USMCA

Towards a new era of integration of the North America Market

Challenges and oportunities from an analytical legal perspective

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INTRODUCTION

Undoubtedly, from an economic perspective, NAFTA has been one of the most relevant successes in worldwide history of trade integration. Since its beginnings in 1994, trade has tripled, and the North American region has been highly competitive on investment attraction, considering that production chains have efficiently interlinked the comparative advantages in the three countries, in a wide range of goods' and services' sectors. This has also led to the expansive generation of employment in practically all the provinces and states of the member countries. In this vein, nowadays, our region represents almost 30% of global nominal GDP.

Although in the last two decades, international commerce in the United States has strongly increased, it is clear that the combined importance of Canada and Mexico for American trade has maintained its levels by 30% of the total volume of said country. This is twice than the current participation of China, which is around 15%. Moreover, NAFTA trade represents around 40% of the American-exportations' growth during the existence of the trade agreement.

While NAFTA's renegotiation emerged in a context of certain protectionist rhetoric by a segment of the United States of America's republican government, the USMCA's first version was signed on November 30, 2018. Notwithstanding the foregoing, as consequence of the Democratic Party's interests in the United States and due to the non-applicability of the NAFTA's parameters regarding labor matters

established by means of an ancillary agreement, an Amendment Protocol to the USMCA was executed, modifying provisions regarding rules of origin and, naturally, labor matters.

The execution of the USMCA and its subsequent Amendment Protocol not only offers a reasonable certainty for investments and trade, but also, updates the most relevant topics of the international trade regime, endorsed by institutions such as WTO and by modern regional agreements as CP TPP.

In 85 years of existence, Goodrich Riquelme has sought to take the lead in the critical study of the applicable legal instruments, in order to construe –with a constant sense of innovation and excellence- creative and strong solutions for our clients in over 35 countries, represented by a range of Fortune 500 companies, practically in all economic sectors.

Our analytical vocation is maintained through the integral study of USMCA. In order to achieve that, we have integrated an interdisciplinary task force, whose mission has been, on one hand, to contrast the contents of USMCA with those of NAFTA and other current regimes of commerce and investment worldwide, as well as offering to our new clients, a practical vision on how to minimize risks and make the most out of the treaty.

Therefore, we are ready to deepen on the detailed consulting, like a tailored suit for each one of our clients.

We sincerely appreciate taking time in reading this document.

BOARD OF DIRECTORS
GOODRICH RIQUELME Y ASOCIADOS

Mexico City, Winter 2020

GLOSSARY

CP TPP: Comprehensive and Progressive Agreement for Trans-Pacific Partnership, before TPP (Transpacific Partnership).

ICSD: International Central Securities Depository.

OCDE: Organization for Economic Cooperation and Development.

ILO: International Labor Organization.

WTO: World Trade Organization.

Parties: Canada, United Stated (also referred to as USA) and United Mexican States (also referred to as Mexico).

S&Ms: Small and Medium Sized Enterprises.

National Anticorruption System: In charge of coordinating social actors and authorities ofdifferent levels of government, in order to prevent, investigate and punish corruption.

NAFTA: North American Free Trade Agreement.

USMCA: United States-Mexico-Canada Agreement.

UNCITRAL: United Nations Commission for International Trade Law.

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The purpose of modernizing NAFTA, now USMCA, is based on diversification and deepening of trade relations in the North American region.

CUSTOMS AND TRADE FACILITATION

In order to accomplish that, one of the main actors in the development of trade relations among member countries of a trade treaty is the Customs Administration, whose main purpose is to create the necessary instruments to facilitate operations in foreign trade operations carried out in the different sectors.

In this order of ideas, it was necessary to update the established mechanisms in NAFTA negotiated 25 years ago, adhering to foreign trade situations and current economic and financial globalization, which requires a dynamism in all the productive sectors.

Therefore, all aspects to highlight in this modernization and now considered in USMCA, are as follows:

- Establishes provisions related to the facilitation of custom operations in order to expedite the exchange of goods among the parties, such as: issuance of anticipated resolutions on the origin of goods for the application of tariff preferences, simplified customs procedures for urgent shipments, joint inspections by border customs authorities.
- Points out the creation of a Sub-Committee on Customs, to address issues related to potential or real customs offenses to discuss joint initiatives in matters of mutual preoccupation in customs and foreign trade matters.
- Improves the combat against customs crimes in the field of illegal trade practices.

We consider that the aforementioned inclusions of USMCA, will benefit the procedure of import and export of goods, accelerating with this the compliance on customs regulations obtaining as a result an increase on the trade flow, as well as regional investment, with a better legal-customs certainty among those involved in the foreign trade operations, fostering trade bonds and a better transaction of customs operations.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/07%20Customs%20%20and%20Trade%20Facilitation.pdf
In this new trilateral trade agreement named USMCA, the Origin Criteria considered in the current NAFTA prevails, as well as the fulfillment of the Specific Origin Regulation,

RULES OF ORIGIN

because of change of tariff classification or because of Regional Value Content or both, as the case may be, to confer the products the origin of the region of the celebrating Parties of said trade agreement and may enjoy the application of preferential tariff rates.

Emphasizing – by its importance and complexity in its fulfillment the Regulation of Specific Origin – those for the respective merchandise of the following industrial sectors:

- Automotive.
- Chemical.
- Optical fibre.
- Mineral.
- Textile and confection.

Automotive Sector

The new Rule of Origin specific for the Automotive Industry, according to USMCA, not only is it stricter than the 62.5% of the Regional Value Content provided in NAFTA, but its methodology is more complex, as it requires the fulfillment of the points indicated herein:

To enjoy an exempt tariff.

a) The Regional Value Content of a motor vehicle must be generated in the United States of America, Canada, and Mexico, and is applicable during four years in an escalating percentage as follows: 66%, 69%, 72%, and 75%.

On the other hand, in the CP TPP, which is pending of ratification by the Mexican Senate, the Regional Value Content for the net worth method to consider motor vehicles as originating from said treaty's Region is 45%.

We consider that this is one of the reasons that motivated the United States of America denouncing NAFTA.

b) Between 40% and 45% shall be elaborated in areas with a high wage of USD $16.00 per hour.

c) 70% of the steel and aluminum used in the production of the motor vehicle shall originate from said countries.

With the USMCA's approved amendments, it was determined that the first steel foundry (e.g.,

steel plaques) shall be manufactured in the Parties' region.

In the case of aluminum, it was established that during the following ten years from the UMSCA's entry into force, its Parties will meet to check if the first aluminum foundry is manufactured in their region as well.

d) 75% of the value of the vehicle shall originate from the region (engine, chassis & body, gearbox, axles, suspension, steering system, batteries, etc.)

As of USMCA's entry into force, there will be a transition period of three years in order to comply with the new Regulation on Specific Origin in question. In the event of non-compliance, the sanction to be paid is the 2.5% tariff of the Most-Favored-Nation.

Textile and Tailor Sector

a) Besides the requirements established in the NAFTA, now it will also be required for the sewing threads, the pockets' fabric and the elastic fabrics to originate from the Parties' region.

b) For the monitoring of the compliance of the Rules of Origin, stricter verifications without previous notice are foreseen.

Other relevant matters

a) The provisions regarding the application of the Rules of Origin were updated, recognizing diverse chemical procedures, chemical reactions, and change of particles' size, among others, as substantial transformation to grant origin.

b) In merchandise such as glass manufacturing, titanium products and steel products, the Origin Rules, with the purpose of using materials that are originals from the Parties' region.

c) The USMCA prohibits to apply custom duties to goods digitally distributed, such as software, games, books, music, movies, etc.

The non-original inputs' value is increased from de minimis to 10%. In NAFTA it is 7%.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/04%20Rules%20of%20Origin.pdf

Origin Producer

This new trade agreement modernizes the certification plan of origin of goods generating greater legal certainty among customs authorities of the Parties of said trade agreement and also among producers, exporters, and importers of the goods covered in USMCA.

On the other hand, it was decided to eliminate the current certificate of origin format provided in NAFTA, allowing now the certification of origin of the goods through the trade invoice or through any other trade document issued by the manufacturer or the importer, as long as the information provided in Annex 5-A of USMCA is declared.

Modernization of verification of origin procedures in USMCA is worth noting because of the following:

In NAFTA, the substantiation of the verification of origin procedures through questionnaires is foreseen in the following legal systems:

- In Administrative Regulations regarding applicability of NAFTA's provisions pertaining to verification of origin;
- In the provisions of the Fiscal Code of the Federation (Código Fiscal de la Federación).

In USMCA, it is determined that the substantiation of the verification of origin procedures of goods may be initiated by any of the following means:

- Information questionnaires requiring documentation or;
- Verification visits at the producers' and/or exporters' industrial facilities.

The USMCA details the steps and stages that are to be followed by customs authorities of the Countries that are part of this trade agreement, in the verification of origin

procedures when these begin through questionnaires or verification visits, specifying, in the case of questionnaires, the deadlines for responding them and the consequences of not certifying the origin of the goods.

The USMCA aligns the provisions of the verification of origin procedures of the goods provided in USMCA to the provisions on these procedures referred to in the other Free Trade Treaties or Trade Agreements executed and signed by Mexico after NAFTA.

Finally, in USMCA it is anticipated that those importers who fail to comply with the provisions established in this Chapter on Origin Procedures shall be subject to civil, criminal or administrative sanctions, as appropriate, by the country party of the aforementioned trade agreement.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/05%20Origin%20Procedures.pdfThe geographic location of NAFTA member countries The geographic location of NAFTA member countries allowed, at the time, that the access of goods into the markets of said countries were reflected in the increase of sectors

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

such as: agriculture and cattle raising, food and beverages, automotive, construction, electric, textile, etc., finding its support, in the preferential tariff applicable to originating goods, as well as the gradual reduction of tariffs.

With the modernization of NAFTA, member countries shall continue to accord equal treatment to the goods and services of the signatory countries of said trade agreement, ensuring compliance with the principle of "national treatment", which refers "to give others the same treatment than nationals".

Said principle shall be applied once the good or service is introduced into the market of any of the countries Party that enter into this trade agreement.

To give certainty to the application of national treatment and access of goods into the market, new trade provisions are established in USMCA to ensure a greater transparency and legal certainty in the implementation of non-tariff measures, thus avoiding

restrictions on market of USMCA's member countries.

The new trade provisions are now reflected in USMCA through the modernization and implementation of the following principles of the national treatment and access of goods into the market are:

- Free trade for all originating goods.
- Elimination of tariff barriers.
- Prohibition on the application of taxes on the export of goods.
- Drawback and Duty Deferral Programs.
- Prohibition of performance requirements for the issuance of import permits and tariff deferral programs.
- Modernization in the matter of temporary importation of goods reimported goods after repair; commercial samples not subject to commercial, and printed advertising materials, etc.
- Trade of remanufactured goods in the region.
- Creation of the Committee on Trade in Goods as a forum of consultation among member countries of USMCA.
- Internment of goods originating in the region free of duty to the United States of America.

Mexico as a country promoting foreign trade and, with globalized view, shall continue promoting trade policies in order to ensure the growth and strengthen of Trade in Goods avoiding the imposition of tariffs and restrictions on foreign trade, thus generating a greater investment in the country that will impact in the creation of new sources of employment.

Free trade for all originating goods. Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/National%20Treatment%20Market%20Access%20Goods.pdf of taxes on the export of goods.

INVESTMENT

This chapter of USMCA establishes the concept of investments, its scope, the regulation of transfers, performance requirements, national treatment, most favored nation, minimum level of treatment, corporate social responsibility, direct and indirect expropriation, dispute settlement, arbitration, arbitration in the case of public debt and exceptions, the application of arbitration to disputes arising from contracts related to oil and natural gas sectors, electricity supply, supply of transportation services, ownership, and infrastructure management.

In a relevant way, the concept of protected investment comprises an extended catalogue of what is considered as 'investment', including futures, obligations, and other derivatives, administration contracts among others, as well as those in which the income and revenue-sharing is established and similar contracts, intellectual property rights, licenses, permits and authorizations, tangible and intangible assets, as well as related rights such as encumbrances, mortgages, pledges and leases.

The concept of transfer is amended to include contributions to capital, royalties, management fees, and technical services stating that, in general, "covered investment" may be done freely and at the prevailing exchange rate at the time of the operation, thus seeking, certainty on the application that no restrictions on the exchange rate will be applied to its investments.

In terms of performance requirements, "purchase, use, or accord a preference of technology, or those who prohibit the purchase, use and accord a preference of technology" are included apart from those originally mentioned in NAFTA, specifically regulating that no requirements may be adopted, nor shall they enforce agreements to impose specific royalties and terms, with the intention of assuring the investors that they shall not be subjected to the application of regulations such as those that were in force during the existence of the Law on the Registration of Technology Transfer and the Use and Exploitation of Patents and Trademarks, which undertook the registration of technical knowledge transfer contracts and limited royalties payments. The concept of transfer is

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IIn the matter of dispute settlement, specifically arbitration, contrary to the provisions of NAFTA, parties themselves may submit, through mutual covenant, to any arbitral institution other than ICSD and UNCITRAL, including the settlement of disputes of those claims initiated before the entry into force of USMCA, preventing that these will be conducted in accordance with NAFTA, which is consistent with the negotiation carried out for said investment. The section on Dispute Settlement, in terms of Public Debt, even if it prohibits the issuance of awards, regulates the possibility of issuing in this matter, only in certain cases, and when certain requirements are met.

Moreover, the section on Dispute Settlement also regulates violations relating to the principles of national treatment and most-favored-nation, as well as those related to contracts signed by the State, in the oil and natural gas sectors, supply of electrical power, supply of transport services, ownership, and administration of infrastructure, all these aspects are regulated in such a specific way that certainty of the way in which disputes will be resolved. In the case of claims of the aforementioned violations, the arbitral award may grant pecuniary compensation with the applicable interest or, otherwise, the restoration of property.

In the investment chapter, we can sense the security of which the investor can benefit from in the oil, natural gas, supply of electricity, supply of transport services, and infrastructure

sectors, and regarding technology contracts, since USMCA tries to avoid the execution of an exchange control act, as well as limitations to the sovereign trade right of negotiation of the parties to decide freely the percentages of royalties payments and validity in their contracts, in addition to regulate by clear rules the way to settle disputes, contributing all this to a greater attraction of foreign investment.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/14%20Investment.pdf

USMCA aims to regulate the applicable measures of the signatory States regarding trade in goods of the agricultural sector, including goods with biotechnology applied to them. The above aims to innovate, encourage and strengthen a market of free trade in agricultural products in the region; increasing the robustness and appropriate structure of tools for transparency and cooperation between the signatory States.

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AGRICULTURE

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It is important to mention that the new Treaty promotes the elimination of tariff barriers, as well as excessive national subsidies to the agricultural sector that could generate disturbances on the free market. It also highlights the commitment among signatory States to work jointly within the WTO framework in order to strengthen the transparent trade in the agricultural sector, as well as the measures applied for domestic assistance, free market access, and export competitiveness.

It continues to foresee (as in NAFTA), the formation of a Committee on Agricultural Trade, composed by Governmental representatives of each of the signing States. It highlights the expansion of its functions, such as the integration of a forum for the signatory States to enable the analysis, consultation, promotion,

and resolution of conflicts in tariff disputes.

The section concerning the promotion and exchange of information between signatory States, concerning trade in the application of biotechnology in agricultural products, is of the upmost importance. It aims to innovate and form a solid protection to this subtype of agricultural market.

Additionally, in the field of biotechnology it is proposed that the signatory States have a detailed list to be posted online with respect to (i) requirements for applicants of permits or authorizations to trade an agricultural product with applied biotechnology, (ii) a summary of the risks and assessments of security linked to the permit or authorization, and (iii) a list of agricultural products with applied biotechnology that have an authorization within the territory of the corresponding signatory State.

Such as NAFTA, USMCA provides free-tariff access to agricultural products, as well as the operation of the Committee on Trade Commerce, however it broadens its functions which allows a new protection and more solid cooperation among the signatory States. USMCA does not envisage the application of seasonal tariffs to imports of agricultural products, with which Mexico increases competitiveness and increases the opportunity for its domestic producers to export their goods.

The impact on trade in agricultural products (even those that are considered as commodities) in the region is definitely positive, not only because it gives legal certainty to the signatory States, but because it demonstrates stability and calm to the international markets that the 3 (three) nations could dialogue and materialize their negotiations on an agreement such as USMCA.

For Mexico, it is important to consider that the objective is not only to increase its competitiveness in the agricultural sector, but to increase the industrialization of this sector to continue its growth.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/03%20Agriculture.pdf

This chapter makes reference to the scope of cross-border services under the principles of national treatment,

CROSS-BORDER TRADE IN SERVICES

the most-favored-nation treatment, determining the bases under which there is access to the markets, without requiring the necessary local presence, with a framework of non-discriminatory measures that promote trade among the three countries, also considering a recognition mechanism for the service providers in order to encourage development of small and medium-sized enterprises, remaining the section on denial of benefits in a more limited way.

It is highlighted that, in order to allow access into the market, the Parties shall not maintain or take measures to restrict service providers, in terms of the number of suppliers, value of the transaction, or specific people to employ for the services. It is worth mentioning that the purpose was to establish a way for freeing the rendering of services including guidelines for the execution of mutual recognition agreements or agreements for the professional services sector.

It is established that Canada shall resume its broadcasting regulatory policy, broadcast networks (CRTC-2016-334), and broadcasting order (CRTC 2016-335) requiring regulations in regard to copyrights to USA and Canada, and where applicable, USA shall ensure authorization for its distribution in Canada, enabling negotiation of distribution agreements with Canadian distributors for cable and satellite services.

The Parties have also recognized Mexico's cultural exception-clause in order to keep and promote the development of its culture, therefore reserving for itself the sole concessions of bands and frequency bands, guaranteeing the respective rights to indigenous people and indigenous communities. Mexico reserved for itself, against national treatment, the exceptions in which this kind of concessions may not be transferable or assigned to any foreign government. Participation may not be higher than 49% in these cases. Mexico equally reserved the foreign investment that could participate in said sector, which may not exceed 49% in case of publications that are written for national audience and recipients abroad; likewise, for film exhibitions, it reserved a 10% for national films projections. Additionally, Mexico has reserved market access commitments for audiovisual services.

Let us recall that NAFTA marked the principles for cross-border services development, including various reserves and quantitative restrictions, considering there were no unnecessary barriers to trade, in which procedures are established for licenses and certifications in the matter of professional services, with specific provisions for contracts for cross-border services in the case of foreign legal services and its future release, as well as procedures for temporary licenses for engineers and civil engineers and all other engineering specialties that Mexico designates as checkpoints for ground transportation.

In conclusion, USMCA is positive for the completion of businesses and cross-border services provision by providing guidelines and bases for its development and provision beyond the borders of the State party, general and uniform criteria for different activities.

The respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/15%20Cross%20Border%20Trade%20in%20Services.pdf

Cross%20Border%20Trade%20in%20Services.pdf

COMMITTEE ON TRANSPORTATION SERVICES

Cross-border transportation has always been a complicated issue, especially between Mexico and the United States. 24 years after NAFTA, its evolution has been poor, however, it is undoubtedly a strategic factor for trade relationships between both countries, and hence it cannot be left out of USMCA. The above is evidenced with the weak position that Mexico has had, as it is the case of the report USA-MEX-98-2008-01 of the NAFTA Arbitration Panel, in which it was determined that USA did not comply with its obligations allowing the crossing of Mexican ground transportation through its border with Mexico, therefore, violating the treaty and the principle of international reciprocity.

Annex 15-B included in this chapter on Cross-border Trade in Services establishes that the parties shall organize a Committee on Transportation Services no later than 6 months after the entry into force of the treaty, which shall be composed of a representative

designated by each party. They may invite representatives of other private entities in order to contribute to the discussion. They shall endeavor to meet within one year as of USMCA's entry into force.

NAFTA provided that, in the matter of transportation, the parties should establish "points of contact" among the interested parties (in transportation through the border) and the respective government entities, in order to facilitate any requirement or procedure. It established a review process to be done during the fifth year after the date of entry into force of said treaty, unlike USMCA, which does not establish any kind of mechanism or procedure to assess the progress of the Committee. It is evident that the progress on this important matter has been minimum because, although the parties have committed to review the progress of the previous treaty, it has not been as expected.

Political factors, such as the US transports unions, have overcome the spirit of reciprocity and cooperation, which has also been aggravated by various facts in the relationship such as immigration, the prohibition of foreigners to participate in ground transportation provided in article 6 of the Mexican Foreign Investment Law, among others. However, this has only resulted in a decline of growth on the trade networks since; as of 1994, year in which the previous treaty was signed, there have been very few transporters who have managed to cross the border without difficulty, both Mexican and American. We shall wait for the results of the meetings of the Committee and verify if the parties are willing to open this sector and that there is competition among service providers of different nationalities.

We hope that the respective Committee will be an actual forum for promoting cross-border transportation, as it is a reality that the exchange of goods is less efficient than it could be with an appropriate and productive cooperation framework for the Parties.

The respective chapter may be consulted at:https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/15%20Cross%20Border%20Trade%20in%20Services.pdf

FINANCIAL SERVICES

The purpose of this chapter is to regulate the actions to be taken by a signatory State with respect to (i) financial institutions of another signatory State, (ii) investors of another signatory State, and investments of said investors in financial institutions in territory of the signatory State; and (iii) cross-border trade in financial services.

The included provisions oblige the parties to promote and monitor the integrity of its participants within the financial system in order to, not only to increase and improve the conditions of financial trade in the region, but to protect the stability of the financial market.

This chapter seeks to particularize provisions which allow the appropriate and free cross-border rendering of financial services between the Parties, the above facilitates service providers to operate in their territory without the need to incorporate themselves in the territory of the other in which it seeks to operate; however, governments reserved their right to issue special regulations on the subject. Neither will it be required as a requirement for financial service providers to operate in foreign territory the need of installing macro-centers or data processing servers or computers, however, this does not imply that they can lose their compliance standards in terms of protection and privacy of its users' personal data. It is contemplated that no Party shall prevent the transfer of information by electronic or other means, including personal information, within and outside its territory.

For Mexico, the Ministry of Finance and Public Credit is the authority considered responsible, which shall serve as a point of contact in order to initiate a consultation on a disagreement with the referred chapter.

It is important to mention that like NAFTA, USMCA continues forcing the financial sector to exercise trade without discrimination, through cooperation and obligation to respect the two most relevant principles of international trade, that is to say, the principles of (1) most-favored-nation, and (2) national treatment, which allow to have a competitive

market without discrimination to the product of the nationality of the financial service provider.

USMCA expands the number of terms defined in NAFTA, the above gives more uniformity and certainty to the implementation of this chapter and trade relations in the financial sector.

The Committee on Financial Services under NAFTA will continue to exist, therefore, there is certainty on the fulfillment and protection of free trade in the financial sector, the representation of Mexico in said Committee will be in charge of an official of the Ministry of Finance and Public Credit.

Continuing to respect the principles of international trade such as most-favored-nation and national treatment represent an excellent signal for the financial sector, since it avoids any kind of discrimination for foreign investment, therefore promoting a more solid and integrated regional trade.

IIt is important to mention that the Mexican regulation of the financial system, has allowed to consolidate it and to keep it intact to the volatility of the global economy, however, business opportunities in the financial sector are exponential, since it is not yet a mature market; undoubtedly, the low banking of the Mexican population is a challenge, however, promotion and innovation in the use of new technological tools in the sector encourage the growth of the financial market in Mexico and in the region, therefore, regulations such as the USMCA, or the law to regulate financial technology institutions (colloquially known as Fintech Law), generate a highly positive outlook for Mexico and, consequently, for the entire region.

Clearly, the use of digital platforms has allowed flexibility and acceleration of financial services to end users, therefore, it is important to understand the great opportunity of growth that this industry has, as well as the challenges in the field of cybersecurity and data protection which will have to be dealt with.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/17%20Financial%20Services.pdf

DIGITAL TRADE

The incorporation of regulations on digital trade contained in USMCA is something new, through it, parameters are established so that the parties adopt internal legislation as well as regulations for interaction among these in regard to trade by electronic means. Both globalization and technology advance have allowed the world of e-commerce to develop in such a way that it was necessary to regulate it, since they were not foreseen in NAFTA.

The respective chapter in USMCA develops and regulates, among other issues, the prohibition of imposing import/export fees or tariffs on digitally commercialized products, non-discrimination to other parties' products, consumer protection, personal data protection, principles of internet access for digital trade, unsolicited commercial information, which the Parties undertake to adopt measures to limit it, and cooperation on cybersecurity, personal data protection, and access for handicap individuals.

Among the highlights is the legal framework to be adopted by the Parties for domestic electronic transactions, because they shall be harmonized with the principles of the UNCITRAL Model Law on Electronic Commerce (UNCITRAL 1996), which in Mexico entered into force in the year 2000. The Elimination of barriers in order to facilitate authentication of electronic signatures, whose regulation in Mexico is harmonized with the principles of UNCITRAL, the access to government data open where the parties agree to facilitate access to such information in order to generate benefits for those who consult it especially for small and medium-sized enterprises. Other considerations are included with regard to small and medium-sized enterprises, for example, the need to facilitate the interaction of IT services as they are vital to the growth of this type of trade.

While it was necessary to include this chapter, the intention to do so is very limited, excluding services provided through electronic means, which are regulated in Chapter 14 (Investment), 15 (Cross-Border Trade in Services) and 17 (Financial Services), however, the foregoing may be somewhat inadequate since the provision of services also requires the protection of personal data, consumer protection, and cybersecurity measures, since in the digital world it is very common, as is the case of troubleshooting and online-gaming services. It is also a somewhat ambiguous chapter as to

whether the provisions cover trade in physical products through electronic means or if it only aims to regulate digital products.

On the other hand, the legislation on the digital trade in our country is relatively new. Evidence of this is that the Federal Civil Code, the code of Commerce and Protection Act Federal consumer were reformed in 2000 in order to include provisions on digital trade. However, stemming from the large supply and demand of e-commerce that exists, it will be necessary for Mexico to review, update and improve laws and regulations concerning data protection and protection of the online consumer; the above since Mexico has fallen behind, since the advancement of technology allows, for example, the capture of patterns of behavior, voice or fingerprint and the current legislation may be ambiguous or remiss in this respect. Likewise, responsibility, sanctions, and preventive measures must be established to denounce, punish or prevent abuse by national merchants of any of the member countries.

Including considerations for small and medium-sized enterprises in this chapter can result in great benefits and as a result the growth of many of those who have chosen to offer their products and services through electronic means, as it represents ease and other economic benefits such as the reduction of some of the costs they would incur if they were offered differently.

In general, the chapter covers all points of vital importance for e-commerce and opens the doors for improvement of the current regulation, strengthen networks of digital trade, and therefore generate growth in sectors that offer products and services susceptible to trade digitally.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/19%20Digital%20Trade.pdf

COMPETITION POLICY

In the chapter referring to Competition Policy, USMCA regulates matters that concern the competition authorities that each Party possesses in their respective territory; likewise, the cooperation

and the possibility of carrying out consultations among said authorities, the corresponding procedure for the application of competition laws and the transparency of the information generated in the field of economic competition. It is important to emphasize that the provisions of economic competition have evolved and have been strengthened, because the most important aspects of the chapter are focused on the establishment of due process in the application of the laws of competition, especially in the imposition of penalties for anti-competitive practices, the inclusion of the cooperation between competition agencies and the transparency of the information.

The purpose of the chapter in question is to give continuity to the chapter of policy on Competition, Monopoly and State-owned Enterprises of NAFTA, since the latter laid the foundations through which a reform was developed in the matter in Mexico, in addition to the creation of the Federal Commission of Economic Competition. With the new chapter, in addition to recognizing the efforts of the competent agencies to avoid monopolistic practices, it is encouraged and sought the active cooperation of such organizations to exchange information and provide mutual legal assistance between the Parties and conduct utility training programs to establish best practices.

In addition to reaffirming the provisions contained in the chapter on economic competition of NAFTA, USMCA includes due process in the application of the laws of economic competition in the specific case that sanctions be imposed for anti-competitive practices. Said procedure shall consist of the Parties, before imposing sanctions, to ensure that the suspects are given the opportunity to obtain the information corresponding to the specific laws that were transgressed, access to the information obtained by the competent authority with the intention of having the resources necessary to prepare an adequate response to the sanction, right of hearing and to present evidence that refute the sanction imposed, the right to present witnesses to support the position against the decision of the authority and, finally, to challenge the allegation of the authority regarding the fine imposed by anti-competitive activities. In the same order of ideas, it also lays the basis for determining the amount of the penalty, which

included a target element of great importance in this type of topics.

Another novel aspect included in USMCA in regard to economic competition is the one relating to the transparency of information, through the establishment of a commitment to publicly share information related to practices, policies, and procedures adopted by the authorities in the exercise of their duties.

The modifications and inclusion in USMCA of aspects as important as delineating the procedure of sanctioning monopolistic activities and establishing a framework of transparency are a great step forward in guaranteeing to national and foreign societies, the efficiency of free competition of the markets, through due process of the application of a regulatory framework concerning each country. In addition, each country recognizes the importance of cooperation and coordination at international level and the work of the Committee on Competitiveness of the Organization for Economic Cooperation and Development and the International Competition Network.

Mexico confirms, through the signing of this chapter, the commitment to guarantee economic agents free market access, their efficiency, and also to protect consumers against anti-competitive business practices, which has been reflected in the indicator "Effectiveness of the Economic Competition Policy" of Global Competitiveness of the World Economic Forum, going from 115th place in the 2012-2013 edition to 64th in the 2017-2018 edition.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/21%20Competition%20Policy.pdf

SMALL AND MEDIUM-SIZED ENTERPRISES

The importance of SMEs is undeniable, since they have led to economic growth, diversity in the market and, according to the OECD, are one of the most important sources of employment in the territories of the parties, as it is the case of Mexico, United States and Canada by which its inclusion in USMCA opens a much more formal space for them

in the international regulation, as in NAFTA where they were not contemplated.

This chapter addresses different measures for cooperation in order to increase trade and investment opportunities for SMEs. Among other areas, the Parties shall promote collaboration centers, assistance centers for exportation in order to create international networks, incubators, and accelerators. In addition, the collaboration will be strengthened to promote SMEs owned by individuals belonging to under-represented groups such as women, indigenous groups, youth, among others, including rural SMEs and agriculture. Another innovative aspect has been to encourage the use of different platforms such as the internet in order to establish contact with suppliers, buyers, and potential international partners. Each Party shall provide access to the information regarding the benefits and opportunities of international business through a Website. This technological platform should have links to other sites of the Parties, governmental agencies related to the development of SMEs, information regarding aspects relevant for trade or investment in the territory of the other. In addition to the aspects already covered, on the aforementioned page, information on customs, tax, intellectual property, on registration of companies and financing programs shall be included.

In order to identify, create, improve and exchange ideas to improve support for SMEs, a Committee of SMEs is created in which the parties, through a representative, shall establish the progress and development in the field of SMEs, which will be monitored by the committee through reports. Some of the highlighted tasks of this Committee, shall be the promotion of the trade through digital media, an annual meeting of SMEs with the purpose of informing relevant aspects aimed at the private sector, employees, NGOs, academic experts, companies with groups of low representation and other stakeholders from the countries.

As mentioned above, SMEs are a fundamental part of the economy, since they allow the creation of a large number of jobs and the economic activation of various sectors. That is

why we believe that including this chapter opens the door to many Mexican producers and merchants to venture into international trade.

A major step in the immediate past by Mexico was the reform to the General Law of Trade Companies with respect to the society by simplified actions, which is a regulatory vehicle that facilitates the establishment of SMEs.

However, the provisions of USMCA, imply a great opportunity of learning and development for Mexican SMEs, as they are mostly lagging behind in the matter, compared with SMEs in the United States of America and Canada, since only one-fifth of the SMEs in Mexico exported its goods or services to other countries, while in the United States of America and Canada they export around 95% and 87% respectively.

Respective chapter may be consulted at:

https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/25%20Small%20and%20Medium%20Sized%20Enterprises.pdf

ANTI-CORRUPTION

The chapter on anticorruption represents one of the new themes incorporated in USMCA as it was non-existent in NAFTA. Its main objective is to criminalize various activities such as illicit enrichment and embezzlement; also encourages the implementation of compliance programs and ethics codes for public and private companies. On the other hand, it is important to highlight the great impetus and importance that is given to the training of public officials in order to promote transparency and integrity in the exercise of public service.

First, the concepts of bribery, extortion, undue advantage, and facilitation payments are defined. All of these practices classified as offenses and therefore State Parties are induced to legislate internally in order to criminalize such conduct, but above all, article 27.6, establishes the obligation to effectively enforce

the national anti-corruption law to which should establish a system for the dissemination of information regarding awareness of the serious effects which corruption brings along and the means available for the population, in general, to denounce acts of corruption anonymously.

Secondly, the need for the participation of all the sectors that are part of the market is exalted, namely, public servants, private companies and consumer. Participation is thus divided into different activities: (i) training; (ii) internal control; (iii) transparency; and (iv) sanction.

However, unlike NAFTA, chapter 27 of the new version of USMCA, contributes to strengthen, invigorate and consolidate the national anti-corruption system in Mexico since, on this occasion, the Mexican State must incorporate accounting bans that would enrich the national anti-corruption system, for example, the interdiction of establishing out-of-books accounts, incurring passive or non-existent expenses in incorrect relation of its objectives, the use of false documents and the intentional destruction of accounting documents before the provisions of domestic legislation.

In this order of ideas, in order to comply with its international obligations and, at the same time, reinforce the national anticorruption system, enterprises, public and private, established in Mexico are constrained to comply with new accounting regulations as well as with the implementation of internal anti-corruption programs, which will definitely favor the eradication of corruption in our country.

In conclusion, in the anticorruption field the international mandate through organizations such as the United Nations, the International Chamber of Commerce, the Treaty of Trans-Pacific Partnership, the European Union, USMCA, is resounding: zero tolerance to corruption.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/27%20Anticorruption.pdf

GOOD REGULATORY PRACTICES

Chapter 28 promotes the adoption of best practices such as: transparency and objective analysis, responsible and predictable regulation with the aim of facilitating trade between the

Contracting Parties, avoiding technical barriers to trade imposed by highly bureaucratic, duplicate, and foreign regulations for private individuals. The obligations of this chapter are directed to administrative regulatory authorities of the central Government issuing general provisions that are compulsory for individuals[2].

This chapter seems to encourage adoption of risk-based regulatory methodologies, prepared with scientific, technical and economic information, truthful and reliable, justifying the limitations imposed on individuals and granting a greater freedom in the adoption of international standards within their activities, unlike prescriptive regulatory methodologies. It is emphasized that, in CP TPP as well as in USMCA, the preparation of regulatory impact studies is requested, as well as risk analysis which seeks to mitigate the normative limitations and relevance of the measure.

Additionally, it obliges the Parties to have mechanisms to follow up on effectiveness of the regulations. The benefit for individuals is high since efforts will be directed to have up-to-date and effective regulations for the productive sectors and allows the parties to suggest better protections for health, well-being, and the environment, without translating into insurmountable obstacles to trade.

It highlights the obligation imposed on the authority to adopt internal mechanisms to enable public consultation, coordination, and revision of the Regulation during its elaboration process. These inter-party consultation processes are also found in the Agreement on Technical Barriers of the WTO and are established in Article 909 of NAFTA; however, these provisions are limited to technical regulations, understood as the official Mexican standards and their notifications were the same texts of the regulation.

It is emphasized that USMCA and CP TPP do not incorporate the technical aspect of the regulation but give the Parties freedom to define the proposed regulatory measures, which shall also be issued annually with a concise description, point of contact and sectors possibly affected. In the same way, it is agreed

[2][1]Mexico excluded from the chapter the regulation on fiscal matters, responsibility for public servants, agrarian and labor, financial services, measures against money laundering, functions of the Public Ministry and issues relating to national and maritime defense.

that the elaboration processes of the regulations must be transparent.

The foregoing will oblige regulators to generate planned and coordinated work programs that will allow individuals to participate more actively in the elaboration of all types of regulations. Currently, the consultation process for official Mexican standards is the most consolidated, with this chapter should strengthen the communication channels between the government and individuals for any administrative regulation.

Now, unlike other trade agreements, it is subject to the application of a dispute settlement system applicable in cases where a provision of the chapter is continually transgressed.

The main risks involved in this chapter are to increase the time for drafting the regulations considerably, and, in this spirit of generating similar rules for all the Parties, the regulation is decontextualized with respect to the needs and possibilities of the authorities and the Mexican society, so we must be aware of the promulgations of laws and regulations.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/28%20Good%20Regulatory%20Practices.pdf

ENERGY PERFORMANCE STANDARDS

This Sectoral Annex aims to standardize the technical regulation of energy efficiency emitted by the central authorities, as well as the procedures for its testing, including the water use and its efficiency. Like the previous chapter, this annex seeks cooperation among the Parties to develop mechanisms for information exchange and support regulatory compatibility.

The obligation is imposed on the Parties to have online resources in which the authorities responsible for the elaboration, development, implementation, review, and application of energy efficiency standards and testing, report:

a) The description of its attributions.

b) Name of public servants that serve as a point of contact.

The main objective is to harmonize product testing procedures so that trade flows faster and consumers are certain that in any of the countries they have the same quality standards and the products are compatible. Cleverly, each Party is allowed, according to their specific operating conditions, to create procedures with specific characteristics that are functional for their needs.

In the Annex, the creation of programs and mechanisms that contribute to a better energy performance of different products is enforced, in response to environmental protection and to the benefit of all consumers.

The main challenge of our country will be to generate appropriate schemes to get closer to the best international practices and have the necessary resources to continue with the betterment processes of energy efficiency regulations.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/28%20Good%20Regulatory%20Practices.pdf

GOVERMENT PROCUREMENT

In the chapter on government procurement USMCA maintains its obligations and prohibitions that were regulated by NAFTA, for instance, the obligation to define the requirements for procurement based on objective and international criteria. However, it adds provisions that aim to attack corruption in the government procurement processes, as well as the promotion of the use of electronic means in them.

First, it is important to point out that the chapter keeps its principles of non-discrimination and services procurement through objective criteria. On the other hand, entities are enabled to disqualify providers for (i) bankruptcy or insolvency; (ii) false declarations; (iii) significant or persistent deficiencies in the performance of any substantive requirement or obligation under a prior contract or contracts; (iv) final judgments in respect of serious crimes or other serious offenses; (v) professional misconduct or actions or omissions that adversely reflect on

the trade integrity of the supplier; (vi) failure to pay taxes.

Nevertheless, we can point out that in regard to NAFTA, the aforementioned chapter maintains impartial review mechanisms and entities that open the door to solution and address unconformities of the suppliers in the processes of government procurement. However, the provision of not imposing compensatory measures (e.g., national content) for the qualification and selection of suppliers in procurement processes.

In this regard, it is necessary to specify that the aforementioned chapter aims to adopt the best international practices, seeking to implement and introduce electronic means in the procurement process in order to reduce expenses and publicize them. It is important to highlight the importance that is given to prevention and sanctioning of corruption in procurement processes.

In conclusion, this chapter shall be considered as a modernization that aims to regulate actual trade necessities of the region. Although new sections are included, these seek to eradicate corruption and discrimination in government procurement procedures. Having said that, the main hazard that the economic agents will face will be the possible over-regulation and surveillance in government procurement procedures, which, while it may tend to discourage corruption acts, it may also have positive effects such as allowing Mexican economic agents to participate in government procurement of the Parties.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/13%20Government%20Procurement.pdf

STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Although of recent creation in the Mexican legal context -- since these derive from the constitutional reform of December 2013 --, state-owned enterprises were already envisaged in NAFTA. However, in NAFTA, its regulation was superficial considering that only the right of the parties to have State-Owned Enterprises was recognized and, on the other hand, they were obliged to ensure that the

actions of such State-Owned Enterprises were in accordance with the principles of the treaty.

In contrast, USMCA provides detailed regulation of the activities and restrictions of State-Owned Enterprises and designated monopolies (entities that are empowered as the sole provider of certain goods or services).

In the same vein as NAFTA, USMCA is responsible for each Party to ensure that its State-owned enterprises and designated monopolies act in accordance with the terms of the Treaty.

The new Treaty contains terms which seek to ensure non-discriminatory treatment in the participation of State-owned enterprises and designated monopolies in trade activities in the Member countries. Thus, the parties are obliged to give equal treatment (not less favorable) when they procure with state enterprises of another state party as if they were contracted with a company of their own, both when procuring or acquiring as well as when rendering or offering a service or good.

A relevant update on the regulation of State-owned enterprises arising from the new Treaty, corresponds to the regime of restrictions on non-commercial support. In this regard, prohibiting certain activities of non-trade support for State-owned enterprises - whether by the Member States and by other State-owned enterprises - such prohibited activities include granting of loans or guarantees related with loans; or with respect to the conversion of debt into capital. It stands out in the regulation, the prohibition to the states parties not to cause adverse effects to the interests of any other party through the use of non-commercial assistance to their state enterprises. In the event of injury to other member States or other State-owned enterprises, USMCA provides methods for the determination of the injury and the degree of it.

Finally, USMCA imposes on the parties obligations of transparency as the identity and performance of State-owned enterprises and designated monopolies. In addition to providing a public list identifying each of the State Enterprises and designated monopolies - together with the scope of such monopolies or the extent of their scope - each Member State is also required to disclose - upon request from another member state- the relevant information on the activity of its state companies or monopolies, if

the applicant state adequately justifies an explanation of why the activity of the monopoly or state enterprise in question affects or violates trade or investment between the Parties.

In order to ensure compliance with the obligations of the parties with respect to state-owned enterprises and their monopolies, the creation of a compliance committee is envisaged, whose functions include reviewing the operation and implementation of the respective regulations and serving as a consultative body regarding the obligations of the parties.

The chapter on State participation enterprises and State monopolies has undergone an absolute transformation from its predecessor in NAFTA, to suit the needs of the current business. The restrictions that are imposed on the activities of these entities, aimed at maintaining the operational balance that justifies their existence in their own jurisdiction, will undoubtedly be a challenge in terms of the implementation of the cross-border activity of state-owned enterprises and designated monopolies. Let us emphasize that the commercial activity in one of the state Parties does not obey the same realities of the rest of its members. Consequently, the daily operation of these enterprises of state privilege could easily transgress the existing balance in other jurisdictions, creating injuries to free trade or the sale and production of goods and services. It shall be the task of the Inter-State committees, to create defined regulations and methods of sufficient implementation to ensure that the freedoms of a Member State allows it enterprises and monopolies to maintain its interests aligned to the other member countries without causing injuries to said international markets.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/22%20State%20Owned%20Enterprises.pdf

LABOR MATTERS

In this chapter, Mexico commits itself to the effective application of the fundamental labor rights envisaged in its labor legislation and to complement the process of implementation of the Constitutional Reform on Labor Justice published in February 2017.

Specific provisions for Mexico are referred to in collective labor matters, such as:

- To guarantee the right of workers to engage in negotiation activities for collective bargaining or protection and to organize, form, and join the union of their choice.
- To establish and maintain independent and impartial bodies to register union elections and resolve disputes relating to collective bargaining agreements.
- To establish requirements for the collective bargaining registry.
- To guarantee the transparency of negotiated collective bargaining.

It also stipulates the commitment to address cases of violence directly related to the exercise of labor rights, as well as to protect against gender discrimination in the workplace.

It is to be noted that unlike the so-called NAFTA parallel labor agreement, which essentially contemplated the obligation of the signatory countries to fulfill their legislation in the matter of security and hygiene in the work, minimum wages and child labor, as well as a scheme of solution of controversies on the individual, the Labor Chapter of USMCA, focuses particularly on the subject of the freedom of union and collective bargaining.

New times and implicit challenges in the collective labor relations in our country are coming, not only by the Labor Chapter of USMCA, but also by the approval by the Senate of the ILO Convention 98 and, above all, by the amendments made to the Federal Labor Law in compliance with the constitutional reform enacted in February 2017.

The USMCA's Amending Protocol signed on December 2019 has a special focus in the Labor Chapter.

For said effect, it establishes detailed mechanisms for the airing of denial of rights' denounces, primarily in matters of association freedom and collective negotiation.

These mechanisms establish that boards integrated by independent specialists shall be the last instance for the settlement of conflicts between the United States of America and Mexico, and

[2] Including, but not limited to, the Paris Convention and the Kyoto Protocol, since Mexico has signed them and are part of its legal framework.

between Mexico and Canada. These boards will also have authorities to make verifications in companies that have been accused for denial of labor rights.

In an ennunciative not limited manner, the following sectors are referred as subjects able to air denial of labor rights' denounces.

d) Mines
e) Aerospace products and components
f) Motor vehicles and motor vehicles' parts
g) Glass
h) Cement
i) Plastic
j) Cosmetic products
k) Steel and aluminum
l) Baked industrial minerals
m) Forge
n) Ceramic

The boards will be empowered to determine the reparation measures that include the application of sanctions and the suspension of preferential duties' treatment for the merchandise manufactured in the company determined as liable for the denial of labor rights.

It is undeniable that the foregoing implies a rupture of the current paradigm and an evolution of labor law in Mexico, for which employers must be prepared to comply with the new provisions for this matter.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/23%20Labor.pdf

ENVIRONMENT

Recognizing the importance of a healthy environment for the economic and social well-being, for each country's current and future generations, as well as the international community, Canada, United States, and Mexico, dedicate, a whole chapter to protection and preservation of the environment, in which its importance for health and human life is highlighted.

In continuity with the Agreement between the United Mexican States and the States of America on cooperation for the protection and improvement of the Environment in the Border Zone and consistent with several international instruments, as established in the CP TPP, the States parties to it are to jointly address environmental problems in matters of: i) atmospheric emissions; ii) marine fauna; iii) pollution of the oceans; iv) species traffic; v) biodiversity; vi) invasive species;

vii) massive fishing; viii) forests; and ix) environmental services.

For this matter, the relevance of the following multilateral treaties shall be taken as framework for the compliance of the obligations in this matter:

a) Convention on International Trade In Endangered Species of Wild Fauna and Flora (CITES).

b) The Montreal Protocol on Substances that Deplete the Ozone Layer.

c) The 1978 Protocol regarding the International Convention for the Prevention of Pollution from Ships.

d) The Convention on Wetlands of international Importance Specially as Waterfowl Habitat.

e) The Convention on the Conservation of Antarctic Marine Living Resources.

f) The International Convention for the Regulation of Whaling.

g) Convention between the United States of America and the Republic of Costa Rica for the Establishment of a Tropical Tuna Inter-American Commission.

This way diverse provisions are integrated with the intention of obtaining a wider regulation in all of the environmental practices and benefits, highlighting:

a) Control over production, consumption and trading of substances that deplete the Ozone Layer in terms of the Montreal Protocol.
b) A wider regulation of activities that, due to certain practices or ships, may have a big impact in the maritime environment.
c) Fight against fauna and flora's traffic and exploitation, criminalizing such traffic as a severe crime in accordance with the United Nation Convention against Transnational Organized Crime.
d) The implementation of procedures for the evaluation of environmental impact of projects and practices that are pretended to be made and that may affect the environment directly or indirectly.

e) A mechanism of public participation and of transparency's promotion through petitions related to the application of a normative framework in environmental matters. This is of utmost importance because it is the responsibility of the State to disseminate the maximum available environmental information, whether legal or technical, in order to promote environmental awareness in the individuals.

f) It is also highlighted the States parties' obligation to ensure due access to environmental justice, be it administrative or judicial, through a fair, transparent procedure, without excessive costs or time, within from which the fact denounced is diligently investigated, and the way to remedy the alleged damage and to apply the corresponding penalties is found.

It's important to highlight that through the USMCA, and in consonance with other international instruments, the parties accept that the environment, its protection and conservation, are intimately bonded with the economic, social and cultural well-being of indigenous communities and towns, recognizing that the respect to their cultural rights helps to preserve and sustainably use

[3]Treaty that has the purpose of looking out for the trade of wild fauna and flora species to not become a threat to their survival in their natural habitats, which is to subject said trade to certain controls. Entered into force in Mexico since the 30th of September 1991.
[4]Its purpose is to establish concrete measures for the elimination of substances that deplete the Ozone Layer to avoid damages to the health and environment. Entered into force in Mexico since the 1st of January 2019.
[5]Its purpose is to preserve marine environment through a complete elimination of pollution by hydrocarbons and other damaging substances. Entered into force in Mexico since the 23rd of July 1992..
[6]This convention was created in virtue of the recognition of the fundamental ecological functions of wetlands as regulators of hydrologic regimes, establishing an international protection regime. Entered into force in Mexico on the 4th of July 1986.
[7] Its purpose is to protect the integrity of marine eco-systems that surround the Antarctic. Only Canada and the United States of America are parties to this treaty.
[8] The Convention applies to Factory ships, terrestrial stations and whaling ships that find themselves under the jurisdiction of the governments parties and to all of the waters in which the whaling is made by the mentioned factory ships, terrestrial stations and whaling ships. Entered into force in Mexico on the 4th of May 1959.
[9] Its purpose is to maintain the population of yellow-fin tuna and other species of fishes fished in the oriental pacific. Entered into force in Mexico on the 4th of June 1999.
[10] The Inter-American Court of Human Rights has interpreted that both the 169 Convention of the International Labor Organization and the American Convention protect the indigenous communities' cultural and property rights, among others,

natural resources. Therefore, the measures to be adopted for the environmental protection must take into consideration the indigenous communities and towns' rights (right for consultation, for auto-determination, property, for cultural bio-diversity), because it has been proven that the population's exclusion from projects made in their communities has freezing effects; on the contrary, their due inclusion is a success factor.

In this order of ideas, if the State fails in the implementation and enforcement of environmental legislation, the interested persons are empowered to request the intervention of the Commission for Environmental Cooperation which, if considered appropriate, would initiate a process aimed for the accused State to implement legislation on environmental matters.

Likewise, in case the instance before the Commission for Environmental Cooperation does not have the expected results, a mechanism for the settlement of disputes is included in which the parties will install a board that will definitively resolve regarding the compliance or non-compliance of the obligations established in the USMCA. The liable State shall comply with the board's resolution or if the contrary its benefits derived form the agreement in any sector (motor vehicle, agricultural, etc.) may be removed. In said proceeding the burden of proof corresponds to the respondent.

On the other hand, in accordance with the accessory letter in matters of environmental cooperation and custom verification between Mexico and the United States of America, custom verifications regarding the legality of certain wild flora and fauna's shipments, forest products' harvests and fishing practices, will occur.

Accordingly, the benefitted sectors by the USMCA's application shall make their trade activities without impacting the environment in a negative way or by doing it in accordance with the rules on this matter, because if the contrary happens, their activities may be punished under national and international law..

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/24-Environment.pdf

[11] Articles 31.6,31.13 and 31.17 of Chapter 31 "Dispute Settlement", which can be consulted at https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/31-Dispute-Settlement.pdf

[12] Visible at https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/Environment-Cooperation-and-Customs-Verification-Agreement.pdf

IMMIGRATION AND TEMPORARY ENTRY

This chapter covers the recognition and strategies of the Parties with a wording aimed at meeting different objectives.

As the first objective of these, we find that the Parties seek to identify professional services in common, to facilitate the performance, and accessibility for the person to carry out their activity. (15-C Professional Services). This recognition of profession gives citizens greater opportunities for free exercise, enriching their professional capacity and raising the level of competitiveness and training. It also seeks to facilitate temporary entry in accordance with the principle of reciprocity and to establish transparent and efficient criteria and procedures (16- Temporary Entry for Business Persons). Encourage investment among the Parties, recognizing that the human factor is essential for companies to meet their objectives and promote the expansion of products and services. To fulfill this purpose, human resources must carry out business trips between countries and facilitate mobility among them.

Chapter 23 seeks to recognize the vulnerability of migrant workers, providing security and guidelines for free performance.

Citizens who have a professional qualification or license to exercise, certify that they have sufficient professional capacity to carry out their activity. However, according to USMCA, at least two of the Parties must have a mutual interest in establishing a dialogue on problems related to the recognition of professional skills, licenses or registration. We believe that openness can be good because it allows citizens to be recognized as professionals in a country that is not of their own, and also opens the door to diversity and culture to enrich knowledge.

Similarly, the entry and exit to business people between the countries of USMCA, promote the market among all the participants. The extensive recognition of professionals in the agreement, allows the barriers to business entry to decrease and as a result promote the competition, which will be reflected in a better offer of products or services and distribution channels of the business, will also benefit.

Through negotiation and recognition of salaries, rights and benefits of work, integrity, and dignity to workers are ensured.

In contrast NAFTA, the sections of Professional Services and Temporary Entry for Business Persons, as well as migrant Workers, there are not really relevant differences that imply an advantage or disadvantage. However, it is established that countries must bend efforts, to instruct the Educational Institutions to a more global formation and to promote the exchange between the Parties, oriented to allow an access to education and culture, that is achievable for students or professionals and recognize professions that do not require a revalidation to be exercised.

Although currently, people from the US and Canada do not require a visa for their entry, those who wish to enter Mexico, should consider:

a) Prove financial capacity during stay.

b) Letter from the enterprise supporting the business trip.

c) Not to receive pay or remuneration in Mexican territory.

d) Exceed 180 days of visit.

e) Have a passport with validity of at least 6 months, from the date of entry to Mexico.

It should not be forgotten that those interested in working or residing in Mexico, shall obtain the correspondent working visa. One of the risks to be considered is the current change of government, which can present longer response times, as well as greater requirements for obtaining authorizations, however, the foregoing will have to be proven factually when the change happens. The respective chapters may be found at:

15C-https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/15%20Cross%20Border%20Trade%20in%20Services.pdf

16-https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/16%20Temporary%20Entry.pdf

23- https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/23%20Labor.pdf

INTELECTUAL PROPERTY

Within the corresponding chapter on Intellectual Property of USMCA, relevant changes are contemplated within each of the figures that the subject involves; undoubtedly the most notable changes in terms of the validity of pharmaceutical patents.

The freedom now provided for each of the Parties to adopt and implement in its legislation the pertinent legal provisions that deems appropriate for safeguarding and defending the rights acquired by the holders of the rights in each of the countries. While NAFTA already envisaged the possibility of adopting most of these measures, USMCA contemplates more rigid provisions for the protection of intellectual property rights. The objective is clear: to promote and protect the innovation and creativity, without losing sight that in order to accomplish it there should be means to facilitate the dissemination of information related to intellectual property in order to promote competitiveness among the Parties.

In the matter of trademarks, the scenario is considerably widened, since geographical indications are recognized; marks certification; collective marks and sounds; as well as the possibility that any third party with better right and who considered that it is invading through the filing of an application for trademark registration, may file an opposition procedure for its registration. This possibility is compatible with the recent reforms of the Industrial Property Law, which for our country represents a breakthrough, because the relevant adjustments and the figures are already contemplated within the Law.

At this point, it is important to note that even when these reforms are in force, there is still a lack of regulations that clarify certain deficiencies and gaps in the reformed Law. The correct application of these patterns will undoubtedly translate into the possibility of reducing the granting of erroneous registrations, as well as the famous brand hijacking.

As we mentioned before, one of the most important modifications

contemplated in USMCA has to do with the issue of pharmaceutical patents and the validity thereof, since now an adjustment will be made available to the patent holder of the right of exploitation, in order to compensate the owner in case there is a delay in the period of approval and granting of their patent. Notwithstanding the foregoing, it is important to consider that such regulation will have limitations, and its application will be linked to certain conditions, which include its application only to pharmaceutical patents and/or in case the process of granting has delays for unjustified causes.

This result certainly lead to the delay of generic competition in medicinal products, since the possibility that the patent can be exploited by the competition or any third party shall be limited for ten additional years.

In Mexico we are ready to fully comply with the provisions contained in the new agreement; over the course of more than 20 years our Industrial Property Law has been adapted to the needs that technological changes demand and, now with the recent amendments to the Law, in Mexico the holders of intellectual property rights will have greater certainty and means to defend their rights.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/20%20Intellectual%20Property.pdf

SANITARY AND PHYTOSANITARY MEASURES

The new treaty, USMCA, like NAFTA, gives each Contracting Party the freedom to adopt or maintain the relevant sanitary or phytosanitary measures in accordance with international guidelines or recommendations. In comparison with NAFTA, we could define the chapter on Sanitary and Phytosanitary Measures as a strengthened chapter where for the first time there is a specific deadline for the resolution of disputes that involve these issues in an expeditious manner; which generates certainty and that disputes over goods that are perishable are resolved in an agile manner among the members of the treaty while maintaining international trade union interference outside of Mexico, thereby respecting the principles of the ILO. Such a situation

is a comparative advantage that to date we do not have with any other trading partner.

It is important to emphasize that within this chapter, the three-member countries are required to make available to the general public the details of the approval process of crops produced with biotechnology, which previously did not occur, that encourage producers to submit concurrent applications for approval and ensure that decisions about those applications are made in a timely manner.

Furthermore, in the event that an importation into a member country is found to have a low level of presence of an unapproved crop produced with biotechnology, the importing country will be obliged to act quickly so as not to unnecessarily delay the shipment. In order to ensure such a situation, as well as others related to the USMCA in a timely manner, will promote the creation of the so-called Working Group for Cooperation in Agricultural Biotechnology, which in turn will help to exchange information and promote transparent regulatory approaches and policies based on in science and risk, not only among member countries but also in other countries and international organizations.

On the other hand, the relevance of this chapter also lies in the elimination of the possibility that any of the parties will adopt future restrictions of any kind in the agricultural sector, demanding greater transparency in the regulations in this area and the regulatory alignment between the three nations will undoubtedly open the range of possibilities of the parties, generating greater freedom by imposing measures at domestic level.

The signed treaty includes in an annex called "Transparency in pharmaceutical products and medical devices" several specific provisions of specific manufacturing sectors; which incorporates inspections in the quality management systems of the manufacturers of medical devices and pharmaceutical products, according to the standards of the unique audit program of medical devices; situation that makes the inclusion of these devices transparent in the health care programs applied by the federal government,

improving the quality of health for the general population.

With regard to the marketing of such devices, it is worth noting the freedom that each party will have to grant or deny marketing authorization based on clinical data, information on their performance and labeling information.

Another relevant issue will be in the case of re-authorizations where it is established that the product subject to re-authorization may be marketed while resolving what is conducive to its granting.

Given the foregoing, within the main benefits for our country, it is that it will be able to maintain health care programs that the federal government applies without changes and will be able to protect the purchases of medicines that the federal government makes through government procurement. The challenge will undoubtedly be to establish clear rules to make transparent the inclusion of pharmaceutical products and medical devices, in the care programs and protect the health programs mentioned above.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/09%20Sanitary%20and%20Phytosanitary%20Measures.pdf

TELECOMUNICATIONS

Along with the technological advance - as expected- USMCA has updated the chapter on telecommunications in regard to the existing regulation of NAFTA. It is worth noting the historical context of negotiation and signature of the old treaty, under which it was foreseen to incipiently guarantee access to telecommunications networks and services of member countries and the conditions under which value-added services should be facilitated.

The new treaty recognizes the complexities that current telecommunications represent, including the treatment that must be given to major service providers and the mechanisms necessary to safeguard competitiveness. In this last category, the former Treaty made a faint outline of the traditional antitrust

regulations fashionable in those years. Even acknowledged the existence of monopolies held or established by the States Party, at the same time stated that said nation should ensure that such monopoly[13] is not incurred in practices contrary to competition affecting individuals or entities on the other hand. On the contrary, USMCA does not refer to any monopoly, it is limited to treat large service providers as major providers, and to which equal regulations (non-discriminatory) shall be applied among their peers in other states party, regarding the provision of services and the technical interconnection of their interfaces.

The inclusion of regulations on collaboration between telecommunications service providers in the member states deserves special mention, to ensure that irrational measures or burdensome terms and conditions are avoided for interested parties of other nationalities in terms of (i) provisioning and pricing on leased circuit services; (ii) the joint location (co-location) of equipment on both sides for the interconnection and access to the networks; (iii) access to poles, ducts, conduits and rights of way or rights of way; and (iv) facilitation of access to submarine wiring systems.

A new aspect in USMCA is the creation for the first time of a specialized Committee whose main functions will be to ensure the implementation and operation of the agreement and establish discussions related to the content of the specific chapter between the parties.

Equally innovative is the creation of a mechanism for dispute settlement, which recognizes the supervisory nature of the internal bodies of the regulatory agencies in telecommunications in each country, providing individuals with the right to promote before said bodies an administrative resource on the rights foreseen in USMCA including the rules of access and use, the obligations of the suppliers of telecommunications services, the application of safeguards, resale and the separation (unbundling) of telecommunications services.

It also foresees the possibility of initiating a reconsideration by the same regulatory body in the event that a determination on the appeal proceedings was unfavorable to the

interests of a party. Finally, USMCA anticipates in its mechanics of dispute settlement and controversy that the judicial authority could solve in last instance on the raised controversies.

In short, the new international agreement has echoed the necessities and realities of a changing and interdependent sector of the technological evolution. Without a doubt, the creation of a regulating committee that will watch the implementation of the disciplines of the treaty in each jurisdiction as well as the methods of conflict resolution implies the necessity to reform federal legislation and state and the normative text unification will represent a challenge for the legislative powers of each state member. On the other hand, the participants of the sector, whether they are telecommunication service providers or their contractors and subcontractors, will find in the rules of the treaty mechanisms that will facilitate the incursion in international markets both in terms of access to infrastructure and in terms of cross participation in neighboring markets.

Respective chapter may be consulted at: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/18%20Telecommunications.pdf

DISPUTE SETTLEMENT

USMCA contemplates substantial changes regarding arbitration between States and investors, but maintains the mechanisms of settlement of commercial disputes (antidumping, compensation fees and obligations of the States Party) already existent in NAFTA. Let us recall that Chapter 19 of NAFTA which establishes the mechanism of binational panels to resolve claims against antidumping measures and fees, while Chapter 20 foresees binational panels of experts to solve said disputes among States and determine if one of the parties has violated its obligations set forth in the treaty. USMCA maintains the content of both chapters without major changes. Given the current policy of the US Government in the field of foreign trade, it is to be hoped that in the coming years these dispute settlement mechanisms will be used against the tariffs and countervailing duties imposed by that Party.

In contrast, arbitration between investors and one of the Parties, as regulated in Chapter 14 of USMCA, presents important differences with respect to Chapter 11 of NAFTA. Most of these changes involve limitations on the rights of investors.

Arbitrations initiated before the end of NAFTA will suffer no impact; they will continue to be governed by Chapter 11 until their conclusion. On the other hand, even after the termination of NAFTA and USMCA entry into force, investors will have a period of three years to file arbitration claims under Chapter 11 (including Canadian investors and Mexican or US investments in Canada), in the case of pre-existing investments, the so-called "legacy investments" in the current text of USMCA. A pre-existing investment is one that has been established or acquired during the term of NAFTA and that continues to exist on the date of entry into force of USMCA.

The main differences of USMCA with respect to NAFTA in terms of dispute settlement between investors and States are the following:

a) Canada is excluded with respect to the application of Chapter 14, said chapter shall be applicable only to disputes concerning investments of Mexican investors in the USA or of USA investors in Mexico. They will be able to resort to the investor-State arbitration contemplated in the USMCA. USMCA will eliminate the possibility for investors from Mexico or the United States to resort to arbitration regarding their investments in Canada or vice versa: that Canadian investors submit arbitration claims regarding their investments in Mexico or the United States under the Chapter 14

b) After the entry into force of USMCA, disputes regarding investments in Canada made by USA or Mexican investors, or investments in the United States or Mexico by Canadian investors, may be submitted to arbitration pursuant to Chapter 11 of NAFTA for a period of three years, as long as they

are pre-existing investments. Additionally, when it comes to investments of Mexican investors in Canada, or of Canadian investors in Mexico, it will be possible to resort to arbitration in terms of the CP TPP, once it enters into force.

c) A stricter requirement is imposed to the exhaustion of national bodies. Before resorting to arbitration, the investor must go to the courts of the Party in which he has invested and wait for the court of highest jurisdiction in this country to issue a decision, or else 30 months after the start of the action. Disputes concerning government contracts in the "protected" sectors (called "covered government contracts") are exempt from this requirement. Likewise, investors will be exempt from going to national courts when it is "obviously useless or manifestly ineffective". We will have to wait and see how this ambiguous exception is interpreted.

The foregoing will also represent an important challenge for Mexican courts, which will have to seek adequate specialization to resolve disputes of this type that are submitted for their consideration.

d) The period for submitting claims will be four years from the date the claimant becomes aware of the violation or loss. NAFTA includes a term of three years.

e) Claims that may be submitted to arbitration are limited, chapter 14 allows claims to be filed regarding violations of the obligations of: (i) national treatment (when less favorable treatment is given to foreign investors than to nationals); (ii) most-favored-nation (in case more favorable treatment is given to investors from other countries that are not part of USMCA, and (iii) direct expropriation (nationalization of the property owned by the foreign investor). In cases of claims related to national treatment and most-favored-nation, the Court must

take into account if the investor different treatment is due to legitimate public welfare objectives. Investors may not submit to arbitration claims for violations of national or most-favored-nation treatment obligations that relate to the establishment or acquisition of an investment, violations of the obligation of fair and equitable treatment or indirect expropriation, unless that the controversy be over contracts protected with the government of the State party in which the investment is located.

f) USMCA considers as "protected" those contracts between the Government of Mexico or USA and investors of the other State Party in the oil and natural gas sectors, power generation, transport, infrastructure, and telecommunications. In these cases, it is allowed to resort to arbitration under Chapter 14 even in the case of claims related to indirect expropriations and violation of the obligation of fair and equitable treatment. In these cases, there is no requirement to go to the courts of the host country beforehand, and the statute of limitations for filing the claim is three years.

Under USMCA, many of the documents submitted by the parties in the arbitration will be made public immediately after their submission. The same will happen with the transcripts of the hearings and the orders, decisions, and judgment of the court. The hearings will be open to the public, although the court will be able to take measures to protect confidential information. NAFTA contemplated solely the publicity of the corresponding decision.

It will be important to keep abreast with the progress of the process of entry into force of USMCA and the termination of validity of NAFTA since the dates of these events shall determine the terms to file arbitration claims under one or another treaty. Given the differences between Chapter 11 of NAFTA and Chapter 14 of USMCA, the investors who have

possible claims against a Party must have adequate advice to determine the desirability of filing a claim during the use of NAFTA or the three later years to this one (as long as one is a pre-existing investment).

After a period of 3 years after the expiration of the term of NAFTA, the possibility of recourse to arbitration under NAFTA or USMCA will be eliminated when a Canadian investor is involved, or a Mexican or American investment in Canada. For this reason, we recommend that those who may be affected by this change inform themselves about their rights under the law of each country and under the CP TPP, once it becomes effective. Even when the arbitration between the investor and the Party that is contemplated in the trade treaties is not available, there will be the possibility of resorting to the national courts or, if an arbitration clause is included in the contracts, to the arbitration according to the rules that have been agreed.

We also consider it important to take into account the changes that can be made to the specific regulations of Arbitration upon the entry into force of the USMCA, since, as was the case with NAFTA, USMCA establishes that an Arbitration Regulation must be formulated, which could be different, and the analysis should be profound.

The respective chapters may be found at:

14-https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/14%20Investment.pdf

31-https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/31%20Dispute%20Settlement.pdf

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