

UNITED STATES-MEXICO-CANADA AGREEMENT  
IMPLEMENTATION ACT

OCTOBER 21 (legislative day, OCTOBER 19), 2020.—Ordered to be printed

Mr. GRASSLEY, from the Committee on Finance,  
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5430]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (H.R. 5430) to implement the Agreement between the United States of America, the United Mexican States, and Canada attached as an Annex to the Protocol Replacing the North American Free Trade Agreement, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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## I. REPORT AND OTHER MATERIALS OF THE COMMITTEE

### A. REPORT OF THE COMMITTEE ON FINANCE

The Committee on Finance, to which was referred the bill (H.R. 5430) to implement the United States-Mexico-Canada Agreement (Agreement), having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### B. SUMMARY OF CONGRESSIONAL CONSIDERATION OF THE AGREEMENT

#### 1. Background

On February 2, 2017, President Trump announced his intention to renegotiate the North American Free Trade Agreement (NAFTA). President Trump had made redressing NAFTA's shortcomings one of his top priorities upon entering into office. In accordance with Section 105(a)(1) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA 2015) (Pub. L. 114–26), U.S. Trade Representative Robert E. Lighthizer notified Congress on May 18, 2017 that the President intended to initiate negotiations with Canada and the United Mexican States (Mexico) regarding modernizing NAFTA. In his letter, Ambassador Lighthizer noted that:

. . . NAFTA was negotiated 25 years ago, and while our economy and businesses have changed considerably over that period, NAFTA has not. Many chapters are outdated and do not reflect modern standards. . . . In addition, and consistent with the negotiating objectives in the Trade Priorities and Accountability Act, our aim is that NAFTA be modernized to include new provisions to address intellec-

tual property rights, regulatory practices, state-owned enterprises, services, customs procedures, sanitary and phytosanitary measures, labor, environment, and small and medium enterprises. Moreover, establishing effective implementation and aggressive enforcement of the commitments made by our trading partners under our trade agreements is vital to the success of those agreements and should be improved in the context of NAFTA.

This is the first time the United States has sought to comprehensively update an existing free trade agreement (FTA).

Ambassador Lighthizer consulted with the relevant congressional committees, including the Senate Committee on Finance, with respect to the initiation of negotiations. He also met with the Senate Advisory Group on Negotiations (SAGON) on May 17, 2017 to discuss the initiation of negotiations. In accordance with Section 105(a)(1)(D) of TPA 2015, the President's negotiating objectives were published on the Office of the U.S. Trade Representative's (USTR) website on July 17, 2017, as was an updated version on November 17, 2017. The United States, Mexico, and Canada proceeded to formally launch negotiations on August 16, 2017.

At the launch of negotiations, it was recognized that for more than two decades, trade among the United States, Canada, and Mexico had taken place under the auspices of NAFTA. At the time of its entry into force, NAFTA was the largest free trade area other than the European Union (EU), and notably the first reciprocal FTA between developing and advanced economies. It helped facilitate economic expansion and integration in North America.

While tariffs with Canada had already been reduced through the U.S.-Canada Free Trade Agreement (CUSFTA), which entered into force on January 1, 1989, Mexico's average applied tariff rate before NAFTA was significantly higher than the average applied U.S. tariff rate on Mexican goods, in part because Mexico enjoyed preferential tariff access under the Generalized System of Preferences Program. NAFTA reduced tariffs with both Mexico and Canada and complemented tariff reduction and elimination with important disciplines to tackle non-tariff barriers, which were a major impediment to expanding trade among the three countries. For example, while CUSFTA lacked commitments on the protection of intellectual property, NAFTA included a chapter on intellectual property. Prior to NAFTA, approximately 60 percent of U.S. agricultural exports to Mexico required import licenses or faced other non-tariff barriers. NAFTA helped to redress these barriers to U.S. competitiveness, and bring greater overall prosperity to the American people.

Although U.S. exports to both Mexico and Canada increased significantly from 1993 to 2016—to Mexico by 334 percent in inflation-adjusted terms, and to Canada by more than 160 percent—international trade and commerce had changed dramatically since NAFTA was negotiated. When NAFTA was negotiated, there was no digital economy. By 2017, the digital economy accounted for nearly 6.9 percent of U.S. GDP, or \$1.35 trillion.<sup>1</sup> In addition, the NAFTA Parties' labor and environment obligations concerning

<sup>1</sup>U.S. Bureau of Economic Analysis, <https://www.bea.gov/news/blog/2019-04-04/digital-economy-accounted-69-percent-gdp-2017>.

trade were contained in side agreements rather than in the core of the FTA itself. There were also concerns that different or unenforced environmental and labor standards facilitated outsourcing of economic activity from the United States. Moreover, it had become apparent over time that a NAFTA Party could frustrate enforcement of its rules by preventing the composition of a dispute settlement panel. Thus, NAFTA lacked important rules in a number of critically important areas, and those rules that did exist lacked sufficient enforceability.

## *2. Trade promotion authority procedures in general*

The ability of the United States to enter into any trade agreement—as well as update and modernize any existing agreement—requires Congress’s assent under the Constitution. Specifically, Article I, Section 8 of the Constitution of the United States vests Congress with the authority to regulate international trade. Congress has periodically delegated some of its authority to the President in order to advance the economic interests of the United States. In order for any such delegation to be constitutionally valid, Congress must impose sufficient strictures on the executive to ensure that Congress retains ultimate control over the conduct of trade policy. To that end, Congress has periodically enacted statutes known as Trade Promotion Authority (TPA) or “Fast Track,” which govern the congressional-executive partnership on trade policy.

TPA represents a compact between Congress and the Administration, by which Congress guarantees it will vote on a trade agreement entered into by the Administration without amendment and the Administration guarantees close consultation with Congress during the negotiation, approval, and implementation of the trade agreement in order to achieve the objectives that Congress identifies. Thus, TPA’s provision for a privileged vote is predicated upon the Administration strictly following the requirements that Congress sets forth in the TPA legislation. Thorough and timely consultation by the Administration with Congress is the essential bedrock upon which Congress’s delegation of constitutional authority rests. This longstanding compact, periodically renewed over the last few decades, has resulted in the successful negotiation and implementation of numerous trade agreements that have contributed significantly to increased economic growth and prosperity in the United States.

The most recent incarnation of this compact is found in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA 2015) (Pub. L. 114–26). The Act includes prerequisites for congressional consideration of a trade agreement under expedited procedures, which are found in Sections 103 through 105 of the Act (19 U.S.C. §§ 4203–4205) and Section 151 of the Trade Act of 1974 (19 U.S.C. § 2191). Section 102 of the Act outlines the negotiating objectives that the President must achieve if the President intends to use TPA procedures to implement a trade agreement. Section 103 of the Act authorizes the President to enter into reciprocal trade agreements with foreign countries to reduce or eliminate tariff or non-tariff barriers and other trade-distorting measures. And Section 151 of the Trade Act of 1974 sets forth expedited procedures for congressional consideration of a trade agreement

without amendment. The President's authority under Section 103 extends to trade agreements entered into on or before July 1, 2021.

### *3. Notification prior to negotiations*

In accordance with Section 105(a)(1) of TPA 2015, the President must provide written notice to Congress at least 90 calendar days before initiating negotiations. Ambassador Lighthizer notified Congress on May 18, 2017 that the President intended to initiate negotiations with Canada and Mexico regarding modernizing NAFTA. This was the first time the United States had sought to comprehensively update and expand an existing FTA.

As noted earlier, Ambassador Lighthizer consulted with the relevant congressional committees, including the Senate Committee on Finance, with respect to the initiation of negotiations. He also met with the Senate Advisory Group on Negotiations (SAGON) on May 17, 2017 to discuss the initiation of negotiations. In accordance with Section 105(a)(1)(D) of TPA 2015, the President's negotiating objectives were published on the USTR website on July 17, 2017, as was an updated version on November 17, 2017. The United States, Mexico, and Canada launched negotiations on August 16, 2017.

### *4. Negotiations*

Section 104(a) of TPA 2015 provides that USTR must consult closely and keep fully apprised the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the status of the trade negotiations. Moreover, Section 104(a) of TPA 2015 requires USTR to promulgate written guidelines for consultation with Congress (Consultation Guidelines). The Trump Administration continued to utilize the Consultation Guidelines promulgated under the Obama Administration.

The Finance Committee considers this requirement key to ensuring compliance with the consultation requirement in TPA 2015, and to ensuring that Congress retains appropriate oversight over trade policy consistent with the Constitution. To that end, USTR and committee staff met regularly to review and discuss potential negotiating proposals. Committee staff also attended the negotiations to ensure they could be kept fully informed regarding the status of negotiations, convey the views of Members of the Committee to negotiators in real time, and be in a position to update Members promptly.

There were seven formal rounds of negotiations regarding the modernization of NAFTA.

1. August 16–22, 2017 (Washington, DC, United States)
2. September 1–5, 2017 (Mexico City, Mexico)
3. September 23–27, 2017 (Ottawa, Canada)
4. October 11–17, 2017 (Arlington, VA, United States)
5. November 15–21, 2017 (Mexico City, Mexico)
6. January 23–29, 2018 (Montreal, Canada)
7. February 25–March 5, 2018 (Mexico City, Mexico)

In addition to these formal rounds, negotiations advanced through digital videoconferences, telephone calls, and Ministerial level meetings. The Committee notes its view that these negotiations are not excluded from the ambit of "key negotiation meetings"

under the Consultation Guidelines if they concern substantive issues, regardless of whether they were part of a formally designated negotiating round or not. Moreover, TPA 2015 itself requires that the Committee be kept timely apprised and consulted regarding all aspects of the negotiations, including any proposals that might be tabled on behalf of the United States.

#### *5. Conclusion of negotiations and signing of agreement*

Under Section 106(a)(1)(A) of TPA 2015, the President must notify Congress at least 90 calendar days before entering into an agreement of his intent to enter into the agreement. On August 31, 2018, President Trump notified Congress of his intent “to enter into a trade agreement with Mexico—and with Canada if it is willing” pursuant to Section 106(a)(1)(A) of TPA 2015.<sup>2</sup> The three parties published the text of the new proposed agreement on September 30, 2018 on USTR’s website as required by Section 106(a)(1)(B) of TPA 2015, a requirement that ensures that both the public and Members of Congress are aware of the content of the Agreement before it is signed by the President. On November 30, 2018, the three Parties signed the Agreement in Buenos Aires, Argentina.

#### *6. Hearings*

The Committee believes it to be critical to obtain the input of the Administration and the stakeholders that are the intended beneficiaries of a trade agreement to effectively evaluate the agreement and develop implementing legislation. To that end, the Committee held two hearings on USMCA. The first hearing was held on June 18, 2019, and was titled “The President’s 2019 Trade Policy Agenda and the United States-Mexico-Canada Agreement.” The sole witness was Ambassador Lighthizer. The second hearing was held on July 30, 2019, and titled “The United States-Mexico-Canada Agreement.” The witnesses at this hearing were Paula Elaine Barnett, Owner, Paula Elaine Barnett Jewelry; the Honorable Matt Blunt, President, American Automotive Policy Council; James Collins, CEO, Corteva Agriscience; Derek Leathers, President and CEO, Werner Enterprises; the Honorable Thomas Vilsack, President and CEO, U.S. Dairy Export Council; and Michael Wessel, President, Wessel Group, and member of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

#### *7. Development of the implementing legislation*

Under TPA procedures, Congress and the Administration work together to produce legislation that implements an FTA. Draft legislation is developed in close consultation among the Administration, the House Committee on Ways and Means, and the Senate Committee on Finance. The committees may hold informal meetings to consider the draft legislation and make recommendations to the Administration. Although not a TPA requirement, the Administration normally also receives Congressional input through a “mock markup” process, in which members of the House Committee on Ways and Means and the Senate Committee on Finance can make

<sup>2</sup>Text of a letter from the President to the Speaker of the House of Representatives and the President of the Senate, 31 August, 2018, <https://www.whitehouse.gov/briefings-statements/text-letter-president-speaker-house-representatives-president-senate-33/>.

proposed amendments to a draft implementing bill. The Administration then finalizes the implementing legislation for formal submission to Congress. These procedures are meant to ensure close cooperation between the executive and legislative branches on the development of legislation that faithfully implements the agreement. Under TPA 2015, trade agreement implementing bills may include only those provisions that are strictly necessary or appropriate to implement the agreement.

*a. House Working Group*

Typically, obligations in the FTA are settled upon conclusion of the agreement between the parties, allowing the Administration and Members of the relevant congressional committees to have time to thoroughly consider the content of the FTA and to discuss what legislative and administrative actions would be necessary for implementation. One of the rationales for TPA is to enhance the Administration's effectiveness during negotiations by giving trading partners confidence that the agreement reached is the agreement that Congress will vote on, subject to minor changes if any, including changes that might be implemented through side letters. However, TPA does not preclude the Administration from going back to a trading partner and requesting changes to an agreement, in consultation with Congress.

On June 13, 2019, House Speaker Nancy Pelosi appointed a Working Group of House Democrats to conduct negotiations with the Administration regarding changes to USMCA required to secure their support. These negotiations were kept confidential from most Members of the House and Senate.

On December 10, 2019, the House Democrats' Trade Working Group and the Administration reached a deal that would secure Democratic support. That same day, the USMCA Parties signed a Protocol of Amendment to USMCA in Mexico City. The publication of the Protocol of Amendment was the first time most members of Congress had an opportunity to see the changes the House Democrats' Trade Working Group requested for USMCA. The Parties agreed to amend Chapter 1 (Initial Provisions and General Definitions), Chapter 4 (Rules of Origin), Chapter 20 (Intellectual Property), Chapter 23 (Labor), Chapter 24 (Environment), and Chapter 31 (Dispute Settlement). The final Protocol of Amendment to USMCA made the following changes to the agreement:

- **Enforcement:** Eliminated the requirement for the Free Trade Commission to convene before a panel is established, and ended the NAFTA practice of blocking dispute settlement panels by allowing the complaining party to appoint the panelists if the defending party refuses to participate in the panelist selection procedure.
- **Labor:** Created a presumption that violations of the relevant labor obligations in USMCA occur in a manner affecting trade and investment between the Parties, and established a unique mechanism to investigate facilities that are denying fundamental labor rights. Specifically, the mechanism is unique because it supports labor reforms that the Mexican government has itself chosen to undertake. To that end, the purpose of this mechanism as noted in the Protocol of Amendment

is “to ensure a remediation of a Denial of Rights . . . [and] not to restrict trade.”

- **Environment:** Created a presumption that violations of the relevant environmental obligations in USMCA occur in a manner affecting trade and investment between the Parties. The Parties agreed to adopt, maintain, and implement seven multi-lateral environmental agreements, an obligation which is modeled after obligations in our FTAs with Colombia, Panama, and Peru.

- **Intellectual Property:** Eliminated Article 20.49.1 of USMCA, which required the parties to “provide effective market protection through the implementation of Article 20.48.1 . . . for a period of at least ten years from the date of first marketing approval of that product in that Party.” Also eliminated the requirement that the Parties confirm the availability of patents for new uses of known products, as well as provided greater clarity that certain U.S. practices would comply with obligations in the chapter.

- **Rules of Origin:** Instituted a requirement that steel used in the automotive sector only receive preferential treatment under USMCA if it is melted and poured in the region.

In addition, the United States and Mexico signed a side agreement creating a framework for cooperation and customs verification to combat illegal trafficking of flora and fauna.

#### *b. Mock Markup*

For consideration of every other FTA to date, the Committee has conducted a “mock markup” to consider the draft implementing legislation for the trade agreement and the draft Statement of Administrative Action (SAA). The Committee can propose amendments for both, although the Administration is not required to accept them. Mock markups are not required by statute. Nonetheless, the Committee considers them valuable opportunities to engage in the development of implementing legislation. Mock markups are also an important way to reinforce the requirement in TPA 2015 that provisions in the implementing legislation be “strictly necessary or appropriate” to implement the trade agreement. To fulfill its purpose, a mock markup has to happen before the Administration formally submits the implementing bill and corresponding materials to Congress. The Committee notes that the lack of a mock markup for USMCA was an exceptional situation that should not be a precedent for the future consideration of FTA implementing bills by Congress.

#### *8. Formal submission of the agreement and implementing legislation*

When the President formally submits a trade agreement to Congress under Section 106(a)(1)(E) of TPA 2015, the President must include in the submission the final legal text of the agreement, together with implementing legislation, an SAA describing regulatory and other changes to implement the agreement, and a statement setting forth the reasons of the President regarding how and to what extent the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives set forth in TPA 2015; how the agreement serves the interests of U.S. commerce;



and how the implementing bill meets the standards to qualify for trade authorities procedures under Section 103(b)(3) of TPA 2015.

On December 13, 2019, President Trump transmitted to Congress the final text of the Agreement, the implementing legislation, the SAA, and other supporting information under Section 106 of TPA 2015. On the same day, House Majority Leader Steny Hoyer introduced H.R. 5430. On December 16, 2019, Mr. Grassley, for himself, Mr. Wyden, and Mr. McConnell, introduced the bill as S. 3052, and it was referred to the Committee on Finance. On December 17, H.R. 5430 was referred to the House Committee on Ways and Means. The Committee on Ways and Means met in open session on December 17, 2019 to consider H.R. 5430 and ordered the bill favorably reported by voice vote. On December 19, 2019, the House passed H.R. 5430 by a vote of 385–41.

On January 3, 2020, H.R. 5430 was transmitted to the Senate and referred to the Committees on: Finance; Health, Education, Labor, and Pensions; Environment and Public Works; Appropriations; Foreign Relations; Commerce, Science, and Transportation; and the Budget.

The Committee notes that H.R. 5430 was referred to multiple committees while the identical Senate bill, S. 3052, was referred solely to the Committee on Finance on December 16, 2019. It is the view of the Committee that the subject matters that predominated the USMCA implementing bill were customs, revenue, reciprocal trade agreements, tariffs and import quotas, and matters related thereto, most of which are within the jurisdiction of the Committee on Finance.

The Committee notes that the implementing bill also included an Appropriations title, granting \$843 million in appropriations. In large part, these appropriations are dedicated to the monitoring and enforcement of certain commitments that are specific to Mexico. Moreover, the Congressional Budget Office has projected that even with these appropriations, USMCA will, on net, be revenue-positive. The Committee recognizes that undertaking certain trade agreement obligations may entail the need for appropriations to ensure the obligations can be carried out. However, the Committee believes that any such appropriation needs careful scrutiny and consultation, because of Congress's constitutional authority over appropriations and because TPA 2015 provides that only provisions strictly necessary or appropriate to implement the final trade agreement are permitted in the implementing bill. Since 1984, no implementing bill for a trade agreement passed pursuant to expedited procedures has included discretionary appropriations. The provision of appropriations in the USMCA Implementation Act must be considered in light of these particular circumstances.

#### *9. Committee and floor consideration*

If the requirements of TPA 2015 are satisfied, implementing revenue bills are subject to the legislative procedures of Section 151 of the Trade Act of 1974. The following schedule for congressional consideration applies under these procedures:

(i) House committees have up to 45 session days in which to report the bill; any committee which does not do so in that period will be automatically discharged from further consideration.

(ii) A vote on final passage by the House must occur on or before the 15th session day after the committees report the bill or are discharged from further consideration.

(iii) Senate committees must act within 15 session days of receiving the implementing revenue bill from the House or within 45 session days of Senate introduction of the implementing bill, whichever is later, or they will be discharged automatically.

(iv) The full Senate then must vote within 15 session days on the implementing bill.

Once the implementing bill has been formally submitted by the President and introduced, no amendments to the bill are in order in either house of Congress. Floor debate in each house is limited to no more than 20 hours, to be equally divided between those favoring the bill and those opposing the bill.

The House passed H.R. 5430 on December 19, 2019, by a roll call vote of 385 ayes, 41 nays. The Committee on Finance met in open executive session on January 7, 2020, to consider favorably reporting H.R. 5430. At this meeting, Senator Toomey sought to offer an amendment to Section 621 of the USMCA Implementation Act that would require approval of Congress before USMCA could expire under the Agreement's sunset clause. The Chairman ruled the amendment out of order because of the privileged status of the bill under TPA 2015. Senator Toomey did not appeal the ruling of the chair. The Committee then proceeded to favorably report H.R. 5430 without amendment by roll call vote of 25 ayes, 3 nays. Ayes: Grassley, Crapo, Roberts, Enzi, Cornyn, Thune, Burr (proxy), Portman, Scott, Lankford, Daines, Young, Sasse, Wyden, Stabenow, Cantwell, Menendez, Carper, Cardin (proxy), Brown, Bennet, Casey, Warner, Hassan, and Cortez Masto. Nays: Toomey, Cassidy, and Whitehouse.

On January 16, 2020, the Senate passed H.R. 5430 by a roll call vote of 89 ayes, 10 nays. President Donald J. Trump signed H.R. 5430 into law on January 29, 2020 (Pub. L. 116–113).

#### *10. Implementation*

Congress's constitutional role with respect to trade policy includes the passage of legislation and oversight of its implementation. Congress has a key role to play in the implementation of FTAs and expects that to continue with USMCA. The Administration's Consultation Guidelines correctly acknowledge as much:

Prior to entry into force of a trade agreement with a trading partner, USTR will consult with the Committees on Finance and Ways and Means regarding measures taken or to be taken by that trading partner to implement provisions of the trade agreement. In addition, USTR will also consult regularly on trading partner compliance with provisions of a trade agreement after entry into force.

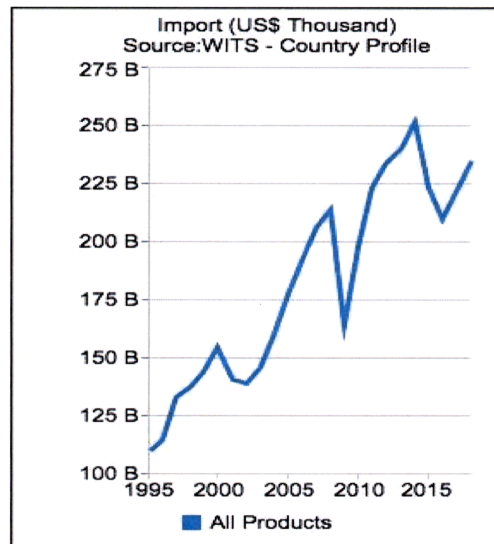
To that end, the Committee expects USTR to routinely update the Committee, and to be available promptly upon request to answer any of the Committee's queries.

## C. TRADE RELATIONS WITH CANADA AND MEXICO

### 1. United States-Canada Trade

Canada ranks first among U.S. export markets and third among foreign exporters to the United States. U.S. exports to Canada totaled \$292.69 billion in 2019, while U.S. imports totaled \$319.7 billion. The top export categories (2-digit HS) in 2018 were: vehicles (\$52 billion), machinery (\$45 billion), mineral fuels (\$27 billion), electrical machinery (\$26 billion), and plastics (\$14 billion).<sup>3</sup> The top import categories (2-digit HS) in 2018 were: mineral fuels (\$85 billion), vehicles (\$53 billion), machinery (\$23 billion), special other (returns) (\$16 billion), and plastics (\$12 billion). The United States had a services trade surplus of an estimated \$28 billion with Canada in 2018.

The following graph shows nominal values of American imports in Canada since 1995.

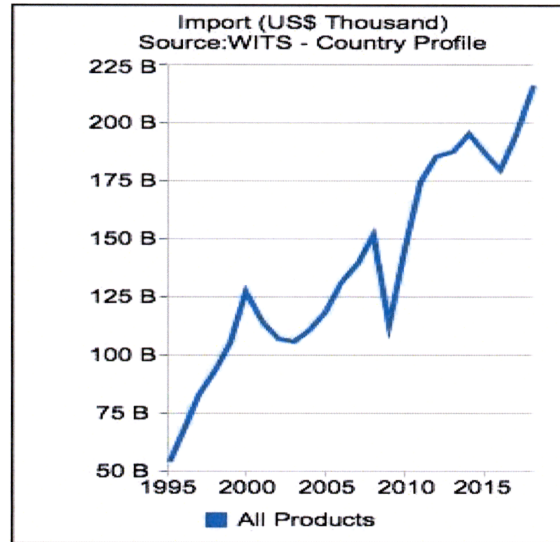


### 2. United States-Mexico Trade

Mexico ranks second among U.S. export markets and second among foreign exporters to the United States. U.S. exports to Mexico totaled \$358.1 billion in 2019, while U.S. imports totaled \$256.37 billion. The top export categories (2-digit HS) in 2018 were: machinery (\$46 billion), electrical machinery (\$43 billion), mineral fuels (\$35 billion), vehicles (\$22 billion), and plastics (\$18 billion). The top import categories (2-digit HS) in 2018 were: vehicles (\$93 billion), electrical machinery (\$64 billion), machinery (\$63 billion), mineral fuels (\$16 billion), and optical and medical instruments (\$15 billion). The United States had a services trade surplus of an estimated \$8.0 billion with Mexico in 2018.

<sup>3</sup> HS refers to the Harmonized Commodity Description and Coding System, an international nomenclature used to classify products.

The following graph shows nominal values of American imports in Mexico since 1995.



### 3. Tariffs and Trade Agreements

Canada acceded to the World Trade Organization (WTO) on January 1, 1995. It has an average bound tariff rate of 6.5 percent for all goods (15 percent for agricultural goods and 5.1 percent for non-agricultural goods). In 2018, Canada maintained a simple average applied most-favored nation (MFN) tariff rate of 4 percent for all goods (15.9 percent for agricultural goods and 2.1 percent for non-agricultural goods). In addition to NAFTA and CUSFTA, Canada has the following FTAs in force: the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CP-TPP), and FTAs with Chile, Colombia, Cost Rica, the EU, the European Free Trade Association (EFTA), Honduras, Israel, Jordan, Korea, Panama, Peru, and Ukraine.

Mexico acceded to the WTO on January 1, 1995. It has an average bound tariff rate of 36.2 percent for all goods (45 percent for agricultural goods and 34.8 percent for non-agricultural goods). In 2018, Mexico maintained a simple average applied MFN tariff rate of 7 percent for all goods (13.9 percent for agricultural goods and 5.8 percent for non-agricultural goods). In addition to NAFTA, Mexico has the following FTAs in force: CP-TPP, and FTAs with Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), Chile, the EU, EFTA, Israel, Japan, Panama, Peru, and Uruguay.

### 4. U.S. International Trade Commission Study

As required by Section 105(c) of TPA 2015, the U.S. International Trade Commission (USITC or Commission) released in April 2019 a report from its investigation (Investigation No. TPA 105-003) into the probable economic effect of the Agreement (USITC Pub.

4889). In the Highlights Section of the report, the Commission noted the following:

The Commission’s model estimates that USMCA would raise U.S. real GDP by \$68.2 billion (0.35 percent) and U.S. employment by 176,000 jobs (0.12 percent). The model estimates that USMCA would likely have a positive impact on U.S. trade, both with USMCA partners and with the rest of the world. U.S. exports to Canada and Mexico would increase by \$19.1 billion (5.9 percent) and \$14.2 billion (6.7 percent), respectively. U.S. imports from Canada and Mexico would increase by \$19.1 billion (4.8 percent) and \$12.4 billion (3.8 percent), respectively. The model estimates that the agreement would likely have a positive impact on all broad industry sectors within the U.S. economy. Manufacturing would experience the largest percentage gains in output, exports, wages, and employment, while in absolute terms, services would experience the largest gains in output and employment.

The Commission also estimated that there would be employment gains for the U.S. agriculture, manufacturing, and services sectors. The following table from the report summarizes the respective gains estimated for those sectors.

Industry	Exports (%)	Imports (%)	Output (%)	Real wages (%)	Employment (%)	Employment (1,000 jobs)
Agriculture	1.1	1.8	0.18	0.23	0.12	1.7
Manufacturing and mining	3.3	1.3	0.57	0.50	0.37	49.7
Services	1.2	5.4	0.17	0.23	0.09	124.3

Source: USITC estimates.

## D. OVERVIEW OF THE AGREEMENT

### 1. Background

USMCA continues the trilateral free trade area that was established under NAFTA. It continues duty-free treatment among Canada, Mexico, and the United States for qualifying goods, and contains updated rules and disciplines intended to reduce non-tariff barriers. It also allows for the United States to take prompt action against such barriers through dispute settlement. USMCA contains a number of commitments that have not been included in previous U.S. FTAs. As such, the Committee believes it is relevant to discuss them below.

### 2. Committee’s positions on various USMCA commitments

#### a. Qualifying Rules for Automobiles

One of the Administration’s objectives in USMCA was to strengthen the North American automobile industry. The process of integrating supply chains in North America began in 1965 with the Canada—United States Automotive Products Agreement (Auto Pact). NAFTA brought Mexico into the supply chain as well. North America has become one of the world’s most important, innovative, and efficient automotive manufacturing hubs.

To attempt to address concerns regarding the functioning of the auto rules of origin, USMCA contains two innovations. First, it creates a new “Labor Value Content” rule requiring that 40 to 45 per-

cent of auto content be made by workers earning at least \$16 per hour. Second, USMCA provides that eligibility for preferential tariff treatment requires that an increased percentage of the auto content originate in North America.

The Committee believes these requirements are reasonable approaches with respect to the North American automobile sector because of the continent's uniquely integrated automobile industry. However, as noted in the USITC's USMCA report, these requirements may inadvertently increase costs for American consumers and increase compliance costs for U.S.-based manufacturers, and they require careful consideration before use with other countries or for other sectors. Because these requirements are unique and novel, the Committee expects the Administration to continue consulting closely with automakers that have a significant U.S. manufacturing presence to ensure the companies can continue to grow employment and investment in the United States. The Committee expects to be timely briefed on such engagement and any developments resulting from such engagement.<sup>4</sup>

#### b. Express Shipments

USMCA's chapter on customs and trade facilitation includes important commitments that will reduce costs and advance business opportunities for U.S. small and medium enterprises. The agreement creates a new informal shipment level of \$2,500, allowing express shipments under that amount to benefit from reduced paperwork and red tape. It also raises the *de minimis* level for express shipments in Canada and Mexico. In Mexico, shipments valued at or below US\$117 may enter free of customs duties, and shipments valued at or below US\$50 may enter free of taxes. In Canada, shipments valued at or below C\$150 may enter free of customs duties, and shipments valued at or below C\$40 may enter free of taxes.

Although the increased *de minimis* levels are a significant improvement upon the past, especially in Canada, the Committee notes that the preferred outcome would have been for Canada and Mexico to have matched the U.S. *de minimis* level of \$800. The Committee expects USTR to continue pushing our trading partners to match the U.S. *de minimis* level in future negotiations. The Committee further notes that the U.S. *de minimis* level continues to enjoy broad bipartisan support and any changes to this level would have to be enacted by Congress.

#### c. Sanitary and Phytosanitary Measures

USMCA's chapter on sanitary and phytosanitary (SPS) measures contains a number of critical commitments that should prevent countries from disguising discriminatory restrictions on agricultural products in the name of food safety or animal or plant health. The SPS chapters in other U.S. FTAs simply established a committee for the Parties to discuss SPS issues rather than binding the Parties to concrete obligations. In contrast, USMCA's SPS chapter has a number of enforceable commitments, including that

<sup>4</sup>The Committee notes that there are certain changes to the rules of origin made by the Protocol of Amendment that are to be phased in at a later time, or that address calculation methodologies. See Protocol of Amendment, para. 2. The Committee did not have an opportunity to evaluate the potential economic implications of these changes since they occurred after the International Trade Commission prepared its economic assessment of USMCA. Committee members will monitor these changes to assess their impact, and provide appropriate input.

SPS measures be based on scientific principles and that risk assessment and risk management for SPS regulations be documented and afforded opportunities for public comment. These commitments achieve the negotiating objectives in TPA 2015 to ensure more open and equitable market access through robust rules on SPS measures.<sup>5</sup> The Committee strongly supports these commitments and believes they should be a model for future FTAs.

#### d. Agricultural Biotechnology

Section B of the Agriculture Chapter of USMCA contains disciplines to avoid unreasonable restrictions on products derived through agricultural biotechnology and increase cooperation regarding the trade in these products. Unfortunately, such restrictions have become a major trade irritant over the last two decades, including through the application of moratoriums on approval processes for such products. The Committee notes in particular that Article 3.14.4 of USMCA provides that Parties must accept and review applications for authorizing products of agricultural biotechnology year-round. The Committee views this obligation as an important commitment that requires the Parties to refrain from adopting any type of moratorium, official or otherwise, on the approval of agricultural biotechnology.

#### e. Technical Barriers to Trade

The Committee appreciates that our trading partners can use standards-related measures to achieve legitimate commercial and policy objectives. Unfortunately, many trading partners also use such measures as a disguised restriction on trade. USMCA's chapter on technical barriers to trade (TBT) contains a number of important disciplines to ensure U.S. commerce is not unreasonably frustrated through standards-related measures. The Committee supports obligations including Article 11.5, which requires the Parties to facilitate the acceptance of multiple international standards; Article 11.6, which requires the Parties to provide national treatment to conformity assessment bodies; and Article 11.7, which requires that TBT measures be developed transparently, including by allowing persons of another Party to participate in the development of technical regulations, standards, and conformity assessment on terms no less favorable than accorded to its own citizens. These outcomes adhere to the objective in TPA 2015 to achieve greater openness, transparency, and convergence on standards development processes.<sup>6</sup> The Committee expects that the Administration will seek a similar level of ambition in future trade agreements. This is particularly important because an increasingly problematic impediment to U.S. commerce in recent years has been the failure of trading partners to afford national treatment to U.S. conformity assessment bodies, resulting in unnecessary testing and costs.

#### f. Labor and Environment

TPA 2015 provides that the U.S. negotiating objectives for labor and environment include that each Party to an FTA adopts and maintains measures implementing internationally recognized core

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<sup>5</sup> (b)(3).

<sup>6</sup> (b)(7)(D).

labor standards and obligations under common multilateral environmental agreements.<sup>7</sup> Moreover, no obligations in USMCA or other U.S. FTAs preclude the United States from changing its laws or implementing measures with respect to environmental laws, or labor laws, provided they achieve the relevant rights in the ILO Declaration on Rights at Work enumerated in Article 23.3 of USMCA.

USMCA's "facility-specific rapid response labor mechanism" provides authority for designated panelists to conduct verifications for reasons relating to a "Denial of Rights." When determining whether there has been a Denial of Rights, the relevant panelists must be objective, reliable, independent, and of sound judgment. The mechanism also provides disputing Parties the right to submit evidence, and to test the veracity of any evidence that may be submitted. Accordingly, the mechanism is designed to be a fair and impartial process for determining whether certain specific labor rights have been breached. The inclusion in USMCA of a "facility-specific rapid response labor mechanism" will not change U.S. labor law, or impose any additional obligations on state and local governments, or the private sector. Moreover, the Committee's view is influenced by the fact that Mexico had already chosen to adopt significant reforms to its labor laws. The mechanism is thus supporting a decision independently made by Mexico.

The Committee notes that the mechanism operates differently with respect to Mexico and the United States. In particular, the footnote to Article 31-1.2 of USMCA provides as follows:

With respect to the United States, a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered facility under an enforced order of the National Labor Relations Board. With respect to Mexico, a claim can be brought only with respect to an alleged Denial of Rights under legislation that complies with Annex 23-A (Worker Representation in Collective Bargaining in Mexico).

Before Mexico can invoke the mechanism against the United States, there must be an enforced order where a United States Court of Appeals has issued a final and conclusive decree requiring compliance with an order issued by the National Labor Relations Board (NLRB). Accordingly, this mechanism cannot be utilized against facilities in the United States unless federal litigation on the issue has been fully concluded and U.S. courts have determined that a U.S. facility has denied a fundamental right. There is no comparable mechanism between the United States and Canada.

USMCA as originally negotiated contained commitments that the Parties would not waive or otherwise derogate from core labor standards or environmental laws in a manner affecting trade or investment between the United States and that Party. The language requiring that the waiver or derogation occur in a manner affecting trade or investment is drawn directly from TPA 2015.<sup>8</sup> The Protocol of Amendment also includes an amendment to USMCA providing that dispute settlement panels shall presume that a waiver or derogation is conducted in a manner affecting trade or invest-

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<sup>7</sup>(b)(10).

<sup>8</sup>(b)(10).



ment, unless the responding party demonstrates otherwise. The presumption does not prevent a defending party from rebutting it, including by provision of evidence or demonstrating that relevant circumstances undermine the presumption's application.

#### g. Investment

USMCA's investment provisions are similar to NAFTA's, with one major exception: USMCA significantly curtails the scope of matters where there is recourse to investor-state dispute settlement (ISDS). ISDS is eliminated with Canada after a grandfathering period, and access to ISDS is limited to specified sectors with respect to Mexico. USMCA also imposes certain procedural challenges to recourse, including attempts to resolve matters through domestic courts.

In general, ISDS allows an investor recourse to dispute settlement when a government discriminates against an investor, repudiates contracts, or expropriates property without due process of law and appropriate compensation. The United States, as a nation committed to the rule of law, has never lost an ISDS case even though it is party to nearly 50 agreements containing ISDS provisions. The principle function of ISDS, like courts, is to provide some form of relief when a Party has failed to comply with obligations it willingly accepted. With respect to ISDS, it provides recourse in a particularly challenging situation: when a U.S. citizen has been wronged by a foreign government, and would like to be heard in a forum other than courts controlled by that government. In this respect, ISDS has often been claimed to further the rule of law by removing incentives for corruption and politicization of courts. Finally, TPA 2015 contained a negotiating objective related to investment that, among other things, required the Administration to seek "to improve mechanisms used to resolve disputes between an investor and a government."<sup>9</sup> Accordingly, the Committee is of the view that the approach to ISDS in USMCA raises concerns.

#### h. Dispute Settlement

The Committee fully supports the changes made by the Protocol of Amendment to preclude a USMCA Party from blocking composition of a dispute settlement panel. The Committee notes this change comports with an objective in TPA 2015 at Section 102(b)(16): "to seek provisions in trade agreements providing for resolution of disputes between governments under those trade agreements in an effective, timely, transparent, equitable, and reasoned manner." In light of the continued impasse to reform WTO dispute settlement, it is more imperative than ever that the United States have recourse to effective and efficient dispute settlement under its FTAs.

#### i. Joint Review

Article 34.7 of USMCA concerns Review and Term Extension of USMCA, otherwise known as the "sunset clause." Under the provision, USMCA will be terminated 16 years after its implementation, unless the Parties agree to extend its operation after a review that

<sup>9</sup>TPA 2015, Sec. 102(b)(4).

takes place six years after entry into force. At this review, the parties could extend the termination date to 16 years from the six-year review, with another joint review to follow six years later. Failure to agree would require additional reviews to occur each year thereafter until the initial 16-year period concludes or until a consensus is reached on how to address the complainant Party's concerns.

The Committee notes that stability in North American trade is critical to the health of our economy, and the Committee does not believe that this provision was necessary, particularly because, like all trade agreements, USMCA provides for withdrawal at any time with six months' notice. This provision does not change the constitutional structure of the United States with respect to the conduct of trade policy. Specifically, the Committee notes that Article 34.7.3 provides that each Party shall confirm in writing through its head of government whether it wishes to extend the term of USMCA. The provision thus only dictates how the communication regarding term extension should be made to the other Parties; it does not address how the decision itself is made within a Party. Further, the United States cannot withdraw from a congressionally approved trade agreement without the consent of Congress.

#### j. Digital Trade

USMCA modernizes NAFTA by directly addressing digital trade among the United States, Canada, and Mexico. USMCA contains broad provisions supporting cross-border data flows, as well as restrictions on data localization. It also prohibits customs duties on electronically transmitted products and limits source code disclosure requirements. The Committee strongly supports provisions addressing modern means of international trade, including digital trade and eCommerce.

#### k. Intellectual Property (IP)

USMCA's IP Chapter requires national treatment for copyright and related rights, and provides a minimum copyright term. It also establishes patentability standards and describes patent-office best practices. The Protocol of Amendment revised certain provisions in USMCA's IP Chapter, including an obligation to provide 10 years of protection for test and other data for biologic medicines.

Pursuant to TPA 2015, the United States should seek to ensure "that the provisions of any trade agreement governing intellectual property rights that is entered into by the United States reflect a standard of protection similar to that found in United States law."<sup>10</sup> The Administration relies on TPA's objective to guide their negotiations—and to confirm for our trading partners that Congress in fact supports many of the relevant asks. These objectives have been carefully vetted through regular order in Congress, including substantive work in relevant committees. Before deviating from these objectives, the Committee believes that the Administration should closely and thoroughly consult with the Committee to ensure its Members are comfortable with whatever deviations may be under consideration. Because that consultation did not take place for certain provisions with respect to Intellectual Property included in the Protocol of Amendment, the Committee does not be-

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<sup>10</sup>(b)(5).

lieve they should be deemed a model for future trade agreements under TPA 2015 without such consultations taking place.

### 1. Currency

USMCA is the first trade agreement entered into by the United States that contains disciplines intended to combat currency manipulation. The Committee notes that the Parties are obliged to achieve market-determined exchange rates, and refrain from competitive devaluations. This is a significant achievement that the Committee strongly supports.

### 3. *Office of the U.S. Trade Representative Summary*

The Office of the U.S. Trade Representative prepared a summary of the Agreement that was included among the documents that the President transmitted to Congress on December 12, 2019. This summary was distributed to Members of the Committee to aid in their consideration of the implementing legislation, and it is reprinted below:

## AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA

### SUMMARY OF THE AGREEMENT

This summary briefly describes key provisions for each chapter of the Agreement between the United States of America, the United Mexican States, and Canada (USMCA or Agreement).

#### PREAMBLE

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the USMCA and provides context for the provisions that follow.

#### CHAPTER ONE: INITIAL PROVISIONS AND GENERAL DEFINITIONS

This chapter states that the Agreement establishes a free trade area consistent with Article XXIV of the GATT 1994 and Article V of the GATS. It also confirms that each Party retains its existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which they are party. Finally, the chapter provides for definitions that apply Agreement-wide.

#### CHAPTER TWO: NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Chapter Two and its relevant annexes and appendices set out the Agreement's principal rules governing trade in goods. Each Party must treat products from the other Parties in a non discriminatory manner and eliminate a wide variety of non-tariff trade barriers that restrict or distort trade flows. Chapter Two maintains duty-free treatment under the North American Free Trade Agreement (NAFTA) for originating goods under the USMCA.

Chapter Two maintains the NAFTA prohibition on export duties, taxes, and other charges, and the waiver of specific customs processing fees for originating goods; adds new provisions for transparency in import licensing and export licensing procedures; prohibits Parties from applying requirements to use local distributors

for importation; prohibits restrictions on the importation of commercial goods that contain cryptography; prohibits restrictions on imports of remanufactured goods.; prohibits consular transactions and their associated fees and charges.

*Agriculture Market Access.* The Parties agree to maintain existing duty-free market access for originating agricultural goods. The Agreement grants U.S. exporters unprecedented access to the Canadian dairy, poultry, and egg markets.

*Dairy.* Canada agreed to provide new access through new tariff-rate quotas (TRQs) for U.S. dairy exports, including fluid milk, cream, butter, skim milk powder, cheese, and other dairy products. Canada will also eliminate its tariffs on U.S. whey and margarine over a number of years. The United States will provide Canada reciprocal market access for Canadian dairy products.

*Poultry.* Canada will provide new access for U.S. exports of chicken and eggs through TRQs and expand access for U.S. exports of turkey.

*Sugar.* The United States will provide Canada small tariff-rate quotas for refined sugar and sugar-containing products.

*Peanuts.* The United States will eliminate tariffs over five years for Canadian peanuts and peanut products made from peanuts grown in one of the USMCA countries.

#### CHAPTER THREE: AGRICULTURE

Chapter Three and its annexes contain commitments related to trade in agricultural products.

*General Provisions.* Chapter Three includes provisions to prohibit the use of export subsidies; increase transparency and consultation regarding the use of export restrictions for food security purposes; and minimize the use of trade-distorting domestic support measures. The Parties also commit to work together at the WTO on agriculture matters to promote increased transparency, and to improve and further develop multilateral disciplines.

*Biotechnology.* This chapter also includes provisions to enhance information exchange and cooperation on agricultural biotechnology trade-related matters to support 21st century innovations in agriculture. The chapter covers all biotechnologies, including new technologies such as gene editing, in addition to traditional rDNA technology.

*TRQ Administration.* The chapter also includes strong rules for administration of TRQs to ensure that TRQs are administered fairly and transparently, including an obligation not to allocate TRQs to producer groups or limit an allocation to processors, unless otherwise agreed.

*Dairy.* Canada commits to the elimination of its milk classes 6 and 7 within six months of entry into force of the Agreement. Canada will ensure that the price for non-fat solids used to manufacture skim milk powder, milk protein concentrates, and infant formula will be no lower than a level based on the USDA price for nonfat dry milk. In addition, Canada will apply export charges to its exports of skim milk powder, milk protein concentrates, and infant formula at volumes over thresholds specified in the Agreement.

*Wheat.* Addressing longstanding Canadian barriers to U.S. wheat, the United States and Canada agree to non-discriminatory

treatment in the grading of originating wheat imported from the territory of the other Party and to not require a country of origin statement on a quality grade certificate for such wheat.

*Distinctive Products.* The Parties agree to continue recognition of Bourbon Whiskey, Tennessee Whiskey, Tequila, Mezcal, and Canadian Whisky as distinctive products.

*Distilled Spirits, Wine, Beer, and Other Alcohol Beverages Annex.* This annex contains nondiscrimination, transparency, and due process commitments regarding the internal sale and distribution of alcohol beverages, including beer. The Parties agree to labeling and certification provisions that will help the Parties avoid barriers to trade in wine and distilled spirits.

*Proprietary Food Formulas Annex.* This annex requires each Party to protect the confidentiality of information relating to companies' proprietary formulas in the same manner for domestic and imported products, and to limit such information requirements to what is necessary to achieve legitimate objectives.

#### CHAPTERS FOUR AND FIVE: RULES OF ORIGIN AND ORIGIN PROCEDURES

Chapters Four, Five, and their respective annexes and appendices establish the rules of origin that a good must meet to qualify as "originating" and the procedures that each Party and its importers and exporters must adhere to in order to ensure that preferential tariff rates of the USMCA can be applied to their respective goods. These rules ensure that the benefits of the USMCA accrue primarily to Parties to the Agreement.

Chapter Four contains product-specific rules (PSRs) of origin for goods. This chapter also outlines new provisions such as the labor value content and higher regional value content requirements for vehicles and parts, as well as steel and aluminum purchasing requirements for vehicle producers.

*Labor Value Content (LVC).* In addition to the PSRs outlined in Chapter Four, Appendix 4-B Article 7 establishes that a vehicle producer of a Party must certify it has met an LVC in order for its vehicle to qualify as "originating" and therefore receive the preferential tariff treatment established in the USMCA. The LVC requires that 40 percent of a passenger vehicle's value and 45 percent of a light truck or heavy truck's value must be produced in a North American plant or facility with an average hourly wage of at least \$US16 per hour. Parties agree that this provision will be implemented fully by January 1, 2023, or three years after the date of entry into force of the Agreement, whichever is later, unless there is an alternative staging period for a vehicle producer.

*Automobiles and Automotive Parts.* In Appendix 4-B Articles 2 through 4, Parties establish the PSRs and Regional Value Content (RVC) required for vehicles, passenger vehicles, light trucks, heavy trucks, and parts to receive preferential tariff treatment under USMCA. Parties agreed to raise the minimum RVC of passenger vehicles, light trucks, and associated parts to 75 percent and to 70 percent for heavy trucks and associated parts. Further, Parties established higher thresholds for the RVC of core, principal, and complementary parts for passenger vehicles, light trucks, and heavy trucks in order to qualify as "originating."

The following are the RVC breakdowns for the respective parts categories for passenger vehicles and light trucks under the net cost method: 75 percent for core parts, 70 percent for principal parts, and 65 percent for complimentary parts. For parts categories for heavy trucks under the net cost method the RVC is 70 percent for principal parts and 60 percent for complimentary parts. These commitments will be fully implemented by January 1, 2023, or three years after the date of entry into force of the Agreement, whichever is later, unless there is an alternative staging period for individual producers.

*Steel and Aluminum.* In addition to the PSRs outlined in Chapter Four, Appendix 4-B Article 6 commits Parties to consider a passenger vehicle, light truck, or heavy truck as “originating” only if 70 percent of the vehicle producer’s steel and aluminum purchases, by value, originate from within one or more of the Parties of the Agreement.

*Remanufactured Goods.* Chapter Four provides for recovered materials to be treated as an originating good when these materials are used in the production of or incorporated into a remanufactured good.

Chapter Five includes specific rules on how to claim preferential tariff treatment and verify products are originating, as well as provisions on cooperation between customs authorities and enforcement of these new rules.

*Certificates of Origin (COO).* In this chapter, the Parties establish data fields in order to complete a valid COO. Minor errors or discrepancies in a COO shall not be grounds for rejection. Parties also agree to allow for the electronic submission of COOs and allow them to be signed electronically or digitally. USMCA also establishes that COOs are not required if the value of the goods being imported does not exceed \$US1,000, except in certain circumstances.

*Origin Verification.* To ensure imported goods are originating, the USMCA allows a Party’s customs administration to conduct verifications through both written requests for information and site visits of the producers or exporters. If an importer, exporter, or producer is found to be making a pattern of false or unsupported claims that a product is originating, their access to preferential tariff treatment may be withheld.

*Committee on Rules of Origin and Origin Procedures.* Chapter Five establishes both the Committee on Rules of Origin and Origin Procedures (Committee) and the Sub-Committee of Origin Verification (Sub-Committee). The Committee is to be composed of government representatives from each Party and its primary objective is to ensure that Chapter Four and Five commitments are administered effectively. The Sub-Committee’s primary objectives are to develop and improve the processes, materials, and guidance associated with origin verifications.

## CHAPTER SIX: TEXTILES AND APPAREL

Chapter Six and its annexes contain provisions covering trade in textiles and apparel among the Parties.

The chapter establishes textile-specific provisions related to rules of origin, customs cooperation, verification, and determinations, including tools for preventing fraud and circumvention. It also in-

cludes provisions establishing a Committee on Textile and Apparel Matters and for monitoring tariff preference levels (TPLs) and will promote greater transparency and the sharing of information among the Parties. Appendices to the chapter set forth rebalanced TPLs for certain non-originating products, allowing for limited use of third-country inputs.

The PSRs for textile and apparel articles, included in Chapter Four, incentivize the use of fibers, yarns, and fabrics produced within the territory of the Parties. The updated rules of origin require the use of U.S. or regional sewing thread, pocketing fabric, narrow elastic bands, and coated fabric in most USMCA-qualifying apparel and other finished textile goods.

#### CHAPTER SEVEN: CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Chapter Seven establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

*Trade Facilitation.* In Chapter Seven, each Party commits to observe transparency obligations, including commitments on online publication of laws, regulations, and procedures for customs and other trade matters. Provisions also require customs administrations to be responsive to importers and exporters. Additional provisions relating to appeals, penalties, and standards of conduct require customs administrations to follow rules to ensure fairness and integrity in customs work. This chapter requires that the Parties, through respective customs administration, issue a written advance ruling prior to arrival, promptly release goods, and maintain disciplines on setting bonds and surety instruments. The chapter also requires the Parties to create a "single window" system for imports into each Party and commitments on Authorized Economic Operator programs, with cooperation to promote best practices and identify benefits for traders.

The chapter also provides new cost-cutting and efficiencies for traders by allowing for reducing reliance on customs brokers and creating more competition among customs brokers in addition to promoting coordinated inspections of merchandise. Additional provisions require standards of conduct to support anti-corruption efforts among customs officers.

*Cooperation and Enforcement.* The chapter also contains provisions aimed at strengthening and expanding customs and trade enforcement efforts and cooperation between the Parties. This chapter contains provisions on customs compliance verification requests, and the exchange of specific confidential information.

*Express Shipments.* Under provisions in this chapter, the Parties agree to create a new informal shipment level of \$US2,500, including procedures to reduce paperwork and formalities required for entry, and to set a *de minimis* shipment value level for each Party. The *de minimis* level for Canada is set at C\$40 for taxes, and provides for duty free shipments up to C\$150. Canada will also allow a period of 90 days after entry for the importer to make payment of taxes. Mexico will provide a \$US50 tax-free *de minimis* and also provide duty-free shipments up to the equivalent level of \$US117. Shipment values up to these levels will enter with minimal formal entry procedures.

CHAPTER EIGHT: RECOGNITION OF THE UNITED MEXICAN STATES' DIRECT, INALIENABLE, AND IMPRESCRIPTIBLE OWNERSHIP OF HYDROCARBONS

In Chapter Eight, the United States and Canada recognize that Mexico has ownership of all hydrocarbons in the subsoil of its national territory.

CHAPTER NINE: SANITARY AND PHYTOSANITARY MEASURES

Chapter Nine sets out the Parties' obligations regarding sanitary and phytosanitary (SPS) measures under the Agreement. It reflects the Parties' understanding that implementation of existing obligations under the *WTO Agreement on the Application of Sanitary and Phytosanitary* (SPS Agreement) is a shared objective. Nothing in the Agreement imposes limitations on any Party establishing its appropriate level of protection for human, animal, and plant life and health.

Under Chapter Nine, the Parties agree to strengthen disciplines for science-based SPS measures. Parties are obligated to base SPS measures on international standards or an assessment of risk. Provisions include increasing transparency in the development and implementation of SPS measures; advancing science-based decision making; improving processes for certification, regionalization and equivalency determinations; conducting systems-based audits; improving transparency for import checks; and working together to enhance compatibility of measures.

Under chapter obligations, Parties must publish proposed regulations, provide the relevant scientific evidence, and provide for the opportunity to comment on proposed regulations and risk assessments. 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. Parties may not stop importation of goods solely because an SPS measure is being reviewed.

*Cooperation.* The chapter establishes a Committee on Sanitary and Phytosanitary Measures to implement the chapter, consisting of relevant trade and regulatory officials, and allows for technical working groups on SPS issues. The SPS chapter establishes a mechanism for technical consultations to resolve issues between two Parties, prior to moving a matter to dispute settlement.

CHAPTER TEN: TRADE REMEDIES

Chapter Ten includes provisions covering safeguards, global safeguards, and antidumping (AD) and countervailing duties (CVD). Provisions will ensure due process and transparency standards, including the use of electronic filing, to enable businesses of a Party to effectively participate in AD/CVD proceedings. Parties also agree to strong duty evasion cooperation provisions 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 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.

Section D of Chapter Ten replicates without substantive changes the NAFTA mechanism for review and dispute settlement in AD and CVD matters.

#### CHAPTER ELEVEN: 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. The chapter maintains each government's sovereign right to regulate products and manufacturing processes that ensure the protection of human, animal, or environmental health and safety.

*Key Concepts.* TBTs refer to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards ("technical regulations"), and procedures used to determine whether a particular good meets such standards, i.e., "conformity assessment" procedures.

Provisions in this chapter enhance rights and obligations under the *WTO Agreement on Technical Barriers to Trade* (WTO TBT Agreement), and build on WTO rules to promote transparency, accountability, and cooperation between the Parties on regulatory issues. This includes 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 the entirety of the text 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. The chapter includes three articles to prevent other practices from creating barriers, including that 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; that technical assistance should not promote the use of standards developed in a manner inconsistent with the WTO TBT Agreement; and that 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.

Finally, the chapter lays out specific time lines and information requirements to discuss a specific trade concern that is under consideration for dispute settlement.

*Committee on Technical Barriers to Trade.* The chapter establishes a committee to strengthen collaboration and facilitate trade between the Parties, including a commitment to engage the public in work of the TBT Committee.

#### CHAPTER TWELVE: SECTORAL ANNEXES

Chapter Twelve is comprised of six sectoral annexes containing provisions covering chemical substances, cosmetic products, information and communication technology, energy performance standards, medical devices, and pharmaceuticals.

*Chemical Substances Annex.* This annex contains provisions to enhance regulatory compatibility and data and information exchange between the three Parties, while recognizing the regulatory authority of each Party. This annex commits the Parties to make efforts to align risk assessment methodologies and risk management measures for chemical substances. Moreover, the annex recognizes the importance of minimizing unnecessary economic barriers or impediments to technological innovation and Parties 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.

*Cosmetic Products Annex.* This annex contains provisions to enhance regulatory compatibility in the cosmetics sector. In this annex, the Parties commit to a risk-based approach for cosmetics and further agreed to not require marketing authorization for a cosmetic product unless there is a human health or safety concern. The Parties also agree 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 annex also requires the Parties to share post-market surveillance information of cosmetics products, where appropriate.

*Information and Communication Technology (ICT) Annex.* This annex contains provisions on regional cooperation activities on telecommunication equipment. 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 annex also includes obligations to protect innovation of encryption products to meet consumer and business demand for product features that protect privacy and security, while also allowing law enforcement access to communications consistent with applicable law.

*Energy Efficiency Performance Standards (EPS) Annex.* This annex contains provisions to enhance regulatory compatibility on EPS. Provisions in this annex aim 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 establish a mechanism for continued regulatory cooperation on EPS.

*Medical Devices Annex.* This annex contains provisions to enhance regulatory compatibility for medical devices. Provisions commit the Parties to follow a risk-based approach for the classification of medical devices, specifically to administer marketing authorization procedures to ensure timely, transparent, impartial, and science-based decision making for medical device approvals. This annex contains commitments that each Party will base its respective marketing authorization decision only on safety and efficacy of the product and not on unrelated factors, such as sales, pricing, or financial data, and to maintain an appeal process. 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.

*Pharmaceuticals Annex.* This annex contains provisions to enhance regulatory compatibility for the pharmaceutical sector. Provisions commit the Parties to administer marketing authorization procedures to ensure timely, transparent, impartial, and science-based decision making for pharmaceutical approvals. This annex also contains commitments that each Party will base its respective marketing authorization decision only on safety and efficacy of the product and not on unrelated factors, such as sales, pricing, or financial data, and to maintain an appeal process.

This annex 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.

#### CHAPTER THIRTEEN: GOVERNMENT PROCUREMENT

Chapter Thirteen and its annexes contain government procurement provisions applicable to the United States and Mexico only. The chapter specifies covered procurement measures as well as activities not covered under the Agreement. Under this chapter, the United States and Mexico must apply fair and transparent procurement procedures and rules. This chapter also contains provisions clarifying that technical specifications and conditions for participation in tenders can be used to promote the conservation of natural resources, protection of the environment, or can be designed to promote compliance with laws regarding international labor rights, as long as they are otherwise consistent with the Agreement and provided the conditions do not constitute a disguised barrier to trade.

*General Principles.* Chapter Thirteen establishes a basic rule of "national treatment" meaning that the United States and Mexico must treat goods, services, and suppliers of such goods and services from the other Party in a manner that is "no less favorable" than their domestic counterparts. The chapter provides incentives for putting information about procurement systems online; for electronic publishing of notices; and for permissible reductions in time periods when using electronic procurement methods.

*Support for Small Businesses.* The chapter contains provisions to facilitate small business participation in procurement, including by

encouraging that, to the extent possible and appropriate, Mexico and the United States make tender documentation free of charge and consider how to better structure procurements to help small businesses compete, among other things.

*Transparency.* 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.

#### CHAPTER FOURTEEN: INVESTMENT

Chapter Fourteen establishes rules to protect investors from one Party against wrongful or discriminatory government actions when they invest or attempt to invest in another Party's territory.

*Key Concepts.* Under this chapter, the term "investment" covers all forms of investment, including enterprises, securities, certain forms of debt, intellectual property rights, licenses, and certain contracts. The chapter covers both investments existing when the Agreement enters into force, and future investments. The term "investor of a Party" encompasses U.S., Canadian, and Mexican nationals as well as firms (including branches) established in one of the Parties.

*General Principles.* 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. In the event of an investment dispute, each Party can seek remedies for breach of these rules in State-to-State dispute settlement procedures.

*Sectoral Coverage and Non-Conforming Measures.* With the exception of investments in or by regulated financial institutions, Chapter Fourteen generally applies to all sectors, including service sectors. However, each Party negotiated a limited list of exemptions from the chapter's obligations relating to national treatment, most-favored nation (MFN) treatment, performance requirements, or senior management and boards and directors as "non-conforming measures." Annex I contains each Party's list of existing non-conforming measures at the central and regional levels of government. The United States has scheduled an exemption from all of the aforementioned obligations for all existing state measures. All existing local measures are exempt from those obligations for all Parties without the need to be listed. In Annex II, each Party has listed sectors or activities in which it reserves the right to adopt or maintain future non-conforming measures. Annexes I and II also include exemptions from Chapter Fifteen (Cross Border Trade in Services).

*Investor-State Dispute Settlement (ISDS).* 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 dis-

crimination and direct expropriation. In certain sectors-such as oil and gas, telecommunications, and certain 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. ISDS with Canada will be phased out over three years, but State-to State remedies will remain between the United States and Canada.

#### CHAPTER FIFTEEN: CROSS-BORDER TRADE IN SERVICES

Chapter Fifteen governs measures affecting cross-border trade in services between the Parties. Certain provisions also apply to measures affecting investments to supply 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. This chapter also 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 to enhance commercial opportunities for small and medium-sized businesses. 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. National treatment, MFN treatment, market access, and local presence obligations do not apply to non-conforming measures as set out by the Parties in their respective Schedules to Annexes I and II.

Chapter Fifteen also contains an annex requiring that Canada eliminate its rule prohibiting simultaneous substitution of advertising for the Super Bowl, and will increase access for teleshopping broadcasters. Additional annexes provide the basis for ongoing work in professional services and transportation services, and a new set of disciplines for delivery services.

#### CHAPTER SIXTEEN: TEMPORARY ENTRY

Chapter Sixteen permits temporary entry for professionals and businesspeople seeking to engage in certain activities in the territory of another Party. These commitments, included in the NAFTA, 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. Annexes to this chapter include provisions on Parties' measures applicable to temporary entry and define business activities and professionals eligible for temporary entry into a Party. This chapter maintains the same treatment provided under the NAFTA.

#### CHAPTER SEVENTEEN: FINANCIAL SERVICES

Chapter Seventeen and its annexes include commitments to liberalize financial services markets and create a level playing field for financial institutions, investors and investments in financial institutions, and cross-border trade in financial services.

The chapter includes core obligations, such as national treatment, to ensure that a Party does not discriminate against financial service suppliers of another Party. It also contains market access provisions that prohibit a Party from imposing certain quantitative or numerical restrictions on financial services. A separate annex contains commitments of the Parties relating to cross-border trade, including an expanded list of cross-border services, such as portfolio management, investment advice, and electronic payment services. Additionally, provisions in this chapter create enhanced transparency obligations for regulatory licensing and other market access authorizations.

Notably, this chapter includes a key prohibition on local data storage requirements where the financial regulator has immediate and ongoing access to data that it needs to fulfill its regulatory and supervisory mandate.

Chapter Seventeen also contains specific procedures related to ISDS claims with Mexico, including provisions regarding the level of expertise required for arbitrators and a special procedural mechanism to facilitate the application of the prudential and other exceptions.

#### CHAPTER EIGHTEEN: TELECOMMUNICATIONS

Chapter Eighteen and its annexes include disciplines on regulatory measures affecting telecommunications trade and investment between the Parties. It includes rules to promote effective competition in the telecommunications sector, provide access to the networks of other suppliers, and ensure that regulation of the sector is independent, impartial, and transparent.

This chapter includes provisions to address competition in the supply of fixed and mobile telecommunications services. For Internet of Things devices, this chapter includes new rules to ensure that countries will not prohibit roaming arrangements that are often used to support advanced functionality of such devices. 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 regard to international mobile roaming.

*Transparency.* In this chapter, the Parties commit to ensure that their respective telecommunications regulatory body is independent from and impartial to their suppliers of public telecommunications services, and to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, designed to encourage adherence to principles of deregulation and technological neutrality. The chapter also includes transparency commitments for licensing processes.

#### CHAPTER NINETEEN: DIGITAL TRADE

Chapter Nineteen contains robust disciplines on digital trade, providing a firm foundation for the expansion of trade and investment in innovative products and services. This chapter includes provisions that prohibit the application of customs duties and other discriminatory measures to digital products distributed electroni-

cally (e-books, videos, music, software, games, etc.). It also ensures that data can be transferred cross-border, and that limits on where data can be stored and processed are minimized. Additional provisions in the chapter ensure that suppliers are not restricted in their use of electronic authentication or electronic signatures, and guarantee that enforceable consumer protections, including for privacy and unsolicited communications, apply to the digital marketplace. The chapter also limits Internet platform's civil liability with respect to third-party content that such platforms host or process, except regarding intellectual property enforcement.

Chapter Nineteen also promotes open access to government-generated public data, and collaboration in addressing cybersecurity challenges, while seeking to promote industry best practices with respect to network security. Additional provisions limit governments' ability to require disclosure of proprietary computer source code and algorithms, to better protect the competitiveness of digital suppliers.

#### CHAPTER TWENTY: INTELLECTUAL PROPERTY RIGHTS

Chapter Twenty complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law. This chapter requires the Parties to extend full national treatment for copyright and related rights, ensuring the same protections for creators of another Party that its domestic creators receive. It also contains provisions to ensure transparency. With respect to a Party's laws, regulations, procedures, and administrative rulings concerning the protection and enforcement of intellectual property rights, including requirements to publish information online. The chapter also contains strong standards for industrial design protection, requiring a minimum term of protection for industrial designs of at least 15 years.

*Public Health.* This chapter includes provisions permitting a Party to adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their development, provided that those measures are consistent with the provisions of this chapter.

*Trademarks and Geographical Indicators (GIs).* Chapter Twenty contains provisions for protecting trademarks, including well-known marks. In addition, it includes rules relating to electronic trademarks systems, a classification system that is consistent with international standards, and systems to protect against "trademark squatting" with respect to a country-code top-level domain name. Chapter Twenty also provides important procedural safeguards for recognition of new GIs, including strong standards for protection against issuances of GIs that would prevent producers from using common names, and establishes a mechanism for consultation between the Parties on future GIs pursuant to international agreements.

*Patents and Pharmaceuticals.* This chapter provides robust patent protection for innovators, enshrining patentability standards and patent office best practices to ensure that innovators, including small and medium-sized businesses, are able to protect their inventions with patents. The chapter also includes strong minimum standards for pharmaceutical and agricultural innovators, includ-

ing with respect to data protection. For the pharmaceutical sector, this chapter contains provisions requiring compensation of applicants for unreasonable marketing approval delays and requires the Parties to provide an effective mechanism for the early resolution of potential patent disputes.

*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. Provisions also establish appropriate copyright safe harbors to provide protection for IP and predictability for legitimate enterprises that do not directly benefit from the infringement.

*Trade Secrets.* The chapter includes all of the following protections against misappropriation of trade secrets, including by state-owned enterprises: civil procedures and remedies, criminal procedures and penalties, prohibitions against impeding licensing of trade secrets, judicial procedures to prevent disclosure of trade secrets during the litigation process, and penalties for government officials for the unauthorized disclosure of trade secrets. It also establishes strong standards of protection of trade secrets against misappropriation.

*Enforcement Provisions.* Chapter Twenty contains robust intellectual property rights enforcement mechanisms, including provisions that require *ex officio* authority for border enforcement officials to stop suspected counterfeit or pirated goods at every phase of entering, exiting, and transiting through the territory of any Party; express recognition that IP enforcement procedures must be available for the digital environment for trademark and copyright or related rights infringement; meaningful criminal procedures and penalties for unauthorized camcording of movies; civil and criminal penalties for satellite and cable signal theft; and broad protection against trade secret theft, including by state-owned enterprises.

#### CHAPTER TWENTY-ONE: COMPETITION POLICY

Chapter Twenty-One includes provisions on national competition laws to promote competition. The Parties recognize 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.

The Parties agree to obligations providing increased procedural fairness and competition law enforcement. This provides 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 chapter also 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 affecting the Party's territory or commerce.

The chapter includes cooperation and transparency provisions related to competition policies and the enforcement of national competition laws, including coordination of investigations between national authorities, when warranted.



CHAPTER TWENTY-TWO: STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Chapter Twenty-Two and its annexes apply to the activities of state-owned enterprises (SOEs), state enterprises, and designated monopolies of a Party that affect or could affect trade or investment between Parties of the USMCA. The chapter contains a broad definition of what constitutes an SOE to ensure that any government ownership of an entity that confers control is captured.

The chapter prohibits certain subsidies to SOEs that are particularly trade-distorting. Specifically, it prohibits three types of subsidies: (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) noncommercial SOE debt-to-equity swaps by the government or government entities. 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.

*Non-Conforming Activities.* In Annex *N*, each Party negotiated a limited list of exemptions from the Chapter's obligations relating to non-commercial assistance and non-discriminatory treatment and commercial considerations as "non-conforming activities."

*Application to Sub-Central Entities.* In Annex 22.D, each Party indicates the extent to which the obligations in the chapter do not apply to enterprises owned or controlled by sub-central governments. In Annex 22.C, Parties agree to commence negotiations on coverage of sub-central entities within six months of entry into force of the Agreement.

CHAPTER TWENTY-THREE: LABOR

Chapter Twenty-Three sets out the Parties' commitments and undertakings regarding trade-related labor rights. USMCA's labor provisions are in the core of the Agreement and subject to the same dispute settlement mechanism as other chapters.

The chapter requires the Parties to adopt and maintain labor rights in law and practice as recognized by the International Labor Organization, to effectively enforce their labor laws, and not to waive or derogate from their labor laws.

The chapter includes provisions requiring Parties to prohibit the importation of goods produced by forced labor, to address violence against workers exercising their labor rights, and to ensure that migrant workers are protected under labor laws. It provides procedural guarantees for the 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.

*Annex on Worker Representation in Collective Bargaining in Mexico.* This annex 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. On May 1, 2019, Mexico approved comprehensive labor reform legislation to implement the requirements of this Annex.

#### CHAPTER TWENTY-FOUR: ENVIRONMENT

Chapter Twenty-Four and its annexes set out the Parties' commitments and undertakings regarding environmental protections. These provisions are subject to the same dispute settlement mechanism as other chapters.

The chapter includes obligations to combat trafficking in wildlife, timber, and fish, including by enhancing the effectiveness of customs inspections and strengthening law enforcement networks to stem such trafficking. The Parties agreed to affirm their existing and future commitments under listed Multilateral Environmental Agreements. The Parties also agree 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. The chapter 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 chapter also includes public participation provisions, including a streamlined mechanism for public submissions asserting a failure by one or more Parties to effectively enforce their environmental laws.

*Agreement on Environmental Cooperation.* The Parties also agree to support implementation of the chapter's commitments by continuing their longstanding history of environmental cooperation under a modernized Commission for Environmental Cooperation, as outlined in the new Agreement on Environmental Cooperation (ECA) among the Governments of the United States of America, the United Mexican States, and Canada. The ECA will take effect upon entry into force of the USMCA and provide a platform for environmental cooperation in such areas as environmental governance, pollution, conservation of biological diversity, and sustainable management of natural resources.

#### CHAPTER TWENTY-FIVE: SMALL AND MEDIUM-SIZED ENTERPRISES

Chapter Twenty-Five includes provisions to promote cooperation between the Parties to enhance commercial opportunities for Small and Medium-Sized Enterprises (SMEs). This new chapter recognizes the fundamental role of SMEs in maintaining dynamism and competitiveness in the economies of each Party. It aims to promote 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.

*SME Dialogue.* 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 SME 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. The chapter also highlights provisions across the Agreement that benefit SMEs.

#### CHAPTER TWENTY-SIX: COMPETITIVENESS

Chapter Twenty-Six establishes a Committee on Competitiveness that will discuss and develop cooperative activities to promote regional economic growth in North America and facilitate regional trade and investment.

#### CHAPTER TWENTY-SEVEN: ANTICORRUPTION

Chapter Twenty-Seven contains disciplines to prevent and combat bribery and corruption in international trade. It 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. Provisions in the chapter require Parties to provide appropriate sanctions for violations of anticorruption laws; disallow the tax deductibility of bribes; require companies to maintain accurate books and records; and to establish codes of conduct and develop other tools to promote high ethical standards among government officials. The chapter also provides notable whistleblower protections.

The chapter also includes provisions that promote honesty and integrity among public officials and encourage Parties to take appropriate measures to engage civil society and the private sector. Finally, the chapter provides for strong cooperation among the Parties in the enforcement of anticorruption laws.

#### CHAPTER TWENTY-EIGHT: GOOD REGULATORY PRACTICES

Chapter Twenty-Eight sets out specific obligations with respect to good regulatory practices, that is, good governance procedures that governments apply to promote transparency and accountability when developing and implementing regulations. The chapter makes clear that no provision prevents governments from pursuing public policy objectives with respect to health, safety, or the environment. Provisions in this chapter relate to the planning, design, issuance, implementation, and review of the Parties' respective regulations concerning trade in goods, services, and investment.

This 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.

This chapter also includes extensive transparency requirements to publish key information online, including draft regulations (notice and comment) and final regulations, 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.

Finally, the chapter includes provisions on expert advisory groups, information quality, and 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. The chapter also contains a non-comprehensive list of useful alignment practices that support regulatory compatibility and cooperation.

#### CHAPTER TWENTY-NINE: PUBLICATION AND ADMINISTRATION

Chapter Twenty-Nine 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.

#### CHAPTER THIRTY: ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Chapter Thirty establishes a Free Trade Commission ("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.

#### CHAPTER THIRTY-ONE: DISPUTE SETTLEMENT

Chapter Thirty-One sets out detailed procedures for the resolution of disputes between the Parties for any matter arising under the Agreement (with only a few exceptions). The chapter provides for a two-step process comprising consultations and review by a panel. The disputing Parties shall file all documents relating to the dispute electronically. Chapter procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (e.g., the WTO agreements), the

complaining government may choose a forum for resolving the matter that is set forth in any valid agreement between the Parties. The selected forum will be the exclusive venue for resolving the dispute.

*Consultations.* A Party may request consultations with another Party on an actual or proposed measure that it believes to be inconsistent with obligations of the Agreement. If the Parties fail to resolve the issue within a certain time period, the complaining Party may request establishment of a panel.

*Panel Procedures.* Parties agree to maintain a roster of panelists to objectively assess the dispute. 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.

*Suspension of Benefits.* 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.

The chapter also provides for a Facility-Specific, Rapid Response Labor Mechanism to ensure remediation of a denial of rights, as defined in the chapter.

#### CHAPTER THIRTY-TWO: EXCEPTIONS AND GENERAL PROVISIONS

Chapter Thirty-Two provides for the following exceptions and provisions that apply Agreement-wide or to various chapters.

*General Exceptions.* Chapter Thirty-Two incorporates the GATT Article XX exceptions with respect to goods-related obligations and OATS Article XIV exceptions with respect to services-related obligations.

*Essential Security.* This chapter provides for a self-judging Agreement-wide exception for actions a Party considers to be in its essential security interest.

*Taxation Measures.* This chapter circumscribes the obligations that apply with respect to a Party's taxation measures.

*Temporary Safeguard Measures.* Chapter Thirty-Two 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.* This chapter 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.* This chapter 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.* This chapter 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.* This chapter 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, this chapter 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 Free Trade Agreement (FTA).* This chapter 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. It 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. A 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 signed free trade agreement.

*Specific Provision for Mexico.* This provision 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.

#### CHAPTER THIRTY-THREE: MACROECONOMIC POLICIES AND EXCHANGE RATE MATTERS

Chapter Thirty-Three includes policy commitments to achieve and maintain market-driven exchange rates and refrain from competitive devaluations to gain an unfair trade advantage. The chapter also contains transparency and reporting requirements on intervention and foreign exchange reserves, which reinforce accountability by providing rapid information to assess whether commit-

ments are being met. Key obligations in the chapter are subject to dispute settlement. The chapter also creates a Macroeconomic Committee to monitor implementation.

#### CHAPTER THIRTY-FOUR: FINAL PROVISIONS

Chapter Thirty-Four contains provisions regarding the transition from NAFTA 1994, amendments to the Agreement, the languages in which the Agreement is authentic, withdrawal, and entry into force.

*Review and Term Extension.* Chapter Thirty-Four 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 six years.

#### E. GENERAL DESCRIPTION OF THE BILL TO IMPLEMENT THE AGREEMENT

##### *Sec. 1. Short Title and Table of Contents*

This section contains the short title of the Act, which may be cited as the “United States-Mexico-Canada Agreement Implementation Act.” It also sets forth the table of contents for the bill.

##### *Sec. 2. Definitions*

This section defines various terms used throughout the bill, including “appropriate congressional committee,” “HTS,” “identical goods,” “NAFTA,” “preferential tariff treatment,” “USMCA,” “USMCA Country,” “International Trade Commission,” and “Trade Representative.”

#### TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE USMCA

##### *Sec. 101: Approval and Entry Into Force of the USMCA*

In Section 101(a), Congress approves the Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada, the USMCA attached as an Annex to the Protocol, as amended by the Protocol of Amendment to the Agreement between the United States of America, the United Mexican States, and Canada, and the Statement of Administrative Action.

Section 101(b) provides for the USMCA to enter into force with respect to Canada and Mexico not earlier than 30 days after the date on which the President submits to Congress the written notice required by section 106(a)(1)(G) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA 2015). The notice must include the date on which the USMCA will enter into force.

*Sec. 102: Relationship of the USMCA to United States and State Law*

Section 102(a) provides that U.S. law prevails in the case of a conflict with the USMCA.

Section 102(b) provides that no state law or its application can be declared invalid on the ground that it is inconsistent with USMCA other than the United States.

Section 102(c) states that no person other than the United States shall have any cause of action or defense under the USMCA or may challenge any action brought under any provision of law that the action or inaction of an instrumentality of the United States is inconsistent with the USMCA.

*Sec. 103: Implementing Actions in Anticipation of Entry Into Force; Initial Regulations; Tariff Proclamation Authority*

Section 103(a) provides the President may proclaim such actions, and other U.S. Government officers may issue such regulations, as are necessary to ensure the appropriate implementation of any provision of the legislation that is to take effect on the date of entry into force of the Agreement. The effective date of such actions and regulations may not be earlier than the date of entry into force of the USMCA. Where proclaimed actions are not subject to consultation and layover requirements under the bill, proclamations generally may not take effect earlier than 15 days after their publication.

Section 103(b) provides that initial regulations necessary or appropriate to carry out actions under the bill and Statement of Administrative Action must, to the maximum extent feasible, be issued within one year of entry into force of the USMCA or, where a provision takes effect on a later date, within one year of the effective date of the provision.

Section 103(c) authorizes the President to proclaim:

- modifications or continuations of any duty; (ii) continuation of duty-free or excise treatment; or (iii) additional duties that the President determines to be necessary or appropriate to carry out or apply USMCA;
- subject to the consultation and layover provisions in Section 104, such modifications or continuations of any duty or duty-free or excise treatment as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions provided for the USMCA; and
- rules of origin to implement the USMCA

Section 103(c) also provides that in implementing the tariff-rate quotas set forth in the Schedule of the United States to Annex 2-B of the USMCA, the President shall take such actions as may be necessary to ensure that imports of agricultural goods do not disrupt the orderly marketing of agricultural goods in the United States.

The Committee expects robust consultation regarding the use of proclamation authority to implement this agreement, both on tariff and non-tariff issues.



*Sec. 104: Consultation and Layover Provisions for, and Effective Date of, Proclaimed Actions*

Section 104 establishes requirements for the proclamation of actions that are subject to consultation and layover provisions under the Act. Specifically, the President may proclaim such action only after: (1) obtaining advice from the appropriate private sector advisory committees and the USITC, which shall hold a public hearing on the proposed action before providing advice regarding the proposed action; (2) submitting a report to the appropriate congressional committees concerning the reasons for the action; and (3) providing a 60-day layover period (starting after the President has both obtained the required advice and provided the required report). The proposed action cannot take effect until after the expiration of the 60-day period and after the President has consulted with the appropriate congressional committees regarding the proposed action.

*Sec. 105: Administration of Dispute Settlement Proceedings*

Section 105(a) authorizes the President to establish or designate within the U.S. Department of Commerce a United States Section of the Secretariat established under Chapter 30 of the USMCA. This section also provides that the U.S. Section of the Secretariat is not subject to the Freedom of Information Act.

Section 105(b) authorizes \$2 million to the Department of Commerce for each fiscal year after fiscal year 2020 for the establishment and operations of the section and for payment of the U.S. share of expenses of panels established under Chapter 31 of the USMCA, including under Annex 31–A relating to the Facility-Specific Rapid Response Labor Mechanism, binational panels and extraordinary challenge committees convened under NAFTA for matters covered by Article 34.1 of the USMCA. The provision also provides for the reimbursement of expenses incurred in dispute settlement proceedings under Chapter 10 of the USMCA, Chapter 31 of USMCA, or under Chapter 19 of NAFTA if the Canadian or Mexican Section of the Secretariat provides funds to the U.S. Section during any fiscal year as reimbursement for their expenses in connection with dispute settlement proceedings.

*Sec. 106: Trade Representative Authority*

Section 106 provides that if a USMCA country does not enact implementing legislation, the Trade Representative is authorized to enter into negotiations with the other country that has signed the USMCA to consider how the applicable provisions of the USMCA can come into force.

*Sec. 107: Effective Date*

Section 107 provides that sections 1 through 3 of Title 1 (other than section 103(c)) shall take effect on the date of the enactment of the USMCA Implementation Act. Section 103(c) shall take effect on the date on which the USMCA enters into force.

## TITLE II—CUSTOMS PROVISIONS

*Sec. 201: Exclusion of Originating Goods of USMCA Countries From Special Agriculture Safeguard Authority*

Section 201 amends the Uruguay Round Agreements Act to implement an exclusion of originating goods of USMCA from special agricultural safeguard authority.

*Sec. 202: Rules of Origin*

Section 202 implements the rules of origin set out in Chapter 4 of the USMCA.

Section 202(a) contains 31 definitions for the terms used in this section. Among the terms that are defined are “Aquaculture,” “Customs Valuation Agreement,” “Fungible Good or Fungible Material,” “Transaction Value,” and “Value.”

Section 202(b) explains the application and interpretation of this section, such as indication that “tariff classification” means the basis for any tariff classification in the HTS.

Section 202(c) establishes how a good from Canada or Mexico may qualify as an “originating good” and therefore be eligible for preferential tariff treatment when it is imported into the United States.

*Sec. 202A: Special Rules for Automotive Goods*

Section 202A of S. 3052 implements the specific provisions related to the rules of origin for automotive goods in the Appendix to Annex 4–B of the USMCA.

Section 202A(a) defines the following terms used in this section: “Alternative Staging Regime Period,” “Automotive Appendix,” “Automotive Good,” “Automotive Rules of Origin,” “Commission,” “Covered Vehicle,” “Interagency Committee,” “Passenger Vehicle, Light Truck, Heavy Truck,” and “USMCA Country.”

Section 202A(b) directs the President not later than 30 days after the enactment of the bill to establish an interagency committee led by the Trade Representative with participation by other relevant agencies, including the United States Department of Commerce, Customs and Border Protection, the Department of Labor, the International Trade Commission, and any other members determined to be necessary by the Trade Representative to provide advice on the implementation, enforcement, and modification of the automotive rules of origin. Additionally, the interagency committee will review the operation of the agreement with respect to trade in automotive goods, including the economic effects of the rules on the U.S. economy, workers, and consumers, and the impact of new technology on such rules of origin.

Section 202A(c) lays out the certification requirements for the new labor value content and steel and aluminum purchase rules for producers of passenger vehicles, light trucks, and heavy trucks. Article 6 of the Appendix to Annex 4–B of USMCA includes requirements that at least 70 percent of a vehicle producer’s purchases of steel by value and at least 70 percent of a vehicle producer’s purchases of aluminum by value are of originating goods. Article 7 of the Appendix requires that vehicle producers source a certain share of content from North American plants or facilities that on average pay direct production workers at least \$16 per hour, known as the

labor value content requirement. Section 202A(c) also requires the Secretary of the Treasury, in consultation with the Secretary of Labor, to prescribe regulations to carry out this subsection.

Section 202A(d) requires the Trade Representative, in consultation with the interagency committee established in section 202A(b), to publish the requirements for producers of covered vehicles to request a transition to meet the USMCA requirements under an alternative staging regime, as described in Article 8 of the Appendix to Annex 4–B of the USMCA. The Trade Representative will request a detailed and credible plan which describes the actions the producer intends to take to bring production of the passenger vehicles or light trucks into compliance with the requirements<sup>11</sup> set forth in USMCA from a producer that seeks to use the alternative staging regime for more than 10 percent of the producer’s total production of passenger vehicles or light trucks in USMCA countries.

Per subsection (d), the Trade Representative shall issue that determination to each producer in writing not later than 120 days after receiving a request of a producer for the alternative staging regime. The Trade Representative shall maintain a public list of the producers whose covered vehicles have been authorized to use the alternative staging regime, and provide the appropriate congressional committees with a summary of requests for the alternative staging regime. The remainder of the section addresses modification of alternative staging plans and treatment of producers unable to meet the requirements of the alternative staging regime.

Section 202A(e) permits the Secretary of the Treasury, in conjunction with the Secretary of Labor, to conduct a verification of whether a covered vehicle complies with the labor value content requirements. This subsection also includes protections for individuals who disclose or cooperate with a federal agency with respect to a verification. Importers may not request accelerated disposition of any protests regarding decisions by Customs and Border Protection regarding labor value content requirements.

Section 202(f) authorizes the Secretary of Labor to establish or designate an office within the Department of Labor to carry out the provisions of this section for which the Department is responsible.

Section 202A(g) requires the Trade Representative, in consultation with the interagency committee, to conduct a biennial review of the operation of the USMCA with respect to trade in automotive goods to ensure the Agreement’s provisions remain relevant in light of new technology and changes in the content, production processes, and character of automotive goods. In addition, the USITC shall submit to Congress a report on the economic effects of the automotive rules of origin on the U.S. economy. Finally, the Comptroller General of the United States shall submit to the congressional committees a report assessing the effectiveness of the interagency coordination on the implementation, enforcement, and verification of the automotive rules of origin. For all of these reports, subsection (g) requires that the relevant agency solicit information from the public, allow for the public to submit comments, and to make the reports publicly available on the internet.

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<sup>11</sup> See Articles 2 through 7 of the Appendix to Annex 4–B of the USMCA.

*Sec. 203: Merchandise Processing Fee*

Section 203 eliminates the Merchandise Processing Fee on originating goods from USMCA countries.

*Sec. 204: Disclosure of Incorrect Information; False Certifications of Origin; Denial of Preferential Treatment*

Section 204 prohibits the imposition of a penalty upon importers who make an invalid claim for preferential tariff treatment under the agreement if the importer acts promptly and voluntarily to correct the error and pays any duties owed. The section also makes it unlawful for a person to certify falsely, by fraud, gross negligence, or negligence that a good exported from the United States is an originating good.

*Sec. 205: Reliquidation of Entries*

Section 205 ensures that Customs and Border Protection is authorized to reliquidate an entry to refund any excess duties paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation if the importer so requests, within one year after the date of importation.

*Sec. 206: Recordkeeping Requirements*

Section 206(a) amends section 508 of the Tariff Act of 1930 by defining the terms “USMCA; USMCA country” and “USMCA certification of origin”; provides that a U.S. exporter or producer that issues a USMCA certification of origin must make, keep, and, if requested, render for examination and inspection a copy of the certification and such records and supporting documents; and, requires that the exporter or producer keep these records and supporting documents for five years from the date it issues the certification.

Section 206(b) provides that the amendments take effect on the date on which the USMCA enters into force and apply with respect to a good entered, or exported from the United States, on or after that date. Section 206 also provides that goods entered or exported from the United States before the USMCA enters into force will be provided NAFTA treatment.

*Sec. 207: Actions Regarding Verification of Claims Under the USMCA*

Sections 207(a) through (c) provide that the Secretary of Treasury may conduct a verification of whether a good is an originating good under Section 202 or 202A of the bill, and describe the determination and actions that may be taken in response. These subsections also provide that if the Secretary of Treasury conducts a verification, the President may direct the Secretary to release the good only upon payment of duties of security and, deny or withhold preferential tariff treatment in the case of certain determinations.

Section 207(d) provides that the Secretary shall interpret the requirements of this section in a manner to avoid and prevent circumvention of USMCA’s requirements.

*Sec. 208: Drawback*

This section has been transferred from section 203 of the NAFTA Implementation Act to the USMCA Implementation Act by operation of Section 501 of the USMCA Implementation Act.

*Sec. 209: Other Amendments to the Tariff Act of 1930*

Section 209 makes conforming amendments to sections 304, 509, and 628 of the Tariff Act of 1930 concerning the country of origin marking and the examination of books and witnesses. It also amends section 628 of the Tariff Act of 1930 by authorizing Customs and Border Protection to exchange information with any government agency of a USMCA country.

The amendments take effect on the date on which the USMCA enters into force and apply with respect to a good entered, or exported from the United States, on or after that date. Section 209 also provides that goods entered or exported from the United States before the USMCA enters into force will be provided NAFTA treatment.

*Sec. 210: Regulations*

Section 210 directs the Secretary of Treasury to prescribe regulations necessary to carry out the provisions of Title II, except with respect to the labor value content determinations under section 202A, which will be prescribed by the Secretary of Labor.

## TITLE III—APPLICATION OF USMCA TO SECTORS AND SERVICES

## SUBTITLE A—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

This subtitle has been transferred from section 311 of the NAFTA Implementation Act to the USMCA Implementation Act by operation of section 502 of the USMCA Implementation Act.

## SUBTITLE B—TEMPORARY ENTRY OF BUSINESS PERSONS

This subtitle has been transferred from section 341 of the NAFTA Implementation Act to the USMCA Implementation Act by operation of section 503 of the USMCA Implementation Act.

SUBTITLE C—UNITED STATES-MEXICO CROSS-BORDER LONG-HAUL  
TRUCKING SERVICES

This subtitle creates a mechanism to address material harm to the U.S. long-haul trucking industry on account of increased competition from Mexican operators.

*Sec. 321: Definitions*

Section 321 defines 14 terms that are used in this subtitle, including “Border Commercial Zone,” “Cargo Originating in Mexico,” “Change in Circumstances,” and “Commercial Motor Vehicle.”

*Sec. 322: Investigations and Determinations by Commission*

Section 322(a) provides that upon filing of a petition by an interested party, or at the request of the President or the Trade Representative, or upon the resolution of the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, the USITC shall initiate an investigation. The

investigation will consider whether there is material harm or a threat thereof on account of (1) a request by a person of Mexico to receive a grant of authority that is pending as of the date of the filing of the petition; (2) a person of Mexico who has received a grant of authority on or after the date of entry into force of the USMCA and retains such grant of authority; or (3) a person of Mexico who has received a grant of authority before the date of entry into force of the USMCA and retains such grant of authority because there has been a change in circumstances.

Section 322(b) and (c) concern respectively the USITC's transmission of the petition to the Trade Representative and Secretary of Transportation, and the USITC's notice of the investigation and holding of a hearing.

Section 322(d) establishes the factors that the USITC will consider in making its determination, including the volume and tonnage of merchandise transported and working conditions.

Section 322(e) provides that the Secretary of Homeland Security will provide assistance at the request of the USITC, including on information regarding commercial motor vehicles entering or exiting the United States.

Section 322(f) provides that the USITC shall promulgate regulations to provide access to confidential business information under a protective order.

Section 322(g) provides that the USITC shall issue its determination in 120 days of initiation except in extraordinary cases, in which case the USITC shall have 150 days.

Section 322(h) provides that certain provisions in the Tariff Act of 1930 are to be utilized in the case of a divided vote by the USITC.

#### *Sec. 323: Commission Recommendations and Report*

Section 323 requires the USITC to issue a report within 60 days of making its determination under section 322. The report shall include an explanation of its determination and, if the determination is affirmative, recommendations for action to address the material harm. The report shall also include any additional and dissenting views. The USITC is required to promptly make the report public and to publish a summary in the Federal Register.

Under section 323(b), only those members of the USITC that agreed to the affirmative determination may vote on the recommendation.

#### *Sec. 324: Action by the President With Respect to Affirmative Determination*

If the President receives an affirmative determination, section 324 requires the President to issue an order to the Department of Transportation (DOT) directing the relief to be carried out. The order must be issued within 30 days of the date on which the President receives the USITC's report.

Section 324(b) provides that the President is not required to provide relief if the President determines that it is not in the national economic interest of the United States or it would cause serious harm to the national security of the United States.

Section 324(c) also provides for the type of relief that the President is authorized to provide. The President is authorized to deny

new grants of authority to provide cross-border trucking services, revoke, restrict, or limit existing grants of authority, and place a cap on the number of grants of authority issued on an annual basis.

Section 324(d) provides that the relief may not last longer than two years, but such relief can be extended for an additional four years if the USITC finds that an extension is necessary to remedy or prevent material harm. If the President determines that an extension is necessary, then the President may extend the relief for an additional four years.

*Sec. 325: Confidential Business Information*

Section 325 ensures that the USITC protects confidential business information that it receives during the course of any investigation.

*Sec. 326: Conforming Amendments*

Section 326 makes certain conforming amendments to provisions in Title 49 to ensure they do not limit DOT's ability to carry out the actions authorized by this subtitle.

*Sec. 327: Survey of Operating Authorities*

Section 327 requires DOT to conduct a survey of all existing and pending grants of operating authority to Mexican-domiciled motor carriers. DOT shall complete this report within 180 days of the date on which USMCA enters into force. The report shall be delivered to the Trade Representative, USITC, the Committee on Ways and Means, the Senate Finance Committee, the House Transportation and Infrastructure Committee, and the Senate Committee on Commerce, Science, and Transportation.

TITLE IV—ANTIDUMPING AND COUNTERVAILING DUTIES

SUBTITLE A—PREVENTING DUTY EVASION

*Sec. 401: Cooperation on Duty Evasion*

Section 401 provides that the Commissioner of Customs and Border Protection to take into consideration that Canada and Mexico are USMCA Parties for purposes of trade enforcement and compliance assessment activities relating to evasion of antidumping and countervailing duties

SUBTITLE B—DISPUTE SETTLEMENT

This subtitle has been transferred from sections 401–408 of the NAFTA Implementation Act to the USMCA Implementation Act by operation of section 504 of the USMCA Implementation Act.

SUBTITLE C—CONFORMING AMENDMENTS

Overview: Sections 421–424 make conforming amendments to the Tariff Act of 1930 related to judicial review in anti-dumping and countervailing duty cases, disclosure of proprietary information under protective orders, and the Court of International Trade. These amendments reflect that the binational panel system under Chapter 19 of NAFTA now operates through Chapter 10 of USMCA.

*Sec. 421: Judicial Review in Antidumping Duty and Countervailing Duty Cases*

Section 421 makes conforming changes to Section 516A of the Tariff Act of 1930.

*Sec. 422: Conforming Amendments to Other Provisions of the Tariff Act of 1930.*

Section 422 makes conforming changes to Section 777(f) of the Tariff Act of 1930.

*Sec. 423: Conforming Amendments to Title 28, United States Code*

Section 423 makes conforming changes to Chapter 95 of Title 28.

SUBTITLE D—GENERAL PROVISIONS

*Sec. 431: Effect of Termination of USMCA Country Status*

Section 431 provides that, on the date on which a country ceases to be a USMCA country, the provisions of Title IV of the USMCA Implementation Act will cease to have effect with respect to that country. Section 431 also provides that if on the date on which a country ceases to be a USMCA country (1) an investigation or enforcement proceeding concerning the violation of a protective order issued under section 7777(f) of the Tariff Act of 1930 or an undertaking of the government of that country is pending, the investigation or proceeding shall continue and sanctions may continue to be imposed; or (2) a binational panel or extraordinary review is pending or has been requested with respect to a determination that involves a class or kind of merchandise, such determination shall be reviewable and the time limits for commencing an action shall not begin to run until the date on which USMCA ceases to be in force with respect to that country.

*Sec. 432: Effective Date*

Section 432 shall take effect on the date that the USMCA enters into force but shall not apply to any final determination or any binational panel review under the NAFTA, or any extraordinary challenge arising out of any such review, that was commenced before the date on which the USMCA enters into force.

TITLE V—TRANSFER PROVISIONS AND OTHER AMENDMENTS

*Sec. 501: Drawback*

Section 501 transfers section 203 of the NAFTA Implementation Act to section 208 of the USMCA Implementation Act, and amends section 203 of the NAFTA Implementation Act to provide exceptions to the limitation on drawback implemented in the NAFTA for certain goods traded between the Parties to the Agreement.

*Sec. 502: Relief From Injury Caused by Import Competition*

Section 502 transfers section 311 of the NAFTA Implementation Act to subtitle A, title III of the USMCA Implementation Act and re-designates it as section 301 without substantive change.



*Sec. 503: Temporary Entry*

Section 503 transfers section 341 of the NAFTA Implementation Act to subtitle B, title III of the USMCA Implementation Act and re-designates it as section 311 without substantive change.

*Sec. 504: Dispute Settlement in Antidumping and Countervailing Duty Cases*

Section 504 transfers sections 401, 402, 403, 404, 405, 406, 407, and 408 of the NAFTA Implementation Act to subtitle B, title IV of the USMCA Implementation Act and re-designates them as sections 411, 412, 413, 414, 415, 416, 416, 417, and 418 without substantive change. Section 504(k)(1) also provides for an effective date that is the date on which the USMCA enters into force, and a transition period for antidumping and countervailing duty cases decided before USMCA enters into force and cases that are appealed to a binational NAFTA panel before the USMCA enters into force. In addition, Section 504(k)(2) provides that the relevant provisions in the NAFTA Implementation Act will continue to apply to such to cases.

*Sec. 505: Government Procurement*

Section 505(a) amends Section 301 of the Trade Act of 1974 to provide the President authority to modify discriminatory purchasing requirements.

Section 505(b) implements U.S. obligations under Chapter 13 of USMCA by amending the definition of “eligible product” in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that “eligible product” means a product or service of Mexico that is covered under the USMCA for procurement by the United States. This amended definition, coupled with the President’s exercise of his waiver authority under section 301(a) of the Trade Agreements Act, will allow U.S. government entities covered by the USMCA to purchase, on non-discriminatory terms, covered products and services from Mexico for procurements that fall above the thresholds established under the USMCA.

*Sec. 506: Action Affecting United States Cultural Industries*

Section 506 makes a conforming change to Section 182(f) of the Trade Act of 1974 to maintain the treatment provided to Canada regarding cultural industries once the USMCA enters into force by exempting certain measures adopted or maintained by Canada with respect to a cultural industry from a number of obligations under the USMCA. It also allows the United States or Mexico to take a measure of equivalent commercial effect in response.

*Sec. 507: Regulatory Treatment of Uranium Purchases*

Section 508 amends the Energy Policy Act of 1992 to strike the “North American Free Trade Agreement” and insert the “USMCA.”

*Sec. 508: Report on Amendments to Existing Law*

Section 508 requires the Trade Representative not less than 180 days after the bill’s enactment to provide a report setting forth any technical or conforming amendments to other laws that may be necessary to carry out the USMCA Implementation Act. The report

is submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

#### TITLE VI—TRANSITION TO AND EXTENSION OF USMCA

##### SUBTITLE A—TRANSITIONAL PROVISIONS

###### *Sec. 601: Repeal of the North American Implementation Act*

Section 601 repeals the NAFTA Implementation Act effective on the date on which the USMCA enters into force.

###### *Sec. 602: Continued Suspension of the United States-Canada Free Trade Agreement*

Section 602 continues the suspension of the U.S.-Canada Free Trade Agreement and provisions of the Canada-U.S. Free Trade Agreement Implementation Act.

##### SUBTITLE B—JOINT REVIEWS REGARDING EXTENSION OF THE USMCA

Overview: Article 34.7 of the USMCA provides a mechanism for the Parties to conduct a joint review of the Agreement on the sixth anniversary of its entry into force, and for annual reviews thereafter, if a Party does not confirm it wishes to extend the term of the Agreement at such joint review. Section 611 concerns U.S. participation in the joint review mechanism.

###### *Sec. 611: Participation in joint reviews with Canada and Mexico regarding extension of the term of the USMCA and other action regarding the USMCA*

Section 611(a) provides that the President shall consult with the appropriate congressional committees and stakeholders with respect to the Joint Review Mechanism.

Section 611(b) provides that at least 270 days prior to a joint review, the Trade Representative shall seek public comment and hold a hearing prior to participating in a joint review. At least 180 days prior to the joint review, the Trade Representative shall report to the appropriate congressional committees an assessment regarding the operation of USMCA, the precise recommendation to be proposed at the review, the position of the United States on whether to extend the term of USMCA, and whether any prior attempts have been made to resolve any concerns that underlie the U.S. recommendation or position.

Section 611(c)–(d) provides that the Trade Representative shall report and consult with the appropriate congressional committees after a lack of agreement on extending the term of USMCA or after a joint review has taken place.

Section 611(e) contains definitions for terms used in this section.

##### SUBTITLE C—TERMINATION OF THE USMCA

###### *Sec. 621: Termination of USMCA*

Section 621(a) provides that during any period in which a country ceases to be a USMCA country, the USMCA Implementation Act and any amendments made through the act shall cease to have effect with respect to that country.

Section 621(b) provides that on the date on which the USMCA ceases to be in force with respect to the United States, the USMCA

Implementation Act and any amendments made through the act shall cease to have effect.

#### TITLE VII—LABOR MONITORING AND ENFORCEMENT

Overview: This title includes provisions that cover the labor commitments in USMCA, including those secured in the Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada that was signed on December 10, 2019 in Mexico City.

##### *Sec. 701: Definitions*

Section 701 defines “labor attache,” “labor obligations,” and “Mexico’s labor reform.”

#### SUBTITLE A—INTERAGENCY LABOR COMMITTEE FOR MONITORING AND ENFORCEMENT

##### *Sec. 711: Interagency Labor Committee for Monitoring and Enforcement*

Section 711(a) requires the President to establish the Interagency Labor Committee for Monitoring and Enforcement (Interagency Labor Committee) within 90 days of the enactment of the USMCA Implementation Act. The Interagency Labor Committee will be responsible for monitoring compliance with the USMCA labor obligations, including the implementation of Mexico’s labor reforms, and requesting that the Trade Representative take enforcement actions.

Section 711(b) provides that the Interagency Labor Committee will be co-chaired by the Trade Representative and the Secretary of Labor, and shall include representatives from other agencies with relevant expertise.

Section 711(c) provides that the Interagency Labor Committee will meet once every 90 days for the five years following the enactment of the USMCA Implementation Act, and once every 180 days thereafter.

Section 711(d) provides that notwithstanding any other provision of law, the members of the Interagency Labor Committee may exchange information in order to carry out the title.

##### *Sec. 712: Duties*

Section 712 establishes that the Interagency Labor Committee’s duties include: coordinating the U.S. government’s monitoring of the USMCA labor obligations, establishing an ongoing dialogue with the Government of Mexico regarding Mexico’s implementation of labor reforms and compliance with USMCA, coordinating with the International Labor Organization and Government of Canada, and identifying priority capacity building activities in Mexico to be funded by the United States.

##### *Section 713: Enforcement Priorities*

Section 713 requires the Interagency Labor Committee to review the list of priority sectors under Annex 31–A of the USMCA, and to suggest additional sectors to USTR. The Interagency Labor Committee is also required to establish and annually update a list of priority subsectors for enforcement.

*Sec. 714: Assessments*

Section 714(a) requires the Interagency Labor Committee to complete biannual assessments of Mexico's compliance with the USMCA labor obligations in Annex 23–A. These assessments are for a 10-year period beginning on the date of the USMCA Implementation Act's enactment.

Section 714(b) provides that 5 years after USMCA Implementation Act's enactment, the Interagency Labor Committee may consult with the appropriate congressional committees and, with their approval, modify the frequency of assessments to an annual basis.

Section 714(c) provides that the assessments shall include a review regarding whether Mexico has provided adequate funding to enforce its labor reform, whether legal challenges to Mexico's labor reform have succeeded in Mexican courts, and whether Mexico has implemented various aspects of its reform consistent with the timeline announced by Mexico in a September 2019 policy statement.

*Sec. 715: Recommendation for Enforcement Action*

Section 715(a) requires the Interagency Labor Committee to recommend enforcements actions to the Trade Representative if it determines that a USMCA country has failed to meet its labor obligations.

Section 715(b) provides the Trade Representative must determine whether to initiate an enforcement action within 60 days of receiving a recommendation. If the Trade Representative's determination is negative, the Trade Representative is required to submit a report to the Committee on Ways and Means and the Senate Finance Committee regarding any negative determination.

*Sec. 716: Petition Process*

Section 716(a) provides that the Interagency Labor Committee shall establish procedures for submissions from the public regarding a failure to comply with the USMCA labor obligations.

Section 716(b) provides that if the Interagency Labor Committee receives a petition requesting an enforcement action under Annex 31–A, the Interagency Labor Committee shall determine whether there is sufficient, credible information to request an enforcement action. If its determination is negative, it shall certify this determination to the Committee on Ways and Means, the Senate Finance Committee, and the petitioner. If the Interagency Labor Committee's determination is affirmative, the Trade Representative is required within 60 days to make a determination regarding whether to request the establishment of a rapid response labor panel under Annex 31–A. If the Trade Representative's determination is negative, the Trade Representative is required to certify its determination and provide information regarding any remediation plan to the Ways and Means and Finance Committees.

Section 716(c) also establishes a petition process for allegations of non-compliance with the USMCA labor obligations not related to Annex 31–A.

*Sec. 717: Hotline*

Section 717 requires the Interagency Labor Committee to establish a web-based hotline to receive confidential information regarding labor issues among USMCA countries from interested parties.

*Sec. 718: Reports*

Section 718(a) requires the Interagency Labor Committee to submit a biannual report for the first five years after the USMCA Implementation Act is enacted. The report shall include a description of the Interagency Labor Committee's staffing and capacity building activities, Mexico's compliance with its labor reform, including budgetary commitments, a summary of petitions filed under section 716, the results of the Interagency Labor Committee's assessments under section 714, and any determinations made by the Independent Mexico Labor Expert Board.

Section 718(b) provides that five years after the bill's enactment, the Trade Representative and the Secretary of Labor shall consult with the Committee on Ways and Means and the Senate Finance Committee regarding whether the report could be submitted on an annual, instead of biannual, basis.

Section 718(c) requires the Interagency Labor Committee to complete a five-year comprehensive assessment of Mexico's implementation of its labor reform. The assessment shall include a strategic plan and recommendations regarding areas of concern for purposes of the joint review conducted pursuant to Article 34.7 of the USMCA.

*Sec. 719: Consultations on Appointment and Funding of Rapid Response Labor Panelists*

Section 719 requires the Interagency Labor Committee to consult with the Labor Advisory Committee, the Committee on Ways and Means, and the Senate Finance Committee regarding the selection of rapid response labor panelists under Annex 31-A. This section also requires the United States, in consultation with Mexico, to provide adequate funding for such panelists.

## SUBTITLE B—MEXICO LABOR ATTACHÉS

*Sec. 721: Establishment*

Section 721 requires the Secretary of Labor to hire five labor attachés that will be detailed or assigned to work on behalf of the U.S. government in Mexico.

*Sec. 722: Duties*

Section 722 establishes the duties for the labor attachés, which include assisting the Interagency Labor Committee in its monitoring efforts and submitting quarterly reports on Mexico's compliance with its labor obligations.

*Sec. 723: Status*

Section 723 provides that the labor attachés shall remain employees or officers of the United States for purposes of allowances, privileges, rights, seniority, and other benefits.

## SUBTITLE C—INDEPENDENT MEXICO LABOR EXPERT BOARD

*Sec. 731: Establishment*

Section 731 establishes the Independent Mexico Labor Expert Board (“Expert Board”), which is responsible for monitoring and evaluating Mexico’s compliance with its labor obligations and advising the Interagency Labor Committee regarding capacity building activities in Mexico.

*Sec. 732: Membership; Term*

Section 732(a) provides for the selection of the membership of the Expert Board (12 members). The Labor Advisory Committee will appoint four members. The Speaker, House Minority Leader, Senate Majority Leader, and Senate Minority Leader will each appoint two members.

Section 732(b) provides that the members of the Expert Board will serve an initial term of six years.

Section 732(c) provides that if a majority of the Expert Board determines that Mexico is not in full compliance with its labor obligation, the Expert Board’s term will extend for four years, and a new board will be selected in accordance with subsection (a).

*Sec. 733: Funding*

Section 733 requires the United States to provide necessary funding to support the work of the Expert Board.

*Sec. 734: Reports*

Section 734 requires the Board to submit an annual report to the Interagency Labor Committee, the Committee on Ways and Means and the Senate Finance Committee that will contain an assessment of Mexico’s labor reform implementation efforts and how labor law are generally enforced in Mexico. The Board’s reports may contain a determination that Mexico is not in compliance with its labor obligations.

## SUBTITLE D—FORCED LABOR

*Sec. 741: Forced Labor Enforcement Task Force*

Section 741(a) requires the President to establish a Forced Labor Enforcement Task Force (Task Force) within 90 days of the enactment of the USMCA Implementation Act to monitor the enforcement of the prohibition on importation of goods made by or with forced labor under section 307 of the Tariff Act of 1930.

Section 741(b) provides that the Task Force will be chaired by the Secretary of Homeland Security and will be comprised of the Trade Representative, Department of Labor, and other agencies that the President determines appropriate. The Task Force shall meet on a quarterly basis.

*Sec. 742: Timeline Required*

Section 742(a) requires the Task Force to establish timelines for responding to petitions alleging that goods are being imported by or with forced or child labor.

Section 742(b) provides the Task Force shall consult with the Committee on Ways and Means and the Senate Finance Committee in establishing the timelines.

Section 742(c) provides that the Task Force shall submit the timelines in a report to the Committee on Ways and Means and the Senate Finance Committee and make it publicly available.

*Sec. 743: Reports Required*

Section 743 requires the Task Force to submit a biannual report to the Committee on Ways and Means and the Senate Finance Committee regarding enforcement of the prohibition on importation of goods made by or with forced labor under section 307 of the Tariff Act of 1930, including the number of instances merchandise was denied entry under the provision in the preceding 180 day period. The report shall also include a description of actions taken and an enforcement plan regarding goods included in the DOL's "Finding on the Worst Forms of Child Labor" and "List of Goods Produced by Child Labor or Forced Labor" reports

*Sec. 744: Duties Related to Mexico*

Section 744 requires the Task Force to develop an enforcement plan regarding goods made by or with forced labor in Mexico. The Task Force is also required to report to the Interagency Labor Committee regarding its enforcement of child and forced labor in Mexico.

SUBTITLE E—ENFORCEMENT UNDER RAPID RESPONSE LABOR MECHANISM

*Sec. 751: Transmission of Reports*

Section 751 requires that reports issued by a rapid response labor panel under Annex 31–A of the USMCA be immediately submitted to the appropriate congressional committees, the Labor Advisory Committee, and, as appropriate, to the petitioner. The Trade Representative is also required to make reports issued by a rapid response labor panel to the public in a timely manner.

*Sec. 752: Suspension of Liquidation*

Section 752(a) provides the Trade Representative may direct the Secretary of the Treasury to suspend liquidation of entries of goods from a covered facility that is subject to a review under Annex 31–A of the USMCA.

Section 752(b) provides that liquidation shall resume if the rapid response labor panel has determined that there was not a denial of rights at the facility, a course of remediation has been completed at the facility, or the denial of rights at the facility has been otherwise remedied.

*Sec. 753: Final Remedies*

Section 753(a) provides that if a rapid response labor panel has found a denial of rights at a facility, the Trade Representative may, in consultation with the appropriate congressional committees, direct the Secretary of the Treasury to deny entry to goods, apply duties from which liquidation had been suspended, or any other remedy available under Annex 31–A of the USMCA.

Section 753(b) provides that the Trade Representative shall promptly notify the Treasury Secretary if the denial of rights has been remedied.

#### TITLE VIII—ENVIRONMENT MONITORING AND ENFORCEMENT

##### *Sec. 801: Definitions*

Section 801 defines “environmental law” and “environmental obligations.”

#### SUBTITLE A—INTERAGENCY ENVIRONMENT COMMITTEE FOR MONITORING AND ENFORCEMENT

##### *Sec. 811: Establishment*

Section 811(a) provides that the President shall establish an Interagency Environment Committee for Monitoring and Enforcement (Interagency Environment Committee) to coordinate U.S. efforts to monitor and enforce environmental obligations.

Section 811(b) provides that membership of the committee includes the Trade Representative who serves as chairperson, and representatives from the National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service, the U.S. Forest Service, the Environmental Protection Agency, Animal and Plant Health Inspection Service (APHIS), U.S. Customs and Border Protection (CBP), the Department of State, the Department of Justice, the Department of Treasury, and the U.S. Agency for International Development (USAID)—and any other agencies the President determines to be appropriate.

Section 811(c) provides that notwithstanding any other provision of law, the members of the Interagency Environment Committee may exchange information for purposes of carrying out this subtitle.

##### *Sec. 812: Assessment*

Section 812(a) provides for the Interagency Environment Committee to carry out an assessment of the environmental laws and policies of USMCA countries to determine if such laws and policies are sufficient to implement their environmental obligations and identify any gaps and key priority areas for continued assessment and monitoring, technical assistance and capacity building, and enhanced cooperation.

Section 812(b) provides that the assessment should include the environmental laws and policies of the USMCA countries with respect to which enhanced cooperation should be carried out.

Section 812(c) provides that not later than 90 days after the date on which the Interagency Environment Committee is established, or the date on which the USMCA enters into force (whichever being earlier), the Interagency Environment Committee must submit a report containing the assessment under subsection (a) to the appropriate congressional committees and the Trade and Environment Policy Advisory Committee.

Section 812(d) provides that the assessment must be updated after five years of the agreement being in force.



*Sec. 813: Monitoring Actions*

Section 813(a) provides that the Interagency Environment Committee will undertake monitoring actions related to implementation of the USMCA environment obligations.

Section 813(b) provides for the Interagency Environment Committee to review public submissions filed pursuant to Article 24.27 (Submissions on Enforcement Matters) and factual records prepared by the Secretariat of the Commission for Environmental Cooperation. Based on the findings, it may request enforcement actions under Section 814.

Section 813(c) provides for the Interagency Environment Committee to review reports provided by U.S. environment attachés in Mexico, and assess the efforts of Mexico to comply with its environmental obligations.

Section 813(d) provides that the United States can request verification of particular shipments from Mexico under the Environment Cooperation and Customs Verification Agreement between the United States and Mexico.

*Sec. 814: Enforcement Actions*

Section 814 provides that the Interagency Environment Committee may request the Trade Representative to request consultations under the Environment or Dispute Settlement Chapter of the USMCA or may request the heads of other federal agencies identified in Section 815 to initiate monitoring or enforcement actions.

*Sec. 815: Other Monitoring and Enforcement Actions*

Section 815 describes other existing U.S. government authorities that enforce U.S. environmental laws. For example, Section 815 identifies the Secretary of Commerce as having authority to take appropriate monitoring and enforcement actions under the Magnuson-Stevens Fishery Conservation and Management Act, and the Secretary of the Interior as having authority to take such action with respect to the Migratory Bird Treaty Act.

*Sec. 816: Report to Congress*

Section 816 provides that no later than one year after the USMCA enters into force, and annually for the next four years, and biennially thereafter, the Trade Representative will report to the appropriate congressional committees on steps that the Parties have taken to implement and enforce the USMCA environment commitments, and additional actions that may need to be taken with respect to USMCA countries that might be failing to implement their environmental obligations.

*Sec. 817: Regulations*

Section 817 provides that the head of any Federal agency described in this subtitle, in consultation with the Interagency Environment Committee, may prescribe such regulations as are necessary.

## SUBTITLE B—OTHER MATTERS

*Sec. 821: Border Water Infrastructure Improvement Authority*

Section 821(a) provides for the EPA, in coordination with other relevant agencies, to carry out the planning, design, construction, and operation and maintenance of high priority treatment works, to treat wastewater, nonpoint sources of pollution and related matters resulting from international transboundary water flows originating in Mexico.

Section 821(b) also requires the EPA report to Congress annually on the activities carried out under this subsection.

*Sec. 822: Detail of Personnel to Office of the United States Trade Representative*

Section 822 provides that EPA, NOAA, and FWS may detail one employee to USTR to be assigned to United States Embassy in Mexico.

## SUBTITLE C—NORTH AMERICAN DEVELOPMENT BANK

*Sec. 831. General Capital Increase*

Section 831 authorizes a capital increase for an additional 150,000 shares in the North American Development Bank.

*Sec. 832: Policy Goals*

Section 832 provides for the Secretary of the Treasury to direct the representatives of the United States to the Board of Directors of the NAD Bank to give preference to the financing of projects related to environmental infrastructure relating to water pollution, wastewater treatment, water conservation, municipal solid waste, storm water drainage, non-point pollution, and related matters.

*Sec. 833: Efficiencies and Streamlining*

Section 833 provides for the Secretary of the Treasury to direct the representatives of the United States to the Board of Directors of the NADBank to require the NADBank to develop and implement efficiency improvements to streamline the project certification process.

*Sec. 834: Performance Measures*

Section 834(a) provides for the Secretary of the Treasury to direct the representatives of the United States to the Board of Directors of the NADBank to require the NADBank to develop and annually update performance measures that align with the NADBank's mission and provided added value to the region.

Section 834(b) provides that the Secretary of Treasury shall submit a report on progress in imposing the performance measures in this section.

## TITLE IX—USMCA SUPPLEMENTAL APPROPRIATIONS ACT, 2019

This title appropriates \$843 million to implement, monitor, and enforce USMCA's labor and environment obligations, and to recapitalize the North American Development Bank (NADB).

- NADB funding is \$215 million;
- Labor related funding is \$240 million; and

- Environment related funding is \$388 million.

#### F. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that on January 7, 2020, H.R. 5430 was ordered favorably reported, without amendment, by a roll call vote of 25 ayes, 3 nays. Ayes: Grassley, Crapo, Roberts, Enzi, Cornyn, Thune, Burr (proxy), Portman, Scott, Lankford, Daines, Young, Sasse, Wyden, Stabenow, Cantwell, Menendez, Carper, Cardin (proxy), Brown, Bennet, Casey, Warner, Hassan, and Cortez Masto. Nays: Toomey, Cassidy, and Whitehouse.

#### II. BUDGETARY IMPACT OF THE BILL

The relevant analysis by the Congressional Budget Office (CBO) regarding the USMCA Implementation Act are reprinted below.

**Table 1. Direct Spending and Revenue Effects of H.R. 5430, the United States-Mexico-Canada Agreement Implementation Act, as introduced on December 13, 2019**

December 16, 2019

Tables 1 and 2 display CBO's estimates of the cost of enacting H.R. 5430. Table 1 covers the costs of enacting title I, which would approve the United States-Mexico-Canada Agreement (USMCA). Table 2 includes CBO's estimate of appropriations under title IX of H.R. 5430, which would provide appropriations to several federal agencies for implementing the USMCA. The bill would designate those amounts as emergency requirements in accordance with section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985. The limits on discretionary budget authority established by the Budget Control Act of 2011 (Public Law 112-25), as amended, would be adjusted to accommodate that funding.

By Fiscal Year, Millions of Dollars

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020- 2024	2020- 2029
<b>INCREASES OR DECREASES (-) IN DIRECT SPENDING</b>												
<b>Department of Agriculture</b>												
Estimated Budget Authority	-19	-23	-17	-13	-7	-5	0	0	0	0	-79	-84
Estimated Outlays <sup>a</sup>	-19	-23	-17	-13	-7	-5	0	0	0	0	-79	-84
<b>North American Development Bank</b>												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays <sup>b</sup>	10	0	0	0	0	0	0	0	0	0	10	10
<b>Total Changes</b>												
Estimated Budget Authority	-19	-23	-17	-13	-7	-5	0	0	0	0	-79	-84
Estimated Outlays	-9	-23	-17	-13	-7	-5	0	0	0	0	-69	-74
<b>INCREASES IN REVENUE</b>												
Estimated Revenues <sup>c,d</sup>	10	40	70	230	360	450	460	450	450	450	710	2,970
<b>NET DECREASE IN THE DEFICIT</b>												
Effect on the Deficit	-19	-63	-87	-243	-367	-455	-460	-450	-450	-450	-779	-3,044

Source: Congressional Budget Office.

Estimates are relative to CBO's May 2019 baseline; assumed enactment by February 2020.

a. CBO estimates that enacting the bill would result in greater U.S. exports of certain dairy products, leading to slightly higher dairy prices and thus a small decrease in federal payments that support dairy producers.

b. On October 22, 2019, CBO transmitted a cost estimate for H.R. 132, the North American Development Bank Improvement and Pollution Solution Act of 2019. In 2016, the Congress appropriated \$10 million for paid-in capital, but did not specifically authorize the Department of Treasury to obligate those funds. By authorizing the United States to participate, H.R. 132 would allow the department to pay \$10 million to the bank; CBO expects it would do so in 2020. The full cost estimate can be found here: <https://www.cbo.gov/system/files/2019/10/hr132.pdf>.

c. The estimated revenue effects of enacting H.R. 5430 mainly reflect higher expected revenue from tariffs on motor vehicles and parts. Because of stricter rules of origin for motor vehicles and new labor value content requirements, CBO projects that certain imports of motor vehicles and parts that currently benefit from favorable treatment under the North American Free Trade Agreement would not be eligible for favorable treatment under the new agreement. Because of that change in eligibility, CBO projects that duty-free imports of vehicles and parts into the United States from the USMCA partner countries would decline. A portion of that decline in duty-free imports would be replaced by domestic production while some of that decline would be replaced by imports subject to less favorable treatment. As a result of those changes, total customs revenue would rise. In addition, lower trade barriers would increase duty-free imports from Canada, leading to a small reduction in tariff revenues collected on agricultural imports subject to tariffs.

d. Revenue estimates are net of income and payroll taxes.

Estimated Prepared By: Tiffany Arthur (Agriculture)

Erin Deal (Revenues)

Sanita D'Monte (North American Development Bank)

Daniel Fried (Revenues)

**Table 2. Discretionary Appropriations of Title IX, the USMCA Supplemental Appropriations Act, 2019**

December 16, 2019

Table 2 displays CBO's estimate of appropriations under title IX of H.R. 5430, which would provide appropriations to several federal agencies for the implementation of the United States-Mexico-Canada Agreement. The bill would designate those amounts as emergency requirements in accordance with section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985. The limits on discretionary budget authority established by the Budget Control Act of 2011 (Public Law 112-25), as amended, would be adjusted to accommodate that funding.

By Fiscal Year, Millions of Dollars

Appropriations Subcommittee	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020-2024	2020-2029
<b>Agriculture</b>												
Budget Authority	4	0	0	0	0	0	0	0	0	0	4	4
Estimated Outlays	3	1	0	0	0	0	0	0	0	0	4	4
<b>Commerce, Justice, Science</b>												
Budget Authority	106	0	0	0	0	0	0	0	0	0	106	106
Estimated Outlays	68	22	16	0	0	0	0	0	0	0	106	106
<b>Interior and Environment</b>												
Budget Authority	308	0	0	0	0	0	0	0	0	0	308	308
Estimated Outlays	37	121	120	30	0	0	0	0	0	0	308	308
<b>Labor, Health and Human Services, Education</b>												
Budget Authority	210	0	0	0	0	0	0	0	0	0	210	210
Estimated Outlays	11	63	63	42	21	0	0	0	0	0	200	200
<b>State and Foreign Operations</b>												
Budget Authority	215	0	0	0	0	0	0	0	0	0	215	215
Estimated Outlays	215	0	0	0	0	0	0	0	0	0	215	215
<b>Total</b>												
Budget Authority	843	0	0	0	0	0	0	0	0	0	843	843
Estimated Outlays	334	207	199	72	21	0	0	0	0	0	833	833

Source: Congressional Budget Office.

Estimates are relative to CBO's May 2019 baseline; assumed enactment by February 2020.

Section 905 of H.R. 5430 specifies requirements for the budgetary treatment of title IX. Consistent with that section, and at the direction of the House Committee on the Budget, title IX is considered to be appropriation legislation rather than authorization legislation.

Estimate prepared by: Justin Riordan

### III. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not affect the personal privacy of individuals, and will result in no significant additional paperwork.

The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 ("UMRA") (Pub. L. No. 104-04). The Committee has reviewed the provisions of H.R. 5430 as approved by the Committee on January 7, 2020. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments. The Committee has determined that the bill does not contain Federal mandates on the private sector.

#### IV. ADDITIONAL VIEWS

##### ADDITIONAL VIEWS OF RANKING MEMBER RON WYDEN, SENATOR SHERROD BROWN, AND SENATOR TOM CARPER

While we appreciate the collaborative work of Chairman Grassley to develop a consensus report, a number of items in this report deserve further elaboration.

##### LEGACY OF NAFTA

Signed in 1994, NAFTA integrated three significant economies through reduced tariffs and non-tariff barriers that benefited many businesses and farmers in the United States, Mexico, and Canada. However, the effects of NAFTA were not uniformly positive for all businesses and workers in the United States as trade flows shifted to take advantage of lower tariffs, lower wages, and in some cases, lower regulatory standards. As time passed, it became clear that NAFTA's broken dispute settlement mechanisms, unenforceable labor and environmental standards, and lax auto rules of origin were not sufficient to protect American workers. In addition, as noted above, NAFTA was simply outdated insofar as it did not cover digital trade and other elements of the modern economy. For these reasons, it was appropriate to reconsider our trading relationship with Canada and Mexico and bring NAFTA into the 21st century.

##### NEGOTIATIONS OF USMCA

With regard to the USMCA negotiation process, we would emphasize that while the resulting agreement was broadly supported in the House of Representatives and the Senate, the process of developing an agreement, which contained the right balance of enforceable trade rules, often failed to adhere to the spirit of TPA 2015 to promote transparency and collaboration with Congress, which has the Constitutional authority over the United States' trade with foreign countries. Consultation and access to text are critical for ensuring Congress, and ultimately the public, understands and agrees with the Administration's negotiating positions. The Agreement as initially negotiated by the Administration failed to garner sufficient support to pass Congress. We commend the work of the House Democrats' Trade Working Group to ensure USMCA could receive broad bipartisan support. Canada and Mexico are two of the most important trading partners for the United States. Ultimately, the provisions negotiated by the House Democrats' Trade Working Group reflect that fact, as well as the need to support workers, consumers, businesses, and farmers in all three regions.

## USMCA OBLIGATIONS

Given the close and unique trading relationship in North America, we appreciate the innovative rules needed to ensure that both businesses and workers succeed under the new USMCA.

## AUTO RULES OF ORIGIN

In particular, the automobile rules of origin contain a number of new provisions focused on strengthening U.S. manufacturing and ensuring a robust and resilient industry. We continue to be concerned about the level of specificity provided to auto companies seeking to comply with these rules and the transition plans being put in place to allow for eventual compliance. Once rules are negotiated, it is critical that the information be provided to all relevant members of the industry, including workers and their union representatives, regarding what is needed to comply and when compliance is mandatory. We will continue to work with the Administration to ensure there is sufficient transparency and meaningful compliance with the new auto rules of origin.

## LABOR AND ENVIRONMENT

The NAFTA renegotiation benefited from 20 years of trading experience and a strong understanding of the U.S.-Mexico-Canada trading environment and the ways that NAFTA had failed to safeguard the interests of the United States. Chief among these was an absence of enforceable labor and environmental obligations. Further, the close proximity and trade relationship among NAFTA countries necessitated a new approach to these issues and a commitment on the part of the United States to hold Mexico and Canada to new, high standards on labor and the environment.

With respect to labor, USMCA introduces the innovative rapid response mechanism designed by Senator Brown, Ranking Member Wyden, and others to address certain labor violations at the factory level, recognizing the persistence of exploitative labor practices in Mexico. Neither American nor Mexican workers can wait for state-to-state dispute resolution, and instead need new tools to quickly and effectively crack down on bad actors. In addition, the USMCA Implementation Act dedicates resources to labor enforcement and technical assistance to hold Mexico and employers operating in the country accountable for complying with the obligations and to support reforms required by the Agreement.

Furthermore, we support the inclusion of significant funding for monitoring and enforcement of both labor and environmental obligations and view this funding as critical to implementation of the Agreement. The appropriations included in the bill will ensure that our government has the resources it needs to hold our trading partners accountable under USMCA. The funds are directed towards activities such as monitoring Mexico's implementation and enforcement of its labor laws; combating forced and child labor; ensuring compliance with Lacey Act prohibitions on trade in illegally taken wildlife and illegally harvested timber; combating illegal, unreported, and unregulated (IUU) fishing; engaging in environmental dispute settlement; and other priorities that will ensure full imple-

mentation of USMCA, promote a level playing field for U.S. workers, and help protect the North American ecosystem.

#### ADDITIONAL VIEWS OF SENATOR PATRICK TOOMEY

NAFTA was a groundbreaking free trade deal that eliminated almost all tariffs on products traded between the United States, Mexico, and Canada. The deal fundamentally reshaped North American economic relations, encouraging cooperation and integration between the three party countries.

The American economy benefitted enormously from NAFTA. Regional tradegrew from roughly \$290 billion in 1993 to more than \$1.1 trillion in 2016.<sup>12</sup> U.S. exports to Mexico alone grew fivefold. The Office of the U.S. Trade Representative (USTR) estimated by 2007 that NAFTA provided to the average family of four nearly \$350 to \$930 in annual benefits.<sup>13</sup> Thanks to NAFTA, Canada and Mexico are the two largest destinations for U.S. exports, and American industry has flourished.<sup>14</sup> GDP has grown significantly, with NAFTA being responsible for several billion dollars of added growth per year since implementation.

NAFTA also created high-paying jobs in diverse industries across the United States. An estimated fourteen million U.S. jobs rely on trade with Canada or Mexico,<sup>15</sup> and these export-related jobs pay on average 15 to 20 percent more than jobs focused only on domestic production.<sup>16</sup> It was under NAFTA that the United States consistently set new records as the world's number one manufacturer and, in 2019, achieved the lowest unemployment rate in 50 years.<sup>17</sup>

NAFTA was a free, fair, and reciprocal trade agreement. That being said, NAFTA was due for a modernization. USMCA made some modest, constructive changes to NAFTA, such as in the areas of digital trade, dairy market access, and dispute settlement panel formation. Unfortunately, USMCA also made several large policy changes that were contrary to the objectives set forth by Congress under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA 2015). These trade-restrictive policy changes should not be considered precedent for future trade deals.

#### RULES OF ORIGIN

Primarily through increased Rules of Origin (ROO) requirements that are designed to diminish Mexico's competitive advantage in auto production, USMCA replaced NAFTA's reciprocal, free trade in autos and auto parts with a complex system of quotas and potential tariffs. These shortsighted regulations will hurt the economies of both Mexico and the United States. Besides increasing costs for American consumers and increasing complexity and cost

<sup>12</sup> Figure 2. U.S. Merchandise Trade with NAFTA Partners: 1993–2016. CRS, The North American Free Trade Agreement (NAFTA), <https://www.fas.org/sgp/crs/row/R42965.pdf>.

<sup>13</sup> USTR, NAFTA: An Annual Tax Cut and Income Gain for American Families, <https://ustr.gov/sites/default/files/Quantification%20of%20NAFTA%20Benefits.pdf>.

<sup>14</sup> Council on Foreign Relations, NAFTA and the USMCA: Weighing the Impact of North American Trade, <https://www.cfr.org/background/naftas-economic-impact>.

<sup>15</sup> U.S. Chamber of Commerce, [https://www.uschamber.com/sites/default/files/the\\_facts\\_on\\_nافتa\\_-\\_2017.pdf](https://www.uschamber.com/sites/default/files/the_facts_on_nافتa_-_2017.pdf).

<sup>16</sup> Foreign Affairs, NAFTA's Economic Upsides: The View From the United States, <https://www.foreignaffairs.com/articles/canada/2013-12-06/naftas-economic-upside>.

<sup>17</sup> Figure 2, Selected Countries' Shares of Global Manufacturing Value Added. CRS, U.S. Manufacturing in International Perspective, <https://fas.org/sgp/crs/misc/R42135.pdf>.



of production for U.S.-based manufacturers, the new ROO provisions make U.S. auto production less competitive globally. Companies will likely respond by selecting suppliers in, and/or moving some production to, lower cost countries. The ROO provisions also negatively impact other areas of the U.S. economy. In fact, the U.S. International Trade Commission report on USMCA noted “the trade restrictiveness of ROO is inversely related to its positive impact on the U.S. economy.” Most concerning of these many changes was USMCA’s requirement that at least 40% of the value of an automobile be produced in a factory where workers earn on average \$16 per hour, an arbitrary wage mandate that will further inflate costs of production. These managed trade provisions, which hurt the U.S. economy and run counter to the spirit of a free trade agreement, should not be included in future trade deals.

#### MELTED AND POURED

The Protocol of Amendment added a requirement that steel and aluminum be initially melted in North America (melted and poured) in order to qualify for preferential status under USMCA. This melt and pour requirement is to be phased in over seven years (for steel) and ten years (for aluminum) after USMCA’s entry into force. Since this change was announced only several days prior to Congress taking up the implementing bill, the USITC was not able to formally evaluate the economic and downstream effects of this provision; however, by its nature, it will create “winners and losers” within the U.S. steel and aluminum industries, pitting steel and aluminum producers against steel- and aluminum-using manufacturers. Steel and aluminum producers and users are both a source of high-paying manufacturing jobs. This provision is unnecessary, costly, and should not be included in future trade deals.

#### LABOR

USMCA’s protocol of amendment added in extensive labor provisions forcing U.S. taxpayers to pay \$45 million a year to compel Mexico to facilitate unionization across their country. For the first time in a trade agreement, allegations of a violation of a foreign country’s labor laws will be assumed to have conferred an unfair trade advantage to Canada and Mexico, “affecting trade or investment between the Parties, unless the responding Party demonstrates otherwise.”<sup>18</sup> Violations of Mexico’s labor laws (as adjudicated by the “rapid response” panels) lead to tariffs and even embargoes on goods, at least until the facility adjudicated to have been in violation agrees to cede to the union’s demands. Additionally, the various committees and panels formed by USMCA to monitor the implementation and enforcement of Mexico’s labor reform all must provide justification for any decision *not* to impose tariffs, but are rarely if ever required to justify their decision to impose tariffs, creating a clear bias in favor of restricting trade. All of these provisions risk upsetting the careful balance struck between labor considerations and expanding market access in TPA 2015’s negotiating objectives. Future free trade agreements should focus

<sup>18</sup> USMCA, Chapter 23—Labor; <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf>.

on increasing free trade, not advancing the political agenda of organized labor.

#### ADDITIONAL VIEWS OF SENATORS PATRICK TOOMEY AND BILL CASSIDY

Though USMCA made several beneficial modernizations to NAFTA, its passage was fraught with process fouls, none of which should be considered precedent for future trade deals. Article I, Section 8 of the United States constitution unambiguously assigns to Congress the responsibility for regulating commerce and foreign trade.

Since the Trade Act of 1974, Congress has delegated some of its responsibility through the use of special rules and procedures to facilitate consideration of trade agreements, most recently through Trade Promotion Authority, in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA 2015). However, TPA's delegation of negotiating power is not a reassignment of constitutional responsibility to the executive branch; instead it is a procedural matter, "enabling the President to negotiate reciprocal reductions of nontariff barriers while maintaining Congressional authority over changes to U.S. law" (S. Rept. 114-42). Congress additionally retains the power to make the final decision as to whether to approve the negotiated agreement. To ensure a swift process, members agreed to curtail their own ability to debate and amend the implementing legislation as well as its corresponding trade agreement. However, these self-imposed restrictions and delegation of power to the executive branch are conditioned upon the President's fulfilling certain statutory requirements and obligations in negotiating trade agreements. These requirements and obligations serve the purpose of maintaining Congress's constitutional role overseeing trade policy, ensuring that Congress is consulted on the direction of the agreement and kept updated on the negotiation's proceedings.

In USMCA, the administration did not meet all of these TPA obligations. Firstly, as the Committee Report notes, the provisions of an FTA are typically settled and agreed upon several months prior to Congressional consideration, allowing the administration and Members of the relevant congressional committees to have time to thoroughly consider the final text of the FTA and to discuss what legislative and administrative actions would be necessary for implementation.

In the case of USMCA, the timeline of consideration violated TPA requirements and thus did not provide sufficient time for consideration of the final text of the agreement. USMCA was originally "signed" on November 30, 2018, and the "text of the agreement" for that version of the agreement was submitted to Congress on May 30, 2019. However, on June 13, 2019, House Speaker Nancy Pelosi appointed a Working Group of House Democrats to conduct confidential negotiations with the administration regarding changes to USMCA required to secure their support. On December 10, 2019, the House Democrats' Trade Working Group and the administration reached a deal that secured Democratic support. This deal included changes that altered the final text of USMCA. New provisions, including on labor, environment, and rules of origin

were added. Other sections, like intellectual property protection for biologics, were struck entirely from the deal. These changes requested by the House Democrats' Working group were so extensive that they required a new final text to be re-signed by all party countries, on December 10, 2019 in Mexico City. The implementing bill, which included provisions to implement the new sections of USMCA as approved by the three parties on December 10, was sent by the administration to Congress three days later on December 13, 2019.

Section 106 (a)(1)(D)(ii) of TPA 2015 requires that any agreement shall enter into force if and only if the President, at least 30 days before submitting the implementing bill, submits to Congress a copy of the final, legal text of the agreement. In USMCA, the final text of the Agreement was signed on December 10, 2019 and yet on December 13, 2019, President Trump transmitted to Congress the implementing legislation—a mere three days later, instead of the 30 days required under TPA 2015.

There is a strong rationale and legislative history behind this provision in TPA 2015. The 30-day requirement was newly added in TPA 2015, in order to “help ensure that Congress is given adequate time and documentation to fully understand a trade agreement subject to this bill and inform the consideration of legislation to implement that agreement” (S. Rept. 114–42). Trade authority is a delegated power, and the consultation, notification, and reporting requirements of TPA are designed to achieve greater transparency in trade negotiations and to maintain the role of Congress in shaping trade policy. This lack of regard for TPA rules and timing procedures should not be considered precedent for future trade deals. The TPA timeline should be adhered to in order to grant fast-track status to future trade deals.

A second administration violation of TPA was USMCA's addition of an Appropriations title to the implementing legislation, granting \$843 million in discretionary appropriations to support the changes to U.S. law made within the implementing bill. The Senate's “fast track” procedures allow qualified trade agreements to bypass rule XXII—an abrogation of members' right to unlimited debate and amendments—only because there are both procedural protections and strict limits on the content permitted in a trade agreement. Sec. 103(b)(3)(B)(ii) of TPA 2015 states that only provisions strictly necessary or appropriate to implement the final trade agreement are permitted in the implementing bill, a provision that is intended to prevent extraneous legislative provisions from ‘hitching a ride’ on the parliamentary privilege attached to implementing bills. The Senate Committee report accompanying TPA 2015 further explains the intention behind this provision, stating “the trade authorities procedures should apply only to those provisions in an implementing bill that are strictly necessary or appropriate to implement the underlying agreement, as stated in the Senate Finance and House Ways and Means Committee reports accompanying the Trade Act of 2002. . . . As has been recognized in the past, to apply the procedures more broadly would encroach on Congress's constitutional authority to legislate.”

Yet Title IX of the USMCA implementing bill (“USMCA Supplemental Appropriations Act of 2019”) directly appropriates funds,

which is neither strictly necessary nor appropriate to implement the underlying agreement. As noted above, TPA 2015 gives authority only to make changes in existing laws or new statutory authority required to implement the agreement—it does not permit provisions on new budget authority. Appropriations are done by Congress through specific appropriation legislation that authorizes the relevant agencies to make payments from the federal Treasury and provide budget authority to an agency for specified purposes. Under the standing rules of the House and Senate, funding must be authorized through legislative committees prior to being appropriated through appropriations committees.

A review of the CBO cost estimates for each of the 16 most recent trade bills (dating back to the US-Israel Trade Act of 1985) shows that none of associated implementing bills appropriated funds. Though some had spending effects, those resulted from changes to existing authorities—not new appropriations within an implementing bill. There is one example—the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR)—in which funds were appropriated to achieve the terms of the trade agreement, but these appropriations were done through a separate appropriations agreement (the Foreign Operations Appropriations Bill)—not in the implementing bill itself. The CAFTA-DR agreement authorized appropriations, but did not directly appropriate funds.

Additionally, Title IX of the USMCA implementing bill (“USMCA Supplemental Appropriations Act of 2019”) inappropriately designates appropriated funds as “emergency” funding, again violating the “strictly necessary or appropriate” standard required for expedited consideration. Emergency funding is intended for purposes that are sudden, urgent, unforeseen, and not permanent. The funding provided in the USMCA implementing legislation fails all of these criteria. Designating funds for these purposes as emergency funds is not appropriate within an implementing bill, and is also not strictly necessary for achieving the terms of USMCA. Appropriating within an implementing bill, and especially giving inappropriate emergency designation to appropriated funds, should not be considered precedent for future trade deals.

#### ADDITIONAL VIEWS OF SENATOR TIM SCOTT

The Administration sought a renegotiation of the original NAFTA agreement to modernize the agreement and address some of its perceived deficiencies. To this end, a critical goal was the creation of a new, more stringent set of origin rules governing motor vehicle trade throughout the region.

Throughout the USMCA negotiations and after, the entire U.S. auto industry worked diligently with USTR to understand these new rules, which depart in significant ways from the NAFTA rules and from any other FTA previously negotiated. The complexity and stringency of these rules led several automakers to signal they would require more than the three-year timeframe for full implementation and compliance, and these companies have submitted alternative staging requests for an additional two years in which to fully comply. Following the submission of these requests (and the completion of the Uniform Regulations), USTR staff made it known

that a critical rule involving core parts would be applied differently than the industry had earlier been led to believe.

For months prior to this reinterpretation, automakers were told by USTR staff that “core parts” determined to be originating using any of the approaches allowed under the rules governing such parts would be considered originating for the purpose of calculating the finished vehicle regional value content (RVC). Based on this interpretation, automakers began making investment decisions and supply chain adjustments, and taking other necessary compliance steps. However, after the July 1, 2020 USMCA entry into force date, without formal notice to the industry and contrary to the understanding of the industry and our USMCA trading partners, USTR suddenly insisted that two of the approaches allowed for the purpose of calculating “core parts” value—the key parts calculation and the super core calculation—could not be used to support claims that such parts were originating when calculating the finished vehicle RVC.

Once negotiated, the success of agreements like this rests on industry’s access to reliable and consistent information as well as decision-making processes that provide as much transparency as possible. Simply put, moving the goalposts on such a vital set of calculations now jeopardizes American competitiveness and risks countless jobs and future opportunities for hard-working Americans in the process.

#### ADDITIONAL VIEWS OF SENATORS TODD YOUNG, RICHARD BURR, AND PATRICK TOOMEY

USMCA as originally negotiated by the Administration included groundbreaking provisions to support America’s innovators in the biopharmaceutical industry. Importantly, it obliged the Parties to provide 10 years of protection for test and other data for biologic medicines which would have resulted in higher international standards, adequate protections for innovators, and utmost regard for consumers. The United States provides 12 years of protection pursuant to the Biologics Price Competition and Innovation Act, which had broad bipartisan support. A 10-year period of protection was already a compromise among those who wanted USMCA to reflect the twelve-year period of such protection required in U.S. law—consistent with Trade Promotion Authority’s dictate that the provisions of any trade agreement governing intellectual property rights that is entered into by the United States reflect a standard of protection similar to that found in United States law—and those who sought a shorter term.

Certain critics in Congress and in the stakeholder community argued that including any mandated minimum period of research data protection for biologic medicines in a trade agreement would limit U.S. policy flexibility. They argued the United States would not have the freedom to reduce the period of such protection in the United States from the current twelve years to below the ten-year period mandated in the USMCA. To respond to this criticism, USTR proposed to the House Democrats’ Trade Working Group a proposal that would have preserved U.S. policy flexibility. This proposal was for a so-called “ratchet” mechanism in which the minimum period for research data protection for biologic medicines

mandated in the USMCA would automatically be reduced to whatever period the United States changed its law to require if that period were below ten years.

Regrettably, the House Democrats' Trade Working Group rejected this proposal that would have preserved U.S. policy flexibility, and raised the intellectual property protection of our two most important trading partners closer to our own. Ultimately, the Administration agreed to remove the provision entirely from the USMCA, despite support for the provision among many. That change satisfied the expediency of politics at the expense of good long-term policy for U.S. innovators and reduced the overall benefit of the USMCA for the United States.

Removing the biologics provision is a severe blow to America's highly innovative biotechnology industry. An astounding 71% of all biologic medicines being developed come from small, emerging biotech companies. Emerging companies are responsible for more than half of biologic drugs under development. Nearly half of the total global pipeline of new medicines is comprised of biologic medicines. They are some of the most innovative and promising for patients, including patients with Alzheimer's, cancer, and rare debilitating diseases. These medicines are also some of the most difficult and costly to develop. On average, it costs \$2.6 billion to develop a new medicine and the total investment in research and development related to emerging cures and treatments was \$71.4 billion in 2017. USMCA as originally negotiated reflected these intensive cost factors impacting consumer access. The researchers innovating these medicines cannot succeed without strong, global intellectual property standards.

The unfortunate impact of eliminating this provision is the precedent it sets in other major markets, including China, and the message it sends to free-riders throughout the world that America will not stand by its pre-eminent biopharmaceutical industry and its life-saving innovations. The USMCA should not set the standard for future trade agreements in this important respect.

#### ADDITIONAL VIEWS OF SENATORS ROBERT MENENDEZ AND MARK R. WARNER

This report must take note of the inappropriate and unprecedented manner in which President Trump treated our partners, Canada and Mexico, during the USMCA negotiations.

In 2018, President Trump imposed tariffs on steel and aluminum imports from several countries, including Canada and Mexico, claiming that imports from these countries posed a threat to national security. Canada is a critical ally, a key partner in defense and intelligence activities, and a country with which the United States shares an interconnected defense industrial base. Canadian officials were rightly outraged by President Trump's labeling of Canada as a national security threat. That action has taken a severe toll on U.S.-Canada relations.

In May 2019, President Trump announced via Twitter a tariff on goods imported from Mexico that would increase steadily unless Mexico stopped the flow of migrants into the United States. President Trump then extended his demands against Mexico beyond immigration, insisting Mexico stop an "invasion" of drug dealers and

cartels. Although President Trump did not follow through on his threat, that behavior was insulting to Mexico and made the United States a less reliable trading partner in the eyes of many nations. In addition, the President's past insistence that Mexico pay for a border wall, aggressive rhetoric on migration, and insults against Mexicans have made it more difficult for the United States and Mexico to work constructively to address common threats.

President Trump failed to treat Canada and Mexico with dignity and respect throughout the negotiating process. That behavior may make it harder for the United States to reach agreement with our trading partners on future enforcement disputes that may arise under USMCA. While the President may claim that these actions helped secure a better trade deal, most members of the Committee know this to be false. This agreement was concluded in spite of, not because of, the President's ill-conceived tactics. They should not be repeated.

#### ADDITIONAL VIEWS OF SENATORS TOM CARPER, BEN CARDIN, AND SHELDON WHITEHOUSE

Certain elements of this report related to USMCA's Environment Chapter and the USMCA Implementation Act require further elaboration. First and foremost, we are disappointed that USMCA does not explicitly speak to climate change, one of the most pressing issues facing the world today. It is our view that American domestic and foreign policy must aggressively address climate change through actions including recommitting the United States to the Paris Agreement and ratifying the Kigali Amendment to the Montreal Protocol, and our FTAs should reflect such an approach.

In addition, it is our view that the USMCA Implementation Act's appropriations for monitoring and enforcement of our trading partners' environmental commitments under USMCA are both necessary and appropriate to implement the Agreement. In our view, future implementing bills should follow the precedent set by the USMCA Implementation Act and provide the resources necessary to ensure that the environmental obligations in our trade agreements can be fully carried out.

We also strongly support the improvements in USMCA over NAFTA—particularly language in the Protocol of Amendment that (1) creates a presumption that violations of USMCA environmental obligations affect trade and investment and (2) closes a loophole carried over from NAFTA that would have prevented environmental enforcement by allowing Parties to block dispute settlement panels. These improvements ensure that the Parties' obligations under USMCA's Environment Chapter, including commitments under seven multilateral environmental agreements, can be fully enforced.

Finally, we wish to highlight the importance of new environmental monitoring and enforcement bodies and mechanisms created by the USMCA Implementation Act. These include the new Interagency Environment Committee that oversees implementation of USMCA's environmental obligations; a new mechanism to trigger environmental reviews that gives stakeholders an expanded role in environmental enforcement matters; the establishment of environment-focused attachés in Mexico City; and additional re-

porting requirements to better assess the status of Mexico's environmental laws and regulations. In conjunction with the dedicated funds for environmental monitoring and enforcement, these new mechanisms will help ensure that those that violate the USMCA's environmental rules can be held accountable. We are closely watching how this and future Administrations use these tools and hope they can serve as a model for other trading relationships.

#### ADDITIONAL VIEWS OF SENATOR BEN CARDIN

I want to expand on one important modernization in USMCA. The Agreement included the first-ever standalone chapter on small and medium-sized enterprises (SMEs). While previous trade agreements have included provisions on market access for SMEs, the inclusion of a standalone chapter is an essential improvement to our trade agreements and should be considered as a model going forward. Furthermore, the SME chapter explicitly includes language to ensure promotion of SMEs owned by diverse and under-represented groups, including women, indigenous people, youth and minorities. It is critical this chapter's provisions on diverse and under-represented groups be carried out under the terms of the Agreement.

#### ADDITIONAL VIEWS OF SENATOR MARK R. WARNER

Robust trading relationships improve our nation's economy, and I'm optimistic that this trade agreement will help American farmers, ports, manufacturers, retailers, and workers. Overall, I'm confident that the Agreement will provide the consistency and stability the business community needs.

However, I want to note that I have serious concerns with the inclusion of safe harbor language modeled on Section 230 of the Communications Decency Act (Section 230). Section 230 represents a 1990s approach to internet policy—one that failed to foresee the structure, business models, and market concentration of today's internet platforms. Congress has begun an important, bipartisan debate about whether Section 230 is working as intended, and many—including prominent civil rights groups—believe that Section 230 has allowed internet intermediaries to ignore the misuse of their platforms by bad actors, even as they're repeatedly used to harm consumers, suppress voting, and facilitate racial and gender discrimination. Congress amended Section 230 for the first time in 2018. Just two years later, over a dozen bills have been introduced to amend this 1996 law. These efforts include proposals from bipartisan members of Congress, the Department of Commerce's National Telecommunications and Information Administration, and the Department of Justice. The Chairs of both the Senate Commerce Committee and the Senate Judiciary Committee have sponsored bills amending Section 230. In the United States House of Representatives, the Chair and Ranking Member of the committee of jurisdiction have expressed serious reservations with including Section 230 in our trade agreements.

Within the context of this robust and active debate, including safe harbor provisions similar to Section 230 of the Communications Decency Act into our trade agreements—which has not been



done in a single free trade agreement since the law was first enacted in 1996—was a mistake. Congress has begun a serious review of the underlying premises of Section 230 in light of substantive changes in how consumers interact with technology, ever-wider interpretations of the immunity the law confers by courts, and clear abuses of the law by platforms. It is my hope that USTR recognizes this ongoing and widespread legislative effort and refrains from negotiating for the inclusion of intermediary safe harbor provisions in future agreements, at least until Congress is able to build an effective policy framework for these 21st century problems.

#### **V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

