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**GEARING UP
FOR A
SUCCESSFUL
REVIEW IN 2026**

CA

B | Global Economy
and Development
at BROOKINGS

FORWARD 2024

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**JOSHUA P.
MELTZER** **STEVE
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FOREWORD¹



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USMCA is the most important economic agreement in North America. This agreement provides the rules and stability that enable \$1.8tn annually in trade. USMCA is also more than a trade agreement, it is an economic cooperation agreement that touches on how each government regulates and cooperates to build the industries and technologies of the future. Since USMCA came into effect in July 2020, the COVID-19 crisis, Russia's invasion of Ukraine, and rising economic and strategic tensions with China have highlighted the need to make supply chains more resilient and to reduce risks arising from an overly close economic relationship with China. Indeed, the U.S. is already investing heavily in expanding production of clean energy and semiconductors, and Canada and Mexico are essential partners. Achieving these goals further highlights the importance of USMCA for building closer economic cooperation across North America that draws on the various resources, skills, and capacities across the three countries to build more competitive and resilient economies.

USMCA has already demonstrated its importance for North America. In 2022, the total value of trade

within North America was equivalent to nearly \$3 million per minute and the result of double-digit growth in trade over the past two years.² As a result, Mexico and Canada are now the top trading partners of the United States, with trade volumes 44% higher than U.S. goods trade with China. Combined, the three countries now account for almost a third of global GDP, and intra-regional trade supports approximately 17 million jobs across North America.³

The passage of USMCA through the legislatures of all three countries with overwhelming political support, including from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), underscored that USMCA presents a new approach to economic relations. In particular, USMCA demonstrates how international trade and investment can strengthen labor standards and wages, drive growth in manufacturing, improve environmental outcomes, and increase opportunities for small businesses to grow and prosper. The USMCA's new and binding rules on labor and environment, including the innovative rapid response mechanism (RRM) to address facility specific labor violations, have

been key in proving that trade can coexist with and support strong social outcomes. The agreement's tighter rules of origin for automobiles, the requirement that 40% of auto manufacturing comes from high wage factories, and that 70% of steel and aluminum used in cars come from North America, should also lead to more investment in manufacturing capacity in North America.

However, realizing USMCA's potential requires ongoing attention and vision. The starting point must be compliance by all governments with their USMCA commitments, and in this regard all the governments fall short, as shown by the Brookings USMCA Tracker that scores each government's compliance with their USMCA commitments. Second, maximizing economic opportunities for North America that builds on USMCA requires complementary policies, laws and investments. For example, North America needs even more integrated and efficient border infrastructure, better alignment of regulation, and greater investment in workforce training. Making this a reality requires leadership by government, but leaders in business and civil society must also play a role.

USMCA must recognize that we have a living and dynamic relationship under a predictable and certain agreement. To that end, we should enhance cooperation, and place particular emphasis on important areas and together, define working plans to maximize the potential of the trilateral relationship. Examples include the use of technology to

enhance productivity (AI, machine learning, and others), securing supplies of critical minerals needed to produce batteries that will underpin the enormously important transition to EVs, and deeper cooperation on climate change and clean energy.

The USMCA includes a requirement that by July 1, 2026, the three governments conduct a "joint review" of its operation, after which consensus is required to renew the agreement for another 16 years. Failure to renew, after annual joint reviews until 2036, if needed, would lead to the agreement's termination. As such, it represents an important opportunity to determine what is working, what needs to be improved, and how to increase the region's competitiveness, but we need to be clear that it is a review, not a renegotiation. Parties should not be using the review to change or influence dispute settlement outcomes or the content of the USMCA. This would turn it into a backward-looking discussion by seeking to undo what has already been agreed to.

Failure to agree to renew USMCA in 2026 will increase uncertainty and reduce trade and investment across North America. There is no need to incur these costs. Instead, all three governments should renew USMCA in 2026 and use the opportunity presented by the joint review to agree on a work program for updating USMCA with the goal of deepening economic cooperation across North America.

The Brookings USMCA initiative provides the data and analysis to clearly understand the importance of USMCA for North America.

This includes the initiative's USMCA Tracker that provides detailed data on trade and investment flows, as well as analysis and reports, including their flagship annual USMCA Forward report. In this year's USMCA Forward 2024 report, analyses by subject matter experts and leaders from government, business, and civil society underscore the immense importance of USMCA for North America. The report makes clear that cooperation across North America among government, civil society, and business creates stronger economies that are more competitive and produce better outcomes for workers. As we cross the halfway point between the entry into force of the agreement in 2020 and the first USMCA review in 2026, this report provides a timely and important assessment of how USMCA has worked in key areas and what more could be done to make USMCA even more effective.

Going forward, leadership is required to build on the positive momentum in North American economic relations that USMCA underpins. First and foremost, renewal of USMCA in 2026 must be a priority and will send the strongest signal of government's support for the agreement. Renewal will avoid unnecessary economic harm and lay the foundation for building a more competitive, sustainable, and inclusive North American economic relationship.

The USMCA can function as a guarantor of prosperity for North America for decades to come, a bulwark against the turmoil in much of the rest of the world and a beacon standing for peaceful, cooperative coexistence and friendship between our nations.

Endnotes

- 1 The editors would like to thank Brookings Trustee Paul Desmarais, Brookings International Advisory Council member Pablo González, and Pat Ottensmeyer for their foundational support for the USMCA initiative.
- 2 "USMCA at 3: Reflecting on Impact and Charting the Future | Brookings," Brookings, July 24, 2023, <https://www.brookings.edu/articles/usmca-at-3-reflecting-on-impact-and-charting-the-future/>.
- 3 "USMCA Tracker | Brookings," Brookings, February 5, 2024, <https://www.brookings.edu/articles/usmca-trade-tracker/#/goods>.

INTRODUCTION



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It has been three and a half years since USMCA was signed, ushering in a new era in North American economic cooperation. The passage of USMCA through U.S. Congress with overwhelming bipartisan support also signaled a new economic and political reality and an opportunity to reset the conversation around what can be achieved collectively. The coming into effect of USMCA also paralleled other important developments globally, including rising competition with China and Russian aggression in Ukraine that drew attention to the risks of economic engagement with adversaries. The pandemic also highlighted the fragility of global value chains as well as the resilience of regional supply chains. For example, dependency on China for medical equipment revealed risks for North America while the success of North American supply chains helped to mitigate the risks.

We established the Brookings USMCA initiative shortly after passage of USMCA with the goal of building an evidence base to understand

the impact of USMCA for trade, investment, and jobs, and in turn, develop a pathway for how USMCA can help build more competitive, inclusive, and sustainable North American economic relations.

Any assessment of how USMCA is doing so far must start with the growth in trade and investment across North America which has reached record highs, with \$1.8 trillion in total trade supporting approximately 17 million jobs. Mexico and Canada are the U.S.' top trading partners, with the U.S. trading more with Mexico now than with China. A lot of this trade is also generated by movement of goods and services across complex supply chains that produce automobiles, medical equipment, and information technology (IT). USMCA has enabled the extensive trade and investment ties by reducing trade barriers along with regulatory cooperation. USMCA is also an increasingly important source of geopolitical strength. As the U.S. aims to make supply chains more resilient, expand manufacturing of semiconductors, and

invest in clean energy and batteries, new and long-term investments will be needed. USMCA can reduce investment risk and increase the attractiveness of investing in North America by creating stability and predictability, a key theme reflected in this report. Moreover, the Biden administration's view of national security as encompassing economic security underscores how USMCA's role in building economic security by ensuring supply chain resilience and enabling de-risking of trade with China by reshoring critical supply chains into North America, means that USMCA also strengthens U.S. national security.

This report is the Brookings USMCA initiative's third annual flagship publication. This report includes thematic-focused chapters from subject matter experts as well as viewpoints from senior government officials and leaders from business and civil society. The report takes stock of the state of the North American relationship and looks at how the three parties, including business and civil society, can further leverage USMCA to strengthen economic relations in the lead up to the joint review in 2026. The USMCA joint review requires that by July 2026 all parties agree to renew USMCA. Failure to renew the agreement in 2026 will lead to an annual joint review that could continue for up to 10 years, and the absence of agreement by all parties to renew USMCA within that timeframe will lead to the agreement's termination in 2036. This report includes a chapter by Joshua P. Meltzer and Steve Verheul on how to use the mandated joint review productively and in ways that fulfill the original intentions of the negotiators of keeping USMCA up to date. It also argues for swift renewal of USMCA in 2026 to avoid rising uncertainty and reduced trade and investment that would follow. As Goldy Hyder, President and CEO of the Business Council of Canada, points out, failure to renew USMCA "would discourage

capital investment, foreign and domestic," and undermine the very thing that is a source of geopolitical stability.

There are three key themes in this year's report that form the backdrop for maximizing the USMCA opportunity—and where progress in the lead up to USMCA renewal in 2026 will be important. The first is the key role of the USMCA labor provisions and their effective implementation. The second is how USMCA can further enable the transition to renewable energy and build a more digitally capable North American economy. The third is the role of USMCA and compliance with USMCA rules as key sources of predictability and stability.

We are honored this year to include chapters from prominent academics and other thought leaders as well as viewpoints from senior government leaders including U.S. Trade Representative Ambassador Katherine Tai, Canadian Minister of Energy and Natural Resources Jonathan Wilkinson, Governor of Chihuahua María Eugenia Campos Galván, Mexican Chief Officer for North America, civil society leaders such as American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) President Liz Shuler, and business leaders including President of the American Chamber of Commerce Suzanne P. Clark, President and CEO of the Business Council of Canada Goldy Hyder, Otis CEO and Business Roundtable Chair of Trade and International Committee Judy Marks, as well as CEOs from all three countries.

USMCA and labor

One of the areas of focus in this report is the USMCA labor chapter. This chapter is one of the key developments that distinguishes USMCA from NAFTA. The importance of the USMCA labor chapter is hard to overstate.

Its inclusion helped secure the support of Congressional Democrats, and it led to the AFL-CIO also backing the USMCA—the first time the AFL-CIO backed a trade agreement since the Johnson administration in the 1960s. As noted by Ambassador Tai, "the Rapid Response Mechanism is a main reason the revamped USMCA gained the support of many members of U.S. Congress who have opposed free trade agreements."

The labor chapter includes commitments by the parties to various labor rights and their enforcement, including freedom of association and elimination of forced labor. Implementing these commitments is now seen by many as the litmus test of how trade can support better outcomes for labor both in terms of labor rights and wages. In this respect, the chapter's innovative rapid response mechanism (RRM) is ground zero for proving the chapter's effectiveness. Indeed, Liz Shuler highlights the importance of the labor chapter and the RRM for the ongoing support of the AFL-CIO, referring to the RRM as "a notable bright spot." The RRM allows one country to raise instances of non-compliance with the labor chapter at specific facilities of another country and develop a plan to remediate these issues with that government. Failure to remediate violations allows one of the other governments to impose tariffs or other penalties on exports from that facility. While the RRM is reciprocal, in practice it is only available for use by the U.S. and Canada against facilities in Mexico, and there is no RRM mechanism between the U.S. and Canada.

The various contributions in this report on USMCA and labor show that the impact of the USMCA labor chapter on labor rights and wages in Mexico is complex. Part of the complexity is due to Mexico's labor reforms, including developing new laws and institutions to adjudicate labor disputes

and oversee labor contracts, which were enacted around the time when USMCA came into effect. The chapter from Alfredo Domínguez Marrufo, General Director of the Federal Center for Conciliation and Labor Registration of Mexico, analyzes Mexico's labor reforms and shows how the USMCA commitments on labor have complemented domestic reforms such as new labor courts, dispute resolution mechanisms, and establishment of the Federal Center for Conciliation and Labor Registration to monitor and regulate labor contracts and strengthen union participation. Domínguez makes clear that the process of implementing labor reforms is ongoing and will take time. Liz Shuler in her viewpoint also underscores the importance of implementing USMCA labor commitments while recognizing that in Mexico "the growth of mature industrial relations and the rule of law is a project that will take decades, not years."

The RRM has been a focus for the U.S. Trade Representative when it comes to demonstrating that the USMCA labor commitments can lead to positive outcomes. Kathleen Claussen in her chapter analyzes the effectiveness and operation of the RRM. Similar to Domínguez, Claussen agrees that the USMCA labor chapter has interacted with Mexico's domestic labor reforms in largely positive ways, strengthening Mexico's labor reform efforts, particularly in states where implementation of domestic labor reforms has been slow. However, Claussen also observes that the RRM needs to remain a complement to Mexico's domestic reform and enforcement capacities and should not replace the institution building that is underway in Mexico. Claussen makes some recommendation to improve the operation of the RRM, such as more transparency and information sharing with companies where claims are being made.

Expectations differ on the impact of the labor chapter on Mexico's wages. Liz Shuler emphasizes the need to close the wage gap between manufacturing workers in the U.S. and Mexico. This is indeed an important goal but one that the

USMCA labor chapter is unlikely to have much impact on. Santiago Levy in the USMCA Forward 2022 report devoted a chapter to the impact of the USMCA labor chapter on average wage rates in Mexico and found that in the absence of reform to Mexico's social security laws it is unlikely that USMCA will lead to higher average wages. Addressing low wage rates in Mexico is nevertheless important and is raised by Luz María de la Mora and Governor María Eugenia Campos Galván, who highlight the need to increase the productivity of Mexican workers with improved training. The need to reform Mexico's education system and worker training programs was addressed by Sylvia Ortega in her contribution to the USMCA Forward 2023 report.

USMCA opportunities and new issues: energy and digital technologies

A second main theme in this report focuses on key opportunities that are regional and therefore require a coordinated North American solution that USMCA can facilitate as part of the agenda for the upcoming joint review. In this regard, the transition to clean energy and a more digitally enabled North American economy stand out. Oscar Ocampo outlines a once in a lifetime opportunity to build a clean energy system across North America and a more integrated North American energy market that strengthens energy security and expands production of critical minerals and batteries. Similarly, José Zozaya and Odracir Barquera highlight the role of USMCA in the transition to electric vehicles.

The transition to renewable energy is well underway in Canada as outlined by Minister Wilkinson, and in the U.S., this transition has been given a huge boost with the Inflation Reduction Act. Yet, and as Ocampo points out, "Mexico's energy sector is in disarray" due to the Andrés Manuel López Obrador administration's energy policies that have sought to position PEMEX as the leading supplier of carbon intensive energy at the cost of private sector investment into renewable

energy. This includes the administration's undermining of the federal electricity Commission (CFE) as the independent energy regulator. Moreover, delays permitting new transmission lines has led to under investment in Mexico's energy sector just when investment opportunities are generated by the IRA and Chips Act. For many companies, access to low carbon energy is also important to meet climate goals.

Ocampo identifies various ways to increase access to clean energy with more cross-border energy cooperation. For example, the new transmission line between Quebec and New York to deliver clean energy demonstrates the win-win nature of cross-border energy trade. In addition, building a more integrated North American energy market requires technical level cooperation to develop common standards such as for transnational energy infrastructure. Minister Wilkinson underscores the need for significant new investments to facilitate the transition to clean energy, and the importance of USMCA in providing the certainty and business environment that can reduce risk and enable these investments.

Alejandra Palacios and Christian Norton's contribution focuses on the opportunities for North America to expand trade and cooperation in digital technologies, strengthen regulatory cooperation, and harmonize regulation of the digital economy across the region. The USMCA digital trade chapter is one of the most advanced on digital trade and regulatory cooperation. USMCA already includes commitments to cooperation in cybersecurity and privacy regulation, but more engagement on these issues is needed. There are other areas important for the digital economy where USMCA has little to say but where cooperation is also needed, such as Artificial Intelligence (AI) governance and export

controls of sensitive technologies. Blanca Treviño highlights the need to do more with the USMCA in AI governance and cybersecurity. Palacios and Norton argue that establishing a North American digital trade forum is needed as a focal point for cooperation on digital issue, and a similar recommendation was made by Patrick Leblond in his chapter on digital trade for the USMCA Forward 2022. Progress on these fronts would strengthen outcomes in terms of the digital trade opportunities but also ensure appropriate digital regulation and trust.

USMCA as a source of stability in a turbulent world

There are two ways that USMCA creates stability and predictability in North American economic relations. The first is through the regular meetings among government officials, business, and civil society, and the second is through USMCA dispute settlement. A chapter co-authored by three former ambassadors from each country discusses the significance of the increasingly dense web of meetings and processes for cooperation in developing trust. USMCA mandates regular committee meetings to oversee the functioning of the agreement and to identify and resolve potential trade issues. USMCA includes a commitment to annual ministerial level meetings of the Free Trade Commission (FTC) which sets the agenda and direction for future work on USMCA. For instance, the last meeting of the USMCA FTC in August 2023 decided to expand the benefits of the USMCA by strengthening competitiveness and increasing the participation of small and medium-sized enterprises (SMEs) and underrepresented communities.¹

These USMCA focused meetings are complemented by other high-level bilateral

and trilateral meetings among government officials and between business leaders, including the North American Leaders Summit, the U.S.-Mexico High Level Economic Dialogue, and the U.S.-Canada Roadmap for Renewed U.S.-Canada Partnership. Similar dialogues on the industry side focus on deepening economic cooperation across the region. Roberto Velasco, the Chief Officer for North America in the Mexican Ministry of Foreign Affairs, in his viewpoint underscores the importance of these trilateral and bilateral initiatives that complement engagement under USMCA.

The three authors of this chapter also identify how USMCA meetings and the broader range of interactions across government, industry, and civil society could be used to expand the benefits of USMCA to small businesses and to build a more robust competitiveness and innovation agenda. Indeed, a common theme in this report is that deepening cooperation across North America is needed to strengthen the competitiveness of the region. As Suzanne P. Clark, President of the U.S. Chamber of Commerce, outlines, a competitiveness agenda should include workforce development and increasing investment into critical sectors such as energy. According to Judy Marks, the USCMA is needed to incentivize further economic integration and development of sectoral supply chain ecosystems to boost competitiveness. For her part, Luz María underscores the important role that Mexico can play in bolstering the region's supply chain, leveraging its cheap labor and providing an alternative to China-centered supply chains. Similarly, Galván also highlights the opportunities to further deepen and grow the trade and investment relationship across North America.

Another important part of USMCA is the reforms to its various dispute settlement

mechanisms. Robert Howse, Professor of International Law at NYU Law School, analyzes these developments, describing the changes to the investor-state dispute settlement mechanism and the reforms to the state-to-state system that has led to it being used eight times. Howse observes that the renewed functioning of USMCA state-state dispute settlement demonstrates a real commitment by each government to using USMCA to settle disputes. Yet, a common theme in this report is that instances of non-compliance with dispute settlement decisions reduce the ability of USMCA to provide certainty and predictability for traders and investors. Indeed, the Brookings USMCA initiative's scorecard which tracks compliance with USMCA shows all three governments at various stages of non-compliance, with Mexico being the most non-compliant, followed by the U.S., and then Canada.

Howse recognizes the important role of dispute settlement and compliance in creating certainty and predictability. He also observes how state-state USMCA disputes often engage complex commercial and other government interests that

affect how each government responds to dispute settlement decisions. While failure to comply with a USMCA dispute, such as U.S. non-compliance with the USMCA decision on auto rules of origin, creates uncertainty for business, Howse argues that instances of non-compliance also need to be understood in the context of complex multi-dimensional relationships that might counsel against an overly confrontational stance on trade and investment, rather than as a systemic disregard of USMCA commitments.

This report is being released in advance of elections in the U.S. and Mexico this year and in Canada in 2025. The outcomes of these elections will undoubtedly have important implications for the future of USMCA, for North American relations, and for the joint review in 2026. This report underscores the enormous benefits that the USMCA has produced for businesses and workers as well as its role in strengthening the hand of the U.S. in its geopolitical competition with China and lays out an agenda to further strengthen economic relations. These are goals that should be worth pursuing, irrespective of who leads each country.

Endnotes

- ¹ <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/july/united-states-mexico-and-canada-joint-statement-third-meeting-usmcat-meccusma-free-trade-commission>.





USMCA AND NEARSHORING: THE TRIGGERS OF TRADE AND INVESTMENT DYNAMICS IN NORTH AMERICA



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Three decades after NAFTA's implementation, and over three years since the USMCA took effect, Mexico's trade and investment ties with Canada and the United States remain vital to its economic growth, industrial evolution, and job creation. Mexico has the potential to boost its growth and development as it becomes a premier investment destination within North America, attracting firms that are relocating to the region.

Several external factors have triggered nearshoring opportunities for Mexico. Companies are moving their production to Mexico for various strategic reasons. First, the U.S.-China trade war has diverted trade from China to countries like Mexico where USMCA offers duty-free access to the U.S. market.¹ Second, the Biden administration's strategy for nearshoring, which focuses on "creating diversified and resilient supply chains,"² has positioned Mexico as a key player in the "China+1" supply chain diversification approach. In 2021, U.S. Commerce Secretary Gina Raimondo highlighted that "Mexico is a critical strategic ally and partner of the United States and is a top destination for U.S. exports. As neighbors, it is imperative that we leverage our partnership to build back from the pandemic together...strengthening regional supply chains."³ Third, the country's long-standing expertise in production sharing schemes makes it a strategically valuable partner in the evolving landscape of regional manufacturing and trade. Fourth, Mexico's competitive advantages for nearshoring include significantly low labor costs, with average manufacturing salaries lower than those in China.

Mexico has been fortunate to be in the right place at the right time to leverage its own development by taking advantage of both USMCA and nearshoring in advanced manufacturing. However, Mexico must make sure it can offer the best business environment and fully comply with USMCA commitments since its economic growth and job opportunities are highly dependent on its trade and investment relations with its North American partners.

Deeper regional trade

The 2009 financial crisis precipitated a notable deceleration in the growth of global trade. Between 1990 and 2007, international trade grew at an average annual rate of 6%. However, since 2011 this rate moderated significantly to an average of 2.6% annually.⁴ This reduction in the pace of global trade diminished the share of trade relative to global GDP. In 2007, trade constituted 30% of the world's GDP, declining to 27% by 2021. This trend underscores the long-term economic impacts of the financial crisis on international trade dynamics.

Following a marked downturn in trade among North American partners during the height of the COVID-19 pandemic, trade within the region has rebounded. In 2022, the exchange of goods among the three USMCA member countries—the United States, Mexico, and Canada—reached a milestone of \$1.5 trillion.⁵ This resurgence has been particularly instrumental for Mexico, underpinning growth rates the country has not witnessed in recent years, underscoring the critical role of regional trade in its economic recovery and expansion. Following a -8.7% contraction in 2020 due to the pandemic, the Mexican economy has experienced a rebound, fueled by trade, registering a growth of 5.8% in 2021 and 3.9% in 2022.⁶ Projections suggest a continued positive trajectory with expected growth rates of 3.2% in 2023 and 2.1% in 2024.⁷ In fact, in November 2023, Mexico positioned itself as the U.S.' number one trading partner with a 15.8% U.S.' market share, which supports Mexican economic growth.⁸

In 2022, Mexico's global trade reached an unprecedented figure of \$1.217 trillion, equating to over 78.5% of GDP.⁹ This ratio is higher than that of the U.S. where trade to GDP ratio was 25.48% in 2021¹⁰ or Canada's at 61.4%.¹¹ Trade with the U.S. and Canada accounted for \$778 billion, or 63.8% of Mexico's total international trade, marking a historic peak. During 2019–2022, Mexico's trade with the U.S. grew 27% and with Canada 19.5%.¹² This data not only reflects the country's robust trade dynamics but also underscores its intense partnership with North America.

In 2022, the United States remained Mexico's principal trading partner, its most significant export market, and the foremost source of imports. Concurrently, Canada held a notable place in Mexico's trade landscape, ranking fifth as a trading partner, second as an export destination, and eighth as a source of imports for Mexico. Even then, trade between Mexico and Canada is often understated due to the significant impact of transshipments on trade statistics. For instance, in 2022, Mexico reported exports to Canada valued at \$15.6 billion, whereas Statistics Canada recorded imports from Mexico at a value of \$18.5 billion.¹³ Throughout this period, the United States and Canada have steadfastly occupied the top two positions as Mexico's export market. This trade architecture has exhibited remarkable consistency since the 1990s, following the NAFTA implementation.

TABLE 1.

Mexico's top 10 export markets (US\$ millions)

Rank in 2022	EXPORTS	1993	2003	2013	2022
1	United States	43,116	144,293	299,439	472,584
2	Canada	1,541	3,042	10,453	15,586
3	China, P.R.: Mainland	44	974	6,469	10,917
4	Germany	427	1,715	3,797	8,339
5	Rep. of Korea	25	181	1,525	7,376
6	Spain	873	1,512	6,962	5,489
7	Japan	700	621	5,386	4,703
8	Brazil	290	487	3,963	4,540
9	India	9	662	4,735	3,716
10	Colombia	235	733	1,438	3,691

Source: "IMF Data," n.d. <https://data.imf.org/regular.aspx?key=61013712>.

For decades, the United States has been Mexico's primary source of imports, though its share has seen a gradual decline, from 71.8% in 1994 to 43.8% in 2022. The gap in imports has been filled by China, where global companies, including from U.S. origin, produce and supply to Mexico equipment, parts, and components integral to its export value chain. Consequently, Mexican exports to the United States have been bolstered by access to these critical imports from China that in 2022 reached \$125.8 billion, more than 12 times the value in 2003 as shown in Table 2. On the other hand, Canada, which was the fourth largest contributor to Mexico's imports in 1994 with a 2.02% share, fell to eighth position by 2022, albeit with a slightly increased share of 2.18%.

TABLE 2.

Mexico's top 10 import markets (US\$ millions)

Rank in 2022	IMPORTS	1993	2003	2013	2022
1	United States	51,196	111,682	198,498	280,928
2	China, P.R.: Mainland	388	9,965	65,001	125,818
3	Rep. of Korea	728	4,360	14,303	23,838
4	Germany	3,114	6,591	14,269	19,562
5	Japan	3,705	8,051	18,101	19,395
6	Taiwan Province of China	723	2,660	7,090	15,874
7	Malaysia	226	2,926	5,702	15,458
8	Canada	1,279	4,368	10,438	13,987
9	Brazil	1,311	3,463	4,686	12,877
10	Vietnam	0	125	1,575	10,974

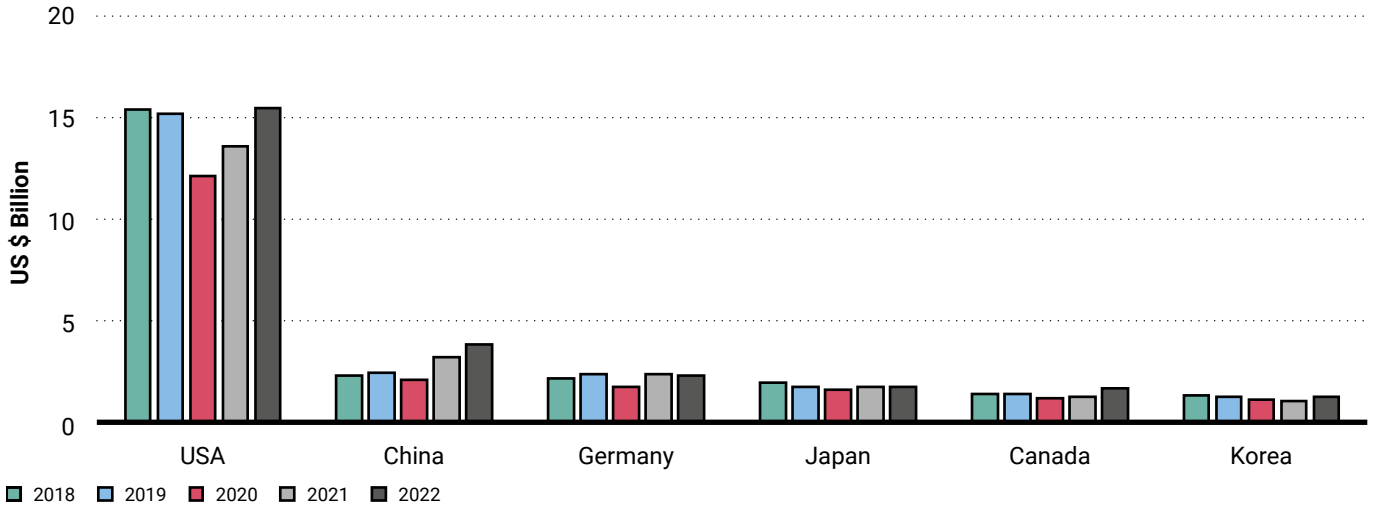
Source: "IMF Data," n.d. <https://data.imf.org/regular.aspx?key=61013712>.

The United States also is the main supplier of intermediate goods to Mexico, accounting for 46.7% of Mexico's imports, which reveals an enduring production-sharing framework that has been a hallmark of North American trade for decades. Mexican exports incorporate inputs with U.S. origin, which are subsequently exported to North America and to other markets in the world. Trade-in-value-added data reveals that, in 2018, Mexican gross exports to the world incorporated 14% of value added originating from the United States; in 2020, this number was 12.7%.¹⁴ This underscores the role the U.S. has in Mexican manufacturing.

FIGURE 1.

Mexico imports of parts and accessories for motor vehicles

Top suppliers, 2018-2022 (US\$ billions)



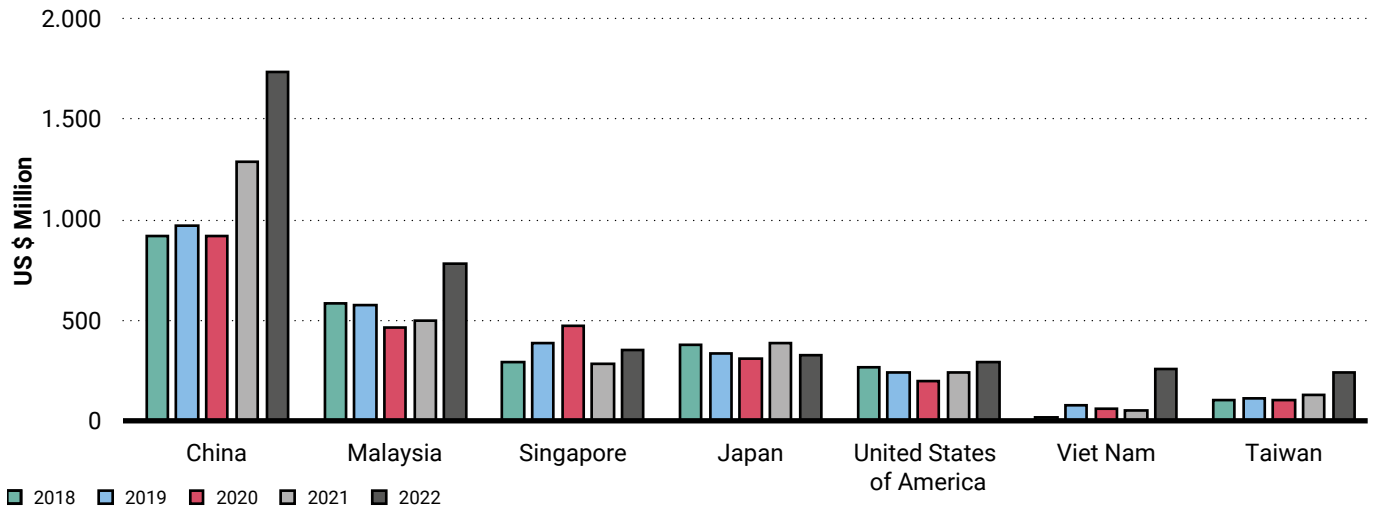
*Product: (8708)

Source: ITC calculations based on UN COMTRADE statistics since January, 2019. ITC calculations based on Instituto Nacional de Estadística y Geografía (INEGI) statistics since January, 2015 and until January, 2019. ITC calculations based on UN COMTRADE statistics until January, 2015.

FIGURE 2.

Mexico imports of semiconductor devices

Top suppliers, 2018-2022 (US\$ billions)



*Product: (8541)

Source: ITC calculations based on UN COMTRADE statistics since January, 2019. ITC calculations based on Instituto Nacional de Estadística y Geografía (INEGI) statistics since January, 2015 and until January, 2019. ITC calculations based on UN COMTRADE statistics until January, 2015.

The automotive industry is a key driver of North American trade and investment, and its production is deeply integrated across the three North American countries. For example, in 2022, 52.5% of Mexico's imports of parts and accessories for motor vehicles came from the U.S., while Canada supplied approximately 5.9%.¹⁵

So-called "Factory Asia" also plays a growing role in North American supply chains. Indeed, strategic sourcing from Asia has increased the competitiveness of Mexican industry. By 2022, approximately one-third of Mexico's total imports originated from six Asian countries: China, South Korea, Japan, Malaysia, Taiwan, and Vietnam.¹⁶ This is particularly evident in the electronics sector where six Asian suppliers accounted for 80% of semiconductor devices, which are inputs throughout the manufacturing sector, including in auto manufacturing (see Figure 2).



Nearshoring triggers investment

More recently, Mexico has benefited from increased foreign direct investment (FDI) as companies respond to geopolitical tensions by reducing their exposure to China and taking advantage of the investment under the U.S. Inflation Reduction Act and the Chips and Science Act to nearshore their manufacturing operations.

In the first nine months of 2023, FDI flowing into Mexico predominantly focused on manufacturing, services, and mining sectors. The United States and Canada emerged as the first and sixth largest investors, contributing \$13.5 billion and \$2.2 billion, respectively, together accounting for 48% of the total FDI.¹⁷

A strong indicator of nearshoring in Mexico is the substantial domestic investments in construction, particularly of industrial facilities and office spaces, paralleling the peak in the U.S. In August 2023, construction in manufacturing facilities in Mexico surged by 47.4% compared to the previous year. Concurrently, in the U.S., “real spending on construction for manufacturing” increased almost fourfold since early 2022, further emphasizing the growing trend of nearshoring.¹⁸

A recent report from Mexico’s central bank highlights industries where nearshoring is most prevalent, including transportation equipment and auto parts, electronics, machinery and equipment, furniture, household appliances, medical devices, among others.¹⁹ Since the 1990s, Mexico has developed a productive network and expertise in these export sectors making them a natural fit for nearshoring.

While precise predictions about the scale of future investments into Mexico are speculative, there is a consistent stream of investment announcements, especially in northern and central Mexico. For example, TC Energy is developing a \$4.5 billion natural gas pipeline, Southeast Gateway Pipeline, that will supply natural gas to states in central and southeast Mexico.²⁰ To boost those investments, in October 2023, Mexico’s Ministry of Finance launched a tax incentive program that expires in December 2024 and targets companies seeking to capitalize on the nearshoring trend. The ministry has registered 174 announcements, which could potentially bring an additional \$74 billion in FDI; a figure 60% higher than expected FDI in 2023.²¹

Trade and investment drive job creation

The USMCA placed workers at the center of the agenda to ensure they benefit from the agreement. While labor markets in the three countries were hard hit by the pandemic, they have fully recovered. In October 2023, the U.S.’ unemployment rate was at 3.9%,²² Canada’s was 5.7%,²³ and Mexico boasted a historically low rate of 2.7%.²⁴

Trade dynamics have significantly influenced job creation in the North American region, albeit with varying impacts across countries. In 2021, Mexico’s workforce exceeded 59.4 million people, but only approximately 26.5 million belonged in the formal economy so the pool of workers that could benefit from trade and investment only covered 44.6% of the

workforce.²⁵ In 2021, Mexico saw a substantial portion of its labor force in the formal sector engaged in activities related to exports to the U.S. and Canada. Considering jobs directly and indirectly linked to export of goods, in 2021, Mexico registered 5.4 million jobs that accounted for 25.81% of all private sector jobs registered in the Mexican Social Security Institute (IMSS) were directly linked to these export activities. This figure is nearly double that of Canada, where 13.1% of jobs are connected to exports of goods to the U.S. and Mexico. In contrast, the United States displayed a comparatively lower percentage; only 1.97% of jobs in 2021 were either directly or indirectly associated with exports of goods to Mexico or Canada (see Table 3). Mexico is by far the most dependent on goods exports and USMCA to create formal jobs at home.

Despite recent efforts to elevate wages, Mexico continues to be a low-wage economy, particularly when contrasted with China. As of January 2022, Mexico's monthly minimum wage stood at \$256.3, lower than China's \$390.²⁶ This persists even in the face of President López Obrador's minimum wage increase policy, a cornerstone of his campaign promises. Under NAFTA, Mexican wage levels experienced stagnation, primarily attributed to low productivity levels and a diminished demand for workers with advanced educational qualifications.²⁷ Since 2019, Mexico has witnessed significant, double-digit annual increases in minimum wages, rising from \$4.40 per day in 2018 to \$13 per day in 2024. In Mexico's northern border regions, this growth is even more pronounced, with the minimum wage reaching \$20 per day starting in 2024.²⁸ Additionally, there have been noticeable improvements in ancillary benefits such as pensions and paid holidays. While these increases are significant and represent a deviation from the trends observed during the NAFTA era, wages in Mexico are far from converging with those in the United States and Canada. Levy and Fentanes (2022) find that unless Mexico implements deep reforms in its labor market regulations, USMCA labor commitments "could lead to small wage increases in firms engaged in trade with the U.S., but with limited impact on overall wages in Mexico."²⁹

Mexican exports of goods remain labor intensive, and those jobs show low productivity compared to the U.S. and Canada. This is evident in the lower export value they generate compared to its North American partners (see Table 3). In 2021, 25.8% of workers in Mexico (5,478,786) were, directly or indirectly, involved in the production of goods exported to the U.S. and Canada. Each Mexican worker contributed \$63,378, around 28% of the export value that a U.S. or a Canadian worker contributes in goods exports to their USMCA partners.

Mexican exports of goods remain labor intensive, and those jobs show low productivity compared to the U.S. and Canada. This is evident in the lower export value they generate compared to its North American partners.

TABLE 3.

Direct and indirect jobs in goods export activities in Mexico, the U.S., and Canada, 2019 and 2021

MEXICO 2019	2019 Mexican jobs related to export of goods activities	Mexican Export value per job	MEXICO 2021	2021 Mexican jobs related to export of goods activities	Mexican Export value per job
Jobs to Export to US	4,907,534	\$64,169	Total Jobs to Export to US	5,322,140	\$63,307
Direct	2,691,407		Direct	2,958,905	
Indirect	2,216,127		Indirect	2,363,235	
Jobs to Export to Canada	184,889	\$66,061	Total Jobs to Export to Canada	156,645	\$65,786
Direct	88,680		Direct	78,938	
Indirect	96,209		Indirect	77,707	
Total Jobs Exports to NAM	5,092,423	\$64,238	Total Jobs to export to NAM	5,478,786	\$63,378
Total Exports to NAM US\$ bn	\$327.1		Total Exports to NAM US\$ bn	\$347.2	
Private Sector Jobs in MEXICO, 2019 (IMSS)	20,421,442		Private Sector Jobs in MEXICO, 2021 (IMSS)	20,620,148	
Share of total jobs linked to NAM exports	24%		Share of total jobs linked to NAM exports	25.81%	

Own estimate based on USMCA Tracker. Brookings. "USMCA Tracker | Brookings," February 5, 2024. <https://www.brookings.edu/articles/usmca-trade-tracker/#/goods>. "Generación De Puestos De Trabajo Formales," n.d. <https://mexicocomovamos.mx/semaforo-nacional/generacion-puestos-trabajo/>.

Note: NAM = North America

USA 2019	2019 US jobs related to export of goods activities	US. Export value per job	USA 2021	2021 US jobs related to export of goods activities	US. Export value per job
Jobs to Export to Mexico	1,189,690	\$209,378	Jobs to Export to Mx	1,167,278	\$229,660
Direct	593,870		Direct	590,185	
Indirect	595,820		Indirect	577,093	
Jobs to Export to Canada	1,328,520	\$202,185	Jobs to Export to Canada	1,247,535	\$226,032
Direct	576,963		Direct	567,054	
Indirect	751,557		Indirect	680,481	
Total Jobs exports to NAM	2,518,210	\$205,583	Total Jobs exports to NAM	2,414,813	\$227,786
Total Exports to NAM US\$ bn	\$517.7		Total Exports to NAM US\$ bn	\$550.1	
Private sector Jobs in US in 2019	126,358,743		Private Sector Jobs in US in 2021	122,716,652	
Share of total jobs linked to NAM exports	1.99%		Share of total jobs linked to NAM exports	1.97%	

Own estimate based on USMCA Tracker. Brookings. "USMCA Tracker | Brookings," February 5, 2024. <https://www.brookings.edu/articles/usmca-trade-tracker/#/goods>. Quarterly Census of Employment and Wages - Bureau of Labor Statistics.

CANADA 2019	2019 Canada jobs related to export of goods activities	Canadian Export value per job	CANADA 2021	2021 Canada jobs related to export of goods activities	Canadian Export value per job
Jobs to Export to Mexico	28,587	\$214,573	Jobs to Export to Mexico	34,387	\$200,628
Direct	12,100		Direct	15,174	
Indirect	16,487		Indirect	19,213	
Jobs to Export to USA	1,459,916	\$244,481	Jobs to Export to USA	1,572,659	\$239,095
Direct	573,946		Direct	621,494	
Indirect	885,970		Indirect	951,165	
Total Jobs exports to NAM	1,488,503	\$243,907	Total Jobs exports to NAM	1,607,046	\$238,272
Total Exports to NAM US\$ bn	\$363.06		Total Exports to NAM US\$ bn	\$382.91	
Private sector Jobs in US in 2019	12,525,000		Private Sector Jobs in CANADA, 2021	12,268,900	
Share of total jobs linked to NAM exports, 2019	11.88%		Share of total jobs linked to NAM exports, 2021	13.10%	

Own estimate based on USMCA Tracker. Brookings. "USMCA Tracker | Brookings," February 5, 2024. <https://www.brookings.edu/articles/usmca-trade-tracker/#/goods>. Statistics Canada. Table 14-10-0027-01 Employment by class of worker, annual (x 1,000).

The distribution of export-related employment is concentrated in the leading export sectors of the three countries, particularly in vehicles and associated transportation equipment and machinery. In Mexico, the combined direct and indirect jobs in both export sectors surpassed 3 million, representing approximately 56% of all jobs related to exports of goods to the U.S. and nearly 70% of those associated with exports of goods to Canada. In the United States, exports in these sectors collectively account for over 40% of the jobs linked to exports of goods to each partner. In Canada, the vehicle and transportation equipment sector is responsible for 12.9% of jobs connected to goods exports to the U.S. market, and 14.23% of those destined for Mexico (see Table 4).

To maintain its attractiveness for new investments, Mexico needs to improve the quality of its labor force in line with the requirements of companies engaged in regional value chains. Nearshoring investments involve advanced manufacturing and automation, so embracing advanced manufacturing requires training the Mexican workforce with the necessary knowledge and skills to actively participate and reap the benefits of nearshoring opportunities.³⁰

The road ahead

The USMCA, along with nearshoring, have significantly influenced North America’s trade and investment dynamics, which have been particularly key for Mexico’s growth, industrial evolution, and job creation. The shift in global trade patterns, especially in the context of the U.S.-China trade war, the “China+1” diversification strategy, and the Biden administration’s

TABLE 4.

Jobs in leading export related sectors in Mexico, the U.S., and Canada, 2021

**Total goods
export-related
jobs and share
by sector**

Mexican exports to USA, 2021	US\$ million, 2021	Jobs supported, 2021	5,322,140
16. Machinery and mechanical appliances; electrical equipment; parts thereof...	\$147,197	1,849,611	34.75%
17. Vehicles, aircraft, vessels and associated transport equipment	\$80,707	1,152,615	21.66%
Sum of goods categories 16 and 17		3,002,226	56.41%
Mexican exports to CANADA, 2021	US\$ million, 2021	Jobs supported, 2021	156,645
16. Machinery and mechanical appliances; electrical equipment; parts thereof...	\$4,323	55,316	35.31%
17. Vehicles, aircraft, vessels and associated transport equipment	\$3,800	54,180	34.59%
Sum of goods categories 16 and 17		109,496	69.9%
US exports to Mexico, 2021	US\$ million, 2021	Jobs supported, 2021	1,167,278
16. Machinery and mechanical appliances; electrical equipment; parts thereof...	\$82,674	381,462	32.68%
17. Vehicles, aircraft, vessels and associated transport equipment	\$24,140	110,436	9.46%
Sum of goods categories 16 and 17		491,898	42.14%
US exports to CANADA, 2021	US\$ million, 2021	Jobs supported, 2021	1,247,535
16. Machinery and mechanical appliances; electrical equipment; parts thereof...	\$60,874	301,057	24.13%
17. Vehicles, aircraft, vessels and associated transport equipment	\$50,996	207,087	16.60%
Sum of goods categories 16 and 17		508,144	40.90%
CANADA exports to USA, 2021	US\$ million, 2021	Jobs supported, 2021	1,572,659
16. Machinery and mechanical appliances; electrical equipment; parts thereof...	\$30,504	136,265	9.00%
17. Vehicles, aircraft, vessels and associated transport equipment	\$43,645	202,914	12.90%
Sum of goods categories 16 and 17		265,925	21.57%
CANADA exports to Mexico, 2021	US\$ million, 2021	Jobs supported, 2021	34,387
16. Machinery and mechanical appliances; electrical equipment; parts thereof...	\$720	2,972	8.64%
17. Vehicles, aircraft, vessels and associated transport equipment	\$1,159	4,893	14.23%
Sum of goods categories 16 and 17		7,865	22.87%

Source: Brookings. "USMCA Tracker | Brookings," February 5, 2024. <https://www.brookings.edu/articles/usmca-trade-tracker/#/goods>.

nearshoring strategies, has positioned Mexico as the U.S.' number one trading partner and a crucial investment hub within North America.

While relocation has been advantageous for Mexico, allowing it to capitalize on its lower labor costs, youthful workforce, and strategic geographical location, Mexico's true challenge is to improve labor productivity and develop a local supply chain that could help reduce its imports from Asia and particularly from China.

The USMCA and nearshoring have opened new doors for Mexico but sustaining and expanding these gains requires a conducive environment to do business, policy reforms, and a commitment to enhancing the nation's competitive edge in a rapidly evolving global economy. The effective leveraging of these opportunities will be crucial for Mexico's continued economic growth and development in the years to come.

Endnotes

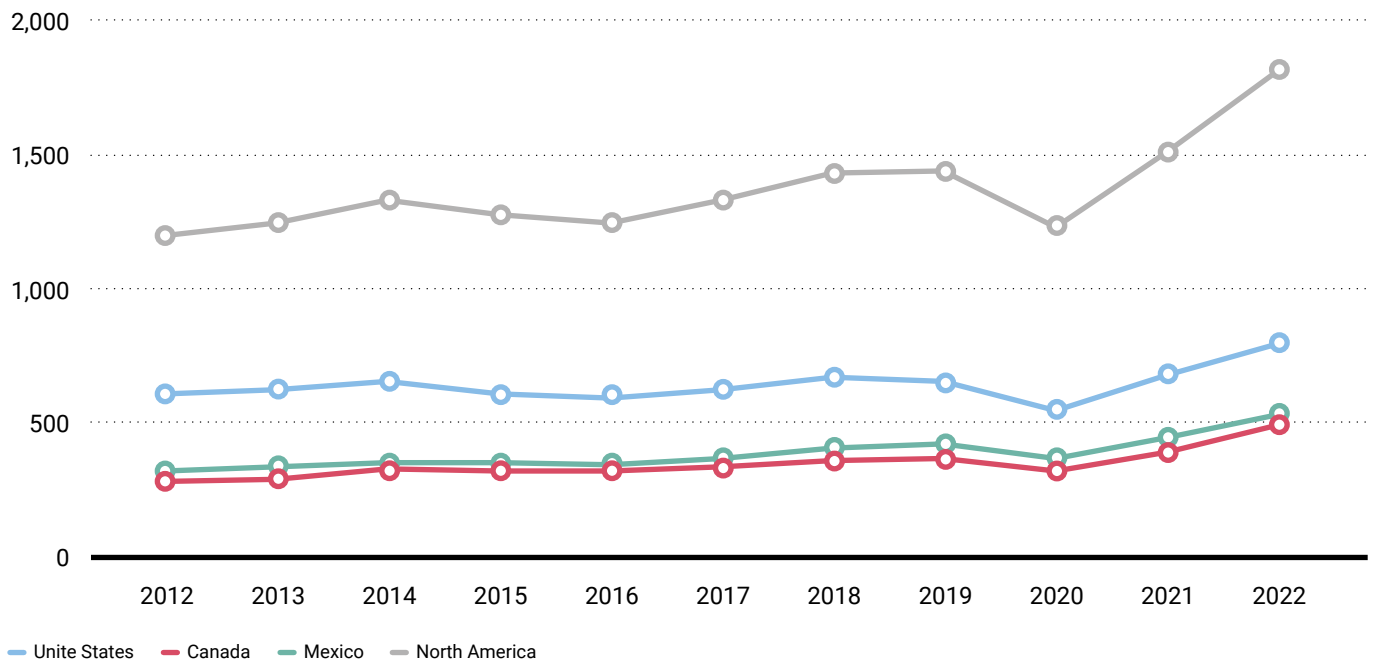
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- 23 <https://www150.statcan.gc.ca/n1/daily-quotidien/231103/dq231103a-eng.htm>
- 24 INEGI does not use the term unemployment but non-occupied people that means people who do not have a job but are actively looking for one. https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2023/enoen/enoen2023_11.pdf
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FIGURE 3.

Total North American trade soars 47% since USMCA took effect

Exports of goods and services by country, (US\$ billions) 2012-2022

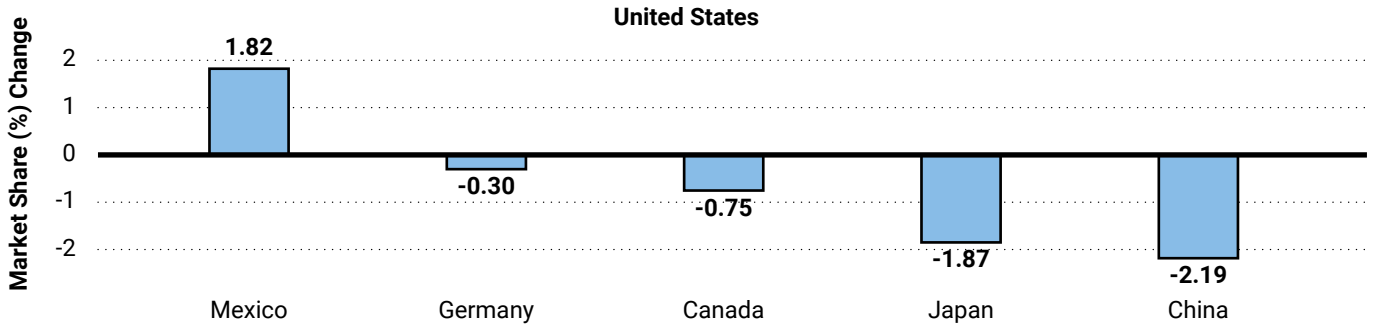


Source: OEC Database, DataMexico, StatsCan, US Census Bureau.

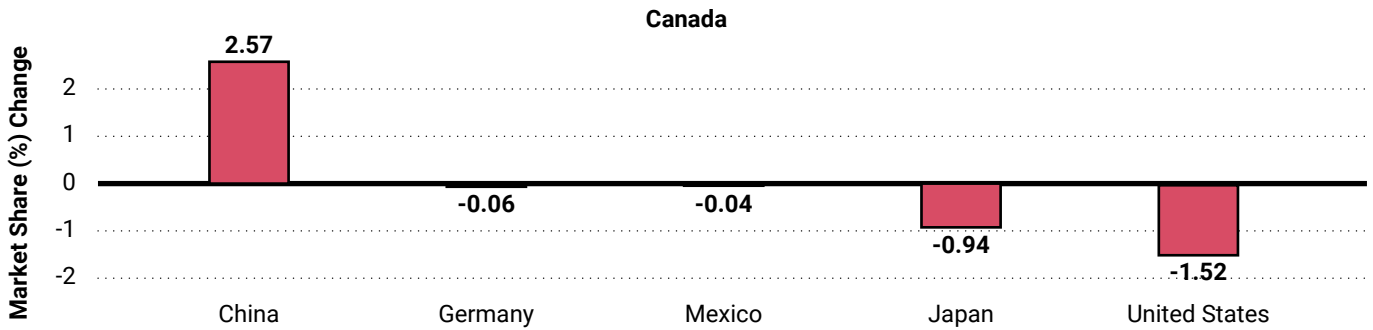
FIGURE 4.

Despite growth in North American trade, import shares decline

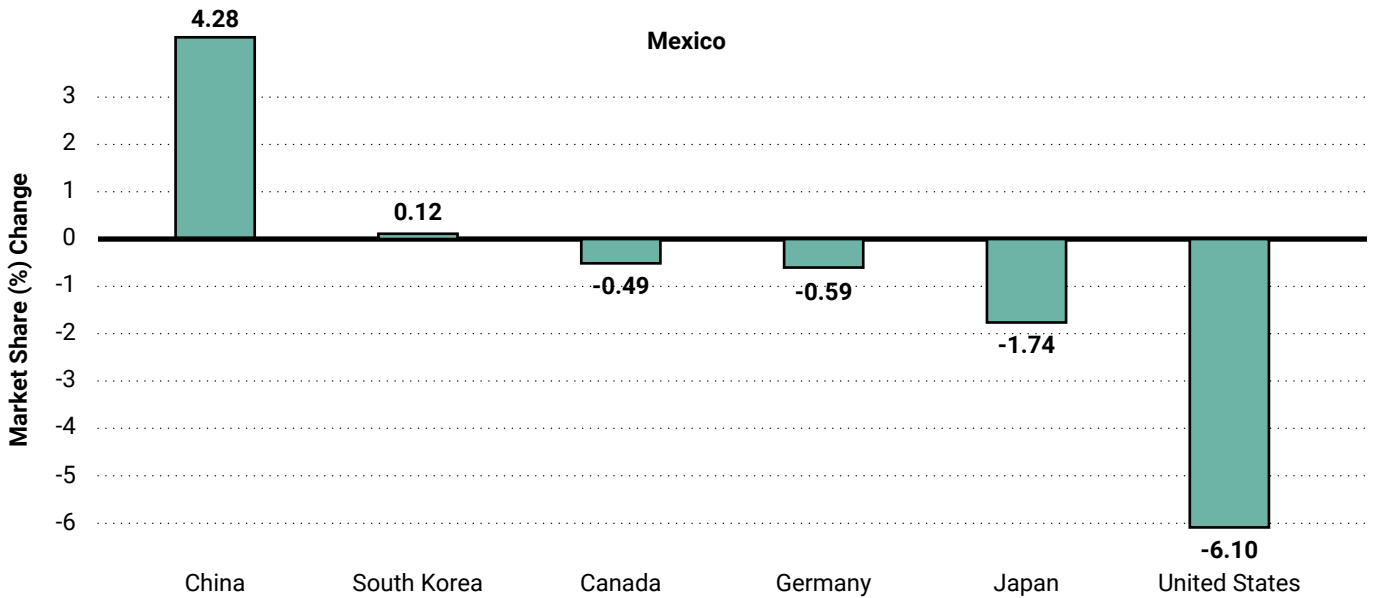
% Share of imports from key markets, 2012-2022



Source: US Census Bureau; OEC Database.



Source: OEC Database.

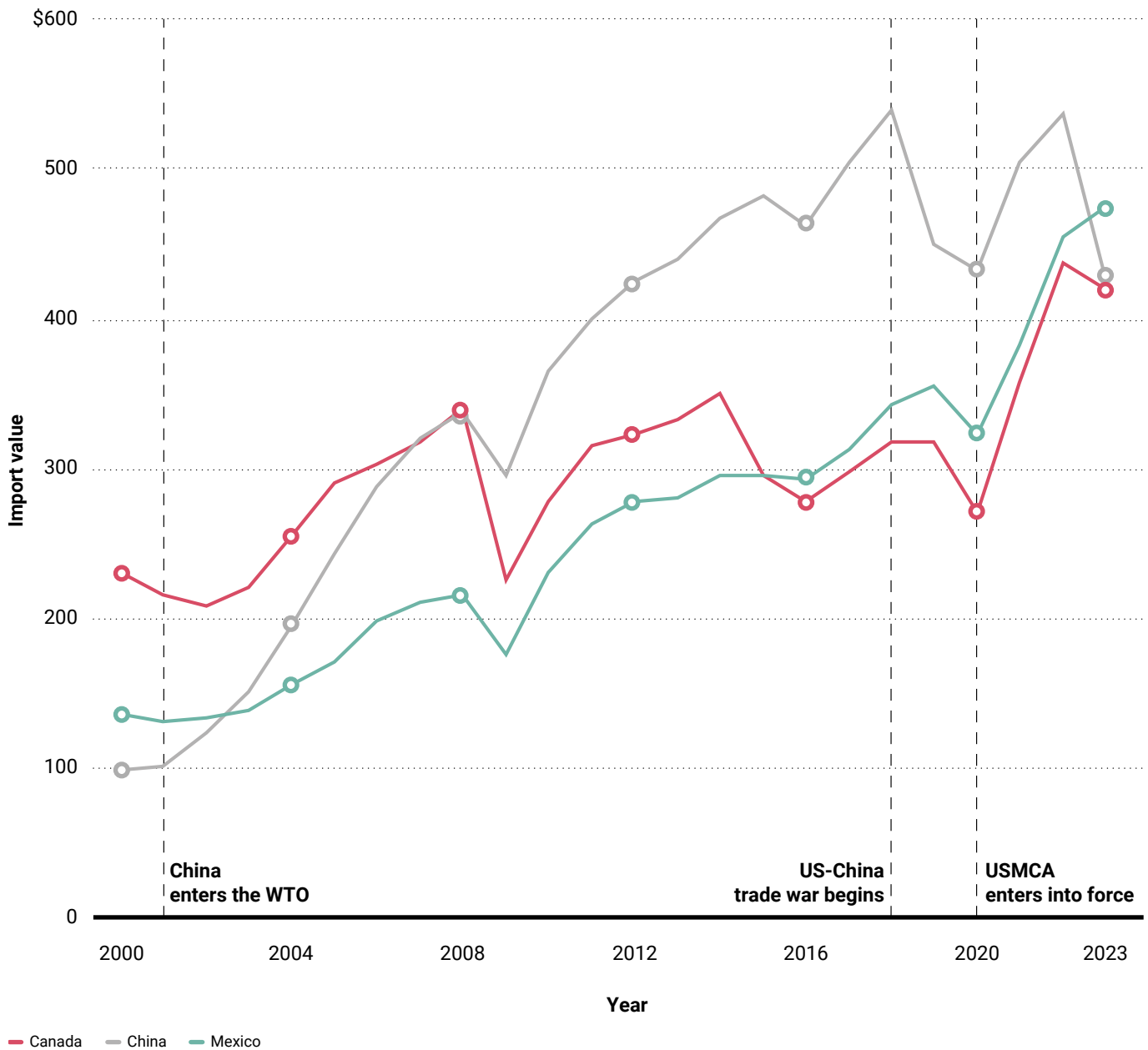


Source: OEC Database; Data Mexico; US Census Bureau.

FIGURE 5.

As China's import market share in the U.S. declines, Mexico's surges

(US\$ billions) (2000-2023)



Source: US Census Bureau; Brookings USMCA Insights Newsletter.

Note: Dollars on a nominal basis, not seasonally adjusted



MARÍA EUGENIA CAMPOS GALVÁN

Governor | State of Chihuahua, Mexico

Chihuahua: Unlocking opportunities and overcoming challenges

Chihuahua stands as one of three Mexican states reaping significant benefits from the USMCA, showcasing a remarkable 5.1% economic growth in the first quarter of 2023.¹ In the short span from 2021 to 2022, the state witnessed a staggering 28% increase in exports. This success story owes itself to a confluence of factors: a resolute government dedication to position the state as a prime investment destination; substantial investments in education programs to prepare citizens for complex tech and manufacturing roles; a robust security initiative in collaboration with businesses and civil society; and an unwavering commitment to democratic principles that underscore the rule of law, assuring citizens, companies, investors, and public officials that accountability reigns supreme.

Chihuahua, the largest state in Mexico by geographic size, has

held the title of the country's top exporter for 12 consecutive years, amassing over \$75 billion in exports during 2010-2022.² Its geostrategic location and an extensive border with the U.S., are a gateway for trade, cultural exchange, and shared development between the two countries. The Chihuahua government understands that global challenges have local impacts that require cross-border cooperation and the active involvement of citizens, through transparent and accountable mechanisms, that reinforces the vital role of democratic institutions. While democracies do not guarantee flawless governance, they act as a safeguard of accountability and balance of powers, providing the potential for elected officials' better performance.

The main opportunities ahead

Chihuahua, enriched not only by its prime geographical location and

abundant natural resources, but by its hard-working people, stands as one of Mexico's key manufacturing hubs, a status enhanced by the USMCA. Since the agreement came into effect in 2020, it has attracted increased foreign direct investment (FDI), particularly from U.S. and Canadian companies expanding their operations into Mexico and Latin America.

The USMCA continues to usher in a plethora of opportunities for the state, Mexico, and the broader North American region. Going forward, the most promising opportunities for Chihuahua include: 1) the phenomenon of nearshoring; 2) a growing demand for Mexican products in the U.S. and Canadian markets; and 3) growth in FDI flowing into Chihuahua, generating employment, infrastructure, and a constant need for adaptive education programs to cultivate highly qualified labor. These opportunities, underpinned by the USMCA, have

driven the Chihuahua region's export growth, reaching over \$35 billion in the second quarter of 2023.³ In terms of employment, in the third quarter of 2023, 453,000 jobs were created in Chihuahua's manufacturing sector alone, marking a 3% increase from 2022. During the same period, Mexico attracted approximately \$1.86 billion in FDI with a high percentage in manufacturing⁴, with Chihuahua representing a substantial 23.8% of this amount, or \$443 million.⁵ Complementing this increased trade and investment in manufacturing is infrastructure development. For example, the recent agreement with Mexico-Pacific to construct the Sierra Madre gas pipeline in the state involved a \$15 billion investment. This pipeline will transport gas from Texas to the Pacific coast in Mexico for export to Asia, opening up new markets for North America.

The primary objective as elected public officials is to ensure that all these opportunities are firmly grounded in the rule of law, guaranteeing that citizens and everyone involved can witness tangible improvements in their daily lives.

Challenges to be surmounted

Challenges are inherent in every journey. Concerning the successful

implementation of the USMCA in Chihuahua, Mexico, and the North American region, the primary challenges include: 1) ensuring that small and medium-sized enterprises (SMEs) are able to grow and take advantage of USMCA to boost their exports; 2) retraining workers in the state and reducing workforce migration; and 3) conducting seamless cross-border integration with new investments in infrastructure.

Labor migration and cross-border mobility in Chihuahua are significant challenges. The state has experienced substantial migratory flows for various reasons. A state offering good jobs, quality education, functional democratic institutions, and protection for civil and human rights is essential to retaining the local population. Smooth collaboration among countries and neighboring states will further contribute to the growth and development of Chihuahua. Complications, such as the 2023 border closures with Texas—resulting in approximately \$30 million in daily export losses and disruptions in the supply chain—underscore the importance of proactive governance and deeper cross-border cooperation. Moreover, the potential influx of migrants into the U.S. from Mexico poses a significant risk to

state institutions at a humanitarian, economic, and governance level.

The role of effective democracy in expanding USMCA attributes

Democracy is no longer confined to election cycles; it is a continuous approach to decision-making and policy formulation. Economic development must harmonize with democracy. According to the Latinobarómetro 2023 research,⁶ “The Recession of Democracy in Latin America,” Mexico is among the countries experiencing “a weak or regressing democracy,” with support of democracy dropping from 43% in 2020 to 35% in 2023. This decline underscores the urgency of strengthening individual, civil, social, and economic rights, and their protection. North America has been, for the past decades, a region of economic prosperity, a fertile ground for trade, and one based on democratic ideals, processes, and institutions. Our region demands continuous efforts from state governments to uphold liberal values and governance within the framework of the rule of law. This administration remains committed to pushing forward economic wellbeing as well as prioritizing the consolidation of democracy for the state of Chihuahua.

Endnotes

- 1 Ministry of Innovation and Economic Development, Government of the State of Chihuahua.
- 2 “Mantiene Chihuahua Liderazgo Nacional En Exportación Pese a Crisis Migratoria | Portal Gubernamental Del Estado De Chihuahua,” n.d., <https://chihuahua.gob.mx/prensa/mantiene-chihuahua-liderazgo-nacional-en-exportacion-pese-crisis-migratoria>.
- 3 Gobierno de México, “Data México,” accessed February 12, 2024, <https://www.economia.gob.mx/datamexico/en/profile/geo/chihuahua-ch?redirect=true&timeNetTradeSelector=Quarter>.
- 4 Gobierno de México, “Data México,” accessed February 12, 2023, <https://www.economia.gob.mx/datamexico/en/profile/geo/mexico#economia-inversion-extranjera>.
- 5 Gobierno de México, “Data México,” accessed February 12, 2024, <https://www.economia.gob.mx/datamexico/en/profile/geo/chihuahua#economy>.
- 6 See <https://www.latinobarometro.org/lat.jsp>.



JUDY MARKS

Chair, CEO and President | Otis Worldwide Corporation
Chair, Trade and International Committee | Business Roundtable

Growing, strengthening, and innovating North America together

Now, more than ever, U.S. companies like Otis rely on the certainty the United States-Mexico-Canada Agreement (USMCA) provides as we plan for the future. Business Roundtable members across industries depend on the North American economy's stability and integration to drive our competitiveness. To that end, Business Roundtable partnered with all three governments, as well as CEOs from all three countries, to ensure that USMCA negotiations succeeded, and together, we continue to build strong bipartisan and stakeholder support for the agreement.

USMCA took effect when it was needed the most

When USMCA was signed, and the legislation implementing the

agreement in the United States passed the U.S. Congress with historic bipartisan support, no one could have known how important North America's strong and stable trade and investment ties would become. USMCA became effective in July 2020, only a few months after the onset of the COVID-19 pandemic. As supply chain disruptions from the pandemic and geopolitical conflict intensified, USMCA helped buttress the North American economy and contribute to the resilience of all three countries. USMCA negotiations and implementation efforts deepened trilateral government-to-government ties, which helped North America navigate these disruptions with a united front. The agreement also enabled policy cooperation on forward-looking efforts to enhance supply chain diversification and resilience. For example, through the

innovative USMCA Competitiveness Committee, all three countries reached an agreement¹ in February 2023 to better position North America to navigate future supply chain disruptions through enhanced coordination.

USMCA partners invest, integrate, and innovate together

The broad, bipartisan support for USMCA demonstrates that the case for comprehensive free trade agreements can still be made in the U.S. Congress. Furthermore, the increased trilateral trade and investment that has flowed from USMCA—and the North American Free Trade Agreement (NAFTA) before it—demonstrate that trade agreements should remain at the heart of U.S. international economic policy. Trade with Canada and

In all three countries, USMCA is needed to incentivize further economic integration and development of sectoral supply chain ecosystems to strengthen the competitiveness of manufacturing in North America.

Mexico collectively accounts for approximately 26% of total U.S. trade—larger than any other trading bloc—and trading activity in North America continues to accelerate faster than U.S. trade with the rest of the world. From 2019, the last full year before USMCA went into effect, through the first half of 2023, U.S.’ two-way trade in goods and services with Canada and Mexico grew 28% to \$1.8 trillion, outpacing the 21% growth in U.S. trade with the rest of the world during the same timeframe.

Investment ties have also grown stronger. U.S. foreign investment in Canada and Mexico grew 21% from 2019 to 2022, reaching \$569 billion, while Canadian and Mexican investment in the United States grew 34% during that same period to \$623 billion. As with the trading relationship, investment between the United States and our North American neighbors has outpaced U.S. outward and inward investment when compared with the rest of the world.

USMCA contains important updates to NAFTA on chapters


governing trade facilitation, digital trade, dispute settlement, regulatory practice, and market access, as well as higher and more easily enforceable labor and environmental standards. However, the full benefits of the agreement will not be realized unless all USMCA commitments are honored and enforced. In addition, with the enactment and ongoing implementation of domestic manufacturing and supply chain programs in all three countries, USMCA is needed to incentivize further economic integration and development of sectoral supply chain ecosystems to strengthen the competitiveness of manufacturing in North America. Across key sectors, such as critical minerals, clean energy technologies, semiconductors, and pharmaceuticals, pairing USMCA with domestic legislative and policy initiatives, such as regulatory reforms to streamline project approvals, fiscal incentives to support technology modernization, and workforce development programs, can accelerate trilateral economic integration, innovation leadership, and job opportunities.

USMCA needs vocal business community champions in upcoming elections and the first USMCA sunset review

Business leaders must continue to champion the importance of USMCA during the upcoming elections in all three countries and the first sunset review of the agreement in 2026. In the face of ongoing and evolving global economic, climate, and technological disruptions, U.S. global competitiveness, innovation leadership, and supply chain diversification efforts depend on USMCA’s framework for North American economic integration. Sustaining political and stakeholder support for USMCA will require business leaders and supporters to raise awareness about the depth and importance of trade, investment, and supply chain integration in North America. Business Roundtable members will continue to partner with our CEO counterparts in Mexico and Canada to tout the agreement’s benefits with policymakers and to ensure a smooth extension of the agreement in 2026.

Endnotes

1 <https://ustr.gov/sites/default/files/2023-02/FTC%20decision%20%235%20trade%20flows%20English%20Final.pdf>.



THE TRACK RECORD OF THE USMCA RAPID RESPONSE MECHANISM



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The USMCA's Facility-Specific Rapid Response Mechanism (RRM) is the first of its kind, but it may not be the last. As the United States presses other trading partners to consider implementing such a tool in other trade agreements, the time is ripe to take stock of the tool and its track record to date.

The RRM was negotiated late in the revised North American Free Trade Agreement (NAFTA) negotiations. In 2019, after having taken control of the U.S. House of Representatives, congressional Democrats insisted on the RRM's inclusion. Proponents saw the RRM—together with the extensive reforms of Mexico's labor law apparatus required by the agreement's labor chapter—as the primary reason for the broad bipartisan support the USMCA garnered. They viewed the extensive emphasis on labor matters in the agreement as marking a new era for trade and an important step forward.

The RRM is designed to protect workers' collective bargaining rights at worksites in North America. It allows one of the three governments to impose tariffs or exact other penalties on goods and services from facilities where that government has a good faith belief that there has been a denial of those rights. The governments can activate the RRM regarding a facility in a "priority sector," defined as "a sector that produces manufactured goods, supplies services, or involves mining" if the facility produces goods or supplies services traded between the parties or that compete in the territory of the other party. At the moment the initiating government activates the tool, that government may "delay final settlement of customs accounts related to entries of goods" coming from that facility.²

If the two governments both believe a denial of rights has taken place or is ongoing, they may agree to pursue a "course of remediation": a plan for resolving the labor rights violation. The USMCA does not prescribe the content of such plans but those to date have included, for example, requirements on the company and its workers to hold a new union vote and for that election to be monitored by external observers. Where no course of remediation is concluded or successful, the initiating government can decide to impose penalties on the company until the denial of rights is ameliorated. Those penalties can begin immediately with the suspension of liquidation of goods from that facility and, if the problem is not remedied, further penalties may include a loss in preferential tariff status. If the government where that facility is located is uncooperative, or if the two governments disagree, either government may call for the establishment of a panel of labor experts to determine whether workers are being denied their rights.

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RRM situations come to the attention of the governments largely through written petitions, but all three parties have provided additional means through which members of the public may submit information about labor rights situations. In the United States, those include an online “hotline”—a form where information can be reported anonymously. In some instances, the U.S. government has carried out its own independent investigations and used the RRM at those facilities.

Importantly, although the primary text of the USMCA suggests the RRM is reciprocal, its application to facilities in Canada and the United States is severely limited by carve-outs inserted by those countries. A footnote in the text restricts Mexico’s use of the RRM to only those facilities in the United States or Canada that have exhausted extensive domestic administrative review—a category invented for purposes of the RRM and limited to a small

handful of facilities each year. There is also no RRM between Canada and the United States; rather, there are two bilateral RRM—each contained in a separate annex to the USMCA dispute settlement chapter: one between Canada and Mexico and the other between the United States and Mexico.

As of November 1, 2023, the RRM has been activated 16 times—all by the United States against facilities in Mexico. Although Canada accepted one petition for review, the issue was resolved before the Canadian government formally took steps against the facility under the RRM. These 16 uses have yielded mixed results. This chapter reviews those uses before evaluating the track record of the RRM and making some recommendations for its reconsideration.

Situations to date and their impacts

The Disputes section of the USMCA Tracker, a tool developed by the USMCA initiative at the Brookings Institution with data on trade, export-related jobs, and investment flows, names the companies, the locations of the worksites, and the dates on which the United States sought Mexico's review.³ Mexico accepted ten of the 16 U.S. requests for review and ultimately rejected three—two because the alleged denials occurred before entry into force of the agreement and one because there was no evidence of employer interference or denial of rights to freedom of association and collective bargaining by the company. One of those three rejections has led to the first recourse to a panel of experts to review the situation, and the panel's work is ongoing as of the time of writing.

There have been petitions the U.S. government rejected about which some limited information was available through interviews with stakeholders; however, very little information is publicly available about the petitions that are filed and rejected.

Each situation, as well as the rejected petitions publicly known, dealt with a facility in the automotive sector until June 2023 when the United States sought review of a facility in the textiles sector. Thereafter, the United States also sought review of facilities in the mining and services sectors.

Already in the first deployment of the RRM by the United States regarding a General Motors (GM) facility in Mexico, some of the challenges in deploying the tool came to light. In the GM situation, both the U.S. government and the Mexican government were heavily engaged with the company, including through the ordinary Mexican labor enforcement process. Prior to the U.S. activation of the RRM, Mexican officials had taken action against an exploitative and undemocratic union at the facility, as well as against employees implicated in ballot tampering. Nevertheless, the U.S. government activated the RRM given that, in its view, the denial of rights was ongoing. The activation of the RRM added immediate financial consequences on GM and possibly exposed the company or its workers to additional liability as more facts came to light from the review. While the Mexican government's actions targeted individual employees and the union, the U.S. deployment of the RRM effectively enlisted the company in facilitating the desired outcome of remediation of worker rights to democratically elect a union.

Subsequent RRM situations followed a similar pattern. With respect to a Panasonic facility, for example, information released by U.S. Trade Representative (USTR) stated that the company entered into an illegitimate collective bargaining agreement with an undemocratically elected union, leading to the dismissal of workers and withholding of paychecks. The facility ultimately agreed to renounce a collective bargaining agreement it had with the exploitative union, reimburse workers, and offer backpay to workers who were wrongfully dismissed, among other commitments. At a VU Manufacturing worksite, the United States alleged that the company cooperated with an illegitimate union without workers' consent. This invocation of the RRM led to elections at the worksite carried out with government supervision. Four months later, however, members of the U.S. Congress urged USTR to take further action at VU Manufacturing, alleging that the illegitimate union had made threats toward a labor organizer and that violence at the facility was likely imminent. This led to a second activation of the RRM against the same facility, and ultimately to the closure of VU Manufacturing.⁴

In August 2023, USTR announced that it sought the establishment of a panel for the first time under the RRM for a situation involving Grupo México regarding a mining facility after the Mexican government rejected the U.S. request, saying that the violation of rights occurred before the entry into force of the USMCA. A panel of three labor experts commenced work on August 30, 2023. The Agreement requires that a panel within five business days of its constitution “confirm that the petition: (a) identifies a Covered Facility; (b) identifies the respondent Party’s laws relevant to the alleged Denial of Rights; and (c) states the basis for the complainant Party’s good faith belief that there is a Denial of Rights.”⁵ The panel, faced with very short submissions from both sides, and a very short deadline, adopted a “*prima facie*”-styled decision in which it “confirmed” the petition. It later announced a schedule for submissions from both governments. Most importantly, the panel has indicated that it will hold an in-person “verification hearing in Mexico City.” The panel will allocate two days for oral arguments and the hearing will be open to the public.

All but two of the targeted facilities in Mexico are Mexican subsidiaries of foreign-headquartered, multinational firms. Many of the situations have involved U.S.-headquartered firms, two have implicated Japanese firms, five have targeted European companies, one has dealt with a Korean company, and one targeted a Chinese company. While some of the companies that have been targeted are well-known brands, the majority are small lesser-known companies, often that provide inputs to large U.S. and European auto manufacturers.

The role of the facility and its parent company in the execution of the tool has come under a degree of scrutiny. Nothing in the RRM requires the three governments to involve the company in its review or in its subsequent remediation planning, and rarely have the governments done so. The parent companies are often not aware of the alleged denial of rights prior to the announcement by the U.S. government of the suspension of liquidation of goods from the facility. In the remediation plans that are publicly available, the United States and Mexico have repeatedly included obligations on the company in question, such as providing security to workers in their election processes. Company representatives have reported that the governments have not consulted them in the development of these plans, and other stakeholders such as nongovernmental organizations have likewise raised concern about the companies' exclusion because their exclusion may make it harder to ensure that the company will be engaged in the successful resolution of the problem.

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Although no one actor dominates the petition filings, the United Autoworkers and the United Steelworkers, as well as the American Federation of Labor and Congress of Industrial Organizations, have been instrumental in the development of petitions for review, as have non-governmental organizations such as Rethink Trade. Likewise, on the ground in Mexico, labor leader Susana Prieto has advocated for the use of the RRM, and her activism has likely contributed to the concentration of RRM activity at worksites in the regions in which she is most active.

Although it is difficult to assess just how "rapid" the Mechanism is—when measured from the date of the original petition to the date that the U.S. government resumes liquidation on the goods from that facility—each of the situations encountered to date that has reached such a conclusion has lasted fewer than four months. They range from 81 days in the case of Unique Fabricating to 132 days for GM. But these numbers undercount in one respect and overcount in another. First, the date of resumption of liquidation is often not the end of the matter. In each situation, monitoring by both governments continues for at least several more months through the implementation of the remediation plan or through the informal, unannounced supervision that both Mexico and the United States have undertaken. Second, the date of the petition may not reflect the date upon which the U.S. government's review began. For example, with respect to two companies that were targeted following an independent investigation or a hotline tip, rather than a written petition, no information is available regarding their start dates.

There is also some concentration of the reviews in particular regions of Mexico. Some Mexican cities have seen more than one facility come under review, in part because workers may have shared information about the RRM process with their neighbors and local communities. Unsurprisingly, these locations are also some of the major automotive manufacturing centers in Mexico.



Assessments and challenges

The success of the RRM can be measured along several different dimensions, depending very much on one's perspective. As a tool for unlocking higher wages and other benefits for workers, the RRM has had some success. In at least a small handful of firms, workers appear to have benefitted economically from the deployment of the tool.⁶ Those benefits may have extended beyond the companies targeted, as well. Some firms in Mexico have sought counsel in making sure that they are operating consistently with Mexican labor law to avoid attention from the U.S. government under the tool. The initiation of investigations by the U.S. government has prompted companies to take a closer look at the management of their local subsidiaries. Thus, there is some evidence of a deterrence effect that may be attributable to the United States' invocation of the RRM at these nearly 20 facilities.

Another view of the RRM is that it helps the López Obrador government achieve greater reach in its enforcement efforts. The RRM has proven useful in Mexican states where reforms to the labor enforcement system have been slow. The non-governmental organizations and organized labor groups that have submitted petitions for review have indicated, positively, that the RRM is supporting stronger corporate accountability norms and better conditions for workers in the locations where it has been used.

A question remains, however, as to the costs that the tool imposes. Within the U.S. government, the RRM process is time-consuming for many staff and requires extensive government resources. The administrative burdens may have inhibited the government actors from activating the RRM for more facilities. And just as the U.S. government officials have found the review process laborious, the filing groups must engage in extensive research and writing to submit a single petition regarding just one facility. They have done so with little guidance from U.S. officials as to the criteria for review. The lack of transparency and limited information shared with companies has also impeded the companies' ability to cooperate.

Relatedly, some advocates have noted that achieving higher wages for workers appears at first glance consistent with labor advocacy goals, but they likewise acknowledge that they lack sufficient information to evaluate the gains of the RRM. If used in instances where the company is not cooperative, the tool could make matters worse by negatively impacting the workers it is designed to help. In other instances, the RRM could disrupt local communities and contribute to power imbalances that may lead to increased violence in those communities. Some of the smaller companies under review have faced significant financial distress; one company closed while under review, leading to criticism about the Mechanism given that those workers lost their jobs in the process.

There are also costs to the sustainability of the Mexican labor reform process. Some advocates have lamented that the tool has not led to sufficient institutional capacity building in Mexico. Others have argued that the intervention by the U.S. government has detracted from the advances in the labor reform process, such as where the U.S. government supersedes the efforts by the Mexican administrative bodies.

As for future challenges, skeptics note that the Mexican government's support for the tool may turn on the strategic interests of the present administration more than a commitment to the principles. The U.S. and Mexican governments have mostly cooperated on the RRM situations thus far. The Mechanism has support from left-leaning administrations in both the United States and Mexico. When those administrations change, however, the governments' deployment of the RRM could play out very differently. Expanded interference could be perceived as infringing on party sovereignty that could in turn put the North American economic integration project in doubt.

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Recommendations

With a review of the USMCA soon upon us, no doubt organized labor groups will take stock of the RRM's deployment and exert the same degree of pressure as in the negotiation of the Mechanism to ensure that whatever reforms are made, those changes support worker rights and higher wages in Mexico as the RRM was originally intended to do.

Having taken stock of the mechanism's operation to date, this chapter offers some procedural fixes that could help the RRM operate more smoothly.

- First, with respect to the governments' engagement with stakeholders, they could make more information public about the criteria they are applying as well as more inclusive in their preparation of remediation plans. They could bring companies into the conversation during the remediation planning process.
- Second, on the issue of complementarity, the governments ought to consider developing rules to manage the interaction between the international and domestic processes. The parallel Mexican proceedings and RRM proceedings have led to confusion. Resolving those issues and implementing more capacity building programs would help.
- Third, with the first panel it is clear that more guidance is needed as to the panel process. The panel so far has adopted the Agreement's Chapter 31 Rules of Procedure, at least in part. Those are designed for traditional state-to-state disputes, but likewise could apply to the RRM, which is an annex to Chapter 31. The match is not a perfect one though, and the first panel has already departed on occasion. The panel process would benefit from clarity on the rules and the parties' intended steps in the panel's work, including the means through which non-governmental entities may participate.

These are three of several reasonably straightforward recommendations that may be feasible for the parties in the coming months. Larger questions about the scope, stringency, and success of the RRM remain. The latter ought to come first in the parties' assessment of the RRM's future, but the former two may be more realistic short-term options while the Mechanism remains in significant use.

Endnotes

- 1 This Essay draws research carried out for Kathleen Claussen & Chad Bown, *Corporate Accountability by Treaty: The New North American Rapid Response Labor Mechanism*, Am. J. Int'l L. (forthcoming 2024).
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- 3 See "USMCA Tracker | Brookings," Brookings, February 5, 2024, <https://www.brookings.edu/articles/usmca-trade-tracker/#/disputes>.
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- 5 <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/31-Dispute-Settlement.pdf>
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KATHERINE C. TAI

United States Trade Representative

A trade agreement for the common good

The entry into force of the final, worker-focused text of the United States–Mexico–Canada Agreement (USMCA), and in particular its Rapid Response Labor Mechanism (RRM), was a defining moment in the trajectory of trade and international economic policy.

From its start, the North American Free Trade Agreement (NAFTA) carried a heavy burden of criticism that it would undermine the rights of workers, the backbone of our economies. Over the next two decades, manufacturing communities across America were hollowed out. Families lost their livelihoods. U.S. workers were continually pitted against workers in Mexico, who remained structurally stymied from advocating for

themselves because of corporatist protection unions aligned with employers.

The U.S. government ultimately chose to fight for workers in the renegotiated USMCA by incorporating a transformative tool, the RRM. This first-of-its-kind mechanism allows interested parties to precisely target specific facilities that are simultaneously benefiting from the USMCA while denying the rights of workers guaranteed by USMCA's rules and Mexico's recent labor reforms.

The RRM is a main reason the revamped USMCA gained the support of many members of U.S. Congress who have opposed free trade agreements. Likewise,

labor organizations, including the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the United Steelworkers, actively endorsed the agreement.

The Biden-Harris Administration has prioritized actively using the RRM. For us, the point of the renegotiated USMCA—and any trade deal—is for everyday people to know that trade can work for them. A trade agreement can and should be a tool to ensure that workers get their fair share, and to embed economic security for working communities for today and for future generations, too.

This is how we are beginning to create a race to the top in our hemisphere, together with the

A trade agreement can and should be a tool to ensure that workers get their fair share, and to embed economic security for working communities for today and for future generations, too.

Government of Mexico, to benefit workers in both of our countries, and we are seeing real change.

The RRM case at a General Motors facility in Silao, Mexico, is a prime example. After receiving a tip from a worker through the USMCA hotline, the United States self-initiated an RRM case, and our investigations found that ballots were destroyed during a vote on a proposed collective bargaining agreement between the facility and the workers' union.

Only a few months after invoking the mechanism, workers elected an independent union and agreed to a new collective bargaining agreement that provided a first-year wage increase of 8.5% for approximately 6,000 workers, as well as a 5.3% increase in other benefits, including bonuses. In 2023, the union negotiated an additional salary increase of 12.5%—a total wage increase of nearly 30% since the RRM action.

The United States has also used the mechanism with great success in responding to issues raised for us by workers through the petition

process. For example, we received a petition from the AFL-CIO, United Auto Workers, and an independent Mexican union known as *Los Mineros*, that alleged a longstanding and violent campaign to undermine organizing activities and union operations at the Teksid facility in Frontera, Mexico. The RRM action led the company to recognize *Los Mineros*, reinstate and pay backpay to thirty-six workers, and pay *Los Mineros* multiple years of previously-owed union dues.

Sometimes, the United States and Mexico have not agreed on how to resolve an RRM matter, as in the Grupo Mexico San Martin Mine case. There, the United States requested Mexico to review whether the mine operator in Zacatecas chose to bypass the existing union—which had the sole right to collectively bargain with the operator—and resume operations during an ongoing strike. After Mexico found no denial of workers' rights, the United States requested a dispute settlement panel under the USMCA to make its own assessment. This marked the first time a panel has been convened under the mechanism and the

process is proceeding under the RRM's rules and procedures.

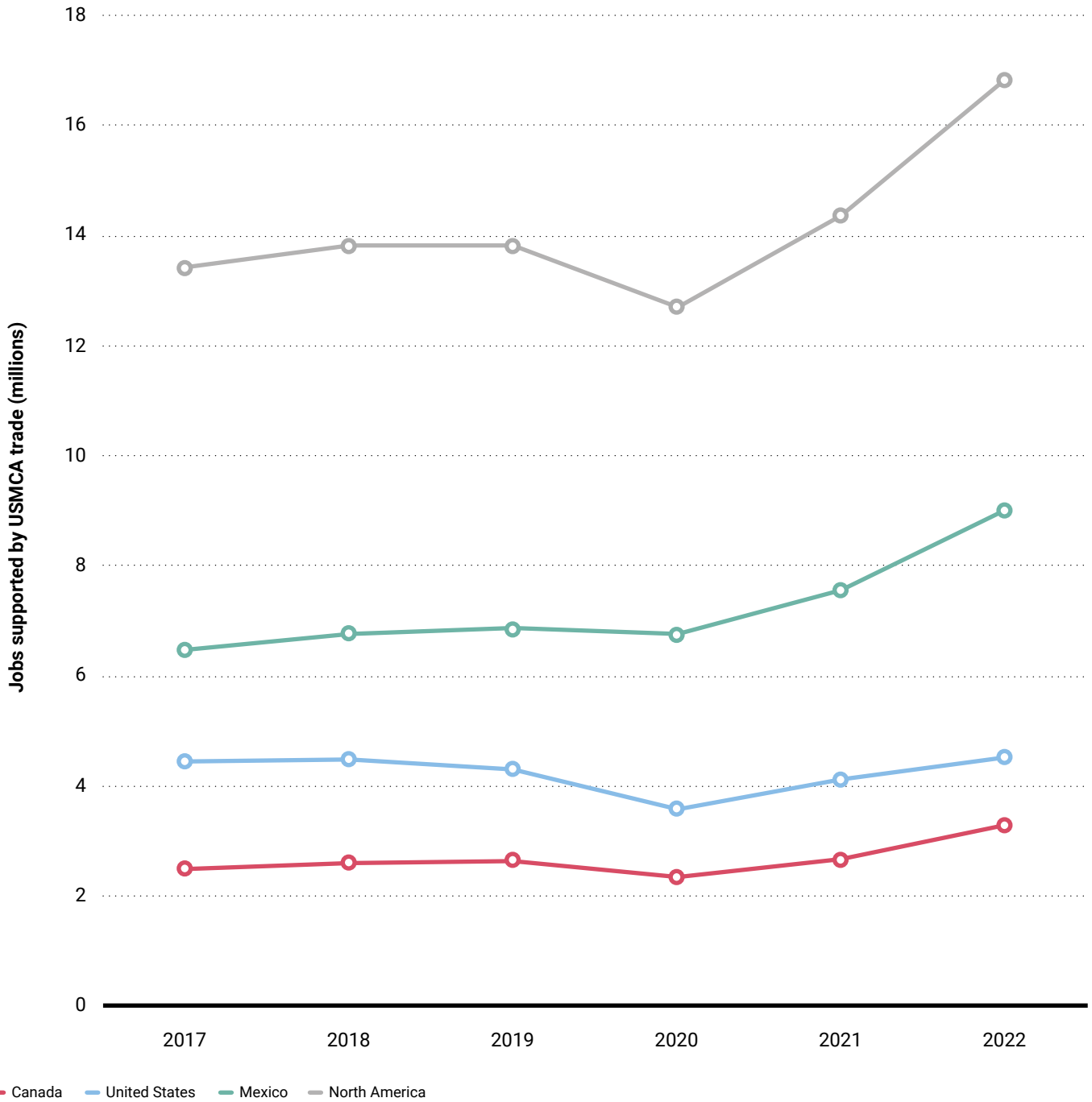
As of mid-January this year, the United States invoked the RRM 19 times overall and 13 times in 2023, at facilities that span various sectors, including the automotive, garment fabrication, transportation services, and call center industries. Eight cases have resulted in backpay for workers, six resulted in reinstatements for wrongfully terminated workers, two included severance pay, and eight resulted in the election of new independent unions. Canada has also worked with Mexico to restore workers' rights at a pipe manufacturing facility in Silao, Mexico. The USMCA's RRM is proving the concept that workers can secure their rights through innovations—in a trade agreement of all things.

These wins are why the RRM will continue to be a model for our trade initiatives. Since day one, the Biden-Harris Administration's approach to trade has been worker-centered. The USMCA RRM demonstrates how we can work with our trading partners to build our middle classes together.

FIGURE 6.

USMCA as an engine for job growth

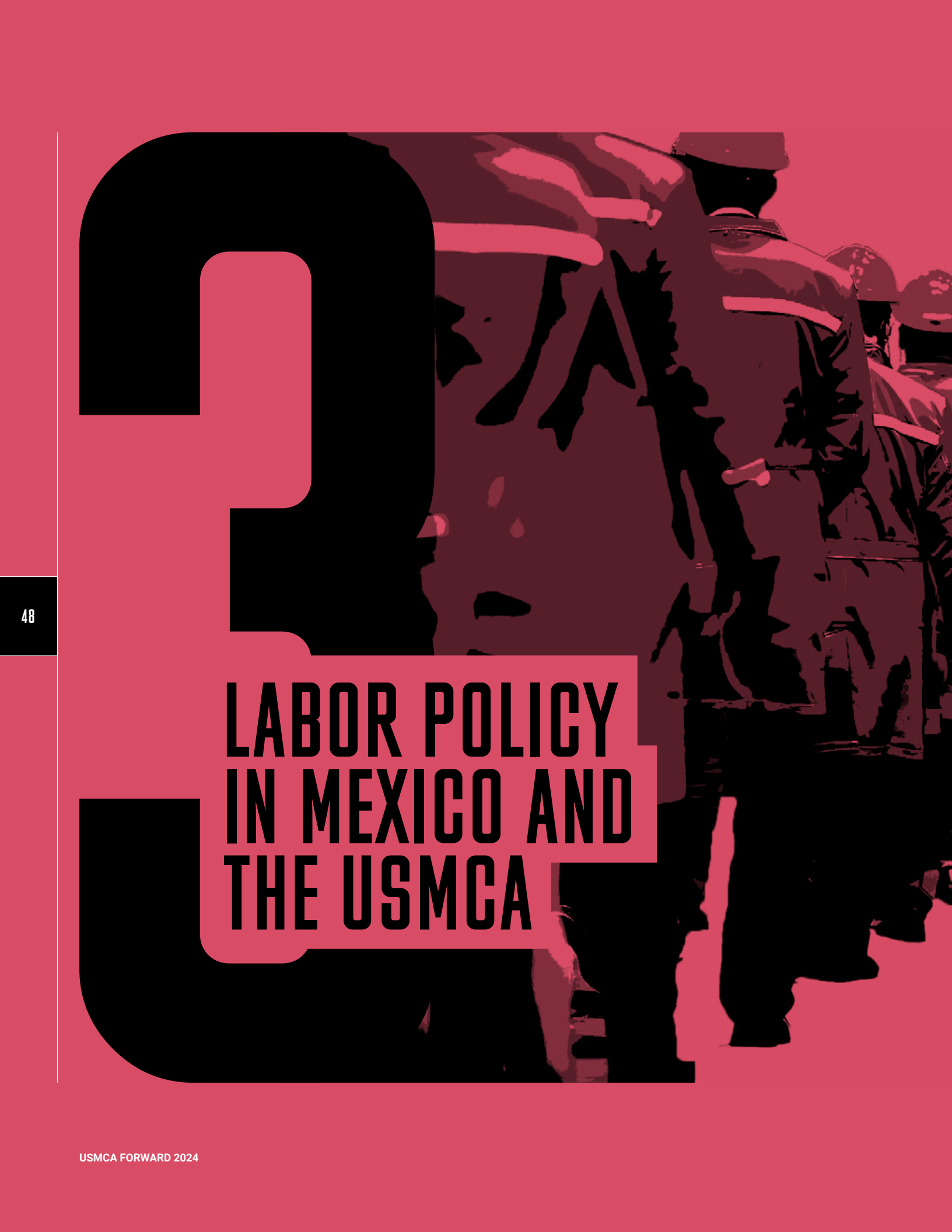
Exports of goods and services across North America have delivered significant growth in jobs*



* Services estimates utilize the latest figures from the OECD Trade in Employment database (2017-2020)

Source: Brookings USMCA Tracker; Trade Partnership Worldwide LLC based on official country data and other resources.



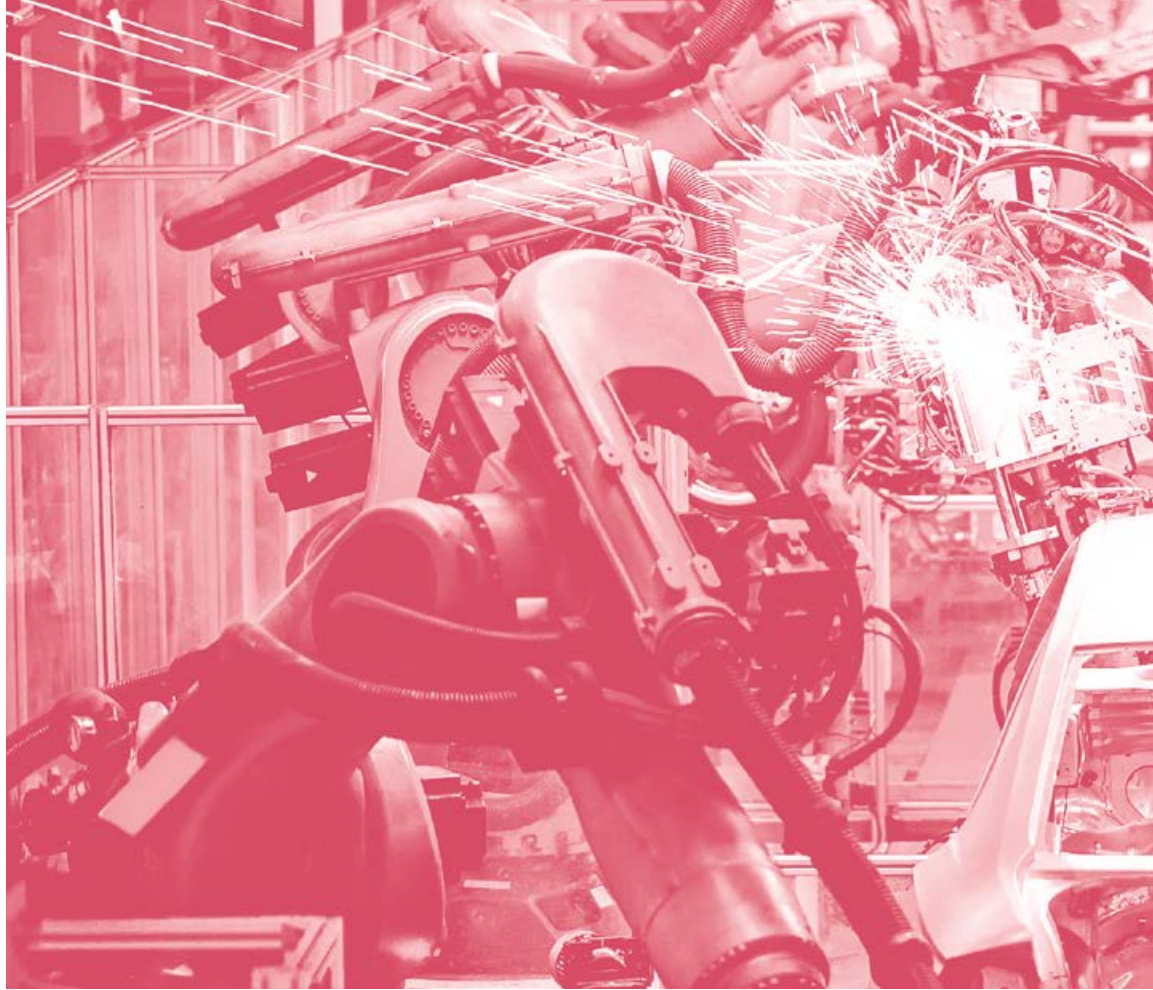


LABOR POLICY IN MEXICO AND THE USMCA



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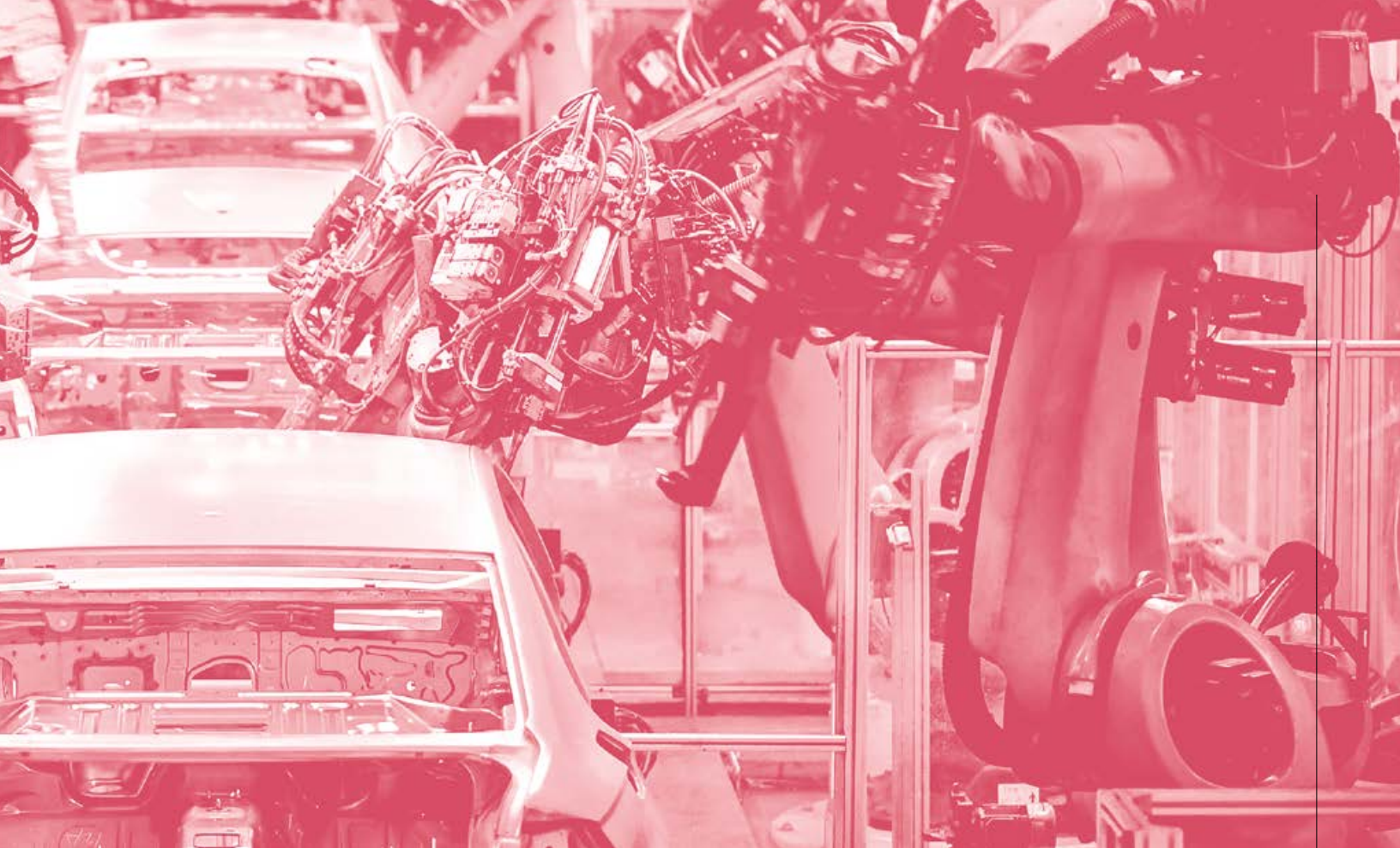


The United States–Mexico–Canada Agreement (USMCA) is not only about trade, cooperation on regulation, and investment. The USMCA is also an acknowledgment of a political responsibility to their respective governed populations that extends beyond the economic and commercial spheres to include socio-cultural issues. Over three years since the entry into force of the USMCA, this paper analyzes the effects of USMCA on labor relations in Mexico.

Mexico, its labor policy, and the USMCA

Mexico is currently going through a period of social transformation, and the labor relations sector is no exception. Building on the 2017 Constitutional Reform, President Andrés Manuel López Obrador’s Administration passed the Labor Reform of May 1, 2019, the most significant reform of Mexico’s labor relations in the last hundred years, creating a New Labor Model. Furthermore, in 2018, the Mexican government ratified the Convention on Freedom of Association and Protection of the Right to Organize (Convention 98) of the International Labour Organization (ILO).

The labor policy priorities of the Mexican government are as follows: a) employment promotion; b) salary recovery; c) “Programa Jóvenes Construyendo el Futuro” (Youth Building the Future Program); d) elimination of outsourcing; e) restoration of profit-sharing rights; and f) the New Labor Model.



Improvement in the outcomes for Mexican labor can already be seen. For example, formal employment has continued to grow and is at historical highs, surpassing 26 million¹ not including workers in the service of the state and federal government. Furthermore, real wages have increased by 17.7% (from October 2018 to October 2023).² In addition, the current minimum wage has seen a real increase of 85% nationally and 178.9% in the border zone among companies that export (from 2018 to 2023).³ All these factors have reduced the number of people in poverty by 23.7%.⁴

In 2019, the Mexican government implemented the Youth Building the Future Program, aimed at incorporating young people aged 18 to 29, who are neither studying nor employed, into economic and productive activities in workplaces and companies willing to provide them with on-the-job training. The youth participants receive a monthly stipend and social security. The program has benefited 2.7 million young individuals with the involvement of 223,928 workplaces.⁵

The Mexican administration has also moved to prohibit outsourcing. While outsourcing in Mexico was justified as a necessity to enhance the competitiveness of companies in a global economy,⁶ it created precarious employment conditions, a lack of stable working conditions, and lower wages.⁷ Moreover, outsourcing allowed companies to avoid the fiscal obligations related to formal employment, including the requirement to contribute to social security.⁸

In April 2021, the Mexican government banned outsourcing, positively impacting three million workers. This measure has resulted in a 27% increase in the average salary of the workers who were rehired in the company. The ban on outsourcing also led to a 144% increase in the amount of workers' participation in profits, representing the involvement of 90% more companies compared to 2020.⁹

The New Labor Model has led to a change in the administration of labor justice, guarantee of trade union freedom, and the right of workers to authentic collective bargaining. This includes a New Labor Justice System that incorporates the use of Alternative Dispute Resolution Mechanisms, which requires the exhaustion of conciliation before proceeding with a judicial process. When labor disputes proceed to court, proceedings are before impartial Labor Courts that aim for swift and expedited trials. This reformed process for resolving labor disputes has been key as the previous legal mechanism for settling labor disputes using the Conciliation and Arbitration Boards was unable to resolve disputes in a timely and impartial manner that adequately took into account the interests of workers.

Moreover, the Mexican administration is committed to protecting union freedom and democracy, and has guaranteed that workers can participate in the decision-making of their union. On the other hand, it also guarantees that workers are consulted on the election of their directors and the approval of their collective contracts. These reforms fulfill a constitutional mandate to ensure the representativeness of union organizations and to provide certainty to the procedures for signing, registering, and depositing collective contracts¹⁰

The Federal Center for Conciliation and Labor Registration (FCCLR) is a key institution of the Labor Reform, that began operations in 2020.¹¹ The FCCLR is a public and autonomous body of labor conciliation in federal matters, and is responsible for maintaining the National Labor Registry which registers and publicizes all union contracts, legal contracts, and internal work regulations. The FCCLR is also responsible for verifying and monitoring the democratic procedures of unions. This organization also assumes the tasks of more than one hundred Conciliation and Arbitration Boards, standardizes various criteria, and has developed an improved interface that provides certainty, professionalism, and impartiality to collective contracting procedures.

The New Labor Model has led to a change in the administration of labor justice, guarantee of trade union freedom, and the right of workers to authentic collective bargaining.

Chapter 23 of the USMCA reflects many of the key elements of Mexico's New Labor Model. This includes obligations on the government to provide collective rights and to comply with the fundamental conventions of the ILO (1998–2008). Chapter 23 requires signatory parties to recognize the importance of labor organizations and respect trade union freedom and democracy and their right to strike and collective bargaining. Additionally, the chapter requires that trade be conducted consistently with these rights. This is an unprecedented chapter that deals with labor provisions, incorporating a new generation of monitoring mechanisms.¹² The USMCA chapter has strengthened the domestic labor reforms outlined above, the result being that Mexican workers have significant new labor rights, including access to democratic processes of participation in the decision-making of their union through personal, free, direct, and secret voting, as well as the right to approve or reject their collective contracts and contractual reviews.

Another important part of the implementation of the Labor Reform has been developing procedures for legitimation of collective contracts. Under the Labor Reform, only those collective contracts that were produced consistently with the law and rights of workers to participate in free and democratic unions were considered legitimated. The result is that only 30,526 of the 139,000 contracts reported by the Labor Boards were considered legitimate. Also, over one hundred thousand collective contracts have been left without effect. This now creates an opportunity, and at the same time an enormous challenge for the workers who were left without the coverage of a Collective Bargaining Contract, to either form a new union or join an existing one and to demand the signing of a new Collective Bargaining Contract.

A substantial and innovative update in USMCA is the new methods of monitoring and dispute resolution—the Rapid Response Mechanism (RRM). The RRM is the strictest and most binding tool for enforcing labor rights ever included in a trade agreement.¹³ The RRM allows the U.S. and Canadian governments to raise concerns about compliance with the labor rights in the USMCA. The United States and Canadian governments can use the RRM to request the Mexican government to initiate investigations to determine if workers were denied of freedom of association and collective bargaining rights.

As of November 2023, 18 complaints have been filed through this mechanism, of which only one is before a panel, three are under review by the Mexican government, and fourteen have been successfully concluded. In other words, out of the fifteen complaints accepted by the Mexican government, 93% had a quick, effective, and expeditious resolution.

The 18 complaints focused on denials of freedom and trade union democratic rights including: a) workers formed new trade unions to demand the signing of a new Collective Agreement, as the previous Collective Agreement had been rejected, derived from a Legitimation Procedure; b) improperly signing Collective Contracts with a union that did not have the majority support of the workers; c) existence of acts of intimidation, discrimination, and violence towards workers due to their union membership; d) employer interference; and e) refusal of union membership.

Conclusion

From our perspective, the USMCA labor chapter and the structural changes and transformation experienced since the 2019 Labor Reform have strengthened the individual and collective rights of workers, also leading to salary increases, especially with the collective contracts that went through the legitimation procedures.

Today, labor conflicts are increasingly being resolved through dialogue and alternative dispute resolution mechanisms. Indeed, 69% of cases are resolved through conciliation, of which 82% are resolved in the first hearing, that is, without the need to go to trial, and around 148,000 agreements have been signed in this pre-judicial instance. All the above have been resolved in less than 45 days, which means that access times to labor justice have been reduced by 87%,¹⁴ which is why it is worth highlighting the transformation in access to labor justice that the Federal Conciliation Center and Labor Registry has allowed.

While it is true that USMCA is an innovative approach to addressing labor rights issues in Mexico, it is also the case that these USMCA commitments are consistent with Mexico's domestic Labor Reform and have in fact acted to support the administration's goals with respect to improving labor rights and increasing wages.

Going forward, it remains of utmost importance that the Mexican government continues to consolidate the New Labor Model, its labor institutions, and the labor governance interface with workers because this means energizing labor relations and therefore contributing to greater overall growth in the region.

USMCA promotes a new way of understanding the region where formal relations are not exclusive to the states but involve businesses, civil society, and, in general, all stakeholders in the world of work. From my perspective the RRM has been successful in defending the rights of freedom and trade union democracy thanks to the legal framework, the proper appropriation of the labor governance interface, the capacity for organization and association, and the political will of the various actors in the world of labor involved.

It is imperative to fulfill the eighth goal of the U.N.'s 2030 Agenda for Sustainable Development, which focuses on Decent Work and Economic Growth. The concept of decent work encompasses various aspects of work activity, such as fair and adequate compensation, safety in the workplace, gender equity, job stability, and the duration of the workday. Consequently, dignified labor conditions must ensure the respect of all these elements and adhere rigorously to the fundamental principles of labor law.

Finally, the Mexican Government is taking significant steps towards promoting respect for labor conditions by addressing the issue of gender equality. Gender equality poses intrinsic challenges in the labor market, proving particularly complex to address in the realm of work and even more so in labor union participation and leadership. Evidently, gender equity clashes with historically masculine values, behaviors, and attitudes deeply entrenched in the labor market and national labor union life. However, thanks to the Labor Reform which incorporates a gender perspective, spaces have been created where women workers are heard and have gained an increasing presence in decision making and union leadership. This progress would drive our society towards an environment where all workers have access to a decent job.



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LIZ SHULER

President | AFL-CIO

Upholding commitments to workers' rights

As we approach the 2026 U.S.-Mexico-Canada Agreement (USMCA) joint review, it is vital to take stock on whether the agreement is living up to its promise to promote workers' rights and fair competition in the North American marketplace. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) supported USMCA because it was a clear improvement for workers over NAFTA, but our continued support will depend on the ability of all three parties to fully implement the agreement's strong labor provisions and begin to close the 10:1 wage gap between

manufacturing workers in the U.S. and Mexico by raising the real wages of Mexican workers.

The USMCA contains unprecedented labor commitments whose implementation is essential if the agreement is to deliver decent work and broad-based economic growth to the region.

As a precondition to signing the deal, the U.S. and Canada insisted that Mexico adopt a sweeping set of constitutional and legislative reforms to protect the right of workers to organize trade unions and bargain collectively. In a nutshell, these reforms seek to

address Mexico's corrupt system of "protection contracts," where employers sign bogus collective bargaining agreements with illegitimate, undemocratic trade unions that do not represent workers' interests. The protection contract system—and Mexico's weak labor justice institutions—have played a fundamental role in keeping Mexican workers' wages artificially low, encouraging offshoring, and lowering wages and standards across North America.

Three and a half years into the USMCA, Mexico's implementation of its labor law reforms has shown

mixed results. The López-Obrador administration deserves credit for standing up new labor justice institutions at the federal level and working constructively with the Biden administration to investigate and resolve most of the complaints filed under the agreement's Rapid Response Labor Mechanism. However, a number of Mexican states have been dragging their feet on setting up the state and local labor courts that are critical to enforcing the new labor laws. In practice, most Mexican workers are still waiting for the labor reforms to change the reality that supporting an independent union is likely to get them fired.

Moving forward, it is clear that the timetable for full implementation of Mexico's labor law reform will stretch well beyond 2026 and require sustained political and financial support from all three parties to the agreement. Uprooting Mexico's deeply entrenched protection contract system and fostering the growth of mature industrial relations and rule of law is a project that will take decades, not years.

A notable bright spot is the strong performance of the USMCA's novel rapid response labor mechanism (RRM). Of the 18 RRM cases filed by the U.S. to date, the vast majority have been cooperatively settled in a timely manner by the U.S. and Mexican authorities,

leading to concrete wins for Mexican workers in the form of authentic union representation with higher wages, benefits, and the reinstatement of illegally fired union supporters. The RRM has had a notable impact in Mexico's auto sector, paving the way for the first independent trade unions at facilities employing thousands of workers for major international companies like General Motors and Panasonic. While the cases directly addressed by the RRM only represent a fraction of the workplaces in Mexico, it has proven to be an indispensable tool to spot check Mexico's implementation of its labor law reforms.

A clear area of concern is the lack of concrete progress towards achieving USMCA's commitment to stop the import of goods produced with forced labor. Products at a high risk of being made with Chinese forced labor continue to enter the North American marketplace, especially through suppliers to factories in Mexico. While all three countries have passed laws or adopted regulations banning the importation of forced labor goods, Canada and Mexico have done little to enforce the ban in practice. This is unacceptable and all three parties must deepen their cooperation and dedicate sufficient resources to enforcing the ban on forced labor goods.

The parties also must increase cooperation on meeting the challenge of the economic and security threats posed by non-market economies like China. Duty free access to the U.S. market has made Mexico an attractive location for Chinese companies looking to sidestep U.S. tariffs imposed to address pervasive state subsidies, dumping, intellectual property theft, and other unfair trade practices. The USMCA cannot be a backdoor for the circumvention of our trade remedy laws.

A related challenge involves the recent surge of steel imports from Mexico in violation of the 2019 Joint Agreement on Steel and Aluminum. In recent years, steel imports from Mexico have surged by 141% over historic levels, with some subcategories of imports tripling and quadrupling.¹ The Biden Administration must elevate this issue and bring Mexico back into compliance.

Looking ahead to the six-year review, the AFL-CIO's support for extending the USMCA cannot be taken for granted. Much depends on the political will and ability of the parties to fully implement the labor commitments that underpinned our support for the agreement. We look forward to the challenge ahead to make this agreement deliver dignity and fair competition for workers across North America.

Endnotes

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A STRENGTHENING USMCA AND NORTH AMERICA'S ECONOMIC COOPERATION



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Building on its predecessor, the North American Free Trade Agreement (NAFTA), USMCA has unquestionably become a foundation for North American trade and investment.

Introduction

The United States–Mexico–Canada Agreement (USMCA) will reach its fourth anniversary in 2024 just as Mexico elects a new president—a few months before the United States does the same. While an election in Canada could happen at any time, it is most likely to occur in 2025, still ahead of the review agreed for USMCA in 2026.

Building on its predecessor, the North American Free Trade Agreement (NAFTA), USMCA has unquestionably become a foundation for North American trade and investment. USMCA has helped fuel robust trade growth following the shocks of a global pandemic and provides a powerful vehicle for further growth if used well, as recommended in this piece.

USMCA members have several big issues that they have yet to resolve under the agreement’s dispute resolution processes, and the outcomes will either reinforce or undermine USMCA’s credibility and its ability to continue to deliver for the United States, Mexico, and Canada.

For now, we only have a preliminary assessment of USMCA’s novel features, such as the digital trade chapter and the Rapid Response Labor Mechanism (RLM) after a few years of implementation, nor have the three countries really taken up the regulatory action agenda embedded in USMCA (Chapters 12 and 28).

USMCA implementation is broadly off to a good start. However, achieving the agreement’s full potential depends on three additional factors:

1. Gaining traction on USMCA’s cooperation chapters in areas such as Small- and Medium-Sized Enterprises, Competitiveness, Good Regulatory Practices, and Temporary Entry for Business Persons;
2. Developing the potential of USMCA’s Competitiveness Committee; and
3. Leveraging other parallel bilateral and trilateral mechanisms such as the North American Leaders’ Summit (NALS), the High-Level Economic Dialogue (HLED), and the 21st Century Border Management Initiative.

This chapter analyzes these topics, provides a general assessment of the current state of play, and offers recommendations for further actions.



Building a broader economic cooperation agenda

NAFTA governed trade and investment relations between Mexico, Canada, and the United States for over a quarter of a century (1994–2020). It became the backbone of North American economic relations and helped foster a new conception of North America. Discussions about a NAFTA 2.0 or a NAFTA Plus that embodies a more ambitious vision for what the three government could achieve together started as early as the year 2000 when the three governments set the goal of building upon their trade agreement a broader economic cooperation and competitiveness agenda. Building a more comprehensive approach to economic cooperation across North America remains a work in progress, however. But the three countries are now pursuing a much wider economic agenda as evident in the North American Leaders Summit action agenda.¹

Throughout NAFTA's enactment and the start of its renegotiation into USMCA, several mechanisms were created and put into action. Because in the new North American context, there has always existed a trilateral, as well as a bilateral dimension, these initiatives followed similar paths. For example, the 2005 creation of the trilateral Security and Prosperity Partnership for North America (SPP) was not continued but it evolved into today's North American Leaders Summit or NALS. The SPP was undoubtedly created in good part because of the terrorist attacks in the United States on September 11, 2001. Often overlooked, the SPP included an ambitious competitiveness agenda intended to reduce the cost of doing business in the region and harmonize regulations, which the three North American partners are pursuing in an updated form today.²

A good and well implemented USMCA can facilitate good outcomes on a broader competitiveness agenda. However, the three North American neighbors must continue to take steps individually, bilaterally, and trilaterally to improve competitiveness.

In 2013, to address important economic issues that were not covered in NAFTA, Mexico and the United States started the High-Level Economic Dialogue (HLED). That dialogue supported a number of valuable cooperative endeavors that were making progress, but it was put aside during the Trump administration. The HLED was relaunched in 2021 under the Biden administration. Similar bilateral cooperation between Canada and the United States is now based on the 2021 Roadmap for a Renewed U.S.–Canada Partnership. In the same vein, the Canada–Mexico Partnership was originally launched in Ottawa in 2004, and in 2022, the governments began a bilateral High-Level Economic Dialogue.³ At different levels, all these mechanisms aimed to pursue a broader economic cooperation agenda that would support and complement NAFTA and now, USMCA. Moreover, these mechanisms have traditionally worked side-by-side with private sector dialogue spaces such as the U.S.–Mexico and U.S.–Canada CEO Dialogues, among others.

USMCA includes agreement to develop a broader economic cooperation agenda, which all three governments now agree is essential to deal with global competition and the evolution of technology and domestic markets. This includes novel cooperation chapters in different areas, which include Small- and Medium-Sized Enterprises, Competitiveness, Good Regulatory Practices, and Temporary Entry for Business Persons. One of the key additions in USMCA was establishing the Competitiveness Committee which was given a broad mandate to develop cooperative activities in support of a strong economic environment that incentivizes production in North America, facilitates regional trade and investment, enhances a predictable and transparent regulatory environment, encourages the swift movement of goods and the provision of services throughout the region, and responds to market developments and emerging technologies. The details of Competitiveness Committee’s mandate is spelled out in USMCA’s Chapter 26.⁴ To date, the Competitiveness Committee has not vigorously taken up all elements of the broad and potentially vital agenda.

A key benefit of USMCA is trade and investment certainty, which allows the private sector to make the most of opportunities and to build impressive networks of production and commerce which are globally competitive. Institutions such as the rules and dialogue mechanisms which govern our economic relations matter. They provide certainty, stability—especially in turbulent times—, and set a basis for following up on our shared goals and commitments.

It is also true that agreed institutions, rules, and mechanisms are often only as good as the shared vision the countries’ leaders have of the region’s future. We firmly believe that this vision must include deeper economic collaboration beyond trade. It is important to underscore that USMCA does not stand alone in North America’s work to build prosperity and enhance our competitiveness. A good and well implemented USMCA can facilitate good outcomes on a broader competitiveness agenda. However, the three North American neighbors must continue to take steps individually, bilaterally, and trilaterally to improve competitiveness.

USMCA cooperation to facilitate trade and investment

Small- and medium-sized enterprises (SMEs)

Among the common criticisms made towards NAFTA was the lack of specific provisions to foster SMEs involvement in transborder trade and investment. Although intra-firm trade has already improved—and can further improve North American competitiveness by building more efficient production and commercial networks—fostering additional SME participation in USMCA must remain a priority.⁵ This is particularly important because of the economic and job potential that tens of thousands of SMEs from all three countries already play in USMCA commerce, and because of the role SMEs can play as enthusiastic stakeholders in defining USMCA priorities and supporting the agreement going forward.

The USMCA recognizes the fundamental role of SMEs in maintaining dynamism and enhancing competitiveness of their respective economies. The agreement seeks closer cooperation to identify opportunities for SMEs to engage in international trade across North America. USMCA's SME chapter sets specific objectives and creates an SME Committee which must convene an annual dialogue. The first USMCA SME Dialogue was convened in April 2022 in San Antonio, Texas.⁶ A second dialogue was held in September 2023 and covered such topics as the experiences of women-owned businesses in North American trade; digitalization of SMEs and e-commerce; SME financial inclusion in export financing; and processes and procedures for exporting within the USMCA region.⁷ The potential is enormous for fostering greater SME participation in the USMCA and sharing benefits more widely across the continent. According to the U.S. Chamber of Commerce, small businesses represent 97% of U.S. exporters and approximately 32% of known export value, as well as creating millions of new jobs. The new SME dialogue is aimed at better understanding and incorporating the needs of these vital smaller enterprises in USMCA's implementation which will hopefully help promote better economic results and also help overcome the stigma that some saw in NAFTA of favoring large enterprises.

The USMCA recognizes the fundamental role of SMEs in maintaining dynamism and enhancing competitiveness of their respective economies. The agreement seeks closer cooperation to identify opportunities for SMEs to engage in international trade across North America.

A broader competitiveness agenda within USMCA

Advocates of NAFTA and USMCA rightly tout the impressive increase in trade over the last three decades. Nevertheless, the USMCA's importance lies not only in the growth of trade flows, but also in enabling the development of shared production networks and reliable supply chains. In this regard, it is also important to consider that stronger networks and supply chains in North America can enhance economic competitiveness. The need to strengthen the competitiveness of North America given global competition underscores the importance of USMCA's Chapter 26, which provides the basis for a cooperation framework to improve regional competitiveness and establishes a Competitiveness Committee (CC) which is charged with producing a work plan.

Although a series of meetings have taken place, to date, no comprehensive specific workplan has been made public. The committee's visible work has mostly focused on workforce development issues and on a process for cooperation during emergency situations that affect North American trade flows, including by establishing a joint understanding of critical infrastructure priorities in North America. These are certainly important topics, and work on them should be commended; however, it seems that to date, the three governments are relying more on existing bilateral mechanisms and the NALS process to work on a comprehensive competitiveness agenda, rather than using the USMCA CC more vigorously.

The CC can, however, serve as a strong catalyst to develop and implement additional measures that will enhance cooperation on key elements of North American competitiveness, especially by addressing issues where coordination, cooperation, and aligned policies and practices are needed among all three countries, and where bilateral cooperation alone is likely to fall short. Unfortunately, to date, the work of this committee has been opaque and has lacked stakeholder engagement. Additionally, its staffing is not fit for this broader purpose. For example, in Canada, the lead is the Foreign Ministry's Assistant Deputy Minister for the Americas, while the CC's file is led by a Deputy Assistant U.S. Trade Representative.

This is a missed opportunity. The Competitiveness Committee could serve as the forum in which the three countries foster ideas and initiative to further expand economic integration and ability to compete in the global marketplace. But to be effective, this committee should be structured in a way most likely to ensure interdepartmental coherence and expertise.

This is a missed opportunity. The CC could serve as the forum in which the three countries foster ideas and initiatives to further expand economic integration and the ability to compete in the global marketplace. But to be effective, this committee should be structured in a way most likely to ensure interdepartmental coherence and expertise. Also, it would benefit from an ongoing transparent and public agenda informed by private sector input. It will also likely require expanded staff and interagency participation to take on its potential wider agenda.

Digital trade

Collaboration on digital trade policies holds tremendous promise to boost trade across North America, considering the growing prevalence of digital technology and services in most economic sectors in all three countries. This potential should only grow with the deployment of artificial intelligence (AI).⁸ USMCA commitments on ruling digital trade are some of the most extensive sets of commitments. As the U.S. International Trade Commission wrote, “The Commission estimates that USMCA is likely to have a significant, positive impact on the many U.S. industries that rely on cross-border data flows and digitally enabled trade, including e-commerce.”⁹ To date, however, there has not been notable progress, and reports flag U.S. internal debates over digital policy. The USMCA countries, however, should give priority to using USMCA as a foundation to create the world’s most advanced digital marketplace. Progress could be pursued under USMCA’s Competitiveness Committee.



Workforce development

The North American workforce still suffers from long-standing skills gaps and mismatches, which will weigh heavily as the region works to build resilience in its supply chains, deploy new technologies, and meet the challenges of global competition.¹⁰ USMCA's Competitiveness Committee has begun a dialogue on workforce development and undertaken several events in 2022-2023.¹¹ Simultaneously, the tripartite semi-conductor ministerial meetings in May 2023 also highlighted the need for collaborative workforce development efforts in the semi-conductor sector, as did the September 2023 HLED.¹²

To support this work over the next two years, within the USMCA context, trade ministers could lead efforts to identify and track successful examples of private and public collaboration to strengthen USMCA value chains. This could include, for example, showing how companies are investing in worker reskilling and upskilling and identifying successful approaches that are encouraging companies to collaborate with educational institutions, trade unions, sub-federal governments, and others to better align curricula with the evolving labor market needs and better connect graduates to the labor market.

The three governments could also work to create tri-national spaces and mechanisms that share best practices across the continent on partnerships that bring together business, academic, and government actors to better train and skill workers to dealing with technological change and the changing workplace in ways that enhance North America's ability to compete successfully.

Such efforts could produce agreement on pilot programs where the national governments could partner with businesses, labor groups, academia, and local governments to foment workforce capacity building in sectors with important chunks of USMCA trade.

Simultaneously, the tripartite semi-conductor ministerial meetings in May 2023 also highlighted the need for collaborative workforce development efforts in the semi-conductor sector, as did the September 2023 High-Level Economic Dialogue.

Emergencies affecting trade

On emergency preparedness, in February 2023, the USMCA partners established a special subcommittee to enable timely cooperation during emergencies, recognizing the serious disruptions that arose during the COVID-19 pandemic.¹³ Officials should agree and present proposed areas for action (e.g., identification of sectors essential during an emergency, procedures for coordinating responses, and plans for practice exercises).

Labor mobility

Close to the workforce development agenda lies the topic of improving labor mobility, which is mentioned in the 2021 NALS declaration but only in the context of supporting development and dealing with migration in the western hemisphere.¹⁴ USMCA's Chapter 16 addresses temporary entry of businesspersons and professionals and creates a Temporary Entry Working Group which must meet once a year. Chapter 16 is naturally restricted to specific categories of temporary entry of businesspersons and professionals through the nonimmigrant (TN) visas offered by the United States. However, as of today, there is little information on the meeting of the working group and any initiatives taken to promote the mobility of professionals among the three countries, something that would enhance overall regional competitiveness. A recent study by the Bush Institute suggests how, as employers fail to find the workers they need, nonimmigrant programs, such as the TN visa also known as the USMCA visa, can play an important role in getting willing workers into open jobs, particularly where there are shortages.¹⁵ In the case of Mexico, the United States–Mexico Foundation has produced a series of studies raising awareness on how to benefit from and improve the framework to provide temporary work visas, including ones to entrepreneurs and “digital nomads”.¹⁶

Regulatory cooperation

Enhanced regulatory cooperation should be a high priority going forward. The U.S. has tried to make progress on regulatory cooperation bilaterally with Canada and Mexico over the years but with limited results. More progress was made with Canada during the Obama Administration than with Mexico. But those dialogues largely faded away during the Trump Administration years. However, the chapters in USMCA open new possibilities for important regulatory collaboration across North America.

Progress could facilitate commerce while protecting consumers. As the Office of the U.S. Trade Representative Katherine Tai put it in 2022, “good regulatory practices are fundamental to transparent governance and fair trade.”¹⁷ In USMCA, however, not much progress is evident to date under Chapters 12 and 28, which address improved regulatory cooperation. The three governments are not actively using the Committee on Good Regulatory Practices called for under Chapter 28, for example. That committee could serve as a central coordinating body for enhancing dialogue, collaborating on more standard Regulatory Impact Assessments (RIAs), improving transparency, and setting priorities for enhancing collaboration in areas not specifically addressed in USMCA. The agreement's Chapter 12 contains key sectoral annexes covering chemical substances, cosmetic products, information and communication

technology (ICT), energy performance standards, medical devices, and pharmaceuticals. These are all areas where “enhancing regulatory compatibility,” as included in the Annex 12-B of the USMCA, could bring many benefits. This should be a focus area over the next two years.

Border infrastructure

Infrastructure is a central component of North American competitiveness, particularly since it allows trade to move safely and efficiently. One such example is port of entry infrastructure. Another is the World Trade Bridge, located in the Laredo’s region at the U.S.–Mexico border, which handles around 17,000 trucks daily¹⁸ and in recent years was ranked as the busiest U.S. commercial port of entry. Similarly, the Detroit¹⁹–Windsor Ambassador Bridge handles around 8,000 trucks on a daily basis.²⁰

Wait times at ports of entry has hindered overall regional competitiveness and can result in significant costs. The Texas–Mexico Border Transportation Master Plan 2021 estimated that delays at the U.S.–Mexico border amounted to approximately a cumulative \$2.7 billion loss in GDP for the United States and Mexico in 2019.²¹ Similarly, recent studies produced by the Arsht Latin American Center have shown how reduced wait times along the border would increase trade, economic activity, and job creation on both sides of the border.²²

Each country has its own internal challenges to address and existing infrastructure to modernize. The U.S. has made a significant investment in its infrastructure through major pieces of legislation and allocation of substantial funding. It has encouraged Canada and Mexico to undertake its own initiatives to supplement bilateral and trilateral collaboration.

In 2010, the 21st Century Border Management Initiative was created between the United States and Mexico. This mechanism has served as the primary forum to address border infrastructure. Its steering committee has held annual plenary meetings spanning three Mexican and U.S. presidential administrations. They last met in December of 2022 and adopted the “2023 Action Plans to guide bilateral border–related efforts, many of which support initiatives identified through the U.S.–Mexico High–Level Economic Dialogue and U.S.–Mexico High–Level Security Dialogue.”²³ It would make great sense to have an annual border ministerial gathering to assess progress and for the NALS to agree on a set of tripartite border objectives where common planning, norms, and sharing of best practices could support a more competitive North America.

Each country has its own internal challenges to address and existing infrastructure to modernize.

North American Leaders' Summit (NALS)

When the Biden administration came to power in 2021, it reinstated the “Amigos Summit.” Historically, the trilateral meeting—an integral part of the SPP founded in 2005 under President Bush—was initially held every year. However, when the SPP became inactive in 2009, meetings became more sporadic, skipping years 2010–2011, 2013, and 2015. However, during the 2014 and 2016 NALS meetings, leaders agreed to substantial action agendas, which was then followed by a long hiatus under then President Donald Trump. President Andrés Manuel López Obrador hosted the last summit in January 2023 with Canada set to host its neighbors in 2024. This restarted the practice of inviting the private sector to meet with the government on the margins of the trilateral meeting. The three leaders approved an ambitious action agenda, which officials from the three governments are charged with implementing.²⁴

These summits are essential for four main reasons: One, they help build trust and personal rapport between the leaders. Second, they provide an opportunity to address irritants before they further damage the relationship. Third, they create the conditions for a renewed commitment to the trilateral partnership. Lastly, they generate an impetus for new continental initiatives that can help the three countries deal with global challenges (e.g. climate change/environment), shared challenges (e.g. transnational crime/drug smuggling, migrations), and building more competitive and resilient economies (e.g. key supply chains such as semiconductors and critical minerals supplies for emerging technologies). The last two NALS produced broad and substantive workplans focused on each of these areas. The 2023 agenda refined and reduced the number of topics covered in 2021.²⁵ The current agenda outlines the key areas the three governments need to focus on and address, and the next NALS should give an indication on whether progress is possible—or if additional prioritization is needed. In 2023, the three governments held a very substantial ministerial meeting on semiconductors which included private sector involvement and a North American Drug Dialogue.²⁶

Given their positive impact, moving forward with the NALS should be seen as an integral part of the three leaders' priorities. The practice of inviting stakeholders should be continued by Canada and the United States as it provides an opportunity for crucial consultation and collaboration.



It is therefore important for the effectiveness of both the USMCA and NALS that the three governments improve their communication on the substance and value of their ongoing work relevant to these topics. One of the great shortcomings of NAFTA was the lack of understanding among the U.S. public of the value and importance of the trade and investment relationships and networks built across the continent that were supporting millions of jobs. Successive U.S. administrations did not do a good job of informing the public about that value added from the trade agreement and related work. Now with USMCA and the other cooperative engagements underway, the three governments should be more transparent about the ongoing work and improve its public-facing messaging that explains the connection between USMCA (as well as NALS and bilateral cooperation) and its economic benefits. This is particularly important for an increased awareness of the benefits of USMCA, given the upcoming review of the USMCA in 2026.

Summary recommendations

The North American partners must use the time between now and the 2026 USMCA review to focus on solving problems and developing the potential evident in USMCA, especially energizing efforts following 2024 elections by garnering renewed public support and making this a priority issue to the three governments. In this regard, government could consider the following recommendations:

1. Begin preparing for the 2026 review immediately and identify how to measure success. This can be done by engaging stakeholders and legislatures and establishing national objectives and strategies.
2. Work on USMCA should be framed in the context of the North American competitiveness agenda reflected in the NALS and taken up in the HLED and U.S.-Canada bilateral engagements. The last NALS was held in January 2023, and leaders approved a substantial work agenda.²⁷ To convey seriousness, the three North American leaders should hold a summit before the electoral season takes off in the U.S. and Mexico.
3. The work of USMCA's Competitiveness Committee (CC) should reflect the broader competitiveness agenda and realize the CC's potential role to innovate and initiate activities to improve the continent's competitiveness within the USMCA framework.
4. Immediately resolve outstanding disputes by using procedures outlined in the USMCA and respect any dispute settlement findings.
5. Energize work that will enable North America to use USMCA's digital trade chapter to build the world's most advanced digital marketplace. Overcome U.S. policy divisions on how to proceed on digital trade. Let the region be the example for further work in this area around the world.
6. Expand the dialogue with SMEs and their participation in USMCA's commerce. Find ways to measure and highlight progress toward SME involvement in continental trade.
7. Complete and practice emergency action procedures to deal with cross border emergencies in coordination with efforts to modernize physical, digital, and communications infrastructure around the border.
8. Demonstrate and highlight progress on building more modern and efficient borders.
9. Expand outreach to stakeholders and the public, addressing misunderstandings, educating on USMCA's importance, and partnering in preparation for the 2026 review.
10. More seriously engage with CEO dialogues and urge the private sector and other stakeholders to increase efforts to highlight the value of USMCA and the North American competitiveness agenda.

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Building bridges: Milestones and cooperative endeavors shaping North America's future

The North American region is currently experiencing a unique and promising opportunity as diplomatic relations between Mexico, the United States, and Canada have never been stronger. Despite the longstanding history of relations between Mexico and the U.S. dating back to 1822 and between Mexico and Canada since 1944, recent years have seen a significant strengthening of ties and exchanges. In 2022, trade between Mexico and the U.S. amounted to \$863 billion, while

the total commercial exchange between Mexico and Canada reached around \$40 billion.

The trilateral relationship was institutionalized in 1994 with the North American Free Trade Agreement (NAFTA), transforming Mexico's commercial ties with the U.S. and Canada. This agreement positioned Mexico as a key trading partner for our northern neighbors, consolidating our country as an export platform to world markets. However, in 2017,

the modernization of our free trade agreement began, leading to the United States-Mexico-Canada Agreement (USMCA), which took effect on July 1, 2020, replacing NAFTA. The USMCA aims to create a fairer and more reciprocal trade environment, generating high-paying jobs and promoting economic growth in North America.

Furthermore, the benefits derived from the above are already visible in the trade patterns between our countries. Canada and the

U.S. are among Mexico's largest trading partners and largest investors in the country. From January to September 2023, Mexico registered a total of \$13.5 billion in foreign direct investment (FDI) from the U.S., representing 41% of the total FDI received by Mexico up to that date. This trend positioned the United States as the number one investor while Canada was responsible for \$2.2 billion in FDI, equivalent to 7% of the FDI Mexico received as of the third quarter of 2023.

It is crucial to emphasize additional initiatives running simultaneously with the aforementioned agreement. Since 2005, Mexico, Canada, and the U.S. have enhanced their economic and social ties through the North American Leaders' Summit (NALS). Through this platform, the trilateral agenda for all regionally significant topics is set by establishing frameworks for collaborative initiatives among the three governments, covering diverse aspects such as inclusion, environment, competitiveness, migration, health, and security.

As an example of our trilateral work, the first North America Semiconductor Conference (NASC) was realized to address the global semiconductor shortage and create a unified region for semiconductor development and production, leveraging each country's strengths. This collaboration aligns with the \$52 billion CHIPS and Science Act's goals, emphasizing U.S.-based chip production. The initiative focuses

on workforce development, research and development, government incentives, and environmental sustainability, holding promise for rebalancing the global semiconductor supply chain in North America.

Additionally, Mexico and the U.S. work together in the High-Level Economic Dialogue (HLED), which aims to promote economic growth and competitiveness in both countries. Among this dialogue's achievements is the recognition by both governments of the importance of joint efforts to modernize border infrastructure and promote sustainable and inclusive social development in southern Mexico and Central America, underscoring the significance of creating short, medium, and long-term employment and opportunities in such regions.

Another example of close collaboration between Mexico and the U.S. are the efforts made through the North American Development Bank (NADBank)—a bilateral financial institution founded and funded by the Governments of Mexico and the U.S.—NADBank seeks to offer financial support to states from both sides of the border for the development and implementation of environmental infrastructure projects. Currently, NADBank is formulating a new strategic plan that centers on prioritizing water as a key investment. This involves financing projects focused on water supply and distribution, wastewater treatment, water

conservation, and supporting infrastructure development in drinking water areas. Additional efforts are directed towards encouraging investments in air quality, addressing solid waste, as well as evaluating projects in the clean energy sector, especially those related to storage and transmission.

Despite the progress made by Mexico, and the U.S. and Canada in strengthening and institutionalizing relations in North America, maintaining these achievements requires a lot of organization and political will from the three countries.

We should not overlook the fact that 2024 will be a year of change in Mexico and the U.S., with both countries having major elections ahead that will dictate the direction of many aspects of the bilateral relation. However, as we enter this new period of change, we must remember that the relationships we have among our countries are a vital axis for our economies, our people, and for the competitiveness of the region as a whole. The ties we have established over the years have made North America the most competitive region in the world. While the upcoming political changes may significantly influence our path forward, the accomplishments we have collectively achieved demonstrate the significance and potential that our relations and region hold for the future.

DEVELOPMENTS IN USMCA DISPUTE SETTLEMENT



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Apart from a special mechanism for labor complaints (addressed elsewhere in this document) the USMCA contains three main kinds of dispute settlement mechanisms, all of them inherited from the NAFTA. State-to-state dispute settlement (Chapter 31) allows an USMCA member state to invoke the jurisdiction of an ad hoc arbitral panel to adjudicate its claim that another member state has violated a provision of the NAFTA. Binational panel review of anti-dumping and countervailing duty determinations replaces domestic judicial review of agency actions with review by a binational panel that applies, however, the administrative law of the country whose agency has made the determination. Finally, there is investor-state dispute settlement (ISDS), with International Centre for Settlement of Investment Disputes (ICSID) or New York Convention rules applicable. Under NAFTA, state-to-state dispute settlement was minimally used, largely because the state, which a claim was brought against, managed to block the formation of a panel. Technical changes in the USMCA should tighten up the process and preclude such blocking behavior. The binational panel review process in USMCA is unchanged from the NAFTA. ISDS has been greatly limited relative to NAFTA and is now only available between the U.S. and Mexico, and on narrow grounds (e.g., direct expropriation)—except in cases where there is a state contract in a few specific sectors such as oil and gas.

State-to-state dispute settlement

The NAFTA provided for state-to-state dispute settlement by panels appointed by the disputing parties from rosters agreed by all three NAFTA state parties. Panel rulings were binding, with the possibility that a winning claimant could withdraw trade concessions should the losing/disputing party not implement the panel ruling. However, as VanDuzer notes, a key weakness of the NAFTA state-to-state dispute settlement process was that, simply by refusing to appoint panelists, a party could block indefinitely the establishment of a panel.¹ After 1998, when the U.S. blocked a panel that Mexico was seeking in the Sugar dispute, the NAFTA state-to-state process was unused. At the same time, this and other disputes between NAFTA parties ended up in WTO dispute settlement,² in one instance at least (Tuna/Dolphin) where a choice of forum clause in the NAFTA would have arguably required the parties to use the NAFTA process.

As Lester, Manak, and Arpas explain, the NAFTA did in fact have a formal mechanism to prevent a disputing party from indefinitely blocking a panel by failing to appoint panelists. This mechanism allowed for selection by lot of citizens of the other disputing party as panelists. But this mechanism depended on a roster, which was agreed by all three NAFTA states parties from which the selection by lot would be made.³ While panelists who were not on the roster could in principle be appointed, these nominations would always be subject to a right of veto (preemptory challenge) by the other disputing party. As Lester, Manak, and Arpas further elucidate, for much of the period the NAFTA was in force, there was apparently a lack of a full roster agreed by all three parties.

In the USMCA context, a serious effort has been made to address the panel blockage problem through provisions in the *Protocol of Amendment* to the USMCA (2019) that provide for the contingency of lack of consensus on a roster. Thus, Article 7.1 of the Protocol states: “The Parties shall establish, by the date of entry into force of this Agreement, and maintain a roster of up to 30 individuals who are willing to serve as panelists. Each Party shall designate up to

10 individuals. The Parties shall endeavor to achieve consensus on the appointments. If the Parties are unable to achieve consensus by one month after the date of entry into force of this Agreement, the roster shall be comprised of the designated individuals.”⁴

In any event, it appears that in fact an agreed full roster is now in place.⁵ In contrast with the NAFTA experience, in the four years since the USMCA state-to-state dispute system has been operating, four disputes have already been fully decided by panels.⁶

The consensus on the roster and the expeditious repeated use of the panel process suggest a real commitment by state parties to state-to-state dispute settlement under the USMCA. It is worth asking to what extent this commitment is driven by uncertainty about the future of the dispute settlement system at the WTO. In this regard, could the U.S., by participating fully in the USMCA state-to-state dispute settlement arrangements, be sending a message that whatever its obstructive moves in the WTO, the Biden administration is not opposed to independent and impartial legal dispute settlement in international trade, especially where the states parties collectively have control over the identity of the adjudicators and where there is not appellate review?

Investor-state dispute settlement

The NAFTA ISDS procedures represented the model found typically in Bilateral Investment Treaties (BITs) of the 1980s and 1990s. The NAFTA gave investors or investments of another NAFTA party the ability to sue a host state NAFTA party under the International Centre for the Settlement of Investment Disputes (ICSID) or the United Nations Commission on International Trade Law (UNCITRAL) for violation of a range of protections such as fair and equitable treatment, national treatment, and expropriation without full market value compensation. If successful, the investor could enforce a monetary award against the host state in ordinary courts around the world.

By the time of the USMCA, critiques of ISDS as an unduly limited policy space had become widespread, along with other concerns about the secrecy of the procedures in most cases, lack of adequate conflict of interest rules for arbitrators, and the continued absence of precedent and consistency in decisions. Robert Lighthizer, the United States Trade Representative in the Trump administration, was strongly opposed to ISDS—so were many prominent progressives in the U.S. Congress, Elizabeth Warren leading the charge. As for Canada, Chrystia Freeland, the prominent politician and former trade minister who led the negotiations for Canada had already implicitly accepted many of the criticisms of ISDS in replacing conventional ISDS arbitration in the Canada European Union Trade Agreement (CETA) with an investment court system (ICS). The EU had devised this system as a response to ISDS critiques, replacing ad hoc arbitrators with a standing roster of judges and including appellate review, which would ensure consistency and certainty in the jurisprudence.

For the Trump administration, replacing ISDS with an ICS model was a non-starter. Already in the WTO, Lighthizer was seeking to undermine the “judicialization” reflected in the Appellate Body. Mexico, for its part, was mainly concerned with maintaining ISDS as a credible commitment to U.S. investors in its petroleum sector primarily, where normally—in

addition to the NAFTA’s treaty-based investor protections—Mexican state authorities entered into contracts with these investors providing a contractual guarantee of some measure of regulatory stabilization.

The resulting solution in the USMCA final text reflects an attempt to reflect and reconcile these various perspectives. Its main aspects are:

- Termination of investor-state dispute settlement between Canada and the U.S. and Canada and Mexico.
- A special ISDS regime for American or Mexican investors in any of five specified sectors of the economy where the investor is a party to a “covered” government contract.
- A greatly restricted ISDS regime for other investors. ISDS under this restricted regime does not apply with respect to those norms most closely associated with the risk of regulatory chill, namely liability for indirect expropriation (regulatory takings) or for violation of fair and equitable treatment (often interpreted to protect investors’ expectations of regulatory stability). Moreover there is a time-limited exhaustion of local remedies requirement—transparency and conflict of interest requirements that respond to criticisms of ISDS procedures.
- Finally, the transitional provisions of the USMCA allow for legacy claims under the NAFTA where: 1) the investment was made when NAFTA was in force and 2) continued to exist at the time of the entry into force of the USMCA. Around a dozen legacy claims have been filed. The most notorious and potentially acrimonious is a claim by Canadian companies against the United States, arising out of the Keystone XL pipeline saga.

But for the demands of Mexican officials during the USMCA negotiations, ISDS might have been excluded entirely from the agreements. The negotiations spanned a transition between administrations in Mexico, and the position taken seems more than anything else like an attempt to preserve the status quo ante particularly for U.S. oil and gas investments in Mexico. Since then, the re-nationalization effort of the new administration in the hydrocarbons sector raises issues of whether these commitments are durable, and whether Mexico will want to continue with ISDS. Another consideration is that Canada and Mexico are parties to the Comprehensive Progressive Pacific Partnership (CPTPP) where ISDS is available. Finally, it is unclear why investors across the Canada-U.S. border would need ISDS since both countries have judicial systems in which investors of the other country can pursue claims, and which are accessible and non-discriminatory. Under the NAFTA, ISDS, more than any other aspect, raised sensitive issues related to political sovereignty and became a principal focus of attacks on the agreement by activists. While activists may be disappointed that USMCA does not address the climate change challenge for example, the considerable restriction of ISDS (combined with a strong labor regime) is likely to make it much less of a target for progressives, and also sovereigntist elements on the populist right than was the case with NAFTA.

Binational panel review of domestic agency trade remedy determinations

Chapter 10 of the USMCA essentially duplicates the NAFTA Chapter 19 procedure of binational panel review of domestic agency determinations on trade remedies. This procedure allows for an alternative to domestic judicial review of such determinations, on the theory that binational panels will be more objective and less subject to protectionist sentiment than courts reviewing their own agencies' trade remedy determinations. The applicable law is that of the agency rendering the determination, and similarly, the standard of review is drawn from that NAFTA party's domestic administrative and constitutional law. The members of binational panels are wherever possible to be retired or sitting judges. There is an Extraordinary Challenge mechanism, which serves as an appellate instance, with appeal grounds including misapplication of the appropriate domestic law standard of review. Binational panel review had been widely criticized in U.S. trade law and policy circles, based primarily on the notion that in cases that Canada brought under Chapter 19 of NAFTA, binational panelists were insensitive to or ignorant of the proper standard of review applied under U.S. administrative law. While the Trump administration was seeking the elimination of binational panel review,⁷ successive Canadian governments, including the current one, had developed a narrative that this mechanism was a key to the benefits Canada received by being part of NAFTA, and its continuation in the USMCA was presented by Canada as non-negotiable.



A comprehensive study of the use of the NAFTA binational panel review mechanism by Canada throughout the existence of the NAFTA suggests that, despite the official narrative in Canada and complaints from the U.S. trade remedies bar, Canadian interests actually gained little: “Chapter 19’s binational review panels did not achieve Canada’s sought-after exemption from the application of domestic trade remedy laws...Chapter 19 has also proven incapable of resolving major trade disputes such as softwood lumber. After protracted litigation and repeated obstruction by U.S. trade authorities of panel decisions that favored Canadian exporters, Canada’s government and forest industry still felt compelled to agree to a negotiated settlement. Over the last quarter-century, Canadian exporters have succeeded in getting trade relief in 12 cases. While seven of these cases were clean wins attributable to the Chapter 19 process, the last of these occurred nearly 15 years ago. In the five other cases, Canadian exporters won interim relief from the panel decisions, but the trade disputes were ultimately resolved independently of the Chapter 19 panel process...”⁸ Given these realities, and also in light of the fact that criticisms of the binational review mechanism were largely confined to Washington insiders (unlike ISDS where objections had broader public and political salience), it is not hard to understand that the Trump administration was not in fact here making a major concession in dropping its demand to eliminate binational panel review.

Conclusion

The improvements to state-to-state dispute settlement in USMCA and the expeditious processing of multiple disputes since it came into force have understandably led to some amount of optimism from commentators who believe in the importance of rule of law in international trade, at least relative to the uncertainty that hovers over the future of the WTO dispute system. But there remain limits to the extent to which dispute settlement can be an effective means to rules compliance, upon which economic factors such as business can depend. Long running trade disputes between, for example, the U.S. and Canada—such as on softwood lumber or Canada’s dairy quotas—have been resistant to resolution despite multiple dispute proceedings under the Canada-U.S. FTA, then the NAFTA, and now USMCA—and also in the WTO. These kinds of disputes engage complex commercial and governmental interests on both sides of the border, are subject to intense lobbying and lawyering, and on the governmental side may involve multiple actors including sub-national governments and domestic administrative agencies and courts. Over a year ago, a USMCA state-to-state panel ruled against the United States in a dispute concerning auto rules of origin (ROOs). This was a key, heavily bargained component of the USMCA and was of importance to all three USMCA parties, especially the U.S. and Mexico. There is still no resolution in the form of compliance with the panel report, although apparently there are ongoing discussions between the USMCA parties. There are real costs to uncertainty here, as the key controversy affects the structure of supply chains, namely whether the value of *inputs* from *non-USMCA* countries used in the production of core auto parts *within* a USMCA country must be taken into account in determining the extent to which the core part counts as USMCA-originating for purposes of ROOs.

In the case of Mexico’s new economic nationalism, the Biden administration has been cautious in pressing dispute settlement despite some initial moves in that direction. The U.S.-

Mexico relationship has many dimensions (e.g., control of the border, drug policy, etc.), and there are reasons to avoid an overly confrontational stance on trade and investment issues. For this reason, despite the newfound optimism about state-to-state dispute settlement under USMCA, politics and the risks that go with it will likely remain very much entangled in high-stakes trade disputes. This is likely only to be reinforced by the increasing linkage of trade with security and geopolitical concerns generally—and especially within the vision of key U.S. officials.

Endnotes

- 1 VanDuzer, J. Anthony, *State-to-state Dispute Settlement under the USMCA: Better than NAFTA?* (April 9, 2020). Festschrift in Honour of Professor Stephen T. Zamora (Houston: Arte Publico, submitted, 2019, Forthcoming), Available at SSRN: <https://ssrn.com/abstract=3341662>.
- 2 See Marc L. Busch, "Overlapping Institutions, Forum Shopping and Dispute Settlement in International Trade" (2007) *International Organization* 735-761.
- 3 Simon Lester, Inu Manak and Andrej Arpas, "Access to Trade Justice: Fixing NAFTA's Flawed State-to-State Dispute Settlement Process," 18:1 *World Trade Review* (2019), 63-79, p. 67.
- 4 The Rules of Procedure (17.1) provide a complex set of mechanisms to overcome various delay and blocking tactics: "1. If a Party has failed to designate its individuals to the roster under Article 31.8 (Roster and Qualifications of Panelists) and this impedes the composition of a panel pursuant to Article 31.9 (Panel Composition) due to an insufficient number of individuals on the roster, the disputing Parties shall apply the following process to compose a panel:
 - (a) If the chair is being selected under this process, within five days of the request for establishment of the panel, each disputing Party shall propose two candidates who shall not be a citizen of either disputing Party.
 - (b) If the disputing Parties are unable to decide on the chair within 15 days of the request for the establishment of the panel, the chair shall be selected by lot within five days, from the candidates proposed pursuant to subparagraph (a) who are not citizens of either disputing Party.
 - (c) If the responding Party refuses to participate in or fails to appear for the choosing by lot procedure under subparagraph (b), the complaining Party shall select an individual to serve as chair from the candidates proposed pursuant to subparagraph (a) who is not a citizen of that Party. The complaining Party shall notify the responding Party of the selection no later than the next working day.
 - (d) If the panelists other than the chair are being selected under this process, no later than five days after the selection of the chair, each disputing Party shall propose:
 - (i) in the case of a five-member panel, four candidates, at least two of which shall not be citizens of that disputing Party, or
 - (ii) in the case who is a citizen of the other disputing Party from the candidates proposed pursuant to subparagraph (d).
 - (g) If a disputing Party fails to select its panelists under subparagraph (f), within five days the panelist or panelists shall be selected by lot from the candidates proposed pursuant to subparagraph (d) who are citizens of the other disputing Party of a three-member panel, two candidates, at least one of which shall not be a citizen of that disputing Party, and each disputing Party shall notify the other Party of its proposed candidates no later than the next working day.
 - (e) If the responding Party fails to propose all of its candidates pursuant to subparagraph (d), the proposed candidates will be those proposed by the complaining Party.
 - (f) If one or more panelists other than the chair are being selected under this process, then within 15 days of selection of the chair, each disputing Party shall select:
 - (i) in the case of a five-member panel, two panelists who are citizens of the other disputing Party from the candidates proposed pursuant to subparagraph (d); or
 - (ii) in the case of a three-member panel, one panelist
 If the disputing Party who failed to select its panelists under subparagraph (f) refuses to participate in or fails to appear for the choosing by lot procedure, within five days the other disputing Party shall select:
 - (i) in the case of a five-member panel, two panelists of its own citizenship from the candidates proposed pursuant to subparagraph (d); or
 - (ii) in the case of a three-member panel, one panelist of its own citizenship from the candidates proposed pursuant to subparagraph (d), and the disputing Party that selects shall notify the disputing Party who refused to or failed to appear for the choosing by lot procedure of the selection no later than the next working day.
- 5 Global Affairs Canada, "Rosters and Lists for Dispute Settlement Panels and Committees," GAC, January 29, 2024, <https://can-mex-usa-sec.org/secretariat/dispute-differends-controversias/members-membres-miembros.aspx?lang=eng>.
- 6 "USMCA Chapter 31 Panel Reports," WorldTradeLaw.Net.
- 7 United States Trade Representative, "Summary of Objectives for the NAFTA Renegotiation," July 17, 2017. Available at <https://ustr.gov/sites/default/files/files/Press/Releases/NAFTAObjectives.pdf>.
- 8 Scott Sinclair, *Saving NAFTA Chapter 19: Was it worth it?* Canadian Center for Policy Alternatives, 2018, p. 19.



GOLDY HYDER

President and CEO | Business Council of Canada

North America needs USMCA now more than ever

When the text of the United States-Mexico-Canada Agreement (USMCA) was finalized in December 2019, no one could have predicted that there would soon follow both a global pandemic and a dramatic geopolitical shift back to great power conflict. These twin shocks to the international trading system have had a destabilizing impact on every continent.

Yet, North America proved particularly resilient. This must be attributed, to some degree, to how the USMCA has allowed our three countries to collectively harness our national advantages. North American business leaders relied heavily on the USMCA as they reshored value and supply chains, reinvesting in manufacturing and our industrial base.

Since it came into force, the USMCA has offered a greater measure of certainty, stability, and predictability for those seeking to invest in North America—something that is lacking in other regions of the world. That is why a swift and successful review of the USMCA before mid-2026 is so critical to the continued resilience of the North American economy.

If the future of the agreement is called into question by political disputes or divisions in or between any of our three countries, it would undermine the very thing which safeguarded our prosperity at a crucial inflection point in modern history. We would discourage the capital investment, foreign and domestic, that is desperately needed to avoid recession.

There are those who argue the review process is an opportune time to look at ways to modernize the USMCA. They suggest carefully tailored, bespoke alterations can be made without resorting to extensive renegotiations. This is optimistic. Pulling on even a single thread could quickly unravel all that we have sewn together. It is not a risk worth taking.

The safest and surest course is to simply review the agreement as written, without adding unnecessary complications or amendments. It will only have been six years since the USMCA came into force—too short a time for a comprehensive evaluation of the deal, especially when many of those years have witnessed once-in-a-generation global events.

Since it came into force, the USMCA has offered a greater measure of certainty, stability, and predictability for those seeking to invest in North America—something that is lacking in other regions of the world.

Canadian, American, and Mexican business leaders have been working closely together to ensure the USMCA is reviewed positively. We are engaging with a broad spectrum of civil society, including labor, to build a data-driven case to demonstrate how the USMCA benefits all North Americans—and all that would be lost if the agreement is not extended.

Business leaders are also actively advocating for our governments to honor the terms of the USMCA by ensuring it is both fully implemented and fairly enforced. Our three governments must take seriously complaints that domestic policies or programs run afoul of either the letter or spirit of the agreement and take steps to ensure they are compliant.

Realizing the full potential of the USMCA also requires us to ensure North America has the necessary infrastructure in place. This includes both an integrated transportation network to support continental supply and value chains and trade-enabling infrastructure to allow goods and services produced in North America to be exported to global markets.

The USMCA was not negotiated simply to promote trade and investment within our shared continental borders, but to ensure that North America develops into an economic and industrial engine that can supply goods and services to countries around the world. It was designed to improve both our competitiveness as well as our ability to compete globally.

Finally, we must recognize some of our foreign competitors have turned their backs on the consensus which has governed the global economy since the end of the Cold War. They moved away from multilateralism and globalization, and in some severe cases have sought to weaponize trade and disrupt the North American economy by various means.

With growing geopolitical tensions in Europe, Asia, and the Middle East, North American economic security is perhaps at greater risk today than any other time in the past half century. In this environment, the USMCA has proven itself to be more than a mere trade agreement, it is a bulwark against global instability. We must ensure it holds firm.



SUZANNE P. CLARK

President and CEO | U.S. Chamber of Commerce

To ensure long-term success of USMCA, compliance is paramount

The private sector is committed to helping the three North American economies live up to their vast potential, including through the United States-Mexico-Canada Agreement (USMCA). Achieving that means understanding the benefits USMCA is delivering and acknowledging the challenges we still need to overcome. This ongoing study and the Brookings Institution's data-driven approach help provide a clear picture of the path forward.

In evaluating USMCA, it is important to recognize that the North

American economic relationship is as strong as ever. Three-way trade is valued at more than \$1.7 trillion annually, a staggering sum approaching \$5 billion daily. USMCA facilitates this success by setting the highest Free Trade Agreement standards in the world in areas such as digital trade, financial services, agricultural trade, and good regulatory practices.

This success is also built on cross-border collaboration that goes far beyond the exchange of goods and services. Our countries

don't just trade with each other, we make things together. North America boasts some of the most tightly knit supply chains in the world, which makes our continent better equipped than any other region to lead on the most pressing global priorities like mitigating dependencies in semiconductors and critical minerals while also enhancing our food and energy security.

We have every reason to assert that North America stands to be the most competitive region in

the global economy. For us to achieve our shared potential as a continent, however, we must start by keeping our word. From the perspective of the U.S. Chamber of Commerce, the biggest roadblock to maximizing our potential is our collective failure to comply fully with the USMCA.

All three countries have contributed to this problem. For its part, Canada's continued insistence on implementing a discriminatory Digital Services Tax (DST) is in contravention of both its USMCA and WTO obligations and the ongoing multilateral negotiations of the OECD/G20 Inclusive Framework's two-pillar solution. On the Mexican side, the U.S. and Canada requested consultations on energy in July 2022 and had the right to request a dispute panel 90 days later if an agreement could not be reached. More than a year and a half have passed, and there is still no resolution, and no panel has been requested. As for the U.S., USMCA mandates that the losing party in a dispute implement a panel's decision within 45 days. Over a year after the Automotive Rules of Origin decision was

published, the U.S. has yet to take meaningful action to implement it.

Like any other trade agreement, USMCA is not worth the paper it is printed on if it is not enforced. Failing to address these disputes ahead of the pact's joint review in 2026 undercuts the certainty investors depend on, adds cost and complexity for the business community, and risks undermining our indispensable continental trade and investment relationship. In North America, we have before us a generational opportunity to leverage the world's most integrated supply chains to assume global leadership in the energy transition and leverage the massive economic potential of areas such as electric vehicle and battery production. But our success in these and all other areas hinges on ensuring that all three parties adhere to their respective USMCA obligations.

As we have for decades, the business community is committed to doing its part to advance North American competitiveness, but we need all three governments to fulfill their end of the bargain. Working

with our partners in Mexico and Canada, the Chamber is leveraging initiatives such as the U.S.-Mexico CEO Dialogue and private sector participation in the North American Leaders' Summit to advance competitiveness by enhancing policy recommendations in areas like workforce development, trade facilitation, energy, investment, and services. And because few things are as important as our shared supply chain resilience, we are advancing pilot projects in strategic sectors—such as semiconductors, medical devices, and electric vehicles and sharing our insights with government leaders.

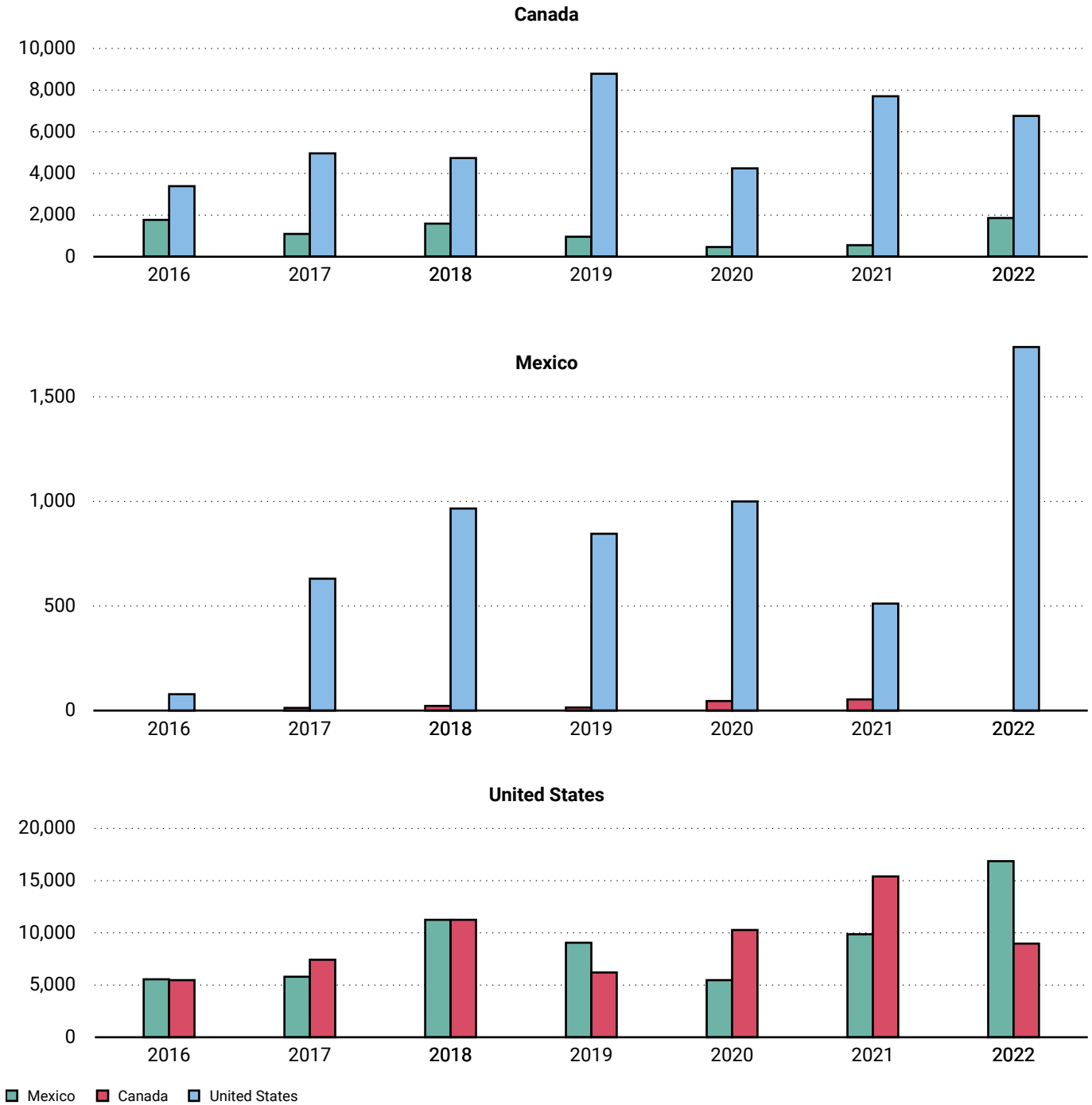
With elections looming in all three countries, close collaboration between government and the private sector has never been more important. A USMCA that is fully implemented and adhered to by all three governments is a worthy focus for such collaboration. Executing on this goal will provide much needed certainty in the marketplace, and more importantly the jobs, innovations, and opportunities to ensure North America is the preeminent powerhouse in the global economy.

We have every reason to assert that North America stands to be the most competitive region in the global economy. For us to achieve our shared potential as a continent, however, we must start by keeping our word.

FIGURE 7.

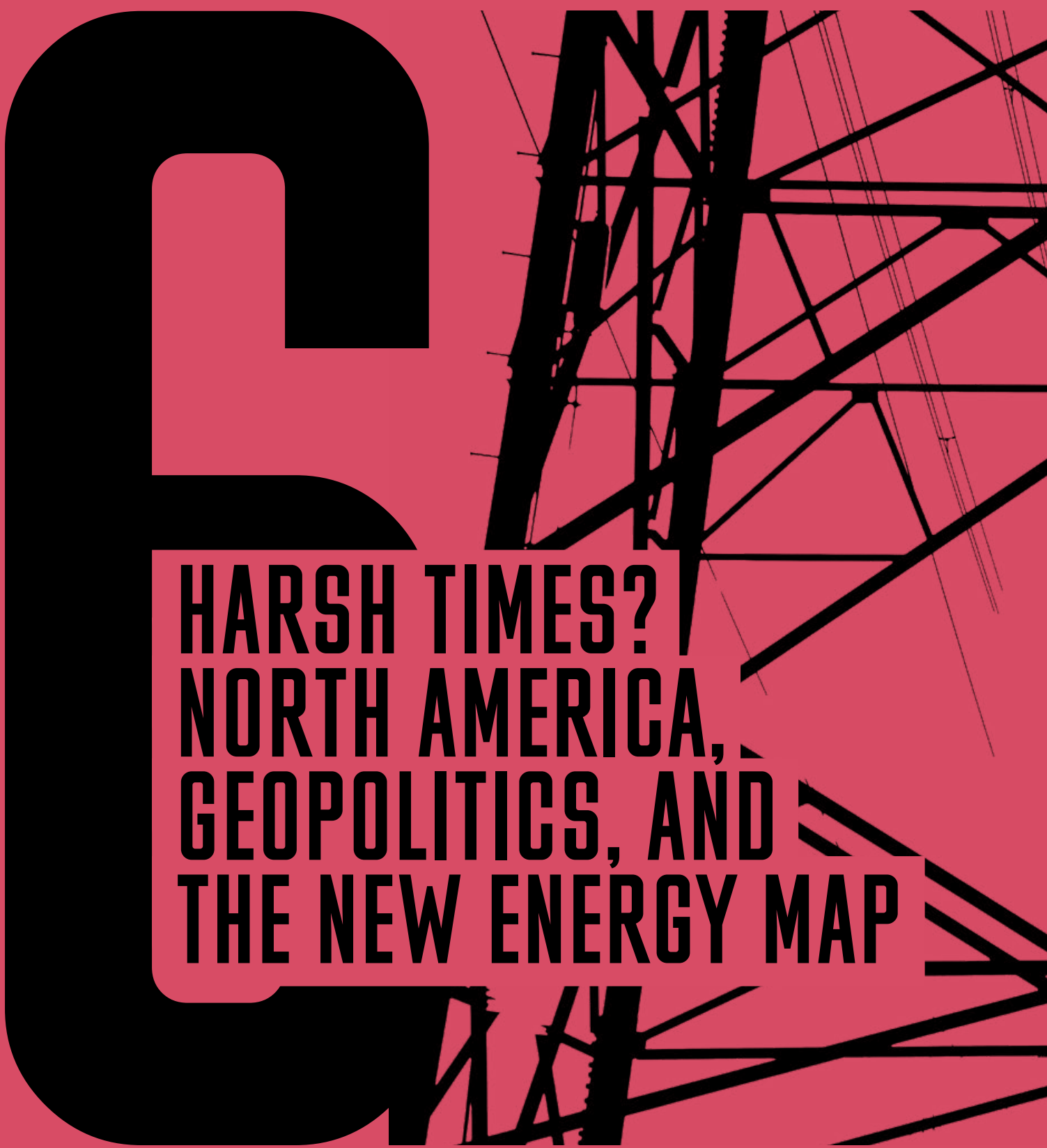
Investing in neighbors: North American partners continue to expand investment in each other's economies

FDI by capital investment (US\$ millions) by destination country, 2016-2022



Source: Data ©fDi Markets, from the Financial Times Ltd 2024. Data subject to terms and conditions of use; Brookings USMCA Tracker





HARSH TIMES? NORTH AMERICA, GEOPOLITICS, AND THE NEW ENERGY MAP



OSCAR OCAMPO

COORDINATOR FOR ENERGY
AND ENVIRONMENT | MEXICAN
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U.S.-China trade tensions, disruptions in supply chains, the Russian-Ukraine war, and the overall instability in the global order, have underscored the value of the predictability offered by the United States-Mexico-Canada Agreement (USMCA) framework at the regional level. What is to be done to harness this revival of the “North American idea”?

North America in a regionalized world

The regionalization trend that has emerged given the uncertain geopolitical environment is here to stay, at least in the foreseeable future. It is time to return to Robert Pastor’s North American idea,¹ an understanding of the continent as a community of three countries whose prosperity depends on their capacity to cooperate and jointly produce goods and services and address security threats. There is a long road ahead. In her most recent book *The Globalization Myth*, Shannon O’Neil demonstrates that 40% of North American trade is intraregional. This figure is significantly lower than in the European Union (approximately two-thirds) or Asia (around 59%).² The push for regionalization in North America has the potential to change that landscape. Developing a North American approach on energy cooperation is an indispensable condition to capitalize on this opportunity. The approach must be part of a broader agenda to build more resilient and secure supply chains, where access to clean, competitive, and reliable energy plays a pivotal role.

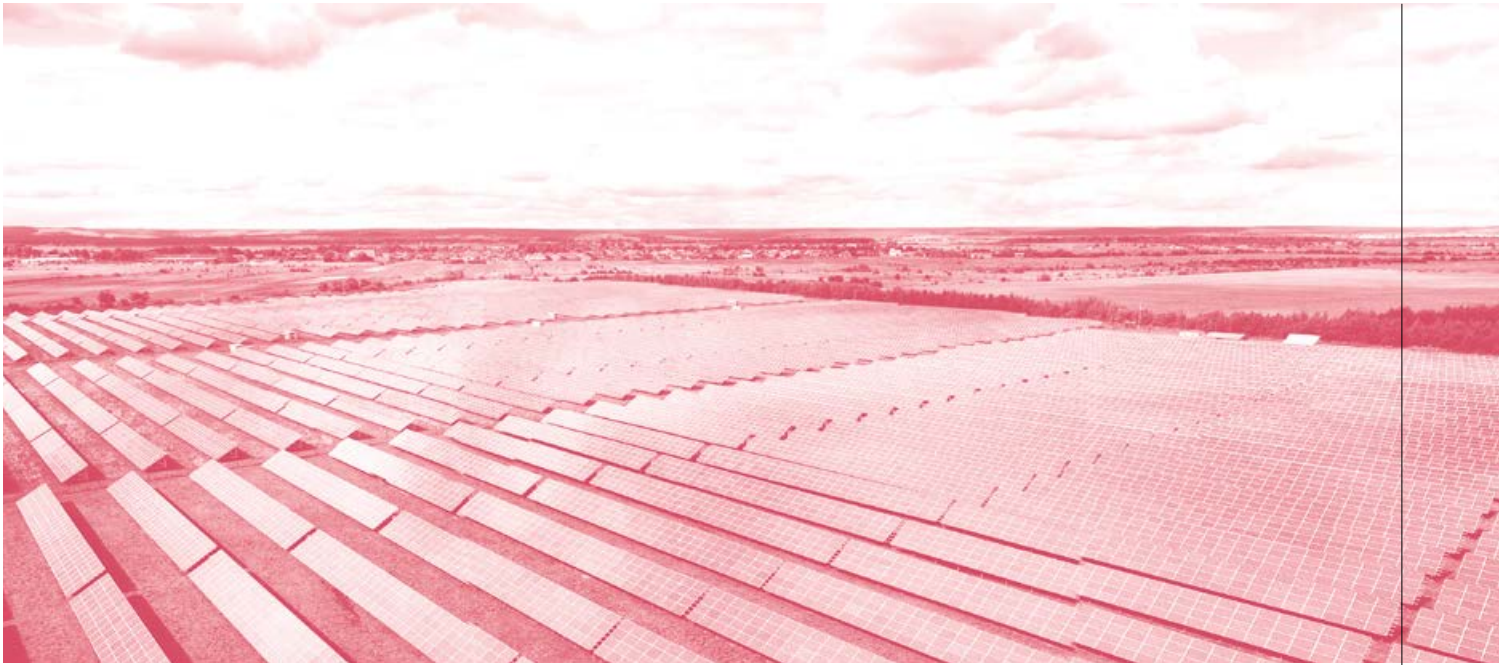
Former United States Trade Representative and World Bank President Robert Zoellick has underscored this: Unlike the process of European integration, the North American approach has not relied on sharing sovereignty or on supranational institutions. Zoellick comments that the North American Free Trade Agreement (NAFTA) “encouraged mutuality, frameworks for deeper cooperation and attention to shared interests.”³ This is especially true for the energy sector. North America’s most logical pathway to more integrated energy markets is to strengthen collaboration at the technical level (e.g., mutual recognition of technical standards), on regulatory harmonization, and on the development of transnational energy infrastructure.

The U.S.-Canada side letter on energy within the USMCA framework could be a stepping stone towards a more ambitious framework for regional cooperation. Mexico should adhere to the side letter that respects the spirit of North American integration as understood by Zoellick; It fosters regulatory cooperation and transparency specifically regarding access to transmission facilities and pipeline networks without sharing sovereignty on decision making processes.

North American energy security

In a world where energy security has regained a central position, North America’s reliable energy sources with low emissions at competitive prices represent a major economic advantage for investment in the industries of the future (e.g., semiconductors, data centers, artificial intelligence, and electromobility).

The International Energy Agency (IEA) defines energy security as “the uninterrupted availability of energy sources at an affordable price.”⁴ The IEA distinguishes between long- and short-term energy security. Long-term energy security requires sufficient investment in



infrastructure to keep pace with economic growth and development, while short-term energy security refers to “the ability of the energy system to react promptly to sudden changes in the supply-demand balance.”³⁵ Both short- and long-term energy security can be realized in North America. With respect to the supply of energy, the region benefits from geographic and climatic diversity that allows it to be competitive on multiple fronts, including solar, wind, nuclear generation, as well as natural gas. A balanced energy matrix composed of multiple technologies is a key requirement for energy security. However, despite this privileged energy “endowment”, North America needs to further invest in developing its energy resources as well as in energy infrastructure, including low-emission power generation, grid expansion and modernization, and natural gas infrastructure (e.g., storage and transportation). USMCA facilitates the goal of energy security by reducing barriers to trade in energy technologies which lowers costs and expands access to energy services. Many of the energy investments needed in North America are also large scale and long-term assets. The impact of USMCA on the business environment, reducing regulatory risk and increasing investment certainty, can reduce the cost of these investments.

One region, three visions

There is currently no vision for how to achieve energy security in North America. Each country is promoting efforts to expand energy infrastructure with different visions and varying degrees of ambition. The U.S. leads the way with the Inflation Reduction Act (IRA) and the Bipartisan Infrastructure Law (BIL), which are expected to trigger over \$1 trillion in new investments in energy infrastructure by 2035. It is mostly related to the decarbonization of economic activities according to Princeton University’s Rapid Energy Policy Evaluation

and Analysis Toolkit, although this estimate might be conservative. The U.S. industrial policy has also focused on energy storage technologies with over \$70 billion in investment commitments for electric vehicles and battery development within the framework of the IRA.⁶ Simultaneously, though, new natural gas projects are facing increased scrutiny. Ultimately, North America needs an energy matrix that guarantees the reliability of the system while reducing the region's carbon footprint, which will include an ongoing role for natural gas and the virtual elimination of coal and other highly polluting fuels.⁷

Canada has developed an energy roadmap and is currently discussing a bill in Parliament to enact investment tax credits for clean energies (expected to be as high as C\$27 billion), including renewable power generation, hydrogen, as well as carbon capture and storage.⁸ Additionally, Canada is promoting expanding its pipeline infrastructure, despite heated debates given social and environmental concerns.

Mexico's energy sector is in disarray and needs a significant new policy direction and greater coordination with its North American partners. The Mexican administration's energy policy has been focused on supporting PEMEX and expanding investment in carbon intensive energy sources such as oil, discouraging investment in renewable energy. After five years of discouraging private investment in power generation, Mexico lags in terms of clean energy (in October 2023, only slightly over 20% of generation was clean) and the electric system overall is facing increasing pressures given the growth in demand driven by nearshoring and the electrification of the economy.⁹ Public investment—CFE's new combined cycle plants and the landmark Plan Sonora—is proving to be insufficient in replacing private investment.¹⁰ Conversely, on the natural gas front, the Federal Government has opted to partner with the private sector to continue the expansion of the pipeline network, prominently in Mexico's south/southeastern region. Mexico's geographical location, its network of free trade agreements, and its technically skilled labor force should allow the country's manufacturers to benefit from U.S. initiatives like the IRA and the CHIPS and Science Act. However, lack of access to clean, competitive, and reliable energy supply limits Mexican possibilities to make the most of nearshoring.

As outlined previously, energy policy remains domestically focused. There is no North American vision for the energy sector. The absence of such a vision means missed opportunities to increase energy security and build resilience into energy infrastructure and supply, such as expanding transnational transmission and generation. The construction of the high-voltage direct current transmission line from Quebec to New York City is an example of this.¹¹ When it starts operating—expected in 2026—the project will transport clean energy (wind and hydro) across borders, reducing grid congestion as well as lowering electricity rates and emissions in New York City and Long Island. Moreover, the absence of a North American vision risks divergent approaches to clean energy across North America, which could become a trade issue as governments begin to prioritize clean energy products. For instance, the steps by the U.S. and the European Union (EU) towards a Global Arrangement on Sustainable Steel and Aluminum (GASSA) point to an emerging approach to trade in clean energy, steel, and aluminum with implications for North America.

Funding energy infrastructure in North America

On the financial side, the North American Development Bank (NADBank) could prove to be a suitable funding mechanism for the development of transnational energy infrastructure projects in the three countries. Expanding its mandate beyond the U.S.-Mexico border and increasing its capitalization would be the first steps towards this goal.¹² NADBank should become a proper regional development bank specialized in energy and logistical infrastructure. The institution could prioritize investments in low-emission power generation capacity, transmission lines, and natural gas pipelines, accompanied by logistical infrastructure that enables the movement of goods between the countries.

Investments must go beyond strictly energy infrastructure. Logistical infrastructure should also be strengthened, with a special focus on the Gulf of Mexico to enhance connectivity among the energy clusters located both in the U.S. and Mexico, including modernizing ports, as well as roads and railroads in the surrounding states.

Developing competitive energy infrastructure should not be reduced to the USMCA partners. An indispensable condition for the sustained success of North America as a region is development in Central America. Hence, it is indispensable to promote investment south of the Suchiate River. There are difficulties on two main fronts: politics and finance. On the political front, a trilateral vision for the region that goes beyond energy would be needed. In addition, the economic and national security benefits of development in Central America (e.g., coproduction of goods, lower migration, new markets) would need to be stressed.

North America and the energy transition

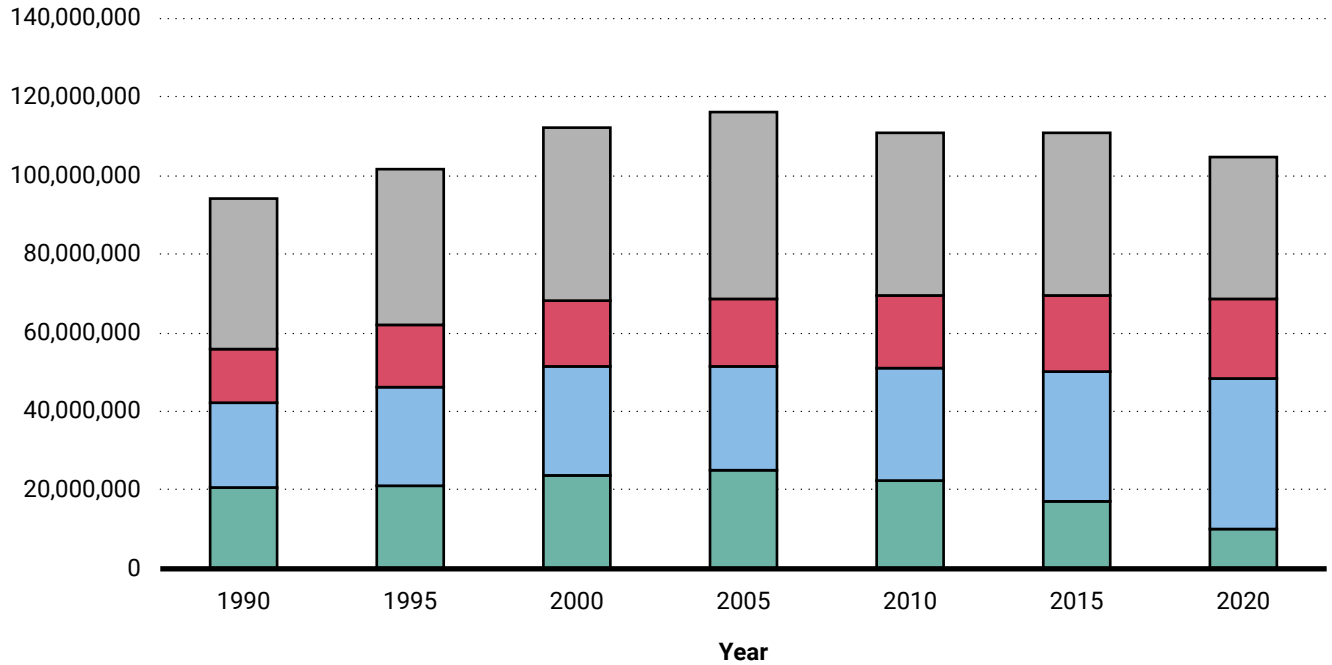
The dilemma on energy security is not limited to availability, it also entails the environmental footprint of the energy matrix. Balancing the energy matrix to reduce North American emissions requires a gradual transition towards renewable energies and natural gas as a transition fuel. Natural gas emissions per million British Thermal Units are 53.1 Kg, while coal, fuel oil, and diesel emit 95.5, 75.1, 74.0 Kg of CO₂ respectively.¹³

North America must decidedly decommission highly polluting facilities in favor of low-emission technologies. As shown in Table 5, in 2020, natural gas represented 36.5% of the region's primary energy matrix while clean energies (e.g., nuclear, solar, wind, hydro, and biofuels) accounted for 19.3%. Nonetheless, coal still represented 9.6% and oil, 34.5%. The room for improvement cannot be overstated.

The ideas proposed in this chapter are consistent with the global imperative to reduce greenhouse gas (GHG) emissions to mitigate climate change and to develop a pathway to energy security across North America. The three countries have set ambitious greenhouse gas mitigation targets by 2030. The U.S. national determined contribution (NDC) is to reduce net GHG emissions by 50-52% to 2005 levels, Canada aims to reduce GHG emissions by 40-45% compared to 2005, and Mexico committed to reduce GHG emissions by 35% compared to the government's baseline scenario (inertial emission growth scenario).

FIGURE 8.

North America's primary energy matrix (1990-2020): Terajoule



■ Coal ■ Natural gas ■ Clean ■ Oil

Source: IMCO with International Energy Agency. World Energy Balances. Note: Clean energies include hydroelectric generation, wind, solar, nuclear, and biofuels.

TABLE 5.

North America's primary energy matrix (2020): Percent share

	Natural gas	Coal	Nuclear	Hydro	Wind, solar	Biofuels	Oil
North America	36.5	9.6	9.7	2.4	2.4	4.8	34.5
U.S.	35.3	10.9	10.5	1.2	2.6	4.9	34.5
Canada	39.7	3.2	9.0	11.7	1.2	4.4	32.4
Mexico	45.3	5.0	1.2	1.3	3.0	5.0	39.0

Source: IMCO with International Energy Agency. World Energy Balances.

At the 2022 Conference of the Parties to the United Nations Framework Convention on Climate Change (COP27), all governments for the first time agreed to phase out of the use of fossil fuels while tripling global renewable power generation capacity by 2030—recognizing that “transitional fuels can play a role in facilitating the energy transition while ensuring energy security.”¹⁴ North America’s size and diversity eases the region’s path towards reducing its climate footprint. Yet again, political will at the tri-national level is an indispensable condition to achieve this objective. The clock is ticking for North America to meet its climate goals. Now more than ever investors’ certainty offered by the trade agreement should catalyze new investments in decarbonization efforts.

Final considerations

Federal and local governments, private companies, academia, as well as NGOs, all have a role to play in the development of a coherent North American vision for energy security and the energy transition anchored in transnational cooperation and transnational projects starting with natural gas pipelines and grid infrastructure. Failing to do so and remaining focused strictly on national endeavors on energy would imply missing the opportunity to consolidate North America as the most competitive region in the world ahead of the EU and Asia-Pacific. Mexico should be the champion of this idea since regionalization offers the country a once-in-a-lifetime opportunity to trigger higher growth levels and develop the country’s worse-off regions, especially south/southeastern states, which could for the first time integrate into North American supply chains.

There is no technical reason for energy to become a bottleneck for the region to make the most of the regionalization trend. Ultimately, the challenge is political, not economic. It is time to develop a North American strategy on energy.

* *Oscar Ocampo is energy and environment coordinator at the Mexican Institute for Competitiveness (IMCO), an independent think tank that produces research and public policy analysis to improve Mexico’s standing in the global economy.*

Endnotes

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HONORABLE

JONATHAN WILKINSON

Minister of Energy and Natural Resources |
Government of Canada

The CUSMA is a generational economic opportunity for the North American energy transition

Last year, Canada experienced the most destructive wildfire season in its history. Such extreme weather events are largely caused by our changing climate. This wildfire season shows us what the future looks like if we fail to effectively tackle climate change.

Beyond its increasingly severe impacts on our environment, climate change is also rapidly transforming the global economy and global finance; it is creating economic opportunities for those who approach the transition to a

low carbon future in a thoughtful, determined, and strategic manner.

The global energy transformation that is already well underway is both an environmental imperative to protect the planet for future generations and an economic opportunity on a scale similar to the industrial revolution. The energy transition is being fueled by financial markets that are increasingly playing a role in the shift to a low carbon future through their investment decisions.

Governments around the world—friends and competitors alike—are also increasingly taking action. For example, the United States is making massive investments in clean economy through the Inflation Reduction Act (IRA). Similarly, the European Union, Japan, and Australia are putting into place strategies to accelerate clean industrial growth. And beyond democratic friends, countries such as China are also moving strategically. In 2022, China accounted for around half of wind and solar additions in the world, and

To effectively seize the economic opportunities associated with the transition to a net zero future, countries must approach this transition in a thoughtful, strategic, and collaborative manner.

well over half of global EV sales. And China presently dominates global critical mineral supply chains.

China has made a major bet on the energy transition—and aims to be a leader in the technologies that will be central to it. We have also seen their willingness time and again to act in an economically coercive manner, including through export restrictions and other unfair and arbitrary measures that affect access to clean energy material and technologies. This is something that must be a wake-up call for those politicians in western countries that continue to pretend that future prosperity lies in simply pursuing the same pathways that the energy transition is fundamentally disrupting as we speak.

To effectively seize the economic opportunities associated with the transition to a net zero future, countries must approach this transition in a thoughtful, strategic, and collaborative manner.

In Canada, we have developed a comprehensive approach to addressing carbon emissions while

concurrently looking to seize the enormous economic opportunities that will come through the transition to a net zero future. Canada is well placed to seize such opportunities due to:

- A well-educated and highly trained workforce;
- Vast natural resources that are increasingly in demand, including things like critical minerals, which will be required by our key allies and partners;
- Innovative energy and clean technology companies, technologies, and expertise;
- Trade agreements with major economies around the world; and
- Banking, political, legal, and regulatory systems that are stable and predictable.

All of this means that Canada can and will be an important player and partner in addressing economic, climate, clean energy, and security goals. This is particularly true for countries that share common

values and aspirations. Certainly, Canada’s international collaboration includes the United States and Mexico—our closest friends, trading partners, and allies.

While cooperation in many areas will be crucial moving forward, we in Canada are keenly aware that stable and predictable, tariff free trade provided by the Canada-U.S.-Mexico Agreement (CUSMA), is crucial for sustainable economic growth and prosperity in all parts of North America.

CUSMA provides certainty for investors and market opportunities for companies in all three countries. CUSMA’s committee architecture, particularly the Committees on Environment and North American Competitiveness, enables us to work collaboratively and effectively. It helps us to ensure North America is at the forefront of the global energy transition, and that our workers and communities will benefit from low-carbon growth and the friendshoring of supply chains.

CUSMA has been and is a critical tool in advancing beneficial

integration of North American economies and facilitating cross-border investments and trade in goods and services. This includes the resources, technologies, and advanced products needed to meet our shared climate goals and seize the immense economic opportunity of the energy transition.

In the context of both the energy transition and the current uncertainties in geopolitics, it is more important than ever that Canada, the United States, and Mexico work actively and collaboratively to uphold and further the commitments we have made in the CUSMA. We must continue to discourage the use of market distorting policies and limit the impact of unfair and discriminatory

trade practices on partner economies. We must also continue to collaborate on environmental and labor standards.

As we approach the 2026 review of CUSMA, we must be clear—a prosperous and sustainable continental economy is and must be built on agreed upon, predictable, fair, and inclusive trade, underpinned by rules and functioning dispute settlement processes.

Globally, principles of free and inclusive trade are under threat—as are democratic values. In too many places, voters are turning inwards, towards leaders who espouse protectionism and economic nationalism as a solution to

economic challenges. Such leaders are increasingly turning their backs on the free and fair exchange of goods, services, and technologies that enable efficiency, prosperity and can accelerate the emergence of a thriving low carbon economy.

It is in this context that Canada is committed to continuing to be a reliable partner to our Mexican and American friends. By working together, we can continue to create wealth and well-paying jobs while collectively working to achieve our respective climate goals.

Building on our friendship, our partnership, and our shared values, we can set the example for building a more competitive, inclusive, and sustainable economy.

In the context of both the energy transition and the current uncertainties in geopolitics, it is more important than ever that Canada, the United States, and Mexico work actively and collaboratively to uphold and to further the commitments we have made in the CUSMA.





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North America and the automotive industry looking forward

with input from Adriana Ramirez, Economic Studies Manager

The year 2024 marks the 30th anniversary of entry into force of NAFTA, the most modern agreement of its time. It triggered the long and successful integration process that led North America to become one of the most competitive regions in the world.

The 26 years of NAFTA, including three years of a highly complex and ambitious negotiation process, led

to the USMCA,² which entered into force in July of 2020, consolidating the economic integration of our three countries. USMCA brought a new approach to trade, incorporating new elements in areas such as technology, services, labor, environment, and digitalization, as well as novel dispute settlement mechanisms.

The renegotiation of NAFTA into USMCA showed the importance

of trade agreements not staying static and being updated to address new issues and challenges of a changing world.

Our three decades-long tradition of free trade has yielded clear and positive results. Thanks in part to this, our three countries account for almost a third of the world's GDP, and all three North American economies are among the world's 20 largest, known as the G20.

By the end of 2023, the trade within our three countries was close to \$2 trillion, meaning more than \$3 million per minute, and accounting for more than 10 million jobs—while also representing at least 15% of global trade.

The standard bearer of our integration is the automotive industry. As mentioned in U.S. Trade Representative Katherine Tai’s 2022 report, “... industry reports that total auto trade (imports plus exports of vehicles and parts) is the largest component of total North American trade, accounting for 22 percent of total trade under the USMCA.”³

North America produced 14.8 million vehicles in 2022 according to OICA,⁴ 17.4% of the world’s total. And by Q3 of 2023, 18.6% of the global production—with the U.S. and Mexico as two of the world’s top ten producers.

We represent 20.7% of global sales with 16.9 million vehicles sold in 2022.⁵ The industry accounts for 3.3 million jobs, and the region is a major player in auto parts and expected to be the fastest growing producers over the next six years.

However, USMCA also brought challenges to the auto industry with the strictest requirements in any free trade agreements/regional trade agreements in the world: the highest rules of origin, certifications of labor value content, and steel and aluminum purchases not seen in any other agreements.

In a time of major international events such as a global pandemic, international trade tensions, armed conflict, and in the case of the auto industry, a historic paradigm shift towards new technologies for zero emission vehicles known as electromobility, we must strengthen our efforts to make North America the global powerhouse of electromobility.

This involves ensuring proper implementation and full compliance with USMCA, including the dispute settlement outcomes such as the 2022 panel ruling on rules of origin. Compliance with USMCA reinforces the rule of law and the business certainty needed for the significant new investments required to build an electromobility supply chain.

On this note, the 2026 review must be seen as the opportunity to

facilitate the region’s transition to electromobility, rather than make the already high requirements even harder—to the detriment of our shared competitiveness. This will help us to effectively address the future needs of raw materials and renewable energy sources and strengthen our shared capabilities to produce key components such as semiconductors, chips, printed circuit boards, and other technology-based components. It is also essential to develop specialized human capital to attract investments, encourage the adoption of digital technologies, ensure security on all communication routes, and improve border infrastructure.

In conclusion, the success of USMCA will depend on its implementation and compliance. The three countries must work together, anticipate challenges, and seize the opportunities. Moreover, collaboration is key, and projects such as Brookings’ USMCA initiative play an important role. Only by working as a region we will be able to successfully address the global challenges of our times.

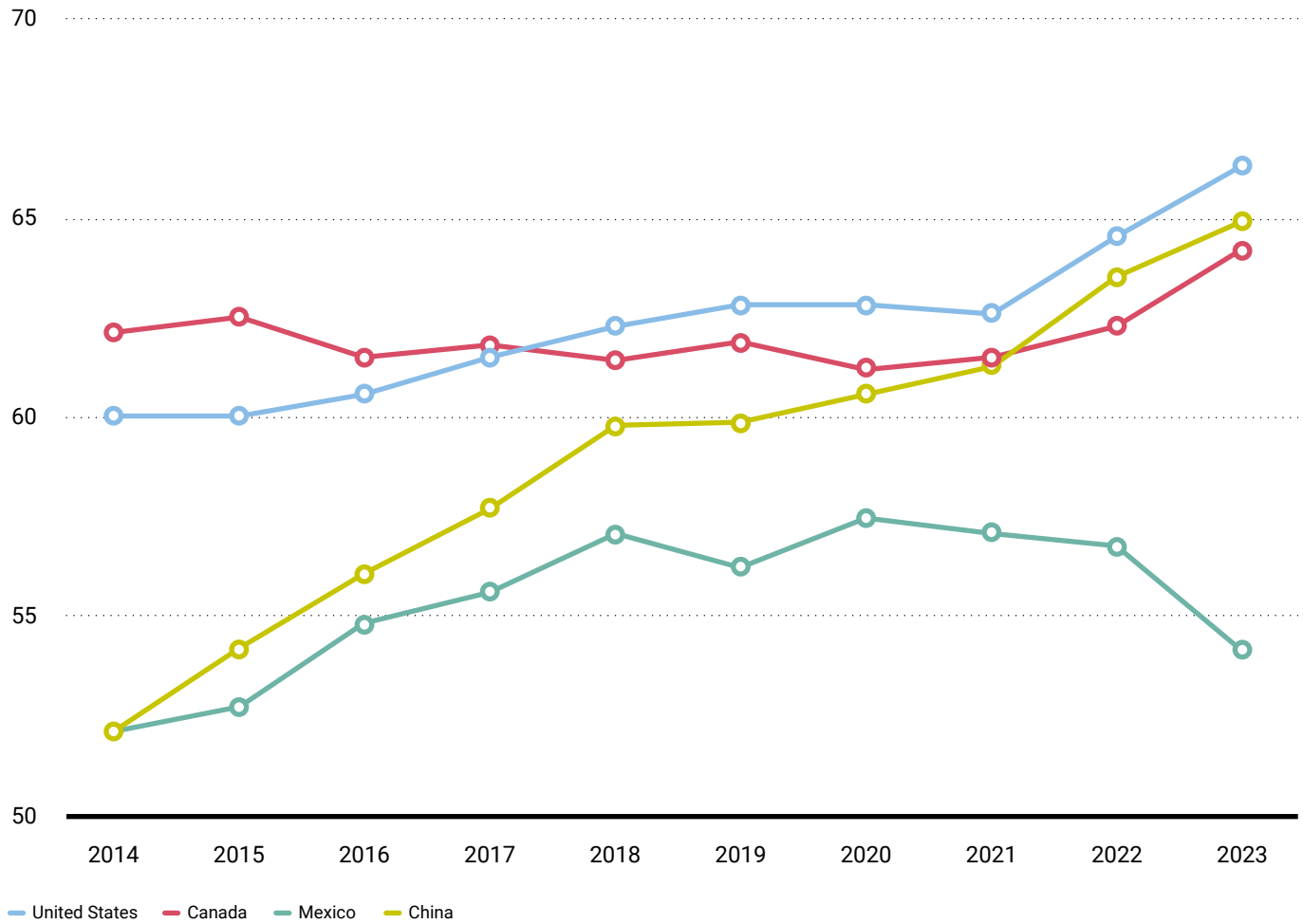
Endnotes

- 1 AMIA was established in 1951, with the purpose of representing the light vehicles automotive sector in Mexico, promoting its growth and development, as well as providing updated public information on the performance of production, exports, and sales of our affiliated companies. We represent light vehicle manufacturers, importers, and traders before the three levels of government, business chambers, key stakeholders, and the general public. Our current membership is made up of 22 companies. AMIA is a consulting body on government initiatives and public policies, as well as on the negotiations of international trade agreements. We were active participants in the negotiation processes of what was the NAFTA, and now, with the USMCA, we support the objectives to increase regional competitiveness, production, and job creation.
- 2 USMCA is also known as CUSMA in Canada and TMEC in Mexico.
- 3 USTR, “Report to Congress on the Operation of the United States-Mexico-Canada Agreement with Respect to Trade in Automotive Goods.” July 1, 2022. <https://ustr.gov/sites/default/files/2022%20USMCA%20Autos%20Report%20to%20Congress.pdf>.
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FIGURE 9.

Divergent paths in North America energy transition: Canada and the United States lead with significant investments in energy security, equity, and sustainability. Mexico risks falling behind with increased carbon emissions and a focus on fossil fuels. China's leadership in the space gains momentum (2014-2023)

World Economic Forum Energy Transition Index (2014-2023). Scores 0-100



Rank 2014	
United States	14/120
Canada	10/120
Mexico	50/120
China	51/120

Rank 2023	
United States	12/120
Canada	19/120
Mexico	68/120
China	17/120

Source: World Economic Forum Energy Transition Index (2024).





TRADE IN A DIGITAL INTEROPERABILITY ERA



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The USMCA introduced a novel chapter on digital trade. Digital trade refers to all forms of commerce conducted by electronic means, whether it be buying a good, selling a service, or accessing information.¹ The value of trade in digitally ordered goods and services across the three North American economies could be as high as \$250 billion yearly.² Such trade requires cross-border data transfers. The importance of these transfers includes, for example, businesses across North America using data to streamline inventories, operations, and forecast demand, which are essential foundations for resilient supply chains. Or medium-sized companies adopting and integrating digital technologies like cloud computing and artificial intelligence (AI) into manufacturing processes, improving productivity, and creating new opportunities for regional trade.³ These economic and trade opportunities highlight the importance of the USCMA's digital trade chapter. More recently, given geopolitics and emerging digital challenges, all three partners are stepping into regulating aspects of their digital economy. In this new regulatory-push context, Chapter 19 of the USMCA, the foundation of the North American approach to regulating digital trade, could help ensure that data flows between countries will not be unnecessarily restricted.

USMCA digital trade chapter: What has changed since it came into force?

The USMCA's Chapter 19 on digital trade provides a foundation for better cooperation on integrating North American digital markets. It includes important commitments to cross-border data flows, avoiding data localization requirements, and not requiring access to source code as a condition for market entry (along with exception provisions for legitimate public policy objectives, such as privacy, consumer protection, and national security concerns). This USCMA chapter also supports digital trade by, for example, prohibiting customs duties on electronic transmissions (see table below). More broadly, the chapter creates regulatory stability, encouraging data-driven business models relying on cross-border data flows. The United States International Trade Commission on the digital trade chapter found: "USMCA represents an insurance policy...that data flows within the North American economic space will continue to be unrestricted."⁴ However, since the agreement came into force, governments are increasingly regulating the digital economy, potentially creating restrictions to cross-border data flows that could hinder digital trade opportunities.

On the one hand, several governments are creating barriers to data flows amid privacy and national security considerations.⁵ On the other hand, within North America, debates begin as to whether some of the USMCA digital trade commitments are aligned with the new push for regulation. For example, the USMCA commitment on content moderation⁶ is being questioned in the U.S., Canada, and other jurisdictions⁷ as the way forward. Also, the United States administration is reviewing its support for rules allowing free cross-border data flows, prohibiting national requirements for data localization and reviewing software source code at the World Trade Organization, as these commitments—all reflected in the USMCA—might have impacts on the U.S. government space to pursue domestic policies like antitrust, consumer protection, and AI regulation.⁸

TABLE 6.

Provisions included in USMCA's Chapter 19 on Digital Trade by concept

Concept	Topic	Provision (description)
Privacy	Personal information protection	Parties recognize the importance of protecting the personal information of users and shall maintain a legal framework for such purpose.
	Location of computing services	No party shall require a covered person to use or locate computing facilities in its territory as a condition for conducting business there.
Use and transfer of information	Use of cross border information	Parties are to refrain from restricting the cross-border transfer of information, including personal information, for conducting business.
	Custom duties	The agreement prohibits the imposition of customs duties, fees, or other charges on digital products transmitted electronically between parties. Parties shall also allow the cross-border transfer of information by electronic means.
	Paperless trading	Each party shall endeavor to accept a trade document submitted electronically as the legal equivalent of the paper version of that document.
	Electronic authentication and electronic signatures	A party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
Cybersecurity	Unsolicited commercial electronic communications	Parties are to adopt measures allowing consumers to stop receiving unsolicited commercial electronic communications and requiring suppliers to facilitate the ability of consumers to do so.
	Incident response capabilities	Parties recognize the importance of building the capabilities of their respective national entities responsible for cybersecurity and protecting against unauthorized access and use of electronic information.
User's rights	Online consumer protection	Parties shall adopt and maintain consumer protection laws to cover fraudulent and deceptive commercial activities online. They shall also cooperate in activities related to online consumer protection.
	Access to open government data	Parties should endeavor to make government data available to the public in machine-readable formats and to promote the use of open data standards, thereby enhancing the availability of government data for innovative uses.
Competitio	Source Code	Parties are not required to, or cannot compel, transfer, or provide access to the source code of software owned by a person of another party, as a condition for the import, distribution, sale, or use of such software.
	Antitrust	Parties shall maintain or adopt competition laws to proscribe anticompetitive business conduct and take appropriate action with respect thereto. Parties shall also cooperate on matters of mutual interest related to competition laws.
	Non-discriminatory treatment of digital products	No party shall accord less favorable treatment to a digital product created, produced, contracted for, commissioned, or first made available on commercial terms in the territory of another party, or to a digital product of which the author, performer, producer, developer, or owner is a person of another party, than it accords to for other like digital products.
Cooperation		Parties shall endeavor to share information and experiences on regulations, policies, enforcement, and other matters related to digital trade, and to cooperate to promote digital trade in third-party markets.
Intellectual property		Parties must provide adequate legal and procedural protections against the violation of trade secrets and ensure effective enforcement of intellectual property rights related to digital trade.

Note: This table was created by the authors based on the content from the USMCA.

The following outlines key regulatory challenges on cross-border data flows and how these might impact the USMCA going forward.

AI regulation

Governments worldwide are discussing policies and regulations against perceived negative consequences of AI, such as biases and discrimination, security risks, privacy and misinformation, and copyright infringements.⁹ Different regulatory approaches are emerging globally, yet all efforts seek trustworthy, transparent, and accountable AI models.¹⁰ The European Union (EU), for example, recently agreed on the first-ever legislation to regulate AI.^{11,12} The proposed “AI Act” includes safeguards on general purpose artificial intelligence, obligations for AI models categorized as “high risk”, and sanctions for non-compliance.¹³

In the U.S., in July 2023, the Biden administration secured voluntary AI commitments by seven leading AI companies¹⁴ on (1) **safety**: establishing AI products are safe before public introduction, conducting rigorous testing and public disclosure of AI assessments; (2) **security**: building systems resilient to cyber threats; and (3) **trust**: ensuring authenticity of AI-generated content, preventing bias, protecting privacy, and shielding children. Building on these voluntary agreements, months later President Biden signed an Executive Order to establish security and privacy protection standards, requiring AI developers to safety test new models and share results with the U.S. government, to help ensure AI systems are safe, secure, and trustworthy.¹⁵ The Canadian government has proposed the Artificial Intelligence and Data Act to address systemic risks during design and development of AI systems. Additionally, in September 2023, the Canadian Ministry of Innovation, Science, and Industry announced a voluntary code of conduct on the development and management of generative AI, which “temporarily provides Canadian companies with common standards and enables them to demonstrate, voluntarily, that they are developing and using generative AI systems responsibly until formal regulation is in effect.”¹⁶ The Mexican government is not formally discussing the issue. In the Mexican Congress, however, the “Law for the Ethical Regulation of Artificial Intelligence and Robotics” was introduced in May 2023 to regulate AI through a new decentralized body, the Mexican Ethics Council for Artificial Intelligence and Robotics. But progress on this law is uncertain.

Related to these regulatory efforts, the USMCA’s commitment to not requiring source code access as a condition for trade could raise concerns on potential limits to government scope on developing and enforcing appropriate AI regulation. Would individual country efforts to regulate AI, including enforcement actions, be inconsistent with trade commitments over algorithmic source code? Or is it allowed under the exceptions provision? Moreover, the diverse approaches that could emerge across North America raise the question of how to use the USMCA for cooperation on AI regulation.¹⁷ AI’s dependence on massive datasets, for example, highlights the importance of Chapter 19’s free data flow commitments. Going forward, should there be a North American approach to AI? Should AI cooperation be prioritized in USMCA meetings? Must the USMCA be amended to include specific AI commitments¹⁸?



Cybersecurity

The USMCA includes commitments for closer cooperation on cybersecurity matters to mitigate intrusions or dissemination of malicious code and share best practices. Robust cybersecurity measures enhance digital trade by further strengthening supply chain resilience and securing critical infrastructure operations for trade, including electricity generating facilities, airports and ports, and customs operations, among others. None of the three countries have a comprehensive federal law regulating cybersecurity; however, since USMCA's enactment all have initiated domestic efforts to tackle such concerns internally. According to the U.S. Federal Bureau of Investigation, in the top 20 countries most victim to cyberattacks, the U.S. is at one, Canada at two, and Mexico at nine.¹⁹

In the United States, cybersecurity is governed by a patchwork of regulatory frameworks. These include sector specific regulations (e.g., the Children’s Online Privacy Protection Act or the Financial Services Modernization Act Gramm–Leach), state privacy and cybersecurity legislation that regulates data breaches notifications, federal agencies using rulemaking power to regulate aspects of it (like the Securities Exchange Commission material disclosure of information to businesses cybersecurity policies or the Transportation Security Administration efforts on cyber–securing all modes of transportation), and national security law.²⁰ Recently, the Biden administration has signaled this patchwork of laws and regulations has resulted in inadequate and inconsistent outcomes and called for a revamp of the federal cybersecurity framework.²¹ Proactively addressing cybersecurity challenges, the Administration released a National Cybersecurity Strategy,²² which provides a vision for the type of cybersecurity work the federal government will be pursuing.

In Canada’s case, it has actively enhanced its cybersecurity framework through key initiatives and legislative actions. Like the U.S., this approach is governed by a combination of laws, policies, and strategies rather than a single, dedicated federal cybersecurity law. Key elements of the framework include a National Cyber Security Strategy, the Digital Privacy Act (setting rules for private sector handling of personal information in commercial activities), the Cyber Incident Management Framework (to improve Canada’s response to cyber incidents), Communications Security Establishment Act (for better interception and disruption of foreign cyber threats), and the Anti–Terrorism Act and the Criminal Code of Canada (including provisions relating to cyber terrorism and cybercrime).

In Mexico, increasing cyberattacks highlights the need for a more robust Mexican cybersecurity framework, especially when government institutions like the oil and gas company, tax administration office, national water commission, and recently, defense ministry, have been under attack.²³ Some laws and regulations include the concept “information technology security” (e.g., the Mexican Federal Criminal Code–articles 211 BIS I to 211 BIS 7–sanctions illicit access to computer systems and equipment).²⁴ However, they are not part of a coherent effort for preventive and corrective measures that should be taken against a cybercrime. More recently, a cybersecurity law initiative presented to Congress by Congressman Javier Lopez Cassarin has been under discussion.²⁵ This law aims to establish a national cybersecurity system, a legal and operational framework for new federal cybersecurity institutions, including a national agency and the National Cybersecurity Council for coordinating cybersecurity efforts across different government agencies.²⁶ It also contemplates criminalizing cyberattacks and conducting annual penetration testing at public and private institutions. Despite its significance, the proposal has faced criticism, particularly concerning potential human rights violations, and as such, has stalled.

As for North American cooperation on cybersecurity matters, in August 2022, the U.S. and Mexico convened a bilateral cyber dialogue for cooperation on a “shared commitment to an open, interoperable, secure, and reliable” cyberspace.²⁷ It was a first, and so far, the only one of its kind. However, representatives from all three countries have convened several times through deputy–level meetings to discuss and advance shared priorities, including trade flow cooperation in emergencies, touching upon cybersecurity.²⁸ In line with USMCA’s Article 19.15 commitment to closer cooperation on cybersecurity, these meetings could set the stage for future collaborations to solidify an aligned approach to domestic cybersecurity frameworks.


The pace of change, the economic and trade importance of data, and the use of digital technologies, combined with potential divergent regulation, underscores the need for regular and sustained dialogue on these issues.

Export control

In recent years, U.S. cybersecurity concerns have shifted from terrorism to China, either from cyberattacks by the Chinese government and/or the potential use of Chinese information technology firms as espionage platforms. In this context, and amid heightened technological rivalries over technologies like Artificial Intelligence, 5G, Internet of Things and microchips, the U.S. is restricting the exports of, and investments in, key technologies such as critical hardware, semiconductors, and communications platforms to that country. Of notice is the semiconductor ban of 2022 and its recent update in October 2023. The U.S. Department of Commerce's export controls not only prohibits U.S. exports of semiconductors to China but includes a list of related items that could be used in the semiconductor's supply chain technology in that country.²⁹ These shifting U.S. concerns over access by the Chinese government to critical technologies raises questions as to what the U.S. will expect of its USMCA partners. For example, will the U.S. presume, for regional security objectives, similar export controls be implemented by Canada and Mexico when it comes to China? The USMCA does not address export controls, an issue typically excluded from trade agreements and instead dealt with as a national security issue. However, the merging of trade and security issues raises the question of whether there is a future role for the USMCA in aligning approaches to the more expansive export controls that the U.S. has developed in recent years.

Data privacy

Another potential conflict area for North American partners is if future domestic reforms to privacy laws modify the treatment of cross-border information flows. Data privacy legislation generally aims to secure consumers data privacy, especially personally identifiable information. The U.S. does not have a comprehensive federal privacy law, but a patchwork of sectoral, federal, and state regulations. Currently, 13 U.S. states have enacted comprehensive privacy laws, drawing on the EU's General Data Protection Regulation (GDPR).³⁰ The GDPR's standard on cross-border data transfers is that businesses are not allowed to transfer personal data outside the EU unless "adequate" measures for protection exist.³¹ Presently, U.S. state privacy laws have no such cross-border restrictions. Instead, entities collecting personal data are responsible for complying with their published privacy policies. The U.S. Congress



could eventually consider the need for a comprehensive federal data privacy legislation, which could include handling standards for cross-border information flows.³² The latest attempt for a federal privacy law was the American Data Privacy Protection Act (ADPPA), introduced May 2022 with a congressional hearing on the subject in April 2023.

Canada's federal privacy law does not contain specific provisions on cross-border data flows.³³ Similar to the U.S., any business is free to transfer any type of personal data to other organizations, nationally or internationally, and is responsible for personal information in its possession or custody. This includes information to a third party for processing. In 2022, the Canadian government proposed the Digital Charter Implementation Act (a reintroduction of a proposed 2020 legislation), which includes a revision of the country's federal privacy law in line with the GDPR but without cross-border flow restrictions. The original bill specifically mentioned that rules governing the protection of personal information should recognize "an era in which data is constantly flowing across borders and geographical boundaries and significant economic activity relies on the analysis, circulation, and exchange of personal information,"³⁴ so it does not distinguish between transfers within Canada or internationally. If approved in its current form, the default position will be for free data flow across borders. In Mexico, the federal privacy law also does not contain specific provisions on cross-border data flows. In general, data subjects need to be informed of personal data transfers in a privacy notice and consent is required. No relevant discussions on modifying the Mexican privacy law seem to be on the public's mind.

As such, for now, the approach to data privacy for cross-border data flows between the three countries is aligned and supportive of digital trade. If divergent approaches were to appear, data flow could still be possible. For example, the new EU-U.S. Data Privacy Framework (DPF) builds interoperability between legal systems to enable the free flow of data despite differing data privacy regimes.³⁵ Agreements of this type can only be possible through dialogue and trust, highlighting the importance of cross-partner cooperation mechanisms (or forums) on high tech and digital economy issues (in this case, the U.S.-EU Trade and Technology Council).

The above-mentioned potential areas for different approaches to digital regulation are not intended to be exhaustive,³⁶ but rather examples of future challenges and opportunities in the North American region. The pace of change, the economic and trade importance of data, and the use of digital technologies, combined with potential divergent regulation, underscores the need for regular and sustained dialogue on these issues. Through a permanent institutionalized council or forum, partners could discuss how to handle possible USMCA digital trade commitment divergences. For example, for dealing with concerns that arose from Mexico's possible USMCA infringement on data location restrictions on fintech businesses in 2021,³⁷ or Canada's proposed digital services tax that would require personal and transactional information of Canadian users of digital services to be stored within Canada for tax assessment purposes.³⁸ Such potential divergences will keep arising amid changing geopolitical, tech, and regulatory landscapes.

Chapter 19 going forward

So far, there has been no formal USMCA dispute on digital issues. However, dispute settlement should be a last resort, and instead, goals of harmonizing digital regulation or achieving regulatory interoperability should be the focus. Making progress here will require more intensive engagement across the three governments. Securing future data flows does not necessarily require the harmonization of North American laws and regulations; still, it does require common principles on privacy, security, intellectual property, and a high degree of trust. As the G7 recently declared, while the means to trustworthy AI may vary, there is a need to identify “commonalities, complementarities, and elements of convergence between existing regulatory approaches and instruments enabling data to flow with trust, in order to foster future interoperability.”³⁹ Like the cross-border data flow agreement between the U.S. and EU, operationalizing this cooperation to a shared agreement is largely a matter of institutionalizing discussions. The G7, for example, has a working group led by countries’ Digital and Tech Ministers. Other international forums on digital issues have seen involvement of different government departments, from security to trade and digital ministries.

What institutional mechanism could the three USMCA governments rely on if/when differences arise? The USMCA’s Chapter 19 calls upon Canada, Mexico, and the U.S. to exchange information and share experiences on regulations and policies relating to digital trade and enjoins the countries to establish “a forum”. This North American digital trade forum could be integrated by the Department of Commerce (U.S.), Innovation, Science and Economic Development (Canada), and Secretaría de Economía (Mexico).⁴⁰ Similarly, the recently launched North American Ministerial Committee on Economic Competitiveness (NAMCEC), seeking to align efforts on regional competitiveness in future industries, could be the forum.⁴¹

However, dispute settlement should be a last resort, and instead, goals of harmonizing digital regulation or achieving regulatory interoperability should be the focus.

The U.S. and Canada have experience participating in international digital issues discussions, Mexico less so. In Mexico, aspects of the country's digital space fall under the guide of several government bodies, some like telecoms, antitrust, and privacy regulators that are autonomous of the Executive branch. Cooperation among all regulatory bodies involved in the digital space is incipient, in part because of lack of support from the federal government for respective regulators' work. This raises the challenge for Mexico to coordinate its approach to digital policy and cooperation with its North American partners. In 2024, the Mexican president could contemplate an administrative restructure of the federal government and create a Ministry of Digital Affairs.

What issues related to digital trade could be dealt with in such a North American forum? Regarding cross border data flow, for example, the G7 plan lays out the following areas of cooperation: (1) data localization; (2) regulatory cooperation; (3) government access to data; (4) data sharing for priority sectors; and (5) fostering future digital regulatory interoperability.⁴² In other substantive issues, there is semiconductor manufacturing mapping, small- and medium-sized enterprises digitalization, promoting digital skills development, tech talent mobility, fostering new players in cross-border payment services, incentivizing investment in robust digital infrastructure, among others.

Looking beyond specifics, the point here is the need for deeper cooperation on digital issues. On regulatory aspects, the general purpose of such collaboration should be interoperability across North America while accommodating each partner's legitimate public policy and national security objectives.

Endnotes

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- 4 Dan Ciuriak, *Optimizing North American Supply Chain in Critical Technologies: The USMCA Digital Advantage* in "USMCA Forward 2023: Building a more integrated, resilient, and secure supply chains in North American Economy", Brookings Institution (Feb 2023), p. 90.
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- 15 The White House, "Fact Sheet: President Biden Issues Executive Order on Safe, Secure and Trustworthy Artificial Intelligence" (October 30, 2023).
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- 24 The Federal Telecommunications and Broadcasting Law (LFTR), the Federal Standard of Transparency and Access to Public Information (LFTAIP), the Federal Copyright Law (LFDA), the Federal Law on Protection of Personal Data Held by Private Parties (LFPDPPP), and the Federal Penal Code (CPF).
- 25 The bill is currently being assessed in the Chamber of Deputies in the United Commissions of Citizen Security and Science, Technology, and Innovation.
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BLANCA TREVIÑO

President and CEO | Softtek

The potential of nearshoring in North America: The case of Mexico

In March last year, I received a call from the office of the governor of the Mexican state of Nuevo León, Samuel García, who invited me to a newly formed economic advisory council. He was excited to learn that Softtek, the company I lead, had coined and trademarked the term “nearshore” in the 90s.

Governor García, like many leaders in Mexico, is a proponent of nearshoring, the form of outsourcing of services delivered from a nearby location. This contributed in part to \$29 billion in Foreign Direct Investment (FDI) in Mexico during the first half of 2023—a 41% increase from 2022 according to the Ministry of Economy¹—which, according to Morgan Stanley, can take Mexican manufacturing exports from \$455 to \$609 billion in the next five years.² Governor García’s enthusiasm was also fueled by Tesla’s recent announcement to

open a factory in Nuevo León, which is set to produce vehicles in 2026, affirming Mexico’s nearshoring boom.

The adoption of the nearshore brand over 20 years ago by a Nuevo León-based company for exporting IT services to the U.S. was seen as visionary by the governor.

The true visionaries, however, were the tri-national teams behind NAFTA in 1992. The USMCA, as the successor to NAFTA, is now three years old. Since coming into force, USMCA has significantly contributed to Mexico’s post-COVID recovery, supporting growth in Mexican exports with the result that Mexico is now the U.S.’ primary trading partner.

In addition to supporting growth in North American trade, I want to highlight three additional ways that USMCA has been successful:

1. Reducing U.S. dependence on China while setting the stage for the nearshoring boom that has allowed Mexico’s post-COVID recovery.
2. Introducing a chapter on digital trade, which was non-existent in the early 90’s and not covered by NAFTA.
3. Including a six-year review requirement that can be used to keep USMCA up to date and relevant.

Adaptations should be welcomed.

Focused on digital trade, Chapter 19 of the USMCA includes definitions and rules for aspects like algorithms, digital products, computing facilities, electronic authentication, and signatures—important aspects of modern business and consumer life. Yet, the chapter lacks explicit mention of Artificial Intelligence (AI),

highlighting how rapidly technology is affecting trade and investment relations.

We are already used to ChatGPT4, to answer trivial questions, brainstorm, or as an “intern” to lighten the load. And as a reminder, it was launched semi-recently in November 2022. This transformative technology has taken the world by storm, prompting the Biden-Harris Administration’s AI Bill of Rights, and Executive Order on AI, directing agencies to combat algorithmic discrimination while enforcing existing authorities to protect people’s rights and safety.

AI is impacting many facets of trade and business, including copyright and labor, as shown during the 2023 strikes of the Writers Guild of America, Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA), and the United Auto Workers (UAW)—all of which demanded actions restricting negative impacts of AI. The USMCA should be updated to include new commitments to cooperate on AI. The USMCA commitments on cybersecurity in article 19.15 can inspire the design of cooperation on AI:

1. The Parties recognize that threats to cybersecurity undermine confidence in digital trade. Accordingly, the Parties shall endeavor to:

- a. Build the capabilities of their respective national entities responsible for cybersecurity incident response; and
- b. Strengthen existing collaboration mechanisms for cooperating to identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks, and use those mechanisms to swiftly address cybersecurity incidents, as well as for the sharing of information for awareness and best practices.

The article concludes by encouraging parties to embrace risk-based approaches rather than restrictive regulations. A similar path should be followed regarding AI.

More than just trade.

On December 17, 2023, the U.S. Customs and Border Protection ordered a temporary closing of the two largest cargo rail bridges at El Paso and Eagle Pass. The measure was attributed to the need to reallocate resources amid migrant surges.

Similarly, Texas Governor Greg Abbott’s orders for cargo truck inspections at all state border crossings disrupted supply chains and prompted Mexico’s foreign ministry to call for the U.S.

government to “mediate with Texas to stop the exhaustive inspections of cargo trucks carried out by the Texas Department of Public Safety.”³

Regardless of the motivations—national security or political posturing—the migrant crisis is real and must not be overlooked in a trade deal as significant as the USMCA.

A broader perspective, beyond trade, in the USMCA is crucial, acknowledging social mobility challenges in Mexico unmet by NAFTA and USMCA.

It is time to bring brilliant minds and goodwill to develop the right policies, incentives, and structures to foster wellbeing in the USMCA. But that is just a start; delivering on the promise of social mobility falls squarely on the Mexican business community.

Access to the largest and wealthiest consumer market in the world should come with the responsibility to create sustainable businesses; they must be more than opportunistic initiatives with short-term gains.

The USMCA must evolve into a trade agreement with a humanistic approach—emphasizing social responsibility, inclusion, and long-term business development for a prosperous North American future.

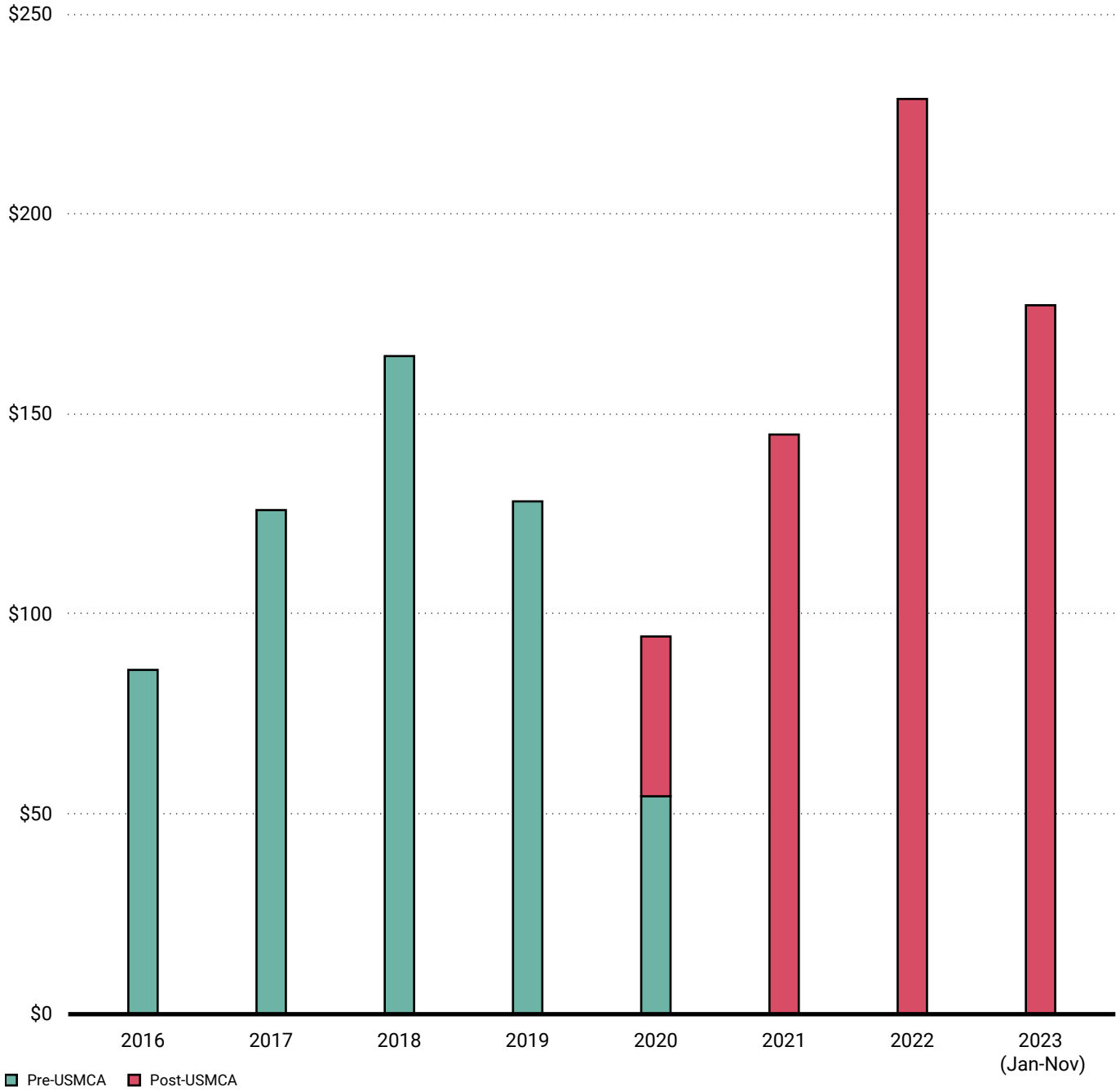
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FIGURE 10.

Total foreign direct investment into North America

Capital investment (US\$ billions) 2016-2023



Source: ©fDi Markets, from the Financial Times Ltd 2024. Data subject to terms and conditions of use.



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**USMCA REVIEW:
UPCOMING ELECTIONS
AND A PATH
FORWARD**



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Under the United States-Mexico-Canada Agreement (USMCA) review clause, on July 1, 2026, the U.S., Mexico, and Canada will confirm in writing whether or not to continue the agreement. If one or more of the three parties decide to take the step of not renewing the agreement, it will kick off a process that will leave the future of the USMCA in a state of uncertainty for years to come. That is, unless the objecting party or parties change their mind. Even though the six-year review is still more than two years away, the uncertainty provided by the review clause is already a significant preoccupation for the business communities in all three countries.

Where did the review clause come from? What is the review clause? What are the prospects for the review? The following lays out a possible path forward.

By increasing the odds that USMCA might terminate in 2036, investors would face greater risks and costs associated with cross-border trade and with making longer-term investments that will be needed in areas such as electrical vehicles (EVs), batteries, and semiconductors.

Why a review clause?

The U.S. proposal in the USMCA negotiations for a review clause was unique and unprecedented. One of the central tenets of free trade agreements is that they are intended to bring security and predictability to the trading relationship between the parties, and a provision that provokes ongoing uncertainty about the continuity of the agreement raised questions and concerns when it was introduced.

The U.S. has used two main arguments in support of the review clause: 1) the clause would provide the U.S. with leverage to make ongoing changes to the agreement and 2) it would force politicians to address difficult decisions rather than delay confronting them. On the first point, the U.S. Trade Representative during the Trump Administration, Robert Lighthizer, wrote that “we wanted a paradigm-changing agreement that would not only address current trade irritants but prevent the United States from ever again finding itself saddled with an unbalanced, outdated agreement and with no leverage to change it other than the costly and disruptive threat of outright withdrawal.”¹ Similarly, Jared Kushner, Trump’s son-in-law and Senior Adviser to the President during the negotiations, asserted that “...it is imperative that the U.S. retain leverage in any of our trading relationships to prevent unfair trade practices and market distortions and correct them when they occur. The sunset provision will give us just that.”²

Lighthizer and Kushner have also argued that the review clause would be a means to put pressure on politicians to confront issues in the agreement with Kushner arguing that it would “force politicians to confront difficult issues and changing dynamics rather than kick the can down the road.”³

The U.S. proposal for a review clause was widely criticized after it became public. The business community, various think tanks, news media, and several Republicans (Paul Ryan, Pat Toomey, Bill Cassidy, and others) were strongly critical of the review clause and the negative impact they felt it would have on business confidence.

Trade agreements historically have always been intended to last indefinitely, although parties are usually free to withdraw unilaterally without penalty or restrictions if desired. The original North American Free Trade Agreement (NAFTA) included a withdrawal provision (Article 2205) that followed the standard model that allows a party to withdraw from the agreement six months after providing written notice to the other parties. This provision has been replicated in the USMCA (Article 34.6) in essentially the same terms.

Both the original NAFTA (Article 2202) and the USMCA (Article 34.4) also contain similar provisions for amending the agreement. It has long been considered that provisions allowing parties to amend the agreement without restriction and enabling parties to withdraw from the agreement provided sufficient flexibility to allow for agreements to evolve over time or be terminated if it was no longer in the parties' interest to continue it.

The original U.S. proposal for a review clause was that the USMCA would have a fixed term and would terminate after four years. Canada and Mexico rejected the initial proposal outright, arguing that an agreement intended to last only four years with no assurance of an agreement beyond that was of little value and offered the private sector no confidence for future planning, growth, or investment. The review clause became one of the most contentious issues in the negotiations, and the U.S. came back with several modifications, eventually settling on the review clause in its current form. Canada and Mexico continued to dislike the review clause, but eventually conceded to it as part of the overall package to conclude an agreement.

What is the review clause?

The USMCA review clause in article 34.7 contains only limited direction. In summary, USMCA will terminate 16 years after the date of its entry into force (i.e., by 1 July 2036), unless each party confirms that it wishes to continue the agreement for a new 16-year term. The parties are to confirm their ongoing support for USMCA at a "joint review" by the Free Trade Commission (the Commission) which comprises Minister-level government representatives from each party. The first joint review is to take place on the sixth anniversary of entry into force of USMCA—which will be on July 1, 2026. At the joint review, the Commission will review the operation of USMCA. The Commission can also "review any recommendations for action submitted by a Party, and decide on any appropriate actions. Each Party may provide recommendations for the Commission at least one month before the Commission's joint review meeting takes place."⁴ Should the parties confirm in writing that they want to continue with the USMCA, then the agreement will be extended for another 16 years. If the parties do not extend the agreement at the first joint review in 2026, then the Commission is to conduct a joint review each year for the remainder of the term of the agreement (i.e., until 2036). During these subsequent joint reviews, the parties can confirm in writing their wish to extend the agreement for another 16 years. Failure to extend the agreement during the first or subsequent joint reviews will lead to USMCA termination on July 1, 2036.

From a process perspective, the issue of the review clause is an ongoing topic of discussion in the regular meetings of the Commission in the lead up to the review. In the U.S., under the USMCA implementing legislation provisions on the Sunset Clause, the U.S. administration

will be obliged to: consult appropriate congressional committees and stakeholders; provide its recommendations for actions to be taken at the review; and advise the committees of the position of the U.S. with respect to extending the term of the USMCA. The U.S. will need to report to the Congress on these issues at least 180 days before the joint review.

Politics matters

Adding uncertainty in the lead up to the six-year review, there will be national elections held in Canada, Mexico, and the United States prior to the review.

In Canada, the minority government Liberal Party and one of the opposition parties, the New Democratic Party (NDP), reached a confidence and supply agreement on March 21, 2022. This would have the NDP support the Liberal Party on confidence and budgetary matters until 2025, provided that an agreed list of issues are addressed.³ That agreement continues to hold, although an election could be held at any time.

All parties supported the passage of the USMCA implementation bill in Canada, and the agreement was widely supported by the business community, key labor organizations, and the majority of Canadians. Whether Canada is led by the Liberal Party or the Conservative Party (currently leading in the polls), there is little doubt that Canada will continue to support the continuation of the agreement. The Canadian government has made few public comments on the review to date, but the business community has highlighted the importance of a successful review. The Business Council of Canada has stated that: “[f]irst and foremost, our number one priority must be the renewal of the Canada-U.S.-Mexico Agreement (CUSMA) when it comes up for review in 2026.”⁶

Mexico will hold a national election on June 2, 2024. Former Mexico City Head of Government Claudia Sheinbaum leads Morena, the ruling party of President Andrés Manuel López Obrador, and the Juntos Hacemos Historia coalition. Xóchitl Gálvez is the leader of the main opposition alliance of the National Action Party (PAN), the Institutional Revolutionary Party (PRI), and the Party of the Democratic Revolution (PRD). In January of this year, Jorge Álvarez Máynez joined the presidential race from the Movimiento Ciudadano (MC) party.

Sheinbaum would be expected to continue the approach of President López Obrador while Gálvez would be expected to take a stronger position in support of the USMCA. Under any scenario, the reliance of Mexico on the U.S. market is expected to lead Mexico to support the continuation of the agreement, although the list of contentious issues is likely to be longer under a Sheinbaum administration than one led by Gálvez.

The U.S. election on November 5, 2024 is expected to be a rematch between current President Joe Biden and former President Donald Trump. The Biden administration has said little about the review so far, but the U.S. Ambassador to Canada, David Cohen, stated in an interview on December 12, 2023, that “the U.S. is beginning to have our internal discussions about what we might like to talk about with Mexico and Canada as the sunset approaches.”⁷ According to the article, Cohen said “nobody is talking now about blowing up the deal.” Still, President Biden is expected to face pressure in the election to take positions against some USMCA issues,

including Mexico on labor, energy, and agriculture issues, and possibly Canada on dairy, digital tax, and other issues.

Should former President Trump prevail, he will likely suggest that President Biden was not tough enough with Mexico and Canada and threaten to terminate the agreement if U.S. concerns are not addressed. It seems unlikely that a Trump administration—that pushed so hard for a review clause, and with the leverage the U.S. has as the much larger economy among the three parties—would pass up the opportunity to use the review clause to negotiate better terms.

The U.S. Congress is likely to express some views about the review as the date approaches, and the outcome of the elections in the House and in the Senate could have some influence on how much pressure they put on the administration over the review. Given that there is no formal approval role for Congress in the review process, however, the administration will make the final call. However, if amendments are made to the agreement as a result of discussions under the review, Congress would need to support those changes, so the role of Congress will continue to be important.

Whether the outcome of the 2024 election is a Democratic or Republican administration, it is likely that the U.S. will approach the review of the agreement with a list of issues on which it would be seeking agreement with Mexico and Canada. Overall, all three parties are beginning to prepare for a discussion in the lead up to the review, with the U.S. expected to be on offense, and Mexico and Canada mainly focused on trying to defend against any significant re-balancing of concessions.

Potential issues and outcomes

The joint review is a novel feature and has not been included in another trade agreement, as far as we are aware. As outlined, the U.S. wanted the joint review clause to push for changes to keep USMCA up to date while avoiding invoking the termination clause to motivate action. USMCA only somewhat achieves this as failure to agree to renew the agreement in 2026 still leaves 10 more years to reach agreement before USMCA terminates. In other words, the potential for termination remains but is pushed out to 2036.

Yet, a joint review is not needed for either party to pull out of USMCA or to propose changes to it. These are rights already recognized in the agreement. The question then is how to make the joint review a value-add process?

Keeping USMCA updated should be a goal that all parties can get behind. The USMCA provides only limited guidance, however, on how to do this. A starting point should be for all parties to approach the joint review as part of a longer-term investment in the ongoing health of North American economic relations by updating the agreement to keep it relevant. Failure to renew USMCA in 2026 would inject uncertainty into the future of USMCA, negatively affect trade and investment across North America, and signal a lack of commitment to the agreement. By increasing the odds that USMCA might terminate in 2036, investors would face greater risks and costs associated with cross-border trade and with making longer-term investments



that will be needed in areas such as electrical vehicles (EVs), batteries, and semiconductors. The parties can avoid these costs and still turn the joint review into a productive process by agreeing to renew the USMCA in 2026 and at the same time, agree on a work program for addressing new issues in the USMCA and reporting back to the Commission. Immediate agreement to renew USMCA would signal ongoing commitment by each government to USMCA, while avoiding the uncertainty and economic costs that would follow from a failure to renew the agreement. However, the right of each party to leave under the agreement's termination clause would remain as a spur.

To ensure that a joint review process remains focused on addressing new issues in USMCA, the parties should reach an agreement on the types of issues that should be part of a joint review. This could include improving operations at the border, strengthening supply chains, and/or facilitating trade in clean energy. There may be scope to address some of these issues by July 2026, whereas other issues may require longer-term attention and work.

Finally, the parties should also agree on the issues that should not be part of a joint review. Revising dispute settlement decisions by USMCA panelists that the losing party does not like would be a dangerous path to go down. For example, former U.S. Trade Representative Lighthizer in a November 2023 article addressed the USMCA panel finding on auto rules of origins (ROOs) that went against the U.S. and argued that “ Washington should announce immediately that it will demand a reversal of this decision during the sunset review.”⁸ We think this is wrong. Trying to change the outcomes of panel findings is at odds with the notion of a joint review as being about addressing new issues in USMCA, and instead would constitute a rebalancing of commitments and undermine what was agreed to in good faith by all three parties in the negotiations. Perhaps even more importantly, in addition to undermining faith in the dispute settlement process, trying to change dispute settlement outcomes at a joint review will make future implementation of adverse USMCA panel decisions by any USMCA party increasingly unlikely. This is because of the domestic pressures this will create on the losing government to renegotiate such panel decisions at a joint review. In other words, the U.S., by seeking a different outcome in the ROOs panel decision, would make it a lot less likely that Mexico would comply with an adverse ruling in the Biotech corn case that the U.S. has brought. More broadly, such an approach would undermine the certainty and value of USMCA commitments by politicizing dispute settlement outcomes and turning them into opportunities to renegotiate the deal.

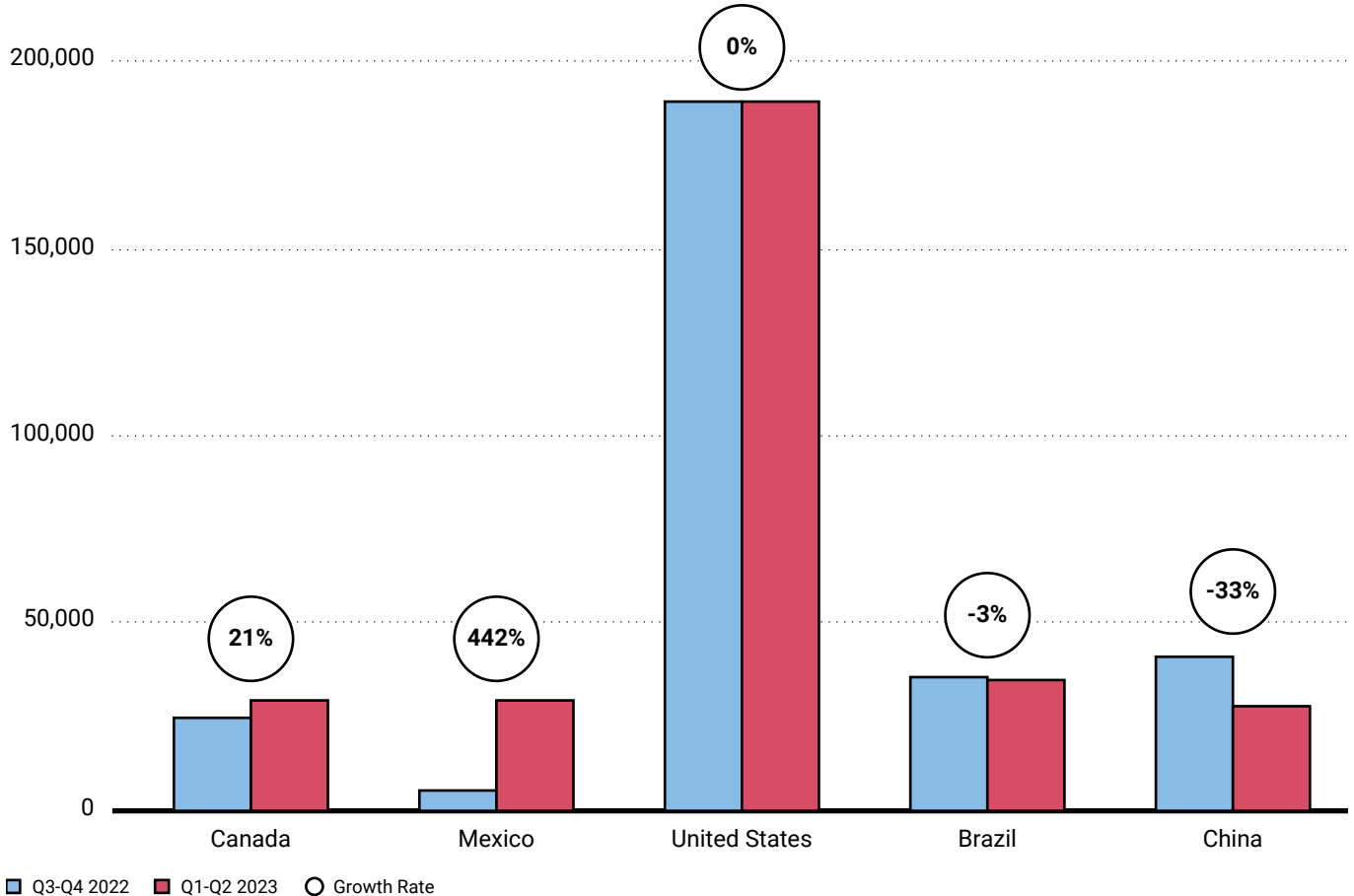
Conclusion

Whatever the outcome of the U.S. election this year, the next U.S. administration is most likely going to seek changes to the USMCA as part of a joint review. In contrast, Canada and Mexico would prefer to retain the status quo and remove the threat of USMCA terminating in 2036 by having all governments agree to renew USMCA for another term. We have proposed a third way that builds on U.S. negotiators’ intentions with respect to the review clause by proposing that the joint review be the beginning of a process to address new issues in USMCA with an agreed agenda on a forward-looking workplan, a process that should be ongoing and subject to political oversight by reporting back to the Commission. We do, however, agree that as part of this, all parties should renew USMCA for another term in 2026. As we have outlined, renewing USMCA in 2026 would not prevent the U.S. or any government from threatening to withdraw from the agreement. From this perspective, our approach to the joint review aims to set up the process that will be needed to review USMCA. At the same time, our proposal avoids creating unnecessary—and what we believe are avoidable—costs and uncertainties for all countries. It will also prevent uncertainties for the economic prospects for the North American market and at the same help finalize ambitious outcomes.

FIGURE 11.

Nearshoring champions: North America secures top spots as attractive investment destination for global investment

FDI inflows for selected countries, Q3 2022-Q2 2023 (US\$ millions)



Source: OECD International Direct Investment Statistics Database.

Endnotes

- 1 Robert Lighthizer, *No Trade Is Free: Changing Course, Taking on China, and Helping America's Workers* (New York, Harper Collins, 2023), 230.
- 2 Jared Kushner. Op-Ed: This is the part of Trump's USMCA deal no one is talking about, CNBC, February 3, 2020, <https://www.cnn.com/2020/02/03/op-ed-this-is-the-part-of-trumps-usmca-deal-no-one-is-talking-about.html>.
- 3 Lighthizer, *No Trade Is Free*, 231; Kushner, Op-Ed: *This is the part of Trump's USMCA deal no one is talking about*, CNBC.
- 4 USMCA, U.S.-Mexico-Canada, art. 34.7, ¶ 2, Nov. 30, 2018 (entered into force July 1, 2020). <https://can-mex-usa-sec.org/secretariat/assets/pdfs/usmca-aceum-tmec/agreement-eng.pdf>.
- 5 Prime Minister of Canada, Delivering for Canadians Now, News Release, March 22, 2022, <https://www.pm.gc.ca/en/news/news-releases/2022/03/22/delivering-canadians-now#:~:text=It%20is%20about%20ensuring%20those,of%20each%20and%20every%20Canadian.&text=The%20arrangement%20lasts%20until%20Parliament,the%20government%20during%20this%20time>.
- 6 Goldy Hyder and Louise Blais, "Why America's Election is Canada's Business," *Policy Magazine*, August 24, 2023: <https://www.policymagazine.ca/why-americas-election-is-canadas-business/>.
- 7 Panetta, Alexander. "U.S. 'beginning' internal discussions about renewing North American trade pact." CBC News, December 9, 2023. <https://www.cbc.ca/news/world/ambassador-cohen-anniversary-interview-1.7053976>.
- 8 Robert E Lighthizer, "The New American Way of Trade, How the USMCA Does What NAFTA Couldn't," *Foreign Affairs*, September 27, 2023.



USMCA TRACKER:
Up-to-date data on trade, jobs supported
by exports, and investment flows