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Briefing on Trade Policy & Environmental Provisions

Hosted by:

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California | Illinois | Michigan | Minnesota | Texas | Washington, D.C.

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United States-Mexico-Canada Agreement - Status

Key Milestones:

- August 30, 2018: Notification to Congress of intent to sign agreement with Mexico.
- September 30, 2018: United States and Canada conclude negotiations; United States-Mexico-Canada Agreement (USMCA) draft text released. Advisory committee reports released.
- November 30, 2018: Agreement is signed.
- January 29, 2019: List of required changes to U.S. law submitted to Congress.

United States-Mexico-Canada Agreement - Status

Current Timeline:

- At least 30 days prior to introduction of implementing legislation: White House must submit to Congress final agreement text & draft Statement of Administrative Action.
- Once final text is submitted, Congress has 90 days to approve or reject the plan without any changes.
- Around April 19, 2019: International Trade Commission (ITC) report due.
- Mexico wants ratification by all three countries by June. It is possible for the U.S. to meet that deadline, but will be hard.
- If/when ratified by all parties, USMCA will be effective for 16 years, with reviews every six years.

United States-Mexico-Canada Agreement - Status

Ratification Outlook:

- Congress is increasing its focus on USMCA. Senior Administration officials appeared before trade committees in both chambers in the past weeks.
- President Trump is meeting with Republican members of Congress to ensure support.
- Speaker Pelosi is organizing meetings for House Democrats with key stakeholders and experts. USTR Lighthizer met with the group two weeks ago.
- Congressionally-mandated ITC report will have major impact on level of support for USMCA in Congress.
- President Trump continues to threaten withdrawal from NAFTA if USMCA is not ratified.

USMCA Environmental Provisions – Chapter 24

Chapter 24 of USMCA:

- Addresses environmental cooperation;
- Replaces the former North American Agreement on Environmental Cooperation (“NAAEC”) – a NAFTA side treaty;
- Emphasizes USMCA parties will cooperate to protect and conserve the environment; and
- Includes provisions on the importance of environmental goods and services and corporate social responsibility.

USMCA Environmental Provisions – Chapter 24

Chapter 24 of USMCA requires each country maintain an environmental impact assessment process related to:

- protecting the ozone layer
- protecting the marine environment from ship pollution
- improving air quality
- preventing the loss of biodiversity
- preventing, detecting and controlling invasive alien species
- protecting and conserving marine species
- promoting sustainable forest management

USMCA Environmental Provisions

- Maintains the Commission for Environmental Cooperation (CEC) initiated under NAFTA
- Establishes a new environment committee, which:
 - Will consist of senior government representatives to assist with the implementation and monitor environmental compliance obligations.
 - Is required to meet only once every two years after its initial meeting, to be held within the first year of the USMCA's implementation.
- Initiates a new process for public participation.

USMCA Environmental Dispute Resolution

- If the parties fail to resolve an environmental matter through dialogue, consultation, or exchange of information, they must resort to the provisions of Chapter 31 of the USMCA for dispute settlement.
- Impacts of Investor-State Dispute Settlement (ISDS) reforms on the environment are viewed as positive for environmental regulation.

USMCA v. Other U.S. Trade Agreements

- USMCA includes language contained in nearly all U.S. trade agreements, as required under the U.S. Trade Promotion Authority, related to the enforcement of environmental regulations.
 - For example, USMCA says it is, “inappropriate to encourage trade or investment by weakening or reducing the protection afforded in the respective environmental law.”
- USMCA's non-binding environmental enforcement language mirrors the Trans-Pacific Partnership.

USMCA v. Other U.S. Trade Agreements

USMCA includes congressionally-approved multilateral environmental agreements (MEAs) present in other trade agreements, such as:

- Montreal Protocol on Ozone Depleting Substances;
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- UN Law of the Sea;
- various Food and Agriculture Organization codes related to fish stocks; and
- Other agreements and measures.

USMCA – Criticism and Opposition

- Environmental groups claim USMCA fails to reinforce environmental protections established in prior multilateral environmental agreements because only three MEAs are included.
- Environmentalists are concerned USMCA perpetuates weak enforcement standards in place through trade agreements with Peru, Colombia, Panama and Korea.
- There is general criticism that USMCA makes no specific mention of climate change.

USMCA – Criticism and Opposition

- Of the MEAs USMCA incorporates, concerns are that it is weak on the Montreal Protocol and the Convention on Marine Pollution for not including specific language seen in CITES.
- Seven MEAs are viewed as the standard in modern trade agreements. USMCA is criticized for not including:
 - Tropical Tuna Convention
 - Ramsar Convention on Wetlands
 - International Whaling Convention
 - Convention on Conservation of Antarctic Marine Living Resources

USMCA – What Congress is Saying

- Congressional Democrats are citing environmentalists' concerns as reasons to re-open the deal to negotiations and possibly holding up the ratification process until they are addressed.
- Senior Trump Administration trade officials, Senate Finance Committee Chairman Grassley, along with representatives from Canada and Mexico, have made clear they are not willing to re-open the text of the USMCA, but would be willing to address concerns through the implementing legislation and/or side letters.
- It is unclear if those options would appease concerns and attract enough votes for passage through the U.S. Congress.

USMCA – What Congress is Saying

- Other Democratic Concerns:
 - Labor (enforcement and ensuring workers are allowed to organize)
 - Prescription Drugs (pricing and intellectual property)
- Republican Concerns:
 - Sunset Provision
 - Dispute Settlement Process
 - Steel and Aluminum Tariffs

Questions

- **Jim Brandell** has more than 20 years of government relations experience on state, federal and international levels. Mr. Brandell has extensive experience crafting and implementing legislative and political strategy; attracting, managing and retaining talented staff; and developing and managing multimillion dollar budgets. As Chief of Staff to Ways and Means Chairman Dave Camp for over a decade, Mr. Brandell led Chairman Camp's team on successful legislative issues, including trade agreement implementation, the first comprehensive tax reform bill in a generation, and health care reform proposals. He also served as chief liaison with Congressional leadership and the White House. Active in leadership roles at the state level, Mr. Brandell was Deputy Chief of Staff to Michigan Governor John Engler, where he served as chief liaison to all state and national political organizations and managed several administrative divisions within the executive office.
- **Andy Buczek** has over 20 years of federal public policy and political experience assisting clients in developing effective legislative, regulatory and political strategies. His practice focuses on building successful partnerships between the federal government and nonprofit organizations, higher education institutions, local governments and private industry, with an emphasis in the areas of housing, manufacturing, transportation, science and technology, as well as a wide array of local government and economic development projects. Prior to joining Dykema, Mr. Buczek developed a strong understanding of the workings of Congress as a senior legislative assistant for Congressman Jim Barcia, who represented the 5th District of Michigan. In that role, he advanced the Congressman's agenda in the areas of education, energy, environment, financial services, health care and manufacturing. Additionally, he was Congressman Barcia's designee to the House Science Committee, where he served as the Congressman's principal advisor on science and technology policy.
- **Mary Beth McGowan** has over 10 years of experience consulting a broad range of clients from local governments to nonprofit organizations to corporations on legislative and regulatory issues related to transportation, cybersecurity, electric power and energy, environmental policy, telecommunications, the appropriations process and federal budgetary matters. She works with clients to develop strategies to effectively advocate before Congress and the Executive Branch. Prior to joining Dykema, Ms. McGowan worked for six years on the staff of United States Senator Arlen Specter (R-PA) where she rose to serving as a policy advisor. In that role, she was actively engaged in all aspects of the legislative process with a focus on energy and environment policy.
- **Grant Gilezan** serves as Leader of Dykema's Environmental Law Practice Group. His environmental practice focuses on regulatory, transactional, contracting, policy and litigation matters involving private and public sector clients. He has experience in site remediation (specializing in multiparty cleanup projects involving large-scale engineering and construction efforts); facility audits; spill reporting; facility closure and redevelopment projects; air emission requirements (especially engine testing and coating); wastewater regulation; underground storage tanks; waste management; TSCA reporting; business and property sales and leases; lobbying on proposed legislation and rulemaking; contracting for environmental services, materials and equipment; and government enforcement, cost recovery and natural resource damage claims.