

USMCA Free Trade Commission Holds Inaugural Meeting as USMCA in Full Force

Key Notes:

- USMCA trade ministers meet, demonstrating that USMCA is in full force
- USMCA compliance required as of now
- Auto rules of origin and labor were key issues in discussions

On May 18, 2021, the U.S.-Mexico-Canada Agreement (USMCA) Free Trade Commission (FTC) held its inaugural meeting, which was led by U.S. Trade Representative (USTR) Katherine Tai, Mexico's Secretary of Economy Tatiana Clouthier and Canada's Minister of Small Business, Export Promotion and International Trade Mary Ng. The parties issued a joint statement at the close of the FTC meeting summarizing the developments and next steps. See [Trilateral Statement of the USMCA Free Trade Agreement | United States Trade Representative \(ustr.gov\)](#). In the lead-up to the FTC meeting, Thompson Hine held a [webinar](#) with business leaders from the United States, Mexico and Canada to discuss North American trade issues.

The USMCA requires that the three governments convene under the FTC within one year of the agreement's entry into force, which occurred on July 1, 2020. Key issues addressed at the FTC included USMCA implementation, issues involving the environment, small and medium-sized enterprises (SMEs), the automotive industry and labor, and other disputes/issues among the parties:

- **Implementation** – The parties reaffirmed that the USMCA is fully “in force” following the period of “maximum flexibility” and “restrained enforcement” deployed by the respective customs authorities during

the initial implementation period (July 1–December 31, 2020). As a result, companies should expect increased USMCA enforcement over the next six months. Additionally, the three trade ministers received reports from various trilateral committees, including the USMCA committees on Origin and Origin Procedures, Textiles and Apparel Trade Matters, Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Transportation Services, Financial Services, Intellectual Property Rights, State-Owned Enterprises and Designated Monopolies, Small and Medium-Sized Enterprises (SMEs) Issues, Competitiveness, and Good Regulatory Practices. Notably, most of these committees only began meeting in May 2021, further demonstrating that USMCA implementation is just “ramping up” in the wake of the COVID-19 pandemic. The trade ministers also approved various translations and interpretations of the USMCA's Uniform Regulations and the rules of procedures for dispute settlement processes under the USMCA.

- **Environment** – The three parties announced that the first meeting of the USMCA's environmental committee will be held virtually on June 17, 2021.
- **Small and Medium-Sized Enterprises** – The three parties announced that the inaugural USMCA Small and Medium-Sized Enterprise Dialogue will be held in San Antonio, Texas on October 13–14, 2021. There, the three governments plan to “engage directly with a diverse group of small business stakeholders, including those owned by women, Indigenous peoples, and other underrepresented groups, to help ensure that everyone is included in, and can benefit from, the Agreement.”
- **Automotive** – While not specifically addressed in the FTC Trilateral Statement, the three countries, according to the report-outs from several USMCA committees, were unable to resolve their differences regarding

interpretations of the USMCA's automotive rules of origin (Auto ROO). At issue is the U.S. view of "roll-up" provisions used during the North American Free Trade Agreement (NAFTA). The USMCA requires that 75% of passenger vehicles' and light trucks' "core" parts, such as engines, be sourced from North America for that vehicle to qualify for duty-free treatment. "Principal" parts, like tires, are subjected to a 70% regional value content (RVC) rule. Traditionally, under the "roll-up" provisions, when a part met the RVC threshold and was incorporated into a larger vehicle component, 100% of the initial part would count as originating. According to the U.S. interpretation, however, of the USMCA's "roll-up" provisions, if the initial part contains any foreign content, the amount of foreign content must be subtracted from the RVC calculation. The U.S. approach makes it more difficult for automakers to source components to satisfy the RVC threshold needed for duty-free treatment. The issue requires ongoing monitoring by automakers and their suppliers, and Thompson Hine will be providing updates.

- **Labor** – On the eve of the FTC (and as discussed in detail during the Thompson Hine webinar), U.S.-based labor organizations and the U.S. government issued separate labor complaints against facilities in Mexico utilizing USMCA's new Facility-Specific Rapid Response Labor Mechanism (RRLM). The Trilateral Statement places significant emphasis on labor issues, including the three parties' commitment to addressing forced labor issues. Companies should expect to see robust labor enforcement over the coming months.
- **Other Issues/Disputes** – The FTC, and particularly the bilateral meetings between ministers, held on the first day of the session, served as a reminder that the USMCA did not promise "dispute free" trade within North America, but rather a framework for resolving disputes. The United States and Canada separately raised energy issues in bilateral discussions with Mexico regarding recent legislative attempts to walk-back recent reforms in Mexico's electricity and hydrocarbons sectors. The United States also raised issues regarding "behind the border" regulations and certifications imposed by Mexico on agricultural products. The United States raised issues with Canada relating to dairy (there is a pending USMCA dispute), Canada's proposed digital service tax (DST) (the United States is investigating DSTs under Section 301), e-commerce and home-shopping. Canada raised with the United States issues surrounding solar safeguards (Canada has pressed this under the USMCA), Buy

America(n) laws, and Canadian softwood lumber subsidies. The parties agreed to work in a productive manner on these issues. To the extent the parties do not mutually resolve issues involving labor and the environment, the Congressional Research Service recently issued this [primer](#) on USMCA's labor and environmental dispute resolution mechanisms.

The key takeaway for companies is that the USMCA is in "full force and effect." While the three member governments slowed the phase-in largely due to the COVID-19 pandemic and the need to fully transition from the NAFTA, now is the time for companies engaged in North American trade to ensure full USMCA compliance.

FOR MORE INFORMATION

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