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No legal impact of the proposed USMCA on China and non-market countries

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Earlier this month, Canada, Mexico, and the United States agreed to a new free trade agreement – the United States-Mexico-Canada Agreement (USMCA) – that will eventually replace the 1994 North America Free Trade Agreement (NAFTA) if it ever enters into force. The NAFTA's liberalisation of trade between the three partners has helped buoy their economies in the intervening 24 years. The NAFTA established investor-state arbitration under its Chapter 11, which commentators see as having accelerated reliance on arbitration to resolve international investment disputes generally. After identifying how the proposed USMCA might impact investor-state arbitration between these partners, this client alert explores the significance of USMCA's non-market-country provision and how it might impact China's efforts to negotiate free trade agreements and investment protection agreements with Canada and Mexico. Contrary to popular belief, USMCA does not give objecting USMCA parties the ability to impose changes or veto proposed free trade agreements between China and the other USMCA parties.

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Contacts

James Kwan

Partner

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