

The United States-Mexico- Canada Agreement (USMCA)

A summary

**What is the USMCA, what does it mean for
Unifor, and where do we go from here?**

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What is the USMCA?

The United States-Mexico-Canada Agreement (or USMCA) is a recently negotiated trade treaty announced on September 30, 2018. The deal was negotiated over a span of 14-months and, if ratified, would effectively supplant the existing rules governing North American cross-border trade, previously enshrined in the 1994 North American Free Trade Agreement (or NAFTA).

The USMCA is a very complex legal treaty, consisting of 34 chapters and several sector-specific annexes and side letters. The full text of the agreement is available to view [here](#).

Why was the USMCA negotiated?

For decades, labour unions, and others across progressive civil society had rightly criticized the decidedly one-sided, corporate-focused trade rules enshrined in the NAFTA.

Expanded tariff-free access to the North American market, coupled with less-restrictive investment laws, resulted in a painful restructuring of the economy – causing hardship for workers from factories to farm-fields. Promises of shared prosperity resulting from “freer trade” were broken, as real wages stagnated or, as in Mexico’s case, declined. NAFTA rules designed to protect workers’ rights and the environment, proved unenforceable and ineffective.

With fewer trade and investment restrictions (and NAFTA tools to challenge laws that upset profits), many global corporations responded to worker demands for higher wages, greater benefits and retirement security with threats of investment relocation and job loss. For decades, labour unions have called for NAFTA’s renegotiation.

Successive governments throughout North America acknowledged the problem, but failed to act. In an attempt to win favour and secure votes from hard-hit industrial (and Democrat-leaning) states, Donald Trump identified trade reform as a key plank in his Presidential election campaign – and won.

In May 2017, less than five months from taking office, U.S. Trade Representative Robert Lighthizer notified Congress of the President’s intent to renegotiate NAFTA. Shortly thereafter, the U.S. laid out a series of hard-line proposals designed to secure economic gains for the United States, at the expense of both Canada and Mexico.

What was Unifor’s role in these negotiations?

Unifor viewed this renegotiation of NAFTA as a once-in-a-generation opportunity to fix a bad trade deal. This was the first major trade agreement for Canada to have been re-opened, and intently scrutinized. It was the first chance Canadian progressives had to table new, creative

policies intended to support workers and communities, and reorient the rules of international trade. Our union was not so naïve as to think that a redesigned NAFTA, led by U.S. President Donald Trump, would deliver the necessary, radical, changes to trade agreements that workers deserve. Yet, we were strategic enough to see the openings available to make significant changes to the text, to amplify the voice of working people in all three NAFTA countries, and re-establish labour unions as credible stakeholders on matters of trade.

In the summer of 2017, Unifor launched its **#ABetterNAFTA** campaign and laid out a set of reform proposals in a [submission to Global Affairs Canada](#). Throughout the renegotiation process, the union lobbied federal Members of Parliament, participated in federal consultation groups and fostered working relationships with government staff. The union also collaborated closely with civil society organizations in Canada as well as allies in the Mexican independent labour movement and U.S. union partners, such as the United Automobile Workers, United Electrical, Radio and Machine Workers of America (UE) and others.

Foreign Affairs Minister Chrystia Freeland invited Unifor President Jerry Dias to serve as an informal advisor to the Canadian negotiating team, offering direct input and counsel to federal officials on matters of bargaining strategy, in all rounds of NAFTA talks.

What makes the USMCA different from the original NAFTA?

Much of the USMCA text derives from the original NAFTA and, as suspected, does not mark a radical departure from the standard “free trade agreement” template. In fact, many provisions are merely lifted from the recently negotiated Comprehensive and Progressive Agreement for Trans-Pacific Partnership (to which the United States had a hand in designing before pulling out of the accord in January 2017).

Broadly speaking, USMCA parties are not only *restricted* from establishing rules that interfere with cross-border commercial activity, including investments (similar to the NAFTA and other trade treaties) but are mandated to craft laws that *facilitate* these activities. Under the USMCA, governments agree to curtail their regulatory and rule-making authority. States are effectively forbidden from writing domestic laws and policies considered unfairly burdensome or discriminatory to foreign goods, services and investment (unless explicitly excluded in the terms of the trade agreement).

Despite these core similarities, there are important distinctions between the USMCA and the original NAFTA – some positive, some negative, and some still yet to be determined.

Several of the changes made to this trade agreement have a direct affect on Unifor members, and it is important that our members understand the terms, conditions and potential implications.

What are the positive changes to NAFTA in the USMCA?

Stronger rules governing auto trade in North America

Relevant chapters: Chapter 4 (Rules of Origin)

- The USMCA contains a set of more stringent “Made in North America” rules for auto trade. This includes higher content requirements that car companies will have to meet if they want to move vehicles and parts tariff-free, across borders, within North America.
- The new rules are very detailed and complicated, but in broad strokes, cars must now contain 75 per cent (or three-quarters) North American content, instead of the 62.5 per cent (or two-thirds) required in the original NAFTA.
- Auto manufacturers must also meet higher “Made in North America” rules on an expanded list of parts in order to secure tariff-free access across borders. North American parts content now ranges from 50-75 per cent (in the NAFTA, parts content ranged from 50-60 per cent and not all were included in the final calculation of vehicle content).
- The USMCA also includes a new requirement that 70 per cent of all steel and aluminum used in the production of vehicle is sourced within North America.
- Lastly, new “Labour Value Content” rules will require automakers to demonstrate that at least 40 per cent of the content of a car (45 per cent for a truck) must be sourced from high-wage facilities (i.e. facilities that pay workers on average \$16 USD per hour, which translates to more than \$20 per hour in Canadian dollars). Credits of up to 15 per cent of this Labour Value Content can be provided to auto manufacturers for wages paid in research, development and engineering (10 per cent max) and for maintaining production at high volume North American powertrain facilities (5 per cent max).
- These new rules closely resemble the proposals put forward by both Unifor and the UAW, and are intended to prevent car companies from relocating production to low-wage Mexican facilities.
- It is too soon to determine how effective these new provisions will be in securing (and growing) Canada’s auto manufacturing footprint, but Unifor believes USMCA rules are far more advantageous to autoworkers in Canada than the previous NAFTA.
- Except for new steel and aluminum sourcing requirements, automakers will have 5 years, following the USMCA’s entry into force, to demonstrate adherence to these new rules as applied to light duty passenger vehicles (7 years for heavy trucks).

An effective exemption against U.S. 'national security' tariffs on autos

Relevant chapters: Side Letter (Canada-US Section 232)

- Hovering over NAFTA talks was the threat of new U.S. national security tariffs imposed on Canadian exports of cars and parts, powers granted to the President under Section 232 of the Trade Expansion Act. Reports have suggested the threatened penalties could be as high as 25 per cent.
- In the event the U.S. imposes these penalties, Canada has secured an effective exemption for the auto sector. Under the terms of the agreement, Canada has protected up to 2.6 million U.S.-destined vehicle exports from any potential tariffs (as well as up to \$32.4 billion in auto parts exports), on an annual basis. All light truck exports to the U.S. from Canada will be fully exempt.
- Unifor firmly believes that the U.S. has no reasonable grounds to impose national security tariffs on Canada, and will campaign strongly against any such measure. Nevertheless, this side letter delivers needed protection for autoworkers and assurances to attract needed investment in the auto industry.
- The protections secured (2.6 million vehicle units) far exceeds Canada's historical export levels to the U.S. At our industry's peak production year (1999) Canada exported 2.2 million vehicles to the United States. In 2017, Canada exported 1.8 million vehicles to the U.S. On the parts side, the threshold was set at 138 per cent of Canada's 2017 export value.
- These high thresholds not only protect Canada's current exports from being subject to potential tariffs, but also additional exports – creating ample buffer for the industry to expand capacity.

The elimination of special investor protections

Relevant chapters: Chapter 14 (Investment)

- In the NAFTA Investment chapter (Chapter 11) there existed a provision (found in Section B) that granted extraordinary access to a specialized form on dispute settlement, only on matters of investment protection and only available to private investors. This provision, known as Investor-State Dispute Settlement (ISDS) effectively allowed private investors to sue governments for decisions that negatively affect existing investments as well as future profits.
- The ISDS mechanism enabled investors to file lawsuits independently (i.e. without government involvement, the only form of dispute settlement in trade treaties that allows this) and to bypass domestic courts by using private arbitration tribunals to find a

resolve. Damages are uncapped and, therefore, firms could sue for unlimited sums of money. U.S. firms have sued Canada multiple times under ISDS (mostly challenging federal and provincial environmental laws and regulations), forcing Canada to pay out damages in excess of \$300M.

- In the new USMCA Investment chapter (Chapter 14) ISDS has been removed between Canada and the U.S. A modified, and far limited, version still binds Mexico.
- For Canada and the U.S., there is an ISDS phase-out period of three years. Experts suggest that investors could take this time-limited opportunity to file claims for legacy investments in previous years. Any claims filed in the coming three-year period are bound by previous NAFTA Chapter 11 rules.
- This is the first time that Canada has removed an ISDS provision from a trade or investment treaty. The elimination of ISDS in the USMCA should enable governments to introduce laws and policies, without fear of challenge from U.S. investors.

Reserving the right to manage energy production and exports

Relevant chapters: Chapter 2 (National Treatment and Market Access for Goods)

- Two clauses existed in NAFTA (Articles 315 and 605) that effectively guaranteed the U.S. access to a proportioned amount of Canadian oil and energy products (also known as the “proportionality clause”). Essentially, Canada had conceded the right to manage its production of oil and gas resources and was unable to restrict product destined to U.S. customers.
- Although never formally invoked, this “proportionality clause” represented a loss of Canadian sovereignty over economic affairs, and was identified in Unifor’s 2017 Energy Policy as one of four impediments to Canada limiting its import-dependence on energy and ensuring the supply of oil and gas resources from Western to Eastern and Atlantic provinces (see Unifor’s Energy Policy [here](#)).
- Energy proportionality (and proportionality clauses more broadly) appear to have been removed from the USMCA.

Stronger and enforceable labour standards

Relevant chapters: Chapter 23 (Labour)

- Labour standards under the NAFTA were notoriously weak and ineffective. In fact, NAFTA only addressed labour concerns in a side accord referred to as the North American Agreement on Labour Cooperation (or NAALC), not in the agreement itself.

The NAALC was only intended to be an aspirational document, and explicitly unenforceable.

- Under the USMCA there are new, enhanced labour provisions as compared to the NAFTA. For starters, the new labour provisions are enforceable under the standard state-to-state dispute resolution system in the deal (Chapter 31). The new labour chapter also contains provisions addressing sex-based discrimination, violence against workers and migrant workers – all of which are upgrades on the previous agreement.
- USMCA labour rules require parties to adopt and maintain (in law and practice) international labour rights as stated in the ILO Declaration on Fundamental Rights at Work, including freedom of association (which includes the right to strike) and the elimination of forced or compulsory labour. Unfortunately, these rights refer to only the ILO Declaration, and not the 8 ILO Core Conventions (as was recommended by Unifor and others).
- The USMCA labour chapter is loosely modelled on the labour chapter of the CPTPP, with some notable alterations (some already noted above). This includes a new footnote designed to address the damaging misinterpretation of the phrase “in a manner affecting trade or investment” that resulted in the 2017 denial of a complaint filed by the United States against Guatemalan labour practices. Many observers saw this misinterpretation as rendering the entire chapter meaningless and unenforceable. It is impossible to determine how effective this clarifying footnote will be (not until a new labour complaint is filed and heard by a tribunal), but is an improvement over the CPTPP provisions nonetheless.
- The USMCA labour chapter also contains a special annex (Annex 23-A, “Worker Representation in Collective Bargaining in Mexico”) that outlines a series of practical labour law reform provisions that Mexico is required to adopt on condition of implementing the deal. This Annex intends to overhaul Mexico’s corrupt protection contract system. It includes a requirement that all Mexican collective agreements be renegotiated within four years to address salary and working conditions and must receive majority support from the members through a “personal, free and secret vote”. There shall also be an independent authority to oversee collective agreements, to verify them through documented evidence and/or on-site inspections.
- Unions will be able to file public submissions, requesting an official consultation, on matters related to this chapter. Submissions must be filed with the established “contact point” of any Party to the agreement (for Canada, this is the Director of Bilateral and Regional Labour Affairs at Employment and Social Development Canada).
- Unlike Canada and Mexico, the United States has offered coverage only of its federal labour laws (i.e. excluded from this chapter are State-level labour laws).

- As per article 23.6, Canada must prohibit the import of goods produced in whole, or in part, by forced or compulsory labour (including forced child labour). This amendment is expected to be included as part of Canada's implementing legislation for the USMCA.

Reversing a recent CRTC television policy that undermined Canadian broadcast rights during the Super Bowl

Relevant chapters: Chapter 15 (Cross-Border Trade in Services); Annex 15-D

- Canada has agreed to formally rescind Broadcast Regulatory Policy CRTC 2016-334 and Broadcast Order CRTC 2016-335, which had previously denied the programming rights holder for the Super Bowl (currently Bell Media) to sell and rebroadcast Canadian advertisements by substituting the U.S. broadcast signal in the Canadian market.
- This move will redirect tens of millions of dollars in television advertising revenue back into the Canadian television system, a long-standing demand of Unifor.

What are the positive elements maintained from NAFTA in the USMCA?

Maintaining tools to protect Canada against unfair trade penalties

Relevant chapter: *tbd*

- Despite U.S. protestations, Canada has maintained a special dispute settlement mechanism that enables Parties to challenge, through arbitration tribunal, any alleged unfair application of trade remedy in the form of anti-dumping or countervailing duties.
- Anti-dumping duties (levied against producers found to be exporting goods at below market prices) and countervailing duties (levied against producers found to be receiving unfair public subsidies) have been the focus of recent and ongoing U.S.-Canada trade disputes, including softwood lumber.
- This special dispute settlement mechanism had existed previously in the NAFTA, under Chapter 19 (at this point, it is unclear how this mechanism will be written into the text of the USMCA). Canada successfully used this mechanism to help reach a settlement in prior softwood lumber disputes.
- It is important to note that this dispute settlement mechanism cannot be used to challenge trade remedies imposed on national security grounds, as is the case currently facing various Canadian steel and aluminum exports.

Preserving Canada's right to regulate its cultural industries

Relevant chapters: Chapter 32 (Exceptions and General Provisions)

- Canada has preserved a relatively broad exemption of its cultural industries from the terms and conditions of the USMCA, as outlined in Article 32.6 (2). The so-called “cultural exemption” aims to provide Canadian law-and policy-makers significant latitude in promoting, regulating and supporting its culture, including film and television, the performing arts, publishing and distribution, among others. The exemption applies to every chapter of the agreement, including digital services.
- Direct and explicit financial and regulatory support to Canadian-only cultural products, performers, agencies, service providers, etc. inherently discriminates against foreign suppliers of cultural products – and, as such, does not conform to the spirit or intent of “free trade” disciplines (e.g. non-discriminatory market access and national treatment), including those embedded in the USMCA. In order to protect this industry against trade challenges (and potential penalties), Canada has identified – and exempted – culture from the agreement.
- In addition to the exemption, there is a similar “notwithstanding” clause in Chapter 32, enabling any Party to undertake a measure of “equivalent commercial effect” in response to a cultural protection. Such a clause existed in the NAFTA but never formally invoked.
- It is worth noting that despite the cultural exemption under NAFTA, Canada has been subject to trade challenge for cultural products (notably under the World Trade Organization), including for magazine support measures. All this to say, it is difficult to say definitively if or to what degree Canada's cultural industries will be fully guarded against trade challenges under the USMCA.

No changes to temporary entry rules for workers

Relevant chapters: Chapter 16 (Temporary Entry)

- Recent trade agreements signed by Canada have expanded the scope of job classifications that qualify for temporary entry, through inter-corporate transfers or other special arrangements. Unifor has flagged this as a concern, especially if the intent was to classify low-to-mid skill occupations – creating the potential for added competitive job pressures and exploitation of foreign workers.
- The USMCA makes no change to these job classifications or to the scope of temporary entry provisions.

What are the concerning aspects of the new USMCA?

Steel and aluminum tariffs (section 232) are still applied to Canadian exporters

Relevant chapters: US-Canada 232 Process Side Letter

- Despite previous suggestions by the Trump Administration, that national security tariffs imposed on Canadian steel and aluminum imports could be lifted in the event of a new trade deal, these tariffs (25 per cent for steel, 10 per cent for aluminum) are still being applied by the Department of Commerce.
- Both Canada and the US penned a side letter (currently labelled the US-Canada 232 Process Side Letter), that restricts the U.S. from adopting or maintaining a future measure or import restriction under Section 232 of the Trade Act, for at least 60 days.
- During this 60-day reprieve, the Parties shall seek to negotiate an appropriate resolve.
- Canada has also reserved the right to both challenge any Section 232 measure and to impose reciprocal counter-measures, in response to any U.S.-imposed penalty.
- Although not explicitly stated in the side letter, Canadian and U.S. officials suggest they will continue discussions for an appropriate resolve to the steel and aluminum tariff dispute before the USMCA signing in December 2018.

Expanded market access for U.S. supply managed products, including dairy

Relevant chapters: Chapter 2 (National Treatment and Market Access for Goods) – Annex 2-B, Appendix C; Chapter 3 (Agriculture) – Canada-US Bilateral Annex

- Canada has provided expanded market access to U.S. imports of poultry and dairy products, by raising the aggregate quantity of allowable duty-free imports (quotas) for goods (e.g. chicken, turkey, milk, butter, cream, cheese, etc.), originating in the United States.
- The quota increases are very complicated. Quotas based on volume (metric tonnes) vary across product category. Annual quotas will increase incrementally each year, over a 19-year timeframe for dairy products (16 years for poultry products).
- Under this agreement, U.S. producers will see additional market access gains of 3.6 per cent - which is incremental to proposed market access provisions in the CPTPP and the Canada-EU CETA.

- Additionally, Canada has agreed to eliminate its milk class 6 and 7 (as well as any associated milk prices) within 6 months of the USMCA's entry into force. The established pricing classifications dealt with a surplus of butterfat in the Canadian market, frustrating U.S., Australian and New Zealand dairy producers (below market prices cut into profit margins).
- To address the dairy farmers opposition to the USMCA the federal government has suggested support measures (i.e. compensation) to impacted dairy farmers.
- Following a meeting with Prime Minister Trudeau, Dairy Farmers of Canada President Pierre Lampron issued a statement, saying: *"We recognize the symbolism of the gesture of Prime Minister Trudeau, in offering to meet with our industry to hear our concerns firsthand. However, the absence of details on measures to mitigate the impact of the concessions made within the USMCA, as well as the absence of a vision for the future of our industry at this time, cannot appease the concerns of the dairy farmers."*
- For good background on the supply management dairy industry, and trade issues, visit: <https://ipolitics.ca/2017/04/22/dairy-101-the-canada-u-s-milk-spat-explained/> (English only)

Reforms to intellectual property rules affecting medicines

Relevant chapters: Chapter 20 (Intellectual Property)

- Despite securing protections from major intellectual property rule changes, affecting pharmaceuticals, in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Canada has conceded significant reforms to the U.S. in the USMCA.
- Canada has agreed to extend "market exclusivity" rights to pharmaceutical patents by an additional 2 years, moving from eight to at least 10 years. This includes important biologic medicines, including those used to treat cancer, arthritis and Crohn's disease.
- There are additional rules pertaining to data protection, the release of clinical trial information and other matters.
- Canada and Mexico have a five-year transition period in order to satisfy new market protection for biologics.
- It is not clear what the impact on drug prices will be, but delaying the marketing of generic substitutes can only drive up costs for consumers.

Lack of ambition on so-called Progressive Trade Agenda

Relevant chapters: Chapter 23 (Labour); Chapter 32 (Exceptions and General Provisions); Chapter 24 (Environment)

- In the early stages of NAFTA renegotiation, the Canadian government outlined a series of socially progressive objectives that they desired to include in a new North American trade pact. Under the framework of the so-called Progressive Trade Agenda, the federal government tabled proposals to include a new chapter on gender and Indigenous trade, in addition to negotiating more ambitious provisions for both the labour and environment.
- Unfortunately, the USMCA does not contain stand-alone chapters on gender or Indigenous trade. Despite certain enhancements to both labour and environmental standards, there is a noticeable lack of ambition within the environment chapter on matters pertaining to climate change.
- The new USMCA does contain language within the labour chapter regarding “sex-based discrimination in the workplace.” This provision requires Parties to implement policies that *“protect workers against employment discrimination on the basis of sex, including with regard to pregnancy, sexual harassment, sexual orientation, gender identity, and caregiving responsibilities, provide job-protected leave for birth or adoption of a child and care of family members, and protect against wage discrimination.”*
- Canada has also managed to secure a strongly worded exemption, protecting any measure (that may not conform to the terms of USMCA) that is necessary to fulfil a Parties’ legal obligation to Indigenous people, within Chapter 32. The exemption states: *“provided... such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, services, and investment, nothing in this Agreement shall preclude a Party from adopting or maintaining a measure it deems necessary to fulfill its legal obligations to Indigenous peoples.”*

New market access to U.S. shopping channels, broadcasting in Canada

Relevant chapters: Chapter 15 (Cross Border Trade in Services) – Annex 15-D

- Despite effectively fighting off U.S. demands for increased market access to sports television services in Canada (e.g. ESPN being offered in Canada), and allowing U.S. network TV and border stations to charge retransmission fees to be broadcast in Canada, there is a provision in Chapter 15, Annex 15-D, that allows U.S. TV shopping channels to broadcast in Canada.

- The provision mandates the CRTC to authorize distribution of these channels in Canada and allows for the negotiation of affiliation agreements with Canadian cable and satellite providers. This could have a negative impact of Unifor members, employed at The Shopping Channel.

What are the next steps for the USMCA?

The next milestone for the USMCA will be November 30, 2018 – the final day of the 90-day U.S. consultation period spelled out under Trade Promotion Authority rules. We expect the USMCA will be signed (as an agreement in principle), by President Trump, Prime Minister Trudeau and outgoing Mexican President Enrique Peña Nieto in early December.

The U.S. Congress will receive a final text of the USMCA in January or February, just prior to the introduction of implementing legislation in April. Congress will consider this legislation in late spring or early summer and vote on the bill in July.

Canada will undertake its own legislative process (as will Mexico), and will design implementing legislation, although the timelines for this are not yet clear.

One of the focal points will be how Mexico's incoming President, Andrés Manuel López Obrador, oversees needed labour law and collective bargaining reforms. This will require close attention.

What are the next steps for Unifor?

Over the coming months, Unifor will continue to pore over the contents of the agreement and further its analysis. Undoubtedly, new issues will arise that will require careful examination. We can expect many twists and turns as U.S. lawmakers and others propose various (and subtle) amendments to the final text.

Unifor will participate in all follow-through consultations on the deal, through the House of Commons and within the various USMCA consultation groups. We will also communicate the terms of this new agreement to our members, specifically to those directly affected, to ensure a full understanding of the deal.

Importantly, Unifor will continue its campaign and advocacy work for trade policy reform – building on those positive outcomes of the USMCA, particularly the elimination of ISDS and stronger labour standards, while confidently criticizing those other areas of concern.

Unifor will continue to actively oppose the CPTPP, and work to frustrate its implementation. We will also commit to playing an active role in future trade negotiations and ongoing trade

disputes, finding a resolve to trade challenges facing Canadian steel and aluminum workers as well as those in the softwood lumber industry.

Our union will leverage its heightened profile and continue to speak with a credible voice advancing the interests of workers and the need for alternative, development-focused and progressive models of trade. That includes advancing our national People's Trade Agenda campaign, organizing community town halls, harvesting new ideas, and developing a worker-centric vision for trade policy reform.

Unifor will also continue to strengthen bonds of solidarity with workers across borders, through global union federations, through Unifor's North American Solidarity Project, and through our Social Justice Fund partnerships. Specifically, we will work to advance our relationship with those in the independent Mexican labour movement, to develop active dialogue and to support each other's struggles for good jobs and fundamental trade union freedoms.

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