Global Economy and Development
at BROOKINGS

JULY 2022

USMCA AT 2: VISIONS FOR NEXT STEPS

Edward Alden
Antoni Estevadeordal
Goldy Hyder
C.J. Mahoney
Eric Miller
Arturo Sarukhan

Edited by

Joshua P. Meltzer

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Introduction

Joshua P. Meltzer

July 1, 2022 marks the second anniversary since the U.S.-Mexico-Canada Agreement (USMCA) came into force. Over the last two years, trade among the North American partners has recovered to pre-pandemic levels having grown 22 percent since 2020 to a total of 1.26 trillion in 2021. It is also worth recalling that for each party to USMCA, trade with the other two parties represents their most important international trade relationship. Over the last two years, the effectiveness of USMCA in managing economic relations has also been demonstrated repeatedly. For instance, the new USMCA Rapid Response Mechanism for labor complaints has been used four times to strengthen free voting and union representation at manufacturing facilities in Mexico. The USMCA State-to-State Dispute Mechanism has delivered results on U.S. complaints over access to the Canadian dairy market, and Canada and Mexico are challenging the U.S. approach to rules of origin for motor vehicles. Trade disputes are to be expected in a $2.6 million-per-minute trade relationship—what is significant is the turn to USMCA arbitration to settle disputes. This signals the importance governments are placing on compliance, which also increases certainty for investors and traders. There has also been a lot of below-the-radar work done by officials from all governments that supports implementation, overcomes technical issues, and can identify ways to further expand opportunities for trade and investment. In addition, there have now been two Free Trade Commission meetings at the ministerial level, as well as a deputies meeting in January this year.

The two-year anniversary of USMCA is an opportunity to reflect on the agreement's success, take stock, and assess the role of USMCA in driving a larger vision for expanding and strengthening North American economic relations. To this end, five leaders from business, government, and academia have outlined their vision for USMCA, identified challenges and suggested some ways forward. Grounded in political and economic realities, these contributions provide concrete proposals for ways USMCA can help realize a more competitive, inclusive, and sustainable North American economy.

Edward Alden at the Council on Foreign Relations focuses attention on an issue that matters deeply for North American relations—border management—which is not specifically addressed in USMCA. Alden argues that it is time to develop an agenda on borders, particularly in light of the experience during the pandemic where border closures by all governments were uncoordinated, leading to delays and confusion. Indeed, better border coordination and improving customs procedures will also support the goals of building more resilient supply chains and creating new opportunities for ally-shoring.

When it comes to strengthening supply chains across North America, C.J. Mahoney, former deputy United States trade representative (USTR) identifies a number of areas where the three countries can work together, including deeper policy coordination to support new manufacturing opportunities such as in semiconductors, and working to align regulations affecting digital trade. Mahoney suggests that the private sector could support USTR's enforcement of the USMCA labor chapter by reporting on violations of Mexican labor laws. Mahoney also emphasizes the need to avoid complacency about North American economic relations, to build on the strong bipartisan support in Congress for USMCA and use the USMCA review in 2026 to update the agreement and keep it relevant.

Goldy Hyder, president of the Canada Business Roundtable, echoes similar sentiments and outlines an agenda that will contribute to a positive outcome of USMCA review in 2026. Hyder sees USMCA as "the foundation for expanding regional cooperation to address resulting threats to our national and continental economic security." This includes in areas such as the production of electric vehicles and batteries, greater energy independence, clean energy, and better jobs.

Yet for others, the review of USMCA in 2026 also presents risks. Former Mexican Ambassador to the United States Arturo Sarukhan is concerned with how Mexican President Andrés Manuel López Obrador has weakened institutions of governance in his country, thereby reducing the capacity of Mexico to comply with its USMCA commitments. For Sarukhan, the larger concern is what weakened institutional capacity in Mexico may mean for the review of USMCA in 2026.

These contributions also include views on USMCA as a platform for engaging other countries on trade. Mahoney argues that USMCA is a new model for trade agreements that should be a basis for engaging other countries such as Australia, Japan, and the U.K. Antoni Estevadeordal, former senior official at the Inter-American Development Bank, and Eric Miller, president of Rideau Potomac Strategy Group, see the recently launched Americas Partnership for Economic Prosperity as a framework for building links between USMCA and other comprehensive regional free trade agreements (FTAs). They identify specific steps that could be taken short of opening USMCA to new countries, including mutual recognition for professional services, digital economic integration, and working on trade facilitation and common rules of origin.

All of the contributions see USMCA as providing key economic and strategic opportunities for North America. While USMCA includes many NAFTA-like provisions, it is in important respects a new agreement, and its strong bipartisan support in Congress provides a clear break from NAFTA and a chance to rethink economic integration. However, to take advantage of USMCA will require ongoing engagement by governments, relevant industries, and civil society organizations—coupled with a renewed vision of how the U.S., Mexico, and Canada will work together to build a more competitive, inclusive, and sustainable North American trade and investment relationship. This is a key focus for our work in the USMCA initiative at Brookings.

USMCA needs a new agenda for border cooperation

Edward Alden

For all the changes that occurred between the North American Free Trade Agreement and the new U.S.-Mexico-Canada Agreement, one thing has not changed: The deals are all about goods and services crossing borders. Effective border management is at the heart of North American commercial relationships. Yet the USMCA contains no mechanisms for managing the borders, and the once-rich cooperation among the three countries on border issues has eroded markedly. For USMCA to be the success it should be, the three governments need to put border management at the center of their agenda.

One of the reasons borders were ignored in both NAFTA and the USMCA is that, for commercial purposes, the borders have largely worked quite well. The United States and Canada have long advertised their frontier as "the world's longest undefended border," and problems between the U.S., and Mexico have been focused on unauthorized entry between the legal ports. The 9/11 terrorist attacks brought disruptions and delays to both borders, contributing to the "thickening" of North American borders. But the Bush and later Obama administrations worked closely with Canada and Mexico to improve security and speed up facilitation at the ports.

The comparison to the COVID-19 response is striking. North America's borders were shut to most travel for some 18 months, considerably longer than the border closures in Europe. While the governments did a good job minimizing trade disruptions, there was little to no coordination on entry rules for people. Canada was closed for most Americans and Mexicans, whether they were arriving by land or air. The U.S. and Mexico closed their land border, but both countries permitted unfettered air travel within North America throughout the pandemic. Canada made some exceptions for family members; the U.S. did not. While the U.S. was late in imposing advance coronavirus testing rules for air travelers, the U.S. testing requirement remained in place until June 2022, several months after Canada lifted its requirement for vaccinated travelers. The border closures were done in a series of rolling 30-day announcements, offering no predictability for tourists waiting for travel to resume, or for businesses dependent on cross-border customers.

Governments also found themselves handcuffed in the face of political protests that led to additional border closures. The so-called "trucker's convoy" of Canadians opposed to the COVID-19 vaccine mandates in Canada shut several of the country's border crossings for days in February 2022, including the Ambassador Bridge between Michigan and Ontario, the most important commercial crossing on the northern border. Texas Governor Greg Abbott set up state border inspection stations at crossings from Mexico in April, claiming the Biden administration was doing too little to stop drug and human smuggling from Mexico. The nine-day operation increased border wait times for trucks by an average of five hours, costing the U.S. economy nearly $9 billion.

The three governments need new mechanisms to cooperate in resolving border disruptions big and small. After 9/11, the U.S. and Canada negotiated the "Smart Borders Declaration," which provided a framework for cooperation on border security and facilitation for the next decade. In 2011, the two governments launched the "Beyond the Border" initiative, which developed action items for speeding up cross-border commerce while maintaining security. The U.S. and Mexico undertook similar initiatives after 9/11 under the Border Partnership Action Plan. Broadly speaking, all three countries embraced the notion of collaborative border management, or "Twenty-First Century Borders"—an approach that rejected the trade-off between security and facilitation and insisted that better cooperation could enhance both.

These initiatives have languished in recent years, however. The Beyond the Border meetings petered out in 2016—though some previous commitments, such as entry-exit tracking at the U.S.-Canada border, were fulfilled. Bilateral U.S.- Mexico discussions have become focused almost solely on managing the flow of asylum seekers across the border, and the United States has increasingly resorted to unilateral measures such as Title 42, which has blocked most border crossers on health grounds. Border issues—even reasonably non-contentious ones like updating the occupational list for NAFTA visas that allow citizens of the three countries to work temporarily across borders—were kept off the agenda in the USMCA negotiations.

It is time for the three governments to launch a new agenda on border cooperation to complement the implementation of USMCA. Trade negotiators have rightly steered clear of immigration and asylum issues—there are other better forums, including the recent Summit of the Americas in Los Angeles, for such discussions. But there is an urgent need for a new cooperative agenda on border management. The agenda should include:

Pandemics and borders. North America should take the lead in developing cooperative measures on borders and travel mobility during pandemics, the same way it led the world in developing the post-9/11 procedures. COVID-19 is not likely to be the last global pandemic. Fears are already rising about the spread of monkeypox, and new coronavirus variants are likely. Instead of waiting for each country to take unilateral border actions in the face of future health threats, the three governments should cooperate to establish common risk assessment measures and standardized procedures. Cross-border teams should undertake scenario planning and be ready to work together if and when future border restrictions become necessary.

Free flow of commerce. The ability of goods to move freely across borders is essential to North American economic competitiveness. Industries have set up supply chains on the assumption that moving goods across borders will be nearly as easy as moving them domestically. All three governments have invested billions in planning and infrastructure to make this possible. The U.S., Mexico, and Canada need to undertake a commitment at the highest political level to move swiftly to remove any disruptions to the free flow of commerce.

Border facilitation. While never fully utilized or deployed, the post-9/11 initiatives did a significant amount to improve border processing. Advanced information, secure identification, cargo screening, biometrics, pre-clearance, trusted traveler initiatives, and other programs helped make North America's borders more secure while producing greater efficiencies in cross-border trade. But that agenda stalled in 2016, and a whole new set of challenges has since emerged. As traffic volumes increase post-pandemic, border delays are increasing; new health protocols produced significant backups at Canadian airports for travelers headed to the United States. The same post-9/11 spirit of cooperation will be needed to tackle the new delays.

The whole project of North American economic integration is premised on smoothly functioning borders, but with NAFTA and the USMCA borders have too often been ignored. Borders cannot be ignored any longer. The timing is critical—global uncertainties from the war in Ukraine to tensions with China to exploding costs for global shipping have all increased the attractiveness of doing business within North America. The commercial opportunities for the region have rarely been better. But to capitalize on that opportunity, the three countries need to show that they can cooperate again on managing the continent's borders.

USMCA: 2 years in—and 4 to sunset

C.J. Mahoney

The two years that have passed since the entry into force of the United States-Mexico-Canada Agreement (USMCA) have brought a once-in-a-century pandemic, unprecedented supply chain disruptions, the return of disco-era inflation, and a hugely divisive presidential election in the United States. Continental trade irritants persist on issues ranging from auto parts to potatoes. Yet, all told, the trilateral trading relationship is as strong as it has ever been—a welcome reversal from the darkest days of the USMCA negotiations when I and the other negotiators often feared the economic relationship between the United States, Mexico, and Canada was but a tweet away from total collapse.

Five years after the negotiations over USMCA began, North American trade is up. The United States is relying more on its northern and southern neighbors and less on China. After a pandemic-related plunge, U.S. goods trade with Mexico and Canada surged 40 percent and 45 percent, respectively, over the last two years. Canada and Mexico have displaced China as the United States' largest trading partners. There has been a flood of investment into the North American auto sector, particularly in new battery plants and electric vehicle (EV) assembly facilities in the United States, driven in part by USMCA's new auto rules of origin.

Yet I fear that a return to normalcy in North American trade has been met with a sense of complacency about the trilateral relationship. Washington is fixated (understandably) on Ukraine and the Indo-Pacific. Mexico City is focused inward and southward. Ottawa appreciates a less volatile U.S.-Canada relationship but is miffed by the Biden administration's proposed incentives for EVs manufactured in the United States with union labor and doubling down on protecting its politically powerful dairy sector, much to the consternation of farmers in Wisconsin and New York. We seem to be reverting to the pattern that characterized North American trade policy during much of the lifespan of NAFTA, when governments in all three countries often took the relationship for granted and were content to defer maintenance on the agreement. The result was that, by 2017, we were left with an agreement that was seriously out of date, battered politically, and contained auto rules of origin that enabled more and more free riding from non-NAFTA countries every year.[1]

[1] NAFTA's rules of origin provided that an automobile had to contain 62.5 percent regional content to qualify for duty-free treatment under the agreement, a top-line percentage that was actually quite high in comparison to other trade agreements. There was a major loophole, however: Only parts identified on a list created in the early 1990s counted. Parts not on the list were "deemed" to have originated in North America, regardless of their true origin. Over time, this meant that, as automobiles evolved—essentially becoming computers on wheels—they could contain larger and larger percentages of non-regional content yet still qualify for duty-free treatment. This free-riding problem only

Fortunately, USMCA has a built-in mechanism, the Review and Termination or "Sunset" Provision, that will force political leaders in all three countries to revisit the agreement every six years. That date is fast approaching. In the summer of 2026—a mere two years into the next U.S. and Mexican presidential administrations—each country must affirmatively agree to extend the agreement's term for another 16 years. If any of the three decline, a 10-year clock will start to tick until the expiration of USMCA. Critics of the sunset charged it would weaken North American trade by destroying certainty and investor confidence. In fact, the intent was precisely the opposite—to ensure that USMCA, unlike previous U.S. trade agreements like NAFTA and the WTO agreements, would remain up-to-date and aligned with the interests of all three countries.

Yet with a mere four years between now and the sunset trigger, it remains unclear whether the parties will treat the six-year review as a mere box-checking exercise or an opportunity to reset, refresh, and build upon the existing agreement. I hope they choose the latter with a focus on the following:

Supply chains. Talk of supply chains is all the rage. One of the Biden administration's first acts was to initiate a comprehensive review of critical supply chains. Congress is about to appropriate an unprecedented $52 billion to encourage reshoring of semiconductor manufacturing. There is bipartisan consensus that the United States must become more reliant on friends and allies and less on would-be adversaries. But recognizing the problem is one thing; enacting policies that will result in a meaningful shift in supply chains is quite another. And, unfortunately, the tools governments have for encouraging reshoring or "friendshoring" are few and blunt: tariffs, domestic content requirements, import bans, and incentives, chiefly subsidies. Ideally the burdens (and benefits) of a meaningful supply chain resiliency effort would be shared between the United States and its allies and partners. This would require a degree of policy coordination between governments that is rare outside of wartime alliances. But if there is one set of countries capable of achieving this kind of alignment, it is the United States, Mexico, and Canada. One could envision, for example, a trilateral pact to support the development of a new hardware manufacturing ecosystem in North America that includes not only the new semiconductor fabrication facilities Congress intends to subsidize through the CHIPS for America Act, but also new manufacturing capacity for other key components like printed circuit boards and efforts to promote sustainable mining and processing of critical minerals on the continent.

Labor. One of the most groundbreaking innovations in USMCA is the Rapid Response Mechanism (RRM) for resolving labor disputes. The Office of the U.S. Trade Representative (USTR) already has invoked it four times, and in the first two cases to be resolved, the mechanism worked precisely as those of us who designed it intended: It led not to conflict but to meaningful and swift cooperation between the United States, Mexico, and private sector employers to resolve labor problems at the facilities in question. The resulting settlements gave Mexican workers free and fair opportunities to exercise their collective bargaining rights.

But as effective as the RRM has proven to be, it was never intended to be the primary tool for enforcing Mexico's landmark 2019 labor reforms. Even with the generous implementation funding Congress appropriated as part of the USMCA implementing legislation, USTR can bring only so many cases. The better way to scale up labor enforcement under USMCA would be to enlist the private sector. Here, USMCA can draw on lessons from the anti-corruption context, where U.S. companies operating abroad have

stood to get worse in the coming years, given that many high-value components in EVs were not on the original parts list. USMCA closes this "deemed originating" loophole and further raises the regional content requirement from 62 percent to 75 percent.

incentives to continually investigate and remediate potential violations of the Foreign Corrupt Practices Act (FCPA), because the Justice Department rewards early voluntary disclosure and robust internal compliance programs. USTR should work with the Department of Labor and the Mexican government to develop analogous incentives for employers in Mexico to investigate, self-report, and remediate potential violations of Mexican labor laws. Doing so would reinforce USTR's able but small labor enforcement staff with in-house legal and compliance teams from hundreds of multinational corporations operating in Mexico.

Digital trade. USMCA's digital trade chapter is the gold standard. But the rapid pace of technological change and policy developments in the digital space already is rendering it dated. The most significant barriers U.S. technology companies face in foreign markets increasingly are in areas the chapter does not cover extensively like privacy, competition, and artificial intelligence, where diverging regulatory frameworks are limiting interoperability and market-specific standards often serve protectionist ends. These issues are not major problems in North America at present, but periodic updating of the digital trade chapter will be necessary to prevent fracturing of the North American digital ecosystem in the future and to set a baseline for digital trade agreements with other countries.

Of course, one of the problems with negotiating robust trade disciplines in areas like privacy is that the United States has not updated its own regulatory apparatus for the digital age. It therefore is quite difficult for USTR to negotiate meaningful rules that, by definition, would constrain domestic policy space. This may be changing, however. Recently there has been increased bipartisan interest in Congress in moving digital privacy legislation. If that happens, USTR should seek to export and codify aspects of this new regulatory framework in USMCA.

Expansion. When Congress passed USMCA, it was heralded by politicians in both parties as the "new model" that would guide U.S. trade policymaking in the future. Yet since then, momentum for new free trade agreements has stalled. The Biden administration has not moved forward with trade negotiations with Kenya and the United Kingdom that were launched during the Trump administration. And while it recently announced a new "economic framework" for the Indo-Pacific, the administration's unwillingness to discuss market access has led to a tepid reaction from allies and partners in the region and many in Congress.

Rather than reinvent trade policy or pursue new agreements that require enormous expenditures of political capital, often for quite modest economic gains, U.S. trade policymakers might instead look to build upon USMCA—perhaps quite literally, by expanding the agreement to include close U.S. allies like Australia, the United Kingdom, and Japan. These countries already have free trade agreements with one or more of the parties to USMCA. Further integrating them into the North American trade fabric would require certain tweaks and nonconforming measures. I, for one, would not upend USMCA's auto rules of origin. There would need to be something besides traditional market access—perhaps meaningful commitments on supply chains and nonmarket economies—to make expanding the agreement worth the effort from the U.S. perspective.[2] But creative trade negotiators could find ways around these and other challenges if the political will to overcome them existed.

[2] The United States already has mostly duty-free access to the Australian market. The United Kingdom has some of the lowest most-favored-nation tariffs in the world. While Japan has high tariffs on certain U.S. agricultural products, the U.S.-Japan Phase I agreement guarantees U.S. farmers most of the market access Japan was willing to give the United States in negotiations over the TransPacific Partnership.

Conclusion

USMCA enjoys something its predecessor agreement never did—widespread popularity in all three member countries. Unlike NAFTA, which passed by narrow margins in Congress, USMCA passed with broad bipartisan support in both chambers—and attracted near unanimous support in the Mexican Congress and the Canadian Parliament. And unlike the TransPacific Partnership, which drew bitter resistance from labor and environmental groups and was opposed by both major U.S. presidential candidates in the 2016 election, USMCA is seen as the hallmark of a balanced, "worker-centric" trade policy. At a time of growing public skepticism about globalization, USMCA is the strongest trade brand in town.

This deep reservoir of political support is a major asset and competitive advantage for North America. But maintaining it will require focus, imagination, and leadership. I hope it doesn't take another crisis for Washington, Mexico City, and Ottawa to recommit to their critical partnership.

North American resiliency depends on a strong trade agreement

Goldy Hyder

This July marks the second anniversary of a modernized North American trade pact, and yet all three signatories to the United States-Mexico-Canada Agreement (USMCA) must do more to ensure the deal reaches and realizes its full potential. Our region faces a number of consequential challenges since the trade pact was negotiated, making the USMCA even more indispensable.

The global economy—already weakened by the COVID-19 pandemic—is now facing a second shock caused by enormous geopolitical pressures, primarily arising from Russia's invasion of Ukraine and tensions with China placed on supply chains. In this context, USMCA has the unrealized potential to serve as the foundation for expanded regional cooperation to address the resulting threats to our national and continental economic security.

Unfortunately, since USMCA has come into force, governments in all three countries have introduced policies that at times evidence little apparent regard for the letter or spirit of the agreement. Trade disputes are perfectly normal, even among allies. What is cause for alarm is the degree to which some North American decisionmakers are advocating policies contrary to USMCA.

Governments must adhere to the commitments they made when the USMCA was negotiated and assess whether domestic policies could adversely affect our regional economy. In an increasingly competitive world, a weaker North American economy means a weaker United States, a weaker Mexico, and a weaker Canada—none of which are in our individual or collective interests.

Our shared continent is rich in natural resources and food production, boasts cutting-edge technology, and is home to diverse, well-educated, hardworking populations. Working together, our three countries have the potential to address global food and energy shortages while being a rare source of economic stability in an increasingly unstable and uncertain world.

To achieve this, however, the public and private sectors of all three countries must combine their efforts to ensure USMCA is not only a success but that it is *seen* as a success both internationally and domestically. More specifically, we should work together to identify tangible examples that show how the agreement can and will benefit all of North America.

Fortunately, there are many areas where USMCA has the potential to yield significant benefits for Americans, Mexicans, and Canadians. North Americans share a concern for the environment and have directly experienced the effects of climate change. USMCA offers us a framework within which we can both achieve meaningful emissions reductions and manage the green energy transition.

For example, North America has the potential to be a global leader in the production of electric vehicles and the batteries that power them. Collectively we have the critical minerals, the production facilities, and the skilled workforces required to create an integrated value and supply chain.

When it comes to energy, North America can ensure its own independence today and into the future by coordinating our efforts and investments. Moreover, as the world transitions to cleaner energy, we can also do more to responsibly provide a steady and secure supply of different forms of energy to like-minded partners in Europe, Asia, and beyond.

Another shared value we hold is that economic growth should create jobs that allow people to make full use of their skills and allow them to support their families. This is particularly important at a time of rising inflation. USMCA contains many provisions intended to improve labor standards and outcomes and, in so doing, improve the lives and livelihoods of our citizens.

These opportunities must be seized just as we must stand firm against attempts to undermine the agreement whether in the form of misguided protectionist policies or misinformation about the nature of trade. Each party to USMCA has the obligation to hold itself to account and not fall prey to the easy practice of pointing fingers at others. We must all have clean hands.

Between now and 2026, when the future of the agreement will be formally discussed, Canada, Mexico, and the United States will hold federal elections. Without knowing which leader and party may be in power four years from now, we cannot be certain that those who will be in office will share the same favorable view of equitable, sustainable, and liberalized trade.

It is incumbent on all of us—in both public and private sectors—to promote the many benefits of the USMCA to ensure economic resiliency for our region in the years to come.

The USMCA at 2: The red flag on the horizon

Arturo Sarukhan

The U.S.-Mexico-Canada Agreement (USMCA) is probably one of the few remaining guardrails for Mexican President Andres Manuel Lopez Obrador's policies. In his two previous unsuccessful bids for the presidency, in 2006 and 2012, Lopez Obrador opposed the North American Free Trade Agreement (NAFTA)—the predecessor to the revamped UMSCA. By 2018 and his landslide electoral victory, the then-president elect had experienced a Damascene moment regarding free trade with Mexico's two North American partners. The well-being and prosperity of Mexico, as well as the resources needed to fund his social programs and cash handouts, depended on the economic and trading edifice that had been built over three decades of convergence and synergy with the United States. As a result, throughout the five-month transition period between his victory in the polls and his presidential inauguration, Lopez Obrador threw his weight behind the efforts of the Peña Nieto government to ensure the successful renegotiation of NAFTA.

Today, except for energy policy—President Lopez Obrador has complied with the USMCA. This is undoubtedly good news as we observe the second year of the entry into force of the agreement between the three North American neighbors and partners. Nonetheless, there is one salient concern as we move into the last stretch of Lopez Obrador's tenure.

From the outset of his government, a key concern has been the whittling-away of the government's checks and balances and the erosion of autonomous institutions. For example, President Lopez Obrador has targeted the independence of regulators in the telecommunications and energy industries, and sought to control otherwise autonomous institutions such as the Comptroller General's Office, the National Electoral Institute, and the National Institute for Access to Information. Yet, this means that these institutions and regulators are less effective at supporting economic growth, mitigating the costs of the pandemic, resolving social conflicts, and taking advantage of Mexico's geostrategic assets— its mooring to the U.S. and Canadian economies via UMSCA and the coming U.S. recalibration of relations with China that should lead to deepening North American supply chains.

And the weakening of those institutions and regulators could end up having Mexico run afoul of the USMCA. When bureaucracies and agencies can't do their job because they lack budgets and manpower or are constrained in effectively doing their job, there are negative effects on Mexico's trade with its North American partners as well as on Mexico's compliance with UMSCA. Whether it's the U.S. downgrading

Mexico's civil aviation status, the ban on shrimp exports to the U.S. because of poor enforcement of bycatch regulations, a temporary stop to U.S. Department of Agriculture inspections of avocado exports in response to threats to on-site personnel of the Animal and Plant Health Inspection Service, or a prohibition on Mexican vessels in the Gulf of Mexico from docking in U.S. Gulf Coast ports because of persistent violations to U.S. waters, Mexico's institutional gaps are creating economic costs and threatening to put Mexico out of compliance with its USMCA commitments.

These developments are taking place under the shadow of the agreement's review process and sunset clause that will take place in 2026, two years after the simultaneous presidential elections in both Mexico and the U.S. (as is the case every 12 years.) The risk is that this diminished governmental and bureaucratic bandwidth could trigger deleterious consequences for Mexico and affect the long-term survival of the USMCA.

And to make matters even more complex, Mexico-U.S. relations are not in good shape. President Lopez Obrador has alienated Democratic lawmakers—for example, by visiting then-President Trump to celebrate the entry into force of the USMCA on the eve of the 2020 elections but ignoring the Democratic lawmakers who were fundamental in securing congressional passage of the agreement, or by refusing to congratulate Biden until well after other friends and allies had done so. The U.S. and Mexico are now sparring over Mexico's domestic policies related to energy, renewables, and climate change, to name a few. The president's posture regarding the Russian invasion of Ukraine and his boycott of the Summit of the Americas further increased bilateral tensions, and his ad hominem attacks against members of Congress in the U.S. have only increased in recent weeks. Going forward during the next two years, none of this bodes well for Mexican compliance with the USMCA or for a review process of the agreement that will require constructive engagement and interaction with Capitol Hill.

How USMCA can drive trade cooperation in Latin America

Antoni Estevadeordal and Eric Miller

At the recent Summit of the Americas in Los Angeles, U.S. President Biden launched the Americas Partnership for Economic Prosperity (APEP), [3] which aims to ensure, among other things, "sustainable and inclusive trade." Although short on details, APEP comes at an inflection point in Latin America and the Caribbean (LAC). The region has been pummeled economically by COVID-19 but is also poised to benefit from nearshoring if regionalization of global supply chains accelerates. If properly given substance, APEP could mature into a platform that enables broad-based economic growth and prosperity in the years ahead. This paper will argue that the United States-Mexico-Canada Agreement (USMCA)—the remake of the North American Free Trade Agreement (NAFTA)—can be a cornerstone of an enhanced trade interconnectivity initiative that the U.S. needs to realize these broader goals for the region.

Echoes of 1994

The last inflection point in LAC's economic history came in the aftermath of the Cold War. Coming out of the stagnation of the 1980s, the region's leaders understood that they needed greater connectivity to international trade networks to drive economic growth.

This debate coalesced in 1994 with the launching of four distinct pathways: (1) At the global level, the creation of the World Trade Organization (WTO) offered a multilateral system for governing international trade; (2) At the hemispheric level, the launch of the Free Trade Area of the Americas (FTAA) negotiations aimed at a hemispheric free trade zone; (3) At the subregional level, the Protocol of Ouro Preto transformed Mercosur from a free trade area to a customs union, modernizing LAC's traditional integration model; and (4) At the bilateral level, and in North America, NAFTA was a groundbreaking trade agreement, the first between a developing country in LAC and the developed Northern partners.

Ultimately, the NAFTA model became the dominant approach to economic integration in the region. The WTO stalled as a forum for trade negotiations, the FTAA failed, and Mercosur became increasingly protectionist and inward-looking. Today, there are two groups of countries in LAC trade. The first group includes countries such as Chile, Peru, Columbia, and Panama who apply comprehensive NAFTA-style agreements that underpin low tariffs and a close connection to North American and global markets. The

[3] https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/08/fact-sheet-president-biden-announces-the-americas-partnership-for-economic-prosperity/

second group of countries that includes Brazil and Argentina prioritized subregional integration goals, resulting in a less dense network of trade agreements and less robust integration with the U.S. and global markets.[4]

For the first group, its network of free trade agreements has generated myriad economic benefits. Yet, it has also resulted in overlapping agreements and rules that increase costs and complexities. Establishing greater connectivity among these "likeminded" agreements would be an important step forward for regional competitiveness.[5] The participation of the United States as the hemisphere's largest economy, would be fundamental.

How USMCA can catalyze APEP

APEP, like its recently launched sister initiative with Asia, the *Indo-Pacific Economic Framework for Prosperity* (IPEF)[6], reflects U.S. trade politics in 2022. Trade Promotion Authority has expired in the U.S. and the Biden administration appears uninterested in seeking its renewal wary of a political backlash from negotiating comprehensive trade agreements. In this environment, the accession of new partners to existing U.S. free trade agreements such as USMCA is not workable. A better approach would be to focus on interconnecting and making more efficient the current network of trade agreements in the region.

How might this work in practice?

Taking USMCA, the Americas' most far-reaching agreement as the cornerstone, the U.S., Canada, Mexico, the Central American countries, Colombia, Peru, and Chile would identify certain technical disciplines in USMCA and their agreements for interconnection.[7] LAC countries without NAFTA-style agreements, but that are interested in a more expansive level of trade connectivity could also participate in the discussions. Initially, the countries would choose areas that are not especially political and do not require Congressional approval, such as:

Rules of origin cross-cumulation. These technical rules determine whether products are "originating" and thus can benefit from a trade agreement. Several trade agreements in the region allow some form of "cross-cumulation"—the ability to count content from non-member countries in meeting the origin thresholds. For example, the U.S.-Central America Agreement (CAFTA-DR) allows for limited use of Mexican and Canadian yarns and fabrics for certain woven apparel items.[8] The Pacific Alliance and Canada have applied similar principles. Under the rubric of ACEP, the U.S. could work with likeminded countries with similar free trade agreements to better interconnect these rules of origin with those in USMCA,

[4] This first group includes the United States, Canada, Mexico, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Dominican Republic, Colombia, Peru, and Chile. The second group includes the remaining countries of the Americas.
[5] The Pacific Alliance countries have taken important steps, but they have fallen short of a comprehensive strategy to eliminate the obstacles implicit in the region's current trade architecture.
[6] https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/statement-on-indo-pacific-economic-framework-for-prosperity/
[7] An earlier proposal to promote a similar framework can be found in Estevadeordal A. and Talvi E. (2016) Towards a new Trans-American Partnership (Brookings). https://www.brookings.edu/opinions/towards-a-new-trans-american-partnership/.
[8] *Appendix 4.1-B - Cumulation in Chapter 62 of the Harmonized System*. (Found on p.137) https://ustr.gov/sites/default/files/uploads/agreements/cafta/asset_upload_file23_3943.pdf

focusing first on those products most likely to deepen the regionalization of global value chains, such as in autos and medical devices.

Regulatory cooperation. At the 2022 Summit of the Americas, 13 countries agreed to a Declaration on Good Regulatory Practices.[9] The declaration focuses on transparency and predictability in regulatory processes but does not advance mutual recognition or equivalence processes in regulations that would allow goods to cross borders without having to undergo additional assessment for conformity with domestic regulations. Using USMCA rules[10] as the standard, the United States and partner countries could, for example, work with select professional services bodies to develop mutual recognition agreements for select professions. They also could work on equivalence processes or information-sharing obligations for certain food, plant, and animal products.

Digital economic integration. A key USMCA update to the original NAFTA framework was the inclusion of a robust chapter on digital trade.[11] Many LAC countries are looking to further benefit from the digital economy. Taking the themes and, as applicable, the text of USMCA as a starting point, the parties could work toward appending robust digital trade chapters to other agreements in the region. If successful, it could perhaps evolve into a broader Americas Digital Trade Agreement. In addition, building on USMCA Article 1907, a broader cooperation agreement on cybersecurity could be another important deliverable.

Trade facilitation. In Chapter 7, USMCA establishes a Trade Facilitation Committee to advance work in this area. While not formally required in USMCA, Canada recently mandated the use of surety bonds by (mostly) all importers to guarantee their obligations, including future penalties, to the government. The U.S. has had this system of "customs bonds" in place since the 1930s. Such surety bonds are cost-effective to the importers and give customs services the confidence to release goods quickly from customs control. The system is in place in a variety of other jurisdictions, from China to Jordan. It would greatly enhance release times if this regime was implemented in LAC.

Conclusion

As President Biden's announcement made clear, trade is but one part of the APEP framework. To achieve greater prosperity LAC needs improved transportation and digital infrastructure, better education systems, and a greener energy matrix. Regional bodies, such as the Inter-American Development Bank, have crucial roles to play in supporting these areas. The Americas are divided politically, making consensus on anything in the trade area very challenging. Thus, the guiding principle in the years ahead must be "pragmatic incrementalism"—seeking consensus when, where, and with whom we can find it. In time, as these efforts yield benefits for some countries, others sitting on the sidelines may come to feel compelled to engage.

[9] *USTR Announces New Declaration on Good Regulatory Practices*. https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/june/ustr-announces-new-declaration-good-regulatory-practices.
[10] *Chapter 15 - Annex 15-C* and *Appendix 1*. https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/15-Cross-Border-Trade-in-Services.pdf.
[11] *Chapter 19 – Digital Trade*. https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19-Digital-Trade.pdf.

Contributors

Joshua P. Meltzer | @JoshuaPMeltzer

Joshua P. Meltzer is a senior fellow in the Global Economy and Development program at the Brookings Institution. His research focuses on international economic relations and the intersection of technology and trade policy. Along with Cameron Kerry, he co-leads the Forum on Cooperation in Artificial Intelligence (FCAI)—a multistakeholder dialogue with government officials from the U.S., EU, Canada, the U.K., Singapore, Japan, and Australia, as well as AI experts from industry and academia. He also leads the Brookings USMCA initiative housed within the Global Economy and Development program, which focuses on how the United States-Mexico-Canada Agreement (USMCA) can strengthen international cooperation in North America.

Edward Alden | @edwardalden

Edward Alden is Bernard L. Schwartz senior fellow at the Council on Foreign Relations (CFR), specializing in U.S. economic competitiveness, trade, and immigration policy. He is the author of the book "Failure to Adjust: How Americans Got Left Behind in the Global Economy," which focuses on the federal government's failure to respond effectively to competitive challenges on issues such as trade, currency, worker retraining, education, and infrastructure. Mr. Alden recently served as the project director of a CFR-sponsored Independent Task Force, co-chaired by former Michigan Governor John Engler and former U.S. Secretary of Commerce Penny Pritzker, which produced the report "The Work Ahead: Machines, Skills, and U.S. Leadership in the Twenty-First Century." In 2011, he was the project codirector of the independent task force that produced "U.S. Trade and Investment Policy." In 2009, he was the project director of the independent task force that produced "U.S. Immigration Policy."

Antoni Estevadeordal | @EstevadeordalA

Antoni Estevadeordal has held several senior executive positions at the Inter-American Development Bank (IDB) in a career of more than 25 years. Under his leadership the IDB launched in 2019 an innovative blended-finance initiative of $ 1 billion to respond to the migration crisis in Latin America and the Caribbean (LAC). For more than a decade he was responsible for IDB support to the trade and integration agenda in LAC, including the supervision of a lending portfolio of more than $ 3.3 billion in more than 20 countries. Mr. Estevadeordal also coordinated all of IDB's technical assistance, research agenda, capacity building, as well as several public-private policy dialogues and inter-institutional partnerships (WTO, OECD, WB, IMF, WCO, U.N., ADB, APEC, WEF, etc.) in areas such as trade policy, trade negotiations, trade facilitation, investment promotion, regional integration, and regional public goods, among others.

Goldy Hyder | @goldyhyder

Goldy Hyder is president and CEO of the Business Council of Canada, a nonpartisan association composed of the chief executives and entrepreneurs of Canada's leading companies. Previously he was president & CEO of Hill+Knowlton Strategies (Canada). Earlier in his career he served as director of policy and chief of staff to The Right Honourable Joe Clark, former prime minister and leader of the then federal Progressive Conservative Party. He serves in many charitable and non-profit organizations, including as chair of the Asia Pacific Foundation of Canada's Asia Business Leaders Advisory Council, as board member of the Business + Higher Education Roundtable and as advisory board member of Catalyst Canada. Mr. Hyder is a regular commentator in the Canadian media on business, politics, and public policy. He is also the host of the "Speaking of Business" podcast, which features interviews with Canadian innovators, entrepreneurs, and business leaders.

C.J. Mahoney | @CJMKansas

C.J. Mahoney joined Microsoft as deputy general counsel, U.S. International Trade and Azure, in 2021 after serving as deputy United States trade representative from 2018 to 2020. Mr. Mahoney leads Microsoft teams responsible for export control and sanctions compliance, international trade and national security policy, and Azure's relationship with the federal government. While at the Office of the U.S. Trade Representative, Mr. Mahoney led negotiations over the United States-Mexico-Canada Agreement (USMCA) and helped shepherd the agreement through Congress, where it passed with the largest margin of any trade agreement in over 30 years. He personally negotiated key aspects of the agreement's landmark labor chapter, including the first-of-its-kind, rapid-response mechanism. He also oversaw USTR's digital trade portfolio and helped launch free trade agreement talks with the United Kingdom and Kenya. Under his leadership, USTR launched its first dispute settlement actions to enforce environmental obligations in U.S. free trade agreements. He represented USTR on the Committee on Foreign Investment in the United States (CFIUS) and the boards of the Millennium Challenge Corporation and the Overseas Private Investment Corporation.

Eric Miller | @ericmiller191

Eric Miller is president of Rideau Potomac Strategy Group, a consultancy that advises public and private sector clients on North America, Asia, Latin America, and Europe trade, regulatory, business, technology, and geopolitical matters. From 2013-2016, Mr. Miller served as vice president for North America and cybersecurity at the Business Council of Canada, which represents the CEOs of the 150 largest companies in the country. From 2008-2013, he was the first representative of Canada's Department of Industry in the United States. Earlier in his career he spent eight years with the Integration and Trade Division of the Inter-American Development Bank. Mr. Miller has extensive international experience, having advised more than 40 governments in North America, Latin America and the Caribbean, Asia, and the Middle East on trade, transportation, technology, and economic policies. Over the course of his career, he has worked on the development and implementation of six free trade agreements.

Arturo Sarukhan | @Arturo_Sarukhan

Ambassador Arturo Sarukhan is an international strategic consultant and advisor, public speaker, and media contributor based in Washington, D.C., and a former Mexican ambassador to the U.S. (2007-2013). President of Sarukhan + Associates, LLC, he's also a distinguished visiting scholar at the USC Annenberg Public Diplomacy School; an associate fellow at Chatham House in London; and an adjunct professor at George Washington University. Ambassador Sarukhan is a digital diplomacy pioneer, becoming the first ambassador accredited to the U.S. to use Twitter in an official capacity. He writes a biweekly column on international issues for Mexico City's El Universal newspaper—as well as op-eds in U.S. media—and has a weekly radio and TV program in Mexico. Ambassador Sarukhan is also a nonresident senior fellow in the Foreign Policy program and the Center for Security, Strategy, and Technology at the Brookings Institution.

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