

The background features a stylized map of North America, including the United States, Canada, and Mexico. The map is composed of various shades of green, blue, and orange. Overlaid on the map is a white network of lines and nodes, resembling a global communication or transportation network. Several icons are scattered across the map: a blue and white airplane in flight, a black semi-truck, a black car, and a blue and white truck. The overall aesthetic is modern and technological.

NORTH AMERICA 2.0

Forging a Continental Future






MAKING THE ENVIRONMENT A PRIORITY IN NORTH AMERICA

By Daniela Stevens and Mariana
Sánchez Ramirez

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Making the Environment a Priority in North America? Evidence from the USMCA

Daniela Stevens and Mariana Sánchez Ramírez

Cooperation on environmental issues is key to building capacity for stronger partnerships that support and encourage efforts to build markets for sustainable trade in North America. Working at the trilateral level in addition to domestic measures and global agreements serves improve the incorporation of region-specific, market-based incentives that accelerate a change to a cleaner environment while streamlining the benefits of deepening the integration of sustainable supply chains. Under trilateral cooperation, the North American partners could more efficiently address pre-existing threats, such as the impact of climate change on national security, as well as emerging socio-economic challenges to the region's prosperity, such as COVID-19.

In this sense, the renegotiation of the North American Free Trade Agreement (NAFTA) brought about challenges and opportunities for environmental cooperation. In 2018, Canada, Mexico, and the United States adopted an Agreement on Environmental Cooperation (ECA), which superseded the North American Agreement on Environmental Cooperation (NAAEC), a side-agreement established alongside NAFTA. The ECA took effect when the United States-Mexico-Canada Agreement (USMCA) entered into force on July 1, 2020.¹ Whereas NAFTA discussed environmental issues only in the NAAEC, the USMCA includes an environmental chapter, Chapter 24, which alongside the ECA formalizes cross-border environmental protection and conservation efforts in the region. The USMCA mentions previously overlooked environmental issues, which offered a rationale for the U.S. government to characterize it as the “most advanced, most comprehensive, highest-standard chapter on the Environment of any trade agreement.”²

Does this mean that the new agreement promotes deeper and broader environmental protection? In this chapter we find that the USMCA makes a small positive contribution to environmental protection and offers a handful of innovations. Largely, though, the USMCA replicates environmental provisions of existing agreements, such as the Trans-Pacific Partnership (TPP) yet fails to explicitly address the most pressing environmental issue of our time, climate change.

The chapter proceeds as follows. First, it lays out the environmental provisions of NAFTA and its side agreement and illustrates the evolution of the Parties' domestic environmental performance.³ Second, it details the USMCA's strengths and innovations in relation to enforcement of wildlife trafficking, marine litter, and food waste. Third, it discusses two provisions beyond Chapter 24 that will affect the North American environment: the Investor-State Dispute Settlement (ISDS) mechanism and the energy proportionality clause. Then, the chapter considers the potential that the USMCA has to strengthen the environmental governance framework by outlining missed opportunities, particularly regarding climate change. Finally, it presents recommendations related to revitalizing current governmental institutions' scope and

¹ The new North America trade agreement is known in Canada as the Canada-United States-Mexico Agreement (CUSMA) and in Mexico as the *Tratado México, Estados Unidos y Canadá* (T-MEC).

² “United States–Mexico–Canada Trade Fact Sheet: Modernizing NAFTA into a 21st Century Trade Agreement,” United States Trade Representative (USTR), 2017, <http://tinyurl.com/y5xppv1m>.

³ The term “Parties” refers to the three signatories of the North American free trade agreement: The United States, Canada, and Mexico.

responsibilities and deepening ties in the electrification of transport to benefit the people and environment of North America.

NAFTA and the NAAEC

During negotiations, American environmental groups argued that NAFTA's trade and investment reforms would further weaken the Mexican environmental infrastructure in exchange for industrial growth and that as a result, Mexico's lax environmental policies would spur trading partners to lower standards and regulations in order to remain competitive.⁴ On the U.S. campaign trail, then Democratic presidential candidate Bill Clinton pledged not to enact NAFTA without supplemental environmental rules, which were not a primary goal of U.S. negotiators during the George H.W. Bush administration.

When enacted in 1994, NAFTA was considered "one of the most environmentally conscious" trade agreements.⁵ Though it did not include an environmental chapter, it explicitly addressed the environment in the following sections.

- The Preamble obliged the Parties to proceed in a manner consistent with environmental protection and promoted sustainable development, and that strengthened the development and enforcement of environmental laws.
- Chapter 1 (Article 104 and its Annex) established the precedence of NAFTA over other treaties and legitimized the use of trade measures to enforce other bilateral and multilateral environmental agreements (MEAs) in the event of an inconsistency.
- Chapter 7B laid out Sanitary and Phytosanitary measures and recognized that the Parties could adopt stricter measures than the ones established by other international bodies. Chapter 9 authorized Parties to choose their desired level of environmental protection. Both provisions legitimized the Parties' domestic environmental regulations and limited a strict interpretation of the agreement's Investment chapter (Chapter 11) in favor of domestic laws.
- Chapter 11 (Articles 1102, 1103, 1105, 1106) granted American, Canadian, and Mexican foreign investors protection from the host State to ensure national and most favored nation (MNF) treatment, minimum international standards, and performance requirements prohibitions. It allowed investors to initiate a dispute settlement process against the host nation.⁶ Chapter 11 provisions were drafted in anticipation of a potential deregulation of environmental and sanitary standards in Mexico in an effort to attract more investment. Yet, the provisions created a mechanism that stalled the enactment of more ambitious regulations across the three Partners.
- A side agreement between the U.S. and Mexico governments created the bi-national North American Development Bank (NABD) to address legislators' concerns

⁴ Diana Orejas, Daniel C. Esty, Gary Clyde Hufbauer, Jeffrey Schott, Luis Rubio Freidberg, *NAFTA and the Environment: Seven Years Later*, (Peterson Institute for International Economics, October 2000).

⁵ Esty, "Making Trade and Environmental Policies Work Together: Lessons from NAFTA," *Aussenwirtschaft (The Swiss Review of International Economic Relations)* 49, (1994).

⁶ See Hufbauer et al., 2000 for a comprehensive review of NAFTA's provisions on the environment.

regarding the U.S.-Mexico border region. The bank “provides loans and grants to public and private entities for environmental and infrastructure projects” on both sides of the border. Water supply, wastewater treatment, and municipal solid waste disposal related projects were the focal points of the bank’s activities at the start. Over the years, it has expanded its jurisdiction and financed projects related to air quality, and the development of wind farms for electricity generation.

- The North American Agreement on Environmental Cooperation (NAAEC) is the side agreement that links trade to the environment in the region. The NAAEC had three operational goals: foster cooperation to improve environmental protection, guarantee the correct implementation of environmental standards and regulations, and mediate disputes.⁷ To that end, the side agreement created an intergovernmental organization committed to safeguarding the environment without sacrificing economic prosperity.⁸ The Commission for Environmental Cooperation (CEC), comprised by three entities:
 - A Council of Ministers, a governing body composed by the ministers of environment from Canada and Mexico and the Environmental Protection Agency (EPA) Administrator from the U.S.
 - A Secretariat that provides technical, administrative, and operational support to the Council and implements activities.
 - A Joint Public Advisory Committee (JPAC), the core mechanism for public participation and stakeholder engagement and for advising the Council.

The NAAEC established a trilateral approach to environmental governance and cooperation, but it was not the reflection of a trilateral commitment to mitigate the environmental impacts of commerce.⁹ Rather, the side agreement was the result of a political compromise to facilitate the passage of NAFTA in the U.S. Congress, after U.S. environmental interest groups successfully lobbied President George H.W. Bush, former Democratic presidential candidate Bill Clinton, and the legislature. After winning the election, Clinton’s strategy for ratification included the negotiation of separate labor and environmental side agreements to assuage opponents.¹⁰

The side agreement charged the CEC with collecting and archiving environmental data from the three countries to streamline regional cooperation and boost public engagement to preserve and protect the North American environment with the ultimate aim of increasing “economic, trade, and social links” between the three countries.¹¹ The Commission aimed to undertake initiatives, projects, and reports centered around three strategic priorities: climate change mitigation and adaptation; green growth; and sustainable communities and ecosystems.¹² The CEC compiled an

⁷ Hufbauer et al. (2000).

⁸ CEC, 2020, accessed 2/24/2020, <http://www.cec.org/about-us/about-cec>.

⁹ Charnovitz S., “The NAFTA Environmental Side Agreement: Implications for Environmental Cooperation, Trade Policy, and American Treatymaking,” 1994.

¹⁰ Avery W., “Domestic Interests in NAFTA Bargaining,” *Political Science Quarterly* 113, no. 2 (1998): 281-305.

¹¹ CEC (2020).

¹² The fourteen interactive online tools and databases illustrate the extent of the information sharing to reflect the advancements in environmental cooperation and governance. For instance, the CEC’s *Taking Stock Online: North American Industrial Pollution* is an interactive database that identifies industry pollutants in an effort to better understand how to better manage “pollutants of common concern”. The Taking Stock Online

online portal with databases, projects, and publications to better understand the North American environmental landscape. Yet, the portal's reliance on the voluntary sharing of data to inform its reporting has raised concerns regarding the real-time availability and accuracy of such data to inform policy recommendations.

The Commission also established the Citizen Submission Process as a model for accountability and governance through the promotion of transparency and public participation in the enforcement of environmental laws in the region. For the first time ever, citizens of the three countries had the right to present a submission to the Commission's Secretariat alleging an entity's failure to comply with American, Canadian, and Mexican environmental laws. Although the Commission could receive, and to some degree investigate complaints from individuals and firms, it did not have the mandate to hold trading partners accountable for engaging in trading practices or investment ventures at the expense of environmental protection. Still, evidence shows that the mechanism of citizen petitions strengthened transnational networks of activists, and contributed to the formation of NGO coalitions and epistemic communities.¹³

The absence of a clear scope of work of North America's environmental agenda was a critical drawback of the side agreement. The NAAEC commitment simply required that enforcement provisions to mitigate environmental violations be available, which limited the effectiveness of environmental enforcement to a country's existing laws. The CEC's powers were poorly defined, which made imminent the need to overhaul it "to make its work more focused, relevant and outcome oriented."¹⁴ The CEC's primary objectives to cooperate with NAFTA Free Trade Commission in order to achieve NAFTA's ten environmental objectives were too large and vague, making them difficult to evaluate. In addition, the CEC was not granted the authority to sanction governments that did not enforce their existing laws or fine companies that repeatedly violated environmental standards.¹⁵ The CEC continues to be a valuable portal that conducts and publishes research relating to the North American environment, but its policy recommendations rarely amount to actionable policy solutions.

Furthermore, as the Parties recognize, the side agreement was largely ineffective in enforcing and improving environmental conditions, specifically along the U.S.-Mexico border.¹⁶ The Clinton administration did not allocate resources where they were urgently needed — for

database utilizes year, location, pollutant type, and industry as filters to generate custom reports that summarize the source and amount of pollution in North America. See the CEC's Tool & Resources page at: (<http://www.cec.org/tools-and-resources> and the Taking Stock Page: Accessed 03/01/2020).

¹³ Pacheco-Vega, "Las denuncias ciudadanas sobre cumplimiento ambiental en América del Norte (1996-2012): perspectivas sobre la sociedad civil ambientalista norteamericana," *Norteamérica*, 2013.

¹⁴ Vaughan S., "USMCA Versus NAFTA on the Environment," *IISD*, 2018.

¹⁵ Cosgrove, Clifford T., "The NAAEC after ten years: A qualitative assessment of the North American agreement on environmental cooperation," (2005), *University of Montana Graduate Student Theses, Dissertations, & Professional Papers*: 8629, accessed: 3/17/2020, <https://scholarworks.umt.edu/etd/8629>.

¹⁶ U.S. House Committee on Ways & Means, "Ways & Means Committee Democrats Raise Concerns with Environmental Provisions in Renegotiated NAFTA," Press Release, April 17, 2019, <https://waysandmeans.house.gov/media-center/press-releases/ways-means-committee-democrats-raise-concerns-environmental-provisions>. U.S. House Committee on Ways & Means, "Environmental Concerns," Press Release, May 3, 2019, accessed: 3/28/2020, <https://waysandmeans.house.gov/media-center/press-releases/ways-means-democrats-raise-concerns-provisions-renegotiated-nafta-could?>

example, to provide an increase in funding to border communities — and Canada and Mexico preferred a non-confrontational approach and agreed to the provisions.¹⁷

Unfortunately, there is no data to evaluate the regional environmental conditions or performance. Still, an evaluation of domestic performance serves as an imperfect proxy to assess whether the side agreement has had any domestic impact. According to the Yale Center for Environmental Law & Policy’s Environmental Performance Index (2020), Canada, Mexico and the United States have not had a significant change in the level of environmental protection in the last twelve years.¹⁸ The Index provides a quantitative basis for making cross-national comparisons of environmental performance over time based on two sub-indices, Environmental Health and Ecosystem Vitality. The former refers to how domestic measures fare regarding four issue categories: Air Quality, Sanitation & Drinking Water, Heavy Metals, and Waste Management. The latter evaluates domestic performance in seven categories: Biodiversity & Habitat, Ecosystem Services, Fisheries, Climate Change, Pollution Emissions, Agriculture, and Water Resources. The EPI scorecard provides practical guidance for countries to gauge whether they are moving toward a more sustainable future and highlights environmental leaders and laggards globally.¹⁹

The 2020 EPI ranks the United States in 31st place, Canada in the 38th, and Mexico in the 41st in a list of 180 nations. As Table 1 shows, from 2010 to 2020, the performance scores have remained primarily unchanged, particularly in the U.S., although Mexico, which started from a lower baseline, did increase considerably.

Table 1. Environmental Performance Index Rank and Score for 2020 and change from 2010

Country	EPI Global Rank	EPI Score	10-year change
Canada	38	57.3	+4.1
México	41	55.9	+10.3
USA	31	60.3	+1.7

Source: YCELP, 2020a.

Results are similar in a comparison between the 2018 scores and a baseline—the first year for which data became available per country (in the 1960s for the three countries). Considering this baseline, Canada has decreased its overall performance from 73.1 to 72.28, as Table 2 shows, whereas Mexico increased its performance by 7.5 points and the U.S. by half a point. Canada’s

¹⁷ Hufbauer, 2000.

¹⁸ Yale Center for Environmental Law and Policy (YCELP), “2020 EPI Results,” 2020a, accessed: 3/19/2020, <https://epi.yale.edu/epi-results/2020/component/epi>.

¹⁹ YCELP, “EPI Executive Summary, Global metrics for the environment: Ranking country performance on sustainability issues,” 2020b, <https://epi.yale.edu/downloads/epipolicymakersummaryr9.pdf>.

protection to the ecosystems (55.29) was the component that affected most significantly the worsening of its overall performance score.

Table 2. Environmental Performance Index Scores and Sub-component Scores, 2018 and baseline years

Country	EPI Score 2018	EPI Score baseline	Health 2018	Health baseline	Ecosystem 2018	Ecosystem baseline
Canada	72.18	73.1	97.51	97.8	55.29	56.63
Mexico	59.69	52.26	66.04	58.86	55.46	47.85
USA	71.19	70.7	93.91	92.6	56.04	56.1

Source: Socioeconomic Data and Applications Center (SEDAC), 2018.

Evaluations about institutional procedures, particularly the citizen petition procedure, are mixed. From 1995 to 2011, the mechanism was not successful attracting submissions in the United States, and while it attracted more submissions directed at Canadian and Mexican enforcement, interest in the procedure declined after 2011. Tardiness characterized the petition resolution process as factual records were issued after an average of 4.5 years after the initial submission. A perception of unfairness clouds the process as it grants governments a number of rights that petitioners do not have. However, evidence suggests that the citizen petition procedure was somewhat effective in decreasing non-compliance with domestic legislation. While the process did not yield legally binding decisions of incompletion, it did strengthen activists’ domestic ties and transnational coalitions, bolstered data and findings available to further validate environmental concerns, and pressured the three governments to justify inaction.²⁰

The inclusion of the environmental side agreement in NAFTA was a novel yet narrow trilateral approach to protect North America’s environment. Chartering an intergovernmental organization, the CEC — with a loosely defined scope of work and with an inexistent authority to sanction public and private stakeholders — led to a disjointed, often bureaucracy-ridden approach to address environmental concerns. Yet, the CEC’s collection of data and research publications along with the citizen submission process are valuable assets that have a greater potential to inform an environmental agenda that recognizes shared responsibilities. The preservation of the CEC in the USMCA coupled with key innovations grants the three countries a new opportunity to collectively reimagine the parameters and processes that define the assessment of government performance and enforcement.

The Strengths of USMCA’s Chapter 24

Although Chapter 24 of the USMCA retained 72 percent of NAFTA’s environmental obligations, a key difference is that it gave the environmental dimension a stronger character by incorporating environmental provisions within the agreement’s main body.²¹ This much-

²⁰ Markell and Knox, “Evaluating Citizen Petition Procedures: Lessons from an Analysis of the NAFTA Environmental Commission,” 2012, 47 TEX. INT’L L.J. 505.

²¹ Laurens, Z. Dove, J.-F. Morin, S. Jinnah, “NAFTA 2.0: The Greenest Trade Agreement Ever?” *World Trade Review*: p. 6.

anticipated chapter strengthens previous environmental governance rules and introduces a substantive amount of issue-specific provisions.

Overall, most of the provisions in Chapter 24 are found in other international agreements.²² Negotiators replicated provisions from the recently negotiated Chapter 20 of the Trans-Pacific Partnership (TPP) to minimize the U.S. Democrats' objections in Congress and provide a broader coverage of environmental issues compared to other free trade agreements. As a result, the USMCA requires each party to maintain environmental impact assessment processes regarding protection of marine habitats from vessel pollution and overfishing; to protect the ozone layer, flora, and fauna; to reach improvements in air quality, prevention of biodiversity loss, and control of invasive alien species; and to promote sustainable forest management. The inclusion of an environment chapter in the main body of the USMCA illustrates how a stronger recognition of the environmental dimension in trade agreements is vital not only for the protection and preservation of the environment but for the region's economic prosperity.

Chapter 24 does not establish mechanisms for country-led environmental initiatives, but it does compel all countries to enforce their domestic environmental laws and to promote greater accountability, public participation, and transparency. The chapter introduces a domestic enforcement standard that further binds the United States, Mexico, and Canada to not weaken domestic environmental laws in order to accommodate trade or investment in the region. The Environment Committee of high-level representatives is in charge of providing information to the CEC on the implementation of environmental commitments and streamlining data collection to evaluate and issue report findings.²³ An increased level of transparency and timeliness is a notable characteristic of the Committee, as the agreement requires that all its decisions and reports are available to the public, unless the Committee decides otherwise.²⁴ Under NAFTA, reports were not accessible unless two-thirds of the Council voted to make them publicly available.

The chapter makes the Parties' compliance regarding multilateral environmental agreements (MEAs) subject to Environment Consultations (Article 24.29) or Dispute Settlement (Article 24.32) as long as the complaining Party and the Party in violation are signatories to the relevant MEA. For state-to-state disputes the USMCA adopts a "ladder" practice,²⁵ whereby consultations are the first step if Parties disagree on the interpretation or implementation of Chapter 24. The issue moves up to the Environment Committee if consultations do not solve the dispute. If necessary, the issue climbs up one more rung to ministerial consultations, and the last resource is the USMCA's general dispute settlement regime. This is the only and explicit mention of utilizing the dispute resolution mechanism as a tool to resolve disagreements on

²² Lilliston B, "'New NAFTA' Continues Damaging Climate Legacy," *IATP*, 2018, brief, accessed: 4/01, https://www.iatp.org/sites/default/files/2018-10/2018_10_NewNAFTA_Analysis_ClimatePolicy.pdf. Mertins-Kirkwood, "Updated NAFTA Deal a Profound Failure for Climate Action," *Behind the Numbers Blog*, Oct. 12, 2018, <http://behindthenumbers.ca/2018/10/12/updated-nafta-deal-a-profound-failure-forclimateaction/>. Weber B, "New Trade Deal Doesn't Address Climate Change: Environmentalists," *CTV News*, Oct. 1, 2018, accessed: 4/02, <https://www.ctvnews.ca/politics/newtrade-deal-doesn-t-addressclimate-change-environmentalists-1.4116723>.

²³ The Committee is required to meet within one year of the agreement's entry into force, July 1, 2020 and then convene every two years.

²⁴ USTR Environment Chapter Provision 24.26.

²⁵ Cosbey, "Weighing up the Environmental Cooperation Agreement under the Canada–United States–Mexico Agreement," *Policy Brief IISD*, February 2019, accessed: 3/17/2020, <https://www.iisd.org/sites/default/files/publications/environmental-cooperation-agreement-policy-brief.pdf>.

environmental matters.²⁶ The inclusion of a consultation hierarchical chain of command provides transparency throughout the process to resolve the claim prior to reaching dispute resolution.

Prior to the USMCA, the NAAEC could convene an arbitral panel to resolve such disputes, but one was never formed.²⁷ Moreover, NAFTA's dispute mechanism could be used if a Party considered that another Party was not effectively enforcing their environmental laws.²⁸ The NAAEC's language implied that a Party A would bring a complaint about Party B's violation of Party B's environmental laws, but the USMCA introduces a standard that places the onus on the State, as Party A must uphold its own laws and bring forward a dispute if their own laws are being violated by the trade practices of Party B.

Other notable improvements in the USMCA's Chapter 24 include:

- The CEC's (and ECA's) maintenance of the Citizen Submission Process, which presented an opportunity to update and improve the process and provide greater transparency. The shorter time requirements between the filing of a submission with the Secretariat and the publication of a record than the NAAEC could speed up enforcement in the future. Under NAFTA, the procedure took an average of seven years.²⁹
- A revision of the CEC's mission, mandating that it defines a "Work Program" establishing areas of cooperation between the Parties.
- The maintenance of the Joint Public Advisory Committee (JPAC), which is noteworthy given its past mild yet firm recommendations to reaffirm the Parties' commitments and support the continuance of the citizen complaint procedures.³⁰
- A consideration of the relevance of the environment for indigenous populations, acknowledging their constitutional rights, and pointing out the importance of consulting with them on efforts to enhance environmental protection issues.
- A pioneering provision on gender that mandates the Secretariat "to develop recommendations on how best to consider gender and diversity effects and opportunities in the implementation of the Work Program" (ECA's Article 10.4).
- The centrality of fisheries subsidies, also drawn from the TPP, is a major victory since the World Trade Organization has grappled for over a decade with the issue.

²⁶ Shall a dispute arise, the USMCA mandates the creation of a panel to offer advice or assistance on the matter. Chapter 31 (Dispute Settlement) of the agreement outlines the extensive process for the appointment, function, and dispute resolution process of the panel. Experts preside over the panel who will hear from the parties involved and evaluate the facts related to the dispute, to then present a report with its recommendations to the Environment Committee, rather than the CEC. See the USTR Dispute Settlement Chapter.

²⁷ Cosby.

²⁸ Charnovitz S., "The NAFTA Environmental Side Agreement: Implications for Environmental Cooperation, Trade Policy, and American Treaty-making," *Temple International and Comparative Law Journal* 8 (1994, accessed 07/08/2020): 257, <http://www.worldtradelaw.net/articles/charnovitznaftaenvironment.pdf.download>.

²⁹ Knox J.H., "Fixing the CEC Submissions Procedure: Are the 2012 Revisions up to the Task?" *Golden Gate University Environmental Law Journal* 7 (2013): 81-107.

³⁰ Gantz, David, "The U.S.-Mexico-Canada Agreement: Labor Rights and Environmental Protection," *Rice University's Baker Institute*, Report no.06.13.19. (2019).

Subsidies often promote illegal, unreported, and unregulated (IUU) fishing³¹ and cost approximately US\$15-35 billion per year.³² The inclusion of fisheries in the agreement minimizes the national security threat posed by IUU, since illegal fishing supports illicit trafficking networks, such as narcotics and wildlife.³³

Innovations

Three provisions specifically had never been included before in a free trade agreement: increased enforcement of wildlife trafficking (Article 24.22), an obligation to take measures to prevent and reduce marine litter (Article 24.12), and a trade regime related to food waste (ECA, Article 10), discussed below.

Enforcement of Wildlife Trafficking. The USMCA establishes that Parties shall treat transnational trafficking of protected wildlife “as a serious crime,” carrying a punishment of at least four years of incarceration (Article 24.22).³⁴ The inclusion of this provision in the chapter is linked to the 2013 resolution by the United Nations (UN) Economic and Social Council (ECOSOC) to prevent and respond to the illicit trafficking of flora and fauna. The 2013 ECOSOC resolution lists 15 recommendations for member-state consideration to combat and prevent the illegal trade of protected wildlife.³⁵

Marine Litter. The USMCA is the first trade deal to establish that its signatories must “take measures to prevent and reduce” marine plastic pollution (Article 24.12) but does not mention explicit measures, much less how they would be funded. This provision is drawn from the United Nations Environment Program (UNEP) reporting and measures to address domestic waste and sea pollution.³⁶ A direct antecedent of this provision’s inclusion in the USMCA was Canada’s endorsement of the Ocean Plastics Charter in the 2018 G7 Summit (alongside France, Germany, Italy, and the United Kingdom). Notably, the United States (and Japan) abstained from adopting the charter.³⁷ Marine litter, of which 80 percent is plastic, affects at least 800 species worldwide.³⁸ It has many forms, including worn out fishing gear and vessels, abandoned recreational equipment, metals, rubber, paper, and textiles. The USMCA’s broad language

³¹ Global Ocean Commission, Report, “The Future of Our Ocean Next steps and Priorities,” 2016.

³² Bahety, S. Mukibi, J., “WTO Fisheries Subsidies Negotiations: Main Issues and Interests of Least Developed Countries,” *CUTS International*, Geneva, 2017.

³³ Hearty, G., “Fishing for Success: Using Trade Agreements to Enhance National Security,” *Center for Strategic and International Studies*, July 20, 2020.

³⁴ As defined in the United Nations Convention on Transnational Organized Crime.

³⁵ The resolution draws this list from the Convention on International Trade in Endangered Species of Wild Fauna and Flora. See “Resolution 2013/40: Crime prevention and criminal justice responses to illicit trafficking in protected species of wild fauna and flora,” *ECOSOC*, 25 July 2013, accessed 4/25/2020, <http://tinyurl.com/y95ptrny>.

³⁶ For example, Resolutions 1/6 and 2/11 urge States to manage, prevent and clean-up plastic debris in the marine environment. See Morin et al., 2017: 378-380, and “Resolution 1/6. Marine plastic debris and microplastics”, *United Nations Environment Program*, 2014, accessed February 1, 2019, <http://tinyurl.com/y2q52nbs>; “Resolution 2/11. Marine plastic litter and microplastics,” *United Nations Environment Program*, 2016a, “Marine plastic debris and microplastics – Global lessons and research to inspire action and guide policy change,” *United Nations Environment Program*, 2016b, accessed 2/01/2020, <http://tinyurl.com/y55gemkf>.

³⁷ The Government of Canada’s Ocean Plastics Charter outlines a framework that business, government, and civil society may adapt “to ensure plastics are designed for reuse and recycling.” The Charter identifies five target areas to institute “a resource-efficient lifecycle management approach to plastics in the economy.” See “Ocean Plastics Charter,” *Government of Canada*, 2021, accessed 04/24/2020, <https://www.canada.ca/en/environment-climate-change/services/managing-reducing-waste/international-commitments/ocean-plastics-charter.html>.

³⁸ Secretariat of the Convention on Biological Diversity, “Marine Debris: Understanding, Preventing and Mitigating the Significant Adverse Impacts on Marine and Coastal Biodiversity,” *CBD*, Technical Series No. 83, 2016, accessed 02/03/2020, <https://www.cbd.int/doc/publications/cbd-ts-83-en.pdf>.

regarding marine litter may serve as a catalyst for North America to come together to find innovative solutions to address the issue.

Food Waste. The ECA's Article 10.2 establishes that the Work Program "may include" cooperative activities "promoting sustainable production and consumption, including reducing food loss and food waste." The provision follows a report by the CEC that evidences an annual food loss per capita in Canada and the U.S. of 396 kg and 415 kg, respectively.³⁹ Reducing food waste reduces emissions from methane, a greenhouse gas (GHG), therefore adding to the fight against climate change. According to the intergovernmental Panel on Climate Change (IPCC), this sector caused between 8 and 10 percent of global emissions from 2010 to 2016.⁴⁰

Beyond Chapter 24

As others emphasize, provisions on energy and investment are as significant for environmental governance as Chapter 24's rules establishing environmental provisions.⁴¹ This section discusses issues throughout the USMCA that will directly impact environmental issues.

Investor-State Dispute Settlement

The investor-state dispute settlement (ISDS) is an arbitration mechanism that allows companies and private investors to pursue claims against a host State when it allegedly breaches a standard in the agreement. The ISDS mechanism is a means of settling legal disputes between foreign investors and host nations, which in turn encourages foreign investment by signaling the existence of a predictable and impartial system of arbitration and avoids inter-State conflict.

NAFTA's Chapter 11 provided protection for signatory-country investors in other signatory countries and did not require that investors exhaust domestic court system remedies before bringing the arbitration forward (Article 1121). ISDS procedures have raised suspicions about advancing business' interests over the Partner States' health and environmental regulations. The last decades saw much public and academic criticism regarding the way that this system was used under NAFTA to sue governments and challenge domestic environmental or resource management regulations to favor investors invoking the national treatment standard (Article 1102) and minimum standard of treatment obligation (Article 1105).⁴²

NAFTA ISDS cases show the risks of prioritizing investor protections at the expense of environmental governance, which undermined environmental conservation, justice, and legitimate domestic attempts to enforce regulations. Examples include the curtailment of climate action in Alberta and disregard for environmental impact assessments and ecosystem's

³⁹ "Characterization and Management of Food Loss and Waste in North Commission for Environmental Cooperation", CEC, 2017, accessed 02/03/2020, <https://tinyurl.com/y47d85hb>.

⁴⁰ "Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems," IPCC, 2019.

⁴¹ Vaughan S, "USMCA Versus NAFTA on the Environment," *IISD*, 2018. Tienhaara, K., "Regulatory Chill in a Warming World: The Threat to Climate Policy Posed by Investor-State Dispute Settlement," *Transnational Environmental Law* 7, no. 2 (2017): 229–50.

⁴² Sinclair S, "Canada's Track Record Under NAFTA Chapter 11: North American Investor-State Disputes to January 2018," *Canadian Centre for Policy Alternatives*, 2018. McCarthy J, "Privatizing Conditions of Production: Trade Agreements as Neoliberal Environmental Governance," *Geoforum* 35, no. 3 (2004): 327–41. Nolan M, "Challenges to the Credibility of the Investor-State Arbitration System," *American University Business Law Review* 5 (2015): 429–46. Allen, L. J., "The Environment and NAFTA Policy Debate Redux: Separating Rhetoric from Reality," *William & Mary Environmental Law and Policy Review* 42, no. 965 (2018): 984-985.

protection in several Canadian provinces and in Mexico, among other violations of environmental rights. Furthermore, Chapter 11 provided incentives for States to refrain from enhancing regulations to avoid litigation and potential losses, as it created incentives for investors to obtain high payouts from ISDS arbitration.⁴³ In this sense, NAFTA gave the Parties an avenue to escape environmental policies by offshoring production to countries with weaker climate standards.

USMCA's Chapter 14 on Investment amended the ISDS so that the three Parties will only be able to bring claims against each other arising out of unfair trade practices. While Canadian and Mexican investors will rely on their rights under the TPP (Chapter 9), Annex 14-D lays out a limited ISDS that applies to the U.S. and Mexico, whereby investors from both countries can claim cases of direct expropriation or for violation of national treatment or most favored nation obligations. To follow this course of action, investors must have attempted to resolve the issue via domestic court or administrative proceedings first. Annex 14-D limits the scope of ISDS between both countries to five economic sectors:

- Oil and natural gas
- The supply of power generation
- The supply of telecommunications
- The supply of transportation services
- The ownership or management of roads, railways, bridges, or canals

Investors are not required to exhaust domestic options as a first step in these five economic sectors, given that it was a priority for the U.S. and multinational energy companies to be able to resort to the ISDS in the recently liberalized energy sector in Mexico, especially after the election of Mexican President Andrés Manuel López Obrador, who has been traditionally opposed to private investments.

Canada, which had been looking to reform or withdraw from Chapter 11 of NAFTA for some time, did not join Annex 14-D, while Annex 14-E eliminated ISDS between the U.S. and Canada three years after the Agreement came into force. Canada has been subject to more claims under NAFTA than the U.S. or Mexico, and lost eight cases, while the U.S. has never lost one.⁴⁴ Since 1994, Canada has been a defendant in over 40 ISDS appeals by foreign companies claiming that Canadian policies violated their rights. About 60 percent of the appeals challenged environmental regulations or resource management policies.⁴⁵ Among the disputes that have been challenged under NAFTA's ISDS procedures are regulations phasing out coal-based electricity generation, banning radioactive waste disposal at sea, and preventing the export of toxic waste.⁴⁶

In sum, once fully in force, Chapter 14 of the USMCA will prevent United States investors in Canada (and Canadian investors in the United States) from initiating a direct arbitration proceeding against the host State that may challenge the protection and improvement of

⁴³ Tienhaara.

⁴⁴ García Barragán et al., "The New NAFTA: Scaled-Back Arbitration in the USMCA," *Journal of International Arbitration* 36, no. 6. (2019) : 739–754.

⁴⁵ *Canadian Centre for Policy Alternatives*, 2019.

⁴⁶ Laurens et al., 2019.

environmental standards. Still, Chapter 28 (Article 28.14) contradicts this limitation, giving “any interested person” the opportunity to suggest, modify, or repeal regulations if they are technologically outdated, affecting health, welfare, or safety of society. The added level of transparency and openness from government on regulatory issues is a plus as environmental groups or citizens may use this opportunity to better advocate and change regulations that harm the environment. Yet, it also gives ample space for investors to argue that regulations are burdensome and impact trade negatively.⁴⁷ July 2026, the USMCA’s first review period, may provide a glimpse into how advocacy and private-sector groups’ leverage of the chapter’s contradictory measures affect environmental governance in the region.

A Necessary Note on Energy

There is ample evidence of the relationship between climate change and carbon dioxide (CO₂) emissions that result from burning fossil fuels for energy production and consumption. A report of the International Energy Agency (IEA) pointed to CO₂ emissions from coal as the single largest source of global temperature increase — over 0.3°C of the 1°C increase in annual temperatures above pre-industrial levels.⁴⁸

The USMCA eliminated the “energy proportionality clause” established under Article 605 of NAFTA, which was binding on the U.S. and Canada. The provision had significant environmental implications: it required Canada to export to the U.S. the same proportion of domestic energy production every year based on a three-year average.

On the one hand, the clause meant that Canada could not reduce U.S. access to Canadian oil, natural gas, coal, and electricity without a corresponding reduction in its own access. On the other, if Canadians reduced their reliance on fossil fuels and companies increased the proportion of energy exported, then the obligation to keep producing fossil-based energy would grow. This rule would “likely hinder, postpone, or even prevent [...] phasing out the production of oil and natural gas and the transition to a low-carbon future.”⁴⁹

As the production of oil and natural gas is Canada's largest and most emission-intensive source of GHG emissions, the elimination of the provision in the USMCA removes an obstacle in the fight against climate change and could potentially contribute to achieving Canada’s commitments under the Paris Agreement. Although Canada is not legally bound to maintain these exports, trends indicate that Canadian total crude oil exports have been steadily growing.

In Mexico, despite the ratification of the USMCA, the future of renewable energy is uncertain under President López Obrador. In an effort to strengthen the State’s role in the energy sector, his administration continues to subsidize State-owned oil firm Pemex and power utility Federal Electricity Commission (CFE), arguing that the previous government skewed the market in favor of private companies, which largely invested in renewable generation. Given that Pemex and CFE are fossil-fuel intensive assets, this agenda will not only disincentivize investment in

⁴⁷ Tienhaara, K., “NAFTA 2.0: What are the implications for environmental governance?” *Earth System Governance* 1 (2019): 2.

⁴⁸ “Global Energy & CO₂ Status Report 2019,” IEA, 2019, <https://www.iea.org/reports/global-energy-co2-status-report-2019/emissions#abstract>.

⁴⁹ Laxer G, “Escaping Mandatory Oil Exports: Why Canada needs to dump NAFTA’s energy proportionality rule,” *The Council of Canadians*, 2018. For a comprehensive analysis of how the proportionality clause creates distortionary effects, see Laxer and Dillon, “Over a Barrel: Exiting from NAFTA’s Proportionality Clause,” *Parkland Institute*, 2008; and Hughes, “Eastern Canadian Crude Oil Supply and Its Implications for Regional Energy Security,” *Energy Policy* 38, no. 6 (2010): 2692–99.

renewable energy, but will bring about lengthy litigation with private firms, as it effectively contradicts the non-discriminatory spirit of the USMCA.⁵⁰

Missed Opportunities of Chapter 24 and Recommendations Moving Forward

Chapter 24 does not refer to the learned lessons from the past 25 years under NAAEC or to the scientific advancements that show the unequivocal progression of climate change, its man-made origins, and the urgency to address it — which is the USMCA’s most glaring omission. The treaty could have been a significant force to reduce emissions. For example, it could have required the Parties to adhere to the Paris Agreement and report implementation, set increasingly ambitious commitments, establish mechanisms to finance adaptation, or hold corporations accountable for their GHG emissions. The USMCA does not include any mention of fossil fuel subsidies, which delay the transition to a low-carbon economy and fails to mention the production gap, that is, the necessary fossil fuel production cut to meet climate goals.⁵¹

The Chapter highlights the importance of trade and investment in environmental goods and services, such as “clean technologies” and promotes the use of carbon storage — all in a non-binding section. However, it fails to set any concrete measure to incentivize investment in areas such as green infrastructure or support renewable energy supplies, and it overlooks important concepts and objectives in the fight against climate change, such as the energy transition, low or zero carbon economies and technologies, and adaptation to protect vulnerable communities.⁵²

The United Nations designated 2020 as the start of “The Decade of Action” to address climate change, which poses challenges not only to trade, and development, but to quality of life on Earth.⁵³ Negotiators did not rise to the task of not only addressing but recognizing the escalation of climate change’s impact on trade. The turn to protectionism in the U.S. during the Trump Administration and the former U.S. president’s denial of the existence of climate change loomed large over the renegotiation of NAFTA. As anticipated, Chapter 24 does not mention the United Nations Framework Convention on Climate Change, the Paris Agreement, or any commitment related to emission reductions.⁵⁴

The ECA and Chapter 24 in effect set out an array of activities for cooperation and mechanisms absent in the NAAEC. Yet, the formal inclusion of such activities reflects already existing practices and does not make implementation binding. The chapter’s pioneering provisions are

⁵⁰ Stevens D, “Mexico: AMLO’s Backwards Move on Fossil Fuels,” *AULA Blog*, 2021, <https://aulablog.net/2021/03/03/mexico-amlos-backwards-move-on-fossil-fuels/>.

⁵¹ Steenblik et al., “Fossil fuel subsidies and the global trade regime,” in Jakob Skovgaard, Harro van Asselt (Eds.), *The Politics of Fossil Fuel Subsidies and Their Reform*, (Cambridge University Press, 2018).

⁵² The CCE’s 2015-2020 Strategic Agenda did include three items directly addressing climate change: mitigation and adaptation to climate change, ecosystem protection and green growth and sustainable communities, a radical change in the Secretariat’s work agenda. See Sánchez, 2020: 38.

⁵³ “Climate action ‘both a priority and a driver of the decade’: Guterres,” *UN News*, 2020.

⁵⁴ This may be explained given that the U.S.’s TPA-2015 forbids the country from including obligations to reduce carbon emissions in its preferential trade agreements. See Morins and Rochette, “Transatlantic convergence of preferential trade agreements environmental clauses,” *Business and Politics* 19, no. 4 (2017): 621-658.

rather vague, as it does not provide guidelines for specific, measurable commitments and explicit prohibitions.⁵⁵

Whereas the CEC has the potential to focus on consequential outcomes, it lost its ability to produce unsolicited reports and will likely remain, as it has been traditionally, underfunded, which casts doubt on whether the updates will revitalize environmental cooperation.⁵⁶ The budget for the CEC has yet to be decided, as it is the job of the Council, but it is likely to be lower than it was under NAFTA.

Indeed, the USMCA mentions more MEAs than NAFTA, but it mentions fewer MEAs than other U.S. Preferential Trade Agreements negotiated after 2007.⁵⁷ Specifically, it fails to include MEAs that the U.S. government agreed to incorporate in free trade agreements in the May 10th, 2007, Bipartisan Agreement on Trade Policy.⁵⁸

Concerning procedural issues, the fact that environmental disputes are subject to the settlement mechanism is in theory a major step forward because it makes environmental provisions enforceable via trade sanctions. However, this mechanism has not worked well for trade disputes, as it has allowed the Parties to delay considerably the proceedings by failing to appoint rosters of panelists.⁵⁹

Some argue that NAFTA remains the most innovative preferential trade agreement because it created 46 new environmental provisions.⁶⁰ For example, NAFTA included more provisions related to dispute settlement than USMCA, given that the NAAEC incorporated a specific dispute settlement mechanism in case that a Party failed to enforce domestic laws.⁶¹

Approximately 96 percent of global trade agreements have two or fewer innovations, whereas the USMCA included the three mentioned above.⁶² The stark similarity between the USMCA and the TPP contributes to consistency across trade agreements yet stands in the way of creativity to advance environmental protection.

The USMCA's pioneering provision regarding food waste is particularly weak. The other two on wildlife trafficking and marine pollution include the term "shall," which implies some degree of commitment. In contrast, the reduction of food waste is an area where the Parties "may" consider cooperation.

The caveat about sovereignty in Chapter 24 is stronger than in the NAAEC, as it includes the right to exercise discretion in enforcement, priority-setting, and resource-allocation, among others (Article 24.3). The chapter leaves to the discretion of each party the form and extent of

⁵⁵ TEPAC, 2018.

⁵⁶ Benevides, "Does the USMCA Offer Hope for a Revitalized Commission for Environmental Cooperation?" *Canadian Environmental Law Association Blog*, 19 October 2018; and Tienhaara, 2019.

⁵⁷ Laurens et al., 2019.

⁵⁸ Such as the Inter-American Tropical Tuna Convention, the Ramsar Convention on Wetlands, the International Whaling Convention, and the Convention on Conservation of Antarctic Marine Living Resources.

⁵⁹ Gantz, 2019.

⁶⁰ Morin et al., 2017; Morin and Jinnah S, "The Untapped Potential of Preferential Trade Agreements for Climate Governance," *Environmental Politics* 27, no. 3 (2018): 541–65.

⁶¹ Consultations, an arbitral panel, a monetary enforcement assessment, and a suspension of benefits.

⁶² Laurens et al., 2019.

protection, and the commitment to enforce environmental laws only applies if they do not discourage trade or investment. For example, regarding corporate social responsibility and responsible business conduct, the USMCA does not commit Parties beyond encouraging enterprises “to adopt and implement voluntary best practices” (Article 24.13). Similarly, whereas the USMCA encourages Parties to implement specific MEAs, it does not require to ratify or implement agreements.

Finally, the USMCA does not acknowledge the precautionary principle. In the European Union (EU), this principle allows the EU or its member States to act against a risk before this risk has been scientifically proven.⁶³ The principle first appeared in the 1992 Rio Declaration signed by the USMCA Parties except the U.S., which did not sign on appealing to the need of a “science-based approach.”⁶⁴

Given that the Parties have the capacity to use Chapter 24 as a framework to accommodate larger-scale initiatives that strengthen environmental cooperation in the region, in what follows, we identify two areas with untapped and promising potential, institutional coordination and the electrification of transport.

Institutional Leverage

The scope of work and mechanisms utilized by two institutions — the North American Development Bank (NADB) and the International Joint Commission (IJC) — may facilitate the implementation of the USMCA’s environment chapter.

The IJC is a bilateral institution established to manage the shared lake and river systems and was charged with approving projects that affect water flows between Canada and the United State.⁶⁵ It oversees particularly critical projects that might adjust the natural water levels, disturb wildlife, and affect drinking water intake and hydroelectric power generation. However, given its position as an oversight body, there are no investments associated with the Commission, which only steps in to resolve disputes when one party claims that a project causes environmental damage. Both governments may consider enhancing the IJC’s faculties as well as committing economic and human resources to provide it with an actionable set of mandates beyond supervision.

On the other hand, the United States and Mexico have demonstrated their commitment to increase the capital of the NADB in the last five years. According to the Congressional Research Service (CRS), former U.S. president Barack Obama and Mexican president Enrique Peña Nieto agreed to double the NADB’s capital base, from \$3 to \$6 billion dollars in 2015.⁶⁶ Following the long, tense negotiations between the U.S. Congressional leadership and the Trump

⁶³ Stoll et al., “CETA, TTIP and the EU precautionary Principle. Legal analysis of selected parts of the draft CETA agreement and the EU TTIP proposals.” June 2016.

⁶⁴ See principle 15 of the Rio Declaration, Accessed 4/03/2020, http://www.unesco.org/education/pdf/RIO_E.PDF; “Precautionary Principle Wednesday, August 4, 2010,” U.S. Chamber of Commerce, 2010, accessed 4/05/2020, <https://www.uschamber.com/precautionary-principle>.

⁶⁵ The IJC serves as an advisor and investigative resource to both governments; its authority is limited to issue orders of approval, which place conditions on projects and how they operate. See “Annual Project Summaries,” *ICJ*, 2020, <https://ijc.org/en/what/iwi/projects>.

⁶⁶ “The North American Development Bank,” *Congressional Research Service (CRS)*, June 18, 2020, <https://crsreports.congress.gov/product/pdf/IF/IF10480>.

Administration to schedule a ratification vote, the USMCA implementation bill (H.R. 5430) that was signed into law on January 29, 2020, partially increased the bank's capital.⁶⁷

We identify that the IJC and the NADB could push for a dual bilateral approaches to address and fund cross-border environmental projects. The governance structure and funding mechanisms of both institutions may inform how Canada, Mexico, and the United States create an environmental cooperation task force with a focus on identifying and funding infrastructure projects that address broader, regional environmental issues. As the Environment Committee looks to schedule its inaugural meeting, it should consider evaluating how to reallocate capital towards strengthening these two key institutions.

Potential for Electrification

As low-carbon technologies continue to develop and consumer choices keep reflecting market trends and concerns about fossil fuel consumption, a growing share of the North American economy will rely on low or zero carbon electricity to fuel cars, power industrial processes, and heat homes and businesses. The USMCA provides a timely avenue to face this challenge, given that electrification could considerably increase electricity demand and amplify the already significant need for modern and reliable transmission and distribution infrastructure.

North America has the potential to lead the energy transition. While it does not include climate provisions, the USMCA's language does allow for ambition and does not explicitly prevent further cooperation on the electrification of different systems. Such potential could be developed if forward-thinking leaders incentivized transitions that linked energy security and reliability to a green recovery from the global pandemic.

In each of the three USMCA signatory nations, transportation constitutes a major source of GHG emissions, airborne pollutants, and the toxification of groundwaters. The USMCA provides a framework for reducing those harms while expanding industry and generating jobs, given that it explicitly seeks to "[...] encourage future production of new energy and autonomous vehicles," a key component of which will be the development of "advanced batteries." The ways and means to enable this are not specified.

The treaty allows for duty-free imports of PEVs so long as a percentage of the parts of those automobiles are produced within the three signatory nations. By 2023, that requirement will reach 75 percent, which will remain the minimum percentage going forward. While the inclusion of advanced batteries in the USMCA (for electric, hybrid, and conventional cars) indicates that the Trump Administration intended to incentivize domestic production, the transition implies a long process that is also contingent on international factors. Competition with China, which intends to dominate the advanced battery industry may partially spur regional production

⁶⁷ "The United States-Mexico-Canada Agreement Implementation Act", 2020, <https://www.congress.gov/bill/116th-congress/house-bill/5430?q=%7B%22search%22%3A%5B%22USMCA%22%5D%7D&s=10&r=1>.

capacity, yet North America is lagging. Any strategy must include investments in research and development, new capacity, and production of and demand for PEVs.⁶⁸

Furthermore, the change of administration in the U.S. in January 2021 presented a more optimistic scenario. President Joe Biden pledged to rejoin the Paris Agreement, to make electricity production carbon-free by 2035, and to achieve net zero emissions by 2050. His multi-pronged proposal includes restoring the full electric vehicle tax credit, using the federal government procurement system to reach 100 percent zero-emissions vehicles, as well as the collaboration with governors and mayors to deploy public charging outlets by the end of 2030.⁶⁹

We suggest that the three USMCA national partners empanel an independent commission to propose a tri-national strategy to speed the development of efficient and affordable advanced batteries and PEVs. We also suggest the prior formation of an ad-hoc, multi-stakeholder committee to inform the commission's deliberations, provide reliable background information, and suggest agenda items.

The forthcoming years — especially in the context of the economic recovery from the COVID-19 pandemic — will be crucial to define whether investments are directed not only to the electrification of transportation but to forward-looking infrastructure so that the grid is able to support the transition to low-carbon economies in North America. In a future automotive world, electric utilities and grid planners will bear the greatest underlying challenges of how to manage grid impacts, especially peak charging demand, as well as how to efficiently set up charging locations. To be met, these challenges require decisive and visionary leadership from three governments.

Conclusion

The inclusion of an environment chapter in the United States-Mexico-Canada Agreement further solidifies the linkage of trade and the environment in North America. Further, subjecting trading partners to the same dispute settlement mechanism to resolve failures to enforce environmental laws is a new, revolutionary characteristic of 21st century trade agreements.

This chapter listed Chapter 24's merits, such as the provisions on marine litter prevention, wildlife protection, and food waste management, which in turn reflect growing international attention to this specific set of issues. However, the greatest environmental strengths of the USMCA are outside Chapter 24: phasing out the investor-state dispute settlement mechanisms and eliminating altogether the energy proportionality clause. The change in the ISDS mechanism may alter trade and investment relations in a way that results in greater environmental protection and stronger environmental governance in North America, while the elimination of the proportionality clause may incentivize and speed up a process of decarbonization in the Canadian energy sector. In contrast, regulatory disputes and an increased government investment

⁶⁸ Reinsch W.A. et al., "The Impact of Rules of Origin on Supply Chains USMCA's Auto Rules as a Case Study," *CSIS*, April 2019.

⁶⁹ "The Biden Plan for a Clean Energy Revolution and Environmental Justice," 2020, <https://joebiden.com/climate-plan/>.

in fossil fuel energy sources in Mexico curtails expectations about decarbonizing the energy sector.

However, we also argued that the USMCA's shortcomings surpass its innovative provisions and the detailed character with which it discusses environmental issues. Because of the politically fraught trade diplomacy, negotiators missed the opportunity to explicitly address climate change, as well as serious concerns like fossil fuel subsidies.

Finally, we made two recommendations. First, to strengthen, coordinate and increase funding for existing institutions such as the NADB and the IJC. Second, to pursue the electrification of transport as an avenue of cooperation to speed up a low-emission future lessening dependence on fossil fuels. It is in the hands of visionary leadership in the three countries to devise and execute forward-looking policies and investments. The consummation of a sustainably prosperous North American region in the next decade rests on the creation of a nimble, regional approach that mitigates environmental challenges and maximizes opportunities presented by continent-wide free trade.