

LEARN ABOUT THE IMPACT AND
THE RECOMMENDATIONS
FOR THE AGRICULTURE AND
LIVESTOCK SECTOR

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Sector: Agriculture and Livestock

A. Overview

The United States – Mexico – Canada Agreement (USMCA), contains a specific chapter for agricultural products, additional to the Specific Origin Regulations corresponding this sector, *Chapter 3: Agriculture*.

According to the United States Trade Representative (USTR), the new provisions maintain a tariff free import of agricultural origin products, just as NAFTA. For the US, new market access opportunities are created for dairy, poultry and egg exports to Canada, in exchange, the US granted access to dairy products, peanuts and processed products, as well as to a limited amount of sugar and sugar-containing products.

According to the Secretariat of Economy (SE), Mexico had the following benefits:

- Tariff-free access to the U.S. market for Mexican agricultural and agro-industrial products is maintained.
- The provisions agreed upon in international forums that ensure the elimination of export subsidies for these types of goods are confirmed. Clear and transparent mechanisms are determined to ensure cooperation, communication and collaboration between the Parties in order to discuss agricultural issues of interest.

The Agreement includes a biotechnology section that seeks to encourage research in the sector and establishes the exchange of information and cooperation in biotechnology for agriculture, including genetic modification.

Any future possibility of imposing any restrictions on the sector is eliminated.

A chapter on sanitary and phytosanitary measures has been strengthened with respect to NAFTA. *Chapter 9: Sanitary and Phytosanitary Measures (SPS)*, which according to the SE, it includes:

- Procedural provisions on risk analysis, audits, import reviews and certification, equivalence and regionalization.
- The creation of an SPS Committee, ad hoc technical groups, consultations, and the possibility of using the dispute settlement mechanism.
- Provisions to strengthen SPS compatibility, which implies the consideration of another Party's measures in the development of its own measures. The publication of draft measures is encouraged so that the other Party can comment on the draft measures and seeks to ensure that these are based on scientific evidence as well as international standards, guidelines, and recommendations.
- A commitment to allow health authorities to use a simplified procedure for the recognition of regionalization and equivalence of measures. This allows Mexico to have quick

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recognition from the American and Canadian authorities by obtaining recognition of pest and disease-free status.

As for Geographical Indications, criteria were established to promote a transparent opposition procedure, which strengthens the system of protection of geographical indications. Trademark owners are given the opportunity to oppose the protection of a geographical indication if they consider that it causes confusion with their trademark. A mechanism is established for consultation between the Parties on future geographical indications in accordance with international agreements.

Mexico agreed not to restrict access to the Mexican market for American cheeses labeled with certain names, while maintaining the results of negotiations with the European Union.

It includes an annex for spirit drinks, which establishes commitments to non-discrimination and transparency with respect to sale and distribution; labelling and certification provisions to avoid technical barriers to trade in wines and distilled spirits. The recognition of Bourbon Whiskey, Tennessee Whiskey, Tequila, Mezcal and Canadian Whiskey as distinctive products is maintained.

The Annex on Patent Formulas for Packaged Foods provides that each Party shall protect the confidentiality of such information in the same manner for domestic and imported products. It also limits such information requirements to what is necessary to achieve legitimate goals.

Background

On May 8 of 2017, the President of the United States notified to Congress the intention to renegotiate NAFTA, since he considered it had led to a loss of both jobs and industry in the country. In addition, the U.S. agricultural sector had been treated unfairly by Canada by restricting the export of certain products. Therefore, in July USTR issued a document with the objectives of the negotiation, beginning a series of consultations and public hearings with the various productive sectors and with society in general.

Based on the comments, the renegotiation objectives document was updated in November of the same year. The following goals for the agricultural sector are established:

- Maintain mutual, duty-free access for agricultural products.
- Expand market opportunities for U.S. agricultural products in NAFTA countries, including through the elimination of remaining Canadian tariffs on imports of dairy, poultry, and egg products
- Seek to eliminate and prevent non-tariff barriers to U.S. agricultural exports, such as administrative restrictions, discriminatory barriers, and unjustified technical barriers, that apply to U.S. grain beverages and alcohol.
- Eliminate unjustified measures that limit access to Canadian markets and unfairly diminish market access opportunities in third countries for U.S. dairy products

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- Establish reasonable adjustment periods for U.S. imports of sensitive agricultural products by consulting with Congress on those products before initiating tariff reduction negotiations.
- Promote greater regulatory compatibility, through cooperation to reduce burdens associated with unnecessary differences in regulation, including regulations and standards for processed foods and beverages.
- Establish specific commitments for trade in products developed through agricultural biotechnologies, and a mechanism for information exchange and greater cooperation in this area.

Sanitary and Phytosanitary Measures:

- Establish enforceable SPS obligations based on WTO rights and obligations with respect to science-based measures, good regulatory practices, import controls, equivalence, regionalization, and risk analysis and certification, making clear that each country can establish for itself the level of protection it considers appropriate to protect food safety and plant and animal health in a manner consistent with its international obligations.
- Establish a mechanism to quickly resolve unjustified barriers that block the export of food and agricultural products from the United States.
- Establish new and enforceable rules to ensure that science based SPS measures are developed and implemented in a transparent, predictable, and non-discriminatory manner.
- Improve communication, consultation, and cooperation among governments to share information and work together on SPS issues in a transparent manner, including on new technologies.
- Provide a mechanism to enhance dialogue and cooperation to address SPS issues and facilitate trade where possible.

In the third Round of Negotiations, the U.S. government presented a proposal for seasonality for trade in some agricultural products during the labor harvest season, which was rejected by the Mexican and Canadian private sectors. The proposal was completely removed from the table when the bilateral negotiations between Mexico and the United States began.

This was because American farmers were asking for greater access to the Canadian market, mainly for dairy and poultry products. The dairy industry has been one of the most sensitive production sectors for the Canadian government and became one of the key issues between the two countries, resolved almost until the last moment of the bilateral negotiation when Canada granted greater access to dairy products from the US.

It is worth mentioning that the American dairy and pork industries were affected by the tariff measures taken by Mexico in retaliation to those imposed by the United States on steel and aluminum. Similarly, Canada implemented similar actions against U.S. products.

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A not insignificant issue, and one that represented a challenge for Mexico, was to maintain the results of the negotiation of the Free Trade Agreement with the European Union (FTA-EU) in view of the legislative differences in the area of geographical indications and intellectual property. Therefore, a non-exhaustive list of commonly used cheese names was established, such as mozzarella, cheddar, and Swiss cheese, which cannot be restricted by the EU-MX FTA.

Finally, it is important to remember that in view of the possibility that the United States government would denounce NAFTA, thus leaving the agreement. The Mexican government saw the need to look for alternative markets for the supply of some products, so it began the modernization of trade agreements with potential supplier countries, including Brazil and Argentina for grains and meat products; with South America for cotton and rice.

The USMCA was signed on November 30, 2018, in Buenos Aires, Argentina, by the then President of Mexico, Enrique Peña Nieto; the Prime Minister of Canada, Justin Trudeau; and the President of the United States, Donald Trump. Once it enters into force, it will replace the North American Free Trade Agreement (NAFTA).

June 19, 2019, the full Senate of the Republic approved, with 114 votes in favor: 4 against, and 3 abstentions, the Treaty between the United States, Mexico and Canada (USMCA).

In response to the demands of the Democrats in the U.S. House of Representatives and the American unions, the Modifying Protocol was negotiated. These petitions revolved around 4 themes:

- a. protection of the environment;
- b. data protection for biological medicines;
- c. protection of labor rights; and
- d. monitoring and enforcement.

On December 10, 2019, the signing of the Modifying Protocol to the Treaty between the United States, Mexico and Canada (USMCA) took place in Mexico City. This protocol reforms some of the disciplines originally agreed in the USMCA, including a provision recently proposed by the U.S., on rules of origin for the automotive and steel sectors.

The US was the last partner to notify its counterparts that it had completed the internal procedures necessary for the entry into force of the USMCA on 24 April 2020. Canada and Mexico did the same earlier this month.

The Protocol of amendment the USMCA provides that the agreement will enter into force on the first day of the third month after the last partner notifies the completion of its internal procedures. This deadline is set for 1 July.

B. USMCA

Chapter 3, includes:

- Article 3.1: Definitions
- Article 3.2: Area of Application
- Article 3.3: International Cooperation
- Article 3.4: Competitiveness on Exportation
- Article 3.5: Export Restrictions – Food Security
- Article 3.6: Subsidies
- Article 3.7: Agriculture Committee
- Article 3.8: Agriculture Advisory Committee
- Article 3.9: Agriculture Special Safeguard
- Article 3.10: Transparency and Consultation
 - Section A: Agricultural Technology
 - Annex Mexico – United States (Sugar)
 - Annex of Spirit Drinks, Wine, Beer, and any other alcoholic beverage
 - Annex for Patented formulas for Packaged Food

If tariff balances of NAFTA are upheld, it is relevant to observe the Specific Origin Regulations and the Deductibility lists.

In Chapter one, one of the main changes are noted in the dairy sector. Canada established new quotas for the United States:

- ✚ Provide new market access in the form of tariff quotas for dairy, poultry and egg products.
- ✚ Remove tariffs on whey powder and margarine.
- ✚ Current milk classes 6 and 7 will be eliminated; prices of components of these products will be calculated on the basis of an agreed reference price.
- ✚ A mechanism is established to monitor exports beyond the agreed threshold, of skimmed milk powder, milk protein concentrate and infant formula, these products will be subject to surcharges.
- ✚ Allow U.S.-grown wheat of Canadian-registered varieties to receive official Canadian grain quality.


In Exchange, the United States will allow more Canadian dairy, peanuts and derived products, and a limited amount of sugar, to cross the border.

The following provisions for the elimination of agricultural subsidies establish that:

- ✚ Article 3.4: Export Competition.

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- 1. No Party shall adopt or maintain an export subsidy on any agricultural good destined for the territory of another Party.
- 2. If a Party considers that export financing support granted by another Party results or may result in a distorting effect on trade between the Parties, or considers that an export subsidy is being granted by another Party, with respect to an agricultural good, it may request to discuss the matter. The responding Party shall agree to meet with the requesting Party as soon as practicable.


 Article 3.6: Domestic Support.

- 1. The Parties recognize that domestic support measures can be of crucial importance to their agricultural sectors but may also have trade distorting and production effects. If a Party supports its agricultural producers, the Party shall consider domestic support measures that have minimal or no trade distorting or production effects.
- 2. If a Party raises concerns that another Party's domestic support measure has had a negative impact on trade between the Parties, the Parties shall share relevant information regarding the domestic support measure with each other and discuss the matter with a view to seeking to minimize the negative trade impact.


 Agriculture Committee.

- It will be formed by a representative of each government
- It shall meet once a year, and within the first year after the entry into force of the Agreement.

In addition, the following chapters are relevant:

 Customs Administration and Trade Facilitation

- It incorporates provisions regarding customs cooperation and compliance, which includes the following actions:
 - Local and bilateral cooperation, to improve coordination between customs and promote initiatives to detect and prevent customs offences.
 - Exchange of information to prevent customs crimes.
 - Verifications through collaboration between customs authorities to obtain documents and carry out visits to companies.

 Labor:

- Specific provisions are included for Mexico on collective bargaining, which seek to guarantee this right.
- Cases of sustained or recurrent action or inaction in the application of labor law by a government will be subject to the dispute resolution mechanism.
- The Protocol of Amendment states:

- Language that made it difficult to prove that business partners were not committed to protecting workers from workplace violence was removed.

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- It is presumed that a labor violation affects trade and investment, so the other government must prove otherwise.
- In order to ensure that the U.S. government will effectively monitor compliance with labor obligations in Mexico:
 - A committee is created to oversee the implementation of labor reform and compliance in Mexico.
 - There will be labor attachés in Mexico in order to have real information on labor practices.
- Rapid response mechanism for the settlement of labor disputes will enter into force immediately. This mechanism provides for the establishment of panels of experts on labor matters in the event that a Party believes that a Covered Plant (Plant) is denying workers' rights relating to union elections and collective bargaining.
- It will apply to plants in the manufacturing, service and mining sectors. It will have a short time period established to issue a resolution.
- Sanctions may include the suspension of preferential tariff treatment for goods manufactured in the defendant company or the imposition of sanctions on goods manufactured or services provided by the defendant company.
- In cases where a company incurs at least two denials of duties, sanctions may include the suspension of preferential tariff treatment for such goods; the imposition of sanctions on such goods or services; or the denial of entry of such goods.

 Environment:

- Certain prohibitions are established regarding some subsidies that affect fishing, especially ships and operators involved in illegal fish poaching.
- Includes a commitment to prevent and reduce marine debris, promote sustainable forest management, and prevent commercial whaling.
- Intentional transnational trafficking in protected wildlife species is a serious offence.
- Robust and modern mechanisms for public participation and environmental cooperation.
- Disciplines that seek to improve the effectiveness of customs inspections of shipments containing wildlife at ports of entry.
- Disciplines are established to protect air quality, and ensure appropriate procedures for environmental impact assessments
- Cases of sustained or recurrent action or inaction in the enforcement of labor laws by a government will be subject to the dispute resolution mechanism.
- The Protocol of Amendment states:
 - It is presumed that an environmental violation affects trade and investment, so the other government must prove otherwise.
 - The Montreal Protocol is covered.
 - A commitment is added that all Parties will adopt, implement and maintain 7 multilateral environmental agreements, other agreements may be added to the list. Non-compliance with any of these agreements will be subject to

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the State-State dispute settlement mechanism, which could lead to the eventual adoption of retaliation.

- A committee is created to monitor the implementation of the obligations acquired in the agreements, as well as the recommendations. It will be the platform through which the American government will coordinate its support and financing of projects to implement the best practices in environmental matters.
- There will be environmental attachés in Mexico in order to have real information about regulations and practices.
- It adds a new customs verification mechanism to guarantee that only legally harvested and taken flora and fauna are traded through Mexico.
- A new North American Development Bank authorization and funding for EPA, loans under the Border Water Infrastructure Program to address pollution on the U.S.-Mexico border; and additional funds to the Trade Control Trust Fund to be used for focused environmental efforts.

Sanitary and Phytosanitary Measures

- Ensures the protection of human, animal and plant life and health in the North American region.
- Progress is made in science-based decision-making.
- Avoids unnecessary barriers to trade.
- Incorporates provisions that allow for recourse to the dispute settlement mechanism in case of non-compliance.

Procedures of Origin

- The certificate of origin may be issued by the exporter, producer or importer.
- The format of the certificate is eliminated, and certification is permitted on the invoice or any commercial document, provided that minimum information is declared.

Intellectual Property

- The system of protection of geographical indications is reinforced.
- Disciplines are expected for well known trademarks.
- The authorities will be able to stop goods suspected of being counterfeit at any entry or exit to the country.
- Implementation of measures against counterfeit goods and piracy on a commercial scale.

Source:

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