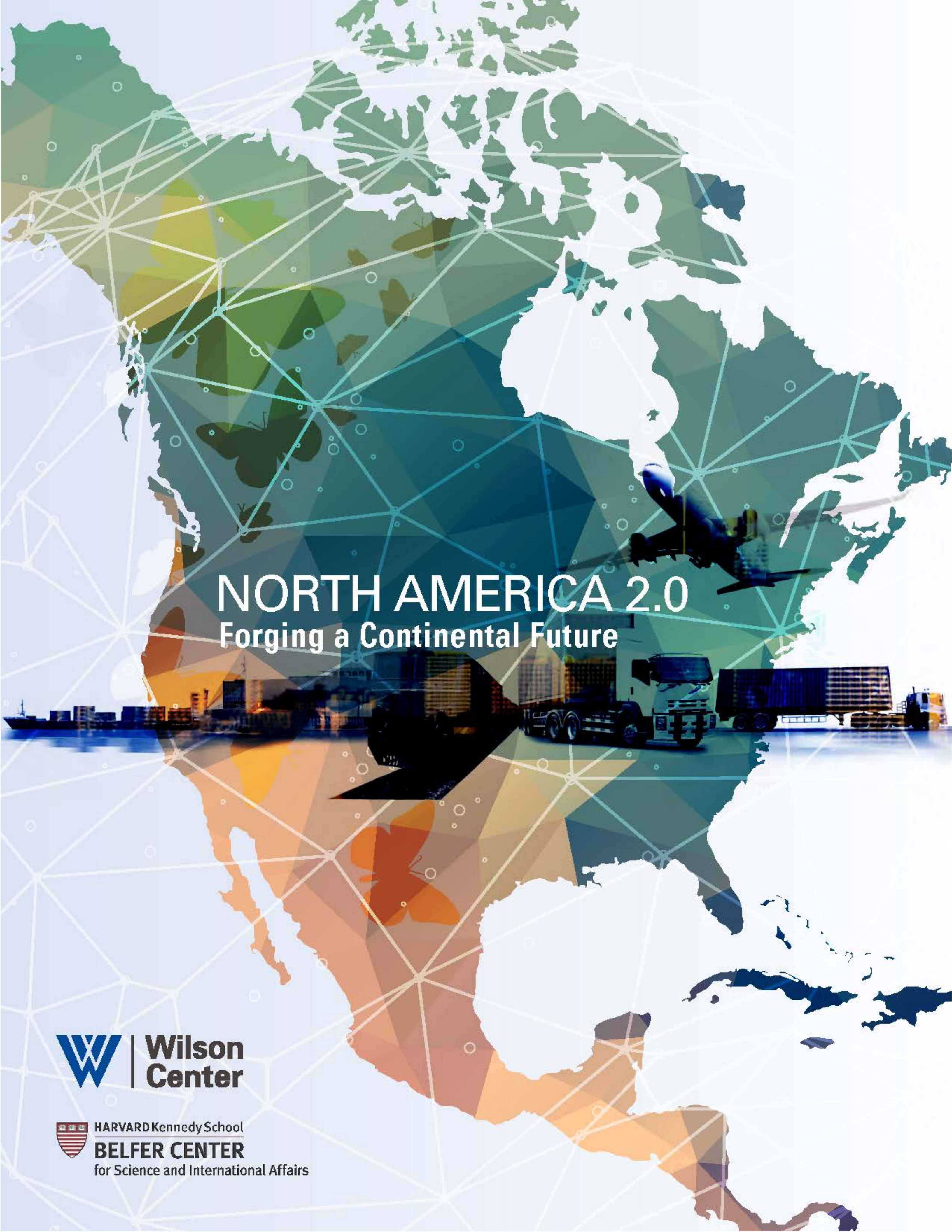
NORTH AMERICA 2.0
Forging a Continental Future



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NORTH AMERICA, INTERRUPTED: TRADE, POLITICS, AND A STUNTED CONTINENTAL VISION

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January 2022
Working Paper*

This working paper will be published as a chapter in the forthcoming book, *North America 2.0: Forging a Continental Future*.

North America, Interrupted:
Trade, Politics, and a Stunted Continental Vision

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Trade connects the North American continent. It has not only been a key driver in the growth of cross-border relationships between businesses, people, and governments across the United States, Canada, and Mexico, but it has also shaped them. With over $1 trillion in annual merchandise trade, North America accounts for 14% of total world merchandise exports. Notably, 50% of North American exports stay within the region.[1] The deepening of our trilateral trading relationship began with the entry into force of the North American Free Trade Agreement (NAFTA) in 1994, bringing almost all tariffs to zero, and opening up opportunities for investment.

While we have witnessed tremendous growth in trade under NAFTA, the world around us has changed dramatically since the pact was negotiated. Asia is now the fastest growing region, and has significantly closed the gap with Europe in the last decade in terms of the value of total regional merchandise trade. The Obama administration was cognizant of this trend, and its response was to negotiate the Trans Pacific Partnership (TPP) agreement (renamed the Comprehensive and Progressive Agreement for Trans Pacific Partnership) to mark a pivot to Asia and to counter China's expanding influence in the region. But the TPP was also a means to update NAFTA. The Trump administration, however, withdrew the United States from the TPP, and pursued a new set of trade priorities. One of these priorities was to renegotiate NAFTA.

Since NAFTA was signed, nearly every candidate for the U.S. presidency made taking a fresh look at NAFTA a part of their campaign, but Trump perhaps went furthest in demonizing the deal, once referring to it as "the disaster called NAFTA."[2] Then, in 2017, he made good on his promise to renegotiate it. For long-time NAFTA watchers, this was seen as another opportunity to update the agreement and to include many of the innovations introduced by the TPP into the fold, to fix state-to-state dispute settlement, and to correct NAFTA's institutional deficit. However, the "improvements" the Trump administration wanted were not so much focused on modernization, but rather on attempting to bring back a bygone era of U.S. manufacturing employment with a renewed focus on industrial policy. Though manufacturing employment has declined, in part due to automation, U.S. manufacturing productivity remains exceptionally high. And while most Americans—about 70% of all non-farm payroll employees—work in the services sector, the administration's policy focused almost entirely on manufacturing.[3]

The negotiations that culminated in the newly named United-States-Mexico-Canada Agreement (USMCA) brought the challenges and weaknesses of NAFTA that North American scholars have

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[1] World Trade Organization, *World Statistical Review 2019* (Geneva: World Trade Organization, 2019), https://www.wto.org/english/res_e/statis_e/wts2019_e/wts2019_e.pdf.

[2] Donald Trump, "Remarks in Monessen, Pennsylvania," *C–SPAN*, video at 36:26, June 28, 2016, https://www.c-span.org/video/?411870-1/donald-trump-delivers-remarks-us-economy.

[3] "Table B-1. Employees on Nonfarm Payrolls by Industry Sector and Selected Industry Detail," *U.S. Bureau of Labor Statistics*, April 2, 2021, https://www.bls.gov/news.release/empsit.t17.htm.

long known back to the surface. NAFTA was a fundamental driver of regional integration in North America, but it was never enough. It was built on two bilateral relationships that have been consumed by two defining forces—asymmetry and ambivalence. And one of the largest shortcomings of NAFTA was what it failed to imagine, resulting in an institutional deficit that has hampered efforts at trilateral cooperation.4 While the USMCA managed to restore state-to-state dispute settlement, it completely ignored the challenges of continental governance and collaboration. What we are left with is a "new" NAFTA that moves the region backwards instead of forwards, and cements dual bilateralism as the standard operating procedure for U.S. relations with its two neighbors.

This chapter examines the renegotiation of NAFTA, and explains why the changes are consequential for the future of North American integration. Focusing on a few policy changes within the USMCA, I elaborate why it is less of a NAFTA 2.0 and more of mixed bag of updates, and in some cases, a step backwards. Despite this, I ask whether the new status quo has permanently interrupted North American integration, or if there is hope for a reinvigorated continental vision. As Vice President, Joe Biden articulated hope for a continental future that would make North America a competitive region. I outline ways in which that vision can be realized. I conclude that while North America has suffered a setback, what binds this continent is larger than any single president. In the end, the persistent challenge is building a more resilient region that can withstand political disruption.

NAFTA, the Bad Word

Canada, Mexico and the United States have a relationship that is characterized by two major forces: asymmetry and ambivalence. Both are closely linked and deeply rooted in the unique historical experiences of all three countries, which have shaped the values and attitudes that each state holds towards its neighbors and the world.[5] A constant thread throughout our shared history is the economic and political power of the United States, which hangs over every policy decision on the continent. Power has undoubtedly shaped the United States' approach to its region, often opting for dual bilateralism instead of a continental vision. This, in turn, has colored its partners responses, as each country vies for attention in its priority areas. It is this reality that shaped the original NAFTA negotiations, which, while cutting-edge at the time, reflected a careful balance of the offensive and defensive interests of all three parties.

But NAFTA was also the product of the convergence of ideational processes and domestic political interests that reflected new economic realities and a unique political opportunity.[6] What emerges through all of this is a region that was beginning to take shape. Negotiating NAFTA led to the

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[4] Simon Lester and Inu Manak, "Fixing NAFTA's Institutional Deficit," *International Centre for Trade and Sustainable Development*, March 7, 2018, https://www.cato.org/publications/commentary/fixing-naftas-institutional-deficit.

[5] For further reading on this topic see Greg Anderson and Christopher Sands, "Fragmegration, Federalism, and Canada-United States Relations," in *Borders and Bridges: Canada's Policy Relations in North America*, ed. Geoffrey Hale and Monica Gattinger, 41-58 (Don Mills: Oxford University Press, 2010); Anthony DePalma, *Here: A Biography of the New American Continent* (Cambridge: The Perseus Group, 2001); Robert A. Pastor, The North American Idea*: A Vision of a Continental Future* (New York: Oxford University Press, 2011); and Jorge I. Domínguez and Rafael Fernández de Castro, *The United States and Mexico*, 2nd ed. (New York: Routledge, 2009).

[6] Stephanie R. Golob, "Beyond the Policy Frontier: Canada, Mexico, and the Ideological Origins of NAFTA," *World Politics* 55, no.3 (April 2003): 375, http://www.jstor.org/stable/25054227.

formation of transnational epistemic communities of business leaders, political elites and civil society actors that began to interact in an entirely new manner. But each country had strong reservations toward any form of "deep" integration, or supranational institutions like those found in Europe, mainly out of fear of sovereignty erosion. This resulted in a limited agreement that failed to include provisions that would lead to deep integration.

Despite its many limitations, NAFTA had a positive impact on North American trade and economic integration. What it lacked in institutions, it made up for in terms of liberalization. NAFTA eliminated virtually all tariffs between Canada, Mexico and the United States, many immediately, with others gradually phased out. Notable areas of reductions were in agriculture, textiles, and automobiles.[7] It provided significant access to the services sectors of the three trading partners, as well as opening up government procurement markets. It also went beyond market access, and included detailed rules of origin, intellectual property rights, foreign investment, dispute resolution, worker rights, and environmental protection, which would later serve as a template for future U.S. trade agreements. Since NAFTA went into force, trade between its partners tripled, hitting the $1 trillion mark in 2011.[8] After its ratification, the Clinton administration set its sights on expanding the accord further south through the Free Trade Area of the Americas (FTAA). However, this initiative failed, and in the backdrop, a backlash towards globalization was growing, most vividly manifested in the 1999 Battle of Seattle protests against the World Trade Organization (WTO). In this environment, there was little appetite to openly promote trade liberalization and deep economic integration.

One of the persistent challenges in conveying the benefits of NAFTA is that it has been oversold by politicians for what it could deliver (as with almost all trade agreements), and the public had little understanding of what was in it. In fact, in three separate public opinion polls that asked respondents whether they favored or opposed NAFTA prior to its entry into force, roughly 22 to 26 percent said they did not know or had not heard enough about it.[9] This confusion has continued. It is partly because the word NAFTA became a bad word politically. In polls conducted in 1999 and 1998 by three firms that asked whether NAFTA had been good for the United States, only 37 to 39 percent of respondents say it was good, 35 to 47 percent say it was bad, and 16 to 25 percent did not know.[10] In 2017, Americans thought NAFTA was beneficial for the United States, but that it favored Mexico more; in addition, a partisan divide began to surface, showing Democrats as more favorable towards NAFTA than Republicans (presumably because Trump was so opposed to it).[11] NAFTA is seen in a much better light in Canada and Mexico, where a 2017 poll found 74 percent and 60 percent support, respectively, compared to 51 percent support in the United

[7] For an overview of NAFTA see, M. Angeles Villarreal and Ian F. Ferguson, "The North American Free Trade Agreement (NAFTA)," *Congressional Research Service*, May 24, 2017.
[8] Villarreal and Ferguson, "The North American Free Trade Agreement (NAFTA)," 11.
[9] "Polls on NAFTA and Free Trade," *American Enterprise Institute*, June 26, 2008, 12 https://www.nftc.org/default/Trade%20Policy/Bilateral_Regional_Trade/6-26-08_AEI_NAFTA_and_FTA_Polls.pdf.
[10] "Public Perceptions and Preferences About Globalization" in Kenneth F. Scheve and Matthew J. Slaughter, *Globalization and the Perceptions of American Workers* (Columbia University Press, 2001), 30, https://piie.com/publications/chapters_preview/109/2iie2924.pdf.
[11] Alec Tyson, "Americans generally positive about NAFTA, but most Republicans say it benefits Mexico more than U.S.," *Pew Research Center*, November 13, 2017, https://www.pewresearch.org/fact-tank/2017/11/13/americans-generally-positive-about-nafta-but-most-republicans-say-it-benefits-mexico-more-than-u-s/.

States.[12] U.S. opposition to NAFTA is odd considering general American viewpoints on trade, which are overwhelmingly positive.[13] Thus, it is not surprising that the Trump administration sought to "rebrand" NAFTA, and in erasing its name, claimed to have tossed out the deal entirely (which of course is not what happened).

NAFTA was therefore a political hot potato, and an easy punching bag on the campaign trail. As Robert Pastor once wrote, NAFTA has always been a piñata for pandering pundits and politicians, even though ample empirical evidence concludes that NAFTA has been a net positive for all three countries.[14] But what Trump did with NAFTA, and by extension, North American trade more broadly, was different. He did not just disrupt integration between the United States and its neighbors, but attempted to reverse it. The next section looks at the NAFTA renegotiation and explains why the latest speed bump on the North American highway was different, and why the consequences of this aberration may be long lasting.

NAFTA Renegotiated

In the lead up to the 2016 U.S. presidential election, candidate Trump railed against NAFTA on the campaign trail—calling it the "worst deal ever negotiated"—and made a promise to reopen it. He was not the first to criticize NAFTA, but he was perhaps the most colorful. The renegotiation of NAFTA began in August 2017, and in a little over a year, the text was signed by the three leaders on the sidelines of the G20 meeting in November 2018. However, following U.S. congressional elections that year, a change in House leadership led Democrats to push for additional changes, particularly on labor and enforcement. These changes were included in a "Protocol of Amendment," which was concluded in December 2019. All three countries then had to ratify the new deal, with Mexico leading the way on this process. The new NAFTA—now the United States-Mexico-Canada Agreement (USMCA)—entered into force on July 1, 2020.

While negotiations proceeded quickly, they were not always amicable. Chrystia Freeland, who played a key role in the negotiations for Canada, did not always seem to rub the Trump administration the right way. She lamented the "winner-takes-all mindset" as well as proposals by the United States to weaken the trade pact.[15] The tensions between the two partners came to a head when Canada was absent from the negotiating table in the summer of 2018, as the United States and Mexico finalized a deal between themselves. Though this was brushed off by Canada as irrelevant, claiming that there were issues the U.S. and Mexico needed to sort out on their own, it was an admission that the trilateral relationship was at one of its weakest points since NAFTA went into force. It was not only a stark acceptance of a dual bilateral, hub-and-spoke model for North American relations, but a realization that the United States truly had no special relationship with any country.

[12] Bruce Stokes, "Views of NAFTA less positive – and more partisan – in U.S. than in Canada and Mexico," *Pew Research Center*, May 9, 2017, https://www.pewresearch.org/fact-tank/2017/05/09/views-of-nafta-less-positive-and-more-partisan-in-u-s-than-in-canada-and-mexico/.
[13] Lydia Saad, "Americans' Vanishing Fear of Foreign Trade," *Gallup*, February 26, 2020, https://news.gallup.com/poll/286730/americans-vanishing-fear-foreign-trade.aspx.
[14] Robert A. Pastor, The North American Idea*: A Vision of a Continental Future.*
[15] John Geddes, "How NAFTA was Saved: The Bitter Fight and the Final Breakthrough," *Maclean's*, October 1, 2018, https://www.macleans.ca/news/canada/how-nafta-was-saved-the-bitter-fight-and-last-minute-recovery/.

U.S. Trade Representative Robert Lighthizer acknowledged that Canada wanted to get the deal done, but that "Canada is not making concessions in areas that we think are essential," and he threatened that they were "running out of time."[16] On reaching an agreement with Mexico, Lighthizer stated that "Today the President notified the Congress of his intent to sign a trade agreement with Mexico – and Canada, if it is willing – 90 days from now."[17] Canada rejoined the talks shortly after, but relations remained strained, with Freeland appearing on an anti-Trump panel called "Taking on the Tyrant," prompting Trump to say: "We're very unhappy with the negotiations and the negotiating style of Canada. We don't like their representative very much." And, as negotiations were down to the wire, he exclaimed that Freeland "hates America."[18]

The fracturing of the talks was evident early on and could have been predicted by examining the general U.S. rhetoric on trade, as well as how it handled its first renegotiated trade agreement with South Korea.[19] In fact, it was clear since Trump took office, where his first trade policy action was to withdraw the United States from the CPTPP, that a new approach to trade was taking shape. It was centered around a key premise—that the United States is being taken advantage of by other countries, and the only way to remedy the situation is to put "America First"—to rebalance trading relationships with greater preference towards the United States, with a particular emphasis on boosting the U.S. industrial base.[20] This approach has led to a heightened preference for bilaterals, which the administration argued gave it more leverage. It also prompted the administration to table a number of ideas that seemed to be non-starters. For example, in the NAFTA renegotiations (which the administration originally suggested it wanted to break into two bilaterals) they proposed a 50% U.S. content requirement for North American autos—a virtual impossibility.

But such a request did not seem so far-fetched if put in context of the administration's general, zero-sum, approach to trade. In fact, this is exactly how the KORUS renegotiation played out. KORUS 2.0 resulted in two sets of outcomes: new issues and side deals, as well as small modifications and amendments. It was concluded rapidly as well. The United States managed to dust off its 1980s trade policy by instituting voluntary export restraints (VERs) on steel, where South Korea agreed to limit steel exports to 70% of the last 3 years' average volume. In exchange, South Korea would receive a permanent exemption from the Trump administration's Section 232 "national security" tariffs on steel.[21] There were also some modifications in autos, to delay

[16] Alan Rappeport, "Trump Trade Negotiator Warns That Canada Is Running Out of Time," *New York Times*, September 25, 2018, https://www.nytimes.com/2018/09/25/us/politics/trade-canada-lighthizer.html.
[17] "USTR Statement on Trade Negotiations with Mexico and Canada," *Office of the United States Trade Representative*, August 31, 2018, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/ustr-statement-trade-negotiations.
[18] James McCarten, "How Trump's Negative Comments about Chrystia Freeland Factored into the New Trade Deal," *Global News Canada*, October 2, 2018, https://globalnews.ca/news/4508358/trump-chrytia-freeland-trade-deal-usmca/; Bob Bryan, "Trump Reportedly Told Donors Canada's Chief NAFTA Negotiator 'Hates America' Days before Sealing the New Trade Deal," *Business Insider*, October 3, 2018, https://www.businessinsider.com/us-canada-nafta-trade-deal-trump-said-chrystia-freeland-hates-america-2018-10.
[19] Simon Lester, Inu Manak, and Kyounghwa Kim, "Trump's First Trade Deal: The Slightly Revised Korea-U.S. Free Trade Agreement," *Cato Institute Free Trade Bulletin* no. 73, June 13, 2019, https://www.cato.org/publications/free-trade-bulletin/trumps-first-trade-deal-slightly-revised-korea-us-free-trade
[20] Simon Lester and Inu Manak, "The Rise of Populist Nationalism and the Renegotiation of NAFTA," *Journal of International Economic Law* 21, no. 1 (March 2018): 151–169, https://doi.org/10.1093/jiel/jgy005.
[21] Scott Lincicome and Inu Manak, "Protectionism or National Security? The Use and Abuse of Section 232," *Cato Institute Policy Analysis* no. 912, March 9, 2021, https://www.cato.org/policy-analysis/protectionism-or-national-security-use-abuse-section-232.

liberalization in that sector. The 25-percent tariff on light truck imports that was supposed to be phased out by 2021 was extended until 2041. While South Korea does not currently export trucks to the U.S., this is because the tariff effectively blocked the possibility of exports.[22] In an interview with CNBC, U.S. Trade Representative Robert Lighthizer explicitly admitted this: "The Koreans don't ship trucks to the United States right now and the reason they don't is because of this tariff," he said. "They were going to start next year – we would have seen massive truck shipments. So, that's put off for two decades."[23]

What happened between South Korea and the United States, though far more low-key in its media coverage, was a harbinger of what was to come. It signified three changes in U.S. trade policy that rang true for the NAFTA renegotiation: first, is the preference for quick deals that show the current administration can get things done, which, by their very nature, are shallow deals; second, securing symbolic "wins" for the United States, where issues are reframed to match the administration's rhetoric (i.e. watering down investor-state dispute settlement to combat "outsourcing"); third, working outside international rules and norms, for instance using threats of withdrawal and unilateral trade measures like Section 232 as a negotiating tactic to extract concessions, trying to undercut dispute settlement, and pursuing VERs. This shift in U.S. trade policy set the stage for the NAFTA renegotiation and all but guaranteed a suboptimal outcome. The United States fully embraced asymmetry in North America, and exploited its posture to interrupt the process of North American integration. While this is not the first time that integration was interrupted, it stands out as a time period of particularly strained relations between the three countries, which will undoubtedly have long lasting consequences. In the next section, I examine what exactly was achieved in the USMCA, and then turn to what this means for the future of the continent.

NAFTA 2.0?

The primary goal for the United States in the NAFTA renegotiation was to "rebalance" its trading relationship with Canada and Mexico. As the Trump administration had been preoccupied with reducing the U.S. trade deficit (even though the vast majority of economists argue that the trade deficit is an accounting measure and not a metric by which to gauge a country's wealth), rebalancing took the form of replacing reciprocity with full-fledged asymmetry. The impetus to find a new balance actually ended up creating more imbalance, uncertainty, and ultimately, discord among the three trading partners. As in NAFTA, Mexico proved the most committed to North America just by virtue of its willingness to concede on a whole host of issues in order to secure the deal. While Canada played tough (likely to assuage its domestic audience and avoid looking like they were being bullied by Trump), Mexico seemed to put the preservation of NAFTA ahead of all other interests. While the full details of the negotiations are unlikely to be known to us until the memoirs of the negotiators are written, what we do know is that the outcome was less than ideal, but it was still better than no deal at all.

So what did we get with USMCA? It would be hard to call the USMCA an entirely *new* NAFTA. In fact, much of what is in the USMCA was carried over from the previous accord. Most

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[22] Joyce Lee, "Hyundai Union Calls Revised Trade Deal with U.S. 'Humiliating'," *Automotive News,* March 27, 2018, http://www.autonews.com/article/20180327/OEM01/180329695/hyundai-union-calls-revised-trade-deal-with-u-s-humiliating.
[23] "Lighthizer: US strikes 3-part trade agreement with South Korea," March 28, 2018, CNBC, video at 9:14, https://www.cnbc.com/video/2018/03/28/lighthizer-us-strikes-3-part-trade-agreement-with-south-korea.html.

importantly, tariff liberalization was unchanged, preserving duty-free access that undergirds the North American market. Essentially, the basic foundation of NAFTA is intact. This section will examine a few highlights of the USMCA, and is by no means a comprehensive assessment. The goal, instead, is to show, through a few examples, how the USMCA departs from NAFTA and may pose some challenges to North American integration going forward.

Given the fact that NAFTA went into force twelve years before the first iPhone was released, it was clearly in need of an update. There are also some elements that "modernize" the deal, most of which have been borrowed from the CPTPP, WTO agreements, and the Canada-EU Economic and Trade Agreement (CETA). One area that was certainly not included in the original deal was digital trade. The Office of the United States Trade Representative defines digital trade as "a broad concept, capturing not just the sale of consumer products on the Internet and the supply of online services, but also data flows that enable global value chains, services that enable smart manufacturing, and myriad other platforms and applications."[24] The CPTPP chapter on electronic commerce served as a basis for negotiations of the USMCA digital trade chapter, and also includes a ban on customs duties for digital products, and anti-spam laws, for instance. But the USMCA also expanded upon a number of CPTPP provisions, leading to stronger obligations, such as barring data localization requirements in additional sectors.[25]

In addition to digital trade, USMCA also updated CPTPP rules on sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT). When NAFTA was negotiated, the Uruguay Round agreements in this case were still being negotiated, so the NAFTA chapters on SPS and TBT were out of date even when they were implemented. The USMCA incorporates these innovations, adds in some WTO-plus provisions from the CPTPP, and goes beyond the CPTPP in some areas as well. For example, the USMCA includes stronger measures on transparency in the development of SPS measures, emphasizes science-based risk assessments, and streamlines processes for determinations of equivalency and regionalization. The TBT chapter, while heavily incorporating principles from the WTO TBT agreement, also goes beyond the CPTPP by including provisions on regulatory alignment and the use of U.S. standards as international standards.

While much of the USMCA borrowed heavily from the CPTPP, there were a few notable differences. A chapter that stands out is that on "Good Regulatory Practices," which goes beyond any similar provisions included in current trade agreements, including what's in the CPTPP (Chapter 25) and the CETA (Chapter 21). In general, the USMCA reads like a blend of the two, with an elaboration on specific obligations. The scope of the chapter reads similarly to the CPTPP, stating that "this Chapter sets forth specific obligations with respect to good regulatory practices, including practices relating to the planning, design, issuance, implementation, and review of Parties' respective regulations."[26] Notably, this encapsulates the entire regulatory process. Again, science-based decision making and transparency figure prominently, issues that the United States has long been concerned about globally, and raised repeatedly at the WTO. It is too early to tell

[24] Office of the United States Trade Representative, "Key Barriers to Digital Trade," March 2017, https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2017/march/key-barriers-digital-trade#:~:text=Digital%20trade%20is%20a%20broad,myriad%20other%20platforms%20and%20applications.

[25] Anupam Chander, "The Coming North American Digital Trade Zone," *Net Politics* (blog), *Council on Foreign Relations*, October 9, 2018, https://www.cfr.org/blog/coming-north-american-digital-trade-zone.

[26] Agreement between the United States of America, the United Mexican States, and Canada (USMCA), article 28.2.2, July 1, 2020.

whether the Good Regulatory Practices chapter will lead to greater regulatory alignment in North America, but the principles are all there. One thing to keep in mind is that this chapter allows for the parties to pursue other avenues for cooperation as well—essentially keeping the Canada-United States Regulatory Cooperation Council (which was established in 2011) intact and on a parallel track. While many see this as a positive thing, it is worth noting that it solidifies the dual bilateral approach, and could lead to Mexico being left out of discussions on alignment in the future.

Another innovation in USMCA was to hollow out investor-state dispute settlement (ISDS). The issue has been hotly debated over the years, as countries have lost significant and headline grabbing disputes. Robert Lighthizer had been vocal about his disdain for ISDS, calling it "risk insurance" for big business, and vowed to eliminate it from NAFTA.[27] While he did not succeed at complete removal, ISDS has been substantially scaled back. There is no general recourse to the mechanism in USMCA. Legacy investments are covered, but subject to consent to arbitration 3 years after USMCA's entry into force. For Mexico, there is coverage for government contracts, including oil and natural gas, although qualified by strict requirements for domestic exhaustion (30 months). Of course, if there are future investment claims between Canada and Mexico, for example, the parties could access this remedy through the CPTPP instead. But for U.S. companies, recourse to ISDS is either nonexistent or severely limited. As this issue has significant bipartisan consensus, it is possible that ISDS will not feature in future U.S. trade pacts.

As noted earlier, the approach of the Trump administration toward the renegotiation of NAFTA featured, as in KORUS, measures to achieve "symbolic wins" to boost the U.S. industrial base. Nowhere is this more evident than in the changes to rules of origin (RoO) for automobiles. Rules of origin were strengthened across the board, but autos became a central focus of the talks, though it is worth noting that the automotive industry is always a key feature of discussions on North American trade. NAFTA required automakers to make cars with 62.5% of components originating in NAFTA countries to qualify for duty free treatment, but USMCA adjusts this to 75% for passenger vehicles and light trucks, to be phased in over a period of 3 years. This is likely to make the North American auto industry less competitive, as it forces sourcing decisions on companies that may not be optimal choices from an efficiency standpoint. Keep in mind that in the CPTPP, regional content for passenger vehicles was reduced to 45% to encourage the use of diverse supply networks. So USMCA is a step backwards here. Upon entry into force, the regional value content will be 66% (for heavy trucks, RVC is 70%). The new auto rules also include a "buy North American" provision that requires vehicle producers to source 70% of their steel and aluminum from North America in the previous year in order for vehicle exports to qualify as "originating," likely targeted at reducing the use of steel from China.

The auto rules also include a novel Labor Value Content (LVC) requirement, which states that vehicle producers must show that a certain percent of their production for passenger vehicles is made by workers making $16 an hour, to be phased in to 40% by 2023. The LVC is a complicated calculation, because the 40% LVC requirement can be made up of 25% high wage material & manufacturing expenditure, 10% R&D expenditure, and 5% assembly expenditure.[28] That said,

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[27] "In His Own Words: Lighthizer Lets Loose on Business, Hill Opposition to ISDS, Sunset Clause," *Inside U.S. Trade*, October 19, 2017, https://insidetrade.com/trade/his-own-words-lighthizer-lets-loose-business-hill-opposition-isds-sunset-clause.
[28] Department of Labor, Rule, "High-Wage Components of the Labor Value Content Requirements Under the United States-Mexico-Canada Agreement Implementation Act," *Federal Register* 85, no. 127 (July 1, 2020):

the overall thrust of the minimum wage requirement is directly targeted at Mexico, which pays its workers much less than Canada and the United States (and does less R&D), and speaks to Amb. Lighthizer's concerns on outsourcing. Overall, the auto RoO are certainly aimed at benefitting U.S. over Canadian and Mexican producers but also focused on reducing foreign components from Asia. If industry is not able to quickly adjust during the implementation period, the higher regional value content threshold will be disruptive to current auto supply chains. Of course, there are likely to be implementation challenges due to the COVID-19 pandemic, which could have additional negative impacts on the North American market. Ultimately, these new auto rules could backfire, as automakers may find it easier to just pay the 2.5% most-favored nation duty than comply with the new rules, increase use of automation, or shift production to lower wage regions, which will actually make U.S. autoworkers worse off in the end.[29]

Auto provisions were not the only new additions on the labor front. In addition to incorporating a labor chapter into the text of the agreement (in NAFTA, a side letter), the USMCA also includes a novel labor enforcement mechanism. This was added into the Protocol of Amendment, after negotiations between House Democrats and Lighthizer, which were completed in December 2019. Democrats pushed for stronger labor enforcement as a condition for putting the pact to a vote, which President Trump was eager to secure well ahead of the 2020 election campaign. Since Democrats could not simply sign off on a deal that the Trump administration had negotiated without making their own mark on it as well, labor became a sticking point, yet oddly enough this time, a Republican administration was on their side. In a way, it is a notable departure from past ratification fights where the two parties are often at loggerheads. But the USMCA as delivered by Lighthizer represents many longstanding Democratic trade policy positions—a stronger labor and environment chapter, the scaling back of ISDS, and industrial policy—and both sides were quick to declare victory.

While there are a number of important changes to the labor chapter that warrant a deeper dive, there are a few in particular that stand out.[30] For example, the USMCA reverses the burden of proof on whether an action or inaction is "in a manner affecting trade," an issue that has been of concern since the CAFTA *Guatemala* labor case.[31] In addition, the intermediate step of convening the Commission (high-level representatives from the three countries) before proceeding to a dispute settlement panel has also been removed. This should speed up the process by which disputes are brought, a common complaint by U.S. labor groups. Finally, the USMCA includes

39782–39817, https://www.federalregister.gov/documents/2020/07/01/2020-14014/high-wage-components-of-the-labor-value-content-requirements-under-the-united-states-mexico-canada.

[29] Jeffrey J. Schott, "For Mexico, Canada, and the United States, a Step Backwards on Trade and Investment ", *Trade and Investment Policy Watch* (blog), Peterson Institute for International Economics, October 2, 2018, https://www.piie.com/blogs/trade-and-investment-policy-watch/mexico-canada-and-united-states-step-backwards-trade-and.

[30] For an overview of USMCA labor changes see, Kathleen Clausen, "A First Look at the New Labor Provisions in the USMCA Protocol of Amendment," *International Economic Law and Policy* (blog), December 12, 2019, https://ielp.worldtradelaw.net/2019/12/a-first-look-at-the-new-labor-provisions-in-the-usmca-protocol.html.

[31] Office of the United States Trade Representative, "In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR," https://ustr.gov/issue-areas/labor/bilateral-and-regional-trade-agreements/guatemala-submission-under-cafta-dr.

rules of evidence to the Rules of Procedure for labor panels, such as the submission of anonymous testimony, which some scholars have pointed to in light of *Guatemala*.[32]

Looking at the Protocol of Amendment, most of it was focused on the rapid response mechanism (RRM) that will be established to enforce specific labor obligations. This comprises two separate annexes to the state-to-state dispute settlement chapter (31-A and 31-B), one between Canada and Mexico, and another between the U.S. and Mexico. The statement of purpose captures what it seeks to achieve: "to ensure remediation of a denial of collective bargaining rights."[33] Unlike the regular state-to-state dispute settlement process for violations of the labor chapter, such as a failure by one of the three governments to effectively enforce labor laws through a sustained or recurring course of action or inaction, or a failure to address violence against workers, the RRM is a way to handle a specific denial of the right of free association and collective bargaining by a private entity at a particular worksite. The RRM is therefore not really a claims process, but instead a quick way to address the "belief" that some denial of rights is underway. There are restrictions with respect to what types of claims can be brought, for instance for Canada, "a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered facility under an enforced order of the Canada Industrial Relations Board." For the United States, "a claim can be brought only with respect to an alleged Denial of Rights owed to workers at a covered facility under an enforced order of the National Labor Relations Board." For Mexico, "a claim can be brought only with respect to an alleged Denial of Rights under legislation that complies with Annex 23-A (Worker Representation in Collective Bargaining in Mexico)."[34] Furthermore, the qualification that this only applies to "covered facilities" in "priority sectors" is also worth noting, though the Protocol does not define what these terms mean.

The remedy that will apply in these disputes are penalties on imports from the factories in question. It is hard to know at this moment how all of this would work in practice, as it is an entirely new enforcement mechanism. The process for how the RRM works appears to build in a significant number of steps so as to provide space for the parties to reach a solution potentially before penalties are seriously considered. But without a case to test the limits of the mechanism, it remains unclear as to how effective it will be. The AFL-CIO has been vocal in its desire to build a case regardless of the time it may take for Mexico to fully implement the significant labor reforms it is undertaking.[35] The success of the RRM may thus largely hang on whether U.S. groups feel satisfied with how much this actually improves the situation in Mexico. But, if Mexico is able to pursue claims against the United States, and succeed, the RRM may not last very long. As it stands, the RRM further cements asymmetry in North America, as it is specifically targeted at Mexico, and really at the behest of U.S. labor interests. Early disputes have already raised significant

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[32] Kathleen Clausen, "Reimagining Trade-Plus Compliance: The Labor Story," October 9, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3258639.

[33] Protocol of Amendment to the Agreement between the United States of America, the United Mexican States, and Canada, December 10, 2019, Arts. 31-A.1.2 & 31-B.1.2., https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Protocol-of-Amendments-to-the-United-States-Mexico-Canada-Agreement.pdf.

[34] Protocol of Amendment to the Agreement between the United States of America, the United Mexican States, and Canada.

[35] Maria Curi, "Labor officials: U.S. closely watching Mexican USMCA commitments," *Inside U.S. Trade*, December 28, 2020, https://insidetrade.com/daily-news/labor-officials-us-closely-watching-mexican-usmca-commitments.

concerns about the RRM's unbalanced focus and lack of transparency, as well as questions about due process.[36]

Another troubling development stems from the Trump administration's attempts to work outside widely accepted rules and norms by embedding one of their negotiating "poison pills" into the final text of the USMCA. This poison pill, which can be referred to as the "sunset clause," essentially allows the USMCA to expire 16 years after it enters into force unless the parties agree to continue it, with a joint review of the agreement beginning 6 years after entry into force. While reviewing trade agreements is a good thing, NAFTA had already provided for this through the Free Trade Commission. But the impetus for the sunset clause is not just about review. In fact, it reflects a tactic utilized by the Trump administration in all of its trade policy actions—that a negotiation is never truly over. It is possible that the administration also envisioned using the sunset clause as an enforcement tool. For example, if, in 6 years, Canada or Mexico have not implemented certain provisions to the United States' liking, the U.S. could threaten to withdraw from USMCA if new rules are not negotiated. But, it is important to note that the sunset clause is a new and untested enforcement tool, and there is no reason to think it will lead to compliance.[37] In addition, it involves a further transfer of Congress' constitutional power over trade to the executive branch, which is of concern for a whole host of other reasons.[38] Ultimately, the inclusion of the sunset clause has the potential to exacerbate asymmetry between the United States and its two neighbors. But it also *bakes in* uncertainty to USMCA—something that trade agreements are supposed to limit.

In fact, in the economic impact assessment conducted by the U.S. International Trade Commission, USMCA won high praise for reducing uncertainty, which was credited for the lion's share of the economic gains. The report estimated gains for the U.S. economy at $68.2 billion, or a 0.35% increase in real GDP, over six years.[39] The key provisions for this reduction in uncertainty are those included in the digital trade chapter, which are expected to induce more U.S. investment.[40] However, it is worth reiterating that the digital trade chapter, with some exceptions, is mostly what is already in the CPTPP, to which Canada and Mexico are parties. Surprisingly, the USITC's analysis does not take this fact into account, and its topline figure for economic gains are likely inflated as a result:

> the Commission's baseline **does not take into account the various market liberalizations and binding commitments that Mexico and Canada have undertaken as signatories of the**

[36] Inu Manak, "Hearing on Implementation and Enforcement of the United States-Mexico-Canada Agreement: One Year After Entry into Force," Congressional Testimony, July 27, 2021, https://www.cato.org/testimony/hearing-implementation-enforcement-united-states-mexico-canada-agreement-one-year-after.
[37] Simon Lester, "The USMCA Sunset Clause as a 'Check on Bad Behavior," *International Economic Law and Policy* (blog), May 23, 2019, https://worldtradelaw.typepad.com/ielpblog/2019/05/will-the-usmca-sunset-clause-.html.
[38] Simon Lester and Inu Manak, "New NAFTA's Sunset Clause Is a Ticking Time Bomb," *The Hill*, November 7, 2018, https://thehill.com/opinion/finance/415290-new-naftas-sunset-clause-is-a-tickingtime-bomb.
[39] United States International Trade Commission, *U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, Publication Number: 4889 (Washington, DC: U.S. International Trade Commission, April 2019), https://www.usitc.gov/publications/332/pub4889.pdf.
[40] Jeffrey J. Schott, "Five Flaws in the USMCA and How to Fix Them," *Trade and Investment Policy Watch* (blog), Peterson Institute for International Economics, August 6, 2019, https://www.piie.com/blogs/trade-and-investment-policy-watch/five-flaws-usmca-and-how-fix-them.

> **CPTPP**, including commitments applying to data localization and data transfer. Since these are key policies that drive Commission model results in estimates that provide higher weights to the value of policy uncertainty, **it is unclear whether estimates with higher weights for policy uncertainty would apply to the current (post- CPTPP signing) policy context**.[41]

However, the USITC does provide an additional model that excludes the reduced policy uncertainty. When reduced policy uncertainty is no longer included, the USITC estimates that the net impact of USMCA on the economy is negative, at -0.12%, or approximately a loss of US$22.6 billion. This is due to the new provisions that will actually reduce trade in North America, such as the more stringent rules of origin provisions. In fact, Canada's own economic assessment notes that motor vehicle exports to the United States would decline by US$1.5 billion relative to NAFTA precisely because it is expected that the new rules of origin will increase production costs.[42]

It is notable that this is the first time the USITC has tried to quantify the impact of binding commitments on data flows and data localization in terms of reducing uncertainty for markets, and it has raised many questions about how we should measure the impact of trade agreements.[43] Even Canada's assessment reported gains for Canada of US$5.1 billion, or 0.249% GDP growth over a 5 year period. But that figure is also highly dependent on a methodological choice that estimates the gains of USMCA compared to having *no agreement in place at all*, as well as the reimposition of steel and aluminum tariffs under Section 232. This scenario, while possible, was not guaranteed. In fact, American legal scholars have questioned whether the president even has the authority to unilaterally withdraw from NAFTA in the first place as well as whether the president can reimpose Section 232 tariffs after rescinding them.[44] Prime Minister Justin Trudeau's government has been very vocal in praising the benefits of the "new NAFTA"—but if the new agreement takes us back from the gains of NAFTA, it is hard to see how this praise is warranted.

In fact, Dan Ciuriak, Ali Dadkhah, and Jingliang Xiao conducted for the C.D. Howe Institute, a Canadian think tank, an assessment of the USMCA's impact on all three economies. They found a negative impact on real GDP across all three NAFTA countries—a decline of -0.396% for Canada, -0.791% for Mexico, and -0.097% for the United States.[45] In an update, Dan Ciuriak

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[41] United States International Trade Commission, *U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, Publication Number: 4889 (Washington, DC: U.S. International Trade Commission, April 2019), p.58 (emphasis added).

[42] Global Affairs Canada, *The Canada-United States-Mexico Agreement: Economic Impact Assessment* (February 26, 2020), https://www.international.gc.ca/trade-commerce/assets/pdfs/agreements-accords/cusma-aceum/CUSMA-impact-repercussion-en.pdf.

[43] Inu Manak, "Canada Evaluates USMCA, Raises More Questions than Answers," *Cato at Liberty* (blog), February 28, 2020, https://www.cato.org/blog/canada-evaluates-usmca.

[44] Joel P. Trachtman, "Power to Terminate U.S. Trade Agreements: The Presidential Dormant Commerce Clause versus an Historical Gloss Half Empty," *International Lawyer* 51 (2017–2018): 445+, https://heinonline.org/HOL/LandingPage?handle=hein.journals/intlyr51&div=67&id=&page=; Jennifer Hillman, Trade Talks Episode 24: The Trump administration Views Trade as National Security Threat, hosted by Chad P. Bown and Soumaya Keynes, Peterson Institute for International Economics (February 21, 2018) https://www.piie.com/experts/peterson-perspectives/trade-talks-episode-24-trump-administration-views-trade-national.

[45] Dan Ciuriak, Ali Dadkhah, and Jingliang Xiao, "Quantifying CUSMA: The Economic Consequences of the New North American Trade Regime," Working Paper, C.D. Howe Institute, February 21, 2020, https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/WorkingPaper_Ciuriak-Dadkhah-Xiao_2020_0.pdf.

provided further clarification on the various estimates that have been put forward, concluding that "on the basis of what can be reasonably determined, the new Agreement represents a significant step back from the three-decades-old partnership in North America launched with the 1989 Canada-United States Free Trade Agreement (CUSFTA) and further developed with the addition of Mexico in the NAFTA."[46]

An objective assessment of the USMCA reveals precisely why the interruption of North American integration under Trump was so different. Unlike the critical junctures or episodes of friction in the past, where U.S. leadership attempted to build on the existing North American trading relationship, the Trump administration actively attempted to dismantle past integration. Thus, in contrast to the institutional layering that North America has long been used to, the experience on the continent from 2016 to 2020 was a unique disruption. USMCA did not add to NAFTA in the way that previous initiatives, such as the Security and Prosperity Partnership,[47] and the Regulatory Cooperation Councils[48] attempted to do. Instead, it surgically weakened some aspects of the relationship, while doubling down on asymmetry, going so far as to embed it permanently within the agreement itself. So, while Trump was not the first to throw a wrench in the wheels of continental deepening, he is a strong contender for inflicting the greatest amount of damage, and for turning the wheels in reverse. The Biden administration has only begun to articulate how it will move forward. The next section reflects on what the changes brought by Trump mean for the future of North American integration and what Biden could do to set things right.

Whither the North America Idea?

The renegotiation of NAFTA has put North American integration in stark focus. It has laid bare the challenges the region has always faced, but amplified the message through tweets from the Trump White House. The asymmetry of power in the region has always been a known fact, but rarely has that power been so indelicately exercised in the trading relationship. The threats of NAFTA withdrawal, the imposition of tariffs on steel and aluminum, threats of tariffs on automobiles, and the constant bullying tactics employed by the Trump administration have seriously damaged the U.S. relationship with Canada and Mexico. While our neighbors have been careful not to air their concerns in public, the heightened ambivalence towards the United States is surely simmering under the surface. It did not have to be this way.

NAFTA was never meant to be the final destination for North America's economic integration. The framework that it created was, in fact, insufficient to ensuring the region would be dynamic and competitive well into the future. NAFTA desperately needed an update, but what we got with the USMCA is not an update at all. Furthermore, the name of the new deal speaks volumes for how the United States views its region—it is the United States-Mexico-Canada Agreement— the "North American" label has been cast aside, and "free trade" removed to signify, perhaps, a broader turning point in U.S. trade policy, isolationist and America First. The USMCA was an

[46] Dan Ciuriak, "The Trade and Economic Impact of the USMCA: Making Sense of the Alternative Estimates," Working Paper, *C.D. Howe Institute*, June 30, 2020. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3546292
[47] Greg Anderson and Christopher Sands, *Negotiating North America: The Security and Prosperity Partnership*, Hudson Institute, White Paper (Fall 2007), 17.
[48] See, International Trade administration, "U.S.-Canada Regulatory Cooperation Council," https://www.trade.gov/nacp/rcc.asp; and International Trade administration, "U.S.-Mexico High-Level Regulatory Cooperation Council," https://www.trade.gov/hlrcc/.

exercise of the Trump administration's vision of a new "reciprocity" where U.S. interests are weighted, and others must bend to its will. The initial desire to negotiate USMCA as two bilaterals is reflected in a title that clearly demarcates three separate entities that do not encapsulate a larger identity beyond the state.

In the title of his book, the late Stephen Clarkson asked, "Does North America Exist?" He concluded that North America lacked regional governance, and that instead, what we did see was merely "continentalism from below."[49] There are many reasons for this. For one, NAFTA overpromised on what it could deliver; it was sold as a boost for jobs, without an explanation for the many other benefits that would come from regional competitiveness.[50] But trade is not zero-sum, and a job lost does not mean another job cannot be created elsewhere, nor should losses in jobs take away from the fact that there are significant gains to consumers from trade agreements. A 2014 study by Hufbauer and Cimino finds a net loss of about fifteen thousand jobs per year due to imports from Mexico. However, the authors also show that NAFTA led to approximately $450,000 in positive gains for each job lost, taking the form of lower prices for consumers, access to a broader range of goods and services, and higher productivity.[51]

It was also a trade agreement, which though cutting edge at the time, failed to anticipate the broader changes to the global economy that would require a deepening of our economic ties, as well as a concerted effort to tap into supply chains in other regions. The initial success that NAFTA created also proved unsustainable without a clear follow up plan. This became most obvious after the terrorist attacks on the United States on September 11, 2001, where the closure of the borders had an immediate impact on the economies. For example, trucks were backed up on the Windsor Bridge for twenty miles to enter Detroit, and Ford, Toyota and Chrysler either shut down plant operations or closed down a number of assembly lines—grinding trade to a halt.[52] The economic impact was significant, and the scramble that ensued at the border was a reminder of how little we had invested in continental governance. A similar lack of unified response is visible today in how the three countries have handled the COVID-19 pandemic, with at one point, President Trump trying to stop the company 3M from sending medical masks to Canada.[53]

Partisanship in the United States is also responsible for much of the discord surrounding continental integration. This was evident at the conclusion of NAFTA itself, an agreement that warrants reminding was negotiated by a Republican administration and concluded by a Democratic administration. However, the brief bipartisan consensus would be shattered when President Clinton proposed expanding NAFTA to the Free Trade Area of the Americas. Partisanship has also shaped the politics of the NAFTA renegotiation, where Republicans, the traditional party for

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[49] Stephen Clarkson, *Does North America Exist? Governing the Continent after NAFTA and 9/11* (Woodrow Wilson Center Press with University of Toronto Press, 2008).
[50] Gary Clyde Hufbauer and Jeffrey J. Schott, "NAFTA Revisited," *Peterson Institute for International Economics*, October 1, 2007, https://piie.com/commentary/speeches-papers/nafta-revisited.
[51] Gary Clyde Hufbauer and Cathleen Cimino-Isaacs, "NAFTA Rejoinder: The US Effects Are Clearly Positive for Most Workers (Part II)," *Trade and Investment Policy Watch* (blog), Peterson Institute for International Economics, July 30, 2014, https://www.piie.com/blogs/trade-investment-policy-watch/nafta-rejoinder-us-effects-are-clearly-positive-most-workers.
[52] Pastor, *The North American Idea*, 115.
[53] James McCarten, "3M says Trump officials have told it to stop sending face masks to Canada. Trudeau responds," *The National Post*, April 3, 2020, https://nationalpost.com/news/world/3m-says-trump-officials-have-told-it-to-stop-sending-face-masks-to-canada.

free trade, are becoming harder to distinguish from the far left of the Democratic party on trade issues. Strikingly, in surveys by the Pew Research Center, the majority of Americans still see NAFTA as "a good thing" for the United States, but when breaking the responses down by party affiliation, 72% of Democrats or those that lean Democrat have a favorable view of NAFTA, whereas only 35% of Republicans do.[54] The same survey provides additional insight to this figure, revealing that 53% of Republicans think Mexico has gained more from NAFTA than the United States has, with just 16% of Democrats sharing that sentiment. The rhetoric that came from the Trump administration (and on the 2016 campaign trail) is likely to take some of the blame for this, as the president regularly painted Mexico as a nefarious outsider that Americans should fear. It is no wonder that in its 2018 "feeling thermometer" survey, Pew found that Americans are much "warmer" towards Canada than Mexico.[55]

Whether the current sentiments will pass is hard to predict. Even under the Obama administration, the U.S. relationship with Mexico was far from ideal, with the drug wars (and heavy handed U.S. involvement) generating its own discord. But Mexico's relationship with the United States has always been complicated, if not fraught at times. Porfirio Díaz, who served as Mexico's leader for 31 years, is thought to have exclaimed, "Poor Mexico, so far from god, so close to the United States." Many Mexicans may still share this feeling, if recent events, including efforts to build a border wall, are any sign. Canada, likewise, has had its fair share of troubles with the United States, far beyond President Trump's name-calling of their prime minister as "two-faced."[56]

Ultimately, this is all politics and optics, and while our leaders may have struggled to create a vision of North America, the peoples of our three countries have continued to engage in continentalism from below. One only has to look at the vast disruption to people's lives from the COVID-19 pandemic for those who live and work on both sides of our northern and southern borders to see how connected we have become.[57] I, myself, a dual Canadian-American citizen, sit writing this chapter in Vancouver, Canada, as I await a flight to return to Washington due to travel restrictions. No matter what policies are enacted in the three North American capitals, the impact is always felt across the continent by the people whose lives these actions touch every day.

So what of our continental future? When Robert Pastor wrote *A North American Idea*, the United States was at another turning point in its trade policy. The Obama administration was pursuing the TPP, which it pitched as its "pivot to Asia," in addition to launching talks with the European Union. North America was not high on the agenda. But Pastor saw an opportunity. In expanding U.S. economic interest beyond the continent, he envisioned a coherent approach where Canada, Mexico and the United States would stand side-by-side in these efforts. Not only would the United States benefit, but the region could also cement itself as a force to be reckoned with. He was concerned by the U.S. approach to the TPP, which appeared to "tack on" Canada and Mexico, without

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[54] Tyson, "Americans Generally Positive about NAFTA, but Most Republicans Say It Benefits Mexico More than U.S.," *Pew Research Center*.

[55] John Laloggia, "Americans Have Mixed Views of Mexico, 'Warmer' Feelings toward Canada," *Pew Research Center*, August 28, 2018," https://www.pewresearch.org/fact-tank/2018/08/28/americans-have-mixed-views-of-mexico-warmer-feelings-toward-canada/.

[56] Krishnadev Calamur, "Trump Calls Trudeau 'Two-Faced' After Video Shows Leaders Apparently Mocking Him," *NPR*, December 4, 2019, https://www.npr.org/2019/12/04/784549243/trump-calls-trudeau-two-faced.

[57] Edward Alden, "It's time for Trudeau to reopen the border," *The Globe and Mail*, April 5, 2021, https://www.theglobeandmail.com/opinion/article-its-time-for-trudeau-to-reopen-the-border/.

separately addressing what would happen to the institutions created by NAFTA, such as the Commission on Environmental Cooperation. He was right to be concerned.

While the CPTPP would have been in many ways the replacement or update of NAFTA had the U.S. not withdrawn, it would have updated the trade rules but not the longstanding challenges the continent has faced in issues related to trade. For instance, labor mobility, though even difficult to talk about among our closest neighbors, did not stand a chance at discussion in the TPP talks. Meredith Lilly called the CPTPP "a missed opportunity to advance global labour mobility for the twenty-first century," thwarted mainly by the United States.[58] Regulatory cooperation also became watered down in CPTPP, with a greater focus on improving domestic regulatory processes instead of reducing regulatory barriers to trade and encouraging alignment.

Even if the Biden administration were to re-enter the CPTPP (a highly unlikely scenario in the near future) it would still do little to solve the overarching problems of continental integration. But Biden's biggest challenge will not be in selling a vision of a more cooperative continent, but rather in distancing himself from the Trump administration's approach to trade. In fact, early signs point to a continuation of many Trump era policies, which the Biden administration has been careful not to take ownership of despite the fact that they openly flirt with their own brand of economic nationalism—we've seen this with the continuation of tariffs on steel and aluminum, the call for more "Buy America" policies, and the America First attitude towards vaccines, their components, and medical supplies to fight the COVID-19 pandemic. It is hard to say how long this "America First hangover" will last.[59] But looking back at Biden's past interactions with his neighbors north and south suggests that his current rhetoric is out of step with things he has said before, and that perhaps some more time is needed for his administration to move past the Trump years.

In a speech given at the Ministry of Foreign Affairs in Mexico City in September 2013, Biden laid out a bold, inclusive, continental vision that seems all but a distant memory now. He repeatedly acknowledged the importance of our economic ties, stating "There is no question that our economic partnership has been a success. But there is also no question that there's much, much, much more potential. And I would add, there's also no question lest we seize the opportunity, it may pass us by because the world is moving rapidly."[60] One area of potential that he outlined was to build capacity for a "strong, integrated North American economy" that could help improve economic outcomes across the Western Hemisphere—"From Canada to the tip of Argentina," he said, "there is no reason why in the 21st century the hemisphere will not be the most potent economic engine in the world."

Biden also outlined a broader vision reaching beyond the Western hemisphere, arguing for the a deepening of economic ties across the Asia-Pacific. Speaking of the countries involved in the TPP

[58] Meredith B. Lilly, "Advancing Labour Mobility in Trade Agreements: The Lost Opportunity in the Trans-Pacific Partnership," *Journal of International Trade Law and Policy* 18, no. 2 (2019): 58–73, https://www.emerald.com/insight/content/doi/10.1108/JITLP-06-2018-0025/full/html.

[59] Zack Beauchamp, "Biden's America First Hangover," *Vox*, May 1, 2021, https://www.vox.com/policy-and-politics/22408089/biden-trump-america-first-policy-immigration-vaccines.

[60] Remarks by Vice President Joe Biden at the U.S.-Mexico High Level Economic Dialogue, Ministry of Foreign Affairs, Mexico City, Mexico, The White House, Office of the Vice-President (September 20, 2013) https://obamawhitehouse.archives.gov/the-press-office/2013/09/20/remarks-vice-president-joe-biden-us-mexico-high-level-economic-dialogue.

negotiations at the time he said, “They understand that there’s nothing local anymore.” The way he spoke about trade and integration was far from the zero-sum rhetoric we have become so used to hearing today. In fact, a part of his speech that truly stood out was his admission that “What benefits Mexico and the people of Mexico ultimately has a resounding benefit in the United States.” Biden thus laid out ways to improve growth and innovation on the continent, including through more investment in the North American Development Bank, modern trade rules, investing in community colleges and technological education, doubling the number of Mexican students in the United States by 2020, and improving border infrastructure. In 2013, Biden identified many of the known challenges of continental integration, and also understood the nature of global competition. We can only hope that he remembers this. Relations with Canada and Mexico may slowly improve, especially as the COVID-19 pandemic subsides. But the stark contrast between the way trade and economic integration were spoken about during the Obama administration and today is telling. It reflects just how deeply the Trump administration ruptured North American relations.

This does not mean that a continental vision is not possible, nor out of reach. If the history of North American integration has taught us anything, it is that it has been stunted only by a lack of political will to see beyond parochial interests. But North America is about more than autos, steel, oil, lumber, dairy and produce. It is a region that by all macroeconomic indicators rises and falls together. It is a region with a shared history and culture that transcends whoever is currently occupying the White House, though its resident can drive integration forward or halt it entirely. The greatest challenge to a continental vision is a failure to imagine what could be possible. Pastor was by far the boldest thinker in this regard, and in his absence there are few calling for such big picture policies.

The strongest articulation of a continental vision outside of Pastor’s own writing was a 2014 Independent Task Force report sponsored by the Council on Foreign Relations, entitled “North America: Time for a New Focus.”[61] The project was chaired by David H. Petraeus and Robert B. Zoellick, and focused on prioritizing integration in four key areas—energy, economic competitiveness, security, and community. In trade relations, the report called for further liberalization, especially in non-tariff barriers and cross-border transaction costs, including simplifying NAFTA’s rules of origin to increase preference utilization rates. It also identified challenges to regional supply chains, including the lack of knowledge among U.S. policymakers of their existence and how they operate. The report also called for a more streamlined border management, with the aim of achieving a “cleared once, approved thrice” approach to continental trade. Furthermore, it pushed for opening North America’s skies, roadways and waterways, including an exemption for the Jones Act for Canada and Mexico, to create a more competitive North American shipping industry. And finally, the report argued for promoting economic trilateralism, saying that the motto should be “trilateral where possible, bilateral where necessary.”[62] Many of the ideas put forward in this report, as well as those championed by Pastor, could help inform a better future for North America.

[61] “Put North America First, CFR Task Force Recommends to U.S. Government,” *Council on Foreign Relations*, October 4, 2014, https://www.cfr.org/news-releases/put-north-america-first-cfr-task-force-recommends-us-government.
[62] Ibid., 72.

As a former student of Bob Pastor, I was lucky enough to work with him and learn from him in the final years of his life. He left me a box of papers—speeches, notes, syllabi—a compilation of years of thought on North American integration. In one speech at a meeting titled “Rethinking North American Integration,” he argued that we cannot “re-think” North American integration because we've never really thought about it. It has not happened yet—Canada debated free trade with the United States and the United States debated it with Mexico—but almost no one has debated or thought seriously about integrating the continent. One of the major problems he identified, particularly during the George W. Bush years, was the inability to look beyond the problems we face in the moment. I would surmise that he would have a similar critique of the current administration, particularly in how it has handled providing vaccines to Canada and Mexico upon taking office. But while Pastor was constantly frustrated at the lack of vision from our leaders, he was, at the same time, deeply inspired by the close connections between the people of our three countries. He believed that a North American identity did exist, and I was privy to a number of animated conversations between him and Stephen Clarkson—a skeptic—on this very subject.

What has stuck with me all these years is the way that Pastor mapped out the elements of that North American identity, whose characterization is highly relevant today. He identified seven characteristics. First, that North America is defined by pragmatism. It is made up of a public that wants to improve their lives. He was always quick to point out that in public polling, views on trade tend to change depending on how the question is asked, and that generally speaking, people in all three countries favored trade with one another. Second, Pastor’s research also found that on the whole, people in Canada, Mexico and the United States support closer cooperation and integration on economic, security, and environmental areas while maintaining national identities and cultural pluralism. He saw the diversity of North America as one of its strengths, and believed embracing it would help the United States in particular become less insular.

Third, he found that the residue of uncertainty always held by Mexico and Canada, what I refer to as “ambivalence,” can turn to resentment or even anger when provoked by the United States, or when the resident of the White House is particularly insensitive to asymmetry. In fact, a set of surveys coordinated by Pastor, Frank Graves, and Miguel Basáñez in October 2013, combined into the “Rethinking North America” survey, revealed that much of the conventional wisdom was wrong: the publics of the three countries like each other, are more like one another than we often think, and are more prepared to consider new forms of collaboration.[63] However, insults from the United States, particularly towards Mexico, bring out hostile and resentful feelings from the others, chilling the prospects for collaboration.

Fourth, he saw a shared respect for the market across all three countries, and argued that this was as a positive force for integration, and often guided government action. The recent turn inwards by the United States, and increasing support for industrial policy, has unsurprisingly disrupted integration. Mexico has also witnessed significant backsliding under President Andrés Manuel López Obrador, so we have yet to see if both countries return to this way of thinking. Fifth, Pastor was a supporter of increased labor mobility, but noted that immigration was the major concern for

[63] “The NAFTA Promise and the North American Reality: The Gap and How to Narrow It,” American University, October 31-November 1, 2013.

the United States and Canada, and for Mexico, emigration. These differences of focus would always be a challenge between the three countries.

Sixth, Pastor was well aware of the distinctiveness of North American regionalism, and was critical of approaches that sought to simply replicate the European integration project. He suggested that Canada, Mexico and the United States were uninterested in supranational institutions in particular, and that was ok. The challenge would be in trying to find the right compromise to create institutions that could preserve some level of continuity while being dynamic enough to adapt to the problems of the day. Finally, he suggested that the North American identity was adventurous—open to new political forms of collaboration, as we've seen with initiatives like the Pacific Northwest Economic Region—but that both Canada and Mexico always wanted to ensure that they would not be swallowed up by the United States. Perhaps this is why sub-regional initiatives have had appeal.

Reflecting on this characterization of North America, Pastor's description of the U.S.-Mexico relationship, as one defined by intensity, complexity, and asymmetry, comes to mind. This could, in fact, be used to describe North America as a whole. So many of the issues we face are "inter-mestic" blurring the lines between domestic and foreign policy. As James Eayrs observed in 1964 about Canada and the United States:

> Natural frontiers exist between nations, but the border between Canada and the United States is not one of them. Birds fly over it, fish swim through it, ore bodies lie under it, stands of timber straddle it, rivers traverse it. As in the movement of trade, so in the disposition of resources. The continent is an economic unit. Its bisection is political, not geographic.[64]

The layers involved in sorting through our shared issues—the various actors—continues to complicate solutions. Politics is the obstacle, and asymmetry remains an ever-present shadow.

With USMCA in effect, it may seem like the road to that better future is far off, or near impossible to achieve. As noted earlier, USMCA goes far in cementing the dual bilateral structure of North American relations, and puts the United States at the center of the hub-and-spoke model for our trading relationship in particular.

NAFTA Article 2001, which was largely carried over into USMCA, allows for the elaboration of the agreement by the Free Trade Commission, which is made up of high-level representatives from the three countries, usually the trade ministers.[65] The parties can, at any point, convene the Commission. It is doubtful that the United States under Biden, at least in the immediate term, will do anything to undo the legacy of USMCA. In fact, the Biden administration seems to have doubled down on "enforcement" particularly on labor, as evidenced by comments from current U.S. Trade Representative Katherine Tai at her confirmation hearing.[66] If the United States is not

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[64] James Eayrs, "Sharing a Continent: The Hard Issues," in *The United States and Canada*, ed. John Sloan Dickey (Englewood Cliffs, NJ: Prentice-Hall, 1964), 81.

[65] USMCA Article 30.2 (b) states that one of the functions of the Free Trade Commission is to "consider proposals to amend or modify this Agreement."

[66] "Hearing to Consider the Nomination of Katherine C. Tai, of the District of Columbia, to Be United States Trade Representative, with the Rank of Ambassador Extraordinary and Plenipotentiary," February 25, 2021, United States Senate Committee on Finance, video, 4:12:14, https://www.finance.senate.gov/hearings/hearing-to-consider-the-

responsive to improving the North American trading relationship through meetings of the Free Trade Commission, Canada and Mexico can also push for changes in 2026, when the sunset clause kicks in. At that time, the three parties will have the opportunity to negotiate modifications and amendments.

What are the changes that should be considered by Canada, Mexico and the United States? While there are a number of modifications that should be made at the earliest possible stage, such as rolling back restrictive auto rules of origin requirements, I want to focus on three ideas that our countries should pursue that could help revitalize North American economic cooperation and continental integration.

First, we should commit to trade liberalization, and be willing to invest resources in trade facilitation. Canada, Mexico, and the United States should also work to limit regulatory trade barriers, and resist the temptation to implement buy local requirements, which has seen a resurgence amidst the current pandemic. The parties should take full advantage of the new Good Regulatory Practices chapter, and attempt to undertake trilateral regulatory cooperation wherever feasible. While the continuation of the United States-Canada Regulatory Cooperation Council is a positive development to ensure continuity of work, it should not become the only forum within North America where such deep integration is possible.

In 2005, the North American Development Bank commissioned a report from the American University's Center for North American Studies, which proposed the creation of a North American Investment Fund to support transportation and infrastructure projects, as well as rural community education in Mexico.[67] The authors were concerned with reducing the income gap between Mexico and its northern neighbors, and saw such a fund as a way to help close that gap. But it may also be worth thinking about how to improve border infrastructure through such a fund, since the vast majority of North American trade happens on our land ports of entry.

Second, we should rethink our shared institutions. The Free Trade Commission, for instance, should have at least one meeting a year, but also include more than just the trade ministers on a regular basis. There is a whole host of shared concerns that impacts all three of our economies, and we should aim for regular and early dialogue. For example, the border restrictions for non-essential travel into Canada since the COVID-19 pandemic have been ad hoc, and extended on a monthly basis. There has been no public indication as to how the border will be safely reopened and economic activity resumed. The Commission should take the lead on deliberating these issues to ensure that trade and disruptions to the lives of citizens across the border remain limited. In the current situation, it seems plausible that the ministers of trade, transportation, and public health in all three countries should be involved in regular dialogue not only for the current crisis, but also to prepare for future ones.

Another institution from NAFTA that remains unchanged in USMCA is the secretariat, which has an office in each country maintained by each of the parties. A single and permanent secretariat,

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nomination-of-katherine-c-tai-of-the-district-of-columbia-to-be-united-states-trade-representative-with-the-rank-of-ambassador-extraordinary-and-plenipotentiary.

[67] Robert Pastor, Sherman Robinson, Samuel Morley, and Carolina Diaz Bonilla, "The Paramount Challenge for North America: Closing the Development Gap," *NAD Bank* and *the Center for North American Studies*, American University, March 14, 2005.

that rotates between the three capitals, and with citizens from each, would do much to not only preserve institutional memory, but also to encourage cooperation from the ground up by building relationships among our people.

Third, we should take down barriers to building a North American community. Now it is true that there are vast limitations to integration in North America, but the majority of these are self-imposed restraints. North America is a region, but “the very idea of ‘North America’ has not penetrated our consciousness.”[68] While border communities may best understand this shared identity and the benefits that trade has brought to each of our countries, big swaths of the United States in particular have no interaction with our Canadian and Mexican neighbors. If we reopen USMCA, we should give serious consideration to including something like the EU’s Erasmus program, which has facilitated student exchanges across its Member States. Allowing American, Canadian, and Mexican students to learn with each other, build friendships, and share ideas will enrich our intellectual discussions and go a long way in fostering a more cooperative atmosphere. This would be particularly useful to help dispel the many myths Americans hold about Mexico if students are encouraged to study and live there, and to have more Mexican students study in the United States. Biden himself called for this as Vice President, so it is not unrealistic. Canada and Mexico’s relationship is the most distant, and this could also help narrow that.

In addition to this, we should work to enable greater labor mobility across the continent, making it easier, for instance, to attain a visa. Some have suggested the creation of a labor agreement between the United States and Canada modeled off the EU’s Schengen agreement,[69] as well as a separate bilateral worker agreement between the United States and Mexico for nonseasonal workers.[70] Labor mobility would work hand in hand with deeper economic integration, help limit illegal entry, and potentially help to build a dynamic regional labor market.

These ideas, while bold, are simply put out there to show what may be possible if we allow ourselves to think about how we can make North America more competitive and vibrant, putting politics aside for a moment. Of course, politics never goes away, but changes in leadership in the past have offered new opportunities to rethink old policies. The uncertainty we face can be addressed more effectively if we collaborate and share ideas on ways forward. Of course, as Greg Anderson rightly points out in *Freeing Trade in North America*, one of the major obstacles to integration is the existence of competing visions of what integration should look like.[71] Anderson asserts that debates about North American integration have centered around two key questions—does North America exist, and is there a North American idea? I agree that a larger debate on this would be useful and provide clarity on the overall approach to integration on the continent.[72]

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[68] Robert Pastor, *The North American Idea*, 3.

[69] Michelangelo Landgrave, “Chapter 4: Constructing a U.S.- Canadian Bilateral Labor Agreement,” in *12 New Immigration Ideas for the 21st Century*, Cato Institute White Paper, May 13, 2020, https://www.cato.org/publications/publications/chapter-4-constructing-us-canadian-bilateral-labor-agreement.

[70] Michael Clemens, “Chapter 3: Shared Border, Shared Future: A U.S.-Mexican Bilateral Worker Agreement,” in *12 New Immigration Ideas for the 21st Century*, Cato Institute White Paper, May 13, 2020, https://www.cato.org/publications/publications/chapter-3-shared-border-shared-future-us-mexican-bilateral-worker.

[71] Greg Anderson, Freeing Trade in North America (Kingston and Montreal: McGill–Queen’s University Press, 2020).

[72] Inu Manak, Freeing Trade in North America, *American Review of Canadian Studies* 50, no. 4 (2020): 583–586, https://doi.org/10.1080/02722011.2020.1843758.

With President Trump out of office, the Biden administration should take the lead in repairing the damage Trump has done to the United States' relationship with its neighbors and kickstart a dialogue on how to make the region better prepared to address future crises. Part of this dialogue should include a strategy for how and when we should collaborate on a trilateral basis, with a clear statement of our shared goals and interests. But Canada and Mexico will have issues of their own that will impact future engagement with the United States. Distrust has certainly grown as a result of U.S. negotiating tactics and sometimes daily policy changes that put diplomatic efforts in a constant scramble. Mexico, in particular, faces its own unique challenge, as President López Obrador threatens to unravel policies that have helped Mexico's economy grow, with recent actions that scale back historic energy reforms.[73]

The landscape we are facing now in North America is as challenging as ever. But this does not mean that it is impossible to navigate. To restart our cooperative relationship, the United States must first lead by example, and avoid turning inwards and casting aside its allies. Nationalistic policies must be avoided at all costs, especially calls for reshoring production. The region has grown through expanding our choices, not limiting them, and it is past time to rediscover this. North America exists. Trade shaped its regional identity, but politics interrupted its growth.

[73] Inu Manak and Alfredo Carrillo Obregon, "Mexico's Electricity Bill Rolls Back Energy Reforms and Threatens Relations with Trading Partners," *Cato at Liberty* (blog), April 1, 2020, https://www.cato.org/blog/mexicos-electricity-bill-rolls-back-energy-reforms-threatens-relations-trading-partners.