

USCMA FACT SHEET

For most stakeholders, the USCMA will represent a welcome continuation of existing tariff-free treatment for trade between the US, Canada, and Mexico. What follows are some of the major areas that the USMCA addresses, and over the course of this week we will produce more in-depth analytical pieces on the changes to investor-state dispute settlement (ISDS) and the new sunset clause.

Dispute Settlement

Dispute resolution provisions have been controversial in several respects, ranging from how to settle trade-related disputes among the states themselves, to protections for investors doing business in member countries. Chapter 19, which governs intergovernmental disputes like the imposition of anti-dumping duties, was a major issue for Canada, which succeeded in retaining many of its protections. However, in [Chapter 31](#), the USMCA contains significant restrictions on the investor-state dispute settlement (ISDS) process established in the original NAFTA.

First and foremost, the new agreement eliminates ISDS with Canada entirely, and what remains of it with respect to Mexico has been significantly curtailed. Investors' ability to settle disputes with Mexico under USMCA is limited to specific sectors and types of contracts:

- The Agreement allows claims in three areas: legacy investments, breaches of national treatment or compensation provisions, and certain government contracts.
- The government contracts provision applies to specific sectors including oil and gas, power generation, transportation services, telecommunications, and transportation infrastructure. Protections are, however, subject to a number of conditions. Only claimants that are party to "covered government contracts" are able to engage in investor-state dispute settlement. "Covered contracts" are defined as written agreements between a "*national authority*" of a North American country and an investor. While "*national authority*" is defined as authority at the "*central level of government*" it includes persons or state enterprises exercising delegated authority. It is unclear what delegated central government authority means in practice and eventual guidance or clarification of this provision will have important consequences for investments in this sector.

Dairy

Canada agreed to eliminate its controversial "Class 6 and Class 7" dairy pricing system which adjusts the price of domestic milk ingredients used to make cheese and yogurt. It also agreed to a number of other provisions that will allow U.S. producers access to the Canadian dairy market and marginally restrict excessive Canadian exports. Negotiations on dairy were one of the main sticking points during negotiations over the weekend and the Agreement represents a key concession to the U.S.

Sunset

The USMCA contains a [clause that the agreement](#) will sunset after 16 years if it is not renewed or renegotiated. Under the Agreement the three North American partners would meet every six years to decide whether to renew or revise the pact. A vote to renew the Agreement would restart the 16-year clock, keeping the USMCA perpetually a decade and a half away from termination. This clause, however, is much less than the five year sunset initially proposed by USTR. Multiple parties have argued that the uncertainty occasioned by sunset clauses harms investment decisions and future planning. The 16-year compromise is hardly ideal especially if the discussions every six years are as tense as negotiations this year, but the longer horizon should help alleviate any broader uncertainty.

Automobile Content

The agreement contained a key USTR demand to increase the North American content requirement for automobiles receiving duty-free status. The requirement will move from 62.5% to 75% ([see Chapter 4](#)) and require that all "core parts" originate in North American countries. Additionally, the USMCA contains a provision sought

by labor unions requiring that at least 40% of automobile contents be made by workers earning an average base wage of \$16 per hour or more.

Tariffs

The agreement negotiated Sunday also included several side letters on tariffs. Canadian negotiators sought to address two particular issues: the section 232 steel and aluminum tariffs and potential section 232 action on automobiles. Canada requested that the Trump Administration lift steel and aluminum tariffs on the two USMCA partners as part of the agreement, something the Administration declined to do. The U.S. did agree, however, to exempt the current automobile and auto-part production capacity of [Canada](#) and [Mexico](#) from any new section 232 action. The Department of Commerce is still investigating potential harms from automobile imports and the Administration stressed that it has not yet decided to move forward with tariff action.

In a separate set of letters, the U.S. committed to exempt both [Mexico](#) and [Canada](#) from any new section 232 actions for 60 days after a measure is imposed in order to “seek to negotiate an appropriate outcome.”

The full text of the USCMA, posted on the USTR website, can be found [here](#).