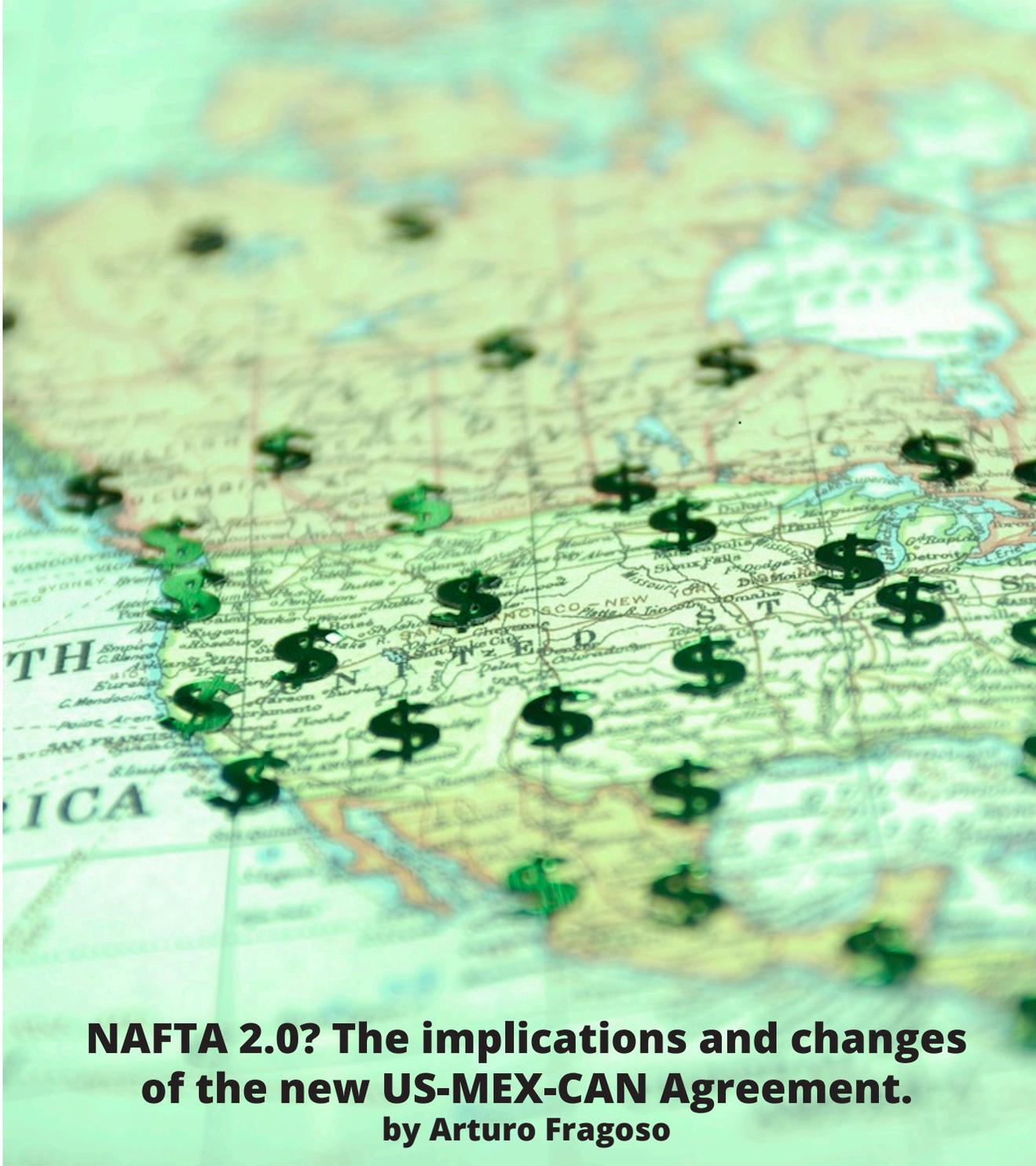


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NAFTA 2.0? The implications and changes of the new US-MEX-CAN Agreement. by Arturo Frago

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by Arturo Fragoso.

January 1, 1994 is a historical date in world trade practices, and specifically within the American region. On that day, the North American Free Trade Agreement (NAFTA) was implemented to promote and boost commerce between the United States (U.S.), Canada, and Mexico. The agreement, which eliminated most tariffs on trade between the three countries, was signed in 1992 by presidents George H. W. Bush and Carlos Salinas de Gortari, and by prime minister Brian Mulroney. Furthermore, the gross domestic product (GDP) of the three nations is more than \$20 trillion, which makes NAFTA the largest free trade agreement and the first one to be signed between two developed nations and one emerging market¹.

In this sense, numerous tariffs, and particularly those related to agriculture, textiles, and automobiles were gradually phased out between 1994 and 2008; nevertheless, the effects of the agreement regarding issues such as employment, the environment, and economic growth have been the subject of political disputes across the North American region. It should also be underlined that most economic analyses have indicated that NAFTA was beneficial to the North American economies but harmed a small minority of workers in industries exposed to trade competition².

However, after U.S. president Donald Trump took office in January 2017, he sought to replace and repeal NAFTA and other trade agreements he deemed unfair to the United States³. Thus, on August 2018, he announced a new trade deal with Mexico to replace it, which was called the U.S.-Mexico Trade Agreement. This accord would maintain duty-free access for agricultural goods and eliminate non-tariff barriers, while also encouraging and strongly promoting more agricultural trade between Mexico and the United States and would effectively replace NAFTA⁴. Therefore, on September 2018, the U.S. and Canada also agreed to a deal to replace NAFTA, which was now renamed to the United States-Mexico-Canada Agreement (USMCA). The deal was ratified by Mexico in 2019, by the United States on January 2020, and by Canada on March 2020⁵.

Subsequently, on July 1, 2020, the USMCA entered into force in Mexico given all necessary measures taken to comply with the commitments under this renews trade. Consequently, it has come to be the start of a new chapter for North American trade, aiming to support freer markets together with a reciprocal, fairer and more balanced trade leading to one big end: a strong economic growth. On last editions, we have addressed the topic of the latest and renewed NAFTA, however, this new agreement brings up several significant improvements for the agricultural sector, intellectual property, digital trade, financial services, labor matters and protections, among other topics⁶.

The new deal changes NAFTA in six areas:

- First, USMCA grants the **most-favored-nation** status to all co-signers;

1.- Kimberly Amadeo. (2020, April 07). What is the North American Free Trade Agreement? In *the Balance*. Retrieved on July 26, 2020 from <https://www.thebalance.com/nafta-definition-north-american-free-trade-agreement-3306147#citation-11>

2.- William Kenton. (2020, June 30). North American Free Trade Agreement (NAFTA). In *Investopedia*. Retrieved on July 26, 2020 from <https://www.investopedia.com/terms/n/nafta.asp>

3.- Michael R. Pence. (2019, October 07). We need the United States-Mexico-Canada Agreement for Trade. In *the White House Press Service*. Retrieved on July 26, 2020 from <https://www.whitehouse.gov/articles/we-need-united-states-mexico-canada-agreement-trade/>

4.- M. Ángeles Villareal and Ian F. Fergusson. (2020, March 02). NAFTA Renegotiation and the proposed United States-Mexico-Canada Agreement (USMCA). In *the Congressional Research Service*. Retrieved on July 26, 2020 from <https://crsreports.congress.gov/product/pdf/R/R44981>

5.- *Supra* note 2.

6.- Diego Ibarra Zavala and Gustavo Acua Popocatl. (2020, July 11). El contexto del T-MEC y los retos para Mexico. In *El Universal*. Retrieved on July 26, 2020 from <https://www.eluniversal.com.mx/opinion/dario-ibarra-zavala-y-gustavo-acua-popocatl/el-contexto-del-t-mec-y-los-retos-para-mexico>

- Second, it **eliminates tariffs on imports and exports** between the three countries;
- Third, exporters must get **certificates of origin** to avoid tariffs;
- Fourth, the USMCA establishes procedures to **resolve disputes**;
- Fifth, all members must respect **patents, copyrights, and trademarks**; and,
- Finally, the accord allows business travelers **easy access** throughout the three nations.

“...Its entry into force seems to be a forceful step towards economic recovery, however, Mexico’s government will have to enormously strengthen its institutions and policies to leverage and enjoy the enormous opportunities and competitive advantages that this new NAFTA could bring with it.”

Moreover, the new deal has two other agreements that complement the original⁷:

i) The North American Agreement on Environmental Cooperation, which enforces environmental laws; and,

ii) The North American Agreement on Labor Cooperation, which effectively protects working conditions.

Thus, being a core and strong element in the North American region’s economy, as well as within Mexican’s economic agenda and policy, the USMCA has mainly become a means to grant legal certainty within trade relationships, being that roughly any act or omission from any of the three countries could have an impact on its obligations under the USMCA⁸. Further, it does not only regulate merely commercial aspects within the North American region but also regulates labor, anticorruption, and environmental practices⁹. Undoubtedly, this is a two-sided challenge for our country, not only because of all new regulations and amendments to the Mexican legislation but a major challenge for its rule of law. Therewith, is Mexico ready to continue to be attractive to foreign investors? A question at the readers’ expense.

On the one hand, one of the biggest challenges, as it was previously mentioned, are all new labor obligations and implications under the treaty that will struggle with the Mexican’s tripartite labor structure between unions, employers and employees, being that labor breaches could have an impact on other areas of the accord, as for the exportation of agri-food products, if Mexico fails to address informal labor relations and problems such as child labor and violence against workers they will continue to prevail within Mexican labor reality¹⁰.

Currently, a product list has been published by the United States Office of Trade and Labor Affairs, including tomato, chili, onion, sugar cane, tobacco, and others, on items that are cultivated violating these new regulations,

7.- *Supra* note 1.

8.- Gerardo Islas. (2020, June 23). T-MEC: Impacto, retos y oportunidades. In *Forbes Mexico*. Retrieved on July 26, 2020 <https://www.forbes.com.mx/t-mec-impacto-retos-y-oportunidades/>

9.- Robert Lighthizer. (2020, April 24). USMCA To Enter Into Force July 1 After United States Takes Final Procedural Steps For Implementation. In *Office of the United States Trade Representative Press Releases*. Retrieved on July 26, 2020 from <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/april/usmca-enter-force-july-1-after-united-states-takes-final-procedural-steps-implementation>

10.- *Supra* note 8.

not only to target them and apply pressure to the Mexican authorities but to begin with labor and legal actions as part of the enforcement of the USMCA¹¹. The lack of implementation of self-assessment protocols for companies; the absence of dissemination and training mechanisms for the new legal framework; along with the lack of codes of conduct or labor certifications that guarantee compliance with all labor regulations, among others; constitute omissions for the Mexican government with regard to its obligations under the agreement.

On the other hand, the absence of proposals to deploy the Anticorruption Chapter of the USMCA has caused many concerns for the United States and Canada, as it not only aims to promote integrity among federal public officials or to adopt standards to protect accusers but to maintain effective anti-bribery and anticorruption compliance programs, encouraging all parties to include the private sector and to develop internal controls and ethics measures to prevent and detect bribery and corruption in international trade and investment¹². The closest Mexico has reached out this topic is with the enforcement of its General Law of Administrative Liabilities (Ley General de Responsabilidades Administrativas) which aims to establish administrative responsibilities for federal public officials and their obligations and applicable sanctions for any act or omission including bribery and corruption; however, it does not seem to be enough to comply with the new disposals that this Anticorruption Chapter has brought, as Mexico continues to be the lowest ranked of the least corrupt nations among the 37 countries part of the Organization for Economic Co-operation and Development (OECD)¹³. Let us not forget this was and has been the main guiding principle in the political agenda of the incumbent president, Andrés Manuel Lopez Obrador, and thus it will certainly be interesting to see how our government will fully address and implement this chapter in its compendium of laws.

Nevertheless, it is not all bad news for our country as many secondary laws of the trade are now to be approved or have already been so, such as the Industrial Innovation Protection Law (Ley de Protección a la Innovación Industrial); the Quality Infrastructure Law (Ley de Infraestructura de la Calidad); the General Import and Export Tax Law (Impuestos Generales de Importación y Exportación); the Federal Copyright Law (Ley Federal de Derechos de Autor), among others¹⁴. The USMCA for Mexico not only seeks greater economic integration among North American countries but also pursues the well-being of our society. As it was previously mentioned, it will maintain free trade for all originating goods meaning that Mexican exports will continue to enjoy preferential access exempt from the tariff payment¹⁵. Furtherly, it also facilitates the movement, release, and clearance of goods in customs and the transparency in administrative procedures. On intellectual property, it includes aspects related to copyrights, trademarks, patents, protection of undisclosed data, industrial designs, trade secrets¹⁶, and others that are planned to make more attractive investment in Mexico.

In sum, this has been one of the most innovative and comprehensive trade agreements that has been implemented and that has promoted the Americas' economic growth in an exponential manner. However, is it a key moment for the USMCA to face the enormous challenges of growth and development not only of our country but those generated from the Covid-19 pandemic and its consequences? Its entry into force seems to be a forceful step towards economic recovery, however, Mexico's government will have to enormously strengthen its institutions and policies to leverage and enjoy the enormous opportunities and competitive advantages that this new NAFTA could bring with it.

11.- *Idem*

12.- Renee A. Latour. (2020, February 2). First-Ever Anticorruption Chapter Included in USMCA. In *National Law Review*. Retrieved on July 27, 2020 from <https://www.natlawreview.com/article/first-ever-anticorruption-chapter-included-usmca#:~:text=Specifically%2C%20the%20United%20States%2DMexico,precursor%20agreement%20to%20the%20USMCA>.

13.- *Idem*.

14.- *Supra* note 8.

15.- *Supra* note 9.

16.- *Supra* note 8.

Mexicans cannot travel to Europe until further notice.

The European Union released the list of "safe" countries that can travel to the country members of the European Union, and Mexico is not included. The selection was made based on three main criteria: the number of cases reported by Covid-19, the government's response to the pandemic, and reciprocity (i.e., whether there are travel restrictions for European citizens). www.eluniversal.com.mx/destinos/mexicanos-no-pueden-viajar-la-union-europea-hasta-nuevo-aviso 01/07/2020.

Trump campaign will use AMLO's visit to the White House to reach out to Hispanic voters.

President Andres Manuel Lopez Obrador's recent visit to the White House became a boost to the campaign of his U.S. counterpart, Donald Trump, and some of his statements will be used to try to woo U.S. Hispanic voters. The two leaders gave a joint speech on July 8 in which they discussed trade issues, trilateral relations in North America and the fight against the coronavirus. www.elfinanciero.com.mx/mundo/campana-de-trump-usara-visita-de-amlo-a-la-casa-blanca-para-acercarse-a-votantes-hispanos-axios 13/07/2020.

Jiménez Espriú leaves the Secretariat of Communications and Transportation (SCT) after "dispute" in port and customs management.

On July 17th, Javier Jimenez Espriú left the management of the Secretariat of Communication and Transportation (SCT) due to a dispute with the president Lopez Obrador in port and customs management whose control was delegated last week to the Armed Forces in order to avoid the illegal introduction of drugs into the national territory and countering corruption in those areas. www.politica.expansion.mx/presidencia/2020/07/23/jimenez-espriu-deja-la-sct-tras-diferendo-en-manejo-de-puertos-y-aduanas 23/07/2020.

Number of women seeking help from Mexico lockdown violence surges.

Mexico's largest network of shelters for victims of violence has said the number of women and children seeking help has surged by more than 80 percent under the coronavirus lockdown. With families stuck at home under official lockdowns for months to check the spread of the virus, experts fear domestic tensions coupled with economic fears after nationwide job losses are likely to escalate into violence. Nearly half of the received calls and messages during lockdown had come from the Mexico City, one of the cities hit the hardest by Covid-19. www.aljazeera.com/news/2020/07/number-women-seeking-mexico-lockdown-violence-surges-200724092920896.html 24/07/2020.

GDP has a historical fall of 17.7% in the second quarter due to COVID-19.

Due to the containment measures applied to stop the spread of the SARS CoV-2 coronavirus and its consequent effects on employment and companies, the economy of Mexico could register a historical contraction in the second quarter of 17.7 percent at a seasonally adjusted rate in April. This contrasts with the drop of just 1.2 percent in the first three months of the year of the country's Gross Domestic Product (GDP). If the projection is confirmed, it would be the deepest setback in the indicator's history since its registration began in 1993. www.milenio.com/negocios/preven-economia-mexico-caida-historica-trimestre 27/07/2020.

Mexico's sees full economic recovery from pandemic by 2022.

Deputy Finance Minister Gabriel Yorio expressed confidence that a full recovery of the Mexican economy to pre-pandemic levels could be reached in one to two years so long as no new coronavirus outbreaks strike. He forecasts a 7.4% contraction in gross domestic product this year, compared with a 2% expansion that was previously estimated in the government's 2020 budget. www.reuters.com/article/us-mexico-economy-yorio/mexicos-sees-full-economic-recovery-from-pandemic-by-2022-idUSKCN24W079 30/07/2020.

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