

United States – Mexico- Canada Agreement and NAFTA

A Practical Comparison and Contrast for Traders May 8th, 2019



NAFTA USMCA

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Introductions

- John Goodrich
- Eden Prairie, MN
- 30+ Years Experience
- Licensed Customhouse Broker
- Trade Compliance Consultant
- Author of textbooks on:
 - HS Classification
 - NAFTA
 - U.S. Importing
 - U.S. Import Audit



- John@JDG-Associates.com
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Housekeeping

Time 9:45 – 11:15

Downloads

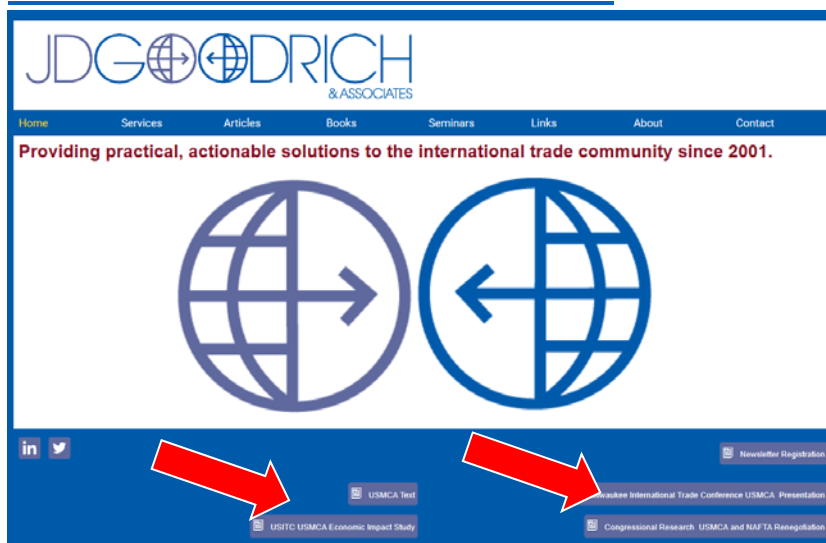
- USMCA Text
 - <https://USTR.gov/>
- USITC USMCA Economic Impact Study
 - <https://USITC.gov/>
- Congressional Research NAFTA to USMCA
 - <https://fas.org/sqp/crs/row/R44981.pdf>
- This Presentation
 - www.JDG-Associates.com



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Today's Agenda

I. USMCA Overview

1. What is it?
2. What does it do?
3. How does it compare to NAFTA?

II. Real World Implications

1. RoO Simpler? Harder? Same?
2. Preparing for USMCA

III. Path Forward

1. Implementation Process & Timeline
2. Hurdles to Implementation

IV. Q & A



I. USMCA Overview

1. What is it?
2. What does it do?
3. How does it compare to NAFTA?

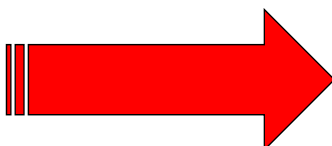


I.1 What is the USMCA?

- A. Originally “NAFTA 2018” or “NAFTA 2.0”
- B. Replaces NAFTA upon entry into force
- C. Builds on legacy NAFTA 1994 concepts and rules
- D. Builds on work done under TPP & other FTAs
- E. Modernizes NAFTA
 - Modified Rules of origin
 - Services
 - Investment
 - Financial services
 - Digital / E-trade
 - Telecommunications
 - Intellectual Property
 - Sanitary & Phytosanitary Measures
 - Labor
 - Regulatory Transparency & Certainty

Structure

NAFTA	USMCA
22 Chapters	34 Chapters



34 Chapters

Table of Contents

- A. United States-Mexico-Canada Agreement Text – Chapters
- 0. Preamble
- 1. Initial Provisions and General Definitions
- 2. National Treatment and Market Access for Goods
- 3. Agriculture
- 4. Rules of Origin, with Product Specific Rules
- 5. Origin Procedures
- 6. Textiles and Apparel
- 7. Customs and Trade Facilitation
- 8. Recognition of the Mexican State’s Direct, Inalienable, and Imprescriptible Ownership of Hydrocarbons
- 9. Sanitary and Phytosanitary Measures
- 10. Trade Remedies

34 Chapters

- 11. Technical Barriers to Trade
- 12. Sectoral Annexes
- 13. Government Procurement
- 14. Investment
- 15. Cross-Border Trade in Services
- 16. Temporary Entry
- 17. Financial Services
- 18. Telecommunications
- 19. Digital Trade
- 20. Intellectual Property
- 21. Competition Policy
- 22. State-Owned Enterprises
- 23. Labor
- 24. Environment

34 Chapters

- 25. Small and Medium-Sized Enterprises
- 26. Competitiveness
- 27. Anticorruption
- 28. Good Regulatory Practices
- 29. Publication and Administration
- 30. Administrative and Institutional Provisions
- 31. Dispute Settlement
- 32. Exceptions and General Provisions
- 33. Macroeconomic Policies and Exchange Rate Matters
- 34. Final Provisions
- B. Agreement Annexes
- C. Side Letters

I.2 What does USMCA do?

Per the USITC – Greatest Effects Will Be...

#1. Reduced uncertainty in digital trade

- Forced data localization prohibited

#2. Increased complexity in automotive

- Increase in auto parts production est. 28K jobs
- Small decline in auto production.
- Reduction in use of FTAs
- Slight rise in cost of passenger & light truck
- Slight decline in vehicle consumption

USITC...

Increased U.S. real GDP by \$68.2 billion (0.35 %)

	Value	Percent
U.S. real GDP (billion \$)	68.2	0.35
Employment (1,000 full-time equivalent workers)	175.7	0.12

Source: USITC estimates.

Note: Dollar value is in 2017 prices.

USITC

Increased U.S. employment by 176,000 jobs (0.12 %)

Industry	Exports (%)	Imports (%)	Output (%)	Real wages (%)	Employment (%)	Employment (1,000 jobs)
Agriculture	1.1	1.3	0.18	0.23	0.12	1.7
Manufacturing and mining	3.3	2.1	0.57	0.50	0.37	49.7
Services	1.2	3.4	0.17	0.23	0.09	124.3

Source: USITC estimates.

USITC...

Increased Trade

	Exports (%)	Exports (billion \$)	Imports (%)	Imports (billion \$)
U.S. trade with Canada	5.9	19.1	4.8	19.1
U.S. trade with Mexico	6.7	14.2	3.8	12.4

Source: USITC estimates, USITC DataWeb.

Note: Exports and imports include both goods and services.

USITC...

“Increases in trade not due to duty savings but to industry-specific rules as well as crosscutting provisions.”

- Agriculture - Tariff Rate Quotas (TRQ) relaxed
- Services
- Intellectual Property Rights Protection
- Investor State Dispute Settlement
- International Data Transfer, E-Commerce
- Labor

1.2 What does USMCA do for trade in goods?

Eliminates Duty on “originating goods.”

Maintains the MPF/DTA exemption

Articles 2.10 & 2.16

- E goods exempt
- TPL textile goods exempt

Article 6, Annex 6-C, 7

I.3. USMCA Compared to NAFTA?

- A. Like NAFTA
- B. Different



Like NAFTA...

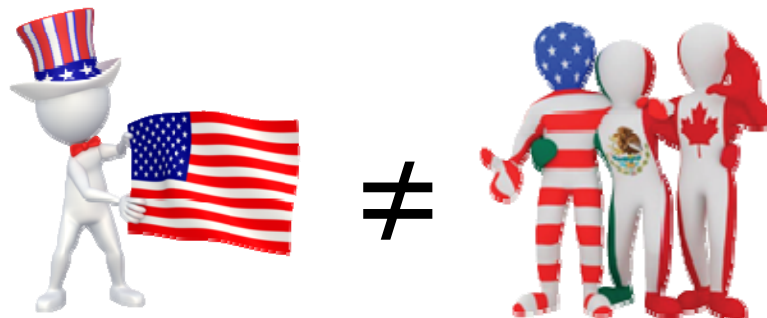
Origination using preference criteria

- A. Wholly the growth (clarified/expanded)
- B. Product Specific Rules of Origin
- C. Produced with originating materials
- D. Exceptions to Tariff Change Rules
 - 1. Assembled in North America
 - 2. Goods and parts classified the same
- E. Electronic Goods
- (F. Agriculture ?)



i.e.. You can't assume USMCA !

Made in USA \neq Qualifies for USMCA



Like NAFTA

USMCA Retains:

- Intermediate Materials
- Accumulation
- Indirect Materials
- Fungible Goods & Materials
- Accessories / Spare Parts
- Drawback / Duty Deferral
- Transshipment
- Packing
- Packaging
- Samples
- Temporary Entry
- Returned Repairs

Different from NAFTA

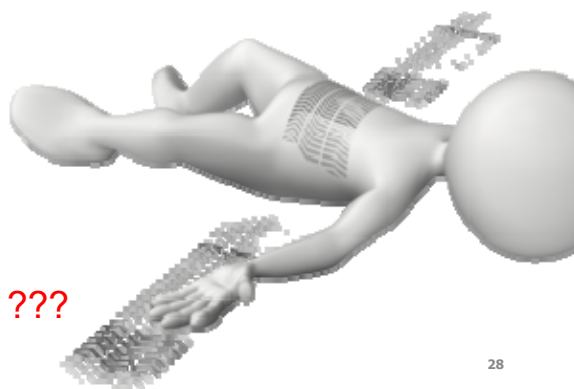
- Omission of Marking Rules (Annex 311 / 19 CFR §102)
- De Minimis raised from 7% to 10%
- Express shipment de Minimis raised
- Retail sets defined
- Recovered materials
- Remanufactured goods
- No official certificate of origin format
- Opens door to cumulation discussion
 - (back door to TPP partners?)

Express Shipments (USMCA Article 7.8)

De Minimis levels

- U.S.
 - \$800 duty free *
- Mexico
 - US\$117 duty free
 - US\$50 taxes free
- Canada,
 - CA\$150 duty free
 - CA\$40 tax free

* Subject to adjustment ???



Certification of Origination

- No specific format but
- Specific minimum data elements

- Certifier
 - Exporter based on “knowledge” or producer certification or
 - Producer based on “knowledge” or
 - Importer based on “knowledge”

Enforcement & Cooperation

- Retains NAFTA verifications & site visits
- Requires notification of local authority.
- Requires mutual cooperation between customs authorities
- Importer has more accountability



Self-terminating Article 34.7

- Expires after 16 years if not renewed.
- Requires a 6-year review after initiation and each renewal.



Contains Maintenance Mechanisms

USMCA Ch. 30

Establishes a Commission with authority to

- Amend the agreement
- Make adjustments for updates to the HS
- Issue interpretive rulings
- Etc.



II. Real World Implications

1. Rules of Origin
Simpler? Harder? Same?
2. Preparing for USMCA



Remember FTA Participation is a Process



- Classification
- Solicitation
- Origination
- Certification



II.1 Rules of Origin Simpler? Harder? Same?

- Liberalizes benefits for some commodities
 - Chemistry
 - Market Access
 - Agriculture
- Restricts benefits for others
 - Automotive
 - Some steel components
 - Rail
- Neutral for the rest



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Product Specific Rules

Same concepts as NAFTA

- Simple tariff change
- Simple Regional Value Content (RVC) using
 - Transaction Value 60%
 - Net Cost 50%
- Combination tariff change and RVC

Many of the Product Specific Rules Remain the Same



Regional Value Content “RVC”

Now Removed from Value of Nonoriginating Material*

- Duty / broker fees
- Domestic Freight
- Originating Content

Obtaining RVC threshold slightly easier

Aligns with manufacturing accounting practice

*Insofar as these costs can be substantiated.

Mineral Fuels etc. – Ch. 27

Petroleum Diluent Rule

Note 4: For the purposes of determining whether or not a good of heading **27.09** is an originating good, the origin of diluent of heading 27.09 or 27.10 that is used to facilitate the transportation between Parties of crude petroleum oils and crude oils obtained from bituminous minerals of heading 27.09 is **disregarded**, provided that the diluent constitutes no more than **40 per cent** by volume of the good.

Glass Cleaner HS 3402.20

NAFTA

(A) A change to subheadings 3402.20 through 3402.90 from any subheading outside that group, except from subheading 3401.30;

or

(B) A change to subheadings 3402.20 through 3402.90 from any other subheading within that group or from subheading 3401.30, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than:

- (1) 65 percent where the transaction value method is used, or
- (2) 50 percent where the net cost method is used.



Glass Cleaner HS 3402.20

USMCA

A change to subheading 3402.11 through 3404.90 from any other subheading, including another subheading within that group; or

No required change in tariff classification to subheading 3402.11 through 3404.90, provided there is a regional value content of not less than:

(a) 60 percent where the transaction value method is used; or

(b) 50 percent where the net cost method is used.



+ PLUS

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Chemistry – Section VI (Ch. 28-38)

Rule 1: Chemical Reaction Rule

Rule 2: Purification

Rule 3: Mixtures and Blends

Rule 4: Particle Size

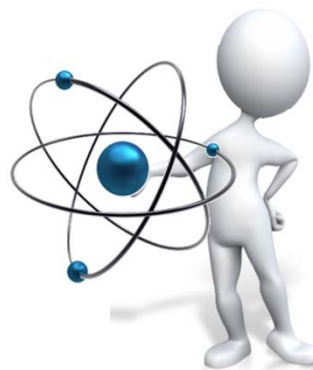
Rule 5: Standards Materials

Rule 6: Isomer Separation

Rule 7: Separation Prohibition

Rule 8: Biotechnological Process

Consistent with other FTAs



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Polyethylene Bag HS 3923.21

NAFTA

A change to subheadings 3923.10 through 3923.21 from any other heading, provided there is a regional value content of not less than:

- (A) 60 percent where the transaction value method is used, or
- (B) 50 percent where the net cost method is used.



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Polyethylene Bag HS 3923.21

USMCA

3916-3926: A change to heading 39.15 through 39.26 from any other heading,



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Textiles & Apparel Ch. 6

Product specific rules retained from NAFTA

- Triple Transformation
 - Yarn forward
 - Fiber forward
- Single transformation rules

De Minimis

- measured by 10% weight
- De minimis cannot exceed 7% elastomeric content.



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Textiles & Apparel Ch. 6

• USMCA drops NAFTA

- Visible lining rule
- Mexican sweater rule

• USMCA adds

- Originating thread rule
- Originating pocketing rule



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Steel

- Chapter 72 identical to NAFTA
- Chapter 73 contains increased RVC
 - 75% Transaction Value
 - 65% Net Cost

Beginning on January 1 2023 or three years after entry into force of this Agreement, whichever is later, and thereafter.

HS	75% TV	65% NC
7305-7307 Pipe, pipe fittings	x	x
7308.10, 7308.20, 7308.30 Bridges, towers, doors, windows	x	x
7308.90	na	x
7312.10 stranded wire, cable	x	x
7313 barbed wire	x	x
7314.19, 7314.31-7314.49 Grill, woven, netting, fencing	x	x
7315.82-7315.89 chain	x	x
7317 nails, tacks etc.	x	x



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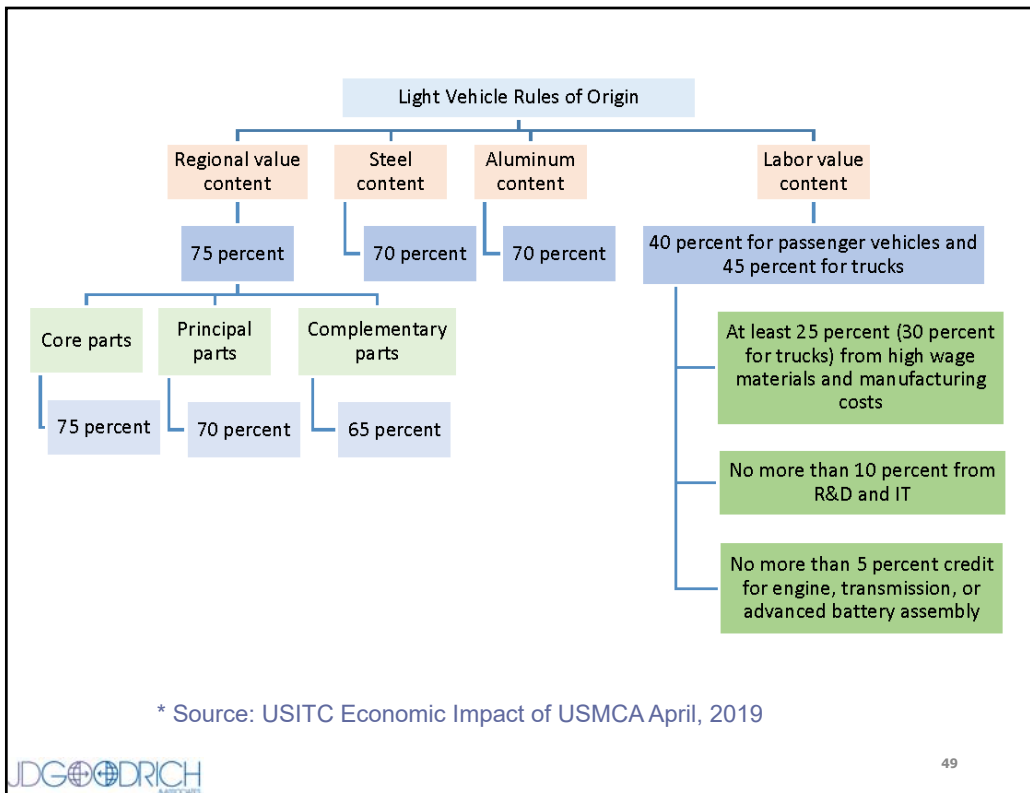
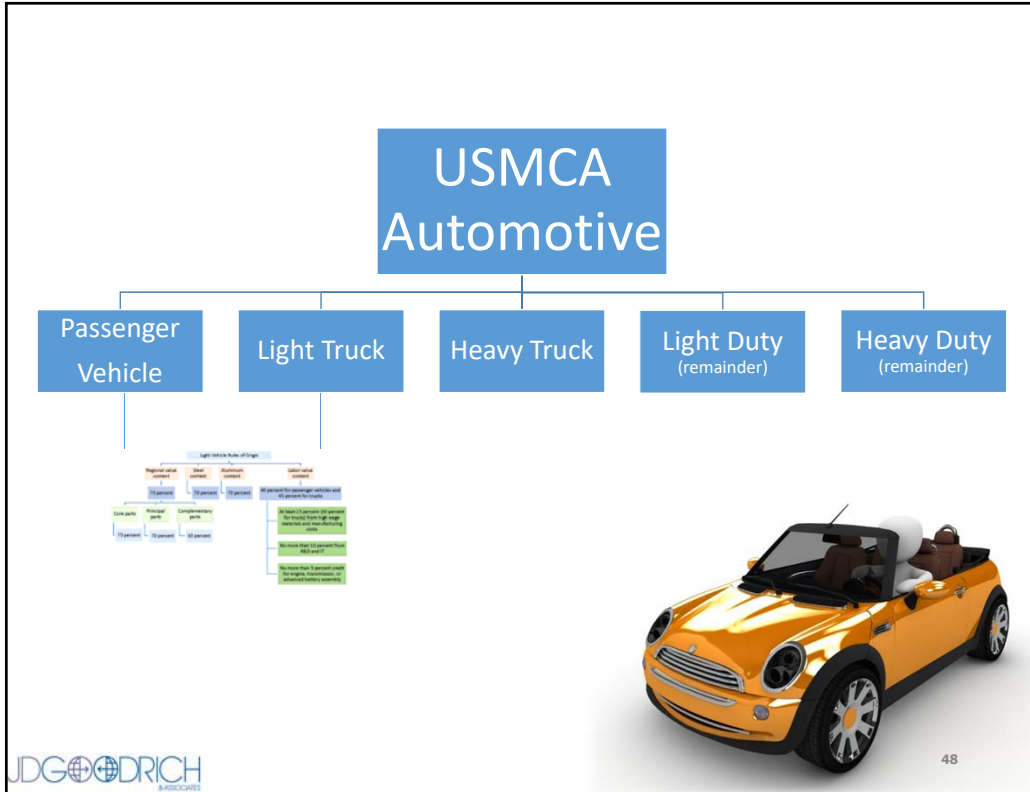
NAFTA Automotive

Light Duty

Heavy Duty



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II.2 Preparing for USMCA

1. NAFTA now!

NAFTA continues to be the law of the land.
Proceed with **NAFTA** as if there were no USMCA.
Don't interrupt your **NAFTA** plans for 2019-2020.



2. Identify Your Rule of Origin

Explore Chapter 4, Annex 4-B and its appendices.
Explore special sector provisions.

Will your rules change from NAFTA?



3. Assess Effect on Your Business

- Administrative processes
 - Reduced or increased?
 - E.g. Chemists, do you need to do solicitation?
- Change in manufacturing allocation necessary?
- Change in sourcing patterns necessary?
- Marketing opportunities or challenges?



4. Develop a Strategy

- Contingency plans for effects?
- Wait and see?
- Political engagement?



5. Strengthen Trade Compliance

● **Classification**

● Solicitation

● Origination

● Certification



5. Strengthen Trade Compliance

If you don't know NAFTA or how to classify
don't wait for USMCA.

Instructional Resources;

• Waukesha County Technical College



• Global Training Center



• JD Goodrich & Associates



6. Remain Flexible

The final USMCA may (will?) change.



III. The Path Forward

1. Implementation Process & Timeline
2. Hurdles to Implementation



III.1 Implementation Process Timeline

- November 3, 2018 – Signed in Buenos Aires, Argentina
- +105 days USITC Issues Economic Impact Review
- + 35 days (gov't shutdown) USITC released report April 20th
- Administration submits enabling legislation
- If Congress determines legislation meets Trade Promotion Authority (TPA) requirements each chamber has 90 days expedited review. Review may be consecutive or concurrent.
- Each country must ratify
- Uniform regulation promulgation & agreement in each country
- Last country notifies others of preparedness
- +60 to 90 days.



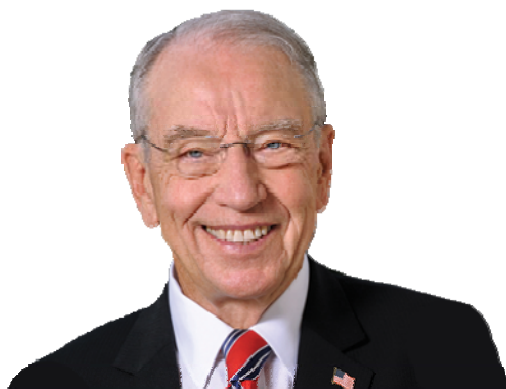
III.2 Hurdles to Implementation

- A. Steel & Aluminum Safeguards
- B. Automotive
- C. De Minimis
- D. Mexican Labor Rights
- E. Politics

A. Steel & Aluminum Safeguards

*“If these tariffs aren’t lifted, USMCA is dead.” **

*Sen. Chuck Grassley
Sen. Finance Committee Chair*



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*WSJ Op-ed 4/29/2019

B. Automotive

- **MEMA** (Motor & Equipment Manufacturer's Assoc.) generally supports
- **OESA** (Original Equipment Suppliers Assoc.) guarded response
 - Suppliers bear greatest burden of change
 - Administrative complexity
 - Lack of clarity surrounding RoO
 - LVC
 - Steel / Aluminum
- **232 Auto Safeguard Announcement – May?**

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C. De Minimis

In 2016, Congress raised the de minimis threshold unilaterally to the current level in the bipartisan Trade Facilitation and Trade Enforcement Act (TFTEA), so our position is clear.

Chuck Grassley R-IA
Ron Wyden D-OR
Senate Finance Committee

D. Mexican Labor Rights

USMCA Obligates Mexico to:

- Recognize right of collective bargaining
- Establish independent labor courts



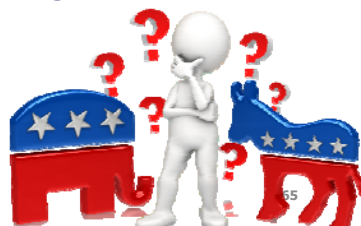
Mexican Senate Approved April 29, 2019

E¹ Political Hurdles

1. Will Congress honor Fast-Track review under Trade Promotion Authority TPA?

- Yes or
- Joint procedural disapproval resolution – both chambers
- Consultation and Compliance Resolution – either chamber
- Change the rules in either chamber
 - Speaker could direct the rules committee to strip expedited treatment from TPA
 - Senate requires supermajority to change the TPA rules.

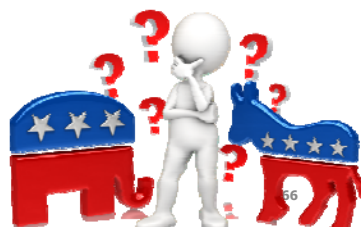
Our game, our rules!



E² Political Hurdles

2. Will the administration exit NAFTA?

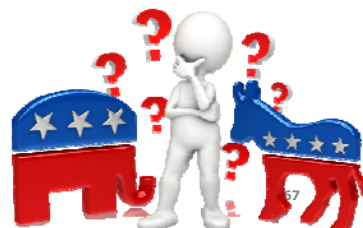
- The President has the authority to make the announcement.
- Only Congress has authority to rewrite the laws incorporating NAFTA.



E³ Enabling Legislation

3. What's in the enabling legislation?

- Customs “Mod Act 2.0” ?
- Rewrite of safeguard laws?
- ?
- When will we see it?



The push for USMCA is on...

USTR Fact Sheets 5/2/2019

1. Agricultural Goods
2. Automobiles and Parts
3. Energy & Energy Products
4. Labor
5. Intellectual Property
6. Digital Trade
7. Textiles & Apparel
8. Environment
9. Small & Medium-sized Enterprises
10. Combatting Non-Market Practices

<https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/fact-sheets/usmca-issue-specific-fact-sheets>



2018 U.S. Agricultural Goods Exports to FTA Partners (% of total)

FTA Partner	Percentage
Mexico	~10%
Canada	~10%
All Other 112 FTA Partners (117)	~80%

Key USMCA Upgrades Over the NAFTA Covering Trade in Agricultural Goods

- The USMCA modernizes NAFTA's existing provisions, significantly expands U.S. access to Canada's dairy market, and includes a number of other important upgrades. According to independent analysis by the U.S. International Trade Commission, full implementation of the USMCA would increase U.S. agricultural exports to the world by \$2.2 billion.
- Provides for Unprecedented Market Access for U.S. Dairy Farmers into Canada
- Expands the Full Range of Access Provisions and Applies New Export Penalties

The push for USMCA is on...

USTR:
Wisconsin North American Trade

\$6.9 Billion **Canada**
\$3.2 Billion **Mexico**
\$10.1 Billion **North America**

[https://ustr.gov/sites/default/files/files/Press/fs/USMCA/USMCA_Wisconsin.pdf](https://ustr.gov/sites/default/files/files/Press/fs/USMCA_USMCA_Wisconsin.pdf)



IV. Q & A

- What USMCA benefits do you see for your company?
- What challenges will USMCA present?

