

USMCA Will Adopt Changes for Businesses with Current or Potential Interests in Canada and Mexico

The new United States-Mexico-Canada Agreement (USMCA), which replaces the prior North American Free Trade Agreement (NAFTA), will bring about a series of changes that will affect businesses that have interests in Canada and Mexico.

Some of the major changes involve treatment of intellectual property.

Copyright

- All three nations will recognize a minimum copyright term of “life of the author plus 70 years.” For copyrights not based on the lifetime of a natural person, the minimum copyright term will be 75 years.
- The USMCA requires “national treatment” for copyright holders in all three signatory countries. “National treatment” means that foreign copyright holders have the same rights as locals in each nation. Creative works marketed in foreign jurisdictions will have the same level of protection as works produced in the home country.
- The agreement will adopt stronger standards to protect digital works from piracy and provide greater enforcement mechanisms in the digital environment.
- Law enforcement officials will have authority to stop counterfeit or pirated goods from entering, exiting or transiting through any of the three countries.
- Safe harbors are adopted across all three nations for internet service providers from liability for potential copyright violations as a result of third-party actions.

Trademarks

- The nations will agree to enhance means to protect trademarks such that brands that have established goodwill can use marks in all three countries.
- Use of “geographical identifiers” (such as food products that are identified by the region of origin) will be subject to procedural safeguards such that common names that have lost regional identification value (e.g., “parmesan cheese”) cannot be asserted as protected names.

Patents

- Each nation will enshrine minimum “patentability” standards and adopt “best practices” within patent offices to ensure that inventions can be protected in all three countries.
- Enhanced protection for pharmaceutical patents will be provided for a minimum of 10 years.

Trade Secrets

- Each nation will be required to provide both civil and criminal remedies for misappropriation of trade secrets.
- Actions by governments that impede the protection of trade secrets are prohibited, and all government officials will be subject to penalties for unauthorized disclosure of trade secrets.
- Protection from trade secret misappropriation will extend to state-owned enterprises.
- Judicial procedures will be required to prevent disclosure of trade secrets during litigation.

In addition, there are a number of other provisions that may affect business practices in North America.

- “De minimis” shipment values (under which cross-border shipments may be tax-free and/or duty-free) will be raised such that smaller and medium-sized business can participate in international trade more freely.
- Customs duties or other discriminatory measures are prohibited from imposition on digitally distributed products (such as streaming video, e-books, music, video games, etc.).
- The parties must ensure protection of data transferred across borders and that limits on where data can be stored and processed are minimized.
- Use of electronic authentication and electronic signatures across all three nations is protected.
- Financial services providers will obtain “national treatment” on regulatory matters to create parity with local providers.
- The three parties will be required to adopt best practices to keep international networks secure by collaborating on cybersecurity standards.
- The nations will promote open access to government-generated public data.

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