



On September 30 of this year, the United States, Mexico, and Canada reached an agreement to replace the North America Free Trade Agreement (“NAFTA”), which had been the three countries’ trade agreement since 1994. The new trade agreement, which is yet to be ratified by any of the countries, and which does not include the word “Trade” in its name, is titled the United States Mexico Canada Agreement (“USMCA”). The USMCA is slated to operate under an initial sixteen-year term with trilateral review every six years.

Given the USMCA’s import and wide-ranging effects, CABA presents this brief bulletin summarizing some of its key provisions.

➤ Professional Visas

The USMCA does not impact the TN visa process, which, broadly speaking, allows certain professionals – such as attorneys, accountants, architects, librarians, dentists, certain types of teachers, among many others – who are citizens in any of the three countries to obtain temporary work permits in the other two.

CABA actively advocated maintaining NAFTA’s attorney TN work permit provisions. In June 2017, as part of a public comment period, CABA submitted a letter to the Office of the United States Trade Representative and was invited to provide testimony at the International Trade Commission’s (ITC) public hearing in Washington, D.C. CABA’s letter to the USTR and its ITC testimony can be viewed [here](#).

CABA is pleased that the USMCA has maintained NAFTA’s temporary work visa provisions. CABA, like many other groups, believe work visas are vital to North American trade and the ever-growing exchange of ideas and skills among North Americans, including participants in the cross-border legal services industry.

➤ Aluminum and Steel Tariffs

The USMCA did not resolve the “national security” tariffs that the U.S. imposed on Canada for Canada’s export of steel and aluminum into the U.S. However, unlike NAFTA, the USMCA recognizes a member state’s right to retaliate for the imposition of tariffs.

The imposition of “national security” tariffs between the US and Canada has been of concern to CABA. In June 2018, during Canada’s public comment period, CABA submitted a letter to the Canadian government regarding the benefits of creating greater certainty around a member state’s ability to exercise its rights under NAFTA’s “national security” provision. While much more can be done to provide greater predictability around the concept of “national security,” in trade agreements, CABA is pleased the USMCA now authorizes a member state to retaliate for “national security”-based tariffs. CABA’s submission on NAFTA’s “national security” provision can be viewed [here](#).

➤ Auto Industry

Under the USMCA, in order to avoid duties, 75% of a car must be made within North America (the previous amount was 62.5%) and 40% of each car must be produced by workers making at least \$16 per hour.

Under additional 'side agreements' to the USMCA (one between the US and Canada and another between the US and Mexico) Canada and Mexico are exempt from the United States's imposition of "national security" tariffs regarding autos and auto parts, so long as Canada and Mexico do not exceed prescribed import limits on these products. These limits will exceed Canada's and Mexico's present volume of automotive exports to the U.S.

➤ Dairy industry

Under the USMCA, the equivalent of 3.6% of the Canadian milk market is now tariff-free and open to the U.S. dairy industry. The previous amount was around 1%. Increases to free trade on eggs, cheese, and other dairy were also agreed to.

➤ Intellectual Property

The USMCA adjusts Canada's copyright period from fifty years to seventy years after the death of the creator. That adjustment brings Canada in line with the U.S.

The USMCA further enlarges the number of years, from eight to ten, that a generic drug manufacturer must wait before it can lawfully compete with the brand manufacturer of a biologic drug.

➤ Dispute Resolution Process

The USMCA retains NAFTA's right to allow any member state to challenge another's anti-dumping, and countervailing duties, before a panel of representatives from each member state.

However, for Canadian parties invested in the United States and United States' parties invested in Canada, the USMCA mostly eliminates NAFTA's private arbitration rights. Under the USMCA it appears that state disputes must be brought in the member states' domestic courts.

➤ Pre-Approval on other Trade Deals and Monetary Policy Controls

The USMCA requires disclosure by any of the three-member states if that member begins negotiations with a "non-market country." The other member states are allowed to review the final text of such agreement and if a member state enters into a free trade agreement with a "non-market country" the other member states may terminate the USMCA on six months' notice.

The USMCA further requires each country to avoid “competitive devaluation” of its currency. This requirement is backed by mandatory consultations, and dispute settlement panels, that would be overseen by a tri-national Macroeconomic Committee.