2021 US-Mexico Cross-Border Trade: Beyond Covid-19 and the Trump Administration

Presented by:
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Agenda

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USMCA Update
Key Aspects Refresher

- On November 30, 2018, the United States, Mexico and Canada officially signed the United States-Mexico-Canada Agreement (USMCA)
- A revised agreement was signed by the 3 countries on December 10, 2019
- The revised agreement was ratified by the U.S. House of Representatives on December 19, 2019 and by the U.S. Senate on January 16, 2020
- President Trump signed the agreement on January 29, 2020
- Implementation date was July 1, 2020
- No gradual transition from NAFTA to USMCA (NAFTA ends on June 30, 2020 and USMCA begins on July 1, 2020)
- CBP had some "flexibility" at the beginning (until December 31st, 2020)

USMCA Update
Key Aspects Refresher

- **General Changes:**
  - USMCA Rules of Origin – HTSUS General Note 11 (NAFTA Rules of Origin – HTSUS General Note 12)
  - USMCA Special Program Indicator – S or S+ (NAFTA Special Program Indicator – MX or CA)
  - USMCA U.S. Regulations – 19 CFR 182 (NAFTA U.S. Regulations – 19 CFR 181)
  - NAFTA Marking Rules under 19 CFR 102 will still apply under USMCA
  - USMCA Sunset Provision – 6 Year Term (Art 34.7)
  - USMCA Intellectual Property Rights – Increased Protection
  - USMCA Forced Labor Provision

USMCA Update
Key Aspects Refresher

- **General Changes:**
  - No official certification of origin format
  - MPF will not be refunded under USMCA Duty Post-Importation Refund Claims (This has been fixed!!)
  - In general, USMCA retains the Drawback restrictions that exist under NAFTA
  - Reconciliation to obtain USMCA Post-Importation Duty Refunds will also be allowed as under NAFTA
  - De Minimis Rule increases from 7% to 10% (with some exceptions)
  - Automotive rules of origin revamped
  - Treatment of Sets for originating purposes (each component has to be originating)
  - De Minimis Duty Free shipments thresholds increased:
    - $117 USD Mexico
    - C$150 Canada
    - $800 USD U.S.

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USMCA Update
Key Aspects Refresher

- **USMCA Resources:**
  - USMCA Agreement, Final Text
    - https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada/agreement/agreement
  - USMCA Implementation Act (Public Law 116-113)
    - https://www.congress.gov/bill/116th-congress/house-bill/5430/text
  - USMCA Interim Implementation Instructions
    - https://www.cbp.gov/document/guidance/usmca-interim-implementation-instructions
  - CBP Webpage
    - https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA
  - Final Uniform Regulations (Published June 3, 2020)
  - 19 CFR Part 182 USMCA Regulations
  - General Note 11 HTSUS

USMCA Update
Key Aspects Refresher

- **Methods for Originating – No Fundamental or Major Changes:**
  - **Criterion A** - "Wholly obtained or produced" entirely in the territory
  - **Criterion B** - Produced entirely in the territory using non-originating materials, provided the goods satisfies the applicable product-specific rules of origin
  - **Criterion C** - Produced entirely in the territory exclusively from originating materials
  - **Criterion D** - Produced entirely in the territory and one or more of the non-originating materials cannot satisfy the product-specific rule because the good ad its materials are classified in a heading that is not subdivided or was classified as assembled under GRI 2(a) and RVC requirement is satisfied

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USMCA Update
Key Aspects Refresher

- On January 12, 2021, US Customs and Border Protection (CBP) published the "USMCA Implementing Instructions Addendum to implement updates and changes under the Consolidated Appropriations Act of 2021
- Among the key updates in this document are:
  - Foreign Trade Zones
    - Under the North America Free Trade Agreement (NAFTA) rules of origin, non-originating goods used in production processes in FTZs could not qualify as originating as a result of that processing. See 19 U.S.C. 3332(a)(2)(A). Specifically, the special rule applicable to FTZs prohibited non-originating goods used in production processes withing FTZs from qualifying as originating goods even if all conditions under the general rules were otherwise satisfied, that are entered for consumption in the territory of the United States
    - Initially, this provision was not incorporated into the USMCA Implementation Act. However, Title VI, 601 (b) of the Appropriations Act now applies the FTZ special rule of origin to USMCA preferential treatment claims. See 19 U.S.C. 4531(c)(3)

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USMCA Update
Key Aspects Refresher

- Among the key updates in this document are (continuation):
  - Merchandise Processing Fees
    - Title VI, 601 (e) of the Appropriations Act authorizes CBP to refund merchandise processing fees (MPF) for post-importation claims (i.e. 19 U.S.C. 1520(d) and reconciliation claims) for USMCA preferential treatment
    - Importers may make post-summary correction claims (including 1520(d) claims for entries filed to date and going forward, included those filed via Reconciliation), which will include refunds of MPF on approved claims

USMCA Update
Key Aspects Refresher

- Among the key updates in this document are (continuation):
  - End of Restrained Enforcement
    - CBP elected to exercise a period of restrained enforcement from July 1 through December 31, 2020, on USMCA preferential treatment claims. This was done in order to provide the trade sufficient time to adjust to the new requirements of the Agreement, and in consideration of the business process changes necessary to achieve full compliance.

USMCA Update
Key Aspects Refresher

- Among the key updates in this document are (continuation):
  - Automotive Goods – Additional Time for Verifications
    - Please note that while the USMCA's restrained enforcement period ended on December 31, 2020, CBP announced in its USMCA Implementing Instructions that from July 1, 2020 to June 30, 2021, for automotive goods, CBP may allow additional time to respond to a verification (CBP Form 28, Request for Information)
    - Automotive goods include passenger vehicles, light trucks, heavy trucks, or other vehicles; or an applicable part, component, or material listed in Tables A.1, A.2, B, C, D, E, F, or G of the USMCA, Chapter 4, Annex 4-B Appendix
  - Used Automotive Goods
    - The USMCA contains no distinction between new and used automotive goods. All importers seeking USMCA preferential treatment for automotive goods must meet the USMCA's rules of origin proovisions

USMCA Update
Implementation Issues - Automotive

- **Automobile and Automotive Parts**
  - The USMCA Elevates Regional Value Content (RVC) Requirements
    - Establishes an RVC of 75% (vs. 62.5% in NAFTA) with similarly high content thresholds for core, principal and complementary parts
  - New Requirements for Vehicle Producer's Use of Steel and Aluminum
    - At least 70% of a producer's steel and aluminum purchases must originate in North America

USMCA Update
Implementation Issues - Automotive

- **<u>Automobile and Automotive Parts</u>**
  - Eliminates Loopholes that Undermine RVC Thresholds (Traced Value)
    - Eliminates NAFTA rules that allowed producers to 'deem' non-North American content as originating, regardless of origin. This will reduce free riding and help ensure key auto parts are made in the region
  - Introduces a First-Of-Its-Kind Labor Value Content (LVC) Rule
    - Requires that a certain percentage of qualifying vehicles (40% to 45%) must be produced by employees making an average of $16 USD per hour, helping level the playing field for U.S. manufacturers and workers

USMCA Update
Implementation Issues - Automotive

- **Automobile and Automotive Parts**
  - **Regional Value Content Requirement for a passenger vehicle of a light truck is:**
    - 66 percent under the net cost method, beginning on July 1, 2020
    - 69 percent under the net cost method, beginning on July 1, 2021
    - 72 percent under the net cost method, beginning on July 1, 2022
    - 75 percent under the net cost method, beginning on July 1, 2023

USMCA Update
Implementation Issues - Automotive

- <u>**Automobile and Automotive Parts**</u>
  - **Table A.1 – Core Parts**
    - Engines, bodies, chassis, transmissions, gear boxes, axles, suspension shocks, steering wheels/columns, lithium-ion batteries…
    - Regional value content requirement for parts listed in Table A.1 that is for use in a passenger vehicle or light truck is:
      - 66 percent under the net cost method beginning on July 1, 2020
      - 69 percent under the net cost method beginning on July 1, 2021
      - 72 percent under the net cost method beginning on July 1, 2022
      - 75 percent under the net cost method beginning on July 1, 2023

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USMCA Update
Implementation Issues - Automotive

- <u>Automobile and Automotive Parts</u>
  - **Table A.2 – Parts and components for passenger vehicles and light trucks (super-core parts)**
    - Engines, transmissions, body and chassis, axles, suspension system, steering system, advanced battery….
    - **Each Party shall provide that a passenger vehicle or light truck is originating only if the parts under Column 1 of Table A.2 of this Appendix used in the production of a passenger vehicle or light truck are originating…**

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USMCA Update
Implementation Issues - Automotive

- **Automobile and Automotive Parts**
  - **Table B – Principal Parts**
    - Pumps, compressors, fans, air conditioners, bearings, brake systems, transmission shafts, clutches, DC motors, starters, generators, bumpers, seat belts, other parts, radiators, mufflers, airbags, seats….
    - Regional value content requirement for parts listed in Table B that is for use in a passenger vehicle or light truck is:
      - 62.5 percent under the net cost method beginning on July 1, 2020
      - 65 percent under the net cost method beginning on July 1, 2021
      - 67.5 percent under the net cost method beginning on July 1, 2022
      - 70 percent under the net cost method beginning on July 1, 2023
    - Notwithstanding any regional value content requirement in this paragraph, a part listed in Table B is originating if it meets the applicable change in tariff classification requirement provided in Annex 4-B

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USMCA Update
Implementation Issues - Automotive

- **<u>Automobile and Automotive Parts</u>**
  - **Table C – Complementary Parts**
    - Pipes/hoses, locks, catalytic converters, valves, wire harnesses, lighting equipment, electric motors, batteries, windshield wipers, switches, lamps, regulators….
    - Regional value content requirement for parts listed in Table C that is for use in a passenger vehicle or light truck is:
      - 62 percent under the net cost method beginning on July 1, 2020
      - 63 percent under the net cost method beginning on July 1, 2021
      - 64 percent under the net cost method beginning on July 1, 2022
      - 65 percent under the net cost method beginning on July 1, 2023
    - Notwithstanding any regional value content requirement in this paragraph, a part listed in Table C is originating if it meets the applicable change in tariff classification requirement provided in Annex 4-B

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USMCA Update
Implementation Issues - Automotive

- Automobile and Automotive Parts
  - If an automotive part is not included on any of the Tables (A.1, A.2, B, C), the USMCA Rules of Origin under Annex 4-B will apply and are not subject to the specific conditions under the provisions related to the product-specific rules of origin for automotive goods…

USMCA Update
Implementation Issues - Automotive

- Alternative Staging Regime
  - Eligible vehicles under an authorized Alternative Staging Regime are subject to the requirements below from July 1, 2020 to June 30, 2025, or any other period provided for in the producer's approved alternative staging regime. Eligible vehicles are also subject to any other applicable requirements established in these Regulations
  - Under the Alternative Staging Regime, eligible vehicles (passenger vehicles or light trucks) are considered originating if they meet the following requirements:
    - A regional value content of not less than 62.5 percent, under the net cost method
    - For parts listed in Table A.1, except lithium ion batteries of subheading 8507.60, a regional value content of not less than:
      - 62.5 percent where the net cost method is used; or
      - 72.5 percent where the transaction value method is used if the corresponding rule includes a transaction value method; and
      - For lithium-ion batteries of subheading 8507.60, a change from within subheading 8507.60 or from any other subheading for lithium-ion batteries of 8507.60

USMCA Update
Implementation Issues - Automotive

- Alternative Staging Regime
  - Under the Alternative Staging Regime, eligible vehicles (passenger vehicles or light trucks) are considered originating if they meet the following requirements (continuation):
    - At least 70 percent of a vehicle producer's purchase of steel and at least 70 percent of a vehicle producer's purchases of aluminum, by value, must qualify as originating under the rules of origin established in Schedule I. <u>This requirement will not apply to vehicle producers that have an exemption under an approved alternative staging regime from having to satisfy this requirement</u>; and
    - A labor value content of at least 25 percent, consisting of at least ten percentage points of high-wage material and manufacturing expenditures, no more than ten percentage points of high-wage technology expenditures, and no more than five percentage points of high-wage assembly expenditures

USMCA Update
Implementation Issues - Automotive

- <u>Automobile and Automotive Parts</u>
  - As we can see, the USMCA brought major changes to the automotive industry rules of origin
  - Because of their complexity, it is recommended to perform a very thorough review and analysis to understand and evaluate the impact of these changes for your particular situation
  - The learning curve for understanding and interpreting these new rules is steep and will take some time

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USMCA Update
Implementation Issues - Labor

- Chapter 23 of the USMCA covers the Labor Provisions
- Among its provisions, the USMCA Labor Chapter:
  - Requires the Parties to adopt and maintain in law and in practice labor rights as recognized by the International Labor Organization (ILO), to effectively enforce its labor laws, and not to waiver or derogate from its labor laws
  - Includes new provisions that require the Parties to take measures to prohibit the importation of goods produced by forced labor, to address violence against workers exercising their labor rights, to address sex-based discrimination in the workplace, and to ensure that migrant workers are protected under labor laws

USMCA Update
Implementation Issues - Labor

- Among its provisions, the USMCA Labor Chapter (continuation):
  - Includes an Annex on Worker Representation in Collective Bargaining in Mexico, under which Mexico commits to specific legislative actions to provide for the effective recognition of the right to collective bargaining:
    - Will allow for workers to engage in real collective bargaining and will require companies in Mexico to abide by the same basic labor principles that companies in the United States do
    - To fulfill this commitment, Mexico enacted historic labor reforms and is implementing transformational changes to its labor regime, including new independent institutions for registering unions and collective bargaining agreements and new impartial labor courts to adjudicate disputes

USMCA Update
Implementation Issues - Labor

- The Labor Chapter language designated the U.S. Department of Labor as the point of contact for addressing matters related to the agreement
- The USMCA implementing legislation establishes an "Interagency Labor Committee for Monitoring and Enforcing", co-chaired by the Department of Labor and the Office of the United States Trade Representative (USTR), to coordinate efforts with respect to implementation and maintenance of the USMCA labor obligations, to monitor Mexico's historic labor reforms, and to enforce USMCA labor provisions where necessary
- Among the many responsibilities of the committee, it will receive and review submissions under the USMCA Labor Chapter and Rapid Response Labor Mechanism

USMCA Update
Implementation Issues - Labor

- As of January 2020, the Bureau of International Labor Affairs of the Department of Labor has awarded $32 million to assist Mexico in complying with the labor commitments in the USMCA, improving working conditions, and strengthening the rule of law
- Specifically, projects supported with these funds will build government capacity in Mexico to:
  - Implement its labor reforms, including training and support for the new labor courts and centers that will attempt to conciliate disputes and register unions and collective bargaining agreements
  - Implement commitments related to collective bargaining, secret ballot voting for union representation challenges and approval of collective bargaining agreements, as well as improve government enforcement of labor laws, and
  - Combat child labor and forced labor, enforce labor laws and acceptable conditions of work in the agriculture sector, and promote economic empowerment of vulnerable women and girls

USMCA Update
Implementation Issues - Labor

- There are concerns, particularly in Mexico, regarding the Labor Chapter under the USMCA
- The United States will have the right of monitoring and ensuring that the Labor Chapter provisions are fully implemented and this can be seen as political interference
- The Labor Chapter can also put pressure on wages in Mexico (Automotive LVC of $16/hr)
- The aggressiveness of the implementation of the Labor Chapter may increase under the Biden Administration (Labor Chapter was key for Democrats to vote for USMCA)
- The current Mexican Administration (AMLO) might be slow in implementing its Labor Reforms (other priorities)

USMCA Update
Energy

- Chapter 8 of the USMCA mentions the following under Article 8.1:
  - As provided for in this Agreement, the Parties confirm to their full respect for sovereignty and their sovereign right to regulate with respect to matters addressed in this Chapter in accordance with their respective Constitutions and domestic laws, in the full exercise of their democratic processes.
  - In the case of Mexico, and without prejudice to their rights and remedies available under this Agreement, the United States and Canada recognize that:
    - Mexico reserves its sovereign right to reform its Constitution and its domestic legislation; and
    - Mexico has the direct, inalienable, and imprescriptible ownership of all hydrocarbons in the subsoil of the national territory, including the continental shelf and the exclusive economic zone located outside the territorial sea and adjacent thereto, in strata or deposits, regardless, of their physical conditions pursuant to Mexico's Constitution (Constitucion Politica de los Estados Unidos Mexicanos)

USMCA Update
Energy

- Article 32.11 of Chapter 32 of the USMCA mentions the following:
  - With respect to the obligations in Chapter 14 (Investment), Chapter 15 (Cross-Border Trade in Services), and Chapter 22 (State-Owned Enterprises and Designated Monopolies), Mexico reserves the right to adopt or maintain a measure with respect to a sector or sub-sector for which Mexico has not taken a specific reservation in its Schedules to the Annexes I, II, and IV of this agreement, only to the extent consistent with the least restrictive measures that Mexico may adopt or maintain under the terms of applicable reservations and exceptions to parallel obligations in other trade and investment agreements that Mexico has ratified prior to entry into force of this Agreement, including the WTO Agreement, without regard to whether those other agreements have entered into force

USMCA Update
Energy

- There are concerns for the lack of interest and promotion of alternative or green energies in Mexico
- Mexico wants to "revive" its oil industry (PEMEX) and its electric services company (CFE) so we can expect that a lot of resources will be devoted to this effort
- There are concerns of Mexico limiting contracts for oil and electricity projects to state-owned entities or a "limited" number of companies
- This can negatively impact current and future foreign investments in Mexico's energy sector

USMCA Update
Energy

January 11, 2021

The Honorable Lic. Marcelo Ebrard Casaubón
Secretary of Foreign Affairs / Secretario de Relaciones Exteriores
Av. Juárez No. 20, Piso 21Col. Centro,
Ciudad De México, México. C.P. 06010

The Honorable Rocio Nahle
Secretaría de Energía
Av de los Insurgentes Sur 890
Col del Valle Centro, Benito Juárez
Ciudad de México, CDMX, Mexico 03100

The Honorable Tatiana Clouthier
Secretary of Economy
Pachuca 189, Piso 23
Col. Condesa, Alcaldía Cuauhtémoc
Ciudad De México, México, 06140

Secretaries Ebrard, Nahle, and Clouthier:

We send our warmest regards to you and the people of Mexico during these extraordinary times. We value the cooperation between our countries as we seek to overcome together the health and economic challenges we face.

Both of our governments seek to maximize our economic relationship, especially with the introduction of USMCA, for the prosperity of both our nations. However, as we have discussed with you previously, recent regulatory actions by the Mexican government have created significant uncertainty about Mexico's regulatory processes, especially regarding the energy sector, and have damaged Mexico's overall investment climate. Most recently, we have been concerned by reports of a July 22 memo, followed by a September 22 meeting with regulators who were allegedly instructed to block permits for private sector energy projects and to exercise their regulatory authority to favor state-owned energy companies. If true, this would be deeply troubling and raise concerns regarding Mexico's commitments under the USMCA.

In addition to harming several U.S.-backed private sector projects across the energy sector, these measures could adversely affect hundreds of millions of dollars of U.S. government public energy investments in Mexico made through the U.S. International Development Finance Corporation, the Export-Import Bank of the United States, and U.S. and Mexican public investments via the North American Development Bank. While we respect Mexico's sovereign right to determine its own energy policies, we are obligated to insist that Mexico lives up to its USMCA obligations, in defense of our national interests, which include investments funded by the U.S. taxpayer.

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Our goals are firmly aligned with your interest in ensuring Mexico's strong and prosperous future. An attractive investment climate, backed by regulations applied in a non-discriminatory manner, can create jobs and foster the investment needed to secure Mexico's energy self-sufficiency while keeping energy costs affordable for consumers. We sincerely hope that we can collaborate with you on these important objectives to ensure that our economic partnership continues to deepen and expand to the benefit of the Mexican and American people.

Sincerely,

Michael R. Pompeo
U.S. Secretary of State

Dan Brouillette
U.S. Secretary of Energy

Wilbur L. Ross
U.S. Secretary of Commerce

USMCA Update
What to Expect in 2021

- In regards to Rules of Origin, no major changes, except for the Automotive Industry (still a work in process), Textiles and Chemicals/Rubber/Plastics (including pharmaceuticals)
- The Alternative Staging Regime for Automotive Goods brings some flexibility to both OEM and automotive parts suppliers (until 07/01/2025)
- We can expect a resurgence of companies re-locating to North America to comply with the USMCA requirements, particularly in the Automotive Sector and in the pharmaceutical and medical devices industries (more flexible rules of origin as well as the Covid-19 supply chain impact)
- Expect an increase in US-MX Cross-Border Trade in 2021 and beyond with the economic recovery
- Expect increased enforcement from CBP regarding verifications of origin, so be ready with the proper internal procedures and documentation to manage and comply with the USMCA requirements accordingly
- Monitor Labor and Energy issues, as they may impact the entire USMCA Agreement for future re-negotiations and updates

Covid-19
By the Numbers

- As per the World Health Organization (WHO), as of February 8th, 2021:
  - 105,805,951 cases confirmed worldwide
  - 2,312,278 deaths confirmed worldwide
  - Cases by Region:
    - Americas 47,122,757
    - Europe 35,620,266
    - South-East Asia 13,057,951
    - Eastern Mediterranean 5,851,415
    - Africa 2,663,529
    - Western Pacific 1,489,288
  - Cases in the US – 26,654,965
  - Deaths in the US – 458,544
  - Cases in Mexico – 1,926,080
  - Deaths in Mexico – 165,786

Covid-19
By the Numbers

- Key Dates in 2020:
  - January 9th, 2020 – WHO announces mysterious Coronavirus-Related pneumonia in Wuhan, China
  - January 21st 2020 – CDC confirms first US Coronavirus case
  - January 31st, 2020 – WHO issues global health emergency
  - February 2nd, 2020 – Global air travel is restricted
  - February 3rd, 2020 – US declares public health emergency
  - March 11th, 2020 – WHO declares Covid-19 a Pandemic
  - March 13th, 2020 – Trump declares Covid-19 a National Emergency
  - March 19th, 2020 – California issues statewide Stay-At-Home order

Covid-19
By the Numbers

- Key Dates in 2020 (continuation):
  - March 25th, 2020 – Reports find extended shutdowns can delay second wave
  - March 26th, 2020 – Senate passes CARES Act
  - May 21st, 2020 – US and AstraZeneca form vaccine deal
  - May 28th, 2020 – US Covid-19 deaths pass the 100,000 mark
  - June 10th, 2020 – US Covid-19 cases reach 2 Million
  - July 2nd, 2020 – States reverse reopening plans
  - July 14th, 2020 – Early Moderna data point to vaccine candidate's efficacy

Covid-19
By the Numbers

- Key Dates in 2020 (continuation):
  - July 22nd, 2020 – HHS, DOD announce vaccine distribution agreement with Pfizer and BioNTech
  - August 11th, 2020 – Trump reaches deal with Moderna
  - September 14th, 2020 – US airports stop screening international travelers
  - September 16th, 2020 – Trump administration releases vaccine distribution plan
  - September 23rd, 2020 – A new, more contagious strain of Covid-19 is discovered
  - October 15th, 2020 – US cases spike again; studies connect blood type and Covid-19 risk

Covid-19
By the Numbers

- Key Dates in 2020 (continuation):
  - October 19th, 2020 – Global cases top 40 Million
  - October 22nd, 2020 – FDA approves Remdesivir as first Covid-19 drug
  - November 9th, 2020 – President-Elect Biden announces Covid-19 transition team
  - November 16th, 2020 – Moderna reveals vaccine efficacy results (94.5% effective)
  - November 18th, 2020 – Pfizer, BioNtech vaccine is 95% effective
  - December 10th, 2020 – FDA Advisory Panel recommends Pfizer, BioNTech Covid-19 vaccine
  - December 17th, 2020 – FDA Advisory Panel recommends Moderna Covid-19 vaccine
  - December 31st, 2020 – US falls short of goal to give 20 Million vaccinations by year end

Covid-19
Essential Business US vs Mexico

- On March 19, 2020 (Version 4.0 updated August 18th, 2020) the Cybersecurity and Infrastructure Security Agency (CISA) identified 16 critical infrastructure sectors as essential business:
  - Chemical Sector
  - Commercial Facilities Sector
  - Communications Sector
  - Critical Manufacturing Sector
  - Dams Sector
  - Defense Industrial Base Sector
  - Emergency Services Sector
  - Energy Sector

Covid-19
Essential Business US vs Mexico

- In the US, the Cybersecurity and Infrastructure Security Agency (CISA) identified 16 critical infrastructure sectors as essential business (continuation):
  - Financial Services Sector
  - Food and Agriculture Sector
  - Government Facilities Sector
  - Healthcare and Public Health Sector
  - Information Technology Sector
  - Nuclear Reactors, Materials, and Waste Sectors
  - Transportation Systems Sector
  - Water and Wastewater Systems Sector

Covid-19
Essential Business US vs Mexico

- **This list is advisory in nature. It is not, nor should it be considered, a federal directive or standard. Additionally, this advisory list is not intended to be the exclusive list of critical infrastructure sectors, workers, and functions that should continue to work safely during the COVID-19 response across all jurisdictions.**
- The advisory list identifies workers who conduct a range of operations and services that are typically essential to continued critical infrastructure viability, including staffing operations centers, maintaining and repairing critical infrastructure, operating call centers, working construction, and performing operational functions, among others. It also includes workers who support crucial supply chains and enable functions for critical infrastructure. The industries they support represent, but are not limited to, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, and law enforcement.

Covid-19
Essential Business US vs Mexico

U.S. Department of Homeland Security
Cybersecurity & Infrastructure Security Agency
Office of the Director
Washington, DC 20528

CISA
CYBER+INFRASTRUCTURE

March 28, 2020

ADVISORY MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE

FROM: Christopher C. Krebs
Director
Cybersecurity and Infrastructure Security Agency (CISA)

As the Nation comes together to slow the spread of COVID-19, on March 16th the President issued updated Coronavirus Guidance for America that highlighted the importance of the critical infrastructure workforce.

The Cybersecurity and Infrastructure Security Agency (CISA) executes the Secretary of Homeland Security's authorities to secure critical infrastructure. Consistent with these authorities, CISA has developed, in collaboration with other federal agencies, State and local governments, and the private sector, an "Essential Critical Infrastructure Workforce" advisory list. This list is intended to help State, local, tribal and territorial officials as they work to protect their communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security. Decisions informed by this list should also take into consideration additional public health considerations based on the specific COVID-19-related concerns of particular jurisdictions.

This list is advisory in nature. It is not, nor should it be considered, a federal directive or standard. Additionally, this advisory list is not intended to be the exclusive list of critical infrastructure sectors, workers, and functions that should continue during the COVID-19 response across all jurisdictions. Individual jurisdictions should add or subtract essential workforce categories based on their own requirements and discretion.

The advisory list identifies workers who conduct a range of operations and services that are typically essential to continued critical infrastructure viability, including staffing operations centers, maintaining and repairing critical infrastructure, operating call centers, working construction, and performing operational functions, among others. It also includes workers who support crucial supply chains and enable functions for critical infrastructure. The industries they support represent, but are not limited to, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement,

and public works.

State, local, tribal, and territorial governments are responsible for implementing and executing response activities, including decisions about access and reentry, in their communities, while the Federal Government is in a supporting role. Officials should use their own judgment in issuing implementation directives and guidance. Similarly, while adhering to relevant public health guidance, critical infrastructure owners and operators are expected to use their own judgement on issues of the prioritization of business processes and workforce allocation to best ensure continuity of the essential goods and services they support. All decisions should appropriately balance public safety, the health and safety of the workforce, and the continued delivery of essential critical infrastructure services and functions. While this advisory list is meant to help public officials and employers identify essential work functions, it allows for the reality that some workers engaged in activity determined to be essential may be unable to perform those functions because of health-related concerns.

CISA will continue to work with our partners in the critical infrastructure community to update this advisory list if necessary as the Nation's response to COVID-19 evolves.

Should you have questions about this list, please contact CISA at CISA.CAT@cisa.dhs.gov.

Attachment: "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response Version 2.0"

Covid-19
Essential Business US vs Mexico

- By clearly identifying the 16 industry sectors and by clarifying that this list is advisory in nature and should not be considered a federal directive or standard, the list provides some flexibility on how to identify essential businesses and implement the requirements and conditions for essential businesses at a federal and state level
- For example, it was determined that the transportation and logistics industry was part of the 16 industry sectors and its companies and workers are deemed essential
- Also, the Center for Disease Controls (CDC), published general guidelines for the management of essential businesses and its employees as it relates to Covid-19 mitigation, treatment and containment, which has allowed companies to continue operating at minimum risk levels
- The above has allowed for essential businesses to be open during the shut-downs
- For more information:
  - https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce
  - https://www.cisa.gov/sites/default/files/publications/Version_4.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_FINAL%20AUG%2018v2_0.pdf
  - https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html

Covid-19
Essential Business US vs Mexico

- On March 31st, 2020, Mexico's Secretary of Health published a resolution in Mexico Official Gazette ordering the stop of all business activities in Mexico that are not deemed "essential"
- The text of the resolution explicitly orders the immediate suspension of all non-essential activities from March 30th, 2020 to April 30th, 2020 (extended until May 30th, 2020) for purposes of mitigating the spread and transmission of Covid-19 in the Mexican community

Covid-19
Essential Business US vs Mexico

- The following "essential" activities may continue to operate:
  - Those that are directly necessary to attend the sanitary emergency, including medical personnel, paramedics, and the administrative personnel of the National System of Health. Also, those activities related to its supply and services, among which the pharmaceutical sector is expressly mentioned, both in its production as in its distribution (pharmacies); the manufacture of medical supplies, equipment, and technologies for health care; those involved in the proper disposal of infectious biological hazardous waste, as well as the cleaning and sanitizing medical units
  - Those involved in public safety (i.e. police) and citizen protection, military, the procurement and impartation of justice, as well as legislative activity at the federal and state level

Covid-19
Essential Business US vs Mexico

- The following "essential" activities may continue to operate (continuation):
  - Fundamental sectors of the economy: financial, tax collection, energy distribution and sales, gas and gas stations, drinking water distribution, food industry, non alcoholic beverages, food markets, convenience stores, sale of prepared foods, transport services (passenger and freight), agricultural, fishing and livestock production, agro-industry, chemical industry, cleaning products, hardware stores, courier services, guards in private security, nurseries and day-care centers for children, nursing homes and stays for the elderly, shelters, and care centers for women victims of violence, their daughters and sons, telecommunications and information media, private emergency services, funeral and burial services, storage services, cold chain and essential supplies, logistics (airports, ports and railways), as well as activities whose suspension may have irreversible effects for its continuation

Covid-19
Essential Business US vs Mexico

- The following “essential” activities may continue to operate (continuation):
  - Those related to the operation of the government’s social programs
  - Those necessary for the conservation, maintenance, and repair of critical infrastructure that secures the production and distribution of indispensable services (drinking water, energy, gas, petroleum, gasoline, jet fuel, basic sanitation, public transportation, hospital and medical infrastructure, among others that could be listed in this category)

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Covid-19
Essential Business US vs Mexico

- Mexico's definition of essential business and critical industries was more specific in nature and it was a federal mandate (legally binding at the federal level)
- As previously mentioned, in the US the definition of critical industries and essential business was more broad in nature and was done for guidance purposes (not legally binding)
- The definition of essential business and critical industries was not aligned among both countries and therefore implemented differently
- This created a major disruption in the supply chain as critical components needed in US factories (mainly in the automotive sector) were not being produced in Mexico due to the shut down
- Although the situation was "fixed" and Mexico has committed to ensure a more efficient process in case there are future shut downs needed, there is still some concern that the definition of essential business and critical business will not be aligned or will not be flexible as in the US

Covid-19
Impact on Trade

- The US economy grew at 4% annualized pace in the fourth quarter of 2020, a sharp slowdown in growth compared to the prior quarter, which grew at a 33.4% annualized pace
- For the full year, the economy shrank by 3.5%, the first annual contraction since the great recession of 2008-2009 and the worse decline since 1946
- A resurgence in Covid-19 cases and a delay in additional government stimulus contributed to the pullback in growth
- The economic growth during the final quarter of the year was attributed to strong consumer spending, capital expenditures (i.e. business investing in equipment, buildings, etc.) and the hot housing market. However, it was dragged down by a slump in state, local and federal government spending and a surge in imports

Covid-19
Impact on Trade

- Trade Statistics (2020 CBP Trade and Travel Report)
  - Total Import Value for Goods
    - FY 2020 - $2.42 Trillion
    - FY 2019 - $2.67 Trillion
  - Total Duty Collected
    - FY 2020 - $74.4 Billion
    - FY 2019 - $71.9 Billion
  - Total Entry Summaries
    - FY 2020 – 32.8 Million
    - FY 2019 – 35.5 Million

Covid-19
Impact on Trade

- Trade Statistics (2020 CBP Trade and Travel Report)
  - Trade Remedies Tariffs Collected
    - Section 301 China FY 2020 - $35.6 Billion (22.8% increase from FY 2019)
    - Section 232 Steel FY 2020 – $1.3 Billion (67.5% decrease from FY 2019)
    - Section 232 Aluminum FY 2020 - $500 Million (54.5% decrease from FY 2019)
    - Section 201 on washing machines, washing machine parts and solar panels FY 2020 - $900 Million (54.5% increase from FY 2019)
    - More than 50% of the duties collected were attributed to the above tariffs

Covid-19
Impact on Trade

- Trade Statistics (2020 CBP Trade and Travel Report)
  - Trade Remedies Tariffs Collected as of February 3, 2021:
    - Section 301 China - $77,689,515,273
    - Section 301 EU - $1,022,913,722
    - Section 232 Steel - $7,516,510,570
    - Section 232 Aluminum - $2,358,887,437
    - Section 201 on washing machines, washing machine parts and solar panels - $2,331,509,374

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Covid-19
Impact on Trade

- The U.S. Trade Deficit in goods and services jumped 17.7% in 2020, the highest since the financial crisis in 2008, according to trade statistics released on February 5th, 2021 by the Department of Commerce
- Both imports and exports saw large declines amid then President Trump's trade war and the economic impact of the Covid-19 pandemic
- The US deficit with China was down for the second straight year in 2020 as exports increased and imports continued to fall
- For all of 2020, the US trade deficit totaled $678.7 Billion, up from $576.9 Billion in 2018
- Exports fell 15.7% to $2.13 Trillion, the most in 6 decades, and imports were down 9.5% to $2.81 Trillion, the lowest amount in 4 years

Covid-19
Impact on Trade

- The goods deficit rose 6% to a record high of $915.8 Billion
- Exports were down 13.2% to $1.43 Trillion, including decreases of $27.4 Billion in civilian aircraft, $18.4 Billion in civilian aircraft engines, $14.8 Billion in crude oil, $13.3 Billion in automotive parts and accessories, $10.5 Billion in passenger cars and $8.5 Billion in gem diamonds
- Imports were down 6.6% to $2.35 Trillion, including decreases of $65.2 Billion in automotive vehicles, parts and accessories, $50.2 Billion in crude oil, and $11.1 Billion in civilian aircraft engines along with increases of $25.1 Billion in non-monetary gold, $23.7 Billion in finished metal shapes, and $11.5 Billion in computers
- China was the US main trading partner with $560.97 Billion in trade in 2020 compared to Mexico, with $538.66 Billion in trade in 2020
- China represented 14.9% of the total US trade and Mexico represented 14.3% of the total US trade in 2020
- Mexican exports to the US were $325.39 Billion in 2020, a 9.1% decrease from 2019, its worst decrease since 2009, in which Mexican exports dropped 18.2%
- Mexican imports from the US were $212.67 Billion in 2020, a 17% decrease from 2019, its worst decrease ever recorded

Covid-19
Impact on Trade

- Personal Protective Equipment (PPE) shortages in the US have posed a tremendous challenge in the US health care system
- Also, there is an increase in demand for similar protective gear from the general population who are following CDC's recommendations to wear "cloth face coverings (not surgical masks or N-95 respirators) in public settings where social distancing measures are difficult to maintain or where it is now mandated by federal or state law
- In response to this clear need to fulfill the demand of PPE and other protective gear, US Customs and Border Protection (CBP) and the US Food and Drug Administration (FDA) worked to relax import barriers to return PPE inventories back to normal
- Both CBP and FDA regulate the import of PPE and other medical devices and drugs into the US
- PPE covers: protective clothing (gowns), helmets, gloves, face shields, goggles, face masks, respirators, and other equipment designed to protect the wearer from injury or help prevent the wearer from exposure to infection or illness
- As mentioned, both CBP and FDA have relaxed their import process to make it more efficient and with limited requirements
- The following links contain both CBP and FDA requirements for PPE imports:
  - https://www.fda.gov/industry/importing-covid-19-supplies/information-filing-personal-protective-equipment-and-medical-devices-during-covid-19
  - Also, you can review CSMS 42448725
    - CSMS #42448725 - Information for Filing Personal Protective Equipment and Medical Devices During COVID-19 (govdelivery.com)

Covid-19
What to Expect in 2021

- We are starting to see the "light at the end of the tunnel"
- It is expected for the economy to bounce back in 2021 to pre-Covid-19 levels (4.1%-6.8% in the US and 4%-5.5% worldwide)
- We hope that the majority of the US population (and world population for that matter) will be vaccinated by mid-2021
- We have learned to "adapt" to the new "normal" and we continue to operate and function accordingly under these conditions
- There will still be issues with the supply chain in 2021, particularly with ocean and air space and in the availability of certain critical components (semiconductor chips in the automotive industry)
- We expect an increase in companies "re-shoring" operations to North America to reduce risks in the supply chain for critical materials (PPE, pharmaceuticals and medical devices)
- We have to be "cautiously optimistic" as any resurgence/peaks in Covid-19 cases can have a negative impact in the economic recovery and trade
- Overall, we forecast robust growth in cross-border trade between Mexico and the US in 2021 with the economic growth, the implementation of the USMCA and the re-shoring of companies

Beyond the Trump Administration
Trump's Trade Policies Refresher

- Trump's administration had a particular view of international trade and its impact on the US economy and politics
- Trump's approach was "Nationalistic" in nature (America First)
- These were some of the things that where considered:
  - Trade deficits are a negative thing (China, Mexico)
  - Fair trade is critical (reciprocal duty rates, market access, etc.)
  - Other countries' policies were to win or come out on top in regards to trade and the US has been somewhat complacent with this (FTA's, China's stealing technology and flooding the US with steel, the EU using high duty rates to hinder US automobile exports, etc.)

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Beyond the Trump Administration
Trump's Trade Policies Refresher

- All of these matters/topics shaped Trump's trade agenda
- The status quo no longer worked as a starting point to negotiate
- There was a willingness to fight trade wars in multiple fronts alone without much regard to collateral damage (harm to US companies by imposing duties on inputs needed or retaliatory measures by other countries imposed on US products)
- The idea was to create some degree of uncertainty so that US companies were motivated to invest in the US instead of overseas
- Also, these type of negotiating tactics were believed to make trading partners more "flexible" towards the US (eventually, they will cave in)

Beyond the Trump Administration
Trump's Trade Policies Refresher

- Trump's "Trade" Wars:
  - Section 301 Tariffs China
  - Section 301 Tariffs EU
  - Section 232 Tariffs Steel
  - Section 232 Tariffs Aluminum
  - Section 201 Tariffs Washers, Washer Parts and Solar Panels
  - Others that remained pending or on hold (Section 301 for Vietnam, Section 232 for Automobiles and auto parts, Section 232 for transformer laminations and other main parts, Section 232 for Vanadium)

Beyond the Trump Administration
What Changes to Expect Under the Biden Administration in Trade Policy

"Trade policy should involve a laser focus on what improves wages and creates high-paying jobs, rather than making the world safe for corporate investment"

Jake Sullivan – National Security Advisor for President Biden

Beyond the Trump Administration
What Changes to Expect Under the Biden Administration in Trade Policy

- The Biden Administration will have its hands full with the existing and pending trade issues left behind
- However, in general terms, we might not see much action in 2021 in regards to trade issues as the focus will be on the pandemic and the economy
- The Biden Administration approach on foreign policy and trade will be an approach that will focus on what policy does for the US workers and middle-income families
- A recent report by Jake Sullivan, Biden's National Security Advisor, mentions that " globalization has increased inequality, accelerated deindustrialization, and failed to boost US productivity"
- As a result, Biden promises to focus on domestic priorities to boost US competitiveness, including investing trillions of dollars into energy, education, and infrastructure, implementing federal "Buy American" policies to favor domestic producers and strengthening workers bargaining power

Beyond the Trump Administration

What Changes to Expect Under the Biden Administration in Trade Policy

- The Biden Administration will also change the tone and form it deals with foreign policy and trade
- It will not longer be a “go at it alone” approach but rather a team effort with US trading partners and allies, specially as it comes to China
- Climate and the environment will play a crucial role in foreign policy and trade (big push for green energies and electric vehicles)
- The Biden Administration will be fully committed to be proactive and to a constructive engagement in the World Trade Organization (WTO) reform and it supported the election of the WTO new Director General, Dr. Ngozi Okongo-Iweala (Nigeria’s former Finance Minister)
- In summary, we are going back to “business as usual” mode but with a focus on domestic interests for US industry, US workers/families and the environment

Beyond the Trump Administration
What Changes to Expect Under the Biden Administration in Trade Policy

- Biden on China:
  - “The most effective way to meet that challenge is to build a united front of US allies and partners to confront China’s abusive behaviors and human rights violations, even as we seek to cooperate with Beijing on issues where our interests converge”
  - “I’m not going to make any immediate moves, and the same applies to tariffs”
  - “I will review President’s Trump phase one deal with China before making any decisions on removing tariffs”

Beyond the Trump Administration
What Changes to Expect Under the Biden Administration in Trade Policy

- Section 301 China Tariffs and Other Trade Remedies:
  - It is not expected that Section 301 Tariffs will be removed immediately (at least in 2021)
  - We might see the exclusion process begin again
  - Wait and see what happens at the Court of International Trade (CIT) with the China Tariffs Case for List 3 and List 4A
  - Use the International Trade Commission (ITC) review as requested by Congress as a justification to remove some tariffs
  - We do not anticipate a Phase 2 Agreement with China anytime soon
  - In regards to Section 232 (Steel, Aluminum, Automobiles and auto parts), Section 201 and other Section 301 (EU, Vietnam), we do not anticipate major changes in 2021 (at least no new trade remedies implemented)

Beyond the Trump Administration
What Changes to Expect Under the Biden Administration in Trade Policy

- USMCA:
  - President Biden has emphasized the need to reduce US dependence on Chinese manufacturing, especially of goods vital to US national security and public health (PPE shortages)
  - With the implementation of the USMCA, North America may become a more attractive alternative for manufacturing and key supply chains, and we can anticipate the Biden Administration working to make North America, in particular Mexico, even more attractive to global business, thereby providing stiffer competition to China-based supply chains
  - With the push for electric vehicles, USMCA provides incentives for the automotive supply chain to relocate to North America to comply with the USMCA Automotive Rules of Origin

Beyond the Trump Administration
What Changes to Expect Under the Biden Administration in Trade Policy

- Forced Labor:
  - During the Trump Administration, CBP stepped up its enforcement of US Laws prohibiting the importation of goods made from forced or indentured labor, including forced child labor
  - CBP has imposed a number of Withhold Release Orders on importers, and worked closely with US Immigration and Customs Enforcement (ICE) on investigations of forced labor practices
  - These issues arise around the world but recently the spotlight has been on China and specifically on the wide use of forced labor in the Xinjiang Region (cotton and tomatoes)
  - We can expect with the Biden Administration continuity in the US posture toward China and we can also anticipate increased CBP enforcement of forced labor laws, especially with regards to goods manufactured in Xinjiang and other parts of China
  - This will provide even further incentive for importers and other supply chain players to increase their visibility deeper into supply chains

Beyond the Trump Administration
What Changes to Expect Under the Biden Administration in Trade Policy

- E-Commerce:
  - Another key area involving focus on trade enforcement by CBP under the Biden Administration is E-Commerce, which, in view of CBP, has not only revolutionized the global economy (explosive growth during 2020 because of the pandemic) but also provided new avenues of criminality, including the importation of counterfeit and pirated goods, as well as other contraband (mainly illegal drugs) shipped in smaller packages often directly to consumers
  - CBP is continuously working to increase and improve the monitoring of E-Commerce shipments into the US to ensure that they are legitimate trade

Beyond the Trump Administration
What Changes to Expect Under the Biden Administration in Trade Policy

- Regulatory Freeze and Other Trade Issues:
  - President Biden has placed a regulatory freeze
  - Basically, no rule in any manner is to be issued or proposed until a Biden appointed department or agency head has reviewed and approved the rule
  - Any rules in process but not yet published must be withdrawn (to begin the whole process)
  - Any rules published in the Federal Register but not yet taken effect may be postponed effective for 60 days (until March 22nd, 2021) and consider a 30-day comment period for public comment and consider a further 60-day delay
  - There were several trade related rules (customs broker regulations, etc.) that will be delayed because of this
  - We expect for the Generalized System of Preferences (GSP) and the Miscellaneous Tariff Bill (MTB) to be renewed sometime in 2021 by Congress
  - We do not foresee any new Free Trade Agreements (FTAs) in 2021 but we can at least see some advances in this area (EU, UK, Kenya, Brazil, India, TPP)

Beyond the Trump Administration
What Changes to Expect Under the Biden Administration in Trade Policy

- Key Political Appointments in the Biden Administration:
  - USTR – Katharine Tai
  - Commerce – Meg Whitman, Terry McAuliffe, Mellody Hobson
  - Secretary of State – Tony Blinken
  - Homeland Security – Alejandro Mayorkas
  - Treasury – Janet Yellen
  - White House Chief of Staff – Ron Klain
  - Defense – General Lloyd Austin
  - National Security Advisor – Jake Sullivan

Beyond the Trump Administration
What Changes to Expect Under the Biden Administration in Trade Policy

- United States Trade Representative (USTR) Katherine Tai:
  - Plans to build strong labor language into US Trade Policies:
    - "President-Elect Joe Biden and I share a commitment to pursuing trade policies that support and benefit American Workers, that combat the threat of climate change, that fuel American innovation and increase America's competitiveness"

Summary and Conclusions

The information provided in this presentation is solely the opinion of the presenter and is for informational purposes only; it is not to be considered legally binding or to be used as legal advice

Muchas Gracias!!

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