



How Is USMCA Stronger Than TPP?

1. More Predictability for Cross-Border Data Transfers within North America

The United States-Mexico-Canada Agreement (USMCA) increases predictability for American consumers and businesses by declaring that the APEC Cross-Border Privacy Rules (CBPRs) are a “valid mechanism” to facilitate cross-border data transfers. Trans-Pacific Partnership (TPP) did not provide this recognition.

The USMCA aligns the legal framework for digital trade exceptions in the USMCA with the corresponding framework in WTO agreements, thereby increasing legal certainty. TPP was less clear.

The USMCA helps the US banking sector in foreign markets by extending to financial services the prohibition on cross-border data transfer restrictions. TPP did not provide those same protections to financial services.

2. Better IP Protections for American Software Algorithms

The USMCA strengthens IP protection for American software by extending to algorithms the prohibition on forced transfer or disclosure of software source code. TPP did not cover algorithms.

3. Increased Legal Certainty Abroad for US Interactive Computer Services

The USMCA contains a new provision relating to non-IP liability and safe harbors for interactive computer services, consistent with section 230 of the Communications Decency Act. TPP did not contain this provision.

4. New Provisions that Bolster America’s Competitive Edge in Artificial Intelligence and Data Analytics

The USMCA is designed to bolster America’s competitive edge in artificial intelligence and data analytics, by promoting access to government-generated public data. TPP did not contain this provision.

5. Bolstering Cybersecurity Standards and Protecting American Digital Exports from Disguised Trade Barriers

The USMCA will bolster America’s cyber defense, while deterring other countries from citing cybersecurity as a pretext for disguised trade restrictions and market access barriers. The USMCA uses stronger language than TPP, and calls for a “risk-based approach” to cybersecurity drawn from NIST framework.