

First-Ever Anticorruption Chapter Included in USMCA

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For the first time, anticorruption has been addressed in the trade agreement between the United States, Mexico, and Canada. Specifically, the United States-Mexico-Canada Agreement (USMCA) that was signed into law by President Trump on Jan. 29, 2020, includes the first-ever chapter on corruption. Anticorruption was not formally addressed in the North American Free Trade Agreement (NAFTA), the precursor agreement to the USMCA.

This new anticorruption chapter represents an official commitment by the United States, Mexico, and Canada to support each nation's efforts to combat bribery and corruption. While President Trump signed the USMCA into law, Canada still needs to ratify the deal, and all three countries must implement the terms of the agreement. Specifically, they will need to align their domestic rules with the terms of the anticorruption chapter, as well as the USMCA as a whole.

The anticorruption chapter requires each party to adopt or maintain standards that prohibit a public official from soliciting or accepting a bribe; bribing a public official, including a foreign public official; and aiding or abetting any such offenses. All parties must also adopt or maintain standards to protect accusers that report to competent authorities. Interestingly, the anticorruption chapter requires parties to encourage enterprises to prohibit facilitation payments – these are so-called grease payments to expedite routine governmental action that involves nondiscretionary acts. Currently, the United States Foreign Corrupt Practices Act (FCPA) permits facilitating payments.

The anticorruption chapter includes an entire subsection dedicated to promoting integrity among federal public officials. Specifically, it requires parties to adopt standards for selection and training of individuals for public positions considered especially vulnerable to corruption. The anticorruption chapter also requires parties to adopt or maintain measures on maintenance of books and records, financial statement disclosures, and accounting and auditing standards to prohibit bribe payments. This would give regulators the ability to prosecute companies that record improper payments as proper payments in their books and records, e.g., recording a bribe as a consultancy fee. The anticorruption chapter also encourages all parties to call upon the private sector to develop internal controls, ethics and compliance programs, or measures to prevent and detect bribery and corruption in international trade and investment.

Although each of the United States, Canada, and Mexico currently imposes its own laws designed to combat corruption and bribery, the official inclusion of the anticorruption chapter within the USMCA highlights the joint commitment to combatting corruption and bribery. Fines and penalties for

violations of the relevant laws can be significant, and the inclusion of an anticorruption chapter in the USMCA indicates that the three signatory nations will work together to prosecute violations. The United States, for example, continues its aggressive enforcement of the FCPA, [resulting in approximately \\$2.65 billion in fines and penalties in 2019](#). While not as aggressive as the United States' enforcement, Canada fined two individuals and executed one deferred prosecution agreement in 2019 for violating the Corruption of Foreign Public Officials Act. Mexico, which rose eight places to rank as the 130th least corrupt nation out of 180 countries according to the 2019 Corruption Perceptions Index reported by Transparency International, continues to be the lowest ranked among the 36 OECD countries. The first ever Mexican Chief Anticorruption Prosecutor, Luz Mijangos Borja, recently reported that the agency is working on 680 opened investigations. However, the number of enforcement actions remains undisclosed.

Further, the new corruption chapter underscores the importance for U.S., Mexican, and Canadian businesses to maintain effective anti-bribery and anticorruption compliance programs. Like the U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC), Mexico's Federal Administrative Law Court that enforces the *Ley General de Responsabilidades Administrativas* takes into account the effectiveness of a compliance program when imposing penalties. There are a number of requirements for such programs to be considered "effective" under Mexican law, but many of the requirements come from the results of cases abroad, including those pursued by the DOJ and SEC. The anticorruption chapter indicates the continued cooperation and commitment to reinforcing each nation's existing anticorruption and anti-bribery laws, which will likely result in heightened scrutiny and an increase of enforcement activities.

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National Law Review, Volume X, Number 37

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