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Two key conditions for the approval of the United States-Mexico-Canada Agreement (USMCA) were met in April. First, on April 18, the U.S. International Trade Commission (ITC) published its evaluation of the economic impact of the USMCA, a procedural step required for U.S. fast track authority. Second, on April 29, the Mexican Senate approved the labor reform that Mexico committed to pass prior to the entry into force of the USMCA pursuant to Annex 23-A of the agreement.

# Partnering in the Unincorporated International Arena

**Andrea E. Stumpf**

Andrea E. Stumpf is a partnership advisor specializing in structured partnerships in the international arena (www.structuredpartnerships.com) and the author of "Designing International Partnership Programs – A Primer for Partners: How to Structure for Sustainability, Efficiency, and Development Impact" (currently available on Amazon). As a lead lawyer at the World Bank for over 13 years, after as many years in the private sector, Ms. Stumpf helped structure hundreds of international partnership programs, at global, regional and country levels, across virtually every type of development topic.

International partnership programs are a favorite type of structured partnership in the international arena. These partnership programs are found all over the international community, particularly in international development, and have become venues of choice for many international partners seeking to join forces and leverage resources to meet global and local needs. Over the past decades, international partnership programs have evolved into major north-south income transfer instruments. They are crucial to meeting the world's Sustainable Development Goals for 2030.

But what are they? We can start by saying what they're not. Let's contrast the private sector, where the baseline is corporate. The starting point is the legal entity, the structure is incorporated, and the context is statutory. You can partner up, but you either partner within the legal entity construct or among legal entities, each within their own constructs. A lot is predefined and prescribed, like statutory duties of board members, tax and disclosure regulations, liability jurisprudence, and more.

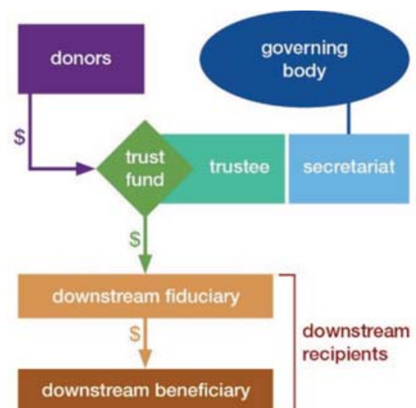
There is, however, another world out there. Like all those who get to know their own country better by traveling abroad, a diversion into the international arena can be instructive. It's like moving from terra firma to the high seas, or breaking through the thermosphere into space, to exaggerate just a bit. Much of the international arena operates on unincorporated grounds. The laws applicable to an international (i.e., multilateral, intergovernmental) entity are the entity's own "laws," often referred to as the "rules of the organization" – meaning its articles of agreement, policies, procedures, etc. – as defined by its members (i.e., member states). As you can imagine, that leaves plenty of room for creativity and malleability, both within each entity and in how those entities partner with others.

So back to our subject. Many of these international partnerships take their shape as international partnership programs – melding partners and programs in more or less branded platforms. While an

international partnership program is an identifiable arrangement, it is not a separate entity, nor is it fully embedded in an existing entity. It is a hybrid, on the one hand positioning a new, dedicated partnership body that relates to the shared program, but on the other hand receiving support from an existing entity, typically an international organization, like the World Bank. As an international supporting entity, the World Bank is a multilateral development bank and one of the Bretton Woods institutions that emerged after World War II. The Bretton Woods sisters and their progeny were created sui generis by agreement rather than statute, internationally rather than domestically. While much has been written about how these and other international organizations – like United Nations agencies and many others – are organized, little has been written about how these organizations organize their partnerships. With few external parameters, this can be an amazingly open space to engage.

With great variety, many of these partnership programs seek to promote global public goods, like responses to climate change and refugee flows, or get rid of global public bads, like ebola and other diseases. Many are set up to pursue the Sustainable Development Goals (SDGs) adopted by the international community as targets for 2030 (following the precursor Millenium Development Goals (MDGs) through 2015), which cover poverty, health, education, equality, food, water, energy, peace, partnerships and much more. Examples abound, but I will mention a few international partnership programs I currently support: the Famine Action Mechanism to strengthen the humanitarian-development nexus for zero tolerance of famine, the Global Financing Facility to improve health and nutrition for women, children and adolescents, the Global Concessional Financing Facility to support refugees and their host communities in middle income countries, and the newly emerging Energy Storage Partnership to direct innovation to developing country energy needs. International partnership programs populate the development landscape at global, regional and country levels.

In establishing international partnership programs, the choice of partner tends to be functional. Most partners have specific roles. Supporting entities often lead the creation of these platforms, while offering administrative (secretariat) and fiduciary (trustee) support, often including implementation support. Donors contribute funds, while beneficiaries – usually developing country governments receiving official development assistance (ODA) – contribute their voice and implementation. Other stakeholders like non-governmental organizations (NGOs) and civil society organizations (CSOs) round out the mix to weigh in for greater buy-in. Overall, everyone shares their perspectives and priorities, experience and expertise in what is ideally a consensus-based setting.




*Classic form of an international partnership program*

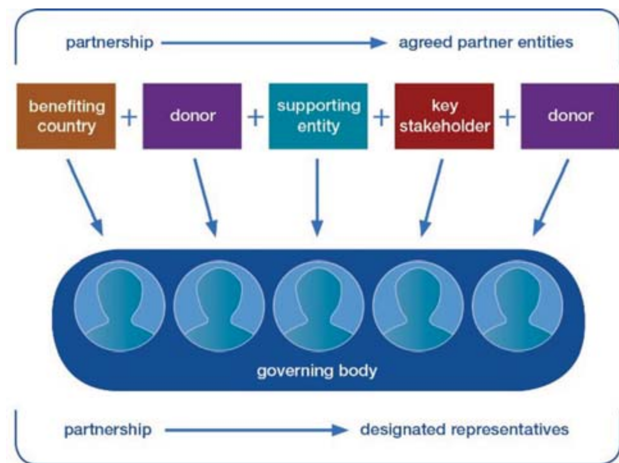
Here is a sample scenario: A sponsoring team at a supporting entity says “we want to rally the international community to create an international partnership – with donors paying into a trust fund, an inclusive governing body supported by a secretariat, and coordinated, supervised funding streams that finance the partnership’s activities,” and they get to structuring, designing and drafting in collaboration with their like-minded partners. A useful option in this structuring exercise is

to lean on this existing international organization as the supporting entity to establish and manage the trust fund, house the secretariat, appraise and supervise the funded activities, and generally hold the thing together as a partnership – brand name, website, and all – while drawing partners into the collective.

To be sure, this is not a structuring free-for-all. The "rules of the organization" of the supporting entity do a lot to define the operations of the partnership. The donors and recipients – typically sovereigns and their ministries or agencies – each bring their domestic rules and requirements. But even as these factors become baselines for the partnership umbrella, the latitude for structuring and the leeway in design choices can still be significant.

Ultimately, unincorporated international partnerships are like alliances, established on their own agreed terms, partnerships through and through. Even when an international partnership looks and feels like an organization, with billions of dollars flowing through, its legal entity status rests within each of the partners relative to their allocated roles and responsibilities. Even the supporting entity is typically positioned as a partner more than a service provider. This unincorporated setting also offers significant advantages for international partners to operate effectively. Here are three:

1) **No Divided Loyalties.** When international partners convene in a governing body supported by an existing international organization, there is no distinct partnership legal entity to which that body has a fiduciary relationship. This means there is no direct responsibility or liability in the way a board would have to its corporation and shareholders. Instead, the fiduciary roles in the international partnership are disseminated elsewhere – for example to the trustee or other downstream fiduciaries. This frees the governing body members to come as themselves and represent their own institutions, rather than be positioned as representatives in their personal capacities with fiduciary duties to the whole. Appearing as domestic or international civil servants from governments or multilaterals, representatives can stay loyal to their respective home organizations – something they are usually supposed to do – without conflicting duties to the partnership per se. If, for example, a donor decides to withhold funds or approval for additional projects, it does not matter if that undermines the "business" of the partnership program; the donor can make its decision for any reason whatsoever, based entirely on its own views and requirements.




*International partnerships consist of both entities and people as partners.*

2) **As-agreed Fiduciaries**. A central tenet of international partnerships that include fund flows is the negotiated nature of "trusteeship." Usually the international fiduciary performs only as articulated in the relevant fund flow agreements, with the express disavowal of any domestic notions of trusts and trustees – performing within the four corners of the agreements, as it were. This lets the supporting entity acting as trustee – or more blandly, as administrator – stay true to its own internal policies and procedures. This also lets partners establish their risk profiles by choosing to rely on more or less robust fiduciary frameworks, including environmental and social safeguards, supervision, and reporting mechanisms. A good deal can also remain unarticulated, particularly with respect to recourse and remedies (see the next point), by placing reliance more on relationships and track records than on indemnifications and litigation. International trustees can come in different flavors, including "full trustees" that sign up to full responsibility for fund use including supervision of grant recipients, and "limited trustees" that become hands-off by transferring both funds and fiduciary responsibility to the recipients, in each case depending on what the partners negotiate.

3) **Privileges and Immunities.** Whether accorded to sovereigns or their multilateral organizations, a layer of protection typically colors much of what international partnerships do. Operating within the penumbra of privileges and immunities (P&I), the partnership is usually based more on a handshake – reliance on each other's engagements – than the specter of legal liability. This is particularly important for supporting entities that benefit from "functional immunities" for the organization, staff and archives in the many roles they can play. Although international organization P&I are being challenged on various fronts, as long as they still exert some protective sheen, international partners can afford to disperse responsibilities amicably amongst themselves and hold each other accountable in a partnering kind of way. For example, when funds are misused and donors expect to be refunded, it is not so much because their fund flow agreements have enforceable clauses, but rather because partners have policies, track records and understandings that undergird their expectations.

*functional privileges and immunities of international organizations*

Needless to say, these features can pose challenges when adding the private sector to international partnerships (not to be confused with project finance-type PPPs). And yet, achievement of the SDGs and other international development objectives, like supporting host communities for refugee flows, are increasingly contingent on catalyzing, coordinating and collaborating with the private sector. The World Bank Group, for example, now refers to the "cascade" – crowding and leveraging in the private sector before following with international funds, thereby layering and reinforcing the support from private to public, as available and needed.

How to handle conflicts of interest in these public-private partnerships can be a big issue. On the one hand, how can we add private sector contributions to international trust funds without skewing the competitive playing field and playing into conflicts of interest? On the other hand, how can we bring international players into corporate settings without compromising their duties of institutional loyalty or undermining their own mandates? The answer is surely not to be strict constructionists and preclude partnering altogether. Instead, there is room to widen the lens: to see synergies in addition to conflicts of interest (I call these synergistic conflicts); to recognize and shape trade-offs; to open up the discussion, opt for transparency and awareness, and disclose and manage where possible.

In many ways, the optimal structure and design of international public-private partnerships remains a frontier for innovation and vision – but a frontier that starts with understanding how international partners create their international partnerships.

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# Cyberwar/Cyberterrorism – A Challenge for Insurers and Cross-border Investors

**Felton (Mac) Johnston**

Felton (Mac) Johnston is the firm's Adviser for Political Risk and Arbitration. He has been involved in political risk mitigation for over 30 years. As Vice President for Insurance of the Overseas Private Investment Corporation (OPIC) for 13 years, he had principal responsibility for OPIC's fast-growing and highly profitable insurance operations, including business production, underwriting and portfolio management, reinsurance negotiations, and product and program development. He had policy responsibility for OPIC's claims decisions, and was a member of OPIC's senior management committee that considers large financing and insurance proposals.

In the crucible of claims and losses, insurance underwriters may learn not just how they are doing, but what they are doing. Claims sometimes cast the light of interpretation on new wordings and also on some tried and true language that is upended by a new peril or found wanting when it occurs. Cyber harm is such a peril, and both the standard war risk exclusion and the provisions of a political violence policy that may previously have served the market well may now need to be reconsidered in light of new issues presented by cyber risk.

Anyone paying attention to such matters will be aware of the NotPetya cyber ransomware attack in 2017 that immobilized many companies' computer systems. The global attack affected enterprises in manufacturing, construction, shipping, pharmaceuticals and other industries, and resulted in aggregate losses estimated in the billions of dollars. One victim, Mondelez International, a food conglomerate, sustained major damage to its servers and laptops. Mondelez brought a claim against its property insurer, Zurich, based on policy coverage for loss due to physical loss or damage to property, electronic data, programs or software, as well as business interruption losses caused by malicious cyber-attacks. The policy had language excluding "hostile or warlike acts" by a sovereign. Zurich has disputed the claim based on that exclusion, relying on a general belief that the attack was state-sponsored, specifically by the Russian government. Mondelez is suing. The heart of the case appears not to be the reality of the sovereign's involvement but its intent, which arguably could have been commercial or otherwise malicious, but not hostile or warlike.

One does not have to take sides in the Mondelez matter to recognize the implications for everyone who wants coverage against cyber losses and purchases such a policy with a standard war exclusion clause, and for their insurers.

## CYBERWAR: MARCHING FROM THE SOUND OF CYBERFIRE

Cyber risk is present in almost every modern endeavor because of the digitization of nearly every enterprise and their resulting vulnerability to malicious cyberattacks and crippling losses. Cyber insurance generally covers extra expense following an attack, liability to third parties for failure to prevent or contain an attack, and possibly property damage resulting from an attack. And as with most insurance, cyber insurance comes with a war risk exclusion, like this one:

*"Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority."*

Such exclusions are a feature of most insurance policies, reflecting the insurance industry's awareness that modern warfare has the potential to cause unsustainable aggregate losses. Courts have generally viewed "war" as something undertaken by a sovereign, so a war exclusion might not bar coverage if an act cannot clearly be attributed to a sovereign. And even if it can be, the sovereign's motivation may be another issue.

Just as insureds want protection from cyber war attacks, insurers, particularly cyber insurers and political violence insurers who are exposed to such risks outside their home countries (where their governments may backstop such losses), generally want to avoid liability for such attacks, for the same reasons that insurers resort to war exclusions clauses – the potential for catastrophic aggregate losses, and perhaps because cyber warfare is an evolving threat whose dimensions and potential manifestations are difficult to anticipate.

But the problem for all parties doesn't end there. Cyberwar isn't the only cyber hot potato. Cyberterrorism is at least as problematic as cyber war.

## CYBERWAR AND CYBERTERRORISM EXCLUSIONS

Terrorism has long been a fact of life for many countries but in the last half century it has become more common, more global, more destructive, and more of a concern for businesses operating domestically or abroad. Most of the insurance market has responded to that concern, as it has to war, by trying to avoid the peril, through modification or clarification of the standard war risk exclusion.

One definition of cyberterrorism is: *"the premeditated use of disruptive activities against any computer system or network, or the explicit threat to use such activities, with the intention to cause harm, further social, ideological, religious, political or similar objectives, or to intimidate any person(s) in furtherance of such objectives."*

An approach some insurers have taken to clearly carve out cyberwar risk is to apply a "Government Action" exclusion for losses resulting from "seizure, confiscation, nationalization, breach of security, use, misuse or destruction of a computer system or electronic data by or on behalf of any government, military, enforcement or other public body or authority…." This may deal with cyberwar, but it doesn't fix the cyberterrorism problem, where no government body may be involved.

One way to carve terrorism (cyber or otherwise) out of a policy is to add any act of terrorism to the litany of excluded events, with an act of terrorism defined thus:

*"For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear."*

**WAR AND TERROR COVER MAYBE, BUT NOT IN CYBER FORM**

That might nail it down for most insurers, including cyber insurers, but political violence insurers, public or private, who explicitly take on war and terrorism perils, have a more-or-less opposite problem. Their policies typically promise to indemnify the insured for *"damage to, or destruction of physical assets …. (other than precious metals, gems, works of art, money or documents)…where damage or destruction is directly caused by Political Violence in the Host Country." Political Violence then may be defined as "a violent act undertaken with the primary intent of achieving a political, ideological or religious objective including by not limited to Willful Destruction, War, Civil War, Revolution, Coup d'Etat, Civil Commotion, Insurrection, Riot, Terrorism, Rebellion, Strike or Sabotage."* Or they may exclude such things as strikes, riots, or civil commotion, depending on the insurer. Business interruption cover may also be available.

To make sure that cyber-terrorism is excluded from policies that otherwise cover war and/or terrorism, wording like the following Lloyd's CL 380 clause is meant to close that door firmly:

*"In no case shall this insurance cover loss, damage, liability, or expense directly or indirectly caused by, or contributed to, by, or arising from, the use or operation, as a means of infliction harm, of any computer, computer system, computer software program, malicious code, computer virus or process or any other electronic system…"*

**MORE EASILY SAID THAN DONE**

Although wanting to avoid exposure to the novelty and threat of cyber war and cyber terrorism, political violence insurers find doing so may raise certain difficulties.

An awkward problem is that when you add a clarification to a policy, even when preceded by the defensive

language “for the avoidance of doubt…” the clarification itself suggests that earlier – and still outstanding – policies could then be assumed to cover the newly excluded risk.

And then there is the matter of competition. Insureds do not like protections to be taken away, and as long as some political violence insurers will offer cyberwar/terrorism cover, or at least don't say they exclude it, there will be some competitive pressure on others to stay the course.

Some political violence insurers are said to exclude cyber risks with explicit wording while being willing to entertain a buy-back of that protection, at a price.

**CONCLUSION**

There is expertise in the matter of cyberwar and cyberterrorism, but that doesn't mean that cyber risk insurers or political violence insurers yet have a complete understanding of those perils and of the potential interplay between potential events and policy wordings sufficient to enable them to comfortably assume the risks involved. Perhaps some clever underwriters and brokers with expertise in both specialties will come up with solutions to bridge the gap between both market segments in the manner that each can each can live with. But standing in the way of that is the uncertainty that surrounds cyber war and cyber terrorism. There is no substantial actuarial or even very much anecdotal information about cyberwar or cyberterrorism risks that has arisen out of the crucible of losses and claims, and in addition to issues about the source and motivation of cyber events there remains much to be understood about the direct and indirect reverberations of cyber-attacks that lead to losses.

# United States - Mexico - Canada Agreement: Innovations and U.S. Ratification

**A Q&A with Prof. Álvaro Santos**

Álvaro Santos is Professor of Law and Director of the Center for the Advancement of the Rule of Law in the Americas (CAROLA) at Georgetown University Law Center. He teaches and writes in the areas of international trade, economic development and transnational labor law. He serves on the editorial boards of leading journals such as the Journal of International Economic Law, the American Journal of Comparative Law, and Law and Development Review, among others. He holds S.J.D. and LL.M. degrees from Harvard Law School, and a LL.B. from Universidad Nacional Autónoma de México (UNAM).

Two key conditions for the approval of the United States-Mexico-Canada Agreement (USMCA) were met in April. First, on April 18, the U.S. International Trade Commission (ITC) published its evaluation of the economic impact of the USMCA, a procedural step required for U.S. fast track authority. Second, on April 29, the Mexican Senate approved the labor reform that Mexico committed to pass prior to the entry into force of the USMCA pursuant to Annex 23-A of the agreement. Despite these events, it remains unclear whether President Trump and Congress will be able to solve the outstanding policy and procedural issues for approval and if so whether there is still time for ratification to occur this year. The clock seems to be ticking for those in favor of a trilateral free trade agreement given President Trump's threat of an early withdrawal from NAFTA if Congress refuses to approve USMCA.

In this context, Georgetown Law's Center for the Advancement of the Rule of Law in the Americas (CAROLA) recently hosted the conference “USMCA: Innovations and U.S. Ratification” to examine the changes to NAFTA that resulted from the new U.S., Mexico, and Canada trade agreement (USMCA) and discuss potential solutions to the hurdles of its ratification. The conference was organized around two panels (including a variety of trade law practitioners, policy specialists, law professors and research fellows) and included a keynote delivered by Her Excellency Martha Bárcena, Ambassador of Mexico to the United States. We asked Álvaro Santos, Professor of Law and Director of CAROLA at Georgetown University Law Center, to share with us the highlights of this interesting event and his general views regarding USMCA. Professor Santos served as Deputy Chief Negotiator of the USMCA for the new Mexican government.

**Q: What were the panelists' views on the main issues affecting the USMCA congressional approval process?**

**A:** With a Democratic majority in the U.S. House of Representatives, the political landscape in the U.S. has changed. There are both procedural and substantive issues affecting USMCA's approval process. Stephen Claeys [Partner, Wiley Rein] mentioned some of the legal steps that would have to be followed by the Executive in order to get the USMCA bill passed. He highlighted, however, that the more interesting aspects with respect to USMCA were the policy issues that would need to be worked out with Congress in order to get the votes needed to ratify the agreement, including labor, environmental, and intellectual property provisions (which concern the Democrats) and steel and aluminum tariffs (which concern the Republicans). One of the problems, however, is that these matters require significant policy discussions and as Brian Pomper [Partner, Akin Gump Strauss & Feld] mentioned, the current Administration might be far from the ideal counterpart from whom to extract trade concessions or with whom to have a broader conversation about trade. Stephen Claeys agreed, putting across the notion that President Trump may believe he has already conceded enough by having the negotiations in the first place, and that he might not be very willing to "pay" any further to get the USMCA through Congress. During the discussion, Elizabeth Baltzan [Principal, American Phoenix Trade Advisory Services PLLC] jumped in to mention that the new standard under the Trade Promotion Act for adding to a trade agreement via the implementing legislation was "strictly necessary and appropriate," and that as a result it would be very hard to include a wish list of policy issues within the implementation bill.

**Q: Mexico's labor reform, which was set as a condition precedent to USMCA entering into force, has been at the center of the approval discussions. Were there any comments in this respect?**

**A:** Celeste Drake, who is AFL-CIO's Trade and Globalization Policy Specialist, reflected on this issue. She mentioned that trade agreements have never done enough for those at the bottom, including workers, and that the current trade model assumes that winners compensate the losers. In the United States, however, she does not believe that has really happened. Trade deals in her view might "grow the pie" but are also known to have exacerbated inequality. In order to offset those tendencies, domestic legislation that compensates the losers should be introduced in tandem. And, according to Mrs. Drake, the reason this has yet to happen is because the powers behind the current trade model are opposed to such reforms. She thought the labor reform in Mexico was very positive but also emphasized the importance of compliance and enforcement on labor rights, suggesting that the agreement would need to be reopened to ensure those mechanisms work effectively.

**Q: I understand several panelists commented on whether the USMCA typified a model for the future and the extent to which it represented a significant departure from NAFTA. Is USMCA very different from other trade agreements?**

**A:** On this point, Kimberly Ann Elliott [Visiting Fellow, Center for Global Development] opined that seen in isolation, the NAFTA and USMCA were indeed different agreements, but that mindful of the evolution of U.S. trade agreements as a whole over the last 25 years, the change could be characterized as incremental at most, the USMCA building from the same basic model and being –save for certain innovations in auto rules of origin, investment, and labor- very similar to the Trans-Pacific Partnership

Agreement (TPP). What was different, according to Mrs. Elliot, was the politics around USMCA i.e., how we got here, inasmuch as the U.S. would not have had a renegotiated NAFTA if Trump had not withdrawn from the TPP.

In terms of the economics, Christine McDaniel [Senior Research Fellow, Mercatus Center, George Mason University] stated that the USMCA was on the whole a positive, adding however that trade agreements are oversold – ITC reports have almost always attributed small but positive effects to them- and they cannot solve all of the domestic problems of the domestic economy. In referring to an aspect of the USMCA that might serve as a model for other agreements moving forward, Mrs. McDaniel singled out digital trade as a discipline in which American "strength shines through."

With respect to environmental standards, Sierra Club's Ben Beachy intervened to say that the USMCA did not significantly depart from the status quo in terms of the environment. Gauging the importance of environmental issues in U.S. trade deals from the number of pages dedicated to it in the recent ITC report –1.5 out of over 300 pages- and the fact that there is no reference to climate change in the USMCA and all previous trade agreements, Mr. Beachy posited that these issues did not register as a priority, even though the concern with environmental arbitrage is real. According to him, deals that incentivize the free flow of goods but that do not impose the same standards on all parties in areas such as labor and the environment encourage arbitrage and the shifting of production where the standards (and costs) are the lowest. In short, he indicated they constitute instruments for corporations to undercut labor and environmental regulations and for the outsourcing of pollution and jobs.

**Q: Were there any discussions regarding the changes to the investor-state arbitration mechanism in USMCA?**

**A:** Inu Manak [Visiting Fellow, Cato Institute] observed how the scaling-back of ISDS (although timid as the USMCA grandfathers in certain sectors) puts the United States back on par with the rest of the world, and that the decoupling of investment from trade is a trend that will continue in other trade agreements. Removing ISDS puts the onus on countries to develop a sound rule of law and a system of effective courts to improve the investment climate, which should, according to Mrs. Manak, be the way for managing investment rules moving forward. Echoing this argument, Ben Beachy also commented that the current ISDS model provides a ceiling not a floor for government action in the public interest. There are other instruments for providing a floor of certitude for investment, of which, according to the World Bank's Doing Business Report, ISDS is not a principle one.

**Q: Can you please share with us the views of Mexico's Ambassador to the United States regarding USMCA and the approval process?**

**A:** Mexico's Ambassador Bárcena delivered a keynote speech. She began her address with a note of optimism, offering the view that the USMCA would get through this year and putting forward a more

nuanced perspective on the importance of the agreement not only for Mexico, but also for the United States. She reflected on the fact that people in the U.S. often ignore the importance of Mexico to the United States. Mexico is the second export market for the U.S. and its third largest trading partner. “In the last two months,” Ambassador Bárcena added, “Mexico has been the number one trading partner of the United States.” To put things into perspective, “all the trade of India and Japan is less than the trade of Texas with Mexico”. Six million American jobs depend on trade with Mexico, Ambassador Bárcena continued. She highlighted that it is easy to get dragged into a narrative of what the problems between the countries in the North American region are, and it is key therefore, not to lose sight of what the challenges for continuing to build prosperity really are.

She also commented on the USMCA's chapter on labor and the shared interest of the Democratic Party and the Mexican government in implementing the rights therein recognized. In her view “a progressive and effective labor rights agenda is one of the top priorities of President López Obrador” and indicated that Mexican government was going to pass a labor reform with or without the USMCA. According to Ambassador Bárcena, passing the labor reform now and aligning it with Annex 23-A of USMCA not only shows that the Mexican President is convinced of labor reform, but also that the government will honor its commitments.

During Q&A, Ambassador Bárcena articulated a message that resonated with the audience: “The U.S. labor movement will never have a better ally than the one of the Mexican government right now.” Adding the phrase “seize the opportunity,” Ambassador Bárcena expressed support for the cause of improving workers' rights in both Mexico and the United States, while also noting that labor obligations under the USMCA should be reciprocal.

**Q: What are your thoughts after hosting this interesting event?**

**A:** There are certainly many conclusions and takeaways from this conference. As a general matter, I believe trade can be a force for prosperity, but that all hopes for peaceful progress and democratic governance cannot be pinned on trade. The U.S. cannot expect that the rules of trade, such as those contained in the USMCA, provide the main solution to the distributional concerns in its society. Mexico also cannot expect that the USMCA be its solution to growth and development necessary to lift half its population out of poverty. The U.S., Mexico, and Canada need to think beyond the USMCA and cooperate on many other fronts in order to appease the passions of nationalism, xenophobia and resentment that can pit our societies against each other. USMCA could be a renewed opportunity for engagement between the North American partners, to establish a solid economic basis to be sure, but also to think ambitiously and creatively on how to cooperate for a prosperous future.

We would like to thank **Andrea E. Stumpf** and **Álvaro Santos** for their contribution to this publication.

## About this Newsletter & robertwray pllc

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