

SOCMA Webinar: United States-Mexico-Canada Agreement Implementation



What Specialty Chemical Manufacturers Need to Know

Wednesday, February 19 at 2:00PM EST

David M. Schwartz – Partner, Thompson Hine LLP
V.M. (Jim) DeLisi – President, Fanwood Chemical, Inc.

Presenters



David M. Schwartz
Partner
Thompson Hine LLP
202.263.4170
David.Schwartz@ThompsonHine.com



V.M. (Jim) DeLisi
President
Fanwood Chemical, Inc.
908.322.8440
jdelisi@fanwoodchemical.com



USMCA Update

David M. Schwartz

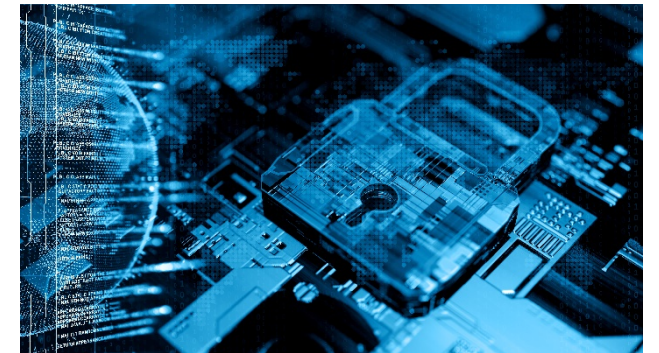
SOCMA Webinar

February 19, 2020



Journey from NAFTA to USMCA

- Reagan to Bush to Clinton to Trump
- Dawn of NAFTA
 - ▣ No Internet/No e-Commerce
 - ▣ No WTO/No plurilateral binding dispute settlement
 - ▣ Emerging IP issues
- Age of USMCA
 - ▣ Digital trade booming
 - ▣ Skepticism of multilateralism and binding plurilateral rulings
 - ▣ Sophisticated IP issues and enforcement concerns



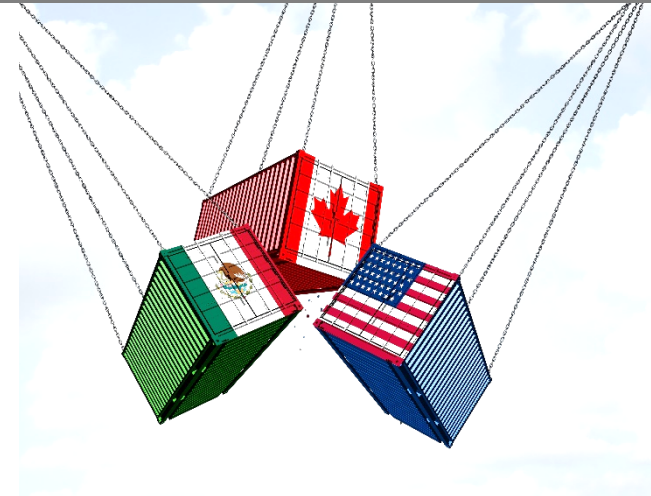
USMCA – Negotiation, Ratification and Implementation

- Negotiations at start of Trump administration in 2017
- Agreement in principle by September 2018
- USMCA signed by November 2018
- Mexico ratifies in December 2019
- U.S. ratifies in January 2020
- Canada ratifies in _____?
- Implementation tied to Canada's ratification



USMCA Implementation Timeline

- Agreement in force on the “first day of the third month following the last notification”
- Status of Canadian ratification
- Any prediction?
- NAFTA remains until USMCA implemented
- U.S. TPA 30-day notification requirement for Congress
- Uniform regulations issued before agreement in force



USMCA – Substantive Highlights



- Digital trade
- IP protections
- Revised automotive rules of origin
- Dairy/agricultural market access

- Labor and environmental protections
- Increased *de minimis* shipment value level
- Commitments on currency and financial services
- Side letters

USMCA – Procedural Changes

Certificate of origin

Investor-state dispute settlement

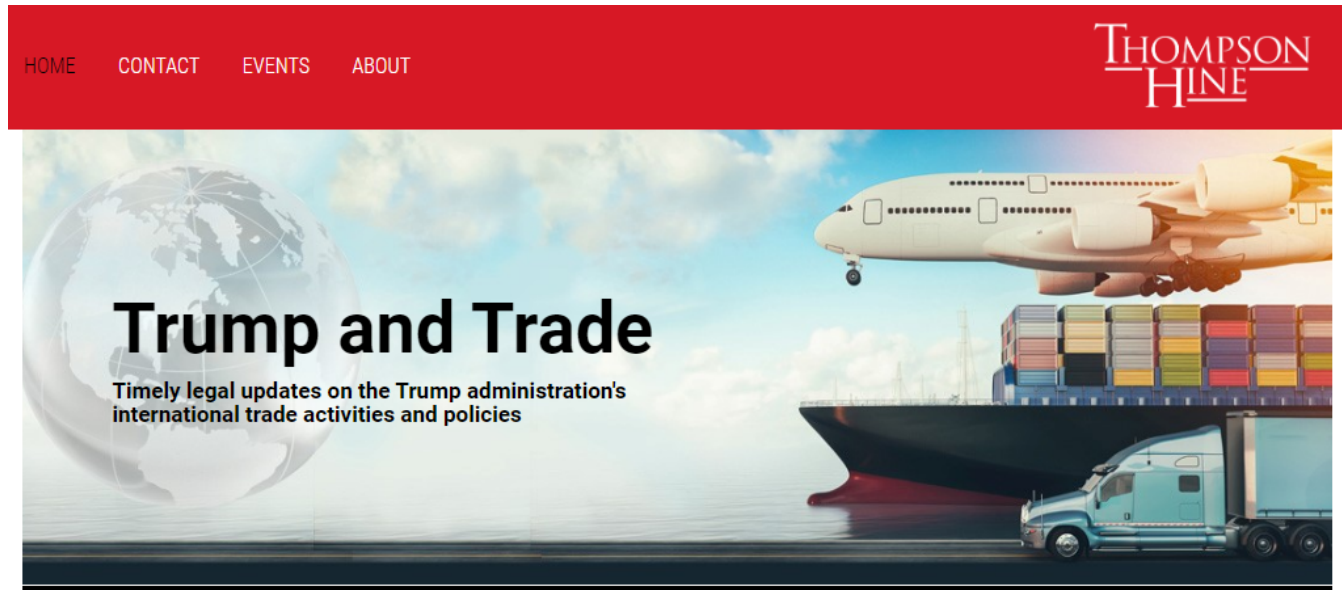
16-year sunset clause

6-year review with possible revisions and extension

Withdrawal allowed if another party enters into an FTA with a non-market economy country (e.g., China)

Certain rules rolled out in phases

We invite you to stay abreast of continuing trade developments via our blog, [TrumpandTrade.com](https://trumpandtrade.com). To receive an email notification whenever a new post is published, [please subscribe to the blog](#).



USTR's Report Lambastes WTO's Appellate Body for Failing to Follow WTO Rules and Agreements

Posted on February 12, 2020

POSTED IN [WORLD TRADE ORGANIZATION](#)

The Office of the U.S. Trade Representative (USTR) has released its [Report on the Appellate Body of the World Trade Organization](#) (WTO), providing an in-depth assessment of the Appellate Body's alleged "failure to comply with WTO rules and interpret WTO agreements as written." In a press release, USTR Robert Lighthizer stated, "For more than 20 years, successive Administrations and the U.S. Congress have voiced significant concerns that the Appellate Body has failed to function according to the rules agreed by the United States and other WTO Members ... Unfortunately, the conduct of the Appellate Body has converted the WTO from a forum for discussion and negotiation into a forum

Blog Editors +

Stay Connected



☒ Subscribe to this blog

SUBSCRIBE



U.S.-Mexico-Canada Agreement

- USMCA = United States – Mexico - Canada Free Trade Agreement. Some call it NAFTA 2.0 – but it is much more than that as effectively described by David.
- It appears as if the U.S. will use this agreement as a template for on-going negotiations with the UK and Japan, and potential negotiations with the EU and as well as any other “developed country” that wishes to engage in FTA discussions with the U.S.
- Includes some very important changes that will have a significant impact on the business of Chemistry.
- Changes demanded by the House of Representatives do not impact the Chemical Industry gains, unless you are involved in biological drugs or have issues of particular concern regarding labor or the environment.



USMCA Intellectual Property

- Agrochemical data protection minimums:
 - Current NAFTA rule allows for 5 years of data exclusivity for Agrochemicals.
 - USMCA provides for 10 years of such exclusivity which reflects U.S. domestic practice.
 - Result: Data & labels that are generated by such data become much more valuable within the region.
- Pharmaceutical data protection, minimums:
 - Small molecules: 5 Years + 2 if a new class.
 - Biologics: 5 Years + 2 if a new class.
- Also includes new protections for confidential business information.

Other General “Headline Issues” of Importance to Our Industry



- Prevents new tariffs from being enacted between the parties.
 - The U.S. dropped tariffs on Steel and Aluminum for both Mexico and Canada.
- Offers strong support for the North American automobile manufactures, a large consuming industry for manufacturers of chemicals in the region.
- There is a new chapter on the Environment which is fully enforceable. It requires each party to adhere to their environmental laws and not to weaken them to induce a trade advantage.
- It includes a chapter that restricts the parties' ability to manipulate currency exchange rates.



Other General “Headline Issues” of Importance to Our Industry con’t

- It includes a specific chapter dedicated to helping support Small and Medium Enterprises (SMEs).
- Each party must establish a single-entry window for the electronic submission of customs documentation (includes certificates of origin) and binding custom rulings. This is especially important since finding and then navigating the Mexican tariff schedules can be a challenge.
- Continues current practice of self-certifying certificates of origin.
- Unfortunately, continues NAFTA restrictions on Duty Drawback and Free Trade Zones.

Sectoral Agreements

- Chemicals:
 - Enhanced regulatory cooperation based on risk, not hazards – hopefully will be an effective offset to REACH.
 - Agreement to align risk assessment measures.
 - Alignment of GHS implementation for a common MSDS.
 - Agreement on coordination of Chemical Inventories.
 - Upon request – agreement to share toxicological and testing data on specific substances.
- Cosmetics:
 - Agreement to work towards regulatory compatibility based as much as possible on internationally recognized initiatives – risk based.
 - Limits the use of animal testing wherever possible.
- Drug/Cosmetic interface:
 - Similar to the above, plus
 - Agreement to work on aligning tamper resistant packaging requirements.
 - Allowance to ship directly to wholesalers and retailers without the need for automatic retesting once allowed into the market.
- Pharmaceuticals:
 - Regulatory alignment following international norms.
 - Agreement to collaborate and share details on facility inspections.
 - Marketing authorizations to take into account international guidance.
 - Bans the needs for home market sales data to obtain marketing authorization.

USMCA Rules of Origin – Chemicals & Intermediates



- Chapter 29 – Organic Chemicals:
 - One rule for 2901.10 through 2942.00
 - A change in subheading (6-digits) from any other subheading, including another subheading within that group; or
 - A change of subheading, except for a good of 2916.32 (Benzoyl Peroxide & Benzoyl Chloride) whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:
 - 40% where the transaction method is used,
 - 30% when the net cost method is used.
- In addition, the following process rules are transformative:

• Chemical reaction rule	Mixtures & Blends (except 28, 29, 32 & 3808)
• Standards rule	Purification rule (remove 80% of impurities)
• Isomer separation rule	Particle size rule (except 28, 29, 32 & 38)
- Since the U.S. has tariffs on most of the line items in the chemicals sector, these rules should incentivize Mexico and Canada to produce specialty chemicals and intermediates for the U.S. market. Further, since a chemical reaction is transformative under this agreement, it will allow producers to import upgraded intermediates for conversion which would then be eligible for duty-free entry into the U.S.

Questions?



Matthew S. Moedritzer
Manager, Legal and Gov't Relations
SOCMA
571.348.5123
mmoedritzer@socma.org



David M. Schwartz
Partner
Thompson Hine LLP
202.263.4170
David.Schwartz@ThompsonHine.com



V.M. (Jim) DeLisi
President
Fanwood Chemical, Inc.
908.322.8440
jdelisi@fanwoodchemical.com