CUSMA:
NAVIGATING THE NEW NORTH AMERICAN TRADE DEAL

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SUMMARY

- The Canada-United States-Mexico Agreement (CUSMA) entered into force on July 1, 2020—almost a year and a half after the agreement was signed by all three parties.
- The renegotiated deal maintains significant duty-free access and provides much needed certainty for North American exporters and investors.
- Despite making numerous technical changes to the original North American Free Trade Agreement (NAFTA), under CUSMA, the vast majority of trade with the U.S. and Mexico is expected to continue in a similar manner as before.

BACKGROUND

In August 2017, all three countries began to renegotiate NAFTA, which has been in place since 1994. The stated objective of the U.S. was to *"seek a much better agreement that reduces the U.S. trade deficit and is fair for all Americans by improving market access in Canada and Mexico for U.S. manufacturing, agriculture, and services."* [1] For Canada and Mexico, the goal was to preserve much of the original agreement, while modernizing it to include digital trade and progressive chapters.

Some U.S. negotiating objectives included:

- Enhance Mexico's labour standards;
- Increase market access to Canada's supply management sectors (dairy, eggs and poultry);
- Harmonize regulations on sanitary and phytosanitary measures (SPS measures are intended to protect humans, animals and plants from diseases);
- Improve customs and trade facilitation, while increasing the low-value (*de mimimis*) threshold at which duties apply for U.S. goods entering Canada and Mexico;
- Strengthen rules of origin for automobile production to source from member countries and include a minimum labour value content;
- Modernize the agreement by including a digital trade chapter and prevent restrictions of cross-border data flows;
- Increase intellectual property protections for creative pieces and biologics;
- Eliminate the antidumping and countervailing duties (AD/CVD, previously chapter 19) dispute settlement mechanism.

Eighteen months later, negotiations concluded on Sept. 30, 2018, when the three parties later signed the new deal. Both Mexico and the U.S. ratified CUSMA in 2019, while Canada moved to pass legislation to ratify the deal in March 2020. CUSMA entered into force on July 1, 2020. Compliance with the new trading rules and most market access take effect immediately.

OVERVIEW

CUSMA comprises 34 chapters and 12 side letters. It retains most of the original NAFTA's chapters, makes key changes to market access provisions for autos and agriculture products, and rules such as investment, government procurement, and intellectual property rights. New issues, such as digital trade, state-owned enterprises, and currency misalignment are also addressed.

MARKET ACCESS

Most of the duty-free market access to Mexico and the U.S. for Canadian exporters was previously secured under NAFTA and remains in place under the new agreement.

In addition to the new market access under NAFTA, CUSMA opens new tariff-rate-quotas (TRQ)[2] for refined sugar, sugar-containing products and peanut products–restricted markets for Canadian exporters.

MOTOR VEHICLES

Under NAFTA, automobile tariffs were phased out if rules of origin (ROO) requirements of 62.5% North American content was used for autos, light trucks, engines, and transmissions. Under CUSMA, ROO requirements to qualify for duty-free status are more restrictive:

- Product-specific ROO and procedures requiring 75% North American content;
- Requires 40-45% of auto content to be made with workers earning at least $16 per hour;
- All vehicle steel manufacturing processes must originate from North America (except metallurgical processes and certain raw inputs);[3]
- 70% of a vehicles' aluminum must originate from North America.

In addition, side letters by Canada and Mexico exempt up to 2.6 million vehicles from any future U.S. Section 232 auto tariffs and grant Canada a 60-day grace period.

DAIRY ACCESS

Canadian farmers in supply managed sectors (poultry, eggs, and dairy) will face increased foreign market access, primarily by U.S. exporters (similar in scope to that granted in the Canada-European Union Comprehensive Economic Trade Agreement (CETA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) – about 3.6%). In return, the U.S. will open similar access. New market access in the form of TRQs for certain dairy products (cheese, cream, milk beverages, butter). Whey powder and margarine will also be subject to TRQs for a defined period before being eliminated completely.

DIGITAL TRADE & E-COMMERCE

Since the original NAFTA in 1994, the digital economy has grown drastically in size and importance. CUSMA sets out guidelines and includes commitments not to impose duties on digital products transmitted electronically, to protect personal information, and to co-operate on security issues in electronic communications. In addition, the agreement puts in place commitments to further open government data sharing and prevents countries from implementing data localization restrictions on foreign companies. Additional provisions in CUSMA prohibit parties from requiring disclosing source code or algorithms.

CUSMA increases the *de minimis* threshold[4] on courier shipments entering Canada to US$117 (C$150) and C$40 for collecting sales tax. Mexico raised their *de minimis* threshold to US$117 as well. The U.S. already had a much higher threshold of US$800. This means Canadian online shoppers will be able to import a greater amount of goods duty and tax-free.

GOVERNMENT PROCUREMENT

CUSMA doesn't make any major changes to the text in NAFTA for government procurement. Since NAFTA, the World Trade Organization (WTO) members agreed upon a Government Procurement Agreement (GPA) in 2014, which provides fair, transparent and non-discriminatory conditions of competition for purchases of goods, services and construction services by the public entities covered by the Agreement.

However, the GPA contract threshold is higher at $180,000 compared to NAFTA's $25,000, which means Canada has less opportunities to bid on U.S. contracts.

For government procurement between Canada and Mexico, CPTPP provides some favourable measures in addition to the GPA.

INTELLECTUAL PROPERTY (IP)

Part of the effort to modernize and update the North American pact was to create standards for the minimum protection and enforcement of IP rights. Some of the main changes for IP rights are extending copyright protections to author's life plus 70 years (up from 50 years, with 2.5-year transition period) and 75 years for performances and sound recordings (up from 70 years). These changes are consistent with the U.S. and European copyright laws. However, extending these protections does restrict access to work of public interest.

Earlier commitments to extend biologic drug data protection IP from eight to 10 years, have since been removed.

SMALL- AND MEDIUM-SIZED ENTERPRISES (SME)

This SME chapter within CUSMA seeks to increase trade and investment opportunities for SMEs through the co-operation on support initiatives, joint activities and sharing of best practices. All parties agree there should be more effort made to support under-represented groups, such as Indigenous persons and women. A committee between the three countries was established to further enhance the support for SMEs.

DISPUTE SETTLEMENT

The dispute settlement chapter in NAFTA (Chapter 19) allowed any of the three countries to dispute the results of any trade investigation by appealing to a binational panel of trade experts. This provides a neutral review of domestic trade remedy cases (anti-dumping, countervailing and safeguard actions). This mechanism remains in CUSMA, under Chapter 10.

Commitments have been made to prevent a country from blocking appointments to the binational panel which effectively delays the body from reviewing cases.

Investor-state dispute settlement (ISDS) has been removed from CUSMA between Canada and America, but remains in limited effect between Mexico and the U.S. This mechanism allowed a North American company to sue a member country under NAFTA based on discrimination or non-compliance with the agreement, although such provisions remain in place between Canada and Mexico in the CPTPP.

ENVIRONMENT

The agreement recognizes the importance of Indigenous peoples in the long-term conservation of the environment, sustainable fisheries and forestry management, and biodiversity conservation. There are no specific targets to reduce greenhouse gas emissions, but the agreement sets out environmental protection commitments and is subject to dispute settlement. CUSMA prohibits subsidies that contribute to overfishing, illegal trafficking, marine species, air quality and sustainable forestry.

LABOUR

One of the main objectives of the U.S. when beginning negotiations of NAFTA was to address poor labour standards in Mexico. CUSMA includes new provisions that prohibit the importation of goods produced by forced labour, enforces obligations related to discrimination, addresses violence against workers, and protects workers under rights to collective bargaining.

The agreement sets out guidelines for acceptable labour rights, working conditions, minimum wages, hours of work and safety conditions.[5] The labour chapter is subject to dispute settlement and non-compliance could result in recourse from another party. The ROO for automotive goods includes a labour value content requirement for vehicles to receive duty-free status under CUSMA. At least 40% of the vehicle's value must originate from workers earning at least US$16/hour.

SERVICES

The new agreement builds on commitments in NAFTA to ensure the free flow of data and information. The financial services chapter mentions this commitment as it relates to that sector. Stricter IP protections could, in principle, make it more difficult for Canada to import copyright protected materials.

Temporary entry of business persons remains in CUSMA. However, the list of professions for entry originally in NAFTA was largely unchanged.

NEW PROVISIONS

- Cultural exemptions allow for Canada to implement measures that support local artists or domestic cultural producers;
- A "sunset review" mechanism after six years of entry into force (reviewed every six years to extend for another 10 years);
- "Non-market" economy clause (Article 32.10) to create notification requirements should a country begin negotiations with a "non-market economy";
- Commits parties to maintain free-floating exchange rates and refrain from devaluation of currencies;
- Customs and trade facilitation (Chapter 7) aims to simplify, standardize, and modernize trade-related customs procedures;

- Commitments that state-owned-enterprises (SOE) will adhere to market forces and provide non-discriminatory treatment to competitors;
- Prevent the transhipments of dumped steel and aluminum goods from other countries;
- Progressive chapters on Indigenous and gender to address support and recognition.

IMPLICATIONS FOR CANADIAN EXPORTERS

The most significant aspect of CUSMA implementation is that it provides updated rules on North American trade. This will provide additional clarity for Canadian exporters and investors, who were dealing with elevated policy uncertainty about the future outcome for North American trade rules, among other challenges globally.

Auto manufacturers will have more complicated ROO and labour content requirements. The supply managed sectors will need to adjust to increased foreign market access and the elimination of Class 6 and 7 milk classes[6]. Overall, the outcomes of CUSMA negotiations are generally viewed as positive or neutral, and re-enforce existing commitments by the parties.

SUMMARY OF THE DEAL

TOPIC	NAFTA	CUSMA
Autos	62.5% ROO; no wage requirements; no export quota.	75% ROO; wage requirement of at least 40% content from $16 per hour workers; 2.6 million car quota for Section 232 exemptions.
Dairy	Dairy market not mentioned.	U.S. dairy farmers will get similar access granted under CETA and CPTPP; Canadian dairy farmers will receive comparable access to U.S. market; Canada to eliminate milk Class 6 and 7.
Government Procurement	General commitments pre-GPA.	Canada government procurement will be bound by the WTO GPA and CPTPP (for Canada and Mexico).
Digital Trade and E-Commerce	Not included.	Commitments to improve the flow of cross-border data and information; prevents duties on data and information; Canada and Mexico raised their duty-free threshold to US$117 (C$150); Canada raised tax-free amount to C$40
Dispute Settlement	NAFTA included chapters that allowed investors and governments to settle disputes with binational panels of experts.	Chapter 10 allows parties to appeal domestic trade remedy results; Commitments surrounding CUSMA binational panel; eliminated investor-state dispute settlement (formerly Chapter 11).
Environment and Labour	Side letters on co-operation.	Commitments on both issues and subject to dispute settlement.

FURTHER READING

- USTR negotiating objectives
- Implementation Bill C-4
- CUSMA full text and summary

SOURCES:

- Canada-United States-Mexico Agreement (CUSMA), Global Affairs Canada
- United States-Mexico-Canada Agreement (USMCA), Office of the United States Trade Representative
- *From NAFTA to CUSMA: The Changes, the Additions and What it Means*, Conference Board of Canada
- *Proposed United States-Mexico-Canada Agreement*, Oct. 5, 2018, Congressional Research Service
- *New North American trade deal becomes law*, Mar. 13, 2020, iPolitics

ABOUT THIS REPORT

This report is part of a publication series of concise reports written by EDC Economics staff on Canadian international trade and investment issues. The views expressed in this report are those of the author and should not be attributed to Export Development Canada or its Board of Directors.

This report was written by Andrew DiCapua, reviewed by Stephen Tapp and copy-edited by Janet Wilson.

[1] *USTR Releases NAFTA Negotiating Objectives*, July 17, 2017, United States Trade Representative

[2] A tariff-rate-quota (TRQ) is a mechanism that allows a set amount of specific products to be imported at a low or zero duty rate. They usually have a phase in and out period.

[3] Requirements begin seven years after force of the agreement.

[4] Threshold considered by customs agencies to be too small to collect duties.

[5] In accordance with the International Labour Organization Declaration of Rights at Work.

[6] Ontario Class 6 and the Federal Class 7 milk categories were used to price skim milk powder and milk proteins under the supply management system. These classes used world market prices to export the oversupply from these milk products.