

USTR Announces List of Changes Required to U.S. Law in Order to Implement USMCA

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On January 29, USTR Ambassador Lighthizer delivered to Congress [a list describing changes to U.S. laws](#) that would be required to fulfill obligations agreed to under the United States Mexico Canada Agreement (USMCA). This action, taken in accordance with procedures set forth in the *Bipartisan Congressional Trade Priorities and Accountability Act of 2015* (also known as Trade Promotion Authority or TPA), brings the agreement one step closer to Congressional consideration by identifying the legal changes that must be included in an implementing bill to be voted on by legislators to approve the underlying agreement.

The changes in existing law are largely customs related, the bulk of which involve implementing market access commitments, including lowering tariffs and creating new tariff rate quotas, as well as updating provisions related to duty drawback, merchandise processing fees and customs enforcement. For example, while USMCA preserves duty free treatment for industrial goods and textiles under NAFTA, the United States and Canada negotiated additional access on certain agricultural products. Accordingly, modifications must be made to eliminate U.S. tariffs on such products from Canada, including dairy, sugar, sugar-containing products, peanuts and peanut products and cotton.

Changes are also required to implement rules of origin, origin procedures and customs measures to provide preferential tariff treatment for eligible goods. The most significant and notable changes involve automotive goods. Necessary legal revisions will end NAFTA's tracing and "deemed originating" requirements and increase the required regional value content for vehicles and vehicle parts. Changes are also needed to implement a new "Labor Value Content" rule, which for the first time requires that a minimum amount of car content be produced by North American workers earning an average of \$16 per hour. Modifications must also be made to satisfy a steel and aluminum minimum region content requirement for autos. The list further indicates that rule of origin modifications must be made for other products, including optical fiber, certain steel, glass, titanium, certain chemicals and textiles.

The notice also indicated a few areas where further consultation with the House Committee on Ways and Means and Senate Committee on Finance would be necessary to determine whether amendments are necessary to implement USMCA provisions related to trade remedy duty evasion, express shipments and the United States Annex II, which addresses sector-specific obligation carve outs, generally concerning trade in investment and cross-border services.

The legal changes described in the list will be the basis of the implementing bill the Administration sends to Congress for approval of the agreement. Several steps remain under TPA, however, before

the vote can occur procedurally, including publication of an ITC report due in March and a “mock” mark-up of the draft legislation where Members may suggest changes before the Administration submits the final bill. TPA provides “fast track” authority for trade agreements, which means they are subject to deadlines for consideration once introduced and are subject to an up-or-down vote with no amendments allowed. TPA procedures aside, the Administration typically will not send a bill to Congress without consultation and until concerns that can be included in either a side agreement or through changes to U.S. laws are satisfied.

There are practical considerations, however, for seeking Congressional approval in advance of submitting implementing legislation because Congress can remove “fast track” through provisions set forth in TPA and under its own legislative authorities. Such action can be taken under TPA by Congress as a whole through an Extension Disapproval Resolution, or one chamber can hold up an implementing bill through a Consultation and Compliance Resolution. Moreover, any chamber can over-ride TPA procedures through its general rules, as was done in 2008 when the House, acting under then Speaker Pelosi, approved a rule change removing fast track for the Colombia FTA. Addressing congressional concerns in any trade agreement tend to be largely political in nature and can take some time to resolve – and particularly even more so in a divided government. As such, timing for a USMCA vote remains uncertain.

Kelley Drye’s government relations professionals and international trade attorneys are closely following USMCA developments. If you have any questions, please contact [Jennifer McCadney](#).