



The Bottom Line

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CONGRESS MAY NOT RATIFY THE USMCA THIS YEAR

Summary

The United States Mexico Canada Agreement (USMCA)—formerly known as the North American Free Trade Agreement (NAFTA)—was signed by representative leaders nearly a year ago on November 30, 2018, yet U.S. Congress has not yet ratified it. With just a few weeks left in this year's congressional calendar, prospects for passage seem to be dimming by the day, but House Speaker Nancy Pelosi has indicated that a breakthrough could be 'imminent.'

Background

Signed in 1992, the stated purpose of NAFTA was to eliminate barriers to trade, promote fair competition, increase investment opportunities, protect intellectual property rights, and provide a framework for the resolution of disputes. Critics of NAFTA claim unintended consequences, including the loss of jobs in both the U.S. and Mexico, the suppression of U.S. wages, and the lack of environmental protections in Mexico. Three days after inauguration, President Trump chose to address those criticisms by renegotiating the agreement and signed an executive order signaling that intent. Trilateral talks began in August 2017. Initially scheduled to last until March 2018, a deal was not reached until the following August, delayed by the imposition of tariffs on steel and aluminum by the United States.

Current Status

Since U.S. trade negotiators presented their final agreed version in 2018, Democrats have been clear about the concerns they want addressed before they vote yes: (1) greater enforcement provisions, (2) stronger labor and environmental protections, and (3) a change to pharmaceutical protections. Those are pretty much the same criticisms many Democrats had about the original NAFTA. The enforcement provisions, found in USMCA Chapter 31, are largely the same as those under NAFTA and call for a five-person panel to hear the dispute, issue a report ruling

on the dispute, and determine recommendations for resolution. These rules allow for any member country to block the dispute-resolution panel by simply refusing to appoint panelists, rendering the enforcement panel impotent. "If you can't enforce the provisions in any treaty, then you really are not protecting American workers," says House Speaker Nancy Pelosi. Lately, another hot-button issue has elbowed into the debate over the trade agreement: whether technology companies will be held liable or not for the content they publish. Tech firms are shielded under U.S. law, and those protections would be extended internationally in the agreement—and that worries both Democratic and Republican lawmakers. Enshrining the decades-old tech liability shield in an international agreement would make it almost impossible for Congress to take any future action to regulate big tech firms' role in spreading misinformation and disinformation—a huge issue heading into an election year already marred by information warfare. While some members of Congress and business groups have been increasing pressure on the House to pass the legislation, negotiations have been ongoing with the Office of the U.S. Trade Representative. Areas of concern, both for Congress and major labor unions, include Mexico being accountable for upholding standards designed to raise wages and stopping U.S. companies from moving jobs across the southern border.

Impact

If fully implemented and enforced, the United States International Trade Commission estimates that the agreement would have a positive, if modest, impact on U.S. real GDP (\$68.2 billion) and employment (176,000 jobs). The provisions that would have the most significant effects on the U.S. economy are those that reduce uncertainty about digital trade, including prohibitions on forced localization of computing facilities and new intellectual property rights protections, as well as new rules of origin applicable to the automotive sector, increasing the required percentage of regional value content and harmonizing regulations across member states.

RESOURCES:

[International Economic Law and Policy Blog](#)
[USITC Releases Report Concerning Likely Impact of the USMCA](#)