

Unlocking the Potential of the USMCA

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***To be placed at bottom of first page:** The authors began this research as part of a “Diplomacy Lab” project during the spring semester 2022 at American University, under guidance from Diplomat in Residence Earl Anthony Wayne. They continued to work on this report after graduation to present more refined analysis and recommendations, with continued support from Wayne.

1. EXECUTIVE SUMMARY

The United States-Mexico-Canada Agreement or USCMA is now in its third year of implementation. Notably, trade across North America has surpassed pre-pandemic levels growing to a total of \$1.26 trillion in 2021 or \$2.6 million a minute.ⁱ To add perspective, a record 75% of Mexican and Canadian imports came from the US in 2021. Both countries are also the US' largest trading partners accounting for over twice trade with China.

The trade ministers and their teams are deeply engaged in a wide range of issues as was evident in the agenda for July meeting in Canada. This agenda includes not only hard trade and investment issues but also how to make USMCA more inclusive of communities that are traditionally underrepresented in trade.ⁱⁱ USMCA has particularly won kudos from US congress for progress on use of the new Rapid Response Mechanism for Labor Complaints which has been used five times as of August 2022.

Despite the good news and evident progress in the broad trade and investment relationships, there remain serious disputes and problems to work through over the months and years ahead. For example, the United States, supported by Canada, on July 20 requested consultations under USMCA over Mexico's energy policies and related treatment of private sector investors at the expense of state-owned electricity and oil and gas enterprises. This action followed a series of private conversations where these concerns were raised. Without significant progress during the period of consultations, the US could seek creation of a dispute settlement panel and potentially win the right to sanction Mexico if does not change its policies/practices. Progress on such divisive issues and effective use of USMCA's dispute resolution mechanisms are important to demonstrate the credibility of the agreement before the agreed review of USMCA's performance in 2025-26.ⁱⁱⁱ

It is important to recall that USMCA was negotiated to address emerging challenges facing 21st century international trade and to provide a much-needed update to its predecessor, the North American Free Trade Agreement (NAFTA). From the increasing relevance of the digital marketplace to progressive shifts in policy toward encouraging development and training of workers, the USMCA includes provisions to help modernize the trilateral trade relationship. As USMCA enters its third year, a number of areas within the agreement are also under scrutiny with questions about enforcement or interpretation by one of the parties, and in others because of a desire to understand the effects the new agreement is having on the economies of all three countries (e.g. in the auto sector).

The US, Mexican and Canadian governments have also agreed on goals that go beyond just increasing trade flows and commercial activity to include such factors as more inclusive participation in trade across North America and support for democratic labor rights practices. This signals that the metrics for measuring USMCA's "success" will include a range of factors beyond simple trade and investment numbers, and some will likely be hard to quantify.

To better unlock the potential of the USMCA, this report recommends that the governments of the United States, Mexico, and Canada take specific actions that can help strengthen trilateral commerce and improve upon some

of the disputed and/or flawed aspects of the deal. One of the key challenges in implementing USMCA is accounting for the needs of the many sectors involved in North American trade and co-production and the wide array of stakeholders involved. The diversity of stakeholders and audiences impacted by USMCA, and North American commerce demands both concrete solutions to problem areas and effective public outreach by the three national governments beyond what is being done at present.

The authors studied the USMCA document that entered into effect in July 2020, spoke with a range of experts and industry leaders, and analyzed a wide selection of studies and policy publications. Building on this research, the team recommends the following priorities, presented largely from a United States perspective:

Digital Trade, SME Engagement, and Cybersecurity Cooperation

- Establish a North American Digital Trade Council to help coordinate and direct progress.
- Continue and increase dialogues and stakeholder outreach toward SME e-commerce development.
- Achieve SME empowerment and digital inclusion through capacity and skills development programs.
- Increase efforts to quantify and measure digital trade.
- Hold Mexico and Canada responsible for data localization violations.

Labor Democracy and Workforce Development

- Track reform progress using a shared database which will support US and Canadian labor implementation assistance programs aimed at supporting Mexican reforms.
- Review and potentially revise Labor Dispute Settlement mechanisms during the USMCA 6-year review.
- Collaborate further on forced labor.
- Assemble a Forced Labor Task Force under the Labor Committee.
- Move to adopt real-time labor data collection and expanded credentialing programs by all three federal governments.

Automotive Rules of Origin

- Expedite a resolution of the current dispute in accordance with USMCA's Article 31.6 over the interpretation of Core/Super-core Roll-up, or content tabulation.
- Work constructively with suppliers and automakers to provide them with more time to collect and report the content requirements and related information necessary for automakers to fully comply with USMCA provisions.
- Streamline the USMCA compliance and certification procedures based on implementation experiences.
- Create further incentives for consumers to purchase electric vehicles sourced in North America, rather than proceeding unilaterally.

Agriculture

- Use all available means so that Mexico adopts a regulatory framework for evaluating GMOs, as stated in USMCA's Article 3.14.4.

- Launch a multi-agency effort (USTR, U.S. Department of Commerce, USDA, and others as appropriate) to engage in active discussions regarding the long-standing differences over tomato trade with stakeholder groups and Mexican officials to find a resolution to the dispute.
- Continue working to reduce tariffs on Canadian softwood lumber to comply with previous trade rulings, lower U.S. housing prices, and to avoid a dispute settlement complaint by Canada under USMCA.

Good Regulatory Practices (GRP)

- The GRP Committee established by USMCA should meet.
- Harness emerging technologies for conducting Regulatory Impact Assessments (RIAs).
- Take initial steps toward regulatory alignment – data collection, transparency, and identifying priority sectors, with the goal of having robust collaboration underway by the first USMCA review starting in 2025.

Environment and Energy Policy

- Task the new Environmental Committee with creating a strategic plan on climate change, including implementable goals for the pre-existing Commission for Environmental Cooperation (CEC) regarding climate cooperation.
- Create a dialogue among North American peers regarding increasing funding for the CEC to ensure the agency has the funds to implement climate programs while not interfering with existing programs and day-to-day functions.
- As allowed in Article 1.3.2, begin negotiations regarding the addition of the Paris Climate Agreement to the list of multilateral environmental agreements.
- Increased cooperative capacity should be allocated towards harmonizing regional energy efficiency standards as established in Article 12.D.4.
- Develop an agreed US policy framework for addressing and influencing the Mexican government’s energy policies and practices that violate USMCA. Coordinate closely with Canada. Pursue dispute settlement as needed.
- Utilize the USMCA’s Competitiveness Committee to help establish a dialogue regarding North American energy cooperation and regional energy competitiveness.

Public Face: Public Outreach, Transparency, and Public Education

- Acknowledge current limits in public outreach and communications capacity within the USG, including USTR, and create a USG inter- agency working group to devise a more effective public outreach strategy, including to stakeholders as well as the broader public.
- Given similar capacity limitations in the Mexican and Canadian governments, create a standing working committee on public outreach and communications either directly in the USMCA under the Free Trade Commission or perhaps indirectly through coordination mechanisms (e.g., North American Leaders Summit working group).

- In preparation for and during the first sunset review beginning in year five, identify possibilities for more robust and coordinated public communication and outreach efforts regarding USMCA and its benefits for the public.

Emergency Coordination: The authors welcome the decision announced by trade ministers at their July meeting to set up a mechanism under the Competitiveness Committee that can help maintaining trade flows in emergency situations. This is essential for all three countries, given the size and importance of trade flows. With recent examples where cross-border trade was disrupted by a range of unexpected developments from the pandemic to political decisions, this new mechanism can help bolster the other efforts among the three countries to modernize and develop cross border infrastructure, improve border crossing processes and deal with emergencies.

The authors understand that unlocking the potential successes of USMCA will take “whole of government” efforts by all three governments, including the work of foreign ministries, and a range of other agencies. Successful coordination will be challenging in the United States, Canada, and Mexico, especially when involving all the sub-federal governments that must play a role. Yet, the authors came away from its work confident that pulling together, the full potential of the USMCA can be unlocked. Similarly, good public outreach and regular conversations with USMCA’s many stakeholders across the agreement’s three nations will help improve the benefits that accompany trade. The United States, Mexico, and Canada are all in a good position to bolster economic wellbeing in each country and North America’s strength in the international marketplace. We hope that the recommendations described in this report will help the United States and its two key partners to strengthen USMCA’s positive impact in North America.

2. INTRODUCTION

The United States-Mexico-Canada trade agreement (USMCA) has enormous potential to foster a more competitive, equitable, and sustainable North American economy. Unlocking this potential will require sustained effort and greater participation by government officials and non-government stakeholders at the federal, state, and local levels. The USMCA’s effective implementation and enforcement is a challenging task, particularly considering the volatility of current political climates and the uncertainty of impending global phenomena from pandemics to wars and extreme environmental events. As the economic interests of Mexico, Canada, and the United States are closely integrated, it is in each nation's interest to dedicate consistent time and effort to implement the USMCA, address its shortcomings, and identify outstanding areas for future collaboration. And, some international events, such as the Russian invasion of Ukraine, underscore the importance of strong economic collaboration across the North American continent.

This report seeks to qualitatively analyze the efficacy of the USMCA over its first two years of implementation, with a focus on **six key areas: digital trade, labor, automotive rules of origin, agriculture, regulatory practices, and the environment**. The authors of this report recognize that there are other areas of importance in the USMCA and that USMCA’s success will depend on several issues being addressed outside the agreement’s

scope. However, the authors believe the six matters identified in this study are the highest priority for the U.S. government. Therefore, each of these issue areas has its own section in the report.

In each section, the authors provide a background, an analysis of key issues, and a list of policy recommendations. These proposals are informed by literature on USMCA, as well as interviews with a wide variety of experts.

Following these six sections, the authors include a section which addresses public outreach, entitled *Public Face*. This segment of the report suggests that to foster public support for the USMCA, **the three governments must educate their citizens about its benefits and its impact on common everyday activities as well as keep them well informed on the USMCA's implementation and progress.** Public support for the agreement is essential to its long-term success. Done well, implementation and public outreach can serve as a model framework for other U.S. trade agreements. **The report includes recommendations to promote public understanding of USMCA.**

The authors argue in their conclusion that the United States' approach toward the USMCA should be undergirded by three overarching themes: increased transparency, more robust implementation, and bona fide cooperation. The authors hope that this report's multidisciplinary discussion and recommendations will provide valuable material for internal USG discussions and for trilateral discussions on USMCA's implementation and progress.

3. DIGITAL TRADE, SME ENGAGEMENT, AND CYBERSECURITY COOPERATION

BACKGROUND

A common definition of digital trade is “digitally-enabled trade in goods or services, whether digitally or physically delivered” (OECD). Digital Trade has transformed daily lives and the global economy. As noted by a 2021 Congressional Research Service report, “Digital trade includes end-products, such as downloaded movies, and products and services that rely on or facilitate digital trade, such as streaming services and productivity-enhancing tools like cloud data storage and email.” Although the digital transformation has grown remarkably over the past two decades, the COVID-19 pandemic accelerated its growth. The pandemic has underscored the need for private companies and governments to enable digital trade to spark economic growth. Importantly, and unlike its predecessor NAFTA, the USMCA includes a specific chapter on Digital Trade (Chapter 19).¹ This chapter sets forth one of the most comprehensive and liberal frameworks for governing digital trade. Moreover, the chapter recognizes the interrelation of Digital Trade with small and medium-sized enterprise (SME) engagement and cybersecurity cooperation.

In order to measure the benefits of the digital economy, researchers and policymakers require good data. Currently, data collection and reporting are insufficient to understand the scale and trends of digital trade. This shortfall is due partly to the lack of a common definition and understanding as to what constitutes digitally enabled trade. In recent years, there has been a greater effort to define, measure, and analyze the digital economy. These efforts have been spearheaded by several multilateral institutions, including the Organization for Economic Co-operation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD). In preparation for this report, the authors spoke with several leading experts in the field of digital governance, many of whom recommended that parties to the USMCA conduct more surveys of businesses, consumers, and other end-users to gain better insight into the scope and direction of digital commerce. Simple questions such as “*where are you exporting?*”, “*how are you delivering your products?*”, “*what regulatory problems are you running into?*”, and “*what problems are you encountering in getting the digital products you need?*” would provide helpful data as to how a wide range of industries interact with the digital economy.

KEY ISSUES

The USMCA contains many digital economy provisions that have significant implications for individuals, businesses, and governments of the three signatory nations. Most of these provisions lie in Chapter 19 of the USMCA.

Cross-Border Flows

Data transfers underpin the global economy. It is precisely for this reason that so many of the USMCA provisions were designed to enable the flow of digital products and information across borders. Article 19.3, for instance, prohibits customs duties and other fees on digital products transmitted electronically (such as music, games, videos, and e-books).² This means that businesses can now be assured of tax-free transfers across North American borders.³ Small and mid-sized businesses gain in particular from this provision, as they are less burdened by the complex and costly customs procedures that often slow their delivery times and raise their transaction costs.

Similarly, Article 19.11 on Cross-Border Transfer of Information by Electronic Means enables companies to collect and analyze personal data to better understand customers’ preferences and willingness to pay and adapt their products and services accordingly. Although data privacy is a legitimate concern, it is a simple fact that international trade involving consumers cannot take place without collecting and sending personal data (such as names, addresses, billing information) across borders. Moreover, Chapter 19 recognizes the need for protecting consumers from “fraudulent or deceptive commercial activities when engaging in digital trade”. Provisions such as 19.7 on Online Consumer Protection and 19.8 on Personal Information Protection encourage not only domestic action, but also trilateral cooperation on these matters.^{4 5}

The USMCA’s Chapter 19 goes beyond simply prohibiting potential barriers to digital trade. It also encourages or requires several endeavors that facilitate or encourage digital trade. For instance, Article 19.6 and 19.9 encourage the parties to work together to convert the paper-based administration of cross-border commerce into an electronic one.^{6 7} These processes include e-invoicing, e-signature, and electronic submissions. These digital tools reduce the time and cost of transactions, which is beneficial to both firms and producers. These simple technologies also help agencies to operate more efficiently, realize cost savings, and modernize their operations.

Data Localization

We interviewed Nigel Cory, Associate Director for Trade Policy at the Information Technology, and Innovation Foundation, who described data as “the lifeblood of the modern global economy.” However, policymakers around the world are increasingly enacting “data localization” mandates, which prevents the transfer of citizens’ data

outside of the country from which it originated. Data localization measures are often adopted in the name of political sovereignty, national security, and protecting citizens' privacy. Regardless of how well intentioned these regulations may be, they are widely viewed by digital trade experts as shortsighted. The security of an industry's or firm's data depends not on the location of its storage, but rather on administrative and cyber controls to ensure only the right people can access it.⁸ Moreover, data localization measures are prone to many second-order effects: they reduce trade, slow productivity, and increase prices for affected industries. The USMCA promotes an open, rules-based, and innovative digital economy by banning data localization in most cases. For example, foreign financial institutions will no longer be required to maintain computing facilities in Canada (Article 17.20).⁹ The USMCA's prohibition on data localization should be of particular interest to financial institutions, international businesses, or businesses that outsource data infrastructures abroad.

According to Nigel Cory, "Digital tools are the best way for SMEs to not only survive but thrive." Consequently, data localization is exceptionally harmful to Small and Medium-sized Enterprises (SMEs), as they rely on these tools to do business seamlessly and cheaply. Although SMEs play an important role in job creation and economic development, they rarely have the bandwidth, budget, or expertise to deal with complicated regulatory regimes. If an SME needs to hire a third-party cloud provider, legal services, or service providers (e.g., data analytics) in foreign markets, then the cost will likely outweigh the benefit. Hence, data localization laws erect a barrier that is often insurmountable. The United States, Canada, and Mexico should continue to support data localization measures not only in name, but also in practice.

The United States should use the US-Mexico-Canada Trade Agreement's (USMCA) new data-related provisions and its dispute settlement processes and mechanisms to pressure Mexico and Canada to remove data localization requirements, laws, and proposed laws. If high level diplomatic pressure and consultation fail, the United States should consider initiating a formal USMCA complaint, as it has already done on several issues. The United States could also call a meeting of USMCA's Committee on Financial Services to request further information about current data localization measures and forthcoming proposals. Although Canada has removed two financial data localization policies (two sections of the Canadian Bank Act) to come into compliance with USMCA, Canadian provinces have maintained their track record of data localization requirements (e.g., Alberta's Personal Information Protection Act and Quebec's Respecting the Protection of Personal Information in the Private Sector Act).¹⁰ In late 2020, Mexico's central bank and the National Banking and Securities Commission issued draft fintech regulations (Provisions Applicable to Electronic Payment Fund Institutions) that would violate USMCA commitments. This regulation would force firms to only choose cloud providers based in Mexico; additionally, its USMCA's Article 50 would impose a local data storage requirement.¹¹

Cooperation on digital trade

Chapter 19 emphasizes the notion of cooperation. However, the North American partners must show the political will and allocate resources to bring commitments on digital trade to fruition. Article 19:14, entitled "Cooperation", lays the foundation for joint dialogue and enforcement. This article enjoins the North American partners to establish "a forum" to formalize their cooperation and more effectively implement the USMCA's digital trade provisions and objectives.¹² This forum, though agreed upon in the USMCA, has not yet been created. In preparation for this report, the authors interviewed experts Nigel Cory, Joshua Meltzer, Patrick Leblond, and Sissi de La Pena: all of whom agreed that this forum could play an important role in bringing together relevant stakeholders to not only bring the USMCA provisions to life, but also to talk about important associated issues (e.g. human rights online and emerging digital technologies, such as blockchain and Artificial Intelligence). The experts underscored that this forum would require genuine buy-in from the respective government agencies to be meaningful. According to Nigel Cory, "Commitments to cooperate, hold dialogues, and sign MOUs [on digital trade] are a dime a dozen in trade agreements. What makes them useful if there's genuine buy-in about the agenda

or the issue, and that the respective parties take it seriously and are focused on them.” A digital trade council could have annual meetings at ministerial level, (signaling that this is a priority to keep up the momentum) and quarterly meetings of the council itself (representatives from government, business, civil society that can coordinate on more technical levels). For the sake of transparency, this council should publish publicly the agendas, summaries of meetings, and reports. A good model can be found in Australia and Singapore’s recent Digital Economy Agreement, for which they published an exhaustive Research Report.¹³

Cooperation involving SMEs

Areas in which the signatory nations agreed to increase cooperation includes the promotion of open access to government-generated public data, the expansion of access to and use of government information, and the generation of business opportunities (especially for SMEs). In Chapter 25, the three signatory parties agreed to establish a Committee on SME Issues and to convene a Trilateral SME Dialogue. On April 22, there was an online webinar that functioned as the first annual United States-Mexico-Canada Agreement (USMCA) Small and Medium-sized Enterprise (SME) Dialogue. This dialogue brought together SMEs and stakeholders, including those representing underserved communities, with government officials to discuss strengthening regional trade and investment with USMCA, enhancing cooperation on issues of mutual interest to SMEs, and helping more small businesses benefit from the USMCA, which will foster economic growth and jobs in communities across North America.¹⁴ Deputy trade ministers participated. This Dialogue, as well as the SME Committee, can inform governmental policies aimed at creating ideal, modern environments for SMEs to digitize their operations. Both the SME Dialogue and Committee should also explore public-private partnership programs aimed specifically at e-commerce development for SMEs. There should also be dialogues specifically focused on programs aimed toward SME owners that are rural, women, indigenous, and individuals from other underserved communities (the authors of this report do note that these identities often intersect; many SME owners fall into multiple of these communities at once). For a successful model on public-private partnerships that conduct this sort of outreach, report, and programming, one can look to [Mexican Association of Online Sales \(AMVO\)](#) or the [USAID-backed Alliance for eTrade Development](#).

Cooperation on Cybersecurity

Another critically important USMCA provision promotes cooperation is Article 19.15, which recognizes that “threats to cybersecurity undermine confidence in digital trade.” Therefore, the Parties agreed to “build the capabilities of their respective national entities responsible for cybersecurity incident response” and “strengthen existing collaboration mechanisms for cooperating [...] and use them] to swiftly address cybersecurity incidents, as well as for the sharing of information for awareness and best practices”. Despite these USMCA agreements, trilateral cooperation on cybersecurity has been deficient and calls for more cooperation have subsequently been built into the US-Mexico High Level Economic Dialogue (HLED) and the action plan of the 2021 North American Leaders Summit (NALS). A major barrier has been the lack of a digital mindset within Mexico. Whereas the former administration of President Enrique Peña Nieto did not devote sufficient attention to digital trade or cyber security, they did issue a cyber security plan in 2017¹⁵ and issued new regulations for fintech.¹⁶ Today, there is still no Mexican federal agency dedicated to cybersecurity, as there is within the United States and Canada, and Mexico has failed to carry out programs to educate its citizens on cyber threats. Without a digital mindset, a large percentage of Mexican individuals, SMEs, and larger private-sector companies have failed to view information and communication technologies (ICT) as vehicles for protecting data and transforming workforce dynamics.¹⁷

The United States has comparatively had a relatively successful cybersecurity model. The U.S. could do much to leverage its capabilities to help its North American partners. However, for such collaboration to flourish, there must be a sustained interest from all three of the governments in USMCA, the HLED and the NALS processes, among other fora.

RECOMMENDATIONS

Recommendation 1: Establish a North American Digital Trade Council

To foster an integrated North American digital market, there should be a formal mechanism for coordination and cooperation that establishes a work plan and meets regularly. In the words of Nigel Cory, “It’s as much about the regulatory engagement and cooperation as it is about new digital trade rules.”¹⁸ A Digital Trade Council would convene private sector, employees, non-governmental organizations, SMEs, academic experts, and other stakeholders to identify impediments to digital trade as well as potential solutions. This Council could play an important role in getting the governments to discuss USMCA digital trade violations without having to resort to the filing of disputes. This Council could be particularly in encouraging Mexico to adopt a digital mindset on not only cross border e-trade, but interrelated issues including cybersecurity. This mechanism would foster cooperation not only within North America but might also foster extra hemispheric engagement with key partners such as the European Union, Japan, South Korea, and Australia.¹⁹

Recommendation 2: Continue and Increase dialogues and stakeholder outreach toward SME e-commerce development.

For digital trade to reach its full potential, increasing the participation of SMEs must be a focal point for the three governments. Moreover, there should be a specific focus on minority and women-led businesses. As noted to the authors by Kati Suominen, an expert on digitization and trade, minority and women-led businesses perform just as well and often better than men-led firms in e-commerce, but they often struggle more to get into business and access technologies (e.g., possession of hardware and software technologies, access to broadband connectivity, etc.) to start their e-commerce journeys.

Ms. Suominen noted that many of the problems and difficulties with market access and trade compliance as well as cross border logistics costs – the “nuts and bolts issues” – are the same initial hurdles to SMEs’ growth across the North American markets. The Committee on SME Issues and Trilateral SME Dialogue are good vehicles through which to explore these shared obstacles and potential solutions. There are, of course, some differences to SME barriers across North America. However, the Committee and Trilateral Dialogue would also be a good vehicle to explore programs with more specific aims, such as partnerships with online marketplaces such as Amazon, EBay, and Walmart, aimed specifically toward assisting SMEs in Southern Mexico to overcome their own specific obstacles to initiating online sales. North American SMEs would also benefit from increased connection outside of USMCA mechanisms to gain knowledge about the cross-border trade economy.

One example of such a broader organization is the [Coalition of Small and Medium Enterprises Professionals \(CSMEP\)](#), a non-profit multinational NGO founded by the U.S. together with more than one hundred prominent trade organizations from the G20 countries in 2011. The CSMEP, whose mission is to build a global SME collaboration platform, could be used to establish US-Canada-Mexico specific dialogues during their annual conferences. In addition, the State and Commerce Departments could coordinate Digital Trade Missions, where U.S. small businesses can exchange dialogues (both in-person and via Zoom) with SMEs in Mexico or Canada.

Recommendation 3: SME Empowerment and Digital Inclusion through Capacity Building and Skills Development

All three countries should give more attention to workforce development aimed at the needs of SMEs at the federal, state, provincial, and local levels where governments, academic institutions, and the private sector partner together to meet the needs of those localities. Much of this training is possible through the internet (virtually) and a good deal of it would be relevant for digital enhanced trade.

Reskilling and upskilling are a longer-term investment in augmenting the knowledge, skills, and competencies that will, in turn, significantly advance North American workers' careers in the long run. As an example, community colleges can teach courses geared toward training SMEs on translation and website localization techniques. Such courses could, for instance, help Mexican SMEs to digitally market their products to consumers in the U.S. (and vice versa). There already exist some courses that teach entrepreneurs how to leverage digital technologies. Some successful examples of digital inclusion programs within the United States include the [Tribal Broadband Connectivity Program \(TBCP\)](#), the [Connecting Minority Communities Pilot Program \(CMC\)](#), the [State Broadband Leaders Network \(SBLN\)](#), and the [BroadbandUSA Indicators of Broadband Need Map](#). In addition, the U.S. STEP Program provides funds to states and territories, which then provide financial assistance to local businesses with ambitions to provide products and services to international customers. Canada also has relevant programs. For digital trade to flourish inclusively, these types of programs and community college courses should receive more attention and will likely need more government funding to yield greater benefits across the North American market. The three governments should focus attention on the digital trade and SME working groups finding ways to encourage and promote expanded availability of such capacitation courses to SMEs in all three countries.

Another related and very important topic of work is the widespread availability of internet connectivity. While this remains a work in progress for all three countries, Mexico and thus Mexican companies face particular challenges given the gaps in Mexico's internet service system. The three countries should establish a regular working dialogue, including with the private sector to help Mexico address these shortcomings. (The authors note that the U.S. and Mexico have agreed to address these issues in the HLED - High Level Economic Dialogue - process.)

Recommendation 4: Increase Efforts to Quantify and Measure Digital trade

There are many challenges when it comes to quantifying and assessing digital trade, however it is important for all three North American governments to work together to address these issues. This would include common approaches to reaching to the private sector, including SMEs to identify stakeholders' concerns, problems, and the barriers to entry they face. In addition to direct stakeholder dialogues, studies could also be contracted by government grants, or conducted through multilateral institutions such as the InterAmerican Development Bank. In 2017, Kati Suominen wrote a working paper for the IADB entitled "Accelerating Digital Trade in Latin America and the Caribbean".²⁰ This paper includes valuable insights, including surveys and data points, that could be a model for future efforts. The U.S. and its USMCA partners might also build from the United Kingdom's 2020 [research report](#) on the ability of current data collection methods to capture this rapidly changing aspect of trade.²¹

Moreover, the three governments could agree to build a "Digital Trade Taxonomy". That is, a set of norms on the definitions and types of data that their statistics agencies should regularly collect to better measure digital trade. The proposed Digital Trade Council could be a good mechanism through which to initiate and sustain this initiative. The Council could bring together the trade ministers, who would have to agree to create an intergovernmental ministerial group for this initiative. This could also be a deliverable for the next North American Leaders Summit.

Recommendation 5: Hold Mexico and Canada responsible for Data Localization Violations

Experts suggested to the authors that too many violations of the USMCA's terms are going unchecked. The three governments must hold each other accountable to full USMCA implementation and compliance. Several Canadian and Mexican laws and proposed laws appear to be against what was agreed to in the USMCA. The U.S.

should apply high-level diplomatic pressure (including at North American Leaders Summit or NALS). The Digital Trade Council is also a good forum through which to address such issues. As noted above, if high level diplomatic pressure does not convince Canada and Mexico to do away with localization measures, then the U.S. should consider seriously using the dispute settlement mechanism to bring suits against Canada and Mexico, as it has done in other USMCA areas, like labor and dairy.

1. LABOR DEMOCRACY & WORKFORCE DEVELOPMENT ISSUES

BACKGROUND

NAFTA has long been criticized in the United States for several shortcomings, including the weakness of its labor annex and its neglect of steps to strengthen labor rights in Mexico. Also, as with many free trade agreements, many concluded that the benefits of lower prices and job creation failed to keep up with changing employment patterns, generating trade-related welfare gains for some, and shifting away employment for others who were left without secure employment opportunities²². Many U.S. observers in or close to the organized labor sector concluded that Mexican workers faced serious barriers to union democracy and other practices that kept their wages and benefits unjustly low. Addressing worker-related inequalities and labor rights and practices within USMCA became one of the top priorities during the negotiation process. The new agreement was endorsed by the AFL-CIO, stating “for the first time, there truly will be enforceable labor standards” after congressional democrats pushed to “ensure that workers’ rights will be effectively protected and promoted throughout North America.”^{23 24}

Chapter 23: Labor and Chapter 31(Annex A): Facility-Specific Rapid-Response Labor Mechanism serve as innovative attempts to neutralize the unequal distributional effects realized because of free trade. These chapters underscore the “Worker-Centric Trade Policy” of the Biden-Harris administration, including protections for worker representation and collective bargaining, prohibiting the importation of goods created by forced labor, creating a labor council for collaborative North American policymaking, and codifying anti-discrimination laws. Before the conclusion of USMCA, Mexico’s new government championed labor law reforms, which were passed through the Mexican legislature in 2019, and many provisions from them are also subsequently mandated within USMCA.

Additionally, addressing modern-day workforce development needs will be imperative in fostering a more competitive yet equitable North America for workers. As is, the current state of work in North America is attempting to acclimate to the ever-rapid technological advancements and is drastically altering the future of work. A coordinated multilateral response, such as in the establishment of a regional workforce development dialogue, is vital. Multilateral cooperation on an international front is key to North America producing more equitable and high-skilled workers in the 21st century. From a political, social, and economic standpoint, a considerable perspective shift towards tackling the workforce development challenges of 2022 is duly rationalized. Therefore, all three governments must give more attention to national workforce development initiatives, especially given the implications of the pandemic and automation due to technological advancements. In aggregate, the commitments to labor are feasible through worker-centric policies.

KEY ISSUES

Wages – Numerous studies have attempted to quantify the effect of NAFTA on worker welfare in the United States and abroad. Several models of international trade suggest that as general welfare rises due to a decline in

relative prices, inequality emerges consequently. While evidence has often suggested a rise in average wages for the United States, in Mexico, the impact has been disputed. A recent report from the Brookings Institution compartmentalizes trade-related economic activity in Mexico to conclude that by 2018, NAFTA had raised wages²⁵. According to this data, higher worker productivity and higher nominal income had been realized in trade-related sectors.

Higher wages, however, may not be a guaranteed outcome. In fact, many current wage forecasts after USMCA are either unreliable or unsure. Aside from the general difficulty of attributing causality to trade agreements, which rely on aggregate data, the likely impact of USMCA on wages in Mexico is ambiguous, especially since only a small portion of Mexico's workers are directly tied to the export sector and so many Mexican workers remain in the informal sector.

Also, the combination of USMCA's stricter labor requirements with wages in Mexico will raise production costs, which may decrease the supply of labor in trade-related industries. If this happens, average wages in Mexico could decrease given upticks in low-paying jobs. Still, with enforcement of collective bargaining and association rights, overall wages could also increase, and firms would be able to afford these wages because of an increase in efficient productivity spurred by other chapters of the agreement²⁶.

Non-Wage Measures of Success – Nonetheless, wages may not be the best outcome to determine whether USMCA's labor provisions will be a success. Stakeholders have varying conceptualizations of a successful trade agreement for workers, and analysts and groups will no doubt differ on the best indicators to signal success. One common measure our research identified focuses on dispute settlement. Rachel Micah-Jones is the founder and executive director of El Centro de Los Derechos del Migrante, an interest group that advocates for fair treatment of workers and migrants, particularly in North America. She argues that the real success of USMCA, especially in the context of Labor, will be tested by “how the cases are resolved if they are resolved, and what disputes are resolved.”²⁷

One path to dispute resolution follows a new measure outlined in the text known as the Rapid Response Labor Mechanism, which permits immediate intervention on behalf of a complainant state where there is a reasonable belief that workers are being denied the right to collective bargaining.²⁸ In several early cases, the actual outcomes of disputed cases have indeed yielded positive results. Last year, the United States and Mexico were successfully able to address denial of free association and collective bargaining rights in a General Motors facility located in Sialo, Mexico.²⁹ After the United States invoked the RRM, a vote was called at the facility in which 78% of voting workers expressed a desire to be represented by an independent union. This case is a great example of collaboration among U.S. and Mexican authorities, which serves as evidence that the RRM as written in USMCA can lead to positive outcomes. But we expect many more cases to arise, some of which will be challenging to solve.

As drafted, USMCA favors U.S. complaints over Mexican complaints – Some concerns with the RRM ought to be addressed in the future (either by way of sunset-revision or future specification) for the mechanism to realize its full potential. In March 2021, two female migrant workers moved forward a complaint against the United States for failure to enforce anti-discrimination laws. Mrs. Micah-Jones and her colleagues at CDM took an active role in helping bring this case to attention. However, the case was relegated to the general dispute mechanism, as the RRM only applies to “Covered Facilities,” a term which is defined differently based on where the violation is occurring. Whereas broadly, Micah-Jones mentioned that Labor under USMCA should be viewed as a success for “putting labor rights on the same platform as other aspects of the agreement,” there is still “plenty of room for

improvement,” adding that “for the case that [CDM] filed, we filed on March 23rd, 2021. It's April 2022, and there's still *consulting* happening,” regarding the complaint filed.³⁰

Curious about the RRM and its potential, we talked to Dr. Inu Manak, who is a Fellow for Trade Policy at the Council on Foreign Relations, having researched extensively on the topic. During our interview, she explained some of the issues surrounding the measure:

*“It's 100% asymmetric, and it's built that way on purpose. If you look at the way that the text is structured, there is not really a simple way for Mexico to challenge U.S. labor practices. It's difficult to do, even though there could be legitimate concerns about that as well.”*³¹

As highlighted by the female migrant workers case, the United States is not perfect in its labor practices. Still, because the RRM only allows Mexican intervention in “Covered Facilities,” which are narrowly defined for the U.S. as being under the review of the National Labor Relations Board, it is not clear that action will be taken under USMCA.

Imprecise Language in Rapid Response Mechanism- Dr. Manak also drew attention to the vague language used in the text of the Annex, which further underscores another issue of asymmetry. Chapter 31 is intended to cover state-to-state disputes, but in practice, the U.S. has utilized the room for interpretation created by broad provisions to advance similarly asymmetric outcomes, she argues. Last year, another RRM case came to light for workers being denied the right to collective bargaining at a Tridonex facility in Matamoros, Mexico.³² But the intended design of state-state intervention outlined in USMCA was not followed, as Dr. Manak outlined:

*“With the Tridonex case, USTR was almost negotiating directly with a firm. That's not in the language of the treaty, and it was not clear that the Mexican government supported any of this as it unfolded. Firms can be pressured into changing things because they want to ensure their product crosses the border. They have a lot less leverage... We should be very careful, because we don't want to see in the future, the USTR pressuring firms in Mexico to change their behavior when this should be happened from a government-government perspective”*³³

We note that this may have been a particularly outlying case, as the plant accused of bad practices were in Mexico, its headquarters was in the US, and its owners were based in Canada. And the Mexican federal government had run into judicial roadblocks trying to intervene in favor of the union activists involved. Still, this precedent still is worth watching closely for future U.S. behavior.

Other scholars have expressed similar concerns about the RRM as well. Kathleen Claussen was the former Assistant General Counsel for the Office of the United States Trade Representative and is now a professor of law at the University of Miami, specializing in international law, trade, and investment. According to Claussen, the RRM captures a peculiar inconsistency. Whereas the text of the mechanism is contained within the state-state dispute chapter, it presently serves as means to address suspected violations of collective bargaining from private companies.³⁴ Furthermore, the double standards within the RRM's text jeopardize both the mission and the longevity of the chapter. According to Stephanie Ferguson, who serves as a Senior Manager for Employment Policy at the U.S. Chamber of Commerce, the RRM “carries the ability to violate due to right protections and set a dangerous precedent” because of its lopsided applications.³⁵

Forced Labor- USMCA Article 23.6 prohibits the flow of goods produced using forced labor across borders between US, Mexico, and Canada. Importantly, this provision also extends collaborative efforts to forced labor prevention, offering the opportunity to develop cooperative activities in “identification and movement of goods produced by forced labor.” According to the U.S. Customs and Border Protection (CBP), there have been two findings and one withhold release order issued for Mexico. Notably, in October 2021, CBP issued withhold release orders for Tomatoes produced at the farms Agropecuarios and Horticola after an investigation led officials to believe labor rights were being violated. CBP issued a press release at the time, explaining that five of the international labor organizations indicators of forced labor were identified during the investigation, “including abuse of vulnerability, deception, withholding of wages, debt bondage, and abusive working and living conditions”. According to the report, Mexican authorities had taken action against these farms the prior year for similar violations.

On a state-level, policies to combat forced labor remain important steps in the labor rights agenda. In 2020, the US Department of Labor issued a report on child labor which called Mexico’s implementation of anti-forced labor provisions in both USMCA and domestic policy a “significant advancement.” In July of 2022, similar commitments were reaffirmed at the ministerial meeting in Vancouver. In a joint statement, the trade officials from all three governments expressed “a joint commitment to address forced labour in [their] supply chains and discussed opportunities for continued sharing of best practices, experiences and lessons learned in relation to forced labour and other forms of labour exploitation”.

However, while government commitments seem to have been kept, our research has found that further collaboration will be necessary to maximize the potential of this issue. Rachel from el Centro de los Derechos del Migrante explained in our interview:

“There has been some progress on preventing goods made from forced labor... Some of those provisions, like others in the labor chapter, really could benefit from education of the [people] who are impacted by forced labor and who would be able to call attention to complaints... I think there's not a lot of education about the specifics of the provisions, and what people can do with those.”

The Skills Gap – The double disruption of automation and the effects of the COVID-19 pandemic have shifted global labor market trends and accelerated the implementation of technological innovations in the workplace. Because of recent globalization, such as supply & demand market fluctuations, the already alarming pre-pandemic skills gap was exacerbated, challenging the livelihoods of many North American workers, and negatively affecting industries from automotive to agricultural. The World Economic Forum estimates that by 2025, 85 million jobs will be displaced due to the accelerated integration of automation processes in the workplace.³⁶ The onslaught of a new generation of workers and the double disruption are permanently redefining the concept of the workforce but lack the necessary skill training and institutional support. The skills gap is a global challenge that has revealed fatal flaws in established workforce development pipelines. If the supply of skilled labor fails to keep up with rising demand, the result is a subdued growth in North America's Economic competitiveness.

In tackling the skills gap issue, the USMCA labor chapter, article twelve on cooperation includes a guiding framework for effective provision implementation in enhancing opportunities to improve labor standards

continually and to advance shared labor commitments further.³⁷ Shortly after the agreement's adoption, the Mexico, Canada, and the United States governments convened for a trilateral forum to discuss regional collaborative efforts to enhance workforce development in North America under the auspices of USMCA's Competitiveness Committee.³⁸ The three governments reevaluated their commitment to improving labor standards under USMCA, demanding a whole-of-society approach. This approach entails sharing knowledge, investing in research, and best practices from public and private stakeholders. Nonetheless, the pandemic demonstrated the urgency to re-skill and upskill those affected by technological unemployment and develop new strategic responses to upskilling and reskilling North American workers.

A multipronged design approach is necessary to craft new and improved workforce development programs with strategic approaches that will *firstly* equip job seekers with the skills necessary to acquire a good starting job with a family-sustaining income and *secondly*, allocate resources for regular retraining of workers established in a given industry with new adaptive skills that may better complement automation and production processes.³⁹ In speaking with labor experts, there is a shared area of concern when looking at the future of work in North America: pinpointing the upskilling needs of informal sector workers. In an interview with labor and Foreign Policy expert Erica Owens, she emphasized the need for workforce development programs -specifically job retraining- that target non-routine jobs of the future that are specifically resistant to the strains of globalization and automation.⁴⁰ When asked who should be representing the interests of North American workers, she responded:

“The room for dialogue is harder with respect to the decline of worker unions, especially in the United States. It is a lot harder [for informal sector workers] now that fewer workers are represented by such unions. The answer to who represents the interest of workers is not simple to answer. As workers' economic power has declined, so has their political power and unified voice capable of inciting change. Many informal workers do not have the voice to advocate for their economic well-being.”⁴¹

Therefore, before the North American workforce cannot be truly equitable where all reap the advantages and productivity of automation, the foundational principles of the International Labor Organizations Declaration on Rights at Work must also apply to non-routine and informal workers. Informal sector workers across North America still struggle to have their most basic needs met under USMCA, which upholds labor standards such as the right to collective bargaining.⁴² Notably, during the pandemic, informal sector workers were affected the hardest as they were unable to collect public benefits associated with the formal sector laborer. (e.g., social safety nets to curtail the economic consequences of the pandemic). Moreover, the skills gap discloses other societal and institutional phenomena, such as automation's contribution to a widening wealth gap. Between the upfront costs and four-year time commitment associated with higher education, it has inevitably allowed only the upper classes to be well educated. Consequently, the well-documented correlation between being well educated imparts to higher-wage jobs. Such institutional barriers have led many to seek alternative paths towards meaningful occupations, such as through Mexico's CONALEP⁴³ technical education system.⁴⁴ National programs such as CONALEP that have established credibility and proven effectiveness are exemplary workforce development programs that foreshadow the future of work in North America.

Fixing the skills gap in North America demands a multidimensional solution to continue delivering on the promise of a better future of work. With a strong emphasis on fostering public-private partnerships that create effective pipelines from skill development to employment. Nonetheless, a long-term shared responsibility toward workforce development demands the combined participation of the private sector, governments, academia, and National, State, and local-level cooperation is of utmost importance in minimizing the skills gap.⁴⁵ . A fully developed set of workforce development recommendations is far beyond the scope of this report, however.

RECOMMENDATIONS

Recommendation 1: Track reform progress using a shared database, that can support US Department of Labor and Canadian labor implementation assistance programs, among providing other benefits.

Educational programs used to disperse information about USMCA’s labor provisions will prove pivotal to increased awareness and effectiveness regarding the agreement’s Labor Chapter. According to Mrs. Micah-Jones from el Centro de los Derechos del Migrante, “There’s not a lot of education about the specifics on the provisions, and what people can do with those. There’s a long way to go for workers to [be able to] appropriate the provisions of the agreement and really make them real.”⁴⁶ In April 2022, U.S. Deputy Secretary of Labor Julie Su met with officials in Mexico city, where she reinforced the idea that the United States is committed to ‘worker-centric’ policymaking, noting that “Mexico’s actions to reform the country’s labor law in 2019 show us, they believe the same.” Secretary Su announced three important projects, pledging around \$28 million to support efforts to protect collective bargaining rights, and ensure firm level compliance. Canada has undertaken similar projects, supporting labor democracy through education and community activism.⁴⁷ Given the recency of these efforts, we suggest that USG agencies track labor democracy progress, working with the relevant Canadian and U.S. government partners to record where money is going, and also working with local stakeholders in Mexico to determine the effectiveness of the programs. One-way actors in both the U.S. Government and Canada can collaborate on this is through an inter-agency database (pulling in USTR, State, DOL, and Canadian counterparts) to keep track of spending, efforts, and outcomes related to labor law reform implementation. We also suggest that the relevant U.S. government and Canadian authorities present trends in the data at the next Labor Committee meeting, analyzing how reforms have taken place to determine if more efforts are necessary, and if so, where.

Recommendation 2: Reviewing and potentially revising Dispute Settlement during the 6-year Revision

With the 6-year sunset review of USMCA slated to take place in 2025-26, the opportunity exists to try to adjust or fix some of the text which stakeholders have identified as flawed. First, the text of the Rapid Response Labor Mechanism could be adjusted or adapted to expand the ability of any USMCA party or stakeholder to file a labor related complaint. This could allow for more equitable treatment in addressing labor rights issues between the United States and Mexico. Legal advice will be needed to identify options for reopening the text and the pros and cons of each. In addition, the review could look at the vague language used in Chapter 31 Annex A and the possibility for government-firm negotiations as illustrated by the Tridonex case. Future outcomes from this type of asymmetric negotiation could easily yield unfavorable terms for Mexican firms (noting that Tridonex is a U.S. firm), as the threat of goods not being able to cross the border is both strong and real. Additionally, further specification is required within the general mechanism regarding concrete timelines for labor dispute settlement when stakeholders file a complaint. After well over a year of notification, the case to protect female migrant workers is yet to be addressed, let alone resolved: the United States has not yet set a timeline for considering or resolving that complaint. Because of these inefficiencies, the authors of this study believe that the U.S. government should consider amending the text of the RRM to clarify these potential issues. At a minimum, U.S. officials should further investigate the problems that stakeholders have identified. Furthermore, we would like to see legal advisers from various government agencies investigate the potential issues identified above within the text of Chapter 31, as the legal workings of such a review is out of the scope of this report. Given the significant number of stakeholder responses which have been skeptical of the language, such a review may help provide longevity to one of the most critical points of USMCA.

Recommendation 3: Further collaboration in working to stop forced labor

The authors were happy to see the focus on forced labor issues mentioned at the July 2022 meeting of USMCA trade ministers. The United States, Mexico, and Canada ought to collaborate on efforts to increase education and training in identifying forced labor indicators, for the public and stakeholders in cross border trade, as well as for CBP and other border protection agents. The International Labor Organization has outlined eleven indicators of forced labor in a report which “covers the main possible elements of a forced labor situation, and hence provides the basis to assess whether or not an individual worker is a victim of this crime”.⁴⁸ These indicators are useful in their ability for both the public and bureaucrats to determine whether forced labor is taking place, and therefore should be considered when creating these materials. Additionally, these educational materials and training programs should outline accessible action-steps, for example, the inclusion of the forced labor hotline (866-347-2423) (Note: for corporate supply chains, this hotline may be fine. However, the public may benefit from a lower-digit phone number). While the governments have agreed that forced labor issues must be a priority, we recommend identifying more specific collaborative programs.

Recommendation 4: Assemble a Forced Labor Task Force under the Labor Committee

Given the low number of “Withhold Release Orders” (WROs) issued for Mexican firms relative to the volume of trade conducted in this country, it is reasonable to assume that the issue is not yet receiving the national-level bureaucratic attention required of it.⁴⁹ Because of this, we recommend that a Forced Labor Task Force be created to identify environments in which forced labor is rampant, investigate claims of forced labor, and collaborate on issuing future WROs to those firms which are reasonably suspected of violating Chapter 23.6. This Task Force should work with the relevant Mexican and Canadian authorities as well as various parts of the USG, including DHS. We recommend that the ILO could be a valuable partner in sharing information and conducting reviews.

Recommendation 5: Real-time labor data and credentialing

If North America wants to maintain a competitive workforce amid a vast transformation in the job landscape, governments need to capitalize on existing labor policy infrastructure to collect and publish real-time labor data and standardize modern credentialing systems. Implementing complementary policies, such as the America CARES Act, incentivizes a publicly verifiable decentralized database that keeps record of the skills workers have developed and to what degree they have mastered it. A job seeker will have a significant competitive edge by mastery of industry demanded verifiable skills due to access to current employment trends. SMEs as well as larger firms, can also benefit greatly from such data. Consequently, a more equitable workforce system is fortified when candidates are hired based on real-world skills acquired rather than four-year college degrees. When implemented in harmony, these two workforce development recommendations can curtail technological unemployment and move North American workers ahead in the global job skills landscape, further stimulating economic productivity. Collectively, North America must maximize the competitive and economic benefits of tapping into a wider pool of capable workers.

An interagency approach to implementing this two-fold recommendation is feasible through regional interagency collaboration such as through Statistique Canada, the U.S. Bureau of Labor Statistics, and The National Survey of Occupation & Employment (*Encuesta Nacional de Ocupación y Empleo*) in Mexico. Domestically, each government needs to (1.) incentivize employers to improve their data collection methods, (2.) consolidate current workforce data sets, and (3.) support the creation of modernized labor databases. An exemplary model to follow is the O*NET ONLINE labor database. Notably, real-time labor data will benefit workforce development initiatives if the data must be real-time, economy-wide, and inclusive of emerging roles and skills. Workforce development consists of many facets, and with the existence of new innovative technologies, a congressional focus needs to be placed to leverage technology to improve a more equitable workforce through public access to labor data. We recommend that the appropriate USMCA committees ask the relevant national labor statistics offices to develop a plan to allow for real time data collection using compatible criteria across North America and

providing for improved transparency. While the specific agencies will need to develop a proposed timeline, it would be good to have significant progress underway by the time of the first USMCA review. Similarly, we suggest that the USMCA Competitiveness Committee and other relevant USMCA committees work to begin a process to improve shared credentialing programs across North America. This process might best be identifying some pilot efforts working in collaboration with the private sector and relevant NGOs. Again, aiming for clear progress by the time of the first USMCA review would make sense.

2. AUTOMOTIVE RULES OF ORIGIN

BACKGROUND

USMCA's Chapter 4 on Rules of Origin includes an outline of the regulations for vehicle production and trade under the agreement. The automobile sector is one of the most integrated in North America, and is a global powerhouse as the second largest producer of automotive parts and the third largest producer of light- and medium-duty vehicles in the world.⁵⁰ All three nations individually rank among the top ten light vehicle producers globally, highlighting the influence the region can have in the industry through cooperation.⁵¹ This chapter has an incredibly detailed section that ensures vehicle manufacturer compliance in order to qualify for free trade between the United States, Canada, and Mexico. More specifically, it covers requirements for mandatory aluminum and steel purchases, regional core parts production requirements, and higher regional value content thresholds. This section carries over from Chapter 4 of NAFTA, though with important modifications, and aims to promote the growth, competitiveness, and success of the North American automobile industry on a global scale, while also making clear its aim to increase content provided from North America and promote payment of higher wages.⁵²

The automotive chapter is one of the most complex within USMCA, as well as one of the most disputed. At its core is the regional value content (RVC) calculation of passenger vehicles, light trucks, and heavy trucks, which is an average over a fiscal year of the territory where they are produced. Certain core parts, of which there are seven primary categories, determine whether the vehicle complies with USMCA.⁵³ These categories are the engine, chassis and body, axles, transmission, suspension system, steering, and advanced batteries and together must have a minimum 75% RVC to qualify for compliance under current regulations. Principal parts, such as tires, seats, and air conditioning, must have a minimum 70% RVC⁵⁴ and complementary parts like windshield wipers and catalytic converters a minimum of 65%.⁵⁵ Additionally, steel and aluminum content must have a minimum North American sourcing of 70%,⁵⁶ and 40-45% of North American auto content be made by workers making a minimum of \$16 per hour,⁵⁷ a new requirement not present in NAFTA.⁵⁸

KEY ISSUES

Passenger Vehicle Regional Value Content (RVC)

The most pressing issue, according to multiple sources within the industry, is the passenger vehicle RVC, for which the penalty for failing to comply with these rules of origin is a 2.5% Most Favored Nation (MFN) tariff. However, the issue is more important for trucks, as the United States has placed a heftier 25% tariff (in retaliation to European tariffs on chicken imports imposed in 1964).⁵⁹ In order to calculate the RVC of a vehicle, Chapter 4 provides two different equations. One of these provides an RVC based on transaction value while the other is based on net cost; though either is a valid calculation method for most industries, the motor vehicle industry must use the net cost formula. The net cost method is based on the total cost of the good minus the costs of royalties,

sales promotion, and packing and shipping. The equation is as follows, where VNM represents the value of non-originating materials (including materials of undetermined origin) and NC represents net cost:⁶⁰

$$\text{RVC} = (\text{NC}-\text{VNM})/\text{NC} \times 100$$

If this equation results in an RVC less than 75%, the 2.5% tariff is implemented.⁶¹

The major disagreement at this point is between the United States and the other two members of the agreement. The U.S. position is that “Roll-up” content tabulation, or what is specifically counted toward the RVC, should be allowed for certain automobile parts under USMCA, while Canada, Mexico, and most individual private automobile companies argue that they should be counted and that this approach is what was specifically agreed upon in negotiations with the previous U.S. administration.⁶² In fact, the Congressional Budget Office has estimated that USMCA’s stricter rules of origin for motor vehicles and new wage requirements will result in a decline in automobile duty-free imports and parts into the United States.⁶³ Mexico and Canada have filed a formal USMCA complaint.⁶⁴

This problem was addressed in an interview we conducted with Bernard Swiecki of the Center for Automotive Research who has extensive background knowledge on the impact that the USMCA has had on the automotive industry:

“It’s wild to me how we can have this major law [USMCA] in place, and a huge part of it we haven’t even been able to define an agreement on how to interpret it. And yet companies are operating under the jurisdiction of that law, and they don’t know how to do the math to be compliant with that law. We’re two years into the deal and we still haven’t determined what the fundamental, critical parts of it actually mean... The USMCA rules of origin are fraught with peril. They are the main unresolved portion of this deal, and we won’t fully understand the meaning of the USMCA for the automotive industry until we figure out how we’re going to interpret this disputed part of the deal.”⁶⁵

According to Swiecki, over 80% of automobiles produced in the United States are sold in the United States. We also talked to Brian Kingston, who is the CEO of the Canadian Vehicle Manufacturer’s Association. He noted the difference in automobile exports between the nations of the USMCA and pointed out that in comparison to the U.S. figure, about 90% of automobiles produced in Canada are exported to the United States with a similar number applying to Mexico.

Choosing the Tariff Over USMCA

According to Mr. Swiecki, a possible side effect of this is that many U.S. automobile manufacturers are considering simply paying the 2.5% MFN tariff, as they have concluded that using parts, materials, and labor from other nations can still be cheaper even with the tariff than complying with USMCA regulations would be. However, President of the American Automotive Policy Council and former Governor of Missouri Matt Blunt told us that the “Big Three” automakers are all still in compliance with USMCA:

“Given that the automotive industry tends to not have very high margins, the benefits of avoiding the tariff are real. Thus, I know our member companies intend to utilize the USMCA whenever it is possible.”⁶⁷

Electric Vehicle Regulation

These rules of origin were originally designed with traditional gas-powered vehicles in mind under NAFTA. However, as the automobile industry has come to embrace the increase in production of electric vehicles, so too has the USMCA. The significant discrepancy between electric and gas-powered vehicles is that advanced batteries for EVs have a five year long grow-in period instead of the original standard three-year long period. All EV “supercore” parts, despite some being electrified like E-Axles, still adhere to the same rules of origin. There is currently a consumer incentive of up to \$7500 in credit for EV sales under the United States’ Build Back Better program, which only applies to the first 200,000 units a company sells. General Motors and Tesla have already surpassed this threshold with several more likely following soon.⁶⁸ However, these incentives are set to expire for vehicles sourced from outside of the U.S. in 2027, meaning that both Mexico and Canada will not be able to benefit from this point forward. Mexico and Canada have both complained about these tax credits, and this may be addressed in the USMCA dispute settlement process.⁶⁹

Continuing with the current USMCA rules of origin will likely have unintended, yet pivotal consequences. For instance, since the rules of origin in the US-South Korea Free Trade Agreement are less strict than those in the USMCA, it could be that some manufacturers will move production to east Asia and away from North America. This would be particularly harmful to Mexico, which is particularly concerned that this provision could severely damage parts of the industry based in Mexico and be very costly in terms of jobs and exports.⁷⁰ If the North American automotive industry is to remain competitive on the global stage, it is imperative that the member states of the USMCA work together to improve its automotive rules of origin and their implementation to benefit the North American marketplace.

RECOMMENDATIONS

Recommendation 1: Expedite a resolution of the current dispute in accordance with Article 31.6 over the interpretation of Core/Super-core Roll-up (content tabulation).

This recommendation would be in the interest of securing a higher level of certainty about the functionality of the USMCA’s automotive rules of origin. The earliest that the dispute could be settled apparently is September 2022⁷¹, and it is in the interest of all three parties and the industry that the issue is settled this fall.

Recommendation 2: Give more time to suppliers and automakers to collect and report the content requirements and related information necessary for automakers to fully comply.

After the signing of the USMCA, automobile manufacturers were given a yearlong grace period to get their supply chains to comply with the new regulations of the agreement. This ended on July 1, 2021, though many automakers have been granted extensions via “Alternative Staging Regimes” (ASR) that are allowed within USMCA.⁷² These deals allow manufacturers up to five years to comply with the USMCA’s rules of origin, which is a much more convenient time frame for the auto industry considering that the average automobile takes six years from design to dealership.⁷³ However, not every manufacturer has been granted the ASR extension, and even five years is not enough time for many to comply with the regulations if the production process had already begun before the USMCA was signed, according to industry associations. Suppliers and automakers should have an extended grace period of six to seven years to ensure fairness in an industry where time is critical and requires it more than most. These extensions should be negotiated and completed ASAP.

Recommendation 3: Streamline the USMCA compliance and certification procedures.

Streamlining will help ensure that suppliers can and will provide automakers with the necessary information to demonstrate full compliance with the USMCA rules of origin. Though the data will be difficult to report, there is great potential here if it can be done thoroughly and correctly. At present, several industry sources told the authors

that the possibility for incorrect and incomplete reporting from the supply chains is high. The three governments and auto industry representatives should engage quickly to forge agreement on new procedures that are more likely to produce accurate and reliable results within the capacities of the industry to deliver.

Recommendation 2 and Recommendation 3 will specifically play a role in helping to ensure that automakers remain compliant with USMCA and don't opt to pay the 2.5% tariff instead. Giving automakers more time to comply and easing the compliance procedures will naturally incentivize them to work in accordance with the trade deal. Auto industry representatives told us companies want to comply with USMCA since it gives them a good public image and the industry doesn't have very high margins as is. If manufacturers can be given the opportunity through these two recommendations to comply with USMCA overpaying an MFN tariff, the issue will no longer be a concern.

Recommendation 4: Create incentives for consumers to purchase electric vehicles sourced in North America

Such incentives have proven to have worked in the past. Extending them to vehicles produced in all three countries of the agreement could help the industry, as well as quicken the transition from gas-powered vehicles to greener, electric vehicles. This could also prove to be a great opportunity for the nations of the USMCA to promote cooperation amongst each other in EV production, as each country has access to unique resources that are used in the process. The current incentives are provided through the United States' Environmental Protection Agency.⁷⁴ The EPA and other key USG agencies should engage with counterparts in Canada and Mexico to develop proposals for similar incentives to apply across production in all three USMCA countries.

3. AGRICULTURE

BACKGROUND

Agricultural trade and commercial relationships are a fundamental part of the trilateral relationship. The improvement of market access through NAFTA expanded trade between the three countries exponentially, supporting farmers, ranchers, and agricultural groups and USMCA is intended to continue that. According to the USDA, food and agricultural products between the United States and Mexico reached a record \$63 billion in 2021.⁷⁵ USMCA has increased access to Canadian dairy, poultry, and egg markets while the U.S. has offered increased access to its dairy, sugar, peanuts, and cotton markets. Additionally, Mexico gained from the further establishment of grain trade that existed under NAFTA. Under NAFTA, U.S. poultry, beef, and pork exports increased substantially.⁷⁶ The agreement also made progress for several improved provisions, including sanitary and phytosanitary measures, agricultural biotechnology products, limits on Geographical Indications (GIs) to block exports of products labeled in certain ways, etc.⁷⁷ Provisions added under the USMCA agreement could serve as models for future trade agreements. However, despite the improvements made within the USMCA trade agreement, there have been several complaints from all parties regarding certain agricultural policies and practices by one another.

KEY ISSUES

Dairy – In January 2022, the first USMCA dispute settlement was concluded regarding Canada's tariff-rate quotas (TRQ) on dairy products from the US, the panel ruled in favor of the U.S. complaints, citing that Canada was providing an unfair advantage to their own dairy producers, hurting those in the US. In March 2022, Global

Affairs Canada issued a proposal to adjust its TRQ process for U.S. dairy and opened public consultations until April 19th on the issue. The proposal was rejected by several private sector organizations, including the U.S. Dairy Export Council. There has been no official USG public comment on Canada's proposal.

Agricultural Biotechnology – USMCA is one of the first Free Trade Agreements to include a detailed section on biotechnology, including agricultural biotechnology products. However, the U.S. argues that Mexico has rejected several biotech agricultural products since 2019 without following USMCA guidelines and continues to undermine the agreed provisions on agricultural biotechnology. According to the USTR's annual report of trade barriers, Mexico's Secretariat of the Environment and Natural Resources (SEMARNAT) states that "Mexico has not provided an opportunity for public comment, submitted notifications to the World Trade Organization (WTO), or provided scientific evidence for the rejections."⁷⁸ Additionally, Mexico rejected applications for cultivation of biotechnology cotton in 2019 and 2020, although no applications were submitted in 2021. Biotechnology cotton has been cultivated in Mexico for 25 years with no evidence of adverse impact on the environment, biodiversity, or animal or plant health.

Corn is the main agricultural U.S. export to Mexico and Canada. Corn and biotech organizations have expressed concern regarding Mexico's decree published in 2020 to phase out biotech yellow corn and rejecting import permits for glyphosate-containing chemical products for human consumption by 2024. These stakeholders have accused Mexico of violating USMCA. According to Article 3.14, although the approval of a biotechnology product to be on the market is not required, a regulatory framework is needed to ensure a valid decision-making process. Mexico has not approved a biotech product since 2018 which in turn is discouraging farmers in the United States from utilizing new biotechnology that can aid in various issues, such as climate change.⁷⁹ For example, biotech crops that are modified to be no-till contribute to a decrease in carbon emissions released from the tilling process.⁸⁰

Seasonality – NAFTA and now USMCA have given Mexico increased access to the U.S. market, which has benefited U.S. consumers greatly due to lower prices of produce and contributing around \$4.8 billion in total economic activity to the U.S. economy.⁸¹ However, increased competition from Mexico has put pressure on U.S. tomato farmers due to similar growing seasons.⁸² Florida growers and legislators heavily lobbied for more protections for tomatoes and other seasonal agricultural products,⁸³ which were not included under USMCA.⁸⁴ Additionally, a number of anti-dumping complaints have been filed by these actors since the signing of USMCA, accusing Mexico of unfair trade practices due to the unseasonal surge in Mexican fruit and vegetable exports. In 2019, the U.S. Department of Commerce rejected a request by importers of Mexican tomatoes to exempt certain greenhouse-grown specialty tomatoes from the 2019 US-Mexico Tomato Suspension Agreement.⁸⁵ This agreement has given Florida growers aid against what they assert are unfair trade practices. However, Mexican growers and U.S. importers have regarded Florida's anti-dumping suits towards Mexican tomatoes to be harmful and without merit. They state that the increase of competition is not the result of unfair trade practices but better-quality farming methods, climate, and cultivation. In July 2020, Mexican officials stated that they would initiate a dispute settlement case under Chapter 10, article 10.5 which "ensures nondiscrimination treatment for seasonal products."⁸⁶ On April 14th, 2022, the U.S. Federal Circuit rejected a challenge from Mexican tomato growers to re-open anti-dumping findings. The Mexicans alleged that the U.S. was driven by politics to enforce duties on Mexican tomatoes.⁸⁷

Potatoes – For the past 15 years, U.S. producers have faced serious challenges in accessing Mexico's fresh potato market. After a Mexican Supreme Court ruling in November 2021 ruled in favor of allowing access to U.S. producers, there have been delays caused by newly added procedures within Mexico's "work plan," which include increased auditing of U.S. potato producing operations, testing to be conducted by labs and paid for by domestic

Mexican producers, and limited registrations for U.S. producers. According to National Potato Council CEO Kam Quarles, “the Mexicans are reinterpreting that provision to be a precursor to shipments, rather than an audit to determine compliance with a program in operation.”⁸⁸ However, due to increased pressures from U.S. potato producers and state senators, U.S. Secretary of Agriculture Vilsack visited Mexico in April 2022 and announced with Mexican Secretary of Agriculture Villalobos that the United States and Mexico made an agreement on expanding access to Mexico’s market by May 15.⁸⁹

Softwood Lumber – The Softwood Lumber dispute between the U.S. and Canada has simmered since the 1980s. The U.S. heavily imports Canadian lumber since domestic production cannot meet demands. The U.S. Lumber Coalition, a powerful U.S. lobby group, claims that Canada has subsidized lumber production in its provinces, which has led to Canada’s pricing of lumber being artificially low.⁹⁰ However, the Canadian government maintains that lumber sold at Crown auctions are designed to reflect market rates.⁹¹ In August 2020, a WTO panel concluded that the U.S. Commerce Department had improperly imposed countervailing duties on Canadian softwood lumber, but the U.S. appealed that ruling to the WTO Appellate Body, which is not functioning because of the U.S. refusal to name new members.⁹² Canada also appealed the case. In November 2021, President Biden raised duties from 8.9 percent to 17.9 percent on Canadian softwood lumber, which in turn further increased lumber prices in the US.⁹³ As a result, the shortage, and higher prices for lumber in 2021 and 2022 have increased inflationary pressures for American consumers. A month later, Canada threatened legal action against the U.S. under USMCA in response to the U.S. Department of Commerce’s proposal to raise anti-dumping and countervailing duties to 17.9 percent, arguing that the U.S. is in violation of Chapter 10 provisions within USMCA.⁹⁴ Although softwood lumber was not specifically addressed within USMCA, Chapter 10 of the agreement allows member countries to challenge one another’s anti-dumping and countervailing duties in front of a panel of representatives from each country. A binational panel review was requested by Canada in December 2021 under article 10.12.⁹⁵

In March of 2022, the National Association of Home Builders (NAHB) urged that the Biden Administration increase domestic timber production from federal lands and promoted the establishment of an agreement that will eliminate tariffs on Canadian softwood lumber as a solution to the ongoing dispute.⁹⁶ In a coalition with the U.S. Chamber of Commerce, several organizations opposed the “Eliminating Global Market Distortions to Protect American Jobs Act of 2021”, which includes duties on Canadian softwood lumber.⁹⁷ As of February 2022, the Department of Commerce included a reduction of duties from 17.99 percent to 11.64 percent on Softwood lumber shipments from Canada into the US⁹⁸ The reduction of these tariffs will alleviate housing affordability constraints, as well as controlling lumber market price volatility which has added more than \$18,600 to the price of a new home since the summer of 2021, according to the NAHB.⁹⁹

RECOMMENDATIONS

Recommendation 1: The U.S. should continue pressuring Canada to comply with the dispute settlement ruling on dairy provisions agreed on under USMCA. A second dispute panel was initiated by the U.S. against Canada in late May, which will hopefully help achieve a satisfactory outcome.

If the USMCA dispute ruling is not enforced and fully accepted by Canada, the integrity of USMCA will be compromised, encouraging member states to not comply with other agreed provisions. Furthermore, it may potentially harm the integrity of other free trade agreements (FTA) with the United States. Other countries with whom the United States has a FTA might replicate Canada’s actions if not penalized.

Recommendation 2: Place pressure on Mexico to adopt a regulatory framework based in science as per Article 3.14.4.

The expansion of trade under USMCA is greatly benefiting farmers in all three countries. Many biotechnology organizations and corn producers argue that Mexico has no effective framework for addressing biotechnology. Mexico's decisions should be based on science, as agreed upon within USMCA, which has not been the reasoning as of now. The lack of a process makes doing business very difficult for stakeholders. Therefore, USDA and USTR should continue to pressure Mexico to create a science-based framework and effectively functioning decision-making processes to approve or reject biotech crops. More broadly, the US and the private sector should continue work to make Mexicans aware of the benefits of agricultural biotechnology, which can help mitigate climate change and the food crisis. Therefore, having more bilateral meetings, and public outreach, about how biotechnology can ease climate change and improve health is imperative. If Mexico continues blocking biotech products without a science-based analysis, the United States should move forward with a formal dispute settlement process. Public diplomacy is essential to all aspects of the trade agreement, especially in agriculture. If the Mexican public and farmers see how agricultural biotechnology can mitigate climate change and the food crisis, it may help persuade the government to act constructively. Additionally, urging Mexico that a dispute would negatively impact them, especially since Mexico is very reliant on GM corn from the US, is essential to preserve a mutually beneficial relationship.

Recommendation 3: Encourage US government agencies (USTR, U.S. Department of Commerce, USDA, and others as appropriate) to engage in active discussions with American Tomato growers and Mexican Trade representatives to find a resolution to the dispute.

Establishing discussions between U.S. agencies, Mexican Trade representatives, and American and Mexican Tomato growers, and other key stakeholders and players, would aid in finding a resolution to the dispute. Although U.S. consumers have significantly benefited from the increased imports, seasonal produce farmers in the U.S. have been hurt by the increased competition from Mexico. Therefore, finding a solution to the issue, avoiding retaliatory measures by Mexico, and preserving the benefits provided to U.S. consumers is necessary. Floridian and southeastern U.S. legislators continue to push for increased protections for seasonal and perishable goods, which has sparked concern for Mexican growers. The United States should seek to avoid retaliatory tariffs from Mexico on highly exported U.S. goods to Mexico, such as meat and poultry.¹⁰⁰

Recommendation 4: Continue working to reduce tariffs on Canadian softwood lumber to comply with previous trade rulings, help lower U.S. housing prices, and avoid a dispute settlement complaint by Canada under USMCA.

Due to the several rulings in favor of Canada concerning softwood lumber tariffs, the United States would benefit from reducing tariffs in several ways. The United States would be harmed by a dispute settlement case put forth by Canada, especially if there are already trade rulings concerning Canadian softwood lumber not in favor of the US. Canada was successful on similar challenges against the United States regarding softwood lumber under Chapter 19 of NAFTA, now Chapter 10 of USMCA. Another dispute settlement case might damage the public image of USMCA and the three member countries. Furthermore, the American people have been harmed by the duties which have increased housing prices exponentially, especially during a time of high inflation.

4. GOOD REGULATORY PRACTICES (GRP)

BACKGROUND

USMCA Chapter 28 on Good Regulatory Practices is another new addition to USMCA. It outlines the processes which regulators ought to follow in creating and enforcing policy. The chapter's provisions include guidelines for

a public and private consultation, data-based impact assessment, information transparency, timeline flexibility, and accessible text. The GRP chapter also includes an important prospect with Article 28.17, which provides for the possibility of regulatory collaboration and potential coordination by encouraging authorities “in promoting regulatory compatibility and regulatory cooperation when appropriate, and in order to facilitate trade and investment and to achieve regulatory objectives”.¹⁰¹ Whereas policy areas like medical technology, agriculture, and GM crops serve as potential sectors for regulatory convergence, those areas without stringently defined regulatory regimes may be the most likely to realize harmonization most immediately. As noted earlier, Digital trade, for example, is one space where regulatory cooperation will prove essential to reducing friction for companies doing business online in all three states. While the United States and Canada already have robust regulatory regimes, Mexico lags without strong instruments in place to create, enforce, and evaluate regulations in key sectors. Regulatory convergence can only live up to its economic potential with serious and dedicated work to realize the provisions in Chapter 28. Without bureaucratic efficiencies, the governments run the risk of adopting regulations that produce disparate impacts on segments of the economy or struggling to uniformly apply enforcement. The United States has over ten executive regulatory agencies. Canada has around six federal regulatory agencies. Canada and the United States have a recent yet significant history of regulatory collaboration.¹⁰² In 2011, for example, under the Obama Administration, the two governments created the US-Canada Regulatory Cooperation Council, which issued a Joint Action Plan that worked

*“in the areas of agriculture and food, transportation, environment and health and consumer products... [to] provide direct, tangible benefits to Canadian and American consumers and businesses through easier trade flows, lower production costs, streamlined regulatory compliance, reduced testing costs, greater consumer choice, and a better climate for business and economic growth on both sides of the border without compromising the consumer, public health and environmental protections”.*¹⁰³

Since then, the two states issued a Memorandum Of Understanding in 2018, reaffirming these similar goals. While there have been some efforts to improve regulatory efficiency in Mexico, our research has suggested that GRP is yet to take shape in Mexico.¹⁰⁴ Although Mexico created CONAMER in 2018 following the General Law of Better Regulation, which was intended to strengthen the regulatory process, including mandated regulatory impact assessments (RIAs) and stakeholder engagement, more can and should be done to strengthen the regulatory process.¹⁰⁵

KEY ISSUES

GRP Implementation

Current efforts of the Biden administration appear focused on Labor and the Environment, leaving GRP implementation without much attention or evident ongoing work within the USMCA framework. Nonetheless, GRP implementation could serve as one of the most profound ways USMCA can promote welfare in all three states. Although efforts between all three states have proven to make many commitments on the topic of GRP, there is still much work that needs to be done. Steven Bipes, Vice President of Global Strategy and Analysis at Advamed, shared with us his view of implementation, stating:

*“You have to separate the general long-term trajectory of Mexico with the current administration. Mexico generally has been moving in the right direction...I expect that over the next 12-18 months the pace of cooperation on this project will increase, and that as a result of that you will see a shift from second gear to fourth gear in terms of alignment.”*¹⁰⁶

Data from the OECD presents information on “Indicators of Regulatory Policy and Governance in Mexico 2021,” a set of indices developed to compare the relative regulatory schemes of OECD countries. According to this data, there is much to be improved upon in ex-post evaluation of regulations for Mexico. Additionally, total scores received for Regulatory Impact Statements (RIA) and stakeholder engagement have decreased since 2018. Without sound GRP, it may be that case that regulatory convergence ceases to take place at an effective scale. According to the OECD, RIA requirements and stakeholder consultations “only cover processes carried out by the executive, which initiates approximately 6% of laws in Mexico”.¹⁰⁷ CONAMER’s administrative structure, serving under the purview of the Ministry of the Economy, also serves as a challenge. Regulatory policy should not be solely subjected to the purview of economic and trade interests. In the United States, regulations are developed with private sector input, considering industry-associations, interest groups, and legal consultation.

Rent-Seeking and Regulatory Convergence

GRP provisions are generally seen as a huge step for USMCA, but without enforcement they will accomplish very little, especially in convergence. Regulatory alignment may prove to be a long-term goal facilitated by USMCA, but given the current regulatory process, the benefits of harmonized regulatory schemes cannot be realized. According to Steven Bipes,

“[Alignment] is like leaves in your front yard, if they're not bound up, if there's not some system— the ministries change, the government changes, and it all sort of blows away.” ¹⁰⁸

Efforts aimed at harmonizing regulatory schemes prior to the establishment of GRP may prove wasted, as spending time developing policy without consideration for that policy’s longevity will be inefficient.

Still, the prospect of regulatory convergence has its strengths and weaknesses. In some sense, converging regulations may lead to future economic welfare since the presence of unified regulatory specifications will permit firms to achieve cost-effective economies of scale. But, as with any regulatory effort, the possibility of pseudo-state-rent seeking may prove to be a challenge. Rent-seeking can broadly be used to describe the practice of negotiating policy in such a way that advances the specific interest of one or multiple entities with similar goals. In a way, free trade agreements serve as one example of this pseudo-rent-seeking, as states attempt to forward their trade interests to maximize welfare within their territory (although for liberal trade scholars, welfare-maximization gains are usually seen as ubiquitous instead of state-specific). In a domestic regulatory context, similar behavior is typically seen as malicious, as firms with large budgets for lobbying can call for stringent regulations which prove unaffordable to smaller competitors.

Jeff Schott, a senior fellow at the Peterson Institute for International Economics and an expert on North America’s trade agreements and North America, spoke to us about regulatory convergence:

“When it's discussed in U.S. politics, it's Mexico and Canada converging to U.S. norms. That's not acceptable to Mexico and Canada... if you harmonize on a high standard like the U.S. negotiators want, that sort of puts Canada and Mexico at a disadvantage for attracting investment because it would be harder to meet those standards.” ¹⁰⁹

Steven Bipes has claimed that the current status of regulatory misalignment constitutes a trade barrier equivalent to a 20% tariff.¹¹⁰ Bipes predicted that implementation of the USMCA’s Chapter 28 provisions could reduce this

trade barrier by a magnitude of 15%, leaving only a 5% “invisible tariff,” by lowering costs for manufacturers while still maintaining protection for consumers.

Of course, regulatory convergence will be easier and more productive in some sectors than in others. Regulators and USMCA officials will need to work through an inventory of potential areas for reducing regulatory misalignment and identify priority sectors for trilateral and bilateral work. They will also need to identify work plans and timelines for reviews of progress being made.

RECOMMENDATIONS

Recommendation 1: The GRP Committee Should Meet and Begin a Regular Work Process

Above all, implementing the text of the agreement is at the forefront of maximizing the potential of this chapter. States should practice transparent, data-driven policymaking when it comes to current and future regulations, However, as of now GRP is yet to take shape. Chapter 28.18 creates the GRP Committee, tasked with implementing the provisions of the chapter. Unfortunately, this committee has not met. We recommend the GRP committee meets soon to discuss important collaborations on ensuring the provisions of Chapter 28 are implemented. One area where the committee may be able to make such progress includes the establishment of a common procedure for stakeholder consultation. Consulting stakeholders regarding existing and emerging regulations will prove essential to ensuring that regulatory schemes are efficient and protective and in setting priorities for action. Additionally, given the deeply interconnectedness of the North American economy, collaboration on identifying and consulting similar stakeholders may be a useful way of reducing operational friction. Earlier stakeholder consultation may well prove essential to creating and maintaining more transparent regulations, and thus such a consultation will set guidelines for outreach, identification, and engagement.

Recommendation 2: Harness Emerging Technology for Conducting RIAs (Regulatory Impact Assessments)

Regulatory Impact Assessments are one of the key indicators as to how successful regulatory efforts will or can become. Yet, the current scheme of impact assessment can be improved with enhanced methodology. Given the rapid development of new innovations in computing, the adoption of more rigorous RIA methodologies may be adapted to speed up and more accurately assess each policy. The utilization of new technology, including artificial intelligence, machine learning, distributed ledgers, and enhanced data collection will create more accurate impact estimates and ensure that RIAs are conducted to a high standard. Other government organizations have already used some of these robust modeling methods for conducting RIAs. Last summer, UNCTAD estimated the impact of the European Carbon Border Adjustment Mechanism using a computable general equilibrium model and real-time data, to estimate the policy impact on specific sectors in specific countries.¹¹¹ Using known and emerging techniques in the context of USMCA, alongside tools like computational algorithms will prove to make robust estimates to influence the decision making of policymakers and stakeholders as new regulations emerge. The potential of these tools should be discussed further in the GRP Committee, pertinent to article 28.18.3.E.

Recommendation 3: Take Initial Steps Toward Regulatory Alignment - Data Collection, Transparency, and Identifying Priority Sectors

While GRP continues to take shape in North America, initial steps toward regulatory alignment are vital and should be a top priority. Whereas the full-scale development of these policies may be a long-term goal for USMCA’s regulatory convergence provisions, much can be done to ensure that these collaborations face minimal barriers at their time of adoption.

To start, the focus might be on data sharing and transparency. Actions in this area will allow each government to prepare for evaluations on regulatory performance. Publishing RIA data and conducting RIAs with a similar standard across North America using high-quality data will prove to make the process more efficient.

Additionally, the three governments should begin to conceptualize their priority sectors for regulatory convergence. Again, this may be made easier by broader collaborations in trade and competitiveness, but nonetheless developing consensus as to priority sectors will allow the governments to prepare for future regulatory collaboration. Especially since regulations are too often developed, and then not revisited for evaluation of impact and effects. With this, harmonizing on future regulations (as opposed to existing ones) will be more productive. Special attention ought to be paid to especially innovative sectors such as developments in computing technology, lab-based meat alternatives, and data processing. Early agreement should be reached on how to set priority sectors for action.

7. ENVIRONMENT AND ENERGY

BACKGROUND

Environmental and energy issues continue to be areas of North American cooperation that have the most activity and yet need some of the most attention. Since the creation of the North American Agreement on Environmental Cooperation in 1994 and with it, the Commission for Environmental Cooperation (CEC); North America has cooperated in various areas regarding animal protection, preventing environmental degradation, and increasing accessibility to environmental data. In 2020 instead of being a side letter like the agreement that established the NAAEC, environmental issues are embodied in a chapter of USMCA. Many of the mechanisms under NAAEC were integrated along with a new Environmental Committee designated to implement the Environmental Chapter. The New Environmental Committee, along with the already existing CEC, will be responsible for the continued cooperation on a host of key regional environmental issues along with identifying newfound areas and challenges for the environment of North America going forward. The environmental chapter requires states to comply with their existing environmental laws along with implementing requirements under a list of enforced international environmental agreements. The environmental chapter creates measures where complaints against states are enforced through a dispute mechanism system operated by the CEC and the Environmental Committee. As of February 2022, work on environmental issues through the new environmental chapter has begun with USTR filing a claim against the Mexican government regarding its enforcement of laws protecting endangered aquatic species.

Energy is and will continue to be a major area of economic importance for all three USMCA parties. Going forward, efforts to address climate change will increase, and additional resources will need to be allocated towards transforming an energy market highly dependent on hydrocarbons into one relying on green energy production. Energy policy is relatively lacking from the USMCA, and there exists a significant disparity between the three countries in terms of their energy interconnectivity and the openness of energy markets. The United States and Canada currently operate a significantly interconnected energy grid and generally have open markets for foreign and domestic energy companies. Mexico, meanwhile, continues to struggle in both achieving significant levels of energy interconnectivity and liberalizing its traditionally state-dominated energy market. Under the leadership of President Andrés Manuel López Obrador, numerous efforts have been made to undermine the ability of U.S. and Canadian firms to operate in the Mexican energy market on the same footing as their Mexican public sector counterparts. These efforts have set off a series of complaints by U.S. and Canadian investors that various parts of the USMCA are being or will be violated. The reforms have sparked the United States government to engage the government of Mexico on climate change and green energy. U.S. officials have regularly raised concerns about Mexico respecting the USMCA, as have Canadian officials as number of Canadian companies have also complained of treatment which violates USMCA. On July 20, the US requested formal consultations with Mexico over its concerns, and Canada quickly supported the US request.

Key Issues

While the legislatures of the United States, Canada, and Mexico welcomed the new environment chapter in USMCA, many stakeholders felt the chapter fell short. The National Resource Defense Council, one of the world's largest environmental advocacy groups, labeled the USMCA a "huge, missed opportunity" for its failure to include reference to or address climate change in the environment chapter. Though cooperation on climate change is addressed through several alternative diplomatic venues such as the NALS or the HLED The USMCA provides mechanisms that may be useful for addressing regional climate cooperation such as a dispute resolution mechanism, standing committees on things such as competitiveness, and already functioning trilateral organizations on the environment such as the CEC and the Environmental committee. The USMCA can function as a useful mechanism to achieve many of the commitments already agreed to through the NALS and the HLED while also providing avenues to develop new areas of environmental cooperation. Increasing not just environmental commitments but also boosting cooperation is of critical importance and according to Scott Vaughan of IISD, it is extremely difficult for any of the three countries to meet their carbon reduction goals without increasing regional cooperation.

Another major flaw within the agreement is the lack of a chapter regarding energy and electricity production. A chapter on energy existed under NAFTA, but under USMCA, a similar chapter was eliminated in the face of political resistance from the Mexican government with objections to then President-elect Lopez Obrador. The lack of an energy chapter again wasted a valuable opportunity to help steer the three countries regarding the installation and incorporation of renewable and green energy as an increasingly important part of the North American energy portfolio. Efforts to assist in this transition are still possible under the USMCA using other mechanism such as the competitiveness committee, as well as through other bilateral and trilateral channels. Presidents Lopez Obrador and Biden agreed to expand relevant energy and environmental collaboration (notably to reduce regular gas flaring and methane emissions) during Lopez Obrador's July visit to Washington.

As mentioned in the background, nationalistic Mexican energy policy that seeks to significantly strengthen the role of the state-owned electricity commission, known as the CFE, and the state-owned petroleum and gas company, known as PEMEX, continues to be a significant concern for Canadian and American investors, along with the American government. American and Canadian investors in the Mexican energy sector report significant mistreatment by Mexican government policies and regulations. They argue that the continued actions of the Mexican government violate several provisions of the USMCA, including investment and state-owned enterprises (SOEs) provisions, and undermine the large private investment in the Mexican energy market. Mexican private sector players and independent NGOs and think tanks echo these complaints. Up until July 20, The United States government had been hesitant to act. However, private sector and US congressional pressure continued and US officials including USTR Katherine Tai raised concerns publicly and in private discussions with Mexican officials. At the present time, several American and Canadian investors have launched court cases in Mexico as have investors from Mexico and other countries...

RECOMMENDATIONS

Recommendation 1: Task the new Environmental Committee with creating a strategic plan on climate change, including implementable goals for the Commission on Environmental Cooperation (CEC) regarding climate cooperation.

As stated in Article 24.26.3-f, the USMCA provides the Environmental Committee the authority to "perform any other functions as the parties may decide." Therefore, we recommend that the USMCA Environment Committee be tasked by ministers to work with representatives of the CEC Council to develop a North American framework

for climate change cooperation that takes into consideration trade and environmental linkages, forging a working group with appropriate agencies from each government to achieve this task. Such a strategy would not only provide a roadmap for measures that will lower greenhouse emissions, but it would also be a concrete framework that could be a model for other regional and multinational cooperation. The strategy would also provide the Committee for Environmental Cooperation and the three governments with an outline of objectives and steps that the three governments could turn into tangible programs. One complaint that our team heard during the meeting with members of the CEC leadership was the lack of direction for the organization under the current agreement and from policy leaders in the three participatory states. Developing and then implementing a strategic climate plan could provide the CEC with a series of useful tasks and a renewed mission in North America.

Recommendation 2: Create a dialogue with North American peers regarding increasing funding for the CEC to ensure the agency has the necessary funds to implement climate programs while not interfering with existing programs and day-to-day functions.

Connected to *Recommendation 1*, designating additional goals and programs for the CEC may necessitate an increase in the organization's existing funding. Currently, the organization is jointly funded through direct payments by each of the three-member states' environmental government agencies. Speaking with members of the CEC, the leadership stressed that at the current time, the amount of funding the agency received is adequate; however, in the long term, the agency will likely need increased funding, especially if delegated with increased responsibility. The authors recommend that the three states pursue long-term funding of the agency to ensure that the organization can continue its essential functions and take on additional responsibility.

Recommendation 3: As allowed in Article 1.3.2, begin negotiations regarding the ascension of the Paris Climate Agreement to the list of multilateral environmental agreements.

Implemented as an amendment in 2019, Article 1.3.2 allows the three parties to agree to integrate new multilateral environmental agreements (MEAs) into the list found in chapter 24 of the USMCA. Since the mechanisms' creation, calls have existed to integrate the Paris Climate Agreement into the USMCA through the MEAs list, with the Canadian government and Democrats in the House voicing their support. Integrating the Paris Climate Agreement into the MEA list would require the three states to implement carbon reduction measures to comply with the environmental chapter. MEA compliance is integrated into the dispute mechanism system, meaning that cases can be brought against non-compliant parties providing increased enforcement for climate reduction commitments. Therefore, it is recommended that the three governments begin trilateral negotiations regarding the ascension of the agreement to the MEA list.

Recommendation 4: Increased cooperative capacity should be allocated towards harmonizing regional energy efficiency standards as established in Article 12.D.4.

Beyond eliminating direct sources of carbon emissions, another effective method of reducing carbon output is through initiatives that improve the energy efficiency of production and day-to-day operation. Article 12.D.4 of the USMCA states that "The Parties shall cooperate on energy performance standards and related test procedures in order to facilitate trade among the Parties and advance energy efficiency." By placing greater cooperative capacity towards this responsibility, measures can be implemented that both reduce carbon emissions while eliminating cross-trade barriers, lowering costs for consumers.

Recommendation 5: Following the failure of proposed Mexican constitutional reforms related to energy, the State Department and other relevant agency stakeholders need to develop an internal framework for addressing the Mexican government's continued energy nationalism which negatively affects US companies, among others, and violates commitments agreed in USMCA. This framework should build upon USTR's indications of what areas of the USMCA are currently being violated by Mexican policies and practices and

develop a list of alternative opportunities for the Mexican government to engage in energy cooperation that benefits both countries. Should efforts to resolve differences fail, the US should initiate dispute resolution proceedings on a selection of practices and policies in the Mexican energy sector, as is contemplated under the July 20 announcement by USTR. The USG should coordinate closely with Canadian counterparts and where possible join efforts together. The US should leave the door open to future collaboration with Mexico on energy and related environmental and climate issues.

It must be noted that a dispute settlement process does not exclude continuing to develop areas of cooperation within the energy sector. Dispute settlement is a fully anticipated way to resolve differences on difficult issues which should allow for continued collaboration on related issues.

As of April 18th, it appears that Mexican President Andrés Manuel López Obrador's efforts to implement reforms to the Mexican constitution regarding energy policy have failed to win required congressional support. In response to this failure, the Mexican president has promised to continue his nationalistic energy policy, including the nationalization of the nation's Lithium reserves. At the same time, Mexican officials continue to enforce several policies, including regulatory actions, in the Mexican energy sector that go against a good-faith implementation of the USMCA agreement.

In response to this challenge, the authors recommend that the State Department, USTR, the Department of Energy and others develop and maintain an internal coordinating framework for addressing the Mexican government's continued energy nationalistic policies. Those facilitating this framework would work with engaged stakeholders in the field to identify areas of the agreement where Mexican policy violates their USMCA commitments, with USTR leading this effort. They should also encourage efforts to find negotiated solutions to some of the company complaints, if possible. This idea is evident in the efforts by the US ambassador in Mexico and his team to facilitate negotiations including with AMLO with individual companies to resolve certain problems. The US should coordinate closely with Canada in these efforts since some of its companies and investors face similar problems.

We recommend that the State Department continue to develop and present to Mexican officials and the public a cooperative alternative to the previous energy policy. John Kerry, Secretary of Energy Granholm, and other envoys in recent months have highlighted the opportunity and willingness of the Biden administration to cooperate with the Mexican government to develop and implement a green energy agenda within Mexico. This approach seems to be bearing some fruit given the agreements solidified during AMLO's July visit to Washington relating to reducing methane emissions and routine venting and flaring from PEMEX facilities.¹¹²

There is, however, little indication that the government of Mexico has changed its policy predilection to favor state owned energy companies, nor that it will stop using regulatory tools to influence the behavior of private investors. USTR Secretary Tai flagged both concerns when she met with Mexico's Economy Secretary in July, before formally requesting USMCA consultations.¹¹³

Even while pursuing consultations and possible dispute settlement case, the authors suggest that the USG should continue to discuss with Mexican and Canadian counterparts a potential trilateral cooperative alternative to current Mexican policies. Possibilities with such a proposal could include initiatives to spur investment in green infrastructure, commitments to reduce economic barriers, and foster investment in energy transmission and production. These measures can also be explored in a variety of forums, such as proposing unified measures to the WTO.

We believe that it is unlikely that the Mexican administration will be willing to change direction without a concrete alternative to their current path, and for that reason, we encourage the USG to lay out alternatives for the viewing of both the Mexican government and the public.

Should the Mexican government show continued disinterest in USMCA consistent solutions, we recommend pursuing dispute resolution proceedings on a number of policies and practices cited in USTR's July 20 public statement. It is not acceptable for the Mexican government to continue policies and practices that undermine American investments contrary to commitments in USMCA. Though using dispute resolution is not preferred, it remains an important tool to hold the Mexican government accountable and facilitate policies that comply with commitments laid out in the agreement. This is important for the credibility of USMCA as a framework for managing over one trillion dollars in trade across North America.

Recommendation 6: Utilize the Competitiveness Committee to help establish a dialogue regarding North American energy cooperation and regional energy competitiveness. This dialogue would address issues such as grid integration, barriers to environmental goods, and supply shock issues and is authorized in Article 26.5 of the USMCA. (This dialogue could also be pursued as part of the work agenda from the North American Leaders Summit (NALS)).

Energy costs continue to be a significant factor in the price of goods and services particularly in North American and other countries with high levels of development. Lowering the cost of energy use in North America would lower the cost of North American made goods and services and therefore boost the competitiveness of North America in the global economy. The value of this is underscored by the soaring energy prices sparked by Russia's invasion of Ukraine. In addition, many of the methods to lower regional energy costs would also reduce the carbon output of the three countries through improving energy efficiency and reliability.

For this reason, we recommend that the three USMCA member states utilize the Competitiveness Committee to help establish a dialogue regarding North American energy cooperation and regional energy competitiveness. The dialogue itself could take place outside the Competitiveness Committee and perhaps under the NALS umbrella. This dialogue would review several areas where cooperation can be utilized to improve the energy infrastructure of the region and ensure the stability of the American energy market.

A vital topic to pursue is increasing the level of integration of the North American energy grid. Currently, the grids of North America and Canada are heavily integrated with each other. However, the Mexican energy grid continues to lack many connections with the United States. Having a more interconnected electric grid allows for power transactions to occur that transfer power from regions experiencing production surpluses to those experiencing shortages eliminating the frequency of regions needing to ramp up their own production. This benefit of grid integration will be critical going forward as it appears despite hesitation that the three USMCA states will be transitioning towards an energy grid with increased reliance on renewable energy.

Unlike other energy sources, renewable energy is not constant in its production, with ebbs and flows based on changing weather and solar positioning. Having a further integrated North American transmission grid will allow energy transfers between regions experiencing different weather and solar positioning, increasing energy efficiency, and lowering costs for consumers. According to three different experts contacted for this report, it is impossible for the three USMCA nations to be able to scale renewables successfully regionally to the level necessary to tackle climate change without further integrating the North American energy grid.

Barriers to environmental goods should also be addressed. Environmental goods are key resources needed in the fight against both climate change and environmental degradation and are highlighted as an important area of focus in the USMCA. Article 24.24 of the USMCA states that the three-party states should work to eliminate barriers to environmental goods and boost North American environmental good trade using the environmental committee or other relevant committees. Addressing barriers to environmental good trade would not only help efforts to reduce carbon emissions and mitigate environmental degradation but also improve the competitiveness of the North American market by reducing the cost of North American made environmental goods and lowering the cost of power installation.

A final area that should be addressed in any regional energy competitiveness dialogue is efforts to reduce the opportunity for supply shock in the North American energy market. As can be seen in the present moment geopolitical events and economic conditions can lead to significant increases and collapses in the price of energy goods particularly oil and gas. These sudden and dramatic fluctuations can have significant effects on American companies and the cost of their production affecting their global competitiveness. Dramatic increases in the cost of oil can lead to market overreaction where oil production is called above a reasonable level. This outcome increases the amount of global carbon emission while also leaving energy companies vulnerable to collapses in crude oil prices as seen in 2016 and 2020. The USMCA competitiveness committee can provide a valuable venue for exploring possible cooperative measures to reduce the susceptibility of the North American energy market to significant fluctuations in price and production.¹¹⁴

8. PUBLIC FACE: Public Outreach, Transparency, Public Education

BACKGROUND

During the 1992 U.S. presidential campaign, candidate Ross Perrot famously urged voters to listen for the “giant sucking sound” of jobs moving north across the border because of the proposed North American Free Trade Agreement. This protectionist rhetoric that NAFTA would eliminate American jobs haunted the agreement until its eventual replacement under the Trump administration. During the decline of American manufacturing employment of the 1990s and 2000s, the media and political opportunists used NAFTA as a scapegoat to galvanize America's economically disenfranchised. Although many simplistic claims were not substantiated, they were effectively used to mobilize many in the general American public against the agreement.

NAFTA had many successes building competitive markets across North America, however, the agreement suffered from a lack of effective government-led communication directed toward the public in the United States about positive impacts for stakeholders across the three countries. By not highlighting the deal's beneficial effects, U.S. politicians and officials left the agreement more susceptible to the winds of populist political rhetoric and conspiratorial theories as well as to those critics who just did not favor liberalized trade. Such political actors galvanized many voters against the agreement by placing the blame for the economic decline of many American manufacturing sectors on the agreement rather than other more economically likely areas such as automation and competitive advantage. Even many of those whose livelihoods were made possible by trade in the North American marketplace were not aware of the importance of trade with Mexico and Canada to their jobs and wellbeing.

Despite the efforts in the USMCA negotiations to address the deficiencies of NAFTA, there persists a lack of government-led initiatives or collaboration to inform the public about the new trade deal and its benefits. This research team contends that the three governments should increase initiatives to address these communication gaps with the broader public in all three countries as well as among specific stakeholders who have much to gain

from USCMA's effective implementation. These efforts by the three governments should address the lack of popular knowledge about the agreement and to actively engage stakeholders so that they participate more constructively in ongoing efforts to improve the deal's implementation and future adaptations.

KEY ISSUES

The USMCA continues to suffer from many of the same information and outreach deficiencies that plagued its predecessor from the 1990s onward. Public polling clearly shows an information gap regarding the agreement and its potential positive effects. According to data from Monmouth University, over 61% of Americans surveyed had no opinion on the USMCA free trade agreement upon its January 2020 enforcement. That 61% of Americans hold no opinion highlights the need to inform and if possible, interest the U.S. public. If not addressed well, this opinion gap will be left again in the hands of media and political actors, leaving the agreement at significant political risk. If the USMCA is to thrive and achieve its potential, then it must be underpinned by widespread understanding, and hopefully support. The United States, and its USMCA partners, must implement policies and practices to better communicate with the public. The communication efforts highlight the benefits of regional free trade, and the continual work being done by the three governments to improve the agreement, and therefore daily lives across North America. Of course, this work also needs to be embedded within strong efforts to increase transparency about the work going on to implement USMCA and within robust two-way stakeholder dialogues.

This issue area is of critical importance to the USMCA. Yet, this research team perceives that the USMCA process currently lacks sufficient public outreach infrastructure to carry out the public education and information campaign needed to help deepen public understanding and awareness.

One potential method to address this issue is to designate USMCA spokespersons who can regularly coordinate messaging among the three governments and frequently appear at conferences and in the media to represent and defend the agreement in the public arena. Neither U.S. Trade Representative (USTR) nor the other lead government agencies currently have a specific spokesperson for the USMCA. We realize this is mostly due to logistical limitations, such as its small number of employees tasked with representing every U.S. trade agreement. The team also suspects that similar staff restrictions probably limit USTR and others in efforts to organize robust engagement with specific stakeholders or the public in a sustained information campaign about the benefits of USMCA. The limited bandwidth of USTR and other key players in all three governments also means that the internet presence of USMCA materials lacks the magnitude, coherence, and accessibility desirable to have a positive impact on public opinion. Given the importance of social media, this research team urges USTR and its fellow agencies (including Commerce, State and DHS inside the USG) to put a specific focus on social media campaigns to highlight the USMCA's specific successes and general importance.

Currently, the USTR, International Trade Association (ITA), and Cross Border Patrol (CBP) have their own website pages for the USMCA, while U.S. Embassies in Mexico and Canada add public diplomacy outreach. However, each respective website is narrowly focused on the areas of the agreement in which they're involved. The researchers of this report found it difficult to collect information around various issues, including cooperation on environmental and labor requirements. They also found it very difficult to follow the ongoing work of various USMCA committees from public announcements or reports.

USTR's Canadian and Mexican counterparts each run a singular website. The Canadian website is a model for providing important information about the agreement clearly. But all three governments can benefit from increased transparency.

Within the public, there must be more stakeholder engagement regarding the mechanisms and programs that operate under the USMCA. For example, this group of researchers faced significant obstacles to finding information about numerous critical issues. The group tried to rely on government press releases. However, we found the releases in general to fall short of giving the information needed to understand the work that was underway. Many of the experts interviewed for this report consistently cite the same barriers to understanding. When reports and meetings were made available to the public, they were often difficult to find and presented in manners not ideal for public consumption. The efforts of USMCA committees have also not gone far enough in attempting to engage stakeholders in their operations. Throughout the USMCA language encourages committees to engage stakeholders when performing their functions on behalf of the three member states but through our research and conversation with stakeholders it appears that efforts to do so have not been at an acceptable level. Ensuring adequate levels of transparency within the agreement is paramount to ensuring continued trust with the USMCA and its mechanisms.

RECOMMENDATIONS

Recommendation 1: Acknowledge current limits in communication capacity within the United States government, including USTR, and create an interagency working group to devise a more effective public outreach strategy, including to stakeholders and to the broader public

As a smaller agency with a big agenda, USTR lacks the bandwidth to properly communicate the importance of the USMCA to the public. Recognizing this shortcoming, USTR should create and lead an interagency dialogue with other agencies involved with the agreement, such as the State and Commerce Departments (DOS) and, to craft a robust multi-agency strategy and work program. Such a strategy could produce enormous benefits by taking advantage of the public diplomacy staff at State and Commerce's presence across the U.S. as well as in Mexico and Canada, while USTR simultaneously does as much promotion as its staff can handle. Communication around the agreement would still have to be in line with the position and agenda of USTR, as well as the president.

Recommendation 2: Create a standing working committee on communications either directly in the USMCA under the Free Trade Commission or indirectly working through regional dialogues.

The USMCA would benefit enormously from having a unified communication system between the three governments regarding the agreement. This report recommends that the three trade ministers create a USMCA working committee specifically tasked with promoting better public communications and outreach. This working committee could be created using the Free Trade Commission through Article 30.2.2.a, which allows the commission to "establish, refer matters to, or consider matters raised by, an *ad hoc* or standing committee, working group, or other subsidiary body". Alternatively, such a coordinating group might be created outside of the USMCA through an alternative mechanism such as the North American Leaders Summit (NALS) or the High-Level Economic Dialogue/ US-Canada Roadmap agenda. This working committee could encourage the member states to increase their public diplomacy efforts regarding the agreement, while also identifying potential areas for trilateral cooperation on this matter, such as a schedule for joint events across the three countries by various ministers and senior officials. In the long term, the work of this committee could increase the overall trust and cooperative capacity. It could also be a means through which to explore the potential of and plan for a unified communication effort ahead of the 2026 sunset review period.

Recommendation 3: In preparation for and during the sunset review initiate more robust and coordinated public communication and outreach efforts regarding USMCA and their benefits for the public.

The 2025-26 sunset review period provides a valuable and important opportunity to address flaws and shortcomings within USMCA and to discuss/make potential improvements. We believe that the 2025-26 sunset

review period provides a tremendous opportunity for the governments to deeply involve stakeholders in the reflections on USMCA and to address the current lack of cooperative public information, outreach, and two-way communications mechanisms within the agreement. Working to create mechanisms for unified USMCA communications before and during the 2026 sunset review period can provide the three parties with valuable insights as well as a more effective region-wide cooperation on communication and messaging.

Moreover, a three-way public outreach mechanism could also save the three nations' resources: both financially and in terms of bureaucratic bandwidth. Eventually, a trilateral communication strategy could be implemented through the creation of a shared secretariat, or other standing organization within the agreement that could be tasked with communication about the agreement to both involved stakeholders and the public. A USMCA communication secretariat could implement cooperative communication initiatives, such as the development of a singular USMCA website, social media, and spokesperson for the agreement. These initiatives, and particularly the website and social media, would increase transparency about the inner workings of the agreement.

The combination of strengthened outreach efforts by each government and more jointly coordinated effort among the three governments could yield great benefits by increasing public awareness, understanding and involvement across the region and reducing the vulnerability of the agreement to misinformation and disinformation.

9. SUMMARY OF RECOMMENDATIONS

Digital Trade, SME Engagement & Cybersecurity

- **Recommendation 1:** Establish a North American Digital Trade Council.
- **Recommendation 2:** Continue and increase stakeholder dialogues and outreach encouraging SME e-commerce development.
- **Recommendation 3:** SME empowerment and digital inclusion through capacity building and skills development programs.
- **Recommendation 4:** Increase efforts to quantify and measure digital trade.
- **Recommendation 5:** Hold Mexico and Canada responsible for data localization violations.

Labor Democracy & Workforce Development Issues

- **Recommendation 1:** Track reform progress using a shared database in support of US Department of Labor and Canadian labor implementation assistance programs.
- **Recommendation 2:** Review and potentially revise Labor Dispute Settlement during the 6-year Review.
- **Recommendation 3:** Further collaboration on reducing forced labor.
- **Recommendation 4:** Assemble a Forced Labor Task Force under the Labor Committee.
- **Recommendation 5: Develop plans to provide** real-time labor data and expanded credentialing.

Automotive Rules of Origin

- **Recommendation 1:** Expedite a resolution of the current dispute in accordance with Article 31.6 over the interpretation of Core/Super-core Roll-up (content tabulation).
- **Recommendation 2:** Give more time to suppliers and automakers to collect and report the content requirements and related information necessary for automakers to fully comply.
- **Recommendation 3:** Streamline USMCA compliance and certification procedures.
- **Recommendation 4:** Create incentives for consumers to purchase electric vehicles that are sourced in North America (vice in any single country).

Agriculture

- **Recommendation 1:** The U.S. should continue pressuring Canada to comply with the dispute settlement ruling on dairy provisions agreed on under USMCA.
- **Recommendation 2:** Place pressure on Mexico to adopt an agricultural/biotech regulatory framework based in science as per Article 3.14.4.
- **Recommendation 3:** Encourage the USTR, U.S. Department of Commerce, USDA, and others as appropriate to engage in active discussions with American Tomato growers and Mexican Trade representatives to find a resolution to the ongoing dispute.
- **Recommendation 4:** Continue to work to reduce tariffs on Canadian softwood lumber to comply with previous trade rulings, lower U.S. housing prices, and avoid a dispute settlement complaint by Canada under USMCA.

Good Regulatory Practices (GRP)

- **Recommendation 1:** The GRP Committee Should Meet.
- **Recommendation 2:** Harness Emerging Technologies for Conducting Regulatory Impact Assessments.
- **Recommendation 3:** Take Initial Steps Toward Regulatory Alignment - Similar Data Collection Norms, More Transparency, and Identifying Priority Sectors.

Environment & Energy Policy

- **Recommendation 1:** Task the new Environmental Committee with creating a strategic plan on climate change, including implementable goals for the Commission for Environmental Cooperation regarding climate collaboration.
- **Recommendation 2:** Create a dialogue with North American peers regarding increasing funding for the CEC to ensure the agency has the necessary funds to implement climate programs while not interfering with existing programs and day-to-day functions.
- **Recommendation 3:** As allowed in Article 1.3.2, begin negotiations regarding the addition of the Paris Climate Agreement to the list of multilateral environmental agreements.
- **Recommendation 4:** Increased cooperative capacity should be allocated towards harmonizing regional energy efficiency standards as established in Article 12.D.4.

- **Recommendation 5:** Develop a US policy framework for addressing and influencing the Mexican government’s continued energy nationalism. Coordinate closely with Canada. Pursue dispute settlement as needed.
- **Recommendation 6:** Utilize the Competitiveness Committee to help establish a dialogue regarding North American energy cooperation and regional energy competitiveness, working in coordination with the other regional mechanisms such as the North American Leaders Summit process.

Public Face: Public Outreach, Transparency, and Public Education

- **Recommendation 1:** Acknowledge current limits in communication capacity on USMCA within the USG, including USTR and create an inter- agency working group to devise a more effective public outreach capacity and strategy, including to involve stakeholders and the broader public.
- **Recommendation 2:** Create a standing working committee on communications either directly in the USMCA under the Free Trade Commission or indirectly through other regional dialogues.
- **Recommendation 3:** In preparation for and during the sunset review, identify possibilities for more robust and coordinated public communication and outreach efforts regarding USMCA and its benefits for the public.

10. CONCLUSION

Although there are many important issues covered by the USMCA agreement, this report focuses on pressing issues for the three member states and for demonstrating the effectiveness of USMCA.

Digital trade, being one of the newest and quickest developing areas within trade, has presented various opportunities as well as obstacles. As digital trade technologies shift and new cybersecurity challenges emerge, the North American partners will have to work together to respond accordingly. These issues affect a variety of industries and stakeholders, highlighting the importance of diligent research and response through policy making.

Labor issues between the U.S. and Mexico have sparked discussion about the proper policies needed to protect workers and promote productivity.

Automotive rules of origin address the issue of interpretation between the three member countries and the future of the industry in electric vehicles.

Agricultural disputes and challenges continue to present issues of cooperation, implementation, and transparency between the US, Mexico, and Canada, especially regarding the integrity of the agreement.

On the topic of Good Regulatory Practices, the prospect of convergence promises welfare benefits because of economies of scale, yet implementation of these efforts is yet to take off.

Energy and environmental concerns, especially from Mexico's moves to nationalize important aspects of energy markets and materials coupled with a lack of effective response to environmental concerns, must be addressed not only to preserve the agreed provisions within the agreement, but to actively fight against practices that harm the shared continental environment.

We find that the public face of USMCA is equally as important. The lack of public knowledge and discussion regarding NAFTA was a principal reason that the agreement's reputation suffered. To learn from NAFTA's legacy and adapt USMCA practices accordingly, implementers from all three member countries should promote stakeholder engagement, public outreach, and education about USMCA's importance.

The provisions added within USMCA have great potential, if implemented. Trade across North America is already growing to new levels, and the prospects are good for expanding the benefits enjoyed by businesses, farmers, and individuals with good implementation of USMCA.

New USMCA provisions and chapters that focus on developing areas of importance can potentially be incorporated into other FTAs, as the US has proposed be the case with digital trade provisions. However, there is still much work to be done on the USMCA to achieve better outcomes.

Three guiding principles should inspire work going forward.

The first key principle is increased transparency, as there is a lack of easily accessible information about the USMCA's status of operations and implementation. The authors of this report, whose specific task was to research the agreement faced these barriers throughout our inquiries. Many of the experts with whom we spoke expressed similar concerns and urged more transparency in implementation.

The second principle that should guide ongoing work is more robust implementation. While much good work has been done, many experts and stakeholders expressed concern that too many of the USMCA's provisions currently appear to be going unenforced. The U.S. government should lead by example and commit to vigorous enforcement of all the agreement's chapters and provisions before the USMCA review process begins.

The third guiding principle is demonstrating bona fide collaboration. The leaders and stakeholders of each country should regularly communicate with each other, with key actors like legislators, and with the public throughout the processes of the USMCA implementation. The resumption of the North American Leaders Summit, the establishment of the US-Mexico High Level Economic Dialogue and the US-Canada Roadmap process are steps in the right direction which reinforce USMCA's implementation. The three governments must demonstrate with results their commitment to forging solutions and building on opportunities.

In this connection, the authors point to the trade ministers' recent decision to establish a new emergency trade coordination mechanism as an excellent example of the collaboration - and innovation - needed to keep USMCA relevant and effective.¹¹⁵

It is in each nation's interest to commit to these complex yet important tasks. The interdependency between the United States, Canada, and Mexico underscores the necessity of unlocking the full potential of USMCA and benefiting Mexicans, Canadians, and Americans.

11. ANNEX: Experts Consulted

The authors of this report would like to extend a distinctive recognition to the respective experts for their first-hand contributory insights to the outcome of this report.

- Agnew, Mark.** *Senior Vice President of Policy and Government Relations at the Canadian Chamber of Commerce*, March 29, 2022.
- Aguerre, Carolina Ines.** *Co-director of the Center for Technology and Society Studies*, March 28, 2022.
- Anderson, Michael.** *Vice President of Trade and Industry Affairs at the Corn Refiners Association*, March 30, 2022.
- Bipes, Steven.** *Advanced Medical Technology Association*, March 16, 2022.
- Blunt, Matt.** *American Automotive Policy Council*, April 18, 2022.
- Cabrera Rivera, Orlando.** *Head Of Unit, Environmental Quality at Commission for Environmental Cooperation*, March 30, 2022.
- Cory, Nigel.** *Associate Director of Trade Policy at the Information Technology and Innovation Foundation*, March 24, 2022.
- Daoust, Nathalie.** *Director of Government Relations, Strategy and Performance at Commission for Environmental Cooperation*, March 30, 2022.
- De La Peña, Sissi.** *Regional Digital Trade Manager at Asociación Latinoamérica de Internet Public Policy & Government Affairs*, April 8, 2022.
- Dziczek, Kristin.** *Federal Reserve Bank of Chicago | Detroit Branch*, April 22, 2022
- Fognoni, John.** *Natural Resources Specialist at Haynes and Boone*, March 15, 2022.
- Iruegas Peón, Ix-Nic.** *Executive Director at the Mexican Cultural Institute*, April 7, 2022.
- Kingston, Brian.** *CEO of Canadian Vehicle Manufacturers Association*, March 31, 2022.
- Leblond, Patrick.** *Senior Fellow at Centre for International Governance Innovation*, April 6, 2022.
- Lutt, Eric.** *Senior Director of Federal Government Relations at Biotechnology Innovation Organization*, April 7, 2022.
- Manak, Inu.** *Council on Foreign Relations*, April 7, 2022.
- Meltzer, Joshua.** *Senior Fellow at the Brookings Institute*, March 25, 2022.
- Michah-Jones, Rachel, and Olga Hernandez Avila.** *Executive Director and USMCA/T-Mec Project Coordinator at Centro de los Derechos del Migrante*, April 4, 2022.
- Morris, Shawna.** *Senior Vice President of Trade Policy at the U.S. Dairy Export Council*, March 23, 2022.
- Ocampo, Oscar.** *Energy Coordinator Instituto Mexicano para la Competitividad (IMCO)*, March 31, 2022.
- Owens, Erica.** *Associate Dean at the University of Pittsburgh Graduate School of Public and International Affairs*, March 28, 2022.
- Quarels, Kam.** *CEO of the National Potato Council*, April 5, 2022.
- Reinsch, William.** *Senior Adviser and Scholl Chair in International Business at the Center for Strategic and International Studies*, March 30, 2022.
- Robidoux, Lucie.** *Head of Unit - Ecosystems at Commission for Environmental Cooperation*, March 30, 2022.
- Schott, Jeff.** *Senior Fellow at the Peterson Institute for International Economics*, April 4, 2022.
- Solano, Paolo.** *Director, Legal affairs SEM at Commission for Environmental Cooperation*, March 30, 2022.
- Suominen, Kati.** *Founder and CEO of Nextrade Group*, April 22, 2022
- Swiecki, Bernard.** *Center for Automotive Research*, March 30, 2022.
- Vaughn, Scott.** *IISD Senior Fellow and International Chief Advisor, CCICED*, March 30, 2022
- Zahniser, Steven.** *Agricultural Economist at the USDA*, March 28, 2022.
- Zamarripa, Kenia.** *Executive Director of International Business Affairs at the San Diego Regional Chamber of Commerce*, April 19, 2022.

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 6. USMCA, art. 19.6: Electronic Authentication and Electronic Signatures.
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End Note

This report was researched during the spring semester 2022 as part of the United States Department of State’s Diplomacy Lab program by six undergraduate students at American University’s School of International Service (SIS): **Gianna Amendolara, John Burzawa, Sophie Egar, Geneva Conrad Arrízon Pfeifer, Zachary Roten, and Conor Wade**. Earl Anthony Wayne (Career Ambassador Ret.), who is a Distinguished Diplomat in Residence at SIS, provided guidance. The initial version of the report was presented to members of the Offices of Mexican and Canadian Affairs in the State Department’s Bureau of Western Hemisphere Affairs. After graduation, the students continued to work voluntarily on the report to develop a more refined version, with continued support from Wayne