

# CLIENT ALERT

## The Month in International Trade – September 2018

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*This news bulletin is provided by the International Trade Group of Crowell & Moring. If you have questions or need assistance on trade law matters, please contact [Jeff Snyder](#) or any member of the [International Trade Group](#).*

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### **[TOP TRADE DEVELOPMENTS](#)**

#### **Latest U.S. Trade Actions/Tariffs and Other Countries Retaliatory Measures**

Finding it hard to stay on top of the latest in tariff increases?

[Please click here anytime](#) for the latest actions, covered products rate increases, and effective dates.

*For more information, contact: Dan Cannistra, Robert Holleyman, Bob LaFrankie, Spencer Toubia, Ru Xiao-Graham, Cherie Walterman*

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## GOODBYE, NAFTA. HELLO, USMCA...IN 2020?

After more than a year of negotiation, the United States, Mexico, and Canada reached an agreement to update the North American Free Trade Agreement (NAFTA), which governed trade among the three nations. The new agreement may not go into effect until 2020 because leaders from the three countries must sign it and then Congress and the legislatures of Canada and Mexico must approve it – a process that will take months.

The three NAFTA parties are expected to sign the agreement on November 30. After signing, for ratification in the United States, Trade Promotion Authority (TPA) procedures require the U.S. International Trade Commission (USITC) to perform an economic analysis of the agreement, for which it can take a maximum of 105 days. If USITC takes the maximum allotted time, Congress could vote on the agreement in March 2019 (though it is possible for this process to be accelerated). The November midterm elections in the United States could have an impact on whether and when the agreement will pass Congress.

Functionally, the proposed U.S.-Mexico-Canada Agreement (USMCA) picks up elements of the Trans-Pacific Partnership (TPP) and tightens others relative to what NAFTA provided. Essentially, the major accomplishment of the USMCA is to keep the three-country agreement in place, despite Trump's threats to withdraw from the NAFTA. Some think that President Trump could still threaten to withdraw from NAFTA as a means of pressuring Congress to act on the USMCA.

The USMCA makes a number of significant upgrades to environmental and labor regulations regarding Mexico. It also requires additional Intellectual Property protections. U.S. pharmaceutical companies are provided 10 years of protection against generic brands in Canada.

Some of the other key industry points in the proposed USMCA are that Canada made concessions on dairy in exchange for being able to keep in place Chapter 19, the dispute settlement mechanism for reviewing Antidumping/Countervailing Duty determinations. Canada has used this provision to challenge softwood lumber provisions.

Investor-state dispute settlement (ISDS) will phase out for Canada and be limited to certain sectors in Mexico – oil and gas; power generation services; telecommunication services; transportation services; and ownership or management of infrastructure.

Below is a breakdown regarding how the various industries might be affected:

- Steel and aluminum tariffs – remain in place, as do Mexico's retaliatory tariffs. These industries are subject to additional discussion.
- Autos/auto parts – The goal of the new deal is to have more cars and trucks made in North America. The side agreements with Canada and Mexico spell out how much trade would be excluded from any future section 232 tariffs in this sector if imposed. The auto and auto parts sector will have new rules of origin (with the hourly wage component of \$16/hour or "labor value content" required initially for 30 percent of the work accomplished, phasing up to 40 percent over three years) that could affect supply chain decisions. For example in order to qualify, a car or truck must have 75 percent of its components manufactured in the United States, Mexico, or Canada (this is up from the current 62.5 percent requirement).
- Textiles/apparel – More North American content is required. Tariff Preference Levels (TPL) allowing use of non-originating fabric will be more restrictive.

- Chemicals – a new approach to rules of origin for chemicals spells out a number of methodologies that could apply. This was an approach that industry wanted and is expected to make it easier for chemicals to qualify under the agreement. The industry had done a study under the NAFTA and found that only about half of chemicals transactions received duty-free treatment under NAFTA because the paperwork discouraged claiming the treatment.
- Dairy – Canada agreed to increase access under the USMCA to 3.59 percent (from the 3.25 percent that would have applied under TPP) and to eliminate Class 6 and 7 price mechanisms. But Canada will be required to establish safeguards (through specified price surcharges) to prevent surges in shipments of milk protein concentrates, skim milk powder and infant formula

The deal among the countries must be reviewed in six years before it goes into effect for the full 16 years. It will then be reviewed in another 16 years.

*For more information, contact: John Brew, Frances Hadfield, Melissa Morris, Evan Yu*

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## **U.S. AND JAPAN AGREE TO LAUNCH BILATERAL NEGOTIATIONS ON A “TRADE AGREEMENT ON GOODS”**

During discussions on the sidelines of the United Nations General Assembly in New York on 26 September, President Donald Trump and Japanese Prime Minister Shinzo Abe agreed to launch bilateral negotiations to reach what Abe termed a “Trade Agreement on Goods.” The [statement](#) issued by the two leaders of the world’s first and third largest economies envisages negotiations proceeding in two phases, the first designed to achieve market-opening largely through concessions in the agriculture sector as well as in automobile-related tariffs and on regulatory issues. A second phase of negotiations would extend to services and other issues of mutual interest, such as insurance, pharmaceuticals, and digital trade.

The decision to proceed with the bilateral agreement shields Japan from possible tariffs on autos and auto parts by the U.S. under a possible section 232 action so long as both sides are engaged in market-opening discussions. The negotiations may provide a pathway that could lead to the lifting of section 232 tariffs already in place on Japan’s steel and aluminum exports, although this is unclear.

The two leaders made clear that the bilateral agreement they foresee will be more limited in scope than the Trans-Pacific Partnership (TPP) from which President Trump withdrew the United States, and the other economic partnership agreements Japan has negotiated, including with the European Union. An important element in Prime Minister Abe’s decision to agree to bilateral negotiations was a concession by the United States that Japan’s market-opening in agriculture would not have to exceed the tariff and non-tariff concessions Japan had already made in these previous agreements.

The negotiations can proceed after both sides complete their respective domestic consultation procedures. For the United States, USTR Robert Lighthizer immediately began consultations with the relevant congressional committees, signaling that the negotiations themselves will proceed according to the President’s Trade Promotion Authority procedures and timelines. Action by the White House to notify Congress of the intention to proceed with negotiations triggers the start of a 90-day consultation period to define negotiating objectives before bilateral discussions can officially begin (although the two sides can begin to exchange trade data and other documentation to prepare for negotiations). The congressional consultations could identify additional issues and concerns that U.S. negotiators would need to take into account. Also during this period, USTR typically calls

for public comments from interested parties and usually schedules public hearings to accept testimony and written views to help determine U.S. negotiating priorities.

Much attention in these negotiations is certain to focus on the auto sector. The Trump-Abe statement specifically notes that an objective of the negotiations will be to “increase production and jobs in the United States in the motor vehicles industries.” This perspective raises a number of questions: Will the U.S. seek to restrain Japan’s motor vehicle exports? Will the U.S.-Mexico Trade Agreement’s rules of origin offer a prototype for similar rules for vehicles and components imported from Japan? Will Japan agree to accept fully the U.S. Federal Motor Vehicle Safety Standards? Will the U.S.-Japan agreement advance possibilities for the two partners to be able to expand joint R&D efforts to take full advantage of innovation and strategic capabilities? All these questions should be at the forefront of negotiators’ minds as they prepare to begin bilateral talks.

Other sectors that want to be part of an “early harvest” effort with Japan will also need to identify their priority interests and make these known to U.S. negotiators before U.S. objectives become set in stone. Developing priorities for the U.S. pharmaceuticals sector and accelerating negotiating outcomes to the first phase offer a particular example: What time period should industry seek for data exclusivity obligations for biopharmaceuticals? What transparency and consultation procedures should be in place to cover marketing approval and government pricing and reimbursement determinations? How should cross-border health data transfers be handled?

*For more information, contact: Melissa Morris, Robert Holleyman, Andrew Blasi, Evan Yu*

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## **PRESIDENT SIGNS MISCELLANEOUS TARIFF BILL (MTB) ACT OF 2018 – CUTS OR ELIMINATES TARIFFS ON 1,660 ITEMS**

On September 13, 2018, President Trump signed the [Miscellaneous Tariff Bill \(MTB\) Act of 2018](#), which temporarily reduces or eliminates import duties on specified raw materials and intermediate products used in manufacturing that are not produced or available domestically. It is intended to ensure that U.S. manufacturers are not at a disadvantage to their foreign competitors when sourcing manufacturing components.

The American Manufacturing Competitiveness Act of 2016 (AMCA) directed the International Trade Commission (ITC) to establish a process for the submission and consideration of MTB petitions for duty suspensions and reductions. It required the ITC to submit preliminary and final reports on the petitions to the House Committee on Ways and Means and the Senate Committee on Finance (Committees). The ITC’s preliminary report was submitted on June 9, 2017 and the final report was submitted on August 8, 2017. On September 4, 2018, the House agreed to Senate amendments, moving the legislation to the president for signature. The current MTB petition cycle is now complete. The next MTB petition cycle, for 2021 through 2023, will begin not later than October 15, 2019.

The duty suspensions and reductions are effective for goods entered or withdrawn from a warehouse for consumption on or after October 13, 2018, which is 30 days after the date of the enactment. The suspensions and reductions will last until December 31, 2020. All of the MTB provisions are in subchapter II to chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS). This language was added in a Federal Register Notice on August 16, 2018 ([83 Fed Reg 40,823 at page 40,825](#)). The notice also created a new U.S. Note 20(c) to Subchapter II of Chapter 99, HTSUS.

Of the 1,660 items are covered by the new law, roughly half are produced in China. Therefore, overlap between the MTB list and the Section 301 tariffs in effect, and those being considered exists. Goods originating in China are still subject to relevant Section 301 tariffs. On August 21, 2018, [U.S. Customs and Border Protection \(CBP\) issued](#) a message stating, “Products of China that are covered by the Section 301 remedy and that are eligible for special tariff treatment...or that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99, shall be subject to the additional 25 percent *ad valorem* rate of duty imposed by headings 9903.88.01 and 9903.88.02.

*For more information, contact: John Brew, Frances Hadfield, Aaron Marx, Edward Goetz*

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## **NEW OBLIGATION FOR BELGIAN ENTITIES TO REGISTER ULTIMATE BENEFICIAL OWNERS BY MARCH 31, 2019**

In 2015, the European Union adopted its Fourth Anti-Money Laundering Directive, which imposed on Member States the obligation to establish a register containing the details of the ultimate beneficial owners (UBOs) of corporate and other legal entities within the European Union (the so-called UBO register). By way of the Act of September 18, 2017, the UBO register became part of Belgian law, and a Royal Decree of July 30, 2018 now provides the required details about the operation of the Belgian UBO register. The Royal Decree obliges all Belgian companies, foundations, (international) non-profit organizations, fiduciaries, and trusts to submit information about their ultimate beneficial owners to this UBO register, which is administered by the Belgian Ministry of Finance. The information must be submitted by March 31, 2019.

### **Introduction**

The need for accurate and up-to-date information regarding beneficial ownership is key in tracing criminals who might otherwise hide their identity behind a corporate structure.

With this in mind, the [Fourth Anti-Money Laundering Directive \(Directive \(EU\) 2015/849 of May 20, 2015\)](#), implemented into Belgian law by the Act of [September 18, 2017](#), introduced an obligation on Member States to ensure that:

1. Corporate and other legal entities incorporated within their territory obtain and hold adequate, accurate, and current information on their beneficial ownership.
2. This beneficial ownership information is submitted by the directors of the entities in question and held in a national Ultimate Beneficial Owner register (UBO register).

Among other things, the Act of September 18, 2017 (i) added to article 14/1 of the Belgian Companies Code an obligation to obtain and hold adequate, accurate, and current information concerning beneficial ownership and (ii) provided for the Belgian UBO register to be controlled by a service of the Ministry of Finance.

However, the terms of operation of the Belgian UBO register still needed to be determined. These terms have now finally been set out in a [Royal Decree of July 30, 2018](#).

For more, please see [Crowell & Moring’s Client Alert](#).

*For more information, contact: Emmanuel Plasschaert, Frederik Van Remoortel, Steven Verbeke*

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## FINCEN GRANTS ROLLOVER AND RENEWAL EXCEPTION TO BENEFICIAL OWNERSHIP REQUIREMENT

On September 7, 2018, the Financial Crimes Enforcement Network (FinCEN) granted exceptive relief to “covered financial institutions”—banks, broker-dealers, mutual funds, and introducing brokers in commodities—from the requirement to identify and verify the identity of the beneficial owner(s) of their legal entity customers when those customers open a new account as a result of the following:

- A rollover of a certificate of deposit (CD).
- A renewal, modification, or extension of a loan (*e.g.*, setting a later payoff date) that does not require underwriting review and approval.
- A renewal, modification, or extension of a commercial line of credit or credit card account (*e.g.*, a later payoff date is set) that does not require underwriting review and approval.
- A renewal of a safe deposit box rental.

This exceptive relief applies only to the rollover, renewal, modification, or extension of any of these types of accounts on or after May 11, 2018 (the date on which covered financial institutions became obligated to collect and verify beneficial ownership information), and does not apply to the initial opening of such accounts. The exceptive relief does not affect the other obligations that covered financial institutions have under the Bank Secrecy Act (BSA) and its implementing regulations with respect to such accounts. This includes, in particular, the obligation that covered financial institutions have to understand the “nature and purpose” of customer relationships and to “conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.”

For more information, please see [Crowell & Moring's Client Alert](#).

*For more information, contact: Carlton Greene, Scott Lessne, Erik Woodhouse, Nimrod Aviad*

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## CROWELL & MORING WELCOMES

**Pierce Lee** is an associate in Crowell & Moring’s International Trade Group and a resident in the firm’s Washington, D.C. office. He re-joins Crowell after nearly two years at POSCO, one of the world’s largest steelmakers, where he served as the International Trade Counsel and Deputy Director of Government Relations for the company’s U.S. operations. At Crowell & Moring, Pierce’s practice will focus on all areas of trade remedies, import regulatory compliance, and international trade litigation.

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## CROWELL & MORING SPEAKS

John Brew is speaking at the Arizona Manufacturer's Summit in Phoenix on October 5, 2018. John will be on a panel entitled "Trade, Tariffs, and Foreign Trade Zones." Topics will include the new U.S.-Mexico-Canada Agreement (USMCA), the China Section 301 investigation, and the Section 232 national security cases on the import of certain steel and aluminum products, as well as other countries retaliatory tariffs.

Jeff Snyder will speak by invitation at the World Customs Organization's 13th annual Picard Conference in Malatya, Turkey, October 9-11, 2018. Jeff will present on "Global Trends in Customs Matters," showcasing the articles and issues addressed in the Global Trade & Customs Journal (Jeff serves as the General Editor) over the past year. Jeff will also be moderating two panels, at the invitation of the WCO Research Unit, on "Trade Facilitation: An Optimal Policy for Cross-Border Trade" and "Connectivity in Customs."

On September 20, 2018, the Los Angeles Office of Crowell & Moring, LLP hosted a regional Inter-Pacific Bar Association (IPBA) program entitled, "Doing Business in and With Asia," including presentations by Crowell & Moring lawyers Derek Hahn on anti-corruption and the rule of law, and Jeff Snyder on Trade Under Trump: Section 301, Russia, Iran, and Export Controls. A report on the program can be found here. For more information, contact Jeff Snyder at [jsnyder@crowell.com](mailto:jsnyder@crowell.com).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

### **Jeffrey L. Snyder**

Partner – Washington, D.C.  
Phone: +1 202.624.2790  
Email: [jsnyder@crowell.com](mailto:jsnyder@crowell.com)

### **Frances P. Hadfield**

Counsel – New York  
Phone: +1 212.803.4040  
Email: [fhadfield@crowell.com](mailto:fhadfield@crowell.com)

### **Edward Goetz**

Manager, International Trade Services – Washington, D.C.  
Phone: +1 202.508.8968  
Email: [egoetz@crowell.com](mailto:egoetz@crowell.com)

### **John B. Brew**

Partner – Washington, D.C.  
Phone: +1 202.624.2720  
Email: [jbrew@crowell.com](mailto:jbrew@crowell.com)

### **Evan Yu**

C&M International Senior Consultant – Washington, D.C.  
Phone: +1 202.508.8846  
Email: [eyu@crowell.com](mailto:eyu@crowell.com)

**Robert Holleyman**

Partner and C&M International President & CEO – Washington, D.C.

Phone: +1 202.624.2505

Email: [rholleyman@crowell.com](mailto:rholleyman@crowell.com)

**Aaron Marx**

Counsel – Washington, D.C.

Phone: +1 202.624.2751

Email: [amarx@crowell.com](mailto:amarx@crowell.com)

**Carlton Greene**

Partner – Washington, D.C.

Phone: +1 202.624.2818

Email: [cgreene@crowell.com](mailto:cgreene@crowell.com)

**Scott Lessne**

Senior Counsel – Washington, D.C.

Phone: +1 202.624.2597

Email: [slessne@crowell.com](mailto:slessne@crowell.com)

**Nimrod Haim Aviad**

Partner – Los Angeles

Phone: +1 213.443.5534

Email: [naviad@crowell.com](mailto:naviad@crowell.com)

**Emmanuel Plasschaert**

Partner – Brussels

Phone: +32.2.282.4084

Email: [eplasschaert@crowell.com](mailto:eplasschaert@crowell.com)

**Frederik Van Remoortel**

Partner – Brussels

Phone: +32.2.282.1844

Email: [fvanremoortel@crowell.com](mailto:fvanremoortel@crowell.com)