

THE ENFORCEMENT GAP: REFORMING ENVIRONMENTAL DISPUTE RESOLUTION UNDER THE USMCA TO ADDRESS THE CHALLENGES ARISING FROM FRIENDSHORING

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INTRODUCTION

Mexico has become a haven for manufacturers attempting to meet the demands of the American consumer.¹ In 2023, it

1. See M. ANGELES VILLARREAL, CONG. RSCH. SERV., IF11175, U.S.-MEXICO TRADE RELATIONS (2024).

emerged as the primary supplier of imports into the United States, surpassing China with \$475.6 billion worth of goods.² Although China was once the powerhouse that kept American consumerism afloat, its trade relationship with the United States has weakened due to geopolitical differences.³ To mitigate risks, many companies have decided to relocate their manufacturing operations to Mexico, a nation closer to the United States and more compatible with its norms and values⁴—the essence of friendshoring.⁵

Mexico's potential as the world's next industrial giant does not come without consequences. A haven for manufacturers can also become a haven for regional pollution.⁶ Developing countries that take on the mantle of manufacturing for consumers see increased export-related pollution.⁷ However, the degree of environmental harm greatly depends on the country's environmental regulations.⁸ These regulations and policies are

2. *Id.*

3. Laura Alfaro & Davin Chor, *Global Production Networks: The Looming "Great Reallocation"*, STRUCTURAL SHIFT IN THE GLOB. ECON. 213, 214 (2023).

4. See Ana Swanson & Simon Romero, *For First Time in Two Decades, U.S. Buys More from Mexico than China*, N.Y. TIMES (Feb. 7, 2024), <https://www.nytimes.com/2024/02/07/business/economy/united-states-china-mexico-trade.html?camp=7JFJX>

("[G]eopolitical risks are clearly pushing companies to look to other markets, particularly those with low costs and stable trading relationships with the United States, like Mexico.").

5. See Stefan Ellerbeck, *What's the difference between "friendshoring" and other global trade buzzwords?*, WORLD ECON. F. (Feb. 17, 2023), <https://www.weforum.org/stories/2023/02/friendshoring-global-trade-buzzwords/> ("Essentially friendshoring refers to the rerouting of supply chains to countries perceived as politically and economically safe or low-risk, to avoid disruption to the flow of business.").

6. See Xiyan Mao & Canfei He, *A Trade-Related Pollution Trap for Economies in Transition? Evidence From China*, 200 J. CLEANER PROD. 781, 789 (2018) (concluding that "as one economy shifts from a developing economy to a relatively developed one . . . it is likely to become a convergence of pollution emissions, which are embodied in their trade with developed and developing economies.").

7. See *id.* ("[E]vidence from China supports the existence of [the trade-related] pollution trap. That is, the index of [pollution terms of trade] with developed economies keeps larger than 1, while that with developing economies *increases* gradually and *exceeds* the value of 1 eventually.") (emphasis added).

8. *Id.*

subject to external pressures, including foreign policy and international agreements.⁹

The United States-Mexico-Canada Agreement (USMCA) is the signature trade agreement between North America's largest economies.¹⁰ The USMCA's negotiated terms contain various mechanisms that can be used to protect the environment and promote the production of specific goods in certain countries within the USMCA.¹¹ However, more can be done to leverage the agreement in favor of environmental protection and fair trade, ensuring that the North American economies continue to benefit from friendshoring.

The USMCA will have a review period in 2026, during which parties to the agreement can recommend changes or voice their intent to withdraw within the next decade.¹² Given the increase

9. See Antonio Ortiz-Mena, *North American Cooperation: the USMCA and Pacta Sunt Servanda*, THE WILSON CTR. 1, 2—3 (2022), https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/MI_220601_USMCA%20Brief%206_ortizmena_V1%20%28002%29.pdf (explaining, for example, how “[t]he high level of regulatory uncertainty and the myriad obstacles posed to energy investments” with the USMCA “mean that the supply of energy in Mexico will likely be unreliable, without enough clean sources, and not competitively priced.”); see also Shannon K. O’Neil, *The United States’ Missed Opportunity in Latin America: Economic Security Begins Closer to Home*, 103 FOREIGN AFFS. 134, 139—41, 145 (2024) (discussing, in part, Latin America’s “formal preferential trading ties” with the United States, which has played a role in the United States becoming “the region’s largest trading partner, with more than \$1.1 trillion in goods and services exchanged each year” and also becoming Latin America’s “biggest outside investor, contributing nearly 40 percent of all the foreign direct investment the region receives.”).

10. See Agreement Between the United States of America, the United Mexican States, and Canada, Nov. 30, 2018, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> [hereinafter USMCA].

11. See *id.* pmbl. (resolving, for example, to recognize the United States, Mexico, and Canada’s right to protect the environment and natural resources, to protect “human, animal, or plant life or health” in the United States, Mexico, and Canada, and to “promote high levels of environmental protection”); see also *Benefits for the Environment in the United States-Mexico-Canada Agreement*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/benefits-environment-united-states-mexico-canada-agreement> (last visited Feb. 8, 2026).

12. Joshua P. Meltzer & Steve Verheul, *USMCA review: Upcoming elections and a path forward*, BROOKINGS INST. (Mar. 6, 2024), <https://www.brookings.edu/articles/usmca-review-upcoming-elections-and-a-path-forward/>.

in trade between the United States and Mexico, this Comment explores how the USMCA can deter Mexico from willfully violating its environmental policies and safeguard fair trade. Section II outlines China's environmental and economic consequences from the expansion of its manufacturing sector, modern developments in the U.S.-China trade relationship, and Mexico's rise to the world stage as the next manufacturing hub. Section III analyzes the legal implications of the current environmental dispute framework, why changes should be considered advantageous by President Donald Trump and his administration, and the changes that should be made during the USMCA's review. Evaluating these issues will show that fostering a single three-tiered system of environmental dispute resolution under the USMCA can promote fair, accurate, and efficient results while helping bridge an existing enforcement gap.

II. CHINA'S DECLINE AND MEXICO'S CLIMB

A. *China's High-Priced Trade Dominance*

After China implemented economic reforms in 1979, its economic power grew alongside its manufacturing capacity.¹³ China invested in the manufacturing sector and strengthened productivity, putting it in a position to export electronics, machinery, furniture, plastics, and vehicles.¹⁴ This emergence as an industrial hub allowed China to become a significant trade partner of the United States.¹⁵ However, the expansion of its manufacturing ability came with significant energy and pollution issues.¹⁶ In fact, pollution remained on par with China's economic growth, posing a significant health risk to the population.¹⁷

13. See WAYNE M. MORRISON, CONG. RSCH. SERV., RL33534, CHINA'S ECONOMIC RISE: HISTORY, TRENDS, CHALLENGES, AND IMPLICATIONS FOR THE UNITED STATES 1 (2019).

14. See *id.* at 23.

15. *Id.*

16. See *id.* at 29–31 (listing reports on “Environmental Challenges” in China from 2012-2018).

17. *Id.*

Indeed, trade growth feeds an exporting country's pollution emissions.¹⁸ Even after reaping the monetary gains of increased trade, exporters can continue to suffer environmental damage.¹⁹ China continues to face deteriorating air quality in areas with large-scale manufacturing, despite an overall decline in its pollution emissions.²⁰ In 2018, it was found to have overwhelmingly contributed to the growth of carbon dioxide emissions since 2000.²¹ In terms of financial costs, China's air pollution, water pollution, and soil degradation were estimated to have carried a hefty price tag equal to 9.7% of the country's annual GDP between 2000 and 2010.²² Although China has long benefited from the appeal of its manufacturing capabilities, the pollution costs associated with those capabilities have detracted from the country's economic gains.²³

B. The Faltering of U.S.-China Relations

China was the leading trade partner of the United States for about two decades.²⁴ However, the relationship began to sour once the United States realized that China had maintained a sizable trade surplus for years and had unfairly acquired American

18. See Mao & He, *supra* note 6, at 789; see also *2018 Outlook for Energy: A View to 2040*, EXXONMOBIL (2018), https://www.ief.org/_resources/files/events/ief-lecture-exxon-mobils-2018-outlook-for-energy-a-view-to-2040/2018-outlook-for-energy.pdf [hereinafter *2018 Outlook for Energy*] ("The primary driver of increasing global CO2 emissions between 2000 and 2016 was economic growth, as global GDP expanded about 55 percent.").

19. See Mao & He, *supra* note 6, at 789 (concluding that while a country's economy "shifts from a developing economy to a relatively developed one . . . it is likely to become a convergence of pollution emissions," a phenomenon which the authors coin "the trade-related pollution trap.").

20. Qiu Chengcheng, *Why is China's Air Pollution Shifting West?*, DIALOGUE EARTH (July 17, 2025), <https://dialogue.earth/en/pollution/why-is-chinas-air-pollution-shifting-west/>.

21. See *2018 Outlook for Energy*, *supra* note 18 ("China contributed about 60 percent of the growth in emissions from 2000 to 2016 . . .").

22. Air pollution cost China 6.5 percent of its GDP, water pollution cost 2.1 percent, and soil degradation cost an additional 1.1 percent. KEITH CRANE & ZHIMIN MAO, *COSTS OF SELECTED POLICIES TO ADDRESS AIR POLLUTION IN CHINA* 3 (2015).

23. China's rapid economic growth came with the benefit of increased incomes, but was also accompanied with costly air, water, and soil pollution. See *id.*

24. Swanson & Romero, *supra* note 4.

technology.²⁵ China's apparent intent to displace the United States on the international stage, coupled with its threat to American national security, did not help mellow the situation.²⁶ As it became clear that the trade imbalance between the two countries had harmed American producers and labor, the United States imposed tariffs on products originating from China.²⁷

In 2018, the United States declared a trade war against China, aiming to balance the trade relationship between the two countries.²⁸ The conflict began when the United States raised tariffs on certain products regardless of their country of origin, including washing machines, solar panels, steel, and aluminum.²⁹ After China retaliated with its own tariffs on American-made products, the United States specifically imposed tariffs on Chinese imports.³⁰ Although both countries signed an agreement in 2020 to de-escalate the trade war, the tariffs were largely kept in place by the Biden Administration.³¹ The animosity between the two global powers did not go unseen by the private

25. See Tao Liu & Wing Thye Woo, *Understanding the U.S.-China Trade War*, CHINA ECON. J. 2 (2018) (describing the three major concerns that drove the U.S. to initiate the trade war: China's trade surplus, concerns China was illegally and unfairly acquiring U.S. technology, and national security); see also ROBERT E. SCOTT & ZANE MOKHIBER, GROWING CHINA TRADE DEFICIT COST 3.7 MILLION AMERICAN JOBS BETWEEN 2001 AND 2018 4, 7 (2020) ("Overall, the U.S. goods trade deficit with China grew from \$83.0 billion in 2001 to \$419.5 billion in 2018" and "since China's entry into the WTO in 2001 and through 2018, the increase in the U.S.-China trade deficit eliminated or displaced 3,704,700 U.S. jobs.").

26. See Liu & Woo, *supra* note 25, at 2 (describing national security as a major concern in American trade with China).

27. See *id.*; see also SCOTT & MOKHIBER, *supra* note 25, at 8–9 (describing how the trade deficit and domestic job loss worsened in the first two years of the first Trump Administration).

28. See Liu & Woo, *supra* note 25, at 2.

29. See Pablo Fajgelbaum & Amit Khandelwal, *The Economic Impacts of the U.S.-China Trade War*, NAT'L BUREAU OF ECON. RSCH. 1 (2021) (noting that the tariffs were later considered to be targeting China).

30. See *USTR Finalizes Second Tranche of Tariffs on Chinese Products in Response to China's Unfair Trade Practices*, OFF. OF THE U.S. TRADE REPRESENTATIVE (Aug. 7, 2018), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/ustr-finalizes-second-tranche>; see also Chad P. Brown & Melina Kolb, *Trump's Trade War Timeline: An Up-to-Date Guide*, TRADE & INV. POL'Y WATCH 1 (2025) (reporting that China imposed tariffs on American sorghum in April 17, 2018).

31. See Fajgelbaum & Khandelwal, *supra* note 29.

sector and prompted an industrial migration from China to other countries.³²

C. Mexico's Leap to the Top & the Consequences

Over the last few years, the “great reallocation” has begun to shift global supply chains as manufacturing companies leave China for other low-wage countries more amenable to American foreign policy.³³ In 2023, Mexico became the United States’ primary import supplier, displacing China and exporting about \$475.6 billion worth of products to the United States.³⁴ In an effort to minimize supply chain issues, the United States has been open to companies localizing their production processes and establishing operations in closer, more friendly countries like Mexico.³⁵

Mexico has indeed gained ground in exporting products to the United States where China once dominated.³⁶ For example, China’s exports of auto parts, electronics, and semiconductors to the United States have decreased since 2017.³⁷ On the other hand, Mexico’s exports of those same products to the United States have remarkably risen within the last decade.³⁸ In fact, the United States primarily imports motor vehicles, motor vehicle parts, computer equipment, oil and gas products, and electronic

32. See Swanson & Romero, *supra* note 4 (describing how foreign companies looking to sell within North America see Mexico as a viable manufacturing alternative to China).

33. See Alfaro & Chor, *supra* note 3, at 216—18 (describing the “great reallocation” of 2017-2022 as a shift in American import shares away from China to low wage manufacturing countries like Mexico and Vietnam.) The authors attribute the great reallocation to shifts in U.S. economic policy, such as trade deliberalization, encouragement of “friendshoring,” and increased focus on domestic manufacturing.

34. Swanson & Romero, *supra* note 4.

35. See Alfaro & Chor, *supra* note 3, at 216—18 (explaining the reallocation of U.S. import share and describing policy-backed American interests in friendshoring, nearshoring, or reshoring).

36. *Id.* at 233—34 (demonstrating, in Figure 4, how China’s market share in automobiles, auto parts, electronics, and semiconductors to the United States has decreased and, in Figure 5, how Mexico’s market share of auto and autopart imports has increased instead).

37. *Id.*

38. *Id.* at 236 (identifying the relationship between the decline in China’s U.S. import share and the rise in Mexico’s U.S. import share, with particularly strong gains in the last five to ten years).

equipment from Mexico.³⁹ This expansion of Mexican-made products in the United States is demonstrably linked to the manufacturing exodus from China.⁴⁰

Unsurprisingly, the migration of manufacturing to Mexico carries with it the relocation of pollution sources, increasing the potential for pollution-related illness or harm.⁴¹ Mexico is already coping with the concentration of pollutants related to industrial waste, microplastics, pesticides, dyes, and other emerging pollutants not entirely regulated by Mexican law.⁴² In 2023, Mexico's air contained four times the recommended quantity of particulate matter as prescribed by the World Health Organization (the "WHO") guidelines.⁴³ Moreover, the WHO estimated that about 25% of Mexican deaths from stroke and ischemic heart disease could be attributed to air pollution.⁴⁴ Therefore, a fine line must be drawn to ensure that Mexico's trade growth does not come at the cost of environmental protection.

39. VILLARREAL, *supra* note 1.

40. See John Towfighi, *Manufacturing in Mexico is having its moment. The US is buying in — and so is China*, CNN BUSINESS (Apr. 28, 2024), <https://www.cnn.com/2024/04/28/business/us-china-mexico-manufacturing-nearshoring-hnk-intl/index.html> (noting that a decreased reliance on Sino-American trade has benefited Mexican manufacturing as an example of nearshoring).

41. See *Environmental Health Mexico 2023 country profile*, WORLD HEALTH ORG. (June 7, 2023), <https://www.who.int/publications/m/item/environmental-health-mex-2023-country-profile>; Ivonne Cruz, *Nearshoring Raises Questions About Environmental and Social Impacts in the Borderlands*, BAKER INST. (Sept. 27, 2024), <https://www.bakerinstitute.org/research/nearshoring-raises-questions-about-environmental-and-social-impacts-borderlands>.

42. See Angélica Aguilar-Aguilar et al., *A systematic review on the current situation of emerging pollutants in Mexico: A perspective on policies, regulation, detection, and elimination in water and wastewater*, SCI. OF THE TOTAL ENV'T 1—2 (2023) (abstract summarizing the presence of pollutants in Mexico accompanied by lack of comprehensive environmental regulation).

43. *Environmental Health Mexico 2023 country profile*, WORLD HEALTH ORG. (June 7, 2023), <https://www.who.int/publications/m/item/environmental-health-mex-2023-country-profile>.

44. *Id.*

III. SECURING A BALANCE BETWEEN ENVIRONMENTAL RESPONSIBILITY & FRIENDSHORING

A. *The Toothless Oversight of Environmental Law Violations Under the USMCA*

The USMCA is a trade agreement between the United States, Mexico, and Canada (collectively, the “Parties”).⁴⁵ The agreement is mainly predicated on its predecessor, the North American Free Trade Agreement, with the inclusion of new provisions.⁴⁶ For example, the USMCA introduced changes that impacted the trade of motor vehicles between the Parties and recognized the Mexican government’s ownership of regional hydrocarbons.⁴⁷ In turn, trade has substantially increased between the Parties by double digits over the last few years.⁴⁸ This increase in economic activity is indeed a product of the complex mechanisms and commitments integrated throughout the agreement.⁴⁹

Chapter 24 of the USMCA (the “Environmental Chapter”) addresses the relationship between environmental protection and international trade.⁵⁰ The Environmental Chapter ensures that any interested person, in their individual capacity, may request that official authorities investigate violations of environmental law by a Party.⁵¹ It further prohibits the Parties from weakening or waiving their environmental laws to encourage trade or investment, stating that such an action is inappropriate.⁵² On the surface, it is evident that the Parties acknowledged the

45. *See generally* USMCA, *supra* note 10, pmb1.

46. M. ANGELES VILLARREAL, KYLA H. KITAMURA & DANIELLE M. TRACHTENBERG, CONG. RSCH. SERV., IF10997, U.S.-MEXICO-CANADA (USMCA) TRADE AGREEMENT 1 (2024).

47. *Id.*

48. *See* Joshua P. Meltzer et al., *USMCA at 3: Reflecting on Impact and Charting the Future*, BROOKINGS (July 19, 2023), <https://www.brookings.edu/articles/usmca-at-3-reflecting-on-impact-and-charting-the-future/> (stating that in 2022, the total value of trade within North America exceeded \$1.5 trillion, due to double digit growth in trade over the past two years).

49. *See id.*; *see generally* USMCA, *supra* note 10 (showing the mechanisms that the USMCA has in place for environmental regulation and dispute settlement).

50. USMCA, *supra* note 10, art. 24.2.

51. *Id.* art. 24.6(1).

52. *Id.* art. 24.4(3).

environmental issues related to trade and sought to ensure that all Parties adhered to environmental policies.⁵³ However, the USMCA fails to: (1) properly empower the supervisory bodies it created to deal with environmental disputes;⁵⁴ and (2) optimize the processes it put in place to solve such disputes.⁵⁵

1. The Limited Authority of the Environmental Supervisory Bodies Created by the USMCA

The USMCA established and recognized several supervisory bodies meant to oversee the implementation of and compliance with the Environmental Chapter, including: (1) the Environmental Committee; and (2) the Commission for Environmental Cooperation.⁵⁶

a. The Limited Authority of the Environmental Committee

Article 24.26 of the USMCA establishes an Environmental Committee (the “Committee”) composed of the Parties’ senior government representatives in trade and environmental agencies.⁵⁷ The Committee’s purpose is to oversee the implementation of the USMCA’s policies under the Environmental Chapter.⁵⁸ Any decision or report made by the Committee must be a product of consensus among the Parties unless otherwise agreed.⁵⁹ Public participation must be allowed in all matters relevant to the Committee’s work where appropriate, including the functions assigned to the Committee under the USMCA’s Environmental Chapter.⁶⁰ Namely, the

53. *Id.* arts. 24.2(2)—24.2(5).

54. *See id.* arts. 24.26—24.28 (establishing the Environment Committee and recognizing the Commission for Environmental Cooperation).

55. *See id.* art. 31.11 (establishing the Rules of Procedure for dispute settlement).

56. *See id.* arts. 24.26—24.27.

57. *See* USMCA, *supra* note 10, art. 24.26(2).

58. *Id.* art. 24.26(3).

59. *Id.* art. 24.26(5).

60. *See id.* arts. 24.26(8), 24.26(3) (showing the many functions that the Environmental Committee has, among them are “any functions that the Parties deem necessary”).

Committee is tasked with providing a space for debate and review of the Environmental Chapter's implementation, informing other regulatory bodies of updates regarding the Environmental Chapter, coordinating with other committees, and performing any other functions assigned by the Parties.⁶¹

More importantly, however, the Committee must "consider and endeavor" to resolve issues that the Parties are not able to solve through an Environmental Consultation, as discussed in Section III(A)(ii)(a) below.⁶² It must then provide feedback to the Council for the Commission for Environmental Cooperation regarding submissions on enforcement matters, as discussed in Section III(A)(1)(b) below.⁶³ Nonetheless, the Committee is neither required nor textually authorized to issue substantive rulings or remedies that would resolve the Parties' disputes.⁶⁴ Indeed, the Committee's authority to address issues under the Environmental Chapter is limited.⁶⁵

b. The Limited Authority of the Commission for
Environmental Cooperation

Article 24.25 recognizes the Commission for Environmental Cooperation (the "Commission") as established by the Agreement on Environmental Cooperation among the Governments of Canada, the United Mexican States, and the United States of America (the "ECA").⁶⁶ The Commission is a supervisory body to which any national or enterprise organized under the law of a Party can submit disputes alleging that a Party has failed to enforce its environmental laws.⁶⁷ The submissions must be filed

61. *Id.* art. 24.26(3).

62. *Id.*

63. *Id.*

64. *See* USMCA, *supra* note 10, arts. 24.26, 24.4(2) (stating that the Parties retain the right to exercise discretion in decisions regarding regulatory and compliance matters).

65. *See id.*

66. *Id.* art. 24.25(3).

67. *Id.* art. 24.27(1) (showing the submission process for any "person of a Party" to submit disputes to the ECA); *id.* art. 1.5 (defining "person of a Party" as a national or enterprise of a Party).

with the Secretariat of the Commission (the “Secretariat”), which would be in charge of seeing the complaint through to the end.⁶⁸

The Secretariat may consider any written complaint so long as it: (1) clearly identifies the petitioner; (2) provides sufficient information, including evidence and the law at issue; (3) does not appear to be harassment against an industry; and (4) indicates whether the relevant Parties were informed in writing and their response.⁶⁹ After assessing the complaint, the Secretariat must determine if it warrants a Party’s response by considering whether: (1) it alleges harm to the petitioner; (2) it raises issues whose revision would advance the Environmental Chapter’s policies; (3) it is not wholly based on mass media reports; and (4) the petitioner has already pursued other remedies available.⁷⁰

If the Secretariat requests a Party’s response, the Party must inform the Secretariat whether the issue is subject to a pending judicial or administrative proceeding.⁷¹ If so, the Secretariat must cease its investigation.⁷² Otherwise, the responding Party may provide any other information that it wishes to share with the Secretariat regarding the enforcement of the environmental law at issue, whether the matter was previously subject to a proceeding, the availability of private remedies, and whether they have been pursued.⁷³ In essence, the responding Party is not required to provide any information regarding the issue other than whether it is currently subject to litigation.⁷⁴

Depending on the Party’s response and the allegations, the Secretariat may decide that the complaint warrants developing a factual record.⁷⁵ A factual record is a report that outlines the technical, scientific, and legal aspects of a dispute.⁷⁶ The factual

68. See *id.* arts. 24.27(1), 24.28 (showing that a submission received by the ECA is handled almost entirely by the Secretariat of the Commission).

69. *Id.* art. 24.27(2).

70. *Id.* art. 24.27(3).

71. USMCA, *supra* note 10, art. 24.27(4).

72. *Id.*

73. *Id.* art. 24.27(4).

74. *Id.*

75. *Id.* art. 24.28(1).

76. *Submissions on Enforcement Matters*, COMM’N FOR ENV’T COOP., <http://www.cec.org/submissions/#:~:text=A%20Factual%20Record%20is%20a,health%20aspects%20of%20the%20situation> (last visited Nov. 23, 2023).

record also contains transcripts of interviews with government officials and analyses by independent experts.⁷⁷ If the Secretariat decides that one is needed, they must seek the authorization of at least two members of the Council for the Commission for Environmental Cooperation (the “Commission’s Council”) to begin preparing it.⁷⁸ If authorized, the Secretariat must prepare the factual record in consideration of any information provided by a Party.⁷⁹ The Secretariat may also consider information that is publicly available, submitted by interested persons and other supervisory bodies, developed by independent experts, or produced under the ECA.⁸⁰

After preparing the factual record, the Secretariat must submit a draft to the Commission’s Council, where the relevant Parties will be given the opportunity to comment on its accuracy.⁸¹ Such comments must be added to the final draft, which would then be made available to the public unless two members of the Commission’s Council object.⁸² Notably, the USMCA requires no specific reason for objection.⁸³ The final record must be circulated to the Committee for review to determine whether the issue is in line with the Environmental Chapter’s policies.⁸⁴ The Committee may then make recommendations to the Commission’s Council regarding whether the relevant Parties should reach a resolution.⁸⁵ Beyond that, however, the Committee and Commission are not required or authorized by the text to do anything else.⁸⁶ The factual record serves as nothing more than a spotlight that brings awareness to

77. *Id.*

78. USMCA, *supra* note 10, art. 24.28(2).

79. *Id.* art. 24.28(4).

80. *Id.*

81. *Id.* art. 24.28(5).

82. *Id.* art. 24.28(6).

83. Article 24.28 states that that members of the Council may instruct the CEC Secretariat not to make the final record available to the public, but does state any requirement for them to provide a purpose for their objection. *See id.*

84. *Id.* art. 24.28(7).

85. *Id.*

86. USMCA, *supra* note 10, art. 24.28 (indicating that the last measure the Committee is allowed to pursue is making recommendations to the relevant Parties).

the issue at hand.⁸⁷ It is evident that the supervisory bodies established under the USMCA are limited in authority.

2. The Diminished Efficiency of Resolving Disputes Under the USMCA

The USMCA established a multi-tiered mechanism for resolving disputes among the Parties that arise under the Environmental Chapter, progressing from: (1) Environmental Consultations; to (2) Senior Representative Consultations; to (3) Ministerial Consultations; and ultimately (4) Dispute Resolution.⁸⁸

a. The Restricted Scope of Environmental Consultations

The Parties are not bound to a singular pre-determined understanding of the Environmental Chapter.⁸⁹ Although the USMCA foresees eventual disagreements, it merely requires the Parties to “endeavor” to agree on the interpretation and application of USMCA provisions.⁹⁰ In the event that a dispute arises under the Environmental Chapter, any Party to the agreement may request an Environmental Consultation to address it.⁹¹ To be compliant with the USMCA, the requesting Party must provide specific and sufficient information, including the issue and the legal basis, to permit the responding Party to answer accordingly.⁹²

Although the Parties may debate and address any issues that arise under the Environmental Chapter, they are not required to settle their disputes.⁹³ Instead, the Parties are tasked with

87. *See id.* (“The Environment Committee shall consider the final factual record in light of the objectives of this Chapter and the ECA and may provide recommendations to the Council on whether the matter raised in the factual record could benefit from cooperative activities.”).

88. *See id.* arts. 24.2—24.32.

89. *See id.* art. 24.29(1).

90. *Id.*

91. *Id.* art. 24.29(2).

92. *Id.*

93. *See* USMCA, *supra* note 10, art. 24.29(5) (“The consulting Parties shall make every effort to arrive at a mutually satisfactory resolution to the matter which may include

making “every effort” to reach a mutually satisfying solution to the conflict.⁹⁴ This effectively means that if one of the Parties requests an Environmental Consultation to evaluate another Party’s actions and their conformity with the Environmental Chapter, the requesting Party cannot compel the other Party’s compliance.⁹⁵ Indeed, an Environmental Consultation offers no comprehensive or definitive mechanism to ensure the honest and effective practice of the Parties’ environmental regulations.⁹⁶

b. The Restricted Scope of Senior Representative Consultations

The USMCA provides a second tier of issue revision.⁹⁷ If an Environmental Consultation results in no agreement, any consulting Party may request that their representatives in the Committee convene to consider the dispute in a Senior Representative Consultation.⁹⁸ After being notified, the respective Committee representatives must promptly convene to consider the dispute and may consult with relevant experts and gather pertinent information to seek a resolution.⁹⁹ However, the Committee representatives are not required to reach a settlement for those they represent.¹⁰⁰ Instead, this dispute mechanism mirrors the procedures of an Environmental Consultation and merely tasks the representatives with striving to resolve the matter.¹⁰¹ Once again, a Party’s violation of the Environmental Chapter may go unresolved.¹⁰²

appropriate cooperative activities. The consulting Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.”).

94. *Id.*

95. *See id.*

96. *See id.*

97. *See id.* art. 24.30(1).

98. *Id.* arts. 24.26(2), 24.30(1) (indicating that the representatives that are to convene are the senior government officials of the consulting Parties which are part of the Environment Committee).

99. USMCA, *supra* note 10, art. 24.30(2).

100. *See id.*

101. *Id.*

102. *See id.*

c. The Restricted Scope of Ministerial Consultations

The USMCA also provides a third tier of issue revision.¹⁰³ If both Environmental Consultations and Senior Representative Consultations fail to yield a solution, any Party to a Senior Representative Consultation may refer the dispute to the relevant Ministers of the consulting Parties in a Ministerial Consultation.¹⁰⁴ Although the Environmental Chapter does not specifically define who the Parties' Ministers are, there are two possibilities: members of the Labor Council established under Chapter 23 or members of the Free Trade Commission established under Chapter 30.¹⁰⁵ Regardless, the Ministers' obligation and ability to resolve disputes are similarly limited by the phrase "seek to resolve."¹⁰⁶ Reaching a resolution is not required and could be put on hold yet again.¹⁰⁷

d. The Prolonged Path to Dispute Resolution

The USMCA sets forth a final tier of review.¹⁰⁸ If Environmental Consultations, Senior Representative Consultations, and Ministerial Consultations fail to reach a solution, the requesting Party may demand the establishment of a panel under Chapter 31 of the USMCA to settle the dispute.¹⁰⁹ At the implementation of the USMCA, each Party was allowed to designate up to ten individuals who may serve in Chapter 31 panels so long as they: (1) have relevant experience; (2) are nominated based on objectivity, reliability, and sound judgment;

103. See *id.* art. 24.31(1) (authorizing referral of unresolved matters to the relevant Ministers if consultations under arts. 24.29 and 24.30 fail).

104. *Id.*

105. See *id.* art. 24.1 (failing to define the term "Ministers" for purposes of the Environmental Chapter); *id.* art. 23.14(1) (creating a Labor Council composed of senior government representatives "at the ministerial or other level"); *id.* art. 30.1 (creating a Free Trade Commission composed of representatives "at the level of Ministers or their designees").

106. See *id.* art. 24.31(1) (stating that the relevant Ministers "shall seek to resolve the matter," mirroring art. 24.30's language).

107. See *id.*

108. See USMCA, *supra* note 10, art. 24.32(1).

109. *Id.*

(3) are independent of the Parties; and (4) comply with the listed code of conduct.¹¹⁰

If a dispute arises under the Environmental Chapter, the panelists chosen from the pool (except for the chair) must have proficiency or experience in environmental law or practice.¹¹¹ The panel will typically be composed of five members if there are two disputing Parties, unless they agree to limit the panel to three members.¹¹² In forming the panel, the relevant Parties must select two panelists who are citizens of the opposing Party.¹¹³ If the Parties fail to select panelists, panelists who meet the same criteria will be chosen by a lottery system.¹¹⁴

Once a panel is formed, its primary task is to assess the issues at hand objectively.¹¹⁵ After doing so, the panel is required to present a final report that includes its: (1) findings of fact; (2) conclusions on whether the issues are inconsistent with the USMCA; (3) recommendations, if jointly requested by the disputing Parties; and (4) its reasoning.¹¹⁶ Notably, the panel's conclusions may not be interpreted to expand or restrict the rights and obligations of the Parties under the USMCA.¹¹⁷ Instead, if the panel finds that a Party violated its obligations or impaired benefits under the USMCA, the disputing Parties must endeavor to agree on a solution.¹¹⁸

However, the Parties are not bound to an endless cycle of mere endeavors to resolve their issues under the Dispute Resolution tier.¹¹⁹ Rather, if the disputing Parties are unable to agree on a resolution to their issues within forty-five days from receipt of the panel's report, the complaining Party may suspend the breaching Party's access to its benefits under the USMCA.¹²⁰ The level of benefits that are suspended must be on par with the effect

110. *Id.* art. 31.8(2).

111. *Id.* art. 31.8(3).

112. *Id.* art. 31.9(1).

113. *Id.*

114. *Id.*

115. USMCA, *supra* note 10, art. 31.13(1).

116. *Id.*

117. *Id.* art. 31.13(2).

118. *See id.* art. 31.18(1).

119. *See id.* art. 31.19(1).

120. *Id.*

of the breaching Party's violation.¹²¹ Specifically, the complaining Party must seek to suspend benefits in the same sector affected by the breaching Party's violation.¹²²

If the complaining Party determines that limiting suspension to that sector is insufficient, it may suspend benefits in other sectors as well.¹²³ Subsequently, the breaching Party can request that the panel reconvene to determine whether the suspension is manifestly excessive or whether it has remedied its breach.¹²⁴ If the panel determines that the suspension is indeed manifestly excessive, it must provide its opinion on what level of suspension it considers to be of equivalent effect.¹²⁵ On the other hand, if the panel finds that the breaching Party has not remedied its breach, the complaining Party can suspend benefits up to the level previously determined by the panel.¹²⁶ Ultimately, an injured Party would be forced to navigate four tiers of dispute review and consultations before arriving at a clear solution.¹²⁷

B. Granting Adjudicatory Authority to the Commission & Panels to Streamline Dispute Resolution Under the Environmental Chapter

The current USMCA framework is not equipped to ensure that Parties that turn a blind eye to their environmental laws are swiftly dealt with.¹²⁸ Indeed, the current system turns away from efficiency and instead provides two separate avenues that either result in inaction or a prolonged four-tier procedure—factual records and consultations.¹²⁹ As such, the upcoming USMCA

121. *Id.*

122. USMCA, *supra* note 10, art. 31.19(2)(a).

123. *Id.* art. 31.19(2)(b).

124. *Id.* art. 31.19(3).

125. *Id.* art. 31.19(3).

126. *Id.* art. 31.19(4).

127. *See id.* ch. 24 (detailing the tiers of consultations and dispute resolution); *see id.* ch. 31.

128. *See* USMCA, *supra* note 10, at arts. 24, 31 (indicating that an injured Party would be required to navigate through four layers of dispute review and consultations before reaching a definitive answer).

129. *See id.* arts. 24.28—32, 31.17—19, 31.21 (establishing two separate enforcement avenues: A citizen submission mechanism that produces non-binding factual records “without prejudice to any further steps” or an enforcement mechanism, and a

review in 2026 provides a window of opportunity to remedy these shortcomings and implement an adjudication system recognized across the Parties' jurisdictions.¹³⁰

An adjudication system generally provides the structure for resolving disputes between government agencies and/or private individuals through informed, independent-minded evaluations.¹³¹ Such a system typically encompasses factual investigations, initial findings, and appellate review.¹³² An adjudication system should strive to resolve disputes accurately, fairly, and efficiently.¹³³ This means that the system should result in the correct answer, be satisfactory to those affected, and minimize unnecessary delays and costs.¹³⁴

Considering these factors, it is evident that the USMCA's current method of environmental dispute resolution falls short.¹³⁵ As such, the current framework should be modified into a single adjudicatory system (the "System") composed of three levels. Specifically, the USMCA should be revised to: (1) designate Environmental Consultations as the first level of dispute resolution; (2) give the Secretariat adjudicatory power and establish the adjudication as the second level of dispute resolution; and (3) give the selected panels under Chapter 31 of the USMCA appellate authority to review the Secretariat's adjudication and establish the appeal as the third and final level of dispute resolution.

state-to-state dispute mechanism requiring a four-tier process of environment consultations, senior representative consultations, ministerial consultations, and panel proceedings requiring a minimum of 300 days before remedies may be imposed).

130. *Id.* art 34.7(2).

131. Michael Asimow, *Five Models of Administrative Adjudication*, 63 AM. J. COMP. L. 3, 4 (2015).

132. *Id.* at 4, 6, 27.

133. *Id.*

134. *Id.* at 27.

135. See USMCA, *supra* note 10, arts. 24, 31 (permitting enforcement discretion, producing non-binding factual records, allowing compensation in lieu of compliance, and barring private suits).

1. Level One: Environmental Consultations

As outlined in Section III(A)(2)(a), the Parties can engage in Environmental Consultations if a dispute arises under the Environmental Chapter of the USMCA.¹³⁶ Although an Environmental Consultation does not necessarily require the participating Parties to reach a conclusion, it requires them to make every effort to solve the problem independently.¹³⁷ In an attempt to minimize the costs associated with adjudication, it is suggested that the procedures under Environmental Consultations be left as they currently are and that Environmental Consultations be designated as the first level of the System. Requiring the Parties to engage in Environmental Consultations before allowing them to expend adjudicatory resources will ensure that the System remains efficient and does not lose steam on issues where the Parties can quickly negotiate a solution.

2. Level Two: Adjudication By the Secretariat of the Commission

As outlined in Section III(A)(1)(b), the Commission was established under the ECA and recognized by the USMCA.¹³⁸ Although its general purpose is to provide a place for public officials and the community to engage in North American environmental policy issues, it is limited in what it can do to remedy environmental law violations.¹³⁹ For example, the Commission's Secretariat can compile and publish a factual record concerning a Party failing to enforce its environmental laws if the Commission's Council allows it to do so.¹⁴⁰ Yet, as mentioned above, the factual record serves as a mere spotlight on

136. *Id.* art. 24.29(2).

137. *Id.* art. 24.29(5).

138. *Id.* art. 24.25(3).

139. *See id.* art. 24.28 (creating a factual record mechanism that produces non-binding reports with no enforcement authority, permits only optional recommendations for voluntary cooperation, and imposes no obligation to remedy identified violations).

140. *Id.* art. 24.28(6).

environmental violations and offers the Commission no substantive remedial power.¹⁴¹

As such, a provision conferring adjudicatory power to the Commission's Secretariat should be added to the USMCA during its review period. Specifically, adjudications by the Secretariat of the Commission are suggested to be the second level of the System. This adjudicatory level would benefit from following the United States' combined-function agency model, which embraces adversarial hearings.¹⁴² There, the Secretariat would be the hearing officer, and the relevant Parties would be represented by counsel.¹⁴³ After the hearing, the Secretariat would render an initial decision and publish their opinion, which would contain findings of fact, findings of law, reasons, and a remedy for the breach.¹⁴⁴ As provided under Chapter 31 of the USMCA to the Parties, the Secretariat should be able to freeze a breaching Party's benefits under the USMCA in proportion to their violation.¹⁴⁵

Notably, the Secretariat's current election process offers fairness to the Parties.¹⁴⁶ The Commission is governed by a Council comprised of the Parties' cabinet-level representatives in charge of their nation's environmental affairs.¹⁴⁷ The multi-member Council is tasked with selecting an Executive Director to head the office of the Secretariat for a three-year

141. *See id.* art. 24.28 (providing that factual records are publicly disclosed but have no binding legal effect, authorizing only optional recommendations for voluntary cooperation, and requiring informational updates without mandating remediation).

142. *See* Asimow, *supra* note 131, at 13 (describing the United States combined-function model where adversarial hearings before independent officers produce fair and correct initial decisions with procedural safeguards ensuring impartiality).

143. *See id.* at 6, 8–9 (describing adversarial model where parties present cases through lawyer-controlled proceedings before hearing officer who maintains separation from investigation and prosecution functions).

144. *Id.* at 13.

145. USMCA, *supra* note 10, art. 31.19(1).

146. *See* Agreement on Environmental Cooperation Among the Governments of the United States of America, the United Mexican States, and Canada, *opened for signature* Nov. 30, 2018, https://www.epa.gov/sites/default/files/2018-11/documents/us-mxca_eca_-_final_english.2.pdf [hereinafter ECA] (providing that the Executive Director is chosen by a Council of all Parties and requires equitable staffing from each Party's nationals with Council oversight through two-thirds vote).

147. *Id.* art. 3(1).

term.¹⁴⁸ Because all Parties have a role in selecting the Secretariat, the second level of the System and its results should be acceptable to the Parties.¹⁴⁹

3. Level Three: Appellate Review by Chapter 31 Panels

The Secretariat's decision would become final unless the relevant Parties seek an appeal.¹⁵⁰ As outlined in Section III(A)(2)(d), a Party may demand the establishment of a panel under Chapter 31 of the USMCA if no solution has been reached under previous methods.¹⁵¹ However, the panel has no outright authority to remedy the situation.¹⁵² In fact, the panel's conclusion cannot be interpreted to expand or restrict the rights and obligations of the Parties under the USMCA.¹⁵³ The complaining Party may suspend the USMCA benefits of the breaching Party if they cannot reach an agreement.¹⁵⁴ The panel's recommendation regarding the suspension of benefits is only relevant if it determines that the breaching Party failed to address its violation and that the complaining Party has imposed an excessive suspension.¹⁵⁵

As such, a provision conferring appellate authority to panels organized under Chapter 31 of the USMCA should be added during its review period. Specifically, a panel would be created under the existing guidelines of Chapter 31 of the USMCA when the relevant Parties seek to appeal the Secretariat's decision. To keep the System more in line with the United States model, the panel should have closed appellate review¹⁵⁶—meaning no new evidence or arguments—and assign weight to the Secretariat's

148. *Id.* art. 5(1).

149. *See id.* arts. 4(1)(c), 5(1) (providing that the Council oversees the Secretariat and appoints its Executive Director).

150. Asimow, *supra* note 131, at 13.

151. USMCA, *supra* note 10, art. 24.32(1).

152. *See id.* arts. 31.13(1), 31.18.

153. *See id.* art. 31.13(2).

154. *Id.* art. 31.19(1).

155. *Id.* art. 31.19(3)—(4).

156. Asimow, *supra* note 131, at 18—19.

determinations based on their power to persuade.¹⁵⁷ If the panel believes that the Secretariat reached the correct conclusion, it should affirm its findings.¹⁵⁸ Otherwise, the decision should be reversed.¹⁵⁹

Notably, the current process of electing a panel offers accuracy and fairness to the Parties.¹⁶⁰ The Parties are allowed to select up to ten possible individuals who could serve as panelists, so long as they meet specific requirements.¹⁶¹ If a dispute arises under the Environmental Chapter, the chosen panelists must have proficiency or experience in environmental law.¹⁶² The eventual panel will be composed of five members if there are two disputing Parties unless they agree otherwise.¹⁶³ This effectively means that the appellate panel will be composed of environmental specialists, leading to a process that is likely to arrive at the correct result and should be acceptable to the Parties.¹⁶⁴

C. The Trump Administration Would Benefit From Supporting the Adjudicatory System to Resolve Disputes Under the USMCA's Environmental Chapter

Any Party to the USMCA may submit recommendations to the Free Trade Commission (the "FTC") during its review period.¹⁶⁵ The FTC would then review them and take appropriate action.¹⁶⁶ Notably, the FTC is composed of ministerial-level representatives from each Party, and any decision taken must be adopted by

157. The Secretariat's power to persuade can be based on the thoroughness of its considerations, the logic of its reasoning, its consistency with precedent, and anything else that makes it persuasive. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

158. *See id.* at 140 (explaining that agency determinations are given weight according to their "power to persuade").

159. *Id.*

160. *See* USMCA, *supra* note 10, art. 31.8(2)–(3)(b) (establishing qualifications requiring expertise, objectivity, independence, and balanced selection of panelists for dispute resolution).

161. *Id.* arts. 31.8(1)–(2).

162. *Id.* art. 31.8(3)(b).

163. *Id.* art. 31.9(1)(a).

164. *See id.* art. 31.8(3)(b) (requiring panelists in environmental disputes to have expertise or experience in environmental law).

165. *Id.* art. 34.7(2).

166. *Id.*

consensus without objection.¹⁶⁷ President Donald Trump won the 2024 Presidential Election, giving his Administration the authority to submit proposals and jointly consider them on behalf of the United States.¹⁶⁸ Therefore, any proposal to change the USMCA's Environmental Chapter must muster enough support from an administration that has not been receptive to environmental regulation.¹⁶⁹

The first Trump Administration was defined as a big advocate for environmental deregulation and the expansion of American energy.¹⁷⁰ The Trump Administration's aspirations prompted the United States' withdrawal from the Paris Climate Agreement and the annulment of President Obama's Clean Power Plan, both of which were hallmarks of the fight against climate change.¹⁷¹ To fill the regulatory void with a policy more aligned with the Trump Administration's goals, the Environmental Protection Agency issued the Affordable Clean Energy Rule.¹⁷² Although the rule reflected a desire to reduce greenhouse gas emissions from power plants, its emissions targets allowed coal-fired plants to continue

167. USMCA, *supra* note 10, arts. 30.1, 30.3.

168. *Presidential Election Results: Trump Wins*, N.Y. TIMES, <https://www.nytimes.com/interactive/2024/11/05/us/elections/results-president.html> (last visited Feb. 17, 2026) (displaying the results of the 2024 Presidential Election).

169. Samantha Gross, *What is the Trump Administration's Track Record on the Environment?*, BROOKINGS (Aug. 4, 2020), <https://www.brookings.edu/articles/what-is-the-trump-administrations-track-record-on-the-environment/> (discussing the Trump administration's position on environmental deregulation and policy rollbacks).

170. *See id.* ("[Trump's] deregulatory agenda extends into the rules that protect our nation's air and water and address climate change. Brookings is tracking the administration's deregulatory actions, and counts 74 actions that the administration has taken to weaken environmental protection.").

171. *Energy & Environment*, THE WHITE HOUSE, <https://trumpwhitehouse.archives.gov/issues/energy-environment/> (last visited Jan. 17, 2025); *see also* *What is the Clean Power Plan, and How Can Trump Repeal It?*, N.Y. TIMES (Oct. 10, 2017), <https://www.nytimes.com/2017/10/10/climate/epa-clean-power-plan.html> (discussing the Obama administration's Clean Power Plan and the Trump administration's intent to repeal it).

172. Katherine McCormick, *How Clean is Clean?: An Analysis on the Difference Between the Affordable Clean Energy Rule and the Clean Power Plan and Why States Should Adhere to Stricter Emissions Standards*, 37 PACE ENV'T L. REV. 103, 120–23 (2019) (explaining the Trump Administration's analysis of the Clean Power Plan and introduction of the Affordable Clean Energy Rule).

operating and jeopardized the integration of renewable energy into the market.¹⁷³

President Trump campaigned for his second term on the same general demonization of government regulations.¹⁷⁴ Nonetheless, the second Trump Administration may benefit from prioritizing improvements to the Environmental Chapter's dispute resolution framework during the upcoming USMCA review period. Putting forward such recommendations serves two priorities that President Trump has reiterated: (i) diminishing labor outsourcing; and (ii) keeping American land "clean and beautiful."¹⁷⁵

1. Streamlining Dispute Resolution Under the Environmental Chapter Can Help Ensure that Labor is not Unfairly Outsourced to Mexico

President Trump campaigned on a promise to transform the United States into a manufacturing powerhouse.¹⁷⁶ This vision was reflected early in the first Trump Administration when he endorsed the USMCA and described it as "the largest, most significant, modern, and balanced trade agreement in history."¹⁷⁷ President Trump particularly focused on the USMCA's ability to revitalize the American automotive industry through foreign investment, allowing the creation of up to 76,000 American jobs.¹⁷⁸ However, President Trump's promises face potential setbacks if Mexico's regulatory guardrails are allowed to

173. See *id.* at 123–29 (discussing the aspects of the Affordable Clean Energy Rule and the environmental consequences of adhering to its terms).

174. *Agenda 47*, TRUMP VANCE, https://rncplatform.donaldjtrump.com/?_gl=1*1ngfwh8*_gcl_au*MTAwODM2MTU1OC4xNzcwMzI1OTQy&_ga=2.263908559.232721535.1770505154-1750084151.1770325942 (last visited Sept. 18, 2024) (displaying the Trump administration's platform and promises).

175. *Id.*

176. *Id.*

177. *President Donald J. Trump's United States-Mexico-Canada Agreement Delivers a Historic Win for American Workers*, THE WHITE HOUSE (Jan. 29, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trumps-united-states-mexico-canada-agreement-delivers-historic-win-american-workers/>.

178. *Id.*

mirror those China fostered during the expansion of its manufacturing capacity.¹⁷⁹

China employed a “high energy consumption, high pollution, and high emission” growth model during the economic period that gave it the reputation of being the world’s manufacturing center.¹⁸⁰ However, such a model came at the price of weak environmental policies.¹⁸¹ Indeed, China’s policies were full of inefficiencies that prioritized production and spending power over environmental health.¹⁸² China’s economic growth became dependent on resource-intensive manufacturing, which quickly led to environmental degradation.¹⁸³ Now, the regulatory environment in Mexico seems to be in a position where such a socioeconomic growth model can take hold.¹⁸⁴

Mexico’s environmental policies are characterized by neoliberalism, an ideology that favors deregulation.¹⁸⁵ Indeed, Mexican environmental regulations heavily rely on private companies to self-report their discharges of certain pollutants into the air, water, and soil.¹⁸⁶ The Registro de Emisiones y Transferencia de Contaminantes (the “Pollutant Emissions and Transfer Register”) mandates that emitters in specific industries disclose information about their release of certain substances based on their ability to cause environmental and health

179. See Wei Qiu et al., *The Role of Environmental Regulations, Industrial Upgrading, and Resource Allocation on Foreign Investment: Evidence From 276 Chinese Cities*, 29 ENV’T SCI. & POLLUTION RSCH. 32732, 32744—45 (2022) (displaying statistical results of China’s environmental regulation and its detrimental impacts on foreign investments).

180. See Huaxing Wang et al., *China’s New Environmental Protection Law: Implications for Mineral Resource Policy, Environmental Precaution and Green Finance*, 85 RES. POL’Y 104045 (2023) (discussing China’s initial socioeconomic success following environmental reforms).

181. See Wang Chunmei & Lin Zhaolan, *Environmental Policies in China Over the Past 10 Years: Progress, Problems, and Prospects*, 2 PROCEEDIA ENV’T SCI. 1701, 1708—09 (2010) (exploring the weaknesses associated with China’s environmental policy system).

182. *Id.* at 1709.

183. *Id.* at 1705.

184. See generally Cindy McCulligh, *Sewer of Progress*, THE MIT PRESS 1 (2023), <https://doi.org/10.7551/mitpress/14892.001.0001> (providing a historical overview of environmental regulation in Mexico and its contemporary standing).

185. See *id.* at 55, 57.

186. *Id.*

damage.¹⁸⁷ Yet, official government data suggests that either companies underreport their emissions or the government agency in charge of reviewing such reports fails to investigate.¹⁸⁸

Corruption and violence have become inhibitors of regulatory enforcement in Mexico.¹⁸⁹ In 2022, the Centro Mexicano de Derecho Ambiental (the “Mexican Center for Environmental Law”) reported an increase in violence against environmental advocates through intimidation, kidnappings, and assassinations.¹⁹⁰ Furthermore, organized crime networks in Mexico have resorted to bribery and collusion with government officials to commit environmental crimes.¹⁹¹ These incidents directly undermine the enforcement of environmental regulations, exposing Mexico’s regulatory guardrails to the same shortcomings that contributed to China’s environmental degradation.¹⁹²

China consistently disregarded its environmental laws to promote rapid economic growth.¹⁹³ Given that increased local environmental regulations can inhibit investment, countries with weaker environmental regulations are likely to entice foreign investors.¹⁹⁴ As such, Mexico is at a point where it could become the next industrial investment hub that overlooks environmental

187. *Id.*

188. McCulligh, *supra* note 184, at 57.

189. Ivonne Cruz, *Nearshoring’s Environmental and Social Impacts and the Need for Trade Reform*, BAKER INST. (Sept. 26, 2024), <https://www.bakerinstitute.org/research/nearshorings-environmental-and-social-impacts-and-need-trade-reform> (explaining that bribery has contributed to lax enforcement of environmental regulations).

190. U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., MEXICO HUMAN RIGHTS REPORT 3 (2023).

191. Jorum Duri, *Corruption and Environmental Crime in Latin America*, TRANSPARENCY INT’L (Apr. 30, 2020), <https://knowledgehub.transparency.org/helpdesk/corruption-and-environmental-crime-in-latin-america>.

192. *Mexico Risk Report*, GAN INTEGRITY, <https://www.ganintegrity.com/country-profiles/mexico/> (last updated Sept. 30, 2020); see WAYNE M. MORRISON, CONG. RSCH. SERV., RL33534, CHINA’S ECONOMIC RISE: HISTORY, TRENDS, CHALLENGES, AND IMPLICATIONS FOR THE UNITED STATES 30 (2019) (stating that China’s economic policies and government corruption led to heavy pollution and the lack of regulation enforcement).

193. *Id.*

194. See *id.* at 6 (stating that China’s rapid economic growth can be attributed to large-scale foreign investment, among other things); see also Wei Qiu et al., *supra* note 179, at 32745 (stating that foreign investment is significantly inhibited by environmental regulations).

regulations and attracts foreign investment, directly undermining President Trump's plan to market the American manufacturing sector.¹⁹⁵ However, incorporating the suggested adjudicatory System into the USMCA would allow the United States to swiftly respond if Mexico fails to enforce its environmental laws, minimizing the opportunity window for exploitative trade.¹⁹⁶

2. Streamlining Dispute Resolution Under the Environmental Chapter Can Help Address Transboundary Pollution Between the United States & Mexico

During the first Trump Administration, President Trump remarked that it was a priority of his presidency to ensure Americans have access to the “cleanest air and cleanest water on the planet.”¹⁹⁷ The Administration asserted that it pursued this goal by providing good stewardship of public lands, prioritizing cleanup of polluted spaces, and investing in innovative technologies.¹⁹⁸ During his 2024 reelection campaign, President Trump reiterated his commitment to ensuring American cities are clean.¹⁹⁹ Nonetheless, these commitments are undermined by the transboundary air and water pollutants that flow between the United States and Mexico.²⁰⁰

195. Cf. Raphaël Chiappini & Enea Gerard, *Environmental Regulation and Foreign Direct Investments: Evidence From a New Measure of Environmental Stringency*, 29 MACROECONOMIC DYNAMICS 1, 21 (2025) (concluding that foreign direct investment is influenced by the stringency of a country's environmental regulations and the level of government corruption).

196. See generally USMCA, *supra* note 10, art. 24.4(1)—(4) (prohibiting a Party from failing to enforce or weakening its environmental laws in favor of trade or investment).

197. Donald J. Trump, *Remarks by President Trump on America's Environmental Leadership*, THE WHITE HOUSE (July 8, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-americas-environmental-leadership/>.

198. *Id.*

199. *Agenda 47*, *supra* note 174.

200. See *Transboundary Air Pollution*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/international-cooperation/transboundary-air-pollution> (last updated July 16, 2024).

Air pollution is already a critical concern within American and Mexican communities centered along the border.²⁰¹ The byproducts of maquiladoras positioned in Mexican border communities have contributed to higher concentrations of carbon monoxide in the region.²⁰² Moreover, increased international trade between the United States and Mexico over the last few decades has led to a surge and saturation of commercial vehicles crossing the border.²⁰³ Since 2020, Mexico has seen a steady increase in the number of manufacturing plants, maquiladora employment, and industrial productivity.²⁰⁴ This increase is likely driven by friendshoring, which has partially relocated supply chains to Mexico.²⁰⁵ Therefore, increased production near the U.S.-Mexico border tied to friendshoring can continue to worsen air pollution between the two countries.²⁰⁶

The flow of polluted waters from Mexico to the United States is also a topic of discourse between both countries, including individual states.²⁰⁷ For example, untreated wastewater, sewage, and debris from the City of Tijuana, a border Mexican city, typically overwhelm local infrastructure during rain season.²⁰⁸ These overflows usually result in deteriorated water quality, as well as a decline in air quality due to the aerosolization of

201. Cruz, *Nearshoring's Environmental*, *supra* note 189.

202. *Id.*; *Maquiladora*, ENCYC. BRITANNICA, <https://www.britannica.com/technology/maquiladora> (last visited Feb. 6, 2026) (defining a maquiladora as a “manufacturing plant that imports and assembles duty-free components for export”).

203. *Our Border Environment: Water and Air Pollution*, ATL. COUNCIL, https://www.atlanticcouncil.org/wp-content/uploads/2023/02/Our_Border_Environment_Water_-and_-Air_Pollution.pdf (last visited Jan. 19, 2025).

204. *See Estadística Manufacturera y Maquiladora de Exportación*, INEGI, <https://www.inegi.org.mx/temas/manufacturasexp/> (last visited Apr. 4, 2026).

205. *See* Alfaro & Chor, *supra* note 3, at 227–29 (explaining that global supply chains began to reallocate to countries who are United States trade partners, such as Mexico).

206. *See* Cruz, *Nearshoring's Environmental*, *supra* note 189 (explaining how increased industrial activity along the border will exacerbate environmental issues like air pollution).

207. *Tijuana River Valley Transboundary Pollution Crisis*, CAL. STATE LANDS COMM'N, <https://www.slc.ca.gov/environmental-justice/trv-transboundary-pollution-crisis/> (last visited Jan. 20, 2025).

208. *See id.* (detailing how these occurrences impact border communities).

pollution.²⁰⁹ To make matters worse, these transnational flows may include hazardous waste materials that maquiladoras in Mexico typically fail to dispose of as required by Mexican law.²¹⁰

Transboundary pollution can create a public health emergency in the United States.²¹¹ In fact, local governments in California have already declared an emergency due to pollution from chemicals, sewage, and trash making its way into their jurisdictions via the Tijuana River Watershed.²¹² As such, the expansion of manufacturing capabilities, along with the risks of a weak regulatory state, carries the significant danger of exposing Americans to transboundary pollution.²¹³ However, incorporating the suggested adjudicatory System into the USMCA would allow the United States to promptly ensure that Mexico is cooperating in addressing air and marine pollution.²¹⁴

IV. CONCLUSION

Mexico's rise in international trade has expanded its manufacturing sector.²¹⁵ This expansion is largely due to the souring of U.S.-China relations and the subsequent migration of industrial capacities to Mexico.²¹⁶ However, this surge in industrial activity presents a unique challenge to American interests through transnational pollution and the possibility of

209. *See id.*

210. Cruz, *Nearshoring's Environmental*, *supra* note 189.

211. Sarah Davidson, *Transboundary Pollution Is Creating a Public Health Emergency in San Diego, California*, SURFRIDER FOUND. (May 16, 2024), <https://www.surfrider.org/news/transboundary-pollution-is-creating-a-public-health-emergency-in-san-diego-california>.

212. *What the County is Doing*, CNTY. OF SAN DIEGO (Oct. 21, 2024), https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/south-region-health-concerns/County-Role.html (last visited Feb. 20, 2025).

213. *See* Cruz, *Nearshoring's Environmental*, *supra* note 189.

214. *See generally* USMCA, *supra* note 10, art. 24.4(1)–(4) (prohibiting a Party from failing to enforce or weakening its environmental laws in favor of trade or investment); *see id.* arts. 24.11–24.12 (requiring the Parties to cooperate in matters of mutual interest regarding air quality and marine litter).

215. *See* Towfighi, *supra* note 40.

216. *See* Alfaro & Chor, *supra* note 3, at 248–50.

reallocated investments from the United States to Mexico.²¹⁷ The apparent weaknesses of Mexico's regulatory state offer no support in ensuring that policies are not abused to promote unfair trade at the expense of the environment.²¹⁸ As such, proactive steps should be taken to ensure that a strong and efficient dispute resolution system is in place to promptly deal with environmental issues as they apply to trade under the USMCA.

The current dispute framework of the Environmental Chapter provides toothless oversight through supervisory bodies that are limited in authority and resolution methods that are restricted in scope and efficiency.²¹⁹ As such, it should be transformed into a single dispute resolution system with three levels. During the USMCA's review period, provisions should be added to: (1) maintain Environmental Consultations as the first level of dispute resolution; (2) empower the Commission's Secretariat with adjudicatory authority as the second level; and (3) grant a chosen panel under Chapter 31 of the USMCA appellate authority to review the Secretariat's decision as the third level.²²⁰ Establishing this System will help ensure that issues under the Environmental Chapter are resolved fairly, accurately, and efficiently while securing an effective process that will deter Mexico from neglecting its environmental laws in favor of trade advantages.

217. Cruz, *Nearshoring's Environmental*, *supra* note 189; David A. Gantz, *60 Years of Nearshoring: A Historical Exploration of US Production Shifting to Mexico*, RICE UNIV. BAKER INST. FOR PUB. POL'Y (Mar. 27, 2024), <https://www.bakerinstitute.org/research/60-years-nearshoring-historical-exploration-us-production-shifting-mexico>.

218. See McCulligh, *supra* note 184; see also Cruz, *Nearshoring's Environmental*, *supra* note 189 (discussing international pollution arbitrage and how trade policies enable environmental injustices).

219. See USMCA, *supra* note 10, arts. 4, 31 (providing consultation-based dispute procedures and limiting panel authority to findings and recommendations).

220. See *id.* arts. 24, 31 (providing for environmental consultations as an initial dispute-resolution step and panel procedures under Chapter 31).