

Issue Brief

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BY BRYAN RILEY

North American Trade Policy Is Too Important to Rush

During Congressional debate over the Affordable Care Act, many Republicans [criticized](#) House Speaker Nancy Pelosi (D-CA) for saying “we have to pass the bill so that you can find out what’s in it.” If the Senate rubber-stamps a revised [U.S.-Mexico-Canada Agreement](#) (USMCA) that was drafted in negotiations where Speaker Pelosi [said](#) “we ate their lunch,” Republicans will be guilty of the same mistake.

What’s It Going To Take To Get You Into This Trade Deal Today?

Timeshare salesmen may recognize the techniques that are being used on Capitol Hill to move forward on USMCA. Those pushing for a rubber-stamp USMCA are trying to create a sense of scarcity and urgency where none exists. The rules of North American trade are at stake.

The Office of the U.S. Trade Representative (USTR) should not treat Senate Majority Leader Mitch McConnell (R-KY) and other lawmakers like timeshare prospects by pressuring them for a fast decision. It is just common sense for lawmakers to take the time to evaluate how the new USMCA will affect Americans before voting on it.

Key Facts:



After closed-door negotiations between the White House and House Democrats, a revised USMCA deal was announced on December 10, 2019. Although the modified deal contains many positive provisions, there is no reason for Congress to rush to judgment.



During Congressional debate over the Affordable Care Act, many Republicans criticized House Speaker Nancy Pelosi (D-CA) for saying “we have to pass the bill so that you can find out what’s in it.” If the Senate rubber-stamps a revised USMCA, Republicans will be guilty of the same mistake.



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Follow the Law and Congressional Rules

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Indeed, U.S. trade laws are written to ensure that Americans have ample time to review them before a congressional vote can take place. For example, [under U.S. Trade Promotion Authority \(TPA\) law](#), there is a 60 day waiting period between final text of the agreement being posted by the United States Trade Representative and the agreement entering into force. But the House of Representatives will have voted with the text having been public for less than one week.

In addition, before Congress can vote on a trade deal, the [U.S. International Trade Commission](#) is supposed to submit a report “... assessing the likely impact of the agreement on the United States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of United States consumers.”

As USTR [puts it](#), “TPA ensures transparency and public engagement in trade.” But making significant changes to a trade deal after it’s been completed and trying to rush those changes through without meeting ITC review and other transparency requirements hardly encourages public engagement in trade.

In fact, Sen. Pat Toomey (R-PA) and Rep. Justin Amash (I-MI) have suggested that the revised USMCA should not even be eligible for consideration under TPA.

In addition, trade law expert Kathleen Claussen [observes](#) that according to TPA, “Substantial modifications to, or substantial additional provisions of a trade agreement entered into after July 1, 2018 ... shall not be eligible for approval under this title.” Uncertainty about eligibility under TPA suggests that Congress may need, both as a legal matter and as a good-governance matter, to provide additional time to review the revised USMCA agreement.

Other Questions To Be Answered Before Congress Votes

In addition to determining whether USMCA is eligible for consideration under TPA or whether it should be considered under normal legislative procedure, there are several issues Congress should consider before voting. Among them:

New car taxes: The [Congressional Budget Office](#) (CBO) estimates that USMCA will increase import taxes on motor vehicles and parts by nearly \$3 billion over the next 10 years. Higher tariffs on cars will increase prices for consumers, and higher tariffs on parts will discourage car manufacturing in the United States. These policies, along with the protectionist new steel provisions, conflict with a White House [statement](#) earlier this year that “President Donald J. Trump is making this the best country in the world to build and buy cars.” The CBO cost estimate was just released Tuesday. The USMCA voted on in the House is the first trade agreement in American history that increases trade taxes instead of cutting them.

Economic impact of new provisions: The new USMCA deal incorporates significant changes to the initial text, including a new requirement that all steel manufacturing processing, including the initial melting, occur in North America to be eligible for tariff-free treatment. How would this provision affect steel producers and steel-using industries in the United States? According to the initial ITC [analysis](#) of USMCA

in April 2019, “Some [auto] industry representatives expressed concern about whether there is sufficient existing North American steel and aluminum capacity for the specific steel and aluminum they use in their vehicles.” This would be an even bigger concern under the revised USMCA.

Likewise, the impact of new USMCA provisions regarding biologics is a matter of significant uncertainty. Biologics are complex drugs that enjoy a 12-year exclusivity period in the U.S. before biosimilar competition can come to market. The 12-year exclusivity encourages manufacturers to undertake the long, expensive process to research, develop, and receive Food and Drug Administration approval for these drugs. The original USMCA agreement featured 10-year exclusivity, but critics fear House Democrats' insistence on stripping this provision could create a “race to the bottom” that weakens or erodes the incentives manufacturers have to develop new treatments and cures. Those on the other side of the issue [believe](#) the changes will promote affordable medicine. Both domestic and trade policy toward pharmaceuticals must carefully balance the need for development of innovative cures and the need for affordable access.

These and other changes deserve close scrutiny before Congress votes on USMCA.

Regulatory Impact: Will Future Improvements to U.S. Environmental and Labor Laws and Regulations Violate USMCA?

According to [USTR](#), “The Parties are required to adopt and maintain in law and practice core labor standards as recognized by the International Labor Organization, including freedom of association and the right to strike, to effectively enforce their labor laws, and not waive or otherwise derogate from their labor laws.”

After the original USMCA agreement was announced, the American Enterprise Institute’s Claude Barfield [explained](#) the potential impact of this approach:

Since the 1990s, the Democrats have been pushing to get through a trade agreement what they cannot get through the domestic process. And that is, they want the United States to accept a group of so-called core labor rights of the International Labor Organization ... Now a trade agreement would trump US legislation, so it'd be in effect a backdoor way to get what they want.

What it would do is upend US labor law. Right-to-work laws would go out the window. And as a matter of fact the Canadians raised this point early on and said they'd like us to change our right-to-work laws. Also the negotiations with public unions would be changed because there are ILO interpretations that have made it much more restrictive in terms of what you can do.

One could argue back and forth about what US labor law should be, but I think it's another issue to say we can't solve it domestically so we will go ahead and just do it internationally and then come back and force the states to comply. Because if Congress accepts the agreement, it would be accepting the new interpretations.

President Trump [promised](#), “We will make America the best place in the world to start a business. We'll hire workers and we'll open factories and we'll get rid of these horrible regulations that make it impossible to do business in this country.” Would such actions violate USMCA? The United States has promised it will not derogate from current environmental and labor laws in a manner that affects trade or investment—and with the new revision, any such changes would be presumed to affect trade or investment.

Since “derogate from” means “to make something less important,” it is not a stretch to guess that activists in Canada or Mexico might ask their governments to challenge changes to U.S. fuel economy regulations

[proposed](#) by the Trump administration, minimum wage laws, or other regulatory actions that could be alleged to derogate from current environmental and labor laws. In addition, Ambassador Robert Lighthizer [pointed out](#) on December 16 that proposed implementing legislation for USMCA authorizes five Department of Labor attachés (as opposed to “labor inspectors”) to help implement labor reforms in Mexico. USMCA also creates a rapid-response team to conduct on-site verifications at U.S. businesses when Canada or Mexico have good-faith questions about whether workers at a particular American facility are being denied key labor rights.

Under USMCA, as with other trade agreements, the United States would remain free to enact and enforce whatever laws it wants to but if those laws violate USMCA we could be required to either modify them or else face retaliatory tariffs.

Questions about USMCA’s regulatory impact should be addressed by the regulatory impact statement that is generally required to accompany legislation according to Senate [rules](#), which state: “It shall be the duty of the chairman of each committee to report or cause to be reported promptly to the Senate any measure approved by his committee.... Each such report shall contain an evaluation, made by such committee, of the regulatory impact which would be incurred in carrying out the bill.”

Suggestion To Legislators: Don’t Vote Until You Know What’s In USMCA

According to [President Trump](#), “The Agreement will create significant new opportunities for American workers, farmers, ranchers, and businesses by opening markets in Canada and Mexico and eliminating barriers to United States goods, services, and investment.” And according to [USTR](#), “Chapter-by-chapter and line-by-line, the USMCA represents the gold standard in U.S. trade policy.” If that’s the case, the White House should welcome a thorough congressional review - not the increased-pressure cheap salesman tactics that could result in buyer’s remorse for American consumers and taxpayers.

About the Author

Bryan Riley is the Director of NTU's Free Trade Initiative.



*2019 National Taxpayers Union Foundation
122 C Street NW, Suite 650, Washington, DC 20001
ntu@ntu.org*