

# Issue Brief

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## With Modest Changes, President Trump Could Legally Implement USMCA Without Additional Congressional Action

One of the Trump administration's top legislative priorities is securing congressional approval of the U.S.-Mexico-Canada Agreement (USMCA) to revamp trade policy between the three countries. Democrats in the House of Representatives, led by Speaker Nancy Pelosi (D-CA), have so far been unwilling to bring the agreement up for a vote. Because congressional approval is only needed for provisions requiring changes to U.S. law, the Trump administration could bypass Congress and implement an improved version of USMCA on its own.

The Trump administration has previously moved to implement trade deals via executive action without Congress. For example, it negotiated changes to the U.S.-Korea Free Trade Agreement that took effect without congressional approval.<sup>1</sup> Similarly, it has pursued a limited U.S.-Japan trade agreement covering tariffs and digital trade that would not require congressional approval.<sup>2</sup> In 2015, the Obama

### Key Facts:



Many of USMCA's most important provisions can be implemented with no changes to U.S. law. As such, these provisions of USMCA do not necessarily require Congressional approval.



The biggest exception is the agreement's costly and misguided auto regulations, removal of which could reinforce other Trump Administration efforts to reduce burdens on American automakers.



President Trump should consider dropping policy concessions aimed at securing union and Democratic support, allowing for the advancement of an improved USMCA to modernize trade policy.

<sup>1</sup> Office of the U.S. Trade Representative. "Fact Sheet on U.S.-Korea Free Trade Agreement Outcomes," September 2018. Retrieved from: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/september/fact-sheet-us-korea-free-trade>.

<sup>2</sup> Lawder, David. "Trump says US reaches trade deals with Japan, no vote needed." *Reuters*, September 16, 2019.

administration concluded its domestic procedures to implement the WTO Trade Facilitation Agreement, a major trade deal projected to boost world trade by up to \$1 trillion a year, doing so via executive measures; no congressional vote was required because no U.S. laws needed to be changed.<sup>3</sup> These executive branch actions are consistent with trade policy bounded by laws established by Congress, which has authority over international commerce under Article I, Section 8 of the Constitution, but implemented by the executive branch.

In contrast, in its current form, USMCA needs congressional approval because of a handful of provisions that require U.S. law to be modified. As a result, Speaker Pelosi has been able to block USMCA implementation.

On September 26, Senate Majority Leader Mitch McConnell (R-KY) observed: “Speaker Pelosi keeps saying she supports the agreement in the abstract, but the drip, drip, drip of small objections and stalling tactics keep on coming. Even as Speaker Pelosi's moderate members beg her to pass this deal, it's almost as though she's looking for reasons to duck it.”<sup>4</sup> The AFL-CIO has demanded “major changes” to USMCA.<sup>5</sup>

Instead of allowing Nancy Pelosi and union leaders to continue to delay and weaken USMCA, the Trump administration should consider implementing all provisions of USMCA that do not require changes to U.S. laws.

### **Most changes in USMCA do not require changes to U.S. law**

On January 29, 2019, the Office of the U.S. Trade Representative notified Congress of changes to existing law required to bring the U.S. into compliance with USMCA.<sup>6</sup> The most significant legal changes include increased North American content requirements for car manufacturing and new minimum wage regulations for auto workers.

According to a subsequent May 2019 draft Statement of Administrative Action on USMCA, a majority of the agreement's 34 chapters can be implemented with no changes to U.S. law.<sup>7</sup> Chapters not requiring congressional action include those covering:

- Sanitary and Phytosanitary Measures
- Technical Barriers to Trade
- Investment
- Cross-Border Trade in Services
- Temporary Entry
- Financial Services
- Telecommunications
- Digital Trade
- Intellectual Property

<sup>3</sup> Fefer, Rachel F., and Jones, Vivian C. “WTO Trade Facilitation Agreement.” Congressional Research Service, March 3, 2017. Retrieved from: <https://fas.org/sgp/crs/row/R44777.pdf>.

<sup>4</sup> “McConnell bashes Pelosi, Democrats on USMCA, says 'no real progress' has been made.” *Inside U.S. Trade*, September 26, 2019.

<sup>5</sup> Statement by the AFL-CIO Executive Council. “Without Fixes, We Must Oppose the New NAFTA,” AFL-CIO, September 12, 2019. Retrieved from: <https://aflcio.org/about/leadership/statements/without-fixes-we-must-oppose-new-nafta>.

<sup>6</sup> Office of the U.S. Trade Representative. “Changes to Existing Law Required to Bring the United States Into Compliance With Obligations Under the Agreement between the United States of America, the United Mexican States, and Canada (USMCA).” January 29, 2019. Retrieved via Senate Finance Committee: <https://www.finance.senate.gov/imo/media/doc/USMCA%20Changes%20To%20Existing%20US%20Law%20Document.pdf>.

<sup>7</sup> The Implementation Act for the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA), Draft Statement of Administrative Action, May 30, 2019. Retrieved from: [https://insidetrade.com/sites/insidetrade.com/files/documents/2019/jun/wto2019\\_0165.pdf](https://insidetrade.com/sites/insidetrade.com/files/documents/2019/jun/wto2019_0165.pdf).

- Competition Policy
- State-Owned Enterprises
- Labor
- Environment
- Small and Medium-Sized Enterprises
- Competitiveness
- Anti-corruption
- Good Regulatory Practices
- Macroeconomic Policies and Exchange Rate Matters

With the exception of auto regulations, every single provision of USMCA listed on USTR's "U.S.-Canada-Mexico Agreement Fact Sheet: Modernizing NAFTA Into a 21st Century Trade Agreement" could be implemented tomorrow by President Trump, assuming Canada and Mexico agree.<sup>8</sup>

### **Addition by subtraction: Dropping auto regulations would reinforce Trump administration policies**

Under USMCA, to qualify for tariff-free status vehicles would need to contain 75 percent North American content, up from 62.5 percent under NAFTA. This represents a 20 percent increase in domestic content required, adding significant cost and difficulty to automobile manufacturing. In addition, at least 40 percent of each vehicle would need to be produced by workers earning at least \$16 per hour to qualify for tariff-free treatment. These provisions were insisted on by U.S. negotiators in order to secure support for USMCA from Democrats and union leaders.

Given the consistent delays in proceeding to USMCA on the part of Democratic House leadership, it seems clear that the concessions baked into the agreement to secure union support have not worked. If the Trump Administration wants both a political and a policy victory on trade, it could consider simply dropping the costly auto-related regulations along with a few other relatively minor provisions and implementing its new and improved USMCA-Plus without waiting for Congress.

This approach would be addition by subtraction, as these new auto provisions conflict with the Trump administration's goals. As the White House noted in its summary of the updated U.S.-Korea Free Trade Agreement, "The Trump Administration's negotiations will eliminate burdensome regulations that have impeded United States exports."<sup>9</sup>

The president has made other moves to further increase American competitiveness in the auto industry. For example, President Trump revoked California's federal waiver on emissions, with the White House proclaiming "President Donald J. Trump is Making America the Best Country in the World to Build and Buy Cars."<sup>10</sup> Dropping USMCA's new regulations on carmakers would reinforce the Trump administration's actions on emissions, both of which would make cars safer and more affordable. Dropping USMCA's minimum wage mandates and rules of origin changes would also eliminate potentially burdensome regulations that would impede U.S. exports.

<sup>8</sup> Office of the U.S. Trade Representative (2018). "UNITED STATES-MEXICO-CANADA TRADE FACT SHEET Modernizing NAFTA into a 21st Century Trade Agreement." Retrieved from: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/october/united-states%E2%80%93mexico%E2%80%93canada-trade-fa-1>.

<sup>9</sup> "President Donald J. Trump is Fulfilling His Promise on the United States-Korea Free Trade Agreement and on National Security." The White House, September 24, 2018. Retrieved from: <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-fulfilling-promise-united-states-korea-free-trade-agreement-national-security/>.

<sup>10</sup> "President Donald J. Trump is Making America the Best Country in the World to Build and Buy Cars." The White House, September 19, 2019. Retrieved from: <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-making-america-best-country-world-build-buy-cars/>.

Many U.S. automakers would welcome this change. According to the Auto Alliance, a trade association representing a number of automakers including Ford and General Motors, “the automotive rules of origin in the new USMCA are more complex and come with added cost.”<sup>11</sup> John Bozella, President and CEO of the Association of Global Automakers, which represents 21 auto companies and suppliers such as Texas Instruments and SiriusXM, testified that “it is clear that the USMCA auto origin rules will introduce unnecessary complexity, require costly changes to supply chains and potentially redundant investments. We are concerned that the combined impact of these requirements will reduce our industry’s overall global competitiveness.”<sup>12</sup>

Proposed new rules of origin and minimum wage mandates that were inserted in USMCA might make the deal more attractive to union leaders working to block President Trump’s policy agenda, but they also would increase the cost of manufacturing cars in the United States. Consider the following research:

- U.S. International Trade Commission: “The model estimates that changes associated with USMCA’s new ROOs [rules of origin] requirements will have a negative impact on consumers, since light vehicle prices are likely to increase, which would decrease consumption. The market-average price increase would range from 0.37 percent for pickup trucks to 1.61 percent for small cars. The decline in total vehicle consumption in the United States, summed across the four vehicle classes, would be 140,219 vehicles (or 1.25 percent of vehicles sold in the U.S. market in 2017).”<sup>13</sup>
- Scotiabank: “Over the longer-term horizon, USMCA’s extra administrative requirements and higher wage costs will likely increase the price of North American cars and reduce the international competitiveness of the industry -- with the possible result that some production is eventually shifted overseas rather than re-shored to the U.S.”<sup>14</sup>
- Center for Automotive Research: “Raising production costs will limit the ability of U.S.-built vehicles to compete in the global marketplace, and will negatively impact U.S. production and employment.”<sup>15</sup>
- Fraser Institute: “Moreover, since the new rules of origin will likely raise production costs in North America, they will probably increase the appeal of cars made in Europe and Asia to North American consumers.”<sup>16</sup>
- Peterson Institute for International Economics: “Tighter rules of origin, potentially combined with import restrictions on nonconforming autos, would mean higher consumer prices for Mexican or American-made cars. Such a price increase would trigger a natural incentive for Americans to switch to relatively cheaper cars assembled outside of the region that are not subject to Trump’s costly new regulations.”<sup>17</sup>

<sup>11</sup> “Alliance Statement on U.S. International Trade Commission report on USMCA.” The Auto Alliance, April 18, 2019. Retrieved from: <https://autoalliance.org/2019/04/18/alliance-statement-on-u-s-international-trade-commission-report-on-usmca/>.

<sup>12</sup> U.S. International Trade Commission. “Hearing on the United States-Mexico-Canada Free Trade Agreement,” November 15, 2018. (Statement of John Bozella, Association of Global Automakers and Here For America.) Retrieved From: <https://www.globalautomakers.org/John%20Bozell%20ITC%20Hearing%20Oral%20Testimony%20FINAL.pdf>.

<sup>13</sup> U.S. International Trade Commission, “U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors,” April 2019, p. 85, <https://www.usitc.gov/publications/332/pub4889.pdf>.

<sup>14</sup> Siekierska, Alicja. “USMCA could increase cost of vehicles, says Scotiabank report,” *Yahoo Finance*, October 2, 2018.

<sup>15</sup> Dzikczek, Kristin, et. al. “Review of current NAFTA proposals and potential impacts on the North American automotive industry.” Center for Automotive Research, April 2018. Retrieved from: [https://www.cargroup.org/wp-content/uploads/2018/04/nafta\\_briefing\\_april\\_2018\\_public\\_version-final.pdf](https://www.cargroup.org/wp-content/uploads/2018/04/nafta_briefing_april_2018_public_version-final.pdf).

<sup>16</sup> Hufbauer, Gary, and Gliberman, Steven. “The United States–Mexico–Canada Agreement: Overview and Outlook.” *Fraser Research Bulletin*, November 2018.

<sup>17</sup> Brown, Chad. “Sweating the Auto Details of Trump’s Trade Deal with Mexico.” Peterson Institute for International Economics,” August 29, 2018.



- Center for Strategic and International Studies: “There is general agreement regarding the overall impact the USMCA will have on the automotive industry. The new rules of origin are expected to marginally increase costs throughout the automotive supply chain. The rules also may lock in an environment in which U.S. automakers and parts suppliers capture a larger share of the North American auto market but are somewhat less globally competitive. Additional administrative costs and shifting supply chains to a less optimal position to meet the USMCA’s rules of origin could affect multiple parts of the automotive industry.”<sup>18</sup>

Dropping these costly regulations from USMCA would be addition by subtraction.

### **Proposed USMCA auto regulations conflict with conservative principles**

In addition to conflicting with Trump administration efforts to reduce regulations like California’s auto emissions requirements, these proposed auto rules conflict with general conservative principles.

President Reagan pointed out that local content requirements for cars are misguided. “Anticompetitive legislation like the local content rule, which would force our domestic manufacturers of cars to use a rising share of U.S. labor and parts—now, this would be a cruel hoax,” President Reagan said in 1983. “It would be raising prices without protecting jobs.”<sup>19</sup>

Increasing North American content requirements in an effort to create U.S. auto manufacturing jobs is reminiscent of failed states like Venezuela, where socialist dictator Hugo Chavez imposed a 50 percent domestic content requirement in order to “create jobs.”<sup>20</sup>

Conservatives overwhelmingly oppose efforts by the federal government to dictate wages. The minimum wage mandate currently in USMCA is something you might expect to see in the European Union (EU) as opposed to in a U.S. trade agreement. (Although to be fair, even the EU does not impose a minimum wage mandate on its members.)<sup>21</sup>

As Kay Coles James, president of the conservative Heritage Foundation, aptly put it, “Trade deals shouldn’t set labor policy or environmental policy. Trade is about increasing the freedom of people to buy and sell without government intervention. As the USMCA is being considered, eliminating trade barriers, not erecting new ones, should be the objective.”<sup>22</sup>

In addition to getting rid of the counterproductive auto regulations, which were included to get support from Democrats and union leaders, there are a handful of other relatively minor provisions that would not be able to take effect through unilateral executive action. The impact of not implementing new provisions regarding things like merchandise processing fees and temporary entry for business persons is minor compared to the benefits of implementing the rest of USMCA.

### **USMCA in limbo**

USMCA was signed in November 2018, and since then the deal has remained in limbo as the

<sup>18</sup> Reinsch, William, et. al. “The Impact of Rules of Origin on Supply Chains.” Center for Strategic and International Studies, April 2019.

<sup>19</sup> President Ronald Reagan. “Address Before the Japanese Diet in Tokyo.” November 11, 1983. Retrieved from: <https://www.presidency.ucsb.edu/documents/address-before-the-japanese-diet-tokyo>.

<sup>20</sup> Ambassador Demetrios Marantis. “2013 National Trade Estimate Report on Foreign Trade Barriers.” Office of the U.S. Trade Representative. Retrieved from: <https://ustr.gov/sites/default/files/2013%20NTE.pdf>.

<sup>21</sup> “Disparities in minimum wages across the EU.” Eurostat, January 31, 2019. Retrieved from: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20190131-2>.

<sup>22</sup> James, Kay Cole. “Toward a Freer Trade Deal With Canada and Mexico.” The Heritage Foundation, September 25, 2019.

administration has awaited action by Speaker Pelosi. This may be, in part, because President Trump's trade adviser Peter Navarro and U.S. Trade Representative Robert Lighthizer may be focused on a USMCA deal that Democrats will support, as opposed to an even better USMCA deal that can be implemented right now without the need for concessions to the left.

Renegotiating the North American Free Trade Agreement (NAFTA) was one of President Trump's campaign promises. While his administration has pushed the boundaries of his authority elsewhere in trade and other areas of law, executive action here is consistent with the boundaries of legislative and presidential power. Taking executive action to institute an improved USMCA would allow President Trump to implement many positive aspects of the deal, such as modernization of digital trade rules and certainty about continued North American trade opportunities.

President Trump should consider dropping the burdensome regulations included in the agreement in order to clear the path for implementation of an improved USMCA without the need for additional congressional action.

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