

LEGISLATIVE RETURN



SUBMITTED BY: Hon. Sandy Silver – Premier

1. On _____,
- asked the following oral question at page(s) _____ of *Hansard*
- submitted the following written question – WQ No. _____
- gave notice of the following motion for the production of papers – MPP No. _____
- RE: _____

OR

2. This legislative return relates to a matter outstanding from discussion related to:
The United States – Mexico – Canada Agreement (USMCA)
- on _____ at page(s) _____ of *Hansard*
October 9, 2018 2890

The response is as follows:

PRELIMINARY ANALYSIS OF THE UNITED STATES-MEXICO-CANADA (USMCA) AGREEMENT-IN-PRINCIPLE

USMCA Ratification

On September 30, 2018 the United States, Mexico and Canada agreed-in-principle to a new trilateral trade agreement (currently named the USMCA) to replace the North American Free Trade Agreement (NAFTA). This “draft” agreement must now undergo legal review and translation into both French and Spanish, before being ratified by the three affected countries. Until this process is complete, the existing NAFTA continues to have full force and effect.

For Canada the signing and ratification process consist of getting an Order-In-Council to get legal authority to sign the agreement. After that, the text of the agreement, which will need to go through translation to appear in both French and English, must be tabled in the House. It has to stay at least 21 sitting days before the government can introduce legislation to implement the act, which will follow the normal process through to royal assent. That brings it to mid-to-late February 2019 at the earliest for any implementing legislation to appear in Ottawa. The USMCA agreement would enter into force on the first day of the third month after the last of the three signatories has notified the other Parties, in writing, that it has completed the internal procedures required for the entry into force of the Agreement. Hence, the USMCA likely will not come into force until late 2019 at the earliest.

Modernizing NAFTA

Although the USMCA agreement is less ambitious than had been hoped for at the beginning of the negotiations process, it is nevertheless a “modernized” agreement when compared to the existing NAFTA. First and foremost, the USMCA establishes clear procedures for reviewing the Agreement, either as a whole or for specific issues. This provides an opportunity for ongoing modernization that will encourage the parties to update the Agreement, as required, in response to changes in the global trade environment. Further, the USMCA contains new modernizing Chapters or provision with respect to:

1. Rules of Origin related to autos (Chapter 4)

- The USMCA introduces a new approach for how automakers in Mexico and Canada must build cars and trucks to continue selling to U.S. consumers without having to pay import

tariffs. Specifically, 75% of the auto parts must be made in Canada, Mexico or the United States and 70% of the steel and aluminium must come from North America. And for the first time, there is a new requirement that at least 40 per cent of the auto's content be made by workers earning US\$16 per hour or more.

2. Digital trade (Chapter 19)

- This new Chapter applies to measures of a Party that affect trade by electronic means and include provisions such as: online consumer protection, personal information protection, unsolicited commercial electronic communications, etc.

3. Intellectual Property (Chapter 20)

- Although NAFTA contains an Intellectual Property Chapter, the USMCA expands and modernizes the provisions to include, for example:
 - Extending copyright protection of "life plus 70 years" for works and 75 years for performances and sound recordings (Canada currently has terms of "life plus 50 years" and 70 years, respectively).
 - Extending a term of data protection of to a term of 10 years for new biologic drugs (Canada currently provides a term of eight years).

4. Labour (Chapter 23)

- This new Chapter includes commitments to ensure that national laws and policies provide protection of the fundamental principles and rights at work, including:
 - the right to freedom of association and collective bargaining
 - the elimination of child labour, forced or compulsory labour, and discrimination in respect of employment occupation.
- The Chapter also includes new provisions:
 - for parties to take measures to prohibit the importation of goods produced by forced labour;
 - to address violence against workers exercising their labour rights; and
 - to ensure that migrant workers are protected under labour laws.

5. Small and medium-sized enterprises (Chapter 25)

- The USMCA includes a new chapter on SMEs which is designed to complement commitments undertaken throughout the agreement, notably by fostering cooperation amongst the Parties to increase trade and investment opportunities for SMEs, and ensuring information is available to SMEs on the obligations and functioning of the Agreement.
 - Promotes increased trade and investment opportunities for SMEs, including through cooperation on support initiatives.
 - Recognizes indigenous peoples, women, youth and minorities as groups who may benefit from strengthened collaboration on SME promotion activities designed to increase participation in international trade.
 - Includes requirements to make information available that is specifically tailored for SMEs' use, - an issue previously identified by Canadian SMEs as a challenge to leveraging the opportunities created by international trade agreements.
 - Establishes a Committee on SME issues and an annual trilateral SME dialogue, which includes private sector stakeholders, to discuss issues of the agreement that are relevant to SMEs.

6. Gender (Provisions)

- The USMCA contains gender-related provisions in the following chapters:
 - **Labour:** For example, contains enforceable obligations for governments to implement policies that address gender-based discrimination in the workplace, specifically with regard to pregnancy, sexual orientation, sexual harassment, gender identity, and caregiving responsibilities.
 - **Investment:** Includes a corporate social responsibility (CSR) provision that reaffirms the importance of encouraging businesses to respect CSR standards, including gender equality.

- **Small and medium sized enterprises (SMES):** Encourages parties to collaborate on activities that would enhance commercial opportunities for SMEs owned by under-represented groups, including women, and promote their participation in international trade.

7. Indigenous (Provisions)

- The USMCA incorporates a **general exception** that clearly confirms that the government can adopt or maintain measures it deems necessary to fulfill its legal obligations to Indigenous peoples. The provision also specifically references Aboriginal rights as recognized and affirmed by section 35 of the Constitution Act, 1982, as well as those set out in self-government agreements.
- The USMCA maintains Canada's traditional **reservations, exceptions and exclusions** in the areas of services and investment, environment and state-owned enterprises.
 - **Cross-border trade in services and investment:** preserves the right to adopt or maintain measures conferring rights or privileges to Indigenous peoples;
 - **Environment:** ensures that the chapter's obligations take into account Canada's constitutionally protected Aboriginal rights related to harvesting of natural resources; and,
 - **State-owned enterprises (SOE):** ensures that all existing and future SOEs may accord more favourable treatment to Indigenous persons and organizations in the purchase of goods and services.
- In addition to the carve-out related to Aboriginal harvesting of natural resources, the **environment chapter** includes provisions that recognize the important role of Indigenous peoples in the long-term conservation of the environment, sustainable fisheries and forestry management, and biodiversity conservation.
- The **small and medium-sized enterprises (SME) chapter** encourages parties to collaborate on activities that would enhance commercial opportunities for SMEs owned by under-represented groups, including Indigenous peoples, and promote their participation in international trade.
- A first for Canada's FTAs, the **textile and apparel goods chapter** includes a provision under which handcrafted Indigenous textile and apparel goods are eligible for duty-free treatment pursuant to a special process.
- The outcome on **government procurement** maintains Canada's ability to create procurement programs that support small and minority-owned businesses, including Indigenous businesses.

USMCA Implications for Yukon

Although Yukon is not a signatory to the USMCA, in signing the Agreement Canada effectively commits to: "...take such reasonable measures as may be open to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories."¹ As such, all the rights and obligations of the USMCA apply to Yukon, unless they are in areas of exclusive federal jurisdiction (e.g. Customs and Trade Facilitation Chapter), are explicitly excluded under the Agreement or, limited to the federal government (e.g. Environment Chapter). As a result, a number of Chapters and/or provisions have significant implications for Yukon. Specifically:

1. Entire Agreement (Various chapters and provisions)

- Most importantly, the USMCA provides Yukoners with the right to import, export, work or invest in both the United States and Mexico, subject to the rules of the Agreement. Furthermore, virtually all tariffs on goods remain at zero as was the case under NAFTA. This means that Yukon's current exports to the US (which consist mostly of minerals) will be unaffected and that Yukon entrepreneurs can explore entering the US or Mexican markets on a level-playing-field.

2. Temporary Entry (Chapter 16)

- The USMCA specifies that each Party to the agreement shall grant temporary entry to a business person as specified in the Chapter. This means that Yukon: Business Visitors, Traders and Investors, Intra-Company Transferees, and Professionals must be granted

¹ From WTO rules of Accession

entry into either the US or Mexico, provided they have obtained the necessary visa or its equivalent prior to entry.

3. Customs and Trade Facilitation (Chapter 7)

- The USMCA provisions on trade facilitation are aimed at making it simpler and easier for businesses to engage in trade. This includes such provisions as: online resources, easily accessible enquiry points, advance rulings for shipments, as well as other means intended to facilitate the importation, exportation, and transit of a good from one country to another. This should make it easier for Yukoners who want to explore trading their goods internationally.

4. Culture and Cultural Industries (General Exception)

- The USMCA maintains Canada's existing cultural industries exception under NAFTA, a key provision designed to preserve Canada's cultural sovereignty, including in the online environment. The USMCA defines cultural industries as those engaged in the publication, distribution or sale of books, magazines, film, video and music, as well as broadcasting. For Yukon this means that it retains its flexibility to adopt and maintain programs and policies that support the creation, distribution and development of Yukon artistic expression or content, including in the digital environment.

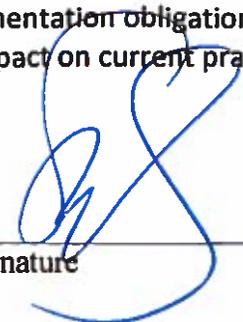
5. Rules of Origin (Chapter 4 – Article 4.12: De Minimis)

- Under the USMCA, Canada has agreed to maintain a de minimis threshold for express courier shipments of at least CA\$150 (the current threshold is \$20) for duties and CA\$40 for taxes at the point or time of importation. As well, new provisions further streamlining administrative procedures for courier companies should lead to lower service fees charged to Canadians by these companies. This means Yukoners who make small on-line purchases for things such as books, household accessories, etc. from American e-retailers like Amazon will pay less for those purchases.

6. Annex 3 B - Distilled Spirits, Wine, Beer, and other Alcohol Beverages

- Under the USMCA, Yukon's obligations related to alcohol are effectively the same as those under the Comprehensive Economic and Trade Agreement (CETA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership "CPTPP". This means that, effectively, there are no new implementation obligations related to alcohol for Yukon and, as a result, there should be no impact on current practices in Yukon coming out of this agreement.

2018.10.14
Date


Signature