



## MEMORANDUM

To: ACSA Members  
From: Buddy Allen, ACSA President  
Date: 12/10/19  
Re: USMCA Deal Announced Today/China Impact?

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Today, the Administration and Congressional Democrats reached an **agreement to pass the United States-Mexico-Canada Agreement (USMCA)** through Congress. United States Trade Representative Robert Lighthizer is in Mexico City to sign the revised version of President Trump's North American Free Trade Agreement (NAFTA) replacement today.

House Speaker Nancy Pelosi (D-CA) and Ways and Means Committee Chairman Richard Neal (D-MA) signaled their support for the deal at a press conference this morning where Democrats broadly praised the revised USMCA as a step away from the "NAFTA-lite" agreement that had previously attracted Democratic criticism. With the submission of implementing legislation imminent, the deal is **expected to swiftly clear Congress** with bipartisan support in the coming weeks.

### The Agreement

After a year of negotiations, leaders from the United States, Canada, and Mexico reached an agreement to replace NAFTA with USMCA last August. The initial deal included a number of changes to the North American trade regime, including: (1) introducing a new "labor-value" content mechanism for automotive rules of origin; (2) extending the minimum exclusivity period for biologic drugs from 7 to 10 years; (3) increasing trade partners' *de minimis* threshold; (4) expanding Canadian market access for US dairy farmers; (5) strengthening intellectual property protections, including by guaranteeing full national treatment for copyright; and (6) adding a 16-year sunset clause.

Despite finalizing USMCA, the administration held off on submitting the deal to Congress for over a year in order to secure support from Congressional Democrats. Chief among Democratic concerns were the enforceability of the deal's labor standards, the expansion of exclusivity for biologic drugs, and content protections for online platforms. Today's announcement included changes largely addressing these concerns, including:

- **Prescription Drugs** — Eliminates languages requiring parties to provide at least 10 years of exclusivity for biologic drugs, which House Democrats had raised concerns would prevent the passage of legislation dealing with that issue. The changes also drop language regarding "patent evergreening" and providing for exclusivity extensions based on the submission of clinical information. In addition, the agreement revises language clarifying

the circumstances under which biosimilar and generic drugs can be brought to market, implements data protection provisions from US law intended to encourage generic competition, and incorporates "May 10th" access to medicine principles that have been included in previous trade deals.

- **Enforcement** — Eliminates "panel blocking" language and creates standards of evidence intended to enable the litigation of labor and environmental disputes.
- **Labor** — Tightens labor requirement language, including establishing a presumption that labor violations affect trade. The deal would also establish a number of mechanisms to enforce the deal's labor provisions, including an interagency monitoring committee, benchmarking for the implementation of Mexico's labor reforms, a corps of labor attaché's monitoring implementation on the ground, and a "rapid response" mechanism allowing for expedited, facility-based enforcement of labor concerns.
- **Environment** — Creates a presumption that environmental violations impact trade and increases the obligation of parties to participate in multilateral environmental agreements. Similar to the labor portion, the deal provides for an interagency evaluation process and monitoring program, and new customs verification process to ensure the legality of harvested flora and fauna.

### *Next Steps*

The process for Congressional consideration of USMCA is spelled out under Trade Promotion Authority (TPA), which provides an expedited approval timeline for trade deals that meet certain Congressional objectives. Combined with numerous disclosure and notification requirements, this 90-day "fast track" timeline is intended to allow Congress a framework for involvement in trade negotiations while also giving the President leverage to negotiate trade deals without worrying that they will be amended by the legislative branch.

While the 90-day TPA process is a maximum timeline for how long it takes the deal to make its way through Congress, USMCA is expected to move on a much more expedited schedule and could clear this House by next week. It remains to be seen if the revised agreement will pass under the committee process or be sent directly to the floor, but Democratic leadership has emphasized that their diving concern will be to pass it expeditiously.

Ultimately, USMCA is expected to pass both chambers with broad bipartisan support. Even in a divided Washington, today's announcement is a reminder that the wheels of government are still at work.

### *Impact on China Trade Negotiations*

Consensus thus far is that the agreement on USMCA is positive for furthering trade negotiations with China, Dec 15 tariffs will likely be delayed, and no deal is expected to be finalized with China prior to Dec. 15. This is being described as a result of progress from both sides being made, but USTR Robert Lighthizer's required focus and presence in Mexico requiring additional time.

