U.S. Chamber of Commerce

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North America Trade Policy
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Submission on the Canada–United States–Mexico Agreement (CUSMA)

To Whom It May Concern:

The U.S. Chamber of Commerce ("the Chamber") greatly appreciates the opportunity to provide comments on behalf of our members to Global Affairs Canada regarding the open consultation on the Canada–United States–Mexico Agreement (CUSMA). The Canadian government has stated it intends to use these comments as part of a public consultation process to inform the joint review in 2026 of the CUSMA (in the U.S. referred to as USMCA).

The CUSMA has delivered substantial benefits to North American workers, farmers, ranchers, and businesses. North American trade supports approximately 2 million Canadian jobs and 13 million American jobs—and millions more in Mexico. This commerce has been a cornerstone of economic growth, fostering high-wage employment and bolstering competitiveness.

As a U.S.-based organization, our perspective on the American economy is perhaps relevant across the continent. U.S. manufacturers export more made-in-America goods to Canada and Mexico than to the next 12 largest export markets combined, while the two countries account for one-third of all U.S. agricultural exports. Additionally, Canada and Mexico are the top two export destinations for U.S. small and medium-sized businesses, with over 100,000 SMEs selling their goods and services to these markets. We expect similar things can be said in Canada and Mexico.

Areas that Work Well in CUSMA

Thanks in large part to the CUSMA, trade between Canada, the United States, and Mexico has grown significantly in recent years, reaching nearly $2 trillion. By providing duty-free access to nearly all goods traded among the three countries, CUSMA has established state-of-the-art rules to facilitate trade and investment, eliminate non-tariff barriers, and implement effective dispute settlement mechanisms.

Retaining the trilateral nature of CUSMA is essential, as consistent trade rules across North America reduce compliance costs and avoid unnecessary complexity, particularly in an era of heightened supply chain transparency requirements.

The CUSMA has fostered co-production in agriculture and manufacturing, particularly in sectors such as automotive, aerospace, medical goods, textiles and apparel, and forest products. These partnerships leverage the unique strengths of the three economies, creating efficiencies that enable companies to produce high-quality products at lower costs. Lower costs, in turn, are the foundation of higher living standards and enhanced global competitiveness.

For example, agriculture demonstrates how companies can capitalize on country-specific strengths. Certain foods and ingredients cannot be sourced locally in sufficient quantities due to limited production in the United States. Oat production, for instance, has declined in the U.S. since the 1940s, while Canada has become the world's largest producer and exporter of oats. More than 90% of oats milled for food in the U.S. are sourced from Canada, supporting thousands of U.S. jobs. Similar examples exist in industries reliant on pulp, fiber, cansheet, and other materials.

The CUSMA bolstered North American energy production, fostering a reliable and stable source of North American energy to international markets. Canada is an important supplier of heavy crude oil to U.S. refineries and the leading source of imported natural gas. Integrated energy markets and cross-border trade in oil, natural gas, and critical minerals provide North America with significant competitive advantages. Strengthening regional energy security and streamlining processes should remain a priority in the CUSMA joint review.

CUSMA's rules chapters have delivered significant benefits and should be maintained for clarity and consistency. Simplified certification of origin has reduced costs for businesses and customers, while the agreement's disciplines have encouraged pro-growth policies in Canada and Mexico. Notably, CUSMA has delivered concrete gains for small and medium-sized enterprises (SMEs). According to the 2025 FedEx Trade Index, 91% of SMEs across the three countries expressed approval of the agreement.

Digital trade has also benefited from the agreement, which established best-in-class rules to foster growth in the digital economy, ensuring the free flow of data across borders and prohibiting data localization requirements. In 2023, U.S.-Canada trade in digitally deliverable services reached $83.5 billion dollars according to the Bureau of Economic Analysis.

Provisions on regulatory cooperation and trade facilitation have streamlined customs procedures, reduced non-tariff barriers, and improved transparency. These measures have enhanced supply chain efficiency and supported the competitiveness of North American businesses

Areas of Potential Improvement

The Chamber has consistently emphasized that a trade agreement is only as effective as its enforcement. In alignment with this perspective, the joint review of the CUSMA presents a critical opportunity to prioritize compliance with the agreement's terms. It is essential that all three governments hold one another accountable to fully implement CUSMA to unlock its full potential and deliver its promised benefits.

In the case of Canada, our member companies remain concerned about Canada not fully meeting its obligations in areas such as its agricultural commodity supply management system, including enhanced market access for U.S. dairy products. Additional concerns include intellectual property protections, such as patent term adjustment and extension, and discriminatory policies in sectors like digital trade (e.g., the Online Streaming Act) and healthcare (e.g., PMPRB pricing policies). These issues not only hinder the agreement's effectiveness but also create uncertainty for businesses operating in Canada. For a detailed list of compliance issues and recommendations, please refer to Annex I.

The Chamber has been clear that the U.S. also faces compliance challenges, particularly regarding the imposition of new tariffs on goods from Canada and Mexico. These tariffs, many of which have been applied under Section 232 of the Trade Expansion Act of 1962, are inconsistent with CUSMA's core commitment to tariff-free trade within North America. Tariffs on Canadian and Mexican steel, aluminum, autos, commercial vehicles, copper, and lumber impose significant costs on manufacturers and consumers, particularly in the auto manufacturing sector, the largest manufacturing subsector in the United States. These tariffs undermine the competitiveness of U.S. industry and strain the economic relationship with Canada, a close ally and integral part of the U.S. defense industrial base.

Canada's role as a critical partner in the U.S. defense and technology industrial base further underscores the importance of maintaining tariff-free trade. For example, the U.S. tariff on Canadian aluminum is counterproductive, as replacing Canadian

imports with domestic production would require decades of investment and significant additional electricity production. These tariffs not only harm U.S. manufacturers but also undermine the price competitiveness of U.S. goods in the Canadian market, despite the United States maintaining a significant manufactured goods trade surplus with Canada.

Mexico also presents compliance challenges in a manner that undermines trade and investment opportunities for its CUSMA partners. Mexico's constitutional reform poses significant challenges to judicial independence and regulatory autonomy, directly conflicting with critical provisions of the CUSMA. These include requirements for independent labor dispute judges and autonomous regulatory bodies in key sectors and areas such as antitrust, energy, and telecommunications. As the Chamber has previously stated, absent adjustments, these legal and regulatory changes risk undermining the rule of law and the guarantees of protection for business operations in Mexico, including the minimum standard of treatment under the CUSMA. The reforms are at odds with Mexico's obligations under the CUSMA and other international treaties to provide all with the right to a competent, independent, and impartial judicial system. Additionally, Mexico presents significant compliance-related challenges in areas including agriculture, digital trade, energy, financial services, intellectual property, regulatory and government procurement, and trade facilitation—including several non-tariff barriers. It is worth highlighting that both the U.S. and Canada initiated consultations with the Government of Mexico on its recent energy policies that have reversed the 2013 liberalization of the energy sector and tilt the playing field toward state-owned Petróleos Mexicanos (PEMEX) and the Federal Electricity Commission (CFE).

The CUSMA joint review must focus on compliance and enforcement to ensure the agreement achieves its full potential. As allies and partners, Canada, Mexico, and the United States must honor their commitments under CUSMA to strengthen North America's competitiveness and economic integration. The Chamber has shared these sentiments with the U.S. government and remains committed to working with all parties to address these challenges and advance the shared goals of the agreement.

Additional recommendations for trilateral improvements under CUSMA:

- Automotive Rules of Origin
  The CUSMA's automotive rules of origin are among the most restrictive of any trade agreement, imposing significant compliance burdens on the industry. While these rules have driven investments in vehicle manufacturing, further restrictions could hinder growth and competitiveness.

  Recommendation: Ensure that automotive rules of origin remain clear, implementable, and supportive of North American competitiveness.

- Digital Trade Enhancements
  While the Digital Trade chapter has been successful, it can be enhanced to keep up with technology advancements. Additional consultation and annex agreements on key topics can build on its foundation. For example, the agreement could address emerging issues such as artificial intelligence, cybersecurity, and trusted technology.

  Recommendation: Harmonize cloud and AI regulation across the region that enables uptake of these technologies. Avoid fragmented AI regulatory, safety, and governance standards by promoting good regulatory practices, including forbearance from regulatory practices that inhibit the development of AI. Establish a Committee on Digital Trade to coordinate practices and address new challenges in the digital economy.

- Gold Bullion and Other Precious Metals
  Trade in gold bullion (HTS 9903.01.10) presents unique challenges that require accommodation under the CUSMA. Currently, gold mined and refined in Canada retains its Canadian origin if transported within CUSMA countries. However, if the gold is moved to and clears customs in a non-CUSMA country, it loses its preferential treatment under CUSMA and becomes subject to the 35% “fentanyl” tariff currently in force.

  Interestingly, if Canada-originating gold bars are further refined in a non-CUSMA country, such that they acquire that country’s origin, they could then be imported into the United States tariff-free, as certain forms of gold are exempt from “reciprocal” tariffs. This creates an inadvertent and costly imposition of tariffs on CUSMA trade, despite the significant role precious metals play in the global economy.

  Recommendation: The Canadian government should advocate for adjustments to CUSMA rules to ensure that all gold (and other precious metals) originating in North America receives duty-free treatment, even if transported to and cleared through customs in non-CUSMA countries, provided it has not been transformed in a way that changes its country of origin. Such a change would prevent unnecessary costs and disruptions in the trade of precious metals, supporting the competitiveness of North American industries in the global market.

Conclusion

The CUSMA has been a cornerstone of North American economic integration, delivering substantial benefits to businesses, workers, and consumers across the region. To fully realize its potential, the agreement must evolve to address compliance

challenges, enhance investment protections, and adapt to emerging economic and technological trends.

The U.S. Chamber of Commerce remains committed to working with the U.S. administration and its North American partners to strengthen the CUSMA and ensure its continued success.

Sincerely,

Neil Herrington
Senior Vice President, Americas
U.S. Chamber of Commerce

Annex I: CUSMA Compliance Issues

Agriculture

The Canadian government made hard-won commitments in CUSMA to marginally increase its dairy market access and establish disciplines on its artificially low-priced dairy protein exports that undercut producers in the United States. Unfortunately, Canada has not upheld its commitments on both fronts. Since the agreement's implementation, the Canadian government has administered its dairy tariff rate quotas (TRQs) in a manner that reserves the majority of the TRQs for Canadian processors, who have little incentive to import, while excluding retailers, restaurants, and other stakeholders throughout the supply chain. As a result, many of the TRQs remain unfilled at the end of the year, despite strong demand. Additionally, Canada has attempted to circumvent its CUSMA nonfat milk solid export disciplines by minimally processing the products subject to export thresholds and increasing export volumes through alternative dairy tariff codes.

More specifically, Canada has been accused of undermining market access by reserving the majority of TRQ shares for dairy processors, effectively blocking access for retailers and food service operators. This practice contradicts the intent of CUSMA and has resulted in persistently low fill rates across several dairy product categories, such as whey powders, fluid milk, and skim milk powder. Furthermore, Canada has exploited export surcharge loopholes by shifting dairy protein production processes to evade CUSMA export surcharges, particularly through the creation of a new Class 4a pricing structure. This has enabled the export of products like milk protein isolates and skim milk powder blends under alternate tariff codes, negatively impacting U.S. dairy producers.

Recommendation: The Chamber urges the Canadian government to fully uphold all its CUSMA dairy trade commitments as intended by the agreement's negotiators.

Digital

Online Streaming Act

Canada's Online Streaming Act (Bill C-11), which entered into force in April 2023, updated Canada's Broadcasting Act to regulate online streaming services and provided discretion to the Canadian Radio-television and Telecommunications Commission (CRTC) on how to implement it. On June 4, 2024, the CRTC issued a decision to require foreign, largely U.S.-based, music and audiovisual streaming service providers to pay 5% of their gross in-country revenue to certain Canadian cultural funds. In addition to the levy, the CRTC is designing additional discriminatory

measures that target U.S. companies, including local content quotas and content discoverability mandates. The CRTC may also increase the financial levy to as high as 30%. In total, the Online Streaming Act could cost U.S. industry as much as $7 billion by 2030.

Recommendation: If full repeal of the Online Streaming Act is not possible, we urge for a full reversal of existing discriminatory implementation decisions, such as the 5% financial levy, and a commitment that future decisions will not raise the levy or otherwise impose discriminatory obligations on U.S. companies, including local content quotas and discoverability requirements.

Intellectual Property

Develop stronger IP commitments

CUSMA reflected the strongest IP protections ever achieved in a North American free trade agreement, and the Chamber maintains Canada should seek to restore the previously agreed IP protections. During the initial CUSMA negotiations, the three parties agreed that Canada and Mexico would provide ten years of RDP for biologic medicines, bringing that RDP closer to the 12-year period provided by the United States. Unfortunately, that provision was ultimately eliminated from the final version of CUSMA, which currently only requires that Canada and Mexico provide five years of RDP for new biologics, far short of the 12 years that the United States provides. The final version of the CUSMA also weakened or removed provisions concerning RDP for new clinical information and patents for new uses, methods, and processes.

Recommendation: Canada should seek to restore the previously agreed IP protections of 10 years of RDP for biologic medicines.

Patent Term Adjustment

As part of commitments made under the CUSMA, Canada agreed to introduce a patent term adjustment (PTA) mechanism. The purpose of this mechanism is to compensate patent applicants for any undue delay in prosecuting their patent applications. Canada's PTA system came into effect on January 1, 2025. However, it has been assessed that due to Canada's implementation approach, obtaining PTA will be difficult, if not impossible, for most applicants. Furthermore, any PTA granted is set to run concurrently with a separate and distinct form of term restoration, namely, supplementary protection for biopharmaceutical patents. These two forms of patent term restoration are intended to address different types of regulatory delays and should operate independently.

PTA is designed to compensate for what CUSMA terms "unreasonable" delays in patent prosecution, in this case by the Canadian Intellectual Property Office (CIPO). On the other hand, Certificates of Supplementary Protection (CSP) for biopharmaceutical patents are intended to restore time lost during the marketing authorization process for new medicines and biopharmaceutical technologies, overseen by Health Canada. These forms of patent term restoration are distinct, as reflected in the separate commitments under Articles 20.44 and 20.46 of CUSMA.

Additionally, the PTA application process lacks clear timelines for critical steps, while also allowing for deductions of delays that could not be avoided by the innovator despite their best efforts (e.g., insufficient time provided to respond to information requests from CIPO). Moreover, where applicants are granted shorter patent term adjustments and wish to apply for redetermination, the Commissioner for Patents can only either shorten the adjustment term or dismiss the application. As a result, the only meaningful remedy available is to initiate costly and lengthy judicial proceedings.

Recommendation: Canada should implement a PTA system that fully satisfies the requirements of Article 20.44 of CUSMA, operating independently from its separate CSP system. The PTA system should include a clear and transparent calculation methodology, reasonable timelines to facilitate cooperation with the patent office, and an effective redetermination procedure that allows for upward adjustments to the granted PTA where justified.

Certificates of supplementary protection (CSP)

The Canadian government's interpretation and implementation of its commitments under the CUSMA closely mirrors its approach to the introduction of the Certificate of Supplementary Protection (CSP) mechanism under the earlier Comprehensive Economic and Trade Agreement (CETA) with the European Union. The relevant amendments to the Patent Act (Sections 106–134) and the implementing regulations published in the Canada Gazette provide—on paper—a maximum restoration period of two years, which is significantly shorter than the five-year maximum restoration period available in the United States. However, the effective availability of this restoration period has been severely restricted through several technical carve-outs.

First, under Section 116(4), the Canadian government retained the discretion to reduce the term of protection. Second, the implementing regulations introduced a non-treaty "Timely Submission Requirement," which limits eligibility to medicines for which a new drug submission is made within one year of the first regulatory submission in a set of "prescribed economies" (i.e., the EU, UK, U.S., Australia, Switzerland, and Japan). This effectively ties the availability of a CSP to timely comparative market entry. Additionally, eligibility for a CSP excludes certain new drug

submissions based on a list of variations of medicinal ingredients, an exception that is absent from the U.S. system. Finally, the law includes an export carve-out, with Section 115(2) exempting the infringement of CSP protection if the activity is exclusively for export purposes. This exemption, which is not foreseen in CUSMA, results in the CSP offering less protection than the underlying patent to which it relates.

Recommendation: The Canadian government should adjust the CSP framework to provide restoration of term up to five years, aligning with international standards. Limitations on eligibility tied to timely regulatory submission requirements or variations of medicinal ingredients should be removed. Additionally, the CSP, as a sui generis right, should provide the same level of protection as the underlying patent, including the elimination of the export manufacturing waiver.

Data protection for biologics

Canada currently provides only eight years of data protection for biologic medicines, which is below the ten years offered in leading jurisdictions such as the United States, the European Union, and Japan. This shortfall undermines incentives for biologics research and manufacturing and is inconsistent with the objectives of CUSMA, which envisions adequate and effective protection for biologic data.

Recommendation: Canada should extend data protection for biologics to at least ten years, consistent with leading jurisdictions, to strengthen innovation incentives, attract investment, and ensure a globally competitive environment for life sciences.

Patent Enforcement System

Article 20.78 of the Canada-United States-Mexico Agreement (CUSMA) requires parties to ensure that their laws include enforcement procedures, including "expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements." However, Canada's damages system under Section 8 of the PM(NOC) regulations creates significant challenges for innovators. The system provides for excessive damages and discourages innovators from adequately enforcing their rights by seeking an order to prevent follow-on product manufacturers from obtaining a Notice of Compliance when they believe the product is covered by a valid patent.

Section 8 allows follow-on product manufacturers to seek damages for lost profits resulting from the innovator's enforcement action if the patent is subsequently found invalid. This principle is fundamentally flawed, as damages should only be justified if the innovator acted in bad faith by initiating the action while knowing the

patent was invalid or not infringed. Furthermore, Canadian courts have interpreted Section 8 in a manner that permits excessive damages, often exceeding the actual damage incurred or the total value of the generic market.

Recommendations: The Canadian government should address these issues during the CUSMA joint review by limiting 1) The scope of the damage provisions to cases where the rights holder willingly acts in bad faith. 2) The amount of damages so that it cannot exceed the actual profits lost, which should be determined in relation to the generic market value. These changes would ensure that Canada's enforcement procedures align with CUSMA's requirements while maintaining a fair and balanced system for all parties involved.

Standard for Disclosure of Confidential Business Information (CBI)

In November 2014, Canada enacted legislation to update its Food and Drugs Act (Bill C-17). Provisions in this law grant the Health Minister discretion to disclose a company's confidential business information (CBI) without notice to the owner of the CBI. However, the disclosure provisions in Bill C-17 are inconsistent with Canada's obligations under the CUSMA, which requires that CBI be protected against disclosure except where necessary to protect the public. Under these provisions, it is not necessary for there to be a serious risk of injury to justify the disclosure; rather, the provisions merely require that the Minister believes the disclosure to be necessary. The Act permits the Minister to disclose CBI to individuals involved in "the protection or promotion of human health or safety of the public," though there is no necessity requirement for this disclosure to occur. CUSMA, however, does not refer to disclosure for the promotion of health but rather limits disclosure to instances where it is needed to protect public health.

Recommendation: The Canadian government should ensure that the regulations and guideline documents implementing the Food and Drugs Act are fully consistent with Canada's CUSMA obligations regarding the protection of confidential business information.

Pharmaceuticals

Market Access Barriers: Artificial devaluation of innovative medicines & reimbursement delays

Despite being one of the largest and most advanced economies in the world, Canada continues to implement policies that artificially devalue innovative medicines and limit patient access to these treatments. The Patented Medicines Prices Review Board (PMPRB) sets maximum prices for all patented medicines sold to public or private payers by referencing prices in other countries. In 2022, Canada removed the

United States and Switzerland from its reference basket of countries, artificially lowering prices and exacerbating the issue of Canada not contributing its fair share to pharmaceutical innovation.

Furthermore, it takes approximately two years following regulatory approval for a medicine to reach patients insured on public drug plans. This delay is caused by lengthy sequential administrative processes and federal-provincial pricing negotiations through the pan-Canadian Pharmaceutical Alliance (pCPA), followed by individual jurisdictional funding agreements. These measures deprive innovators of revenue and market access while allowing Canada to benefit from pharmaceutical innovations without adequately contributing to the costs of their development.

Canada also remains one of the few advanced economies without a dedicated regulatory framework for orphan drugs. Medicines for rare diseases must navigate the same approval process as all other drugs, creating uncertainty for developers and discouraging investment in treatments for small patient populations. Establishing a predictable and incentive-based framework, similar to those under the U.S. Orphan Drug Act and EU Orphan Regulation, would encourage rare-disease innovation and improve patient access to breakthrough therapies.

Recommendations:

- Sunset the PMPRB or reinstate the United States in the reference country basket and continue applying the PMPRB International Price Comparison Test using the Highest International Price standard.
- Improve Canada's drug review and reimbursement system to ensure more efficient, transparent, and timely access to medicines for patients.
- Implement and expand an accelerated access pathway for new innovative medicines.
- Ensure Canada's Drug Agency refines its assessment framework to better capture the value of innovation – including modernizing outdated quality-adjusted life year (QALY) thresholds – and to recognize the broader economic, health system, and patient benefits of new medicines.
- Ensure the pCPA recognizes the value of innovation and reflects this in its pricing decisions.
- Canada also remains one of the few advanced economies without a dedicated regulatory framework for orphan drugs. Medicines for rare diseases must navigate the same approval process as all other drugs, creating uncertainty for developers and discouraging investment in treatments for small patient populations. Establishing a predictable and incentive-based framework, similar to those under the U.S. Orphan Drug Act and EU Orphan Regulation, would

encourage rare-disease innovation and improve patient access to breakthrough therapies.

These changes would help ensure that Canada contributes fairly to pharmaceutical innovation while improving timely access to life-saving medicines for Canadian patients.

Unfair Government Procurement Practices

Recent procurement practices may not align with Canada's obligations under Chapter 13 of the Canada-United States-Mexico Agreement (CUSMA), particularly regarding national treatment and non-discrimination requirements (Article 13.4.1). Concerns about unfair treatment include potential preferences for locally produced vaccines, provincial preferences not being considered in federal procurement processes, price outweighing recognized value, winner-take-all tenders, and a lack of transparency and fairness in procurement practices.

Recommendation: The Canadian government should ensure that future tenders fully adhere to its government procurement obligations under CUSMA, particularly those related to national treatment, fairness, and transparency.

Trade Facilitation

The Canada Border Services Agency (CBSA) recently implemented the latest phase of the CBSA Assessment and Revenue Management System (CARM), which has added complexity and increased compliance costs. For instance, CARM has eliminated the ability for importers to make blanket corrections to customs entries, instead requiring individual corrections for each entry.

Recommendation: Canada's CARM system presents significant challenges and would benefit from permanent modifications to streamline processes and remove bottlenecks, ensuring smoother operations for exporters and importers alike.

Zero Plastic Waste Agenda

Industry supports policies that align and grow a circular economy across the North American market, promote product and waste lifecycle management, and enable innovation in collection, management, and recycling infrastructure systems. However, Canada's Zero Plastic Waste Agenda—including compostability and recyclability labeling, bans on single-use plastics, and cross-border trade restrictions—creates negative impacts on trade and restricts U.S. food and agriculture exports. Other policies, such as the potential listing of certain essential chemistries as toxic under Schedule 1 of the Canadian Environmental Protection Act, are not aligned

with current U.S. approaches. If finalized, these measures could limit economic interests, restrict access to key materials, and hinder circularity in critical sectors, including automotive and aerospace.

For instance, Canada's Federal Plastic Registry—which requires companies to report data on plastic packaging, electrical equipment, and single-use or disposable plastic products—imposes significant administrative and compliance burdens. These include increased costs, duplicative reporting, and reduced competitiveness for industries operating across all three economies. The next phase of reporting, set to take effect in September 2026, would exacerbate these concerns by expanding requirements to include resin manufacturers and importers, plastic waste generated at facilities, and end-of-life plastic.

Recommendations:

- Review Canada's Zero Plastic Waste Agenda and engage with the private sector and trade partners to ensure science- and risk-based approaches to address plastic pollution. This review should consider barriers to trade, the viability of alternatives, increased costs to consumers, restrictions on U.S. exports, and alignment for a circular economy across North America.
- Cancel or pause the implementation of Phase 2 of the Federal Plastic Registry to allow for meaningful stakeholder engagement and a full impact assessment. This should include a thorough evaluation of Phase 1 to ensure that any subsequent requirements are practical, effective, and aligned with international best practices and CUSMA trade obligations.