



Backgrounder

New NAFTA: USMCA is the United States-Mexico-Canada Agreement

November 2018



Background

On September 30, 2018, a new trilateral trade and investment agreement was finalized between the United States, Mexico, and Canada. The United States-Mexico-Canada Agreement (or USMCA) will replace the North American Free Trade Agreement.

Scott Sinclair of the Canadian Centre for Policy Alternatives (CCPA) remarks that “for Canada, it’s hard to see the USMCA as anything more than damage control” because, even though we didn’t concede to major US demands (like eliminating supply management), we did make big concessions by eroding supply management, and by extending, expanding, and cementing corporate patent and exclusivity rights on biologic medicines.

And Canada failed to achieve its negotiating objectives: exemption from Trump’s national security steel and aluminum tariffs, incorporating chapters on gender and Indigenous rights, and improving access to US government procurement markets.

The general sentiment about the USMCA is lukewarm, even from traditional supporters of free trade. Some say it’s a bad deal but could have been worse. Others say it’s better than nothing. We agree it’s a bad deal. But we disagree with the defeatist view that it’s better than nothing. For many reasons, no deal at all would be better than the USMCA.

Pushback from US Congress Democrats

Before it comes into effect, each country’s legislature must pass the USMCA. In the US, a majority of lawmakers in both houses of Congress, the House of Representatives and the Senate must ratify the USMCA. But required waiting periods mean a vote will not come until the next Congress is seated in January. The earliest that Congress is likely to vote to ratify the deal is in February or March 2019. And this could spell trouble. With Democrat control of the House, following the 2018 mid-term elections, they could vote to reject the deal without changes. Some lawmakers have expressed concern that the labour provisions are just guidelines, not legally enforceable. Since they’ll have a majority, Democrats could change or stop the agreement.

Key Aspects of the USMCA

Chapters 11 and 19: A Tale of 2 Dispute Settlement Mechanisms

NAFTA has 3 dispute resolution mechanisms: Ch. 11 (ISDS), Ch. 19 (an appeals process related to anti-dumping and countervailing duties), and Ch. 20 (state-to-state). Two of these were contested, and subject to renegotiation: Chapters 11 and 19.

Ch. 11— Investor-State Dispute Settlement (ISDS)—A Partial Victory

ISDS, which we’ve long sought to have removed, is (mostly) eliminated. It’s an incredible achievement for the labour movement, but not a total victory. ISDS will continue for 3 years, during which investors can keep launching claims, arbitrated under the old NAFTA rules. Scott Sinclair warns this extension will encourage a wave of new cases as investors hurry to exploit their ISDS rights before expiry. For Mexico, a scaled-

back version remains with the US. Existing contracts for energy and other sectors remain subject to full ISDS. And anyway, Canadian and Mexican investors have full ISDS rights in other trade deals like the new Trans-Pacific Partnership (the CPTPP). So the ISDS fight continues.

Ch. 19—Was It Worth It?

The dispute resolution tool Canada was so determined to save in talks was Ch. 19. The government boasted when it was successfully preserved, despite US demands to delete it. But a new CCPA report casts doubts on the value of protecting it. It has a spotty record helping Canadian exporters (only 12 of 54 complaints filed). Worse, it provides no protection at all to the most significant current irritant: Trump's tariffs on steel and aluminum exports. This mixed track record suggests that the price Canada paid to protect it was too high, namely extending monopoly protections on brand-name medicines, eroding supply management, and failing to stop steel and aluminum tariffs.

Labour Chapter

The government is patting itself on the back because of a new labour chapter that outlines and seeks to protect workers' rights and freedoms. And this chapter is supposed to be enforceable through state-to-state dispute resolution. We remain sceptical how this will all play out, and we doubt it will stop the biggest irritants workers face. The USMCA won't fix the long-term problems with NAFTA that have caused so much grief. We'll still lose factories to right-to-work states, and we'll still face wage stagnation caused by direct competition with countries that have lower wages, both the US and Mexico.

Intellectual Property Protections Will Kill Pharmacare

The USMCA extends, expands, and cements monopoly protection for brand-name biologic drugs to 10 years, with serious implications for drug costs in Canada. The rules go significantly beyond the NAFTA text in their patent and exclusivity protections for corporate monopoly on needed medicines. Their purpose is to better insulate expensive new medicines from generic competition, helping pharmaceutical corporations keep the prices of some new medicines higher for longer. For these reasons, multinational US drug companies are hailing the USMCA as *historic*. But for everyone else, this is bad news: it will further strain health care budgets and exacerbate suffering and family financial hardship.

No Indigenous, Gender, or Environment Chapters

Canada's much publicized promise of a "progressive trade agenda" is dead. Instead, Canada negotiated a deal without any gender or Indigenous chapters. Thanks to the pressure by labour unions and their allies, the government did negotiate some language on these, for example, Article 32.5 on "Indigenous Peoples Rights" says that nothing in the USMCA will preclude adopting or maintaining a measure deemed necessary to fulfill any "legal obligations to indigenous peoples." On the other hand, the USMCA does not even mention *climate change*, the *Paris Agreement*, or anthropogenic global warming.

Online Shopping and Canada Post

For online shopping (importing by mail or courier), Canadians are currently allowed to import a maximum of \$20 worth of goods duty free and tax free. Anything over \$20 mailed to Canada is subject to taxes and duties. Under the USMCA, this threshold will increase to \$40 (duty free and tax free) and up to \$150 (just duty free but not tax free). But the new rules for taxes and duties will apply only to parcels delivered by private couriers not to those delivered by Canada Post.

Dairy: 3.7% Conceded for a Grand Total of 18%

The government says only a small percentage of our dairy market was conceded in the USMCA: 3.7 %. But this statistic is misleading. The Dairy Farmers of Canada explain that Canada's 3 biggest trade deals (CETA, CPTPP, and USMCA) together open 18% of Canada's market to foreign farmers and processors. This weakens our food production system and creates uncertainty for workers. The bulk of profits will go to multinational commodities traders and processing companies, not to farmers in the small and mid-sized communities where they earn their living. For this reason, the United Food and Commercial Workers (UFCW) said “there is good reason for food workers to feel betrayed” by these concessions.

Tariffs and Quotas: Not *Free Trade* but US-dominated *Managed Trade*

Some say USMCA is not a free trade deal but inaugurates a new era of *managed trade*, because it entrenches a quota system on certain goods, one that benefits the US.

Silent Job Killers: Automobile Quotas and the Continued Threat of Tariffs

With USMCA, in order for vehicles to be exempt from tariffs, a higher percentage of a vehicle's content (parts) must originate (be produced) in North America. With wages, by 2023, 40%–45% of production must come from workers who are paid an average of more than \$16/hour, a wage well above Mexican wage levels. These 2 measures are both seen as positive developments.

But, the USMCA also places a quantitative cap (or a quota) on how many passenger cars (not light trucks) Canada can export to the US: 2.6 million. Supporters say this quota is significantly above the 1.8 million cars exported now, and the historic peak of 2.1 million. Still, this just entrenches the status quo and creates a disincentive to growth in the auto sector, because Canadian cars will be hit with 25% tariffs if the threshold is crossed. No investor will build a new car plant in Canada knowing that the prospect of such tariffs still exists. Because it will deter investment, this quantitative cap on auto exports is being described as a “silent job killer.”

A similar quota will likely apply to steel and aluminum if the tariffs are removed.

Steel and Aluminum Tariffs

On June 1, 2018, the US government invoked a rarely used national security provision (Section 232) to impose 25% tariffs on steel and 10% tariffs on aluminum from multiple countries, including Canada and Mexico. Both Canada and Mexico responded with reciprocal tariff measures shortly after. Canada expected the tariffs would be lifted with

the completion of NAFTA negotiations. But when the agreement in principle was reached, the US did not remove the tariffs. According to reliable sources reported by CBC news, US Trade Representative Robert Lighthizer wanted Canada to limit steel and aluminum exports to the US through a quota system. But Canada refused to accept quotas. This is a curious position, since Canada capitulated to a similar demand for quotas on autos.

According to the United Steel Workers (USW), what's most disconcerting about the USMCA is that it validates and accommodates US national security tariffs, because it creates a new protocol for imposing future Section 232 tariffs against Canada, without eliminating the existing tariffs on our steel and aluminum. Essentially, the USMCA legitimizes the right of future US presidents to impose national security tariffs against Canada, and not just for steel and aluminum: Section 232 tariffs will be allowed on uranium exports, and even autos. For this reason, the USW describes the new agreement as a "sellout."

Conclusion: Not Having A Deal Is Better

Some say that any deal is better than nothing. But a close examination of the USMCA suggests otherwise: not having a deal would be better than this. In key areas, Canada caved to US demands, with major concessions that undermine regulatory protection in the public interest, harm workers, and imperil our food production system. The USMCA does nothing to protect the environment, undermines pharmacare, betrays dairy farmers, and sacrifices steel and aluminum workers. As for the auto industry, if it grows, we get punished. There are no gender or Indigenous chapters, and there is no mention of *climate change* or anthropogenic global warming.

And all we got in return was a dispute settlement mechanism whose merit is questionable, and a labour chapter of dubious content and enforceability.

What's worse, in these and many other ways not mentioned here, the USMCA breaks new ground to expand and entrench US economic domination over North America. The Canadian government bought into the hysteria that NAFTA was the only way we could trade with the US, that any agreement—even a flawed one—was absolutely necessary. But this logic is itself deeply flawed. We had a good trade relationship with the US long before NAFTA, and we can have the same without the USMCA.



NATIONAL UNION OF PUBLIC AND GENERAL EMPLOYEES

- B. C. Government and Service Employees' Union (BCGEU)
- Health Sciences Association of British Columbia (HSABC)
- Health Sciences Association of Alberta (HSAA)
- Saskatchewan Government and General Employees' Union (SGEU)
- Manitoba Government and General Employees' Union (MGEU)
- Ontario Public Service Employees Union (OPSEU)
- Canadian Union of Brewery and General Workers (CUBGW)
- New Brunswick Union of Public and Private Employees (NBU)
- Nova Scotia Government and General Employees Union (NSGEU)
- PEI Union of Public Sector Employees (PEI UPSE)
- Newfoundland & Labrador Association of Public and Private Employees (NAPE)

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