

# The Research of USMCA

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**Abstract:** The United States, Mexico and Canada have updated the North American Free Trade Agreement. The new USMCA agreement will take effect on July 1, 2020, opening a new chapter in cooperation between the three countries. USMCA inherits most of the content of NAFTA, such as the most typical dispute resolution mechanism. However, with the continuous development of technology and the changing needs of treaty countries, USMCA has also made adjustments in many areas. The impact of USMCA on international economy and trade rules cannot be underestimated. It can bring manufacturing back to North America to some extent and transform North America into a manufacturing center. However, USMCA also has certain shortcomings. The signing of USMCA is a trade barrier set by the United States against China. It will definitely have a serious impact on Sino-US trade. USMCA places too much emphasis on trade protectionism and has major shortcomings in the face of long-term development or sudden events such as the COVID-19 pandemic.

**Keywords:** USMCA; International economic and trade rules

## 1 INTRODUCTION

The United States, Mexico and Canada signed free trade agreements because of their own internal reasons, as well as the rise of Global trade protectionism and regional collectivization. On January 1, 1994, NAFTA entered into force. With the development of the times, some provisions of NAFTA have become out of date, coupled with the serious trade deficit among the three countries, the United States, Mexico and Canada have carried out the renewal of NAFTA. The new agreement USMCA will come into force on July 1, 2020, opening a new chapter in the cooperation among the three countries.

The United States dominates NAFTA, but its provisions protect the interests of other countries as well. The content of NAFTA's rules generally contains removal of barriers to trade, creation of conditions for fair competition, increase of investment opportunities, adequate protection of intellectual property rights, and the establishment of effective procedures for the implementation of agreements. The rules of the country of origin are the most important part of the agreement. The dispute settlement mechanism is the highlight of the North American Free Trade Agreement and the most successful institutionalization attempt of the three countries.

Generally speaking, USMCA inherits most of NAFTA, such as the most typical contention resolution mechanism. However, with the continuous development of technology and the changes in the needs of the countries of the treaty, USMCA has also made adjustments in many fields. There are changes in the non-market economy country clause, intellectual property,

digital trade, auto manufacturing, labor, and agriculture.

The impact of the USMCA on international economic and trade rules cannot be underestimated. It can return manufacturing to North America to a certain extent and transform North America into a manufacturing hub. Because of the "poison pill clause", the signing of the USMCA can also be said to be another trade barrier that the United States has set up against China. It will definitely have a serious impact on Sino-US trade. USMCA pays too much attention to tradeism, and it also has major flaws in the face of long-term development or emergencies such as the new crown epidemic.

## **2 FORMATION BACKGROUND**

### **2.1 Reason for US, Canada and Mexico Entered into a Free Trade Agreement**

Since the 1950s, the status of the United States as a world power and economic center has been shaken. With the rapid development of the European Union in the mid-1980s and the efforts of Japan and other East Asian countries and regions to seek further economic and trade cooperation, the tripartite pattern of the United States, Japan and Western Europe gradually became clear. NAFTA is proposed in this era. The formation of NAFTA not only has the internal reasons of the United States, Mexico and Canada, but also has the external reasons of the global economic trend. The following will elaborate the internal and external reasons of the free trade agreement reached by the United States, Canada and Mexico.

#### **2.1.1 The Change of American Economic Status**

##### **(1) The Rapid Development of American Economy Needs the World Market**

First, after World War II, the rapid development of American economy and the rapid increase of commodity exports are directly related to the development of American multinational corporations. American multinational corporations developed early and well. It has firm specific advantages and country specific advantages. This makes the U.S. multinational companies in the world has been in a leading position. In the 1970s, eight of the world's largest multinational companies were based in the United States, which accounted for more than half of the world's total foreign investment. Although the absolute advantage of American multinational companies has not been shaken since then, they have been seriously threatened by Japan and the European Union. Therefore, the United States urgently needs alliances to consolidate its economic status.

Besides, great changes have taken place in the commodity structure of American foreign trade after the war. After the Second World War, with the development of science and technology and transnational corporations, the international division of labor is deepening, and the intra industry trade between countries with similar industrial structure is developing rapidly. As the United States and Canada are close to each other in territory, and their languages, religious beliefs, customs and values all come from the same matrix, the economic relations between the two countries was greatly close. In terms of bilateral trade, Canada have always been the largest trading partners of the United States. Especially for the United States, Canada has always been the largest export market of the United States. Thus, the formation of NAFTA is of great significance for the United States to further expand its export deficit. In addition, the trade between Mexico and the United States has become increasingly close, and Mexico is a larger

investment place for the United States. If Mexico joins NAFTA, the capital of the United States will combine with Mexico's cheap labor, so the benefits will be considerable for both sides. Therefore, the formation of NAFTA is of great significance to the development of American foreign trade.

## **(2) The Decline of The United States as a World Power Requires The Establishment of Alliances to Consolidate its Position**

The negative impact of the long-term Keynesian economic policy on the economic development of the United States began to show gradually, resulting in the weakening of the economic strength of the United States. For example, the average annual growth rate of the real gross national product of the United States showed a downward trend. From 1961 to 1970, the average annual growth rate of the real GNP of the United States was 3.8%; It decreased to 2.9% from 1971 to 1980 and 2.5% in recent years.

The declining economic strength and increasingly unfavorable trade position of the United States have promoted the desire and determination of the United States, Canada and Mexico to form a unified economic and trade group. The United States hopes to consolidate and improve its position in the world economy and trade by establishing a unified economic and trade group with Canada and Mexico.

### **2.1.2 Canada's Need for Alliance**

Canada is one of the seven largest industrial countries in the west, and has a certain competitive power in the world market. However, since the 1980s, Canada's economic development is not optimistic, and its economic growth rate is slow. In the early 1980s, Canada fell into an economic depression, and the unemployment rate increased greatly. Therefore, Canada actively participated in the negotiations, hoping to restore its economic vitality through the alliance. The United States has strong capital and technological advantages in Canada, which makes the Canadian economy heavily dependent on the U.S. market and even manipulated by the U.S. capital to a large extent. This serious dependence makes Canada the most vulnerable country to US policy. However, since the 1990s, the United States and Mexico have had close trade exchanges. Once the United States and Mexico form a close free trade alliance, Canada may be in a passive position and lose part of its market in the United States. In addition, Mexico is Canada's largest trading partner in Latin America. In the long run, there is great potential for the development of economic and trade relations between the two countries. Therefore, Canada actively participates in promoting alliances with the United States and Mexico.

### **2.1.3 Mexico's Consideration of Alliance**

Mexico's economy is heavily dependent on oil, whose price fluctuates in the international market. In 1982, the price of oil dropped sharply, which caused a great impact on Mexican economy. During 1981-1982, Mexico experienced a debt crisis, during which the country's external debt exceeded its solvency [1]. The economic benefits brought by the free trade agreement between the United States and Canada, which came into force in 1989, have encouraged Mexico's determination to build a North American Free Trade Area with the United States and Canada. Thus, Mexico took the initiative to change its past economic policies and actively sought to improve its relations with the United States. Then president Salinas believed that if Mexico did not actively integrate into the wave of global production, it would face the

risk of being marginalized in the North American economic pattern. The establishment of Mexico us free trade zone can not only allow Mexican enterprises to enter the U.S. market, but also introduce advanced management experience and competition system to comprehensively improve their productivity. At the same time, they can also participate in the formulation of some game rules to avoid the excessive extension of U.S. power. The president of Mexico put forward a slogan at that time: Mexico should export goods, not population. Salinas believes that free trade between Mexico and the United States can promote Mexico's economic development, promote the modernization of domestic industry, attract more foreign investment, create more employment opportunities, and eventually make Mexico's domestic wage level gradually increase, so that Mexicans do not need to immigrate to the United States. Therefore, Mexico need an alliance with Canada and US.

#### **2.1.4 Trade Protectionism Prevails**

The war and economic depression led to the rise of protectionism. In the 1980s, the economic development of all countries was slow, and all countries tried to increase trade and establish domestic economy at the expense of other countries' interests. The U.S. foreign trade deficit has always been high, and the total amount of foreign debt has been increasing year by year, which makes the U.S. domestic trade protectionism sentiment rise again since the mid-1980s. Therefore, it is imperative to form an alliance with Canada and Mexico.

#### **2.1.5 Global Economic and Trade Regional Collectivization**

After World War II, due to the rapid development of science and technology and the increasingly close world economic ties, many countries choose to cooperate to improve their international competitiveness of economy and trade. Therefore, some countries choose to establish free trade areas to improve their economic and trade competitiveness. A free trade area is a region in which a group of countries has signed a free trade agreement and maintain little or no barriers to trade in the form of tariffs or quotas between each other. Free trade areas facilitate international trade and the associated gains from trade along with the international division of labor and specialization [2]. There are many advantages of free trade area (FTA). For example, FTA can stimulate economic growth, reduce monopoly power, and reduce subsidy spending. In addition, the geographical advantages of neighboring countries can also reduce the supervision cost of the alliance. Therefore, the United States, Canada and Mexico will tend to establish a free trade area (FTA).

The formation of the European community makes the Western European countries recover their economy and regain their competitiveness. The was inspired by the success of the European Economic community (1957-93) in eliminating tariffs in order to stimulate trade among its members. Proponents argued that establishing a free-trade area in North America would bring prosperity through increased trade and production, resulting in the creation of millions of well-paying jobs in all participating countries [3]. At the same time, Japan led regional cooperation in the Asia Pacific region is also gradually taking shape. The United States, Mexico and Canada need to establish a free trade agreement to enhance their economic and trade competitiveness.

## **2.2 History of Original Negotiations, and The Establishment of NAFTA**

### **2.2.1 History—The 1980s**

When Reagan was running for president in 1980, he proposed the idea of establishing a "North American Common Market" that included the United States, Canada, and Mexico. In 1985, the President of Canada also proposed the establishment of a "Canada-US Free Trade Area. Negotiations began in 1986 and it was signed in 1988. It went into effect on January 1, 1989, and remained in force until NAFTA replaced it [4].

### **2.2.2 History—The 1990s**

In 1987, the United States and Mexico also signed a framework plan for trade and investment. On this basis, the two countries conducted several negotiations and formally reached the "U.S.-Mexico Trade and Investment Agreement" in July 1990. In order to avoid being marginalized, on September 14, 1990, Canada announced its accession to the US-Mexico free trade agreement negotiations. In this way, the original US-Canada and US-Mexico bilateral free trade issues were expanded to the three-party free trade negotiations between the US, Canada, and Mexico. In June 1990, the United States, Canada, and Mexico agreed to formally prepare for negotiations on a trilateral free trade agreement. On February 5, 1991, NAFTA negotiations officially began. On December 17, 1992, the leaders of the United States, Canada and Mexico signed the NAFTA agreement. In August 1993, negotiations for an additional agreement on labor and the environment began. On January 1, 1994, the NAFTA agreement officially entered into force. In short, facing the new international and domestic situation, the three North American countries adjusted their economic development strategies in a pragmatic and cooperative manner, and finally reached an agreement after overcoming numerous obstacles.

## **2.3 The Renegotiation of NAFTA and The New Formation of USMCA**

### **2.3.1 The Renegotiation of NAFTA**

The three countries have realized that NAFTA can not meet the economic and trade needs of the three countries today, and some provisions are out of date. The trump government's argue to renegotiation NAFTA again mainly focuses on two reasons: The huge trade deficit of the United States and the old NAFTA cannot pace with the development the era.

First, there is a huge trade deficit among the United States, Mexico and Canada. Before the NAFTA agreement was signed, the US deficit with Canada and Mexico was small and stable, but after NAFTA took effect, the US deficit increased rapidly. The US NAFTA deficit has increased by 12.2% so far this year, which shows that the deficit with Mexico and Canada continues to drag down US economic growth and job creation. From 1993 to 2000, the US deficit with Canada and Mexico increased and replaced the production supported by 766,000 US jobs. Most of these jobs are high-paying jobs in the manufacturing industry. The continued growth of this deficit shows that the North American Free Trade Agreement (NAFTA) continues to reduce more employment opportunities in the United States, which makes the current economic recession worse [5]. The continuous increase in the fiscal deficit has caused the three countries' workers' treatment to continue to decline, and workers' positions and wages have received a certain degree of threat. Workers in all three countries are concerned about the continued application of NAFTA.

Second, with the development of the times, the terms of NAFTA cannot meet the modern economic and trade needs of the United States, Canada and Mexico. There are lots of changes in today's economic and trade field cannot be found in NAFTA. For example, in intellectual property field, environment field, and labour field. It is essential to build some new provisions to satisfy new needs of the modern economic and trade world.

### **2.3.2 The New Formation of USMCA**

Representatives from Canada, Mexico, and the United States began renegotiating the agreement in August 2017. However, months of negotiations brought little progress. In April 2018, in order to break the deadlock in the negotiations, Trump made it clear that he wanted to impose steel and aluminum tariffs as a weight to force Canada and Mexico to make concessions in NAFTA negotiations. In response, Canada refused to make concessions under Tariff pressure. Later, the United States changed its strategy and decided to negotiate separately with Canada and Mexico to promote the negotiation process. On August 27, the United States unilaterally reached a preliminary agreement in principle with Mexico on the renewal of NAFTA. On the 28th, under multiple pressures from the United States, Canada returned to the tripartite negotiation table. USMCA was signed by Trump, Trudeau, and Mexican Pres. Enrique Peña Nieto on November 30, 2018. Most of the agreement, which required approval from the countries' legislatures, went into effect on July 1, 2020 [3].

## **3 ORGANIZATIONAL STRUCTURE OF THE NAFTA AGREEMENT**

Unlike the European Union, NAFTA is not an agreement overriding national governments and national laws. The North American Free Trade Agreement (NAFTA) announces the establishment of the North America Free Trade Area (NAFTA). NAFTA has a population of 360 million, a GNP of about US \$6.45 trillion, and an annual trade volume of US \$1.37 trillion. Its economic strength and market size both exceed that of the European Union, making it the largest regional economic integration organization in the world at that time.

### **3.1 Governance Structure of NAFTA**

The North American Free Trade Area (NAFTA) is a north-south regional economic bloc with the United States as the core. The United States is not only the advocator of NAFTA, but also the leading country of NAFTA, and it occupies an absolute dominant and dominant position in the operation of NAFTA. In terms of the strength within the trade area, the United States has 2/3 of the population and 90% of the economic strength, Canada has only 7% of the population and 8% of the economic strength, and Mexico has nearly 26% of the population but less than 2% of the economic strength. The United States, Canada, and Mexico belong to three different levels according to their level of industrialization and development. The United States is in the first tier, Mexico is in the third tier, a newly industrialized country, and Canada is in the second tier. Therefore, no matter in terms of economic strength, degree of industrialization, and level of development, the United States is in an absolute dominant position. The United States has a strong restraining force over Canada and Mexico and has absolute power in the affairs inside and outside the trade zone.

The US's dominance in NAFTA does not mean it can do whatever it wants. The organization has shown some practicality in dealing with some problems. For example, on the issue of tariff reduction, taking into account the gap in the level of development between the developing countries and developed countries, the organization stipulates that from the date of entry into force of the agreement, the United States will cut taxes on imports of Mexican products by 84% on average, while Mexico will only cut taxes on imports of American products by 43% on average [6]. In addition, a longer transition period has been arranged for meat, dairy products, corn, and other products for which Mexico is less competitive. These arrangements have not only increased opportunities for some Mexican agricultural products to the United States and Canada, but also allowed other less-competitive sectors of Mexico to have a 10-15 year buffer period for internal restructuring.

Generally speaking, NAFTA has maintained a stable triangular state between conflict and cooperation since its establishment. On the one hand, the free trade zone is full of undercurrents. First of all, the United States and Canada have been worried that Mexico's cheap labor will lead to the increase of the unemployment rate in the United States, putting pressure on the employment of Americans. Mexico worries that its national industry will not be able to survive between America and Canada. Canada does not want to become too dependent on the United States and become the "52nd state". What is more, the so-called complementary cooperation between the United States, Canada, and Mexico cannot escape the shadow of power relations. The United States would clearly be better able to impose its views, exert its power, and influence better in multilateral negotiations. The United States and Canada, two countries with similar levels of economic development, can expand each other's market by giving play to economies of scale. However, due to the difference in economic development levels, Mexico and the United States, Mexico, and Canada can bring about changes in industrial structure and trade pattern through comparative advantage, so as to give play to their own advantages. Mexico can use the advantage of abundant and cheap labor, while the U.S. and Canada can use the advantage of abundant capital and technology [7].

## **3.2 General Rules in NAFTA and The Rules of The Country of Origin**

### **3.2.1 General Rules in NAFTA**

The North American Free Trade Agreement, an international agreement, is very similar to a treaty. In American law, it is regarded as an administrative agreement of Congress.

Article 1 of the North American Free Trade Agreement clearly stipulates that Mexico, Canada, and the United States shall formally establish a free trade area in accordance with the basic principles of the General Agreement on Tariffs and Trade. The purposes of the establishment of the free trade area are to remove barriers to trade, create conditions for fair competition, increase investment opportunities, provide adequate protection of intellectual property rights, establish effective procedures for the implementation of agreements and the settlement of disputes, and promote trilateral, regional and multilateral cooperation. The three Member States must achieve their objectives by complying with the principles and rules of the Agreement, such as national treatment, most-favored-nation treatment, and procedural transparency, in order to remove obstacles to trade.

In terms of rights, countries in the FTA can exchange goods and reduce or exempt tariffs, but for countries outside the FTA, the original tariffs and barriers remain.

### **3.2.2 Rules of the Country of Origin**

The provisions of NAFTA on the country of origin are the most important part of this Agreement and are very detailed and strict. The purpose of these provisions is to ensure that the products produced in NAFTA areas can enjoy the preferential treatment of NAFTA and to avoid the influence of the rights and interests of NAFTA products by the operators in other countries by means of free-rider or simple processing. On the other hand, this provision also provides the basis for customs of the member countries to determine the origin. The provisions of NAFTA on the country of origin are very strict and complicated, and a foreign-funded enterprise shall carefully evaluate whether the products it produces can comply with the provisions on the country of origin, otherwise, it still cannot enjoy its preferential treatments.

First, Chapter IV of NAFTA consists of fifteen articles, four appendices, of which Appendix 401 provides for the rules of the country of origin, the most important.

Second, there are four basic principles of origins of the products. The products should be wholly obtained or produced in NAFTA areas, such as agricultural products, fish products, and minerals. The products should fully use raw materials in NAFTA areas and be produced in NAFTA areas. When raw materials not in the country of origin are used, the production should comply with Appendix 401. According to the net cost method, Regional Value Content (RVC) single or tariff change single or both of them should be 50%. According to the transaction-value method, RVC single or tariff change single or both of them should be 60%. Unassembled goods and goods classified with their parts shall comply with RVC.

Third, there are other important provisions about the country of origin. Article 404 establishes the rule of accumulation. In accordance with Article 404, if raw materials not in the country of origin are used in the final products, the producer or exporter may include NAFTA regional output value contained in the raw materials not in the country of origin in its final product to calculate RVC, to order to increase the RVC of NAFTA region. Article 405 provides for de minimis. Raw materials or parts originating in areas other than NAFTA which do not contain more than 7% of the value of products may be considered NAFTA products under section 405 without a change of tariff serial numbers, except for agricultural products under Chapters 1 to 27.

Fourth, NAFTA includes rules of origin for important products. On the principle of yarn forward, the process from spinning, weaving, tailoring to garment processing must be completed in the three North American countries to enjoy preferential tariff and quota treatment. Automobiles shall be subject to the principle of change of tariff serial numbers and compliance with RVC, provided that the RVC shall be calculated at net cost and be raised to 60% and 62.5% in 2002 in two phases. Electronic products should apply to the principle of tariff serial numbers, and in line with RVC as a supplement.

Fifth, NAFTA contains the provisions of the certificate of origin. The NAFTA certificate of origin is available in English, French, and Spanish in a uniform format and is filled out by the exporter or manufacturer according to the facts.



### **3.3 Dispute Resolution Mechanisms of NAFTA**

The dispute settlement mechanism is the highlight of the North American Free Trade Agreement and the most successful institutionalization attempt of the three countries. The relevant provisions are mainly embodied in Chapter 11 of the Agreement, which stipulates the procedures for the settlement of disputes concerning property rights between a contracting state and investors in another contracting state. Chapter 14, for example, creates special provisions for resolving financial sector disputes using Chapter 20 dispute settlement procedures. Chapter 19 establishes the review process for checking whether domestic court decisions on anti-dumping laws and countervailing tariff disputes comply with domestic law. Chapter 20 provides for intergovernmental consultation mechanisms to resolve high-level disputes through ministerial consultation. In addition, the subsidiary North American Environmental Cooperation Agreement and the North American Labor Cooperation Agreement also establish mechanisms for addressing trade-related environmental and labor issues among states parties.

#### **3.3.1 Establishment of NAFTA Dispute Settlement Institutions**

NAFTA is a “softening organization” of regional integration group. Compared to the EU’s series of perfect judicial bodies, its dispute settlement body is set up more concisely. NAFTA dispute settlement is primarily the responsibility of the Free Trade Commission and the Panel. FTC has two main responsibilities: to oversee the implementation of the Agreement and to preside over the political settlement of disputes. If the Commission is unable to resolve the dispute, any party to the dispute may request the establishment of an arbitration panel. The panel makes a preliminary report after investigating the facts and submits the report to the parties to the disputing party. After consultation with the disputing parties, the final report shall be submitted to the Committee for its disclosure. The disputing parties shall comply with and act on their own. NAFTA establishes expert testimony procedure in the procedure of dispute settlement mechanism, which can ensure the objectivity and impartiality of the expert panel’s decision. Technical experts may be used by the group of experts in accordance with articles 2014 and 2015 of the Agreement, which means that, at the request of the parties or according to their own needs in the environment, health, safety, or other scientific fields, and when necessary, expert testimony may be sought from relevant technical experts or written reports on relevant facts may be provided.

#### **3.3.2 The Decentralized Dispute Settlement Mechanism**

According to different types of disputes, NAFTA provides a number of dispute resolution mechanisms, including four self-established dispute resolution mechanisms stipulated in the main agreement of NAFTA: Investor State Dispute Resolution Mechanism (ISDM), dispute settlement mechanism in financial services; review mechanisms for anti-dumping and countervailing measures, and mechanisms applicable to the interpretation of agreements and general dispute settlement. Two dispute settlement mechanisms on domestic environmental law and labour law established by NAFTA states parties under sub-agreements. In addition to the above six sets of dispute settlement mechanisms, disputing parties can also choose the ICSID arbitration rules, the ICSID additional facilitation rules, and the UNCITRAL arbitration rules. Among them, ISDM is the most innovative one, which is characterized by a high degree of protection for investors, and is regarded as the greatest contribution and creation of NAFTA to the settlement of international investment disputes.

According to the provisions of Article 1116 on the initiation of ISDM arbitration settlement procedure, it can be seen that the investor's initiation of ISDM procedure is one-way, but the agreement also makes restrictions on the investor's initiation of ISDM procedure unilaterally. These restrictions are shown in the following aspects. First, the subject qualification must be qualified. Article 1139 provides for a wide range of entities, including both those who have invested and those to be invested, as well as citizens, legal persons, or other organizations who invest only directly or indirectly in a contracting state. However, while making extensive provisions on the scope of investors, NAFTA makes the provision of denial of interest through Article 1113, that is, it limits the investors. Second, the dispute must be arbitrable. NAFTA has a clear definition of "investment", and as long as the dispute falls within that range, an investor can activate ISDM. However, NAFTA stipulates that states parties may not start ISDM procedures due to their national conditions and other issues. Third, the investor must waive other rights to remedy damages. By choosing an ISDM mechanism, investors should waive their right to initiate or continue administrative or court remedies for any breach of a disputing state's obligation to invest under NAFTA.

### **3.3.3 Reasons for Establishment of NAFTA Dispute Resolution Mechanism**

There are two reasons for the US to establish this mechanism. First, the US has fear of Mexico's mass nationalization in the 1960s and 1970s. second, Mexico lacks sufficient transparency and strong enforcement in the legal system. Based on these, how to better safeguard the interests of domestic investors in Mexico has become an important issue of concern to the United States in the negotiations. The motivation is of the US is clear. If the US investors can avoid Mexican court cases, and the Mexican government accepts and ensures the enforcement of the arbitration results, it will create a safer investment environment for the investors and protect their interests. The establishment of the dispute settlement mechanism has been considered the application and concrete implementation of the "hard law" in a bilateral trade agreement between countries, which is also a typical case of legalization of world politics [8]. Mexico also has a positive attitude towards the mechanism. Mexico thinks that the mechanism provides institutional legitimacy for the free trade in North America. The mechanism also helps Mexico obtain foreign direct investment [9], enhance its international reputation, and improve the foreign investors in Mexico's sense of security, which is an important auxiliary means to attract foreign capital [7]. Mexico even makes great concessions to accept the high standards of the United States to achieve this mechanism. For example, Mexico gives up the long-held "Calvo doctrine", which opposes not only diplomatic protection, but also international arbitration and other foreign courts' jurisdiction over investment disputes, and regards the sovereign equality of all countries and equal treatment of domestic and foreign people as the direct purpose.

## **4 NEW USMCA**

United States–Mexico–Canada Agreement is the "North American Free Trade Agreement 2.0". The agreement which was regenerated on the base of NAFTA entered into force on July 1, 2020. From a comprehensive point of view, USMCA has both innovation and maintenance parts.

## **4.1 Changes**

### **4.1.1 The “Non-Market Economy Country Clause”**

The new "non-market" clause receives world attention and under spotlight, giving United States, Mexico, Canada unilateral freedom to identify other trading countries as non-market economy countries. Under this clause, if the third party wants to sign a regional trade agreement with any members (United States, Mexico and Canada) of USMCA, it must prove that it is a market economy country.

This clause is actually a breakthrough in the multilateral rules of WTO. According to Article 24 of GATT, member countries have the opportunity to sign trade agreements on their own to establish close economic integration and trade more freely [10]. More specifically, there is a provision of Article 24 of GATT pointing out that the parties of any regional agreements should recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories [10]. However, because of the “non-market economy country clause,” the right of the any three parties of USMCA to conduct trade negotiations with the non-market economy country has been restricted. Therefore, to a certain extent, this clause is a great change of USMCA, which may increase trade barriers.

### **4.1.2 Intellectual Property**

The old NAFTA does not involve provisions about intellectual property. Under USMCA, three countries reached an agreement on modernized, high-standard Intellectual Property (IP) chapter that provides strong and effective protection and enforcement of IP rights critical to driving innovation, creating economic growth, and supporting American jobs [11].

USMCA has extended the protection period of intellectual property rights to 70 years after the death of the creator (in some cases, extended by 20 years). USMCA also added new products that did not appear in international trade when NAFTA was signed in the early 1990s, including music, e-books and other electronic products. In addition, Internet companies will not be responsible for the content produced by users. Additionally, the new IP provisions raise standards and crack down on circumvention of technical protection measures, strengthen trademark protection, copyright and related rights enjoy complete national treatment, establish a copyright safe harbor to protect IP and provide predictability for legitimate enterprises that do not directly benefit from copyright infringement, etc [11]. The new intellectual property protection clauses also have cracked down on cyber theft and protected trade secrets to a certain extent [12].

It can be seen that the new intellectual property protection clauses embody the idea of encouraging technological innovation under the modern development, and better protect the interests of producers and users.

### **4.1.3 Digital Trade**

Under the wave of digital economy, NAFTA signed in 1994 has become weak and cannot cope with and adjust the digital industry. USMCA set a new chapter catering to the great development of digital trade. The aim is to protect the competition of digital business and reduce the

limitations on digital trade. In the process of making the rules of digital trade, the United States played the leading role.

The digital products covered by the protocol include computer programs, texts, videos, images, sound recordings or other products which are digitally encoded, used for commerce and can be transmitted by electronic means. The agreement stipulates that “zero tariffs should be imposed on such goods, and other types of fees should not be charged; Ensure the free transmission of data across borders and minimize the restrictions on data storage and processing locations to promote a global digital ecosystem; In order to promote digital trade, Parties shall ensure that product suppliers are not restricted when applying digital authentication or signature; Ensure implementable consumer protection measures applied to the digital market, including privacy and unauthorized communication [12].

There are several key points in Chapter 19 on digital trade. First, “no party may require the parties to use or locate computing facilities in the territory of the party as a condition for doing business in the territory [13].” This is actually a problem of data localization. On the one hand, this clause protects the data privacy and security of the member countries of the agreement. On the other hand, there are also doubts that, in fact, “if countries lift the restrictions on cross-border data flow, the service imports of all countries will increase by an average of 5% [14].” Second, the charter 19 prohibits parties from requesting “transfer or access to the software source code proprietary to another party or the algorithm expressed by the source code [15].” Actually, this provision is related to the protection of intellectual property and could motivate the data innovation.

#### **4.1.4 Auto Manufacturing**

“The USMCA requires 75% of a vehicle's parts to be made in one of the three countries -- up from the current 62.5% rule -- in order to remain free from tariffs when moving between the three signatory countries [16].” As a whole, the new agreements on auto manufacturing give protection for the automotive industry in Canada and Mexico, avoiding the new automobile tariff of up to 25% announced by the United States before. However, Canada and Mexico must cooperate with the United States to build an automobile industry chain.

Compared with NAFTA, the main changes include that the proportion of parts manufactured by the three countries in the region will be increased from 62.5% to 75%, and at the same time, it is stipulated that more than 40% of parts must be produced by factories with an hourly wage of more than US\$ 16 to protect workers' income. In addition, the agreement requires that at least 70% of automotive steel products must originate from the United States, Mexico and Canada, and there will be a five-year transition period after the new regulations come into effect [17]. There are two key parts. First, if the self-made rate really increased from 62.5% to 75%, the duty-free regulations for importing cars from Canada and Mexico to the United States have become more be strict. The new agreement may stimulate more auto companies to increase investment in the United States and Mexico or increase parts procurement in North America. Second, the change of workers' wages “may provide a boost to manufacturing in the United States, where wages are higher than in Mexico [17].” Additionally, it sets a lower hourly wage limit for Mexico, which currently has a low hourly wage. After implementation of the agreement, wages may rise in Mexico.

#### **4.1.5 Labor**

The new USMCA made labor provisions which have important potential influence. Comparing with NAFTA, the new provisions “aimed at narrowing pay differences among the countries and improving workers' rights” [18]. “Manufacturing workers have long blamed NAFTA for sending jobs to Mexico, where wages are lower”[16].

Under USMCA, the three parties will allow Mexican workers to set up trade unions and establish a brand-new supervision mechanism to ensure that Mexico achieves higher labor standards. Based on this mechanism, the United States and Canada can set up an international labor expert group to investigate trade union complaints from Mexican factories. Furthermore, this mechanism enhances the enforceability of labor and promotes labor reform in Mexico without damaging sovereignty [19]. Additionally, interests of labor can be better protected and recognized by the International Labor Organization. The new charter of labor asks to adopt labor rights recognized by International Labor Organization. These rights cannot be waived and should keep the implementation of effective [19]. In terms of violence against workers and gender discrimination in the workplace, USMCA also put forward stricter labor protection standards.

Generally speaking, USMCA's newly changed labor standards, one is to strengthen international supervision, the other is to solve labor problems through trade sanctions, which has an impact on labor relations and international trade [19].

#### **4.1.6 Agriculture**

USMCA basically kept the agricultural commitments of the three countries under the original NAFTA framework, but expanded the opening of Canadian dairy products, poultry and eggs markets to the United States, reduced the non-tariff barriers of American wheat and alcohol products, and increased the market access of American dairy products, sugar, peanuts and cotton products to Canada. In addition, USMCA has strengthened the transparency of SPS, as well as the consistency and equality of laws and regulations among the three countries. In particular, in agricultural biotechnology, the three countries formulated agricultural biotechnology standards for the first time, including new technologies such as gene editing, and Mexico and Canada agreed to strengthen information exchange and cooperation with the United States on matters related to agricultural biotechnology trade [19].

In general, USMCA's new agricultural provisions are conducive to expanding agricultural trade among the United States, Canada and Mexico and increasing agricultural exports of various countries.

#### **4.2 Maintaining Parts**

In essence, the American Association for Management Certification is very similar to the North American Free Trade Agreement, retaining many of the same terms. For instance, by looking through the chart made by U.S. Customs and Border Protection, “Comparison of USMCA and NAFTA Free Trade Agreements,” it is clear that “most-favored-nation rates of duty on certain goods,” the “drawback and duty deferral program,” the “export duties, taxes or other charges” are not changed [20]. In addition, the country-to-country dispute resolution and anti-dumping duty dispute resolution are retained too.

## 5 CURRENT AND FUTURE DEVELOPMENTS

### 5.1 Impact on Global Economy

On July 1, 2020, USMCA officially came into effect. Due to the diluting effect of the new crown pneumonia epidemic, the USMCA entry into force ceremony was not as grand as expected, but its impact on future international economic and trade rules should not be underestimated. USMCA can return the manufacturing industry to North America to a certain extent and transform North America into a manufacturing hub.

First, the dispute settlement mechanism that the United States and Canada had been fighting for a long time before, the United States finally compromised, which is the biggest part of Canada's victory. Because this article is the most critical, it will prevent the United States from launching anti-dumping and countervailing investigations from its own domestic law. Canada insists that the dispute settlement mechanism be handed over to the third party for arbitration, so that Canada will not be hit by the US anti-dumping tariffs for no reason.

Second, Canada's concession lies in opening up the dairy market, which is a victory for the United States. Although some analysts believe that Canada has already opened the dairy market to all 11 other countries when it joined the Japanese-led CPTPP without the participation of the United States. However, the impact of American dairy products on Canada's domestic industry is not comparable to that of several countries in East Asia and Southeast Asia.

Third, Conditional tariff exemption for automobiles. This is the main profit point of Lisigo, who has kept his access to the US market. However, the new agreement requires that at least 75% of the auto parts exported to the United States of Canada and Mexico are to be exempted from tariffs, and 40-45% of the products must be manufactured by laborers with an hourly wage of not less than US\$16. On the surface, this is to protect the rights and interests of labor in Mexico. In fact, it is to protect the rights and interests of labor in the United States, to prevent the loss of domestic jobs due to Mexico's low labor costs, and to prevent products from other low labor cost countries from entering the United States.

Fourth, The poison pill clause. U.S. Secretary of Commerce Wilbur Rose referred to Article 32 of Section 32 of the USMCA as the "Poison Pill Clause." The clause stipulates: "If a country is recognized as a non-market economy country by any of the signatories of the agreement, and neither of the three parties has signed a free trade agreement with the United States, Mexico, and Canada, before any one of the three parties starts free trade agreement negotiations with the country At least 3 months, other parties need to be notified. If any party signs a free trade agreement with a non-market economy country, the other parties have the right to terminate the agreement with 6 months' notice." In short, "the poison pill clause" "A series of restrictions and obligation clauses set up for free trade negotiations between the parties to the agreement and countries with non-market economy status. This part of the clause is a derivative of the Sino-US trade conflict. The United States may apply this clause to future negotiations with Japan, India, and the European Union. This USMCA clause actually gives Washington the right to veto the free trade agreements signed by Canada and Mexico with other countries.

On the whole, the signing of the USMCA agreement marks a historical turning point in the globalization of trade promoted by international multinational companies since the 1990s. The main driving force for global expansion of multinational car companies comes from the

"arbitrage" of production factors and systems, such as Relocating vehicle and parts manufacturing companies to low-wage countries such as China and Mexico, or to low-tax areas. However, with the increase in wages and various factor prices in China and other manufacturing countries, as well as multinational companies such as the United States through tax cuts and trade barriers to attract overseas capital and business return, multinational companies need to start to globalize. The strategy is re-evaluated.

## **5.2 Impact on China Economy**

The article USMCA Trade Pact: What it Means for China, Key Stakeholders puts forward a point of view "US veto power targets China" [21]. which means that the signing of the USMCA is another trade barrier set by the United States against China. The U.S. policy toward China has shifted from "contact" that emphasizes acceptance and change to "regulation lock." The core of the "regulation lock" policy is to regulate China's behavior and lock in the space and level of China's economic growth, so as to control China's development direction and growth limit within the range that is unable to threaten or challenge the American world's dominance. It is worth noting that the "regulation lock" policy at this time has been mixed with elements of containment and isolation. This policy intention is clearly reflected in the chapters of the "Poison Pill Clause" in the USMCA, intellectual property rights, state-owned enterprises and designated monopolies, macro policies and exchange rates, and investment. This kind of clause specifically for non-market economy countries is actually included in the investment chapter. We call it the "little poison pill clause", that is, if an investor from a non-market economy controls an enterprise of a contracting party, if this If an enterprise has an investment dispute with another party, the enterprise cannot use ISDS for relief. The "little poison pill clause" only applies to the United States and Mexico. In addition, the chapters on state-owned enterprises and designated monopolies in the USMCA also have the meaning of regulating Chinese behavior. This chapter strengthened the regulation of state-owned enterprises by revising the definition of state-owned enterprises and non-commercial support clauses, and its strength is significantly higher than that of TPP. Under the new regulations, many Chinese companies that were not previously classified as state-owned enterprises are also classified as state-owned enterprises. Many of the benefits enjoyed by Chinese state-owned enterprises have directly become prohibited non-commercial support in the USMCA, and China will face a more severe test.

First of all, it will produce a certain trade diversion effect, which will inhibit China's exports to North America. The origin standards of USMCA are more stringent than NAFTA and TPP. As an important importing country for the three countries of the United States, Mexico and Canada, China will definitely be negatively affected. The main manifestations are two: First, China is a major producer of parts and components. Many products enter the North American market through assembly. The new USMCA reduces complete sets of goods and assembly. The value ratio of non-origin goods in the product, once the value of non-origin goods exceeds 7%, it will not be recognized as a product originating in North America, and will not be able to enjoy preferential tariffs between the parties. Therefore, in order to enjoy preferential tariff arrangements between the contracting states, many parts and components will be purchased from within the contracting states, which will substitute for Chinese parts and components exports to North America.

What is more, China is the largest non-regional supplier of the added value of auto exports in the North American Free Trade Zone. The USMCA has further improved the rules of origin for

automobiles, including the proportion of automobile parts, the proportion of steel and aluminum used, and wage requirements. These changes will inhibit the export of Chinese auto parts, steel and aluminum used to produce cars to North America. Second, it produces a limited industrial transfer effect. The USMCA aims to protect the manufacturing industry that the United States has lost its comparative advantage, and in the future will lead to the return of some traditional manufacturing industries such as steel and automobiles, which will have a corresponding negative impact on China's investment and employment. In view of China's good investment environment and deep integration with the global value chain, the effect is very limited. However, under the influence of increasingly tense Sino-US relations and the global new crown pneumonia epidemic, the correction of the US supply chain may become more obvious.

Last but not least, it has a negative impact on resource allocation and world welfare, and indirectly affects Chinese consumers. USMCA has split the global value chain while integrating the regional value chain. In this case, some production may be transferred to higher-cost contracting parties. Although producers can enjoy tax incentives, they hinder the optimal allocation of resources worldwide, which is a kind of world welfare loss. In addition, in order to maintain a certain profit margin, producers will raise prices and pass part of the cost to consumers, which indirectly has a negative impact on Chinese producers and consumers.

### **5.3 Major Flaws of USMCA—Excessive Attention to Trade Protection**

Although the three countries of the United States, Mexico, and Canada had games, compromises, and even fierce negotiation and confrontation in the process of reaching an agreement, it is undeniable that the USMCA still makes the three countries a community of interests with trade protectionism in the world economic structure. On this basis, considering the collective interests of the United States, Mexico, and Canada, especially the principle of the supremacy of U.S. interests, the USMCA presents some characteristics that restrict countries and economies outside the circle. Mainly reflected in the following aspects.

One is the "non-market economy country" clause. Judging from the provisions of the USMCA clause, in Chapter 32, Section 10 (hereinafter referred to as clause 32.10), it restricts the negotiation of free trade agreements between contracting states and "Non-Market Country" and stipulates that the agreement If any member country signs a free trade agreement with a "non-market economy country", it needs to notify the other member countries of the agreement three months in advance of the contract goal, and at least 30 days before the formal contract with the non-market economy country, the new signing The full text of the agreement (including all annexes and additional clauses) is submitted to other member states for review to determine whether the free trade agreement signed by the member state and non-market economy countries will affect the USMCA. If other member states believe that the agreement involves "non-market economy countries," they can notify the signatory countries of the agreement to terminate and withdraw from the USMCA six months in advance, and replace the original tripartite agreement with a two-party agreement.

Although the USMCA has not given an official definition of "non-market economy countries", in the context of the escalation of Sino-US trade friction, the industry generally believes that "non-market economy countries" clearly point to China. The provisions of Clause 32.10 enable the United States to effectively control any trade agreement signed by Canada or Mexico with China. Its role is comparable to the "poison pill clause" used to combat hostile takeovers in



corporate mergers and acquisitions. Canada and Mexico will be involved in Sino-US trade frictions. Forced to follow in the footsteps of the United States.

The other is tax exemption, quota protection and rules of origin.

“The new protectionist measures the agreement introduces—restrictions on auto trade and investment, government procurement contracts, and textiles—will constrain US growth. Contrary to official US “fact sheets,” the USMCA will hurt the overall US economy unless those restrictions are removed or modified. While politically difficult, Congress should insist on improvements to remedy defects exposed by the USITC study [22].”

The USMCA intends to achieve the return of the automobile manufacturing industry by cleverly designing the terms of the agreement: on the one hand, if the United States imposes global auto import tariffs for national security reasons, the two countries will basically be free from the threat of tariffs; on the other hand, USMCA has imposed strict limits on the origin standards of auto parts and raw materials. The USMCA’s increase in the standards of origin in the automotive sector and the provisions on tax-exempt quotas, while benefiting USMCA member states, will have an impact on the export of related industrial products from countries other than USMCA member states, including China, especially the current global supply chain of the automotive industry will have an impact. The United States, Canada and Mexico are all major export markets for Chinese auto parts.

USMCA focuses on the traditional manufacturing industry and the manufacturing of products with more technical content and higher added value. Because USMAC pays too much attention to trade protection. After the outbreak of the new crown epidemic, global production activities have stagnated, the flow of people has been blocked, and trade has shrunk sharply. The impact on countries whose main driving force is export-oriented economic development is particularly obvious. The entry into force of the USMCA will help the United States expand its foreign trade to a certain extent, forming a more obvious trade diversion effect. However, the trade creation effect that a free trade agreement should normally have may be relatively small in the USMCA. What the United States changes is the way it cuts cakes and distributes benefits in the North American market, rather than forming a good value creation environment. Taking digital trade as an example, the USMCA helps to greatly improve the protection of the intellectual property rights of US copyright owners in Canada and Mexico, and helps create a market environment for US digital trade exports. However, in comparison, the number of products that can be formed by the local digital trade exporters of Canada and Mexico is limited, the competitiveness is not strong, it is difficult to find an effective path to enter the US market, and the benefits from USMCA are limited.

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