

ASG Analysis: Assessing North American Trade After One Year of the USMCA

July 1, 2021

In a nutshell

- The U.S.-Mexico-Canada Agreement (USMCA), which replaced the North American Free Trade Agreement (NAFTA), entered into force on July 1st, 2020. It has worked well, especially considering that its first year coincided with the Covid-19 pandemic. Key meetings have taken place and disputes, which are to be expected in such a complex trade and investment relationship, have been channeled appropriately.
- While the North American Free Trade Agreement (NAFTA) was a complement to Canadian, Mexican and U.S. pro-market policies at the time, the USMCA is operating in a more nationalistic economic environment. It is a complement to more pro-labor policies in all three countries and can serve as a potential counterweight to nationalistic energy policies in Mexico.
- Companies operating in North America will be well-served by ensuring that they are complying with the letter and spirit of USMCA labor and environmental commitments. This is the right and smart thing to do, given that the Mexican government will be doubling down on enforcement of domestic and international labor laws, while Canada and the U.S. will be vigilant on both labor and the environment.
- On energy, it is highly unlikely that the government of Mexico will reverse course on its policies favoring its national oil company (PEMEX) and electric utility (CFE). Foreign companies can explore the options that remain for the production and consumption of clean energy and, should the need arise, be prepared to use commercial diplomacy and the mechanisms provided by the USMCA, the Comprehensive and Progressive Trans-Pacific partnership (CPTPP), the E.U.-Mexico Trade Agreement and bilateral investment agreements (BITs), among other international agreements.
- From a trade and investment enhancing perspective, businesses can avail themselves of the opportunity to engage with issue-specific USMCA committees, including the Competitiveness Committee established in Chapter 26.
- The USMCA has been important in ensuring supply chain resilience during the pandemic, but resilience involves working beyond the Agreement. While the USMCA's Digital Trade Chapter recognizes that threats to cybersecurity can undermine digital trade,

cybersecurity poses a broader threat to supply chains, as became evident with the hacking and shutdown of the [Colonial Pipeline](#) and a [meatpacking plant](#) in the U.S. last June. Companies would do well to be prepared for low probability but high impact potential supply chain disruptions that can come not only from regulatory inconsistencies, pandemics, or natural disasters accelerated by climate change, but also from cyberattacks.

- In addition to labor and environmental issues, the lead trade officials in the three countries have emphasized the importance of supply chain resilience, supporting small and medium enterprises (SMEs), especially women and minority-owned businesses, and working with business, labor and civil society in the implementation and operation of the USMCA to ensure it has broad benefits. The October 13-14 USMCA SME Dialogue in San Antonio provides an opportunity to engage with trade officials on these issues, especially as large companies seek to include SMEs and minority-owned businesses into their supply chain.

Key developments

- On May 17 and 18 Canadian Minister of Small Business, Export Promotion, and International Trade Mary Ng, Mexican Secretary of Economy Tatiana Clouthier, and U.S. Trade Representative Katherine Tai led the first meeting of the USMCA Free Trade Commission. Their [joint statement](#) highlighted a commitment to enforce labor laws; prohibit trade in goods produced by forced labor; enforce laws on wildlife trafficking, illegal logging, and fishing; and support SMEs and underrepresented communities. Conversations will continue at a follow-up meeting of the Free Trade Commission on July 7 in Mexico City.
- In a U.S.-Mexico bilateral meeting prior to the trilateral summit, the U.S. expressed concerns about some of Mexico's regulatory approaches to agriculture. It also underscored the importance of an energy policy that respects U.S. investments and of Mexico's full implementation of the USMCA's strengthened environment obligations. Mexico expressed concerns about U.S. barriers to Mexican agricultural exports, regulatory barriers to cross-border trucking services, and its interpretation of automotive rules of origin.
- The U.S.-Canada bilateral meeting focused on implementation of the [Roadmap for a Renewed United States-Canada Partnership](#) agreed on by President Biden and Prime Minister Trudeau, and on strengthening supply chains between the countries. The U.S. expressed concerns about Canada's allocation of dairy tariff-rate quotas, and subsequently launched the first-ever dispute settlement proceeding under the USMCA. Implementation of commitments on cross-border shopping and a proposed digital service tax were also raised, while Canada reiterated its concerns about "Buy America" restrictions, as well as lumber and steel trade.
- The Canada-Mexico bilateral meeting confirmed a shared commitment to inclusive trade, and to ensuring prosperity for workers and businesses in Canada and Mexico.
- Energy was not mentioned in the joint statement after the trilateral meeting, and the starkly different positions on energy and climate change between Canada and the U.S., on the one hand, and Mexico, on the other, could result in the most significant challenge to the

USMCA. While the three ministers agreed on the importance of advancing environmental priorities, as well as mitigating the economic effects of climate change, the potential inability of U.S. and Canadian companies operating in Mexico to fulfill commitments on carbon footprint reduction as mandated by company-specific goals and expected by consumers of their goods and services risks ISDS and government-to-government disputes.

- In contrast, labor commitments and policies are more in sync among the three North American countries. While three such disputes have started under the USMCA, should they be resolved before reaching a panel stage it could boost political support for the Agreement by showing that it supports both business and labor rights and favors fair trade.
- The inaugural meeting of the USMCA's Environment Committee took place on June 17. In a [joint public statement](#) its members stressed the importance of cooperation and effective enforcement. They discussed wildlife trafficking and trade in illegally harvested timber, but energy was not mentioned in the statement.
- The inaugural meeting of the USMCA Labor Council took place on June 29. [Discussions](#) included a “worker-centered trade policy” and implementation of commitments, including those related to prohibiting trade of goods produced by forced labor.

USMCA labor disputes

May 10: U.S.-Mexico labor groups file first complaint under the USMCA (Tridonex)

On May 10, the AFL-CIO and the Service Employees International Union, both based in the U.S., together with the *Sindicato Nacional Independiente de Trabajadores de Industrias y de Servicios Movimiento 20/32 (SNITIS)*, an independent Mexican union, [filed](#) a labor complaint under the USMCA. The unions asked the Biden administration to use the pact's new Rapid Response Labor Mechanism to form an independent panel to investigate claims that workers at an auto parts factory run by Tridonex in Matamoros, Tamaulipas have not been allowed to elect their union leaders or ratify their collective bargaining agreement. On June 19, Mexico accepted the U.S. request to look into the Tridonex case.

May 12: U.S. government files complaint (General Motors)

On May 11, members of the U.S. House Ways and Means Oversight Subcommittee sent a [letter](#) to General Motors (GM) Chair and Chief Executive Officer Mary Barra regarding “disturbing reports of gross labor rights violations” at a GM pickup truck plant in Mexico. The letter came after the Confederation of Mexican Workers (CTM), one of Mexico's largest unions, was accused last month of allegedly destroying ballots during a vote over whether to ratify a collective bargaining agreement at a GM pickup truck plant in Silao, Guanajuato where workers were attempting to bargain independently of CTM. The following day, USTR formally [requested](#) that Mexico review whether workers at the plant are being denied the right of free association and collective bargaining. Mexican President Andrés Manuel López Obrador (AMLO) welcomed the USTR filing, calling it “a good thing,” and acknowledging that irregularities had been detected in the CTM-led vote.

May 12: Mexico flags U.S. food plant labor concerns

Shortly after the USTR announcement regarding the GM plant, the Mexican government, via a [press release](#) by the Ministry of Foreign Affairs, announced that Mexican Ambassador to the U.S. Esteban Moctezuma Barragán sent a letter to U.S. Labor Secretary Marty Walsh flagging worker conditions at U.S. agriculture and meat processing plants. Mexico proposed cooperation through the USMCA to address the issues but did not formally invoke the Rapid Response Labor Mechanism.

About ASG

Albright Stonebridge Group (ASG), part of Dentons Global Advisors, is the premier global strategy and commercial diplomacy firm. We help clients understand and successfully navigate the intersection of public, private, and social sectors in international markets. ASG's worldwide team has served clients in more than 120 countries.

ASG's [Americas practice](#) has extensive experience helping clients navigate markets across the Americas. For questions or to arrange a follow-up conversation please contact [Michael Weiner](#).