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CAN THREE TANGO?

THE US-MEXICO-CANADA AGREEMENT (USMCA)

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Agenda

- Introduction
- NAFTA vs. USMCA
- United States Implications
 - How to Prepare
- Canadian Implications
 - How to Prepare
- Mexican Viewpoint
 - How to Prepare

INTRODUCTION

Introduction: The Trump Trade Doctrine

- America suffers from serious trade imbalances
 - Balance of trade
 - Inconsistent (or unfair) tariff application
 - Historic unfair treatment
- Trade imbalances cause adverse economic effects to America
- Trade balance should be achieved wherever possible
- All “tools” should be used to remedy current trade imbalance
- Bad trade agreements have caused/contributed to trade imbalance
- NAFTA is a prime example of the type of agreement causing these problems

Introduction: Trump Administration NAFTA Strategy

- Candidate Trump urged withdrawal from NAFTA
- President Trump negotiating changes under the threat of a withdrawal
- Negotiations started in late 2017
 - In part because of late confirmation of USTR
- Multiple negotiation rounds occurred

Introduction: Welcome USMCA

- On September 30, 2018 the US, Canada and Mexico reached an agreement on the renegotiation of the North American Free Trade Agreement (NAFTA).
- The renegotiated NAFTA was given a new name – the United States-Mexico-Canada Agreement (USMCA).
- USMCA is an “agreement in principle” that still must be ratified by each of the three countries as a treaty.
- The treaty approval process is different in Canada, Mexico and the US, with the US being the most challenging and time-consuming.
 - Under the US’ Trade Promotion Authority, the earliest that President can sign the USMCA is November 29, 2018 which is 60 days after the agreed text was sent by the USTR to Congress, i.e. September 30, 2018. Expected signature date is November 30, 2018.
 - After Presidential signing, the ITC has 105 days to review the USMCA’s economic impact during which time the Administration will be drafting implementing legislation.

Introduction: Welcome USMCA (cont'd)

- The ITC report and the implementing legislation are then submitted to Congress for review and analysis by the relevant committees in the House and the Senate.
- After a maximum 45 days of committee study, the implementing legislation is then considered and voted on by the House and the Senate.
 - The voting process is limited to an additional 45 day period.
 - During this additional period, no amendments to the implementing legislation is permitted.
- Following approval by the Congress, the legislation as passed will be submitted to the President for signing whereupon the Treaty will take effect.

Introduction: Welcome USMCA (cont'd)

- The USMCA (Article 34.5) requires Canada, Mexico and the US to notify each other in writing regarding when they have completed their respective procedures for ratification of the USMCA.
- After the required notification has been received from each country, the USMCA will enter into force on the first day of the third month following the date when the last notification is received.
- The USMCA does not provide authorization for any portion of the USMCA to take effect prior to the USMCA entering into force.
- Thus, until the USMCA enters into force, NAFTA will remain in full force and effect, as it has since 1994.

NAFTA

VERSUS

USMCA

NAFTA versus USMCA: Duties

The USMCA provides that, with certain exceptions:

- trade between and among each of the three signatory countries will be duty free for “originating” goods;
- existing customs duties on “originating” goods cannot be increased unilaterally; and
- new duties cannot be unilaterally adopted for any “originating” goods.

Am I thinking 232 steel & aluminum tariffs imposed by the US against all countries at 25% and 10% respectively?

NAFTA versus USMCA: Origin Rules for Originating Goods

The USMCA makes various changes to the rules of origin established under NAFTA. These changes fall into two general categories:

- Updates to the general rule of origin principles found in NAFTA; and
- Changes to some product-specific rules of origin (e.g., tariff shift and regional value content requirements) for various products, including automotive goods, textiles, chemicals, and steel-intensive goods.

NAFTA versus USMCA: Origin Rules for Originating Goods

USMCA's updates to NAFTA's general rule of origin principles:

The general principles for determining origin (Origin Rules) under the USMCA are largely the same as NAFTA's origin rules with some exceptions.

Under the USMCA, a good will qualify as originating, and therefore will be eligible for preferential tariff treatment, if it satisfies one of the following four criteria:

1. The good is wholly obtained or produced entirely in the territory of the US, Canada or Mexico. This rule remains largely unchanged from NAFTA, though the USMCA does make some minor updates to the definition of a "wholly obtained or produced" good. Under NAFTA as well as under the USMCA this rule is intended to be applicable to goods of the land, sea or air. Under NAFTA, this origin rule is referred to as Origin Rule A.

NAFTA versus USMCA: Origin Rules for Originating Goods

USMCA's updates to NAFTA's general rule of origin principles (cont'd):

2. The good is produced entirely in the US, Mexico or Canada using non-originating materials, provided that such good satisfies the applicable product-specific rules of origin that are set forth in the USMCA on an HTS# by HTS# basis. The USMCA's product-specific rules of origin, like those in NAFTA, are based on changes in tariff classification, regional value content (RVC) requirements, and/or other product-specific processing requirements (e.g., the "chemical reaction rule"). RVC must be calculated using either the "net cost" method or the "transaction value" method (the same two methods permitted under the NAFTA).

A number of the product-specific rules of origin found in NAFTA have been revised in the USMCA, as discussed in greater detail below.

Under NAFTA, this origin rule is referred to as Origin Rule B.

NAFTA versus USMCA: Origin Rules for Originating Goods

USMCA's updates to NAFTA's general rule of origin principles (cont'd):

3. The good is produced entirely in the US, Mexico or Canada exclusively from "originating" materials.

This rule remains unchanged from the NAFTA rule, which held that goods originate if they are produced entirely in the US, Canada or Mexico exclusively from materials that are considered to be "originating" according to the terms of NAFTA.

Under NAFTA, this origin rule is referred to as Origin Rule C.

NAFTA versus USMCA: Origin Rules for Originating Goods

USMCA's updates to NAFTA's general rule of origin principles (cont'd):

4. The good which is produced entirely in the US, Mexico or Canada is classified with its materials or satisfies the "unassembled goods" requirement, and meets an RVC threshold.

This rule, which is largely unchanged from NAFTA, provides that a good is "originating" if:

- a. One or more of the non-originating materials used to produce the good cannot satisfy the applicable product-specific rules of origin because both the good and its materials are classified in the same tariff heading (thus precluding a tariff shift); or
- b. The good was imported into the territory of the US, Mexico or Canada in unassembled or disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the Harmonized System; and

The regional value content of the good is at least 60% when calculated using the transaction value method, or at least 50% when using the net cost method.

Under NAFTA, this origin rule is officially referred to as Origin Rule D but unofficially referred to as the unassembled parts rule.

NAFTA versus USMCA: Origin Rules for Originating Goods

USMCA's updates to NAFTA's general rule of origin principles (cont'd):

The USMCA increases from 7% to 10% the level of non-originating content that is considered de minimis and therefore does not render a good as non-originating, even if the good otherwise fails to satisfy an applicable tariff change or regional value content requirement, as explained further below:

- A good will qualify as originating if the value of all non-originating materials used in its production that do not undergo an applicable change in tariff classification does not exceed 10% of the transaction value or the total cost of the good (provided the good satisfies all other applicable origin requirements).
- A good that is otherwise subject to an RVC requirement will not be required to satisfy that requirement if the value of all non-originating materials used in its production does not exceed 10% of the transaction value or the total cost of the good (provided the good satisfies all other applicable origin requirements).

Like NAFTA, the USMCA contains a list of products that are ineligible for the de minimis exemptions (including many food and agricultural products).

NAFTA versus USMCA: Origin Rules for Originating Goods

USMCA's updates to NAFTA's general rule of origin principles (cont'd):

The USMCA contains a new provision on the treatment of "Recovered Materials". A "Recovered Material" is defined by the USMCA as a "material in the form of one or more individual parts that results from:

- the disassembly of a used good into individual parts; and
- the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition.

In accordance with this new provision, a "recovered material" derived in the US, Mexico or Canada will qualify as originating when it is used in the production of, and is incorporated into, a "remanufactured good."

NAFTA versus USMCA: Origin Rules for Originating Goods

USMCA's updates to NAFTA's general rule of origin principles (cont'd):

The USMCA contains a revised provision on accumulation. Like NAFTA, the USMCA provides for "accumulation" (i.e., products of the US, Mexico or Canada can be further processed or added to products produced in another USMCA country as long as they had originated in the US, Mexico or Canada). Under USMCA's revised accumulation rules:

- A good is originating if it is produced in the US, Mexico or Canada by one or more producers, provided that it satisfies all applicable origin requirements;
- An originating good or material that is produced in the US, Mexico or Canada is considered as originating in the territory of another Party when it is used as a material in the production of a good there; and
- Production undertaken on a non-originating material in one or more of the Parties contributes to the originating status of the good, regardless of whether that production was sufficient to confer originating status to the material itself.

NAFTA versus USMCA: Origin Rules for Originating Goods

USMCA's updates to NAFTA's general rule of origin principles (cont'd):

The USMCA contains an Updated Provision on Transit and Transshipment.

Under the USMCA, an originating good that is transported outside the US, Mexico or Canada will retain its originating status if the good:

- remains under customs control in the territory of a non-Party; and
- does not undergo an operation other than unloading; reloading; separation from a bulk shipment; storing; labeling or marking required by the importing Party; or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party.

The NAFTA text did not expressly require a good to remain under customs control while in the territory of a non-Party in order retain its originating status, though this concept is included in US Customs and Border Protection's NAFTA regulations.

NAFTA versus USMCA: Origin Rules for Originating Goods

USMCA's changes to various product-specific rules of origin:

The USMCA's Annex 4-B contains revisions to many of the product-specific rules of origin found in Annex 401 of the NAFTA. Some of the revised rules, such as those applicable to automotive goods, are more stringent than the NAFTA rules, potentially forcing companies to alter their current supply chains in order to satisfy the new requirements. Other product-specific rules in the USMCA, such as those applicable to chemicals, might be more flexible than the existing NAFTA rules.

An illustrative list of chapters and products that are subject to revised product-specific rules of origin under the USMCA follows in the next slide.

NAFTA versus USMCA: Origin Rules for Originating Goods

USMCA's changes to various product-specific rules of origin:

HTS Chapters	Products
27	Certain mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes
28 - 38	Certain chemicals, chemical products, pharmaceutical products, fertilizers, dyes, essential oils, soaps, glues, explosives and photographic or cinematographic goods
39 - 40	Certain plastics and articles thereof and certain rubber and articles thereof
73	Certain articles of iron or steel (e.g., welded pipes and tubes, fittings, structures, wires, steel cloth, nails, tacks, and staples)
85	Certain electronics and components (e.g. certain monitors and projectors, certain components used in telecommunications equipment, and certain electrical transformers and their parts)
86	Certain parts of railways or tramway locomotives or rolling stock
90	Certain liquid crystal display (LCD) assemblies
40, 70, 83, 84, 85, 87, 90 and 94	Certain automotive goods
42, 50 – 63, 70, 94 and 96	Textile and apparel goods

NAFTA versus USMCA: Origin Procedures

USMCA contains new procedures for certifying origin

Under NAFTA, Canada, Mexico and the United States established a uniform Certificate of Origin for use in all three countries to certify that imported goods qualify for preferential tariff treatment.

The USMCA, by contrast, will not use a uniform certificate and instead provides that a certification of origin under the USMCA may be provided on an invoice or any other document (except an invoice or commercial document issued in a non-Party) and need not follow a prescribed format, provided that it contains certain minimum data elements. For example, the certification must describe the originating good in sufficient detail to enable its identification, and must be provided in the language requested by the importing Party.

NAFTA versus USMCA: Origin Procedures

USMCA expands responsibility for certifying origin

Under NAFTA, Certificates of Origin must be completed and signed by the producer or exporter of the goods.

By contrast, the USMCA provides that an importer may also complete a certification of origin and claim preferential tariff treatment, subject to certain requirements. In completing an origin certificate, an importer must be in possession of information or documents that support the importer's certification.

As is the case under NAFTA, a certification of origin under the USMCA may apply to a single shipment or to multiple shipments of identical goods within a 12-month period. Further, the USMCA does not modify NAFTA's threshold value (USD \$1,000) below which a certification of origin is not required.

NAFTA versus USMCA: Additional Topics Addressed by the USMCA

New IP Chapter which:

- Includes 10 years of data protection for biologic drugs and a robust scope of products eligible for protection.
- Requires full national treatment for copyright and related rights so United States creators are not deprived of the same protections that domestic creators receive in a foreign market.
- Continues to provide strong patent protection for innovators by enshrining patentability standards and patent office best practices to ensure that United States innovators, including small- and medium-sized businesses, are able to protect their inventions with patents.
- Includes strong protection for pharmaceutical and agricultural innovators.
- Requires a minimum copyright term of life of the author plus 70 years, and for those works with a copyright term that is not based on the life of a person, a minimum of 75 years after first authorized publication.

NAFTA versus USMCA: Additional Topics Addressed by the USMCA

New IP Chapter which (cont'd):

- Requires strong standards against the circumvention of technological protection measures that often protect works such as digital music, movies, and books.
- Establishes appropriate copyright safe harbors to provide protection for IP and predictability for legitimate enterprises that do not directly benefit from the infringement, consistent with United States law.
- Provides important procedural safeguards for recognition of new geographical indications (GIs), including strong standards for protection against issuances of GIs that would prevent United States producers from using common names, as well as establish a mechanism for consultation between the Parties on future GIs pursuant to international agreements.
- Enhances provisions for protecting trademarks, including well-known marks, to help companies that have invested effort and resources into establishing goodwill for their brands

NAFTA versus USMCA: Additional Topics Addressed by the USMCA

New Digital Trade Chapter which:

- Prohibits customs duties and other discriminatory measures from being applied to digital products distributed electronically (e-books, videos, music, software, games, etc.).
- Ensures that data can be transferred cross-border and minimizes limits on where data can be stored and processed, thereby enhancing and protecting the global digital ecosystem.
- Ensures that suppliers are not restricted in their use of electronic authentication or electronic signatures, thereby facilitating digital transactions.
- Guarantees that enforceable consumer protections, including for privacy and unsolicited communications, apply to the digital marketplace.

NAFTA versus USMCA: Additional Topics Addressed by the USMCA

New Digital Trade Chapter which (cont'd):

- LimitS governments' ability to require disclosure of proprietary computer source code and algorithms, to better protect the competitiveness of digital suppliers.
- PromoteS collaboration in tackling cybersecurity challenges while seeking to promote industry best practices to keep networks and services secure.
- PromoteS open access to government-generated public data, to enhance innovative use in commercial applications and services.
- Limits the civil liability of Internet platforms for third-party content that such platforms host or process, outside of the realm of intellectual property enforcement, thereby enhancing the economic viability of these engines of growth that depend on user interaction and user content.

IMPLICATIONS FOR US COMPANIES

Implications for US Companies

- Companies engaged in trade in the US, Mexico and Canada should carefully review the USMCA's product-specific rules of origin and assess the impact of any relevant changes.

The origin rule changes made by the USMCA have the potential to affect manufacturing and supply chains for a wide range of industries, as certain products currently eligible for duty-free treatment under NAFTA might not qualify under the USMCA rules (or vice-versa).

- Companies should also consider the impact on their USMCA imports of the increased de minimis level (7% - 10%)
- Companies should familiarize themselves with and prepared for USMCA's revised origin procedures.

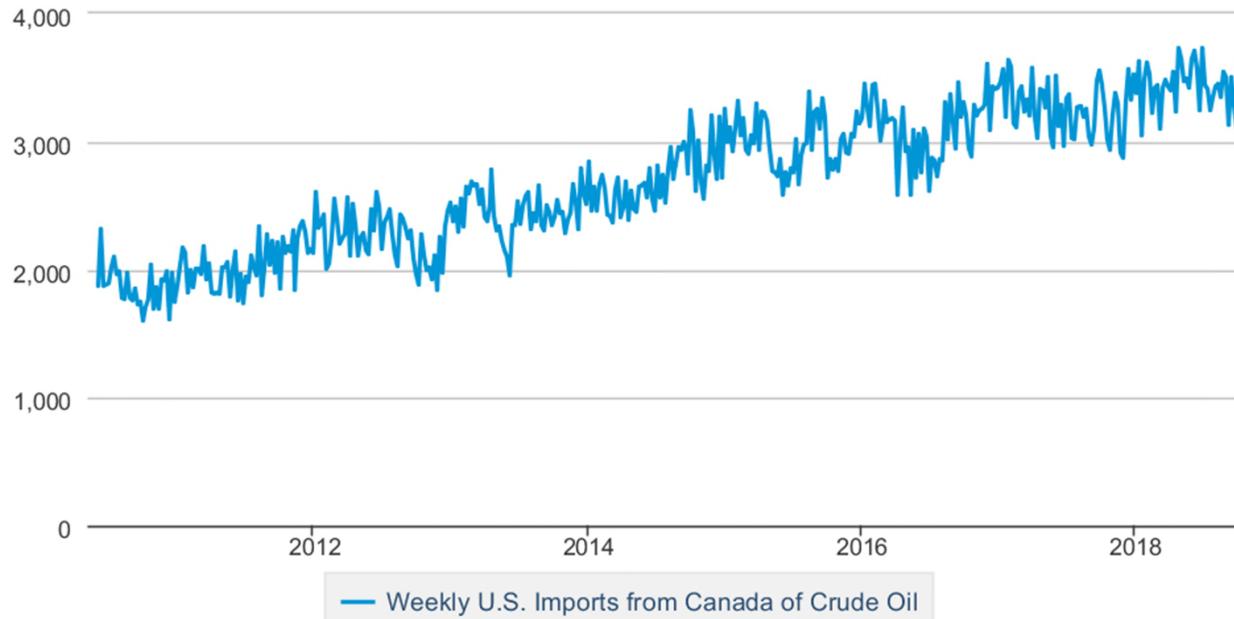
CANADIAN IMPLICATIONS

- Canadian Oil in the North American context
 - Canadian oil exports in North America
 - Canadian oil imports
- Why NAFTA Matters to the Canadian Industry
- USMCA Key Changes
 - By industry
 - By notable provisions
- What's Next?
- Questions?

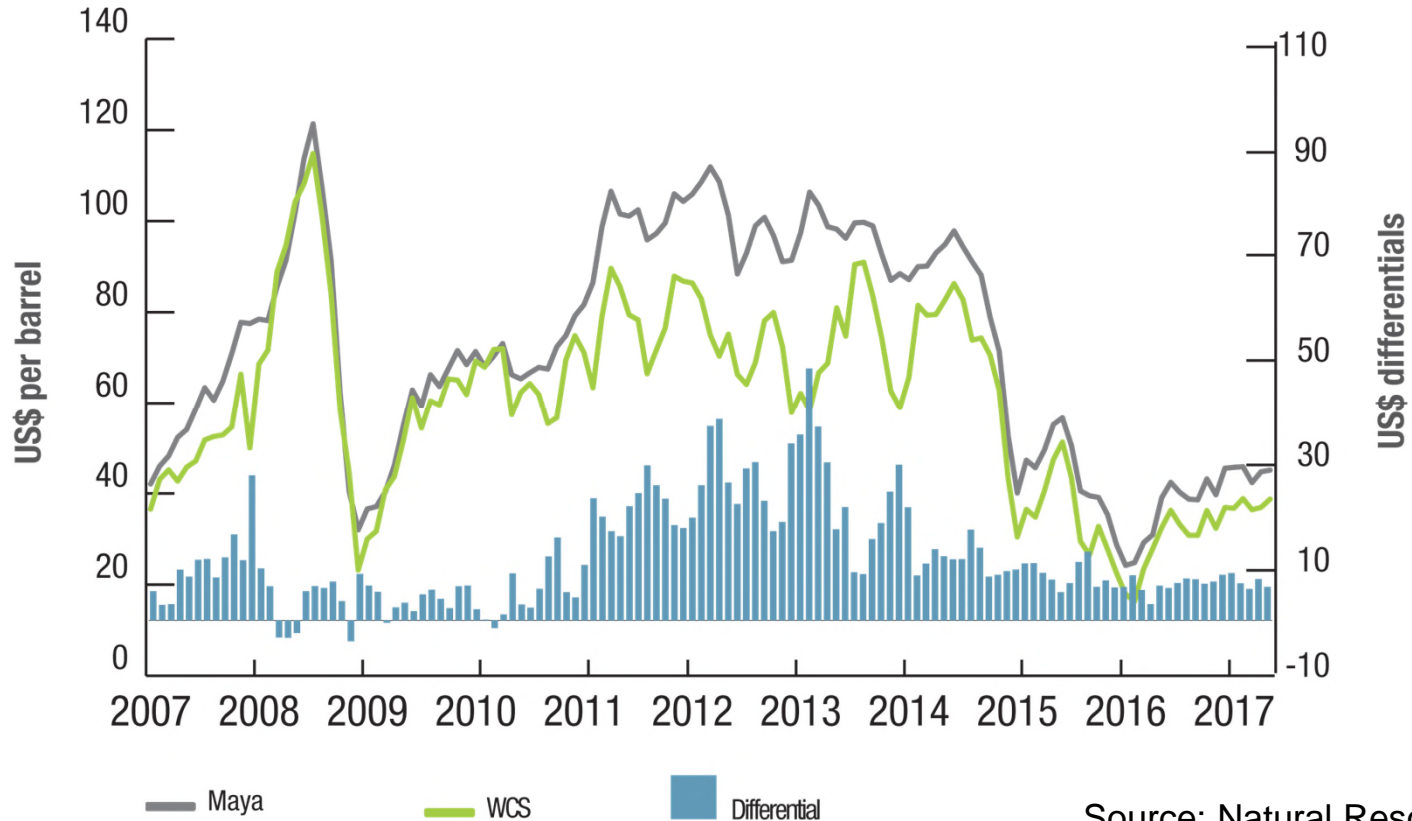
Canadian Oil Exports in North America

Weekly U.S. Imports from Canada of Crude Oil

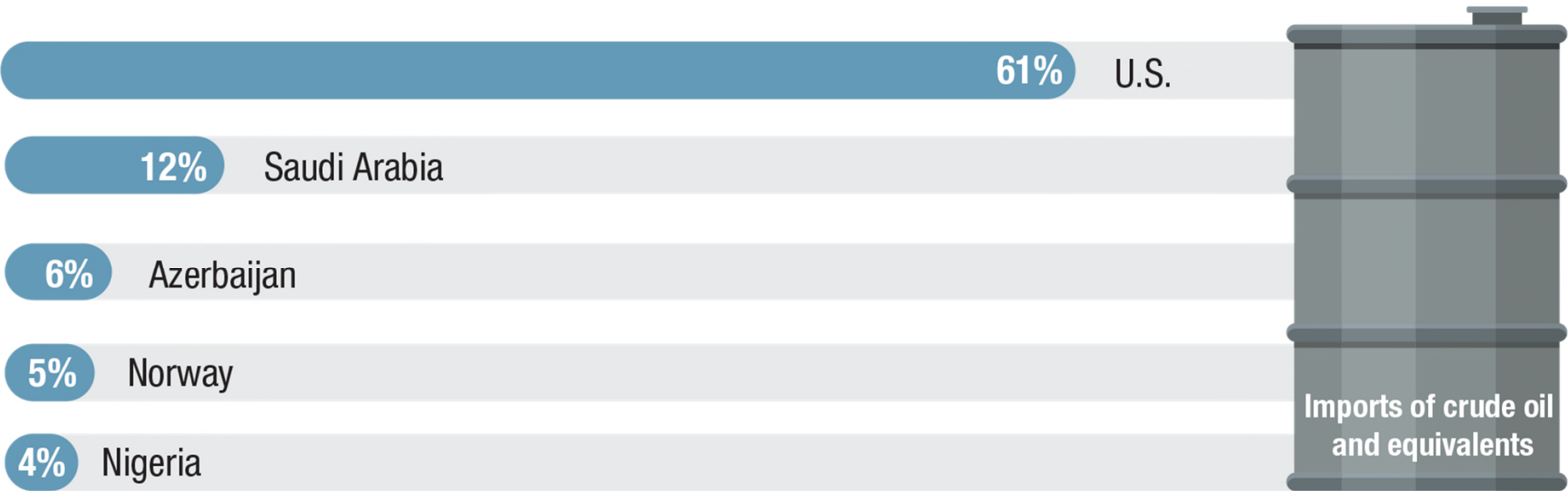
Thousand Barrels per Day



Canadian Oil Exports in North America



Canadian Oil Imports



- Increased trilateral trade is now part of the North American economic fabric
- Attraction of foreign investment
- Oil and gas / energy context
 - Energy security – stronger trade relations in North America may assist in mitigating geopolitical risk
 - Viability of projects in part dependent on reduced tariffs (e.g. steel and aluminum tariffs)

- Automotives – stricter rules of origin
 - 75% regional value content requirement
 - 70% North American steel and aluminum requirement
 - 40-45% labour value content requirement (produced by workers earning at least US\$16/hour)
 - U.S. section 232 side letter
- Dairy – increased U.S. access to Canada’s dairy market
 - Elimination of Classes 6 and 7 from the milk pricing system
 - Increase to Canada’s Tariff Rate Quotas (also for poultry and eggs)

- Oil and gas
 - Elimination of Article 605 of NAFTA (i.e. the proportionality rule)
 - Changes to oil and gas rules of origin
 - *Removal of tax charged on diluent*

- Removal of Investor-State Dispute Settlement (Chapter 11 of NAFTA)
 - Canada and the U.S.: no ISDS mechanism
 - *Three-year phase-out period for investments made prior to ratification*
 - Canada and Mexico: ISDS through CPTPP (when ratified)
- Sunset Provision
 - 16-year term, with reviews every 6 years, at which point the parties can decide to extend USMCA

- Non-Market Economy
 - A party must provide notice and information if it plans to negotiate a trade agreement with a “non-market economy”, at which point the other two parties may decide to terminate the USMCA replace it with a bilateral agreement
 - The party must provide the other two parties an opportunity to review the proposed trade agreement at least 30 days before the date of signature
- Currency Manipulation
 - The parties are required to declare currency reserves data and interventions on a monthly basis
 - Limitation of USMCA benefits as compensation for dispute

- USMCA still requires ratification by legislatures of all three parties
 - Mexico: may be seeking ratification while President Enrique Peña Nieto is still in office
 - U.S.: the outcome of the midterm elections on November 6, 2018 may affect ratification
 - Canada: upcoming federal election in October 2019 and adjournment of parliamentary sitting after June 2019
- USMCA does not address U.S. tariffs on Canadian steel and aluminum

- Level of business disruption in Canada is uncertain
- Bring potential investor claims prior to the three-year phase-out period of ISDS
- Evaluate your pricing strategies
- Evaluate your regional and global supply chains
- Evaluate your existing and potential markets

MEXICAN IMPLICATIONS

Position of the new Mexican Administration regarding foreign trade Matters.

- Policy focused on increasing and diversifying exports:
 - Export to new markets and new products;
 - Support to the export value chain;
 - Focus on production and sale of products and services in markets where it has competitive advantages.
- Greater regional integration in Mexico, United States and Canada:
 - Integration in manufacturing activities;
 - **Competition as a regional bloc;**
 - Creation of jobs and companies in most competitive sectors for each of the parties.

NAFTA / USMCA/ T-MEC

- Increase in the regional content of products marketed in the North American Region:
 - Increased national integration, without raising tariffs or setting non-tariff barriers;
 - **Support Strategic Sectors**, which includes agroindustry, energy, tourism, telecommunications, financial sector, manufacturing industry, among others;
- Northern Economic Zone:
 - Free Economic Zone along the entire northern border of the country (to rescue the economic potential and capacity)
 - Employment generation for immigrants;
 - Increase trade and investment flows;
 - Low taxation regime.

NAFTA / USMCA / T-MEC

Andrés Manuel López Obrador position on NAFTA / USMCA/ T-MEC renegotiation:

- "Maintain the Agreement provided it does not become a burden for Mexicans."
- "It's not appropriate to pursue an agreement under pressure."
- Regional integration MX-USA-CANADA to compete commercially with Asian countries;
- Continue negotiations around NAFTA but with special treatment to local producers;
- Increase in national content of strategic sectors.

POSSIBLE ISSUES REGARDING THE CURRENT LOGISTICS AND SUPPLY CHAIN

- Derived from changes to NAFTA (USMCA) operations of companies in Canada, the United States and Mexico may be subject to relevant changes in their current operations and structures.
- Key elements to analyze prior to the actual entry into force of new USMCA provisions.
 - Tariff classification
 - Customs procedures to be used
 - Manufacturing activities
 - Application of preferential tariff rates
 - Rules of origin compliance
 - Sourcing Alternatives
- Detection of risks and opportunities.
- Review of the impact on the supply chain and alternatives for its adaptation.
- Review of contractual conditions.

POSSIBLE ISSUES REGARDING THE CURRENT LOGISTICS AND SUPPLY CHAIN

- Detection of risks and opportunities arising from particular requirements to specific products imported, manufactured and / or exported from the North American Region.
 - Analysis of specific business structures implemented in the North American Region.
 - Analysis of specific requirements based on a product or kind of industry basis.
 - Analysis of particular sensitivity of products imported, manufactured or exported.
- Review of the impact on the supply chain and alternatives for its adaptation.
 - Operational costs
 - Logistics
 - Taxes
- Review of contractual conditions.
 - Possible impossibility to meet contractual obligations

Energy Industry and particular issues in USMCA

- Inclusion of specific reference to the nature of energetics under the Mexican Federal Constitution.
- CHAPTER 8 – RECOGNITION OF THE MEXICAN STATE’S DIRECT, INALIENABLE, AND IMPRESCRIPTIBLE OWNERSHIP OF HYDROCARBONS”
 - What is the extent and possible risks for investors arising from this concept?
 - What should you prepare for?

Energy Industry and particular issues in USMCA

- CHAPTER 14 – INVESTMENT
- Protection for foreign investment in the USMCA región.
 - Equal treatment principle.
 - MFN Principle
 - Minimum standard treatment for foreign parties.
 - Expropriation and compensation (“ANNEX 14-B – EXPROPIATION”) (“ANNEX 14-D – MEXICO-UNITED STATES INVESTMENT DISPUTES”) 14-E – MEXICO-UNITED STATES INVESTMENT DISPUTES RELATED TO COVERED GOVERNMENT CONTRACTS”).

Specific applicability in case of hydrocarbons, gas, energy generation and similar (“covered government contracts”).

Energy Industry and particular issues in USMCA

- “CHAPTER 22 – STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES”

Mexico’s position and particular reserves regarding the applicability of the general rules in this context.

Possible investors fears arising from current situations.

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QUESTIONS?

Biography



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Biography



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Alan Ross is the Managing Partner of Borden Ladner Gervais LLP's Calgary office, as well as National Leader for the Firm's Public Policy and Government Relations Group. Alan practices administrative and regulatory law with a focus on regulatory proceedings of provincial and national importance in the areas of pipeline transmission, oil and natural gas, renewables and electricity markets. As well, he practices in the international trade area, including NAFTA and Canadian International Trade Tribunal dispute resolution and has extensive knowledge in corporate governance and telecommunications issues. Alan is a member of BLG's Oil and Gas, U.S., and Women's Leadership Development Committees.

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José Alberto is a partner at Sánchez Devanny who leads the Life Sciences practice and co-heads the International Trade and Customs practice group. He has more than 15 years of experience advising clients operating in regulated sectors on regulation and operational matters, and on international trade matters. Alberto is skilled in sanitary law, and in the laws regulating food, non-alcoholic and alcoholic beverages, medicines and medical devices, cosmetic perfume and beauty products, and tobacco products. He is also skilled in international trade and customs matters. He has advised clients on Mexican free trade agreements, import duties, export development programs, customs and non-customs requirements, and international trade issues in mergers, acquisitions, restructurings and privatizations. He has successfully represented national and foreign clients in customs and international trade administrative proceedings and litigation, as well as in negotiations with governmental authorities and in verification processes related to customs and foreign trade. He is fluent in English and Spanish.

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