

USMCA vote in U.S. Congress appears imminent after agreement to change provisions on enforcement, labor, environment, and pharmaceuticals

11 December 2019

Implementing legislation to enact the United States-Mexico-Canada Agreement (USMCA) is expected to be introduced as early as the week of 16 December following extensive discussions between leaders of the U.S. Congress and the U.S. administration. House Speaker Nancy Pelosi, D-Calif., and House Ways & Means Chairman Richard Neal, D-Mass., announced a breakthrough in negotiations regarding certain provisions of the USMCA that was signed 30 November 2018. The two Democratic congressional leaders cited changes to enforcement, labor, environment, and pharmaceutical chapters in the agreement in announcing the decision to bring implementing legislation to enact USMCA into U.S. law.

According to a [fact sheet](#) released by the House Ways & Means Committee, changes to the USMCA since it was signed in November 2018 include:

- **Enforcement:** Language that may have permitted a responding party to block formation of a dispute settlement panel was removed and new rules of evidence were created for administration of the USMCA dispute settlement system.
- **Labor:** Labor violations will be presumed to affect trade and investment, requiring a party alleged to have violated USMCA labor provisions to prove otherwise; an interagency committee will be formed to monitor Mexico's implementation of labor reforms and compliance with USMCA labor provisions and provide periodic reports to Congress along with other monitoring and reporting mechanisms; and labor enforcement mechanisms will be enhanced to, inter alia, expand application of labor commitments to all goods and services between the United States and Mexico and to permit enforcement against individual facilities.
- **Environment:** Environmental violations will be presumed to affect trade and investment, requiring a party alleged to have violated USMCA environmental provisions to prove otherwise; parties will commit to adopting, implementing, and maintaining seven multilateral environmental agreements (MEA) and to consider additional of other MEAs in the future and permits the Montreal Protocol (through which signatories agreed to

phase out the production and consumption of ozone depleting substances) to be covered by the USMCA; an interagency committee will be formed to monitor implementation of environmental obligations by Canada and Mexico and support coordination to improve environmental practices by the parties; and the creation and expansion of mechanisms and resources to support environmental commitments under the USMCA, including authorization of the North American Development Bank and funding of Environmental Protection Agency grants to address pollution at the U.S.-Mexico border.

- **Pharmaceuticals:** Provisions granting 10-year and five-year exclusivity for biologics and pharmaceuticals, respectively, were removed from the USMCA and additional intellectual property protections agreed to under the original USMCA were removed or modified; limitations on the ability of generic pharmaceutical companies to use patented technology and products to be able to obtain market approval on the day a drug patent expires were removed; and principles under the USMCA that were enacted under current free trade agreements with Panama, Peru, and Colombia and consistent with the 10 May principles to improve access to medicines were implemented, including removing "hard linkages" between regulatory approvals and patent status to incentivize generic competition and ensure Mexico permits interested parties to receive notice and be given an opportunity to be heard regarding regulatory approvals.

These changes to the USMCA were discussed and agreed to in trilateral meetings between U.S. Trade Representative Robert Lighthizer, Canadian Deputy Prime Minister Chrystia Freeland, and Mexican Under Secretary for North America Jesús Seade in Mexico on Tuesday, 10 December 2019.

Following this breakthrough, the Trump administration will prepare implementing legislation that will be submitted to Congress, where final text will be reviewed, marked-up, and voted on by the House and Senate before (assuming bicameral approval) final signature by President Trump. While the House Ways & Means and Senate Finance Committees normally conduct mock mark-ups and hold public hearings, it is unclear if these steps will be followed in the interests of time if the goal is to secure House and Senate votes by the end of the year.

If approved, the USMCA would replace the North American Free Trade Agreement (NAFTA) that went into effect in 1994 and which superseded the 1988 Canada-U.S. Free Trade Agreement. The USMCA has already been approved by Mexico's Congress of the Union (20 June 2019), while the Canadian Parliament's efforts to ratify USMCA (or CUSMA as the agreement is referred to in Canada) were delayed by recent federal elections.

While Republicans overwhelmingly support approving and implementing USMCA, passage of the USMCA has been held up by some Democratic lawmakers over concerns about labor enforcement and the environment. With the announcement of these changes to the USMCA to address Democratic concerns and statements in support of the USMCA by U.S. labor groups, it appears that USMCA approval and implementation by the U.S. Congress is imminent. Following the United States implementing legislation, USTR will conduct a detailed review of Mexican and Canadian implementation before the president issues a Presidential Proclamation declaring that the agreement has entered into force. While this process can take anywhere from six months to several years, it could be shorter here, since there has been intensive scrutiny already of Mexico's implementation of its new labor reform law.

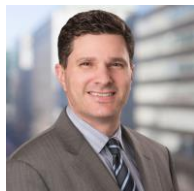
Contacts



Warren H. Maruyama
Partner, Washington, D.C.
T +1 202 637 5716
warren.maruyama@hoganlovells.com



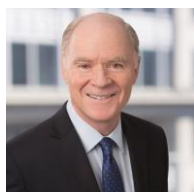
Juan Francisco Torres Landa
Office Managing Partner, Mexico City
T +52 55 5091 0157
juanf.torreslanda@hoganlovells.com



Jonathan T. Stoel
Partner, Washington, D.C.
T +1 202 637 6634
jonathan.stoel@hoganlovells.com



H. Deen Kaplan
Partner, Washington, D.C.
T +1 202 637 5799
deen.kaplan@hoganlovells.com



Robert D. Kyle
Partner, Washington, D.C.
T +1 202 637 5494
robert.kyle@hoganlovells.com



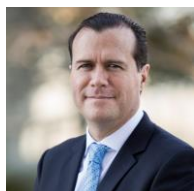
Ivan Zapien
Partner, Washington, D.C.
T +1 202 637 5613
ivan.zapien@hoganlovells.com



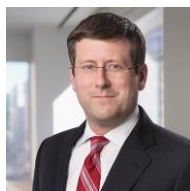
Chandri Navarro
Partner, Washington, D.C.
T +1 202 637 5640
chandri.navarro@hoganlovells.com



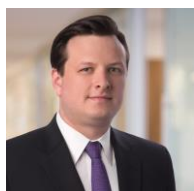
Craig A. Lewis
Partner, Washington, D.C.
T +1 202 647 8613
craig.lewis@hoganlovells.com



M. Jorge Yáñez V.
Partner, Monterrey, Mexico City
T +52 81 8220 1528 (Monterrey)
T +52 55 5091 0165 (Mexico City)
jorge.yanez@hoganlovells.com



Jared R. Wessel
Counsel, Washington, D.C.
T +1 202 637 6472
jared.wessel@hoganlovells.com



Patrick De Lapérouse
Associate, Washington, D.C.
T +1 202 637 6836
patrick.delaperouse@hoganlovells.com

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

© Hogan Lovells 2019. All rights reserved.