade secrets.

- ***Trademarks***
 - Enhanced protections for well-known marks, which the NAFTA did not include.
 - Requires an electronic trademarks system, which the NAFTA did not include.

- ***Enforcement***
 - Requires criminal procedures and penalties for camcording in movie theaters.
 - Requires both criminal penalties and civil remedies for satellite and cable theft.
 - Requires *ex officio* authority for enforcement officials at the border, including for goods in transit or coming in or out of free trade zones or bonded warehouses.
 - Unlike the NAFTA, USCMCA has an explicit recognition that enforcement procedures must be available in the digital environment.



Labor

The labor chapter of the USMCA brings labor obligations into the core of the agreement and makes them enforceable. It requires the Parties to adopt and maintain in law and practice labor rights as recognized by the International Labor Organization, to effectively enforce their labor laws, and not to waive or derogate from their labor laws. It includes new provisions requiring Parties to take measures to prohibit the importation of goods produced by forced labor and to address violence against workers exercising their labor rights. It provides procedural guarantees for enforcement of labor laws, including due process through independent and impartial judicial and administrative tribunals. It establishes institutional mechanisms to provide for intergovernmental engagement and cooperation with stakeholder input and a public submission process whereby members of the public can seek review of claims that a Party is not meeting its obligations under the labor chapter.

It also includes an Annex on Worker Representation in Collective Bargaining in Mexico, under which Mexico commits to specific legislative actions to provide for the effective recognition of the right to collective bargaining namely, secret ballot vote to elect union leadership, challenge existing bargaining representatives, and approve new and existing collective bargaining agreements.

All of the obligations in the labor chapter are subject to the same dispute settlement mechanisms and potential trade sanctions as the rest of the agreement.

Key NAFTA and TPP Improvements

- Unlike in the NAFTA, the USMCA Labor Chapter is in the main text of the agreement and is subject to the same dispute settlement mechanisms and potential trade sanctions as the rest of the agreement.
- Includes provisions to address violence against workers for exercising their labor rights and to take measures to prohibit the importation of goods produced by forced labor.
- Makes obligations more easily enforceable by clarifying the meaning of “manner affecting trade” and “sustained or recurring.”
- The Chapter Annex on Worker Representation in Collective Bargaining in Mexico commits Mexico to specific legislative actions as part of its constitutional labor reforms in order to provide for the effective recognition of the right to collective bargaining. Required actions include legislation that requires majority worker support—through the exercise of a personal, free, and secret vote of workers—to elect union leadership, challenge existing bargaining representatives, and register a new collective bargaining agreement. In addition, the legislation shall require that all existing collective bargaining agreements must have demonstrated worker support—through a personal, free, and secret vote—within four years after Mexico’s labor reform legislation goes into effect.



Textiles

Under the USMCA, new provisions on textiles incentivize greater U.S. and North American value-addition in textiles and apparel trade, strengthen customs enforcement, and facilitate broader consultation and cooperation among the Parties on issues related to textiles and apparel trade.

The updated rules of origin and related provisions for textiles will promote greater use of regional and made-in-the-USA fibers, yarns, and fabrics by (1) requiring the use of U.S. or regional sewing thread, pocketing fabric, narrow elastic bands, and coated fabric in most NAFTA-qualifying apparel and other finished textile goods, and (2) restructuring and rebalancing trade under rules that allow for limited use of third-country inputs. These provisions will strengthen the regional supply chain and provide new market opportunities for the U.S. textile and apparel sector.

The new textiles chapter establishes, for the first time in North American trade, textile-specific provisions on customs cooperation, verification, and determinations, including new tools for preventing fraud and circumvention. Provisions establishing a Committee on Textile and Apparel Matters and for monitoring and administering tariff preference levels will promote greater transparency and information-sharing among the Parties.

Key NAFTA and TPP Improvements

NAFTA+

- Revised rules of origin will increase the U.S. and regional content in apparel and finished textile goods by requiring that inputs such as sewing thread, pocketing, narrow elastic bands, and coated fabric be made in the region.
- Restructuring of rules governing tariff preference levels will promote greater use of U.S. fiber, yarn, and fabrics in North American textiles and apparel trade.

TPP+

- New requirement that pocketing fabric be made in the region.
- Retention of the short supply review process.



Customs Administration and Trade Facilitation

The Customs and Trade Facilitation Chapter of the USMCA goes beyond any past agreement, including through important new provisions that will help reduce costs and bring greater predictability to the border, while at the same time ensuring customs administrations have the tools necessary to enforce the law. New provisions will help ensure that traders have the necessary information to meet customs requirements – including commitments on Internet publication, advance rulings, and administrative guidance. The USMCA requires customs administrations to be responsive to importers and exporters, and provisions on appeals, penalties, and standards of conduct require customs administrations to follow rules to ensure fairness and integrity in customs work. It also includes forward-leaning provisions related to automation, including a mandatory single window and immediate release of goods once customs requirements are met, which are designed to reduce the burdensome red tape that can delay shipments.

The chapter also sets a new informal shipment level of \$2500, so that express shipments under that threshold will benefit from reduced paperwork. In addition, Canada will raise its *de minimis* level for North American express shipments for the first time in decades, doubling it from \$C20 to \$C40 for taxes. Canada will also provide for duty free express shipments up to \$C150. Mexico will continue to provide \$US50 duty and tax free *de minimis*, and also provide duty free express shipments up to \$US117. Shipment values up to these *de minimis* levels will enter with minimal formal entry procedures, making it easier, faster, and cheaper for these shipments.

Key NAFTA and TPP Improvements

NAFTA+

- Online publication of laws, regulations, and procedures for customs and other trade matters.
- Commitments to begin customs processing of goods prior to arrival, to promptly release goods, and disciplines on setting bonds and surety instruments.
- Commitments on express shipments and on automating customs and border processing of documents and shipments.
- Consistency and uniformity requirements for customs documents, processes, and procedures from port to port in each Party.
- Rules for transparency and fairness in customs penalties.
- Advance rulings commitments with expanded scope to give traders certainty on more types of customs issues.



TPP+

- New \$2,500 informal shipment values for express shipments, making low-value shipments easier, faster, and less costly to trade.
- New standards of conduct to support anti-corruption efforts among customs officers.
- New communication and consultation requirements to foster co-creation between governments and traders.
- Transit disciplines to reduce red tape and facilitate trade.
- Border inspection rules to reduce delays and promote cooperation.
- Commitments on customs brokers to expand trading opportunities, while reducing costs.
- “Single Window” for imports into each Party and commitments on Authorized Economic Operator programs, with cooperation to promote best practices and identify benefits for traders.
- The USMCA includes a monetary *de minimis* level for each Party, unlike the TPP.



Sanitary and Phytosanitary Measures

The USMCA chapter on sanitary and phytosanitary (SPS) measures contains elements that are “WTO plus” and that are stronger than provisions of the NAFTA. Parties maintain their sovereign right to protect human, animal and plant life or health and to establish their individual appropriate level of protection, while also committing to avoid unnecessary barriers to trade. The Parties agree to increase the transparency of SPS measures, advance science-based decision making, and work together to enhance compatibility of SPS measures between them. The chapter also creates a new mechanism to resolve issues cooperatively by regulatory agency officials, and is subject to dispute settlement.

New provisions include conducting audits and recognizing equivalence on a systems-wide basis; improving procedures for import checks, equivalence and regionalization; ensuring certification requirements are tied to risk; and enhancing information exchange and cooperation. The chapter establishes an SPS Committee and technical working groups to implement the chapter.

Key NAFTA and TPP Improvements

- Parties are obligated to base SPS measures on international standards or an assessment of risk.
- The chapter is subject to dispute settlement.
- Parties must publish proposed regulations, provide the relevant scientific evidence, and provide for the opportunity to comment on proposed regulations and risk assessments.
- Parties must ensure certification requirements are based on international standards, or are appropriate to the risks to human, animal or plant life or health. The Parties are obligated to limit information required on certificates to essential information. In addition, Parties shall promote electronic certification and other technologies to facilitate trade.
- With respect to import checks, Parties are obligated to ensure testing methods are validated, and importers or exporters are notified within five days if a shipment is prohibited or restricted.
- With respect to provisional measures, Parties are to collect additional necessary information, undertake a risk assessment, and revise the measure if appropriate. Parties are also obligated to review emergency measures periodically to determine whether they should stay in place.
- Parties may not stop importation of goods solely because an SPS measure is being reviewed.
- Parties are to endeavor to enhance the compatibility of SPS measures, while maintaining each Party’s right to determine its appropriate level of protection.
- For regionalization and equivalence determinations (regulatory decisions that may facilitate trade if the determination is positive), the Parties involved may establish timeframes for the



process of making the determination, and the importing Party may consider a streamlined process.

- The SPS Chapter establishes a mechanism for technical consultations to resolve issues between two Parties, prior to moving a matter to dispute settlement.



Trade Remedies

The USMCA Trade Remedies Chapter substantially updates the NAFTA and goes beyond the TPP. It includes provisions that reflect the due process and transparency standards of the United States – including the use of electronic filing – that will enable U.S., Mexican, and Canadian businesses to effectively participate in AD/CVD proceedings.

In addition, the Parties have agreed to strong duty evasion cooperation provisions, so that Parties work together to combat attempts to undermine existing antidumping, countervailing duty, and safeguards measures. The chapter provides for duty evasion verifications and in-country facility visits by the respective customs authorities, as well as the sharing of customs information for the specific purpose of combatting duty evasion.

The Parties have also agreed to share information to more effectively address potentially injurious dumped or subsidized imports, particularly from third countries. Each Party will permit investigating authorities to consider information and data from existing AD/CVD petitions filed in another Party, as well as third-party subsidy information, in determining whether to self-initiate an AD/CVD investigation or take other relevant action.

Key NAFTA and TPP Improvements

- First trade agreement to include enforcement provisions for evasion of AD/CVD/safeguards duties.
- Transparency provisions broadened beyond TPP, including e-filing and information sharing on foreign dumping and subsidy practices.



Investment

Under the USMCA, the Parties have agreed to treat investors and investments of the other Parties in accordance with the highest international standards and consistent with U.S. law and practice, while also safeguarding each Party's sovereignty and promoting domestic investment. With respect to both investment protection rules and investor-State dispute settlement (ISDS) procedures, the Investment Chapter of the USMCA updates and modernizes the NAFTA to better reflect U.S. priorities related to foreign investment.

The key investment protection provisions include rules prohibiting expropriation without prompt, adequate, and effective compensation; discrimination; performance requirements (*e.g.*, technology transfer and local content requirements); nationality-based requirements on the appointment of senior management; restrictions on the transfer of investment-related capital; and denial of justice and other breaches of the customary international law minimum standard of treatment (MST). In the event of an investment dispute, each Party can seek remedies for breach of these rules in State-to-State dispute settlement procedures. In the alternative, U.S. and Mexican investors can themselves initiate ISDS in certain circumstances. ISDS with Canada will be phased out, but state-to-state remedies will remain.

Under the reformed approach to ISDS in the Investment Chapter, U.S. and Mexican investors in all sectors will have limited access to ISDS as a last resort to provide protection in the context of such egregious issues as discrimination and direct expropriation. In certain – as oil and gas, telecommunications, and infrastructure—investors that enter into government contracts will have broader access to ISDS to protect the long-term, capital-intensive investments in these sectors, which are subject to heightened political risks.

Key NAFTA and TPP Improvements

NAFTA+

- Clarification of core rules to protect the right to regulate, including:
 - Incorporation of highest U.S. standards on indirect expropriation.
 - Clarification that public welfare measures do not breach non-discrimination rules.
 - Clarification that frustrating investor expectations does not breach MST.
- Prohibition of performance requirements that require investors to use or favor local technology (*i.e.*, technology localization).

TPP+

- Narrower scope of ISDS that preserves sovereignty and is better calibrated to actual political risk U.S. investors face.



- Improved ISDS rules and procedures, including provisions to ensure that arbitrators act in accordance with the highest ethical standards.
- Enhanced disciplines on technology localization.



Temporary Entry of Business Persons

The USMCA chapter on the Temporary Entry of Business Persons maintains the commitments that the Parties made in the NAFTA to allow temporary entry for professionals and business people seeking to engage in certain types of business activity in their territory. These commitments provide predictability for companies and qualified professionals in serving clients, moving senior managers, initiating new investments, and other business activities conducted on a temporary basis in another USMCA country.

The chapter creates no new obligations under the USMCA or U.S. law.



Technical Barriers to Trade

The USMCA chapter on technical barriers to trade (TBT) strengthens disciplines related to transparency, standards, technical regulations conformity assessment procedures and trade facilitation matters. Furthermore, the chapter maintains each government's rights to regulate products and manufacturing processes that ensure the protection of human, animal, or environmental health and safety.

New provisions in the chapter enhance rights and obligations under the WTO TBT Agreement and the NAFTA, including using the WTO TBT Committee Decision on International Standards as a basis in determining what standards are "international." In cases where there is no international standard, the chapter provides an alternative pathway for standards developed in North America to be considered in technical regulations. The chapter also prevents discriminatory treatment of the conformity assessment bodies that are located in one Party's territory and seeks to prevent testing procedures from becoming unnecessary obstacles to trade. The chapter incorporates good regulatory practices for technical regulations, and emphasizes the Parties' commitment to reduce unnecessary barriers and to provide national treatment with respect to labeling.

The chapter ensures notification of draft and final regulations, with a reasonable period of at least six months between the publication of the regulation and its entry into force. It also provides for participation of interested persons in the development of standards, technical regulations and conformity assessment procedures.

Key NAFTA and TPP Improvements

NAFTA+

- The Parties acknowledge that more than one international standard may exist, and there is a pathway for regulators to consider more than one international standard in a technical regulation.
- Where no international standard exists, the chapter requires a pathway for regulators to consider any other standards that may fulfill the objective of a technical regulation.

TPP+

- The chapter requires each Party to notify the entirety of the text setting forth a proposed or amended measure as a draft for comment by interested parties. Each Party shall endeavor to notify revisions before finalizing the technical regulation or conformity assessment procedure.
- The chapter includes three articles to prevent other bilateral free trade agreement practices from creating barriers:



- No preference may be accorded to standards that have been developed in a manner inconsistent with the WTO TBT Committee Decision, or where the standard setting body does not allow equal opportunity to participate in the standards development.
 - Technical assistance should not promote the use of standards developed in a manner inconsistent with the WTO TBT Agreement.
 - No Party can be party to an agreement with another country which would require it to withdraw or limit the use of a standard developed according to the WTO TBT Committee Decision.
- The USMCA maintains the obligation to accord national treatment to conformity assessment bodies and adds new commitments on transparency in conformity assessment procedures and their fees.
 - For the first time, the Parties commit to allow conformity assessment bodies to use subcontracting to fulfill market or regulatory requirements, and to extend national treatment within the region to subcontracting bodies.
 - The chapter lays out specific time lines and information requirements to discuss a specific trade concern that is under consideration for dispute settlement.
 - The chapter improves upon the TPP TBT Chapter on dispute settlement by protecting against re-litigation of WTO disputes in the NAFTA. A complaining Party will need to choose to file a dispute either under the WTO Agreement or under USMCA.
 - The commitment to engage the public in work of the USMCA TBT Committee is the first of its kind, and will increase the number of experts participating in the work of the committee; support efforts to align our standards, conformity assessment procedures and regulations; and help reduce unnecessary barriers.



Government Procurement

The USMCA includes a chapter on government procurement between the United States and Mexico, under which the United States will continue to have access to the Mexican procurement market equivalent to market access opportunities currently available under the NAFTA, with one difference. However, the United States now has excluded Transportation Security Administration/Department of Homeland Security textile procurements from coverage.

Under the USMCA, both Mexico and the United States will maintain other exclusions consistent with those under the NAFTA. For the United States, this includes exclusions such as the small business set aside, federal requirements attached to grants for transportation and mass transit projects, and exclusions for the Department of Defense.

Canada is not a Party to the USMCA government procurement chapter.

Key NAFTA and TPP Improvements

NAFTA+

- Environment – provisions clarifying that technical specifications can be used to promote the conservation of natural resources or protection of the environment, as long as they are otherwise consistent with the Agreement.
- Labor – conditions for participation can be designed to promote compliance with laws regarding international labor rights, provided the conditions do not constitute a disguised barrier to trade.
- Simplified procurement system – the chapter provides incentives for putting information about procurement system online; for electronic publishing of notices; and for permissible reductions in time periods when using electronic procurement methods.

Support for small businesses – focuses on government procurement policies to promote participation by small businesses, including by providing incentives for Mexico and the United States to make tender documentation free of charge and to consider how to better structure procurements to help small businesses compete.

TPP+

- Statistical data – Mexico and the United States must make procurement statistics publicly available online.
- Ensuring integrity – Mexico and the United States must have measures in place to address corruption, fraud, or abuse in government procurement, both by businesses and by tendering agencies. The chapter also mandates transparency requirements for any debarment procedures.



Cross-Border Trade in Services

The USMCA Cross-Border Trade in Services Chapter helps ensure that U.S. suppliers receive fair and transparent treatment when supplying cross-border services. The chapter includes the core obligations of national treatment and most-favored nation (MFN) treatment, ensuring non-discrimination in the supply of services. The chapter also includes a local presence rule that helps ensure that U.S. suppliers will not be required to establish an office in Mexico or Canada as a condition for supplying cross-border services. Compared to the NAFTA, the USMCA includes commitments to keep services markets open and free from new quantitative restrictions, enhanced rules for ensuring good governance in licensing regimes and a new article on small and medium-sized businesses. The chapter's annexes provide the basis for ongoing work in professional services and transportation services, a new set of disciplines for delivery services, and improvements in Canada's broadcasting market. Except where the Parties have negotiated specific exceptions, the obligations in the chapter apply to all services and are subject to enforcement through dispute settlement.

Key NAFTA and TPP Improvements

NAFTA+

- Market Access obligation that restricts imposition of quantitative restrictions and similar limits on cross-border services trade.

TPP+

- New article on small- and medium-sized enterprises to facilitate their participation in services trade.
- Enhanced obligations that help ensure fairness in government licensing regimes.
- New annex on delivery services (not limited to express delivery services) that helps ensure fair competition for all non-monopoly delivery services.
- New annex that makes improvements to Canada's broadcasting market.



Financial Services

The USMCA Financial Services Chapter includes commitments to liberalize financial services markets and facilitate a level playing field for U.S. financial institutions, investors and investments in financial institutions, and cross-border trade in financial services. It includes core obligations, such as national treatment, to ensure that a Party does not discriminate against U.S. financial service suppliers. It also contains market access provisions that prohibit a Party from imposing certain quantitative and numerical restrictions on U.S. financial services suppliers. Most-favored nation commitments will ensure that a Party does not discriminate in favor of another Party or non-Party.

For the first time in any U.S. trade agreement, the USMCA includes a prohibition on local data storage requirements where a financial regulator has the access to data that it needs to fulfill its regulatory and supervisory mandate.

The USMCA Financial Services Chapter contains a number of other substantial improvements over the NAFTA and the TPP, while preserving the discretion of financial regulators, including to take measures to ensure financial stability.

Key NAFTA and TPP Improvements

- For the first time in any U.S. trade agreement, the USMCA includes a prohibition on data localization requirements where the financial regulator has ongoing and continuing access to data that it needs to fulfill its regulatory and supervisory mandate.
- Updated market access obligation.
- Expanded commitments for trade of cross-border services, including portfolio management, investment advice, and electronic payment services, subject to national treatment and market access obligations and a prohibition on local presence requirements.
- Enhanced transparency obligations for regulatory licensing and other market access authorizations.



Telecommunications

The Telecommunications Chapter of the USMCA completely updates the provisions of the NAFTA and also contains elements that are “WTO plus.” It creates a strong framework of trade rules that will promote effective competition in the telecommunications sector, provide reasonable access to the networks of other suppliers, and ensure that regulation of the sector is independent, impartial, and transparent.

The chapter ensures that suppliers have the freedom to select the best technologies to deliver services, applies pro-competitive principles to mobile services (by far the fastest-growing sector of telecommunications), and recognizes the importance of value-added services to innovation, competition, and consumer welfare.

The chapter also includes commitments to make publicly available information on measures relating to public telecommunications services, to resolve disputes and provide effective enforcement, to ensure fair access to government managed resources, such as spectrum and rights-of-way, to not discriminate in favor of state-owned enterprises, and to cooperate with regards to international mobile roaming.

Key NAFTA and TPP Improvements

NAFTA+

- Includes new provisions that address competition in the supply of fixed and mobile telecommunications services.
- Includes additional text on Mexico’s telecom reform, ensuring the regulator continues to act in a way that is consistent with the reform.

TPP+

- For Internet of Things devices, new rules to ensure that countries will not prohibit roaming arrangements that are often used to support advanced functionality of such devices.
- Includes rules with respect to value added services to ensure that these innovative services can compete against traditional telecommunications services without unnecessary or inapplicable regulation.



Competition Policy

The Competition Policy Chapter of the USMCA substantially updates the NAFTA, with the Parties agreeing to obligations providing increased procedural fairness and competition law enforcement. This will provide parties with a reasonable opportunity to defend their interests and ensure that parties have certain rights and transparency under each Party's competition laws.

The Parties have also recognized the importance of consumer protection policy and enforcement to creating efficient and competitive markets, and enhancing consumer welfare. In this regard, each Party must adopt or maintain national consumer protection laws that address fraudulent and deceptive commercial activities.

Key NAFTA and TPP Improvements

- New obligations providing increased procedural fairness and competition law enforcement, so that parties are given a reasonable opportunity to defend their interests and are ensured certain rights and transparency under each nation's competition laws.
- Limits remedies imposed by a national competition authority relating to conduct or assets outside of the Party's territory to situations in which there is an appropriate nexus to harm or threatened harm affecting the Party's territory or commerce.
- New cooperation and transparency provisions related to competition policies and the enforcement of national competition laws, including coordination of investigations between national authorities, when warranted.



State-Owned Enterprises

The Chapter on State-Owned Enterprises and Designated Monopolies is new to the trade relationship of the three USMCA signatories. It includes new state-owned enterprise (SOE) subsidy disciplines that prohibit certain subsidies that are particularly trade-distorting. These new subsidy rules are “WTO Plus” and go beyond any subsidy disciplines negotiated in any previous trade agreement. The chapter also broadens the definition of what constitutes an SOE to ensure that any government ownership of an entity that confers control is captured, even minority stakes or “golden shares.” Further, the SOE chapter requires the Parties to share, upon request, information about the extent of government ownership and control, and the subsidies provided to their SOEs, as well as all government equity investments made in an SOE. Lastly, the SOE chapter includes commitments by the Parties to ensure that SOEs and designated monopolies make commercial purchases and sales on the basis of commercial considerations and do not discriminate against the enterprises, goods, or services of the other Parties.

Key NAFTA and TPP Improvements

- Prohibits three types of subsidies to SOEs: (1) subsidies to SOEs that are insolvent or on the brink of insolvency, if there is no credible restructuring plan; (2) loans or loan guarantees from SOEs such as state-owned banks to other, uncreditworthy SOEs; and (3) non-commercial SOE debt-to-equity swaps. These subsidies are prohibited – there is no need to show “adverse effects.”
- Broad definition of SOE, including entities in which the government holds a majority stake, but also including entities in which the government owns a minority of the equity, but nonetheless is able to exercise control.
- Subsidy rules apply to all “specific” subsidy programs (i.e., programs where access or use is limited to an industry or group of enterprises) that benefit SOEs, and not just those subsidy programs that target only SOEs.
- All government equity investments in SOEs are subject to written requests for detailed information, regardless of whether a government believes the investment is a subsidy. The chapter also calls on governments to allow certain information on subsidies to be made public to the maximum extent possible under domestic law.
- The chapter applies fully to sovereign wealth funds.
- The chapter also lowers the minimum revenue threshold required for SOEs to be subject to the rules, in comparison with TPP; this broadens the scope of the chapter by ensuring that more SOEs are covered.



Environment

The USMCA includes a modernized, high-standard environment chapter that brings all environmental provisions into the core of the trade agreement and subjects them to the same dispute settlement mechanism as other chapters.

The chapter includes the most comprehensive set of enforceable environmental obligations of any previous U.S. trade agreement, including obligations to combat trafficking in wildlife, timber, and fish, to enhance the effectiveness of customs inspections and strengthen law enforcement networks to stem such trafficking. The Parties also agreed to prohibit some of the most harmful fisheries subsidies, such as those that benefit vessels or operators involved in illegal, unreported, and unregulated (IUU) fishing. It also includes new protections for marine species, such as prohibitions on shark-finning and the killing of great whales for commercial purposes. There are also first-ever articles to improve air quality, prevent and reduce marine litter, support sustainable forest management, and ensure appropriate procedures for environmental impact assessments.

The Environment Chapter also includes improved public participation provisions, including a streamlined mechanism for public submissions regarding a failure of one or more Parties to effectively enforce their environmental laws. The Parties also agreed to support implementation of the chapter commitments by continuing their longstanding and successful history of environmental cooperation under a modernized Commission on Environmental Cooperation.

Key NAFTA and TPP Improvements

- Environment provisions are in the main text of the agreement and are subject to the same dispute settlement mechanisms and potential trade sanctions as the rest of the agreement.
- First-ever commitments on marine litter, air quality, environmental impact assessment, and sustainable forest management.
- Enhanced commitments to combat trafficking in wildlife, timber, and fish.
- Enhanced prohibitions on fisheries subsidies.
- Stronger commitments to combat illegal, unreported, and unregulated (IUU) fishing, to sustainably manage fisheries, and to prohibit shark finning and commercial whaling.
- Improved public participation and public submissions process for alleged failures to effectively enforce environmental laws.
- Enhanced cooperation on environmental issues through a modernized Commission on Environmental Cooperation.



Small and Medium-Sized Enterprises

The USMCA includes, for the first time in a U.S. trade agreement, a chapter on small and medium-sized enterprises (SMEs). This chapter promotes cooperation to increase SME trade and investment opportunities among the Parties and establishes information sharing tools on the provisions of the agreement as well as other information useful for SMEs doing business in North American markets. The chapter also creates a committee on SME issues comprised of government officials from each Party.

In addition, the SME chapter launches a new framework for an ongoing SME Dialogue, which will be open to participation by SMEs, including those owned by diverse and under-represented groups. The goal of the Dialogue is to have participants provide views and information to government officials on the implementation and further modernization of the agreement, in order to help SMEs benefit from the agreement and to further enhance cooperation between the Parties.

This new chapter recognizes the fundamental role of SMEs in maintaining dynamism and competitiveness in the economies of each Party.

Key NAFTA and TPP Improvements

- First SME Chapter in a U.S. trade agreement.
- Establishes an SME Dialogue with stakeholders.
- Includes references in SME chapter to provisions across the USMCA that benefit SMEs.



Competitiveness

The USMCA includes, for the first time in a U.S. trade agreement, a chapter on competitiveness. This chapter establishes a Committee on Competitiveness that will discuss and develop cooperative activities to incentivize production in North America and facilitate regional trade and investment. The Committee may work with other committees, working groups, and other subsidiary bodies established under the agreement to develop a work plan to accomplish these goals.

Key NAFTA and TPP Improvements

- First Competitiveness Chapter in any U.S. trade agreement.
- Includes a Competitiveness Committee to develop cooperative activities.



Anticorruption

The Anticorruption Chapter of the USMCA contains the strongest disciplines on corruption in international trade of any international agreement. It builds from the base of commitments that have been incorporated in our most recent trade agreements, but were not in the original NAFTA or subsequent agreements.

Key NAFTA and TPP Improvements

NAFTA+

- Requires Parties to criminalize acts of corruption, both with respect to their own government officials, and to their own nationals' interactions with foreign government officials.
- Requires Parties to provide appropriate sanctions for violations of anticorruption laws.
- Requires Parties to disallow the tax deductibility of bribes.
- Obligates Parties to require companies to maintain accurate books and records.
- Requires Parties to establish codes of conduct and develop other tools to promote high ethical standards among government officials.
- Requires Parties to promote public involvement in the fight against corruption.

TPP+

- New whistleblower protections.
- Commitments on combating embezzlement.
- Provisions on promoting integrity of public officials, encouraging the creation of corporate compliance programs, and discouraging the use of facilitation payments.
- Provides for strong cooperation among the Parties in the enforcement of anticorruption laws.



Good Regulatory Practices

The USMCA includes, for the first time in a U.S. trade agreement, a chapter on good regulatory practices, which refers to good governance procedures that governments apply to promote transparency and accountability when developing and implementing regulations. Such practices can support the development of compatible regulatory approaches among the Parties, and reduce or eliminate unnecessarily burdensome, duplicative, or divergent regulatory requirements.

The chapter includes commitments relating to central coordination; publication of annual plans of expected regulations; public consultations on draft texts of regulations; evidence-based analysis and explanations of the scientific or technical basis for new regulations; other provisions concerning evidence-based decision-making (such as parameters for conducting regulatory impact assessments and retrospective reviews); and techniques for encouraging regulatory compatibility and regulatory cooperation.

The chapter makes clear that no provision prevents governments from pursuing public policy objectives with respect to health, safety, or the environment. The chapter is subject to dispute settlement.

Key NAFTA and TPP Improvements

- No comparable provisions in the NAFTA or TPP
- Extensive transparency requirements to publish:
 - key information online, including draft regulations (notice and comment), annual regulatory agendas, and descriptions of regulatory agencies' functions and legal authorities;
 - applicable forms used by regulatory agencies;
 - fees associated with licensing, inspection, audits, etc.; and
 - judicial or administrative procedures available to challenge regulations.
- Provisions on private advisory committees, information quality, public suggestions for improvements to regulations, consideration of effects on small businesses, and other elements of evidence-based decision making in the development and implementation of regulations.
- Generally applies to regulations concerning trade in goods and services, and investment.



Publication and Administration

The new chapter on Publication and Administration requires each Party to ensure that its laws, regulations, procedures, and administrative rulings of general application are publicly available. To the extent possible, proposed measures are required to be published in advance for public comment, and be available online. It also provides for due process rights for stakeholders regarding administrative proceedings, including prompt review of any administrative action through independent and impartial judicial or administrative tribunals or procedures.

The chapter also includes a new commitment to compile laws and regulations of general application at the central level of government on those freely accessible websites that are identified in an Annex to the Chapter. This new element strengthens the commitments of the Parties to ensure that any exporter, service supplier, investor, or other interested person in each country has access to the relevant laws and regulations.

Key NAFTA and TPP Improvements

- Commitment to compile laws and regulations of general application at the central level of government.



Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices

The Publication and Administration Chapter of the USMCA also includes a Section on Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices that promotes innovation and the timely introduction of pharmaceutical products and medical devices, lays out best practices for the listing and reimbursement process of such products, and establishes a consultation mechanism to facilitate dialogue and mutual understanding on these issues.

This section will help ensure transparency and due process with respect to listing and reimbursement procedures in relevant national healthcare programs operated by national healthcare authorities.

These transparency and due process requirements are best practices that are fully reflected in U.S. law and practice, including in the Medicare National Coverage Determination process.

The rules in this section require no changes to any U.S. healthcare program, including Medicare Part D, and they will not affect the U.S. government's ability to pursue the best healthcare policy for its citizens, including future reforms or decisions on healthcare expenditures or cost containment. The commitments in this Annex are not subject to investor-state dispute settlement.

Key NAFTA and TPP Improvements

- No similar provisions in the NAFTA.
- Commitment to provide transparency and due process for policies related to pharmaceuticals and medical devices, including:
 - Disclosure of rules, methodologies, principles, and guidelines used to assess proposals;
 - Affording applicants, and where appropriate, the public, timely opportunities to provide comments at relevant points in the decision-making process; and
 - Providing information to the public regarding such decisions and recommendations.



Sectoral Annexes

Chemical Substances

The Chemical Substances Annex promotes enhanced regulatory compatibility and trade between the three Parties, while recognizing the regulatory authority of each Party. The sectoral commitments build on the existing, extensive regulatory cooperation on chemicals between the Parties and identify areas of focus for future cooperation. The outcomes also reflect the importance of the chemical sector for the North American economies.

The Parties agreed to make efforts to align risk assessment methodologies and risk management measures for chemical substances. Moreover, the Parties recognized the importance of minimizing unnecessary economic barriers or impediments to technological innovation and have agreed to define and, where appropriate, use a risk-based approach to the assessment of chemicals. In a risk-based approach, the evaluation of a chemical substance or chemical mixture includes the consideration of both the hazard and exposure as well as the protection of health and the environment.

Key NAFTA and TPP Improvements

- Neither the NAFTA nor TPP contained comparable provisions covering chemical substances.
- Raises level of cooperation between the Parties to eliminate red tape for trade in chemicals.



Cosmetic Products

The Cosmetic Products Annex promotes greater regulatory compatibility and best regulatory practices in the cosmetics sector. The Parties committed to follow a risk-based approach for cosmetics products. In applying a risk-based approach, the Parties further agreed to not require marketing authorization for a cosmetic product unless there is a human health or safety concern. The Parties also agreed to not require cosmetic products be tested on animals unless no validated alternative test method exists to assess a product's safety.

The annex also encourages the Parties to consider internationally-developed science and technical guidance documents when implementing regulations to promote greater compatibility among the Parties including for good manufacturing practice guidelines. The Parties also agreed to endeavor to share post-market surveillance information of cosmetics products.

Key NAFTA and TPP Improvements

- No similar provisions on cosmetic products in the NAFTA.
- With respect to applying a risk-based approach for cosmetic products, the Parties committed to not require marketing authorization for a cosmetic product unless there is a human health or safety concern.
- The United States and Canada agreed to greater regulatory compatibility on cosmetics classified as over-the-counter drugs, such as sunscreens. Specifically, the annex includes:
 - A commitment by Canada to allow such cosmetic products to be shipped directly between the two Parties without undergoing re-testing or quarantine;
 - A commitment by Canada to allow for the distribution of samples of such products in line with Canada's laws and regulations, and strengthened cooperation with respect to such products, specifically in the alignment of the requirements for tamper-evident packaging as well as fact tables included on product packaging.



Information and Communication Technology

The sectoral annex for information and communication technology (ICT) products promotes greater regulatory compatibility and best regulatory practices in the information and communication technology sector. For example, these provisions capture the emerging regulatory practice of electronic labeling for devices with a screen, and require the Parties to allow for certain regulatory information to be displayed electronically rather than being physically-etched on the device. The outcomes also include obligations to protect innovation of encryption products to meet consumer and business demand for product features that protect privacy and security while allowing law enforcement to access to communications consistent with applicable law.

Key NAFTA and TPP Improvements

- No similar provisions on ICT products in the NAFTA.
- Improves upon the TPP outcomes by providing for a new provision concerning the allowance of e-labeling.



Efficiency Performance Standards (EPS)

The USMCA includes a new Energy Efficiency Performance Standards (EPS) Annex, which aims to harmonize federally mandated energy performance standards across a wide range of product categories (household appliances, HVAC, lighting, industrial equipment, and others) within a nine-year timeframe, and establishes a mechanism for continued regulatory cooperation on EPS. This is a new area that has never been included in the Parties' previous free trade agreements, and it will benefit U.S. manufacturers by strengthening standards, reducing the need for duplicative product testing for U.S. exports, and improving energy efficiency cooperation in North America.

Key NAFTA and TPP Improvements

- Neither the NAFTA nor TPP contained comparable provisions covering energy performance standards.
- Promotes harmonization and regulatory cooperation among the Parties with respect to EPS.



Medical Devices

The Medical Devices Annex promotes greater regulatory compatibility and best regulatory practices in the medical device sector. The Parties committed to follow a risk-based approach for the classification of medical devices. Specific provisions now commit the Parties to administer marketing authorization procedures to ensure timely, transparent, impartial, and science-based decision making for medical device approvals. The annex requires each Party to maintain an appeal process. In addition, the Parties committed to base their respective marketing authorization decisions only on safety and efficacy of the product and not on unrelated factors, such as sales, pricing, or financial data.

The annex includes obligations to recognize each Party's audits of medical device manufacturers conducted under the International Medical Device Regulator's Forum Single Audit Program (MDSAP). Furthermore, the provisions also encourage the Parties to consider internationally developed science and technical guidance documents when implementing regulations to promote greater compatibility among the Parties.

Key NAFTA and TPP Improvements

- No similar provisions on medical devices in the NAFTA.
- Parties commit to recognize each other's audits of medical device manufacturers conducted under the MDSAP.



Pharmaceuticals

The Pharmaceuticals Annex promotes greater regulatory compatibility and best regulatory practices in the pharmaceutical sector. The Parties agreed to administer marketing authorization procedures to ensure timely, transparent, impartial, and science-based decision making for pharmaceutical approvals. The annex requires each country to maintain an appeal process. The provisions also commit the Parties to base their marketing authorization decisions only on safety and efficacy of the product and not on unrelated factors, such as sales, pricing, or financial data.

The annex also encourages cooperation on inspections of pharmaceutical manufacturers by permitting the Parties to participate in each other's inspections, as well as to share data on the outcome of those inspections. Furthermore, the Parties agreed to take necessary steps to permit the exchange of confidential information for such inspections.

The provisions also encourage the Parties to consider internationally developed science and technical guidance documents when implementing regulations to promote greater compatibility among the Parties.

Key NAFTA and TPP Improvements

- No similar provisions on pharmaceuticals in the NAFTA.
- The annex improves upon the TPP outcome by providing for enhanced collaboration on pharmaceutical inspections, including the establishment of mechanisms to permit the exchange of confidential information for such inspections.



Macroeconomic Policies and Exchange Rate Matters

The USMCA includes a Macroeconomic Policies and Exchange Rate Matters Chapter with new policy and transparency commitments on currency issues. The chapter will address unfair currency practices by requiring high-standard commitments to refrain from competitive devaluations and targeting exchange rates, while significantly increasing transparency and providing mechanisms for accountability. This approach is unprecedented in the context of a trade agreement, and will help reinforce macroeconomic and exchange rate stability.

The new chapter includes:

- Policy commitments to: i) achieve and maintain market-driven exchange rates, and ii) refrain from competitive devaluations and targeting exchange rates to gain an unfair trade advantage, drawing from G-7, G-20, and IMF commitments.
- A provision for enhanced bilateral engagement in the event that a Party intervenes in another Party's currency.
- Transparency and reporting requirements on intervention and foreign exchange reserves, which improve accountability by providing rapid information to assess whether commitments are being met.

Robust accountability mechanisms, including (i) a mechanism for direct and expedited bilateral talks to challenge trading partners on exchange rate practices and (ii) the dispute settlement mechanism used for all other obligations of the agreement is available to hold trading partners accountable if they fail to comply with the transparency obligations.

- Dispute Settlement for key obligations.

Key NAFTA and TPP Improvements

NAFTA+

- No currency provisions were included in the NAFTA.

TPP+

- First transparency commitments on currency issues in a trade agreement.
- Provides for accountability. Contains enforceable provisions subject to dispute settlement.



Cross-Cutting Chapters; Review and Termination; Non-Market Energy Provision

(Includes Initial Provisions and General Definitions, Administrative and Institutional Provisions, Dispute Settlement, Exceptions and General Provisions, and Final Provisions Chapters)

The USMCA contains five overarching chapters that apply agreement-wide and provide the legal framework for the overall operation of the agreement. Here are key aspects of each of these chapters:

Initial Provisions and General Definitions:

This chapter sets out that the agreement establishes a free trade area consistent with GATT Article XXIV and GATS Article V. It also confirms that each Party retains its existing rights and obligations with respect to each other under the WTO Agreement and other agreements. Finally, the chapter provides for definitions that apply agreement-wide.

Administrative and Institutional Provisions:

This chapter provides for a Free Trade Commission to oversee the implementation of the agreement. The Commission is composed of government representatives of each Party at the level of Ministers or their designees. The Commission will operate by consensus. In addition, the chapter provides for Agreement Coordinators to facilitate communications between the Parties. Finally, the chapter provides for a Secretariat, comprised of National Sections. The Secretariat's main function is to provide administrative assistance to dispute settlement panels.

Dispute Settlement

This chapter provides a mechanism for the settlement of disputes between the Parties for any matter arising under the Agreement (with only a few exceptions). The chapter provides for a three-step process comprising consultations, a meeting of the Commission, and review by a panel. The panel report is due no later than 150 days from the date of the appointment of the last panelist. If the panel finds that the responding Party has failed to comply with its obligations or caused nullification or impairment, the Parties shall attempt to agree on a resolution of the dispute. If the disputing Parties are unable to agree on resolution of the dispute, the complaining Party may suspend the application to the responding Party of benefits of equivalent effect to the non-conformity or the nullification or impairment until such time as the dispute is resolved. The panel may be convened again to determine if the suspension is excessive or if the responding Party has eliminated the non-conformity or nullification or impairment.

The chapter also provides for the maintenance of the Advisory Committee on Private Commercial Disputes, to encourage, facilitate, and promote the use of arbitration, mediation, online dispute resolution and other procedures for the prevention and resolution of international commercial disputes between private parties.



Exceptions and General Provisions:

This chapter provides for the following exceptions and provisions that apply agreement-wide or to various chapters.

General Exceptions: Incorporates the GATT Article XX exceptions with respect to goods-related obligation and GATS Article XIV exceptions with respect to services-related obligations.

Essential Security: Provides for a self-judging agreement-wide exception for actions a Party considers to be in its essential security interest.

Taxation Measures: Circumscribes the obligations that apply with respect to a Party's taxation measures.

Temporary Safeguard Measures: Provides for an exception allowing a Party to adopt or maintain restrictive measures with regard to payments or transfers relating to the movements of capital in the event or threat of serious balance of payments and external financial difficulties. Among other things, any such measure must not be inconsistent with national treatment and Most-Favored Nation obligations of the Investment, Services, and Financial Services chapters; be consistent with the *Articles of Agreement of the International Monetary Fund*; avoid unnecessary damage to the commercial, economic and financial interests of another Party; not be inconsistent with the Expropriation obligation of the Investment Chapter; and be temporary and be phased out progressively.

Indigenous Peoples Rights: Provides that nothing in the Agreement precludes a Party from adopting or maintaining measures it deems necessary to fulfill legal obligations to indigenous peoples, as long as those measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as disguised restrictions on trade or investment.

Cultural Industries: Provides that the Agreement does not apply to a measure adopted or maintained by Canada with respect to a cultural industry, and provides reciprocal flexibility for the United States and Mexico with respect to Canada. Should a Party take a measure that would be inconsistent with the Agreement but for this exception, other Parties may take a measure of equivalent commercial effect.

Disclosure of Information: Provides that nothing in the agreement requires a Party to furnish or allow access to information, the disclosure of which would be contrary to its law or would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Personal Information Protection and Access to Information: Requires each Party to have a legal framework to provide for the protection of personal information. The Parties shall endeavor to adopt non-discriminatory practices in protecting natural persons from personal information protection violations and to foster cooperation in this area. In addition, requires each Party to



maintain a legal framework that allows natural persons to obtain access to records held by the central level of government, subject to reasonable terms and limitations.

Non-market country FTA: Requires that any Party intending to negotiate an FTA with a non-market country must inform the other Parties and provide information and an opportunity to review the text. Provides that entry into such an agreement by one Party allows for the other Parties to terminate the USMCA and replace the USMCA with an agreement as between them. Non-market economy country is defined as a country that at least one Party has determined to be a non-market economy for purposes of its trade remedy laws and is a country with which no Party has a free trade agreement.

Specific Provision for Mexico: Provides that, with respect to the obligations in the Cross-Border Trade in Services, Investment, State-Owned Enterprises and Designated Monopolies, and Market Access for Goods Chapters, Mexico may only adopt measures consistent with the least restrictive measures it may adopt under its other trade and investment agreements.

Final Provisions and Review Mechanism:

This chapter contains provisions regarding, among other things, amendments to the agreement, the languages in which the agreement is authentic, and entry into force. In addition, the chapter sets the term of the USMCA at 16 years, with the possibility of extensions. The Commission is required to review the operation of the Agreement every six years. At the end of each such review, each Party, through its head of government, must confirm whether it wishes to extend the term of the Agreement for another 16 years (that is, if this is done at the 6th anniversary, the Agreement term will then be 22 years). If this does not occur, the Commission will meet to review the Agreement every year until agreement to extend is reached, or the term expires. At any point when the Parties decide to extend the Agreement for another 16-year period, the Commission will continue conducting reviews every 6 years.

