



Global Trade Advisory Alert

U.S. and Mexico Poised for New Bilateral Free Trade Agreement but Hurdles Remain

On 27 August 2018, following over a month of active negotiations, the United States and Mexico announced that they reached a preliminary agreement in principle to a bilateral trade agreement referred to as the "United States-Mexico Trade Agreement" ("U.S.-MX TA"), which proposes to update and potentially displace the North American Free Trade Agreement (NAFTA) between Canada, Mexico and the United States which entered into effect on 1 January 1994.

The U.S.-MX TA focuses on changes to NAFTA addressing the digital economy, the automotive sector, intellectual property protection, labor unions, environmental obligations, financial services markets, and an increase in Mexico's *de minimis* shipment value level. All of the proposed changes would be subject to finalization, as well as

formal implementation, through the legislative processes of both countries.

Following this announcement, the U.S. and Canada immediately continued their ongoing trade negotiations related to NAFTA, with the U.S. setting a 31 August 2018 deadline for these negotiations to conclude.

The Canadian Minister of Foreign Affairs arrived in Washington the week of 27 August to revive negotiations. Three issues were at the center of discussion:

- **Dairy:** U.S. dairy producers face tariffs of 200% to 300% when selling milk and cheese in Canada due to Canada's supply management system that the US claims unfairly favors Canadian producers. Meanwhile, Canada has accused the U.S. of excessively subsidizing U.S. dairy farmers. Dairy was excluded from the original NAFTA deal.
- **Dispute resolution:** NAFTA provides a dispute resolution mechanism allowing member countries to challenge one another regarding unfair trading practices. The U.S. wants this provision removed; Canada does not.
- **Steel, aluminum, and automotive tariffs:** In May 2018, the Trump Administration decided not to exempt Canadian steel and aluminum from the tariffs. Canada wants these tariffs removed before agreeing to a new NAFTA deal. Additionally, new tariffs on automobiles are also possible.

The three-day talks did not yield a U.S.-Canada agreement. President Trump commented on 1 September that "there is no political necessity" to include Canada in the new agreement. Freeland, however, still believes a "win-win-win agreement is in reach."

On 31 August 2018, President Trump notified Congress of the U.S.-MX TA, marking the beginning of the 90-day notice required by law before he can sign a new agreement. As of 7 September, the U.S.-Mexico bilateral deal remains on course. The agreement still requires congressional consideration.

Specific Changes

The U.S.-MX TA includes a number of proposed changes to the NAFTA.

Industry-specific changes include:

- **Automotive sector:** Requirement to maintain a regional value content of at least 75% of a car's value in North

America, an increase from 62.5% under NAFTA, in order to benefit from zero tariffs. The industry also would be required to use more local raw materials and demonstrate that 40% to 45% of cars are made by workers earning USD 16 per hour or more.

- **Digital trade:** Prohibition of duties in digital trade for electronically distributed digital products, such as software and games.
- **Textiles and apparel:** Increased limits on non-NAFTA inputs in textile and apparel, and requirements that specific materials, such as sewing thread and elastic bands, be made in the region for apparel products to qualify for NAFTA.
- **Alcoholic beverages:** Labeling and certification provisions for trade of alcoholic beverages, with reciprocal recognition of specific spirits as distinctive products of either the U.S. or Mexico.

Other proposed changes include:

- **De minimis:** Increase in *de minimis* shipment value from USD 50 to USD 100, so that shipments less than or equal to USD 100 would enter Mexico without duties or taxes.
- **Rules of origin:** Stronger rules of origin, meaning more stringent criteria for determining the origin country of a product, for certain products such as chemicals and steel-intensive products.
- **Agriculture:** Commitments in the agricultural sector to avoid export subsidies or special safeguards, enhanced rules for sanitary and phytosanitary measures, lifting of restrictions on market access in Mexico for cheese labeled under certain names, and protection of the confidentiality of proprietary formulas for food products.

Notably, neither the U.S. nor Mexico addressed the current steel and aluminum tariffs in effect as of May 2018 for Canada and Mexico, or whether this agreement would have any impacts on those tariffs.

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