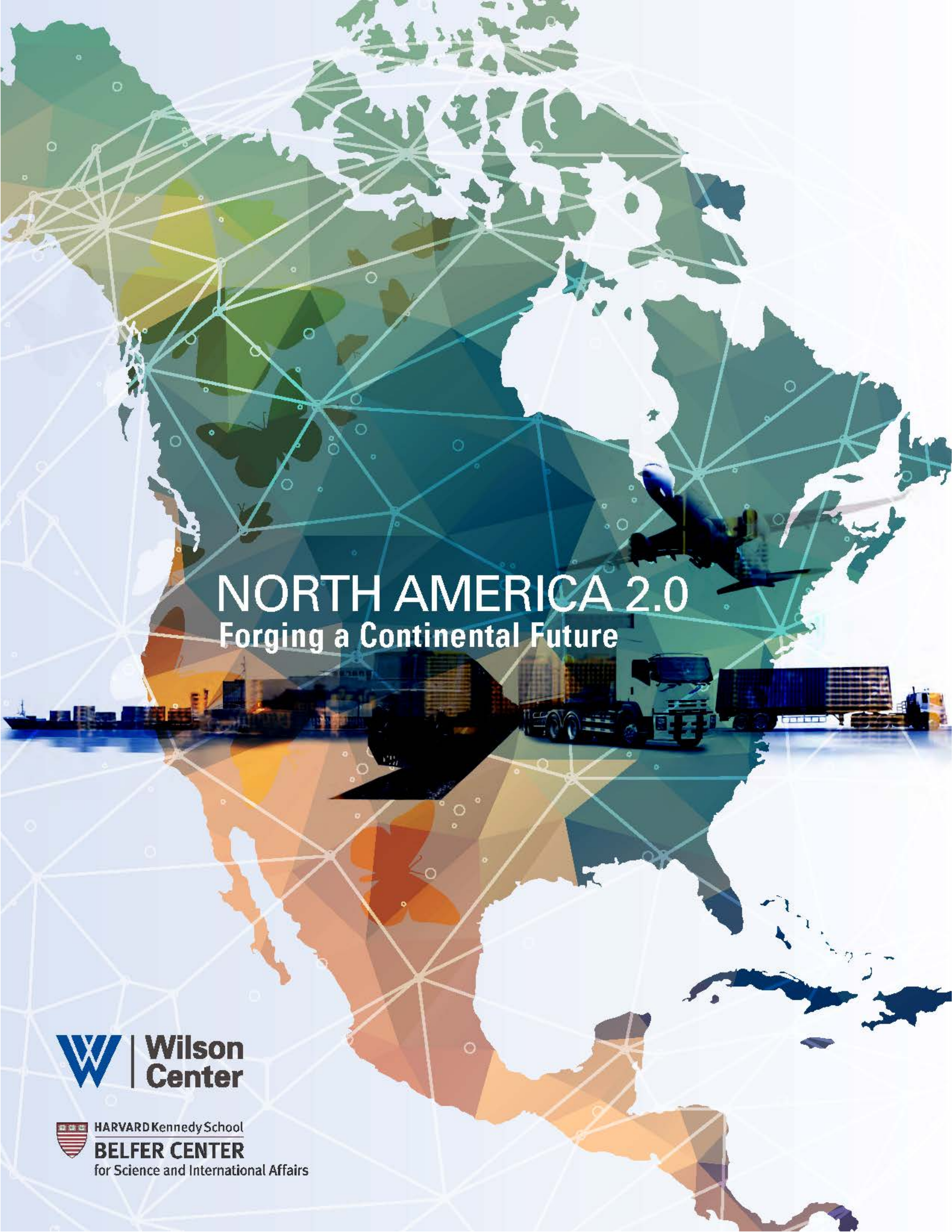

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NEW TRADE POLICY OBJECTIVES: THE EU'S FTA GOALS WITH THE U.S., MEXICO, AND CANADA

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New Trade Policy Objectives: The EU's FTA Goals with the U.S., Mexico, and Canada

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Since the early 1990s, the European Union and North America have pursued two different paths towards high levels of regional economic integration. Though some hoped in the immediate years after the 1994 North America Free Trade Agreement (NAFTA) that North America would follow a European path of regional cooperation, that has not been the case.[1] Instead, North America has pursued more ad hoc forms of cooperation across many issue areas, while also seeing a boom in intra-regional trade and investment linked to tightly integrated North American supply chains.

This divergence in patterns of integration also had profound effects on the relations between the two giant economic markets of the North Atlantic. While the European Union—despite the shock of Brexit—approaches the world economy in a coordinated manner, Canada, Mexico, and the United States have seen large swings in recent years. This inconsistency results, first, from the inconsistent preferences and trade behaviors of the United States; second, from the tremendous effects of Chinese growth; and third, from a process of competitive liberalization in which each North American country pursues its trade policy with minimal consultation. As the smaller economies, dependent on the U.S. market and rocked by changing U.S. whims, Canada and Mexico have sought greater diversification in their economic relationships. This has led them to reach out to the European Union. Doing so is no simple task, however, as Canada and Mexico often find themselves pinned between the competing regulatory models and in contention with U.S. trade interests.

NAFTA provided the building block for regional integration among Canada, Mexico and the United States when it entered into force in 1994. Over nearly three decades, NAFTA reshaped North American trade relations, driving unprecedented integration, as regional trade surged from around $330 billion in 1993 to more than $1.23 trillion in 2019, making NAFTA the second-largest trading bloc in the world. NAFTA's market-opening provisions eliminated nearly almost all tariff and most nontariff barriers on goods and services produced and traded within North America. NAFTA accelerated trade and investment growth between the U.S. and Canada, liberalized the Mexican economy, and opened the U.S. market to increased imports from Mexico and Canada. The three countries also sought further cooperation, including in regulatory coordination, industrial competitiveness, trade facilitation, border environmental management, and security affairs. The three countries remain one another's largest economic partners, especially given their integrated production and supply chains in key sectors.

Yet the advantages of North American economic integration have often been taken for granted. One aspect of that has been minimal North American cooperation in addressing the international position of the integrated market. Reports from the Council of Foreign Relations (2005) and (2014) and the Bush Institute (2020) called on policymakers to recognize trilateral economic interests. However, even these forward-looking recommendations focused largely on promoting greater internal market liberalization rather than leveraging North America's negotiating power with third markets, such as the European Union.

[1] Robert Pastor, The North American Idea: The Vision of a Continental Future (Oxford: Oxford University Press 2011).

Instead of using the material or organizational power of the North American regional trade bloc, Canada, Mexico, and the United States have engaged individually in competitive liberalization with a variety of other trade partners. Hampered by the slow progress in multilateral trade negotiations in the World Trade Organization's Doha Round, all three states increasingly focused on bilateral and regional free trade agreements. The United States grew concerned that the European Union had gained an advantage by negotiating a host of agreements in the 1990s while the U.S. stood on the sidelines. In response, the United States reversed its traditional aversion to regional trade arrangements and signed a flurry of them with Peru, Colombia, South Korea, and Panama.

The U.S. rush to ink new deals pushed Canada and Mexico, fearful of trade diversion, to enhance their own efforts to advance trade liberalization with various partners.[2] Expanding market access outside North America was intended to decrease Canadian and Mexican reliance on the United States as an export market, in addition to ameliorating fears of trade diversion. Canada's preferential trade agreements lagged in part due to preoccupation with the U.S.; however, Mexico developed an extensive network of FTAs that simultaneously served to deepen domestic economic modernization and liberalization. With one eye on the potential effects of the proposed Free Trade Agreement of the Americas (FTAA), Mexico and the European Union pursued an association agreement in the late 1990s.[3] The European Union also continued dialogues with the United States on regulatory cooperation and improved market access, while paying significantly less attention to the Canadian market.[4]

In recent years, however, U.S. trade actions have profoundly affected the context for relations between the European Union and each North American economy. Despite the deep trilateral economic integration achieved under NAFTA, the United States displayed little interest in a joint North American approach towards the European Union. Instead, Canada and Mexico have been caught between shifting U.S. approaches, adopted with little regard for North American integration. Under the Obama Administration, the decision to engage in talks for a Transatlantic (TTIP) and Trans-Pacific Partnership (TPP) agreements forced Mexico and Canada to consider how such arrangements might generate trade diversionary effects for non-participating states.[5] When the United States reversed course and withdrew from the TPP at the outset of the Trump Administration, Canada and Mexico did not follow suit. Instead, both countries signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) with Asia-Pacific partners. But Canada and Mexico could not escape the pull of their larger neighbor. When the Trump Administration denigrated multilateral frameworks and touted the benefits of bilateral deals aimed at reducing trade deficits, Canada and Mexico were drawn into Trump's managed trade practices. These actions played out under the guise of a transactional 'America First' trade narrative. That protectionism—not unique to the United States, of course—threatened many of the norms and practices that traditionally anchored both North American integration and the global

[2] Evenett, Simon J., and Michael Meier, "An Interim Assessment of the U.S. Trade Policy of "Competitive Liberalization," (Discussion Paper, Universität St. Gallen, 2007), 8.
[3] Roberto Domínguez, "EU-Mexican Relations: Adaptation to global trade relations" in *Latin America-European Union relations in the twenty-first century*, eds. Arantza Gomez Arana and María J. García (Manchester: Manchester University Press, 2022).
[4] Kurt Hubner, *Canada and the Comprehensive Economic and Trade Agreement* (London: Routledge, 2011).
[5] D Sahakyan, "Canada's Trade Policy Developments after NAFTA: Sources and Implications," *Journal of Common Market Studies* 57, no. 6, (November 2019): 1292-1309.

trade system. When Trump leveled threats and tariffs against Canada and Mexico, the two countries agreed to the modernization of the North America Free Trade Agreement (NAFTA/USMCA[6]).

Without a doubt, the whiplash shifts in U.S. policy have been difficult for Mexico and Canada.[7] Ties with the EU have taken on new importance for Canada and Mexico given the uncertain trade policy orientation of their largest neighbor. They must balance U.S. demands, while also trying to gain balance by strengthening their relationships with the European Union. Although the Biden administration's trade policy is perceived as less confrontational in tone than that of its predecessor, all three North American partners now operate in a changed global context. The unilateralism, protectionism and unpredictability of the Trump Administration led other regional blocs to promote their own initiatives across a range of issues.[8] Though Biden initially overturned some Trump policies – returning to the Paris accord, rejoining the World Health Organization, and supporting the election of the new Director-General of WTO – the priority of putting American workers first with no indication of renewal of Trade Promotion Authority (TPA) suggests U.S. continued reticence on trade agreements. Since inheriting and – on grounds of national security – defending tariffs on steel and aluminum, the Biden administration has continued to enforce its predecessor's trade agenda. It has been particularly salient not only vis-à-vis China's state-led non-market trade regime – which is viewed as a formidable technological and geopolitical rival – but also with Canada and Mexico.[9] The U.S. has increased scrutiny of environmental and labor commitments as well as long-standing market access disputes that have often strained trade tensions.[10] Among the three, there remain tensions over U.S. rules of origin requirements in cars, electricity markets in Mexico, agricultural market access in Canada, and solar panels in the US.

While the United States remains the principal trade and investment partner for the European Union, the European Union will continue to engage bilaterally with all three partners, even as the existence of a deeply integrated North American market means that Canada and Mexico often face cross-cutting pressures in their economic relations with the European Union due to their dependence on the large neighboring U.S. market and integrated supply chains. This chapter will explore the global context for North American cooperation against the backdrop of relations with Europe. The following section will focus on previous negotiations and agreements for each of the three North American countries with Europe; the integration of new concessions; and the interaction and effects amongst the North American economies. The chapter will then conclude by offering suggestions to foster a North American strategy with the European Union.

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[6] USMCA was implemented in July 2020.
[7] For example, the tax credit in Build Back Better for electric vehicles built by American union workers from 2026 as generated opposition from Canada and Mexico.
[8] CPTPP, RCEP and DEPA being specific examples.
[9] The US and EU subsequently agreed on a global steel framework for a carbon-based agreement (carbon club).
[10] Labor groups under AFL-CIO as well as Public Citizen submitted their first complaint of labor violations under USMCA May 10, 2021, using 'rapid response mechanism" which will be critical for US commitment to enforcement of labor provisions in trade agreements. The EU initiated a similar dispute settlement procedure in EU-Korea FTA to ensure compliance with labor laws and freedom of association.

Bilateral Relations

EU-U.S.

The U.S. and EU have a long history of promoting market liberalization globally. As they drove successive multilateral trade liberalization arrangements to reduce tariffs through various GATT rounds, the subsequent structural changes in the global economy led them to pay increased attention towards non-tariff barriers. Slow progress at the WTO meant that the EU and the U.S. focused their attention on addressing regulatory differences bilaterally rather than wait on a comprehensive multilateral agreement.[11] The U.S. and EU have long sought to eliminate unnecessary and costly trade barriers and remove widespread and entrenched inconsistencies through transatlantic regulatory cooperation. Although European and U.S. stakeholders had been discussing the possibility of creating a transatlantic free trade area (TAFTA) for decades, a trade agreement between the United States and Europe has proven elusive in the past, as their different regulatory policies have been the target of on-going trade disputes, resulting in the U.S. and EU being the most prolific initiators of complaints in the WTO.[12]

Yet both sides increasingly recognize that the exchange of information, promotion of good regulatory practices as well as mutual recognition or harmonization of regulatory standards require trust in their respective governance systems. Preceding official trade negotiations, the U.S. and EU began a succession of initiatives to mitigate the adverse trade effects of divergent regulatory measures through dialogues that have yielded somewhat marginal results.[13] Initially, the Transatlantic Declaration (TAD) was adopted in November 1990 by the Bush Administration to promote economic opportunities through bilateral consultations to build bridges after a contentious period in transatlantic relations. It was followed by a more aggressive commercial strategy under the Clinton Administration. Subsequently, the U.S. shifted from this narrative and signed the ambitious New Transatlantic Agenda (NTA) and "Action Plan" with the EU in late 1995. The NTA formally launched a set of cooperative exchanges which brought together major U.S. and EU multinational firms in the Transatlantic Business Dialogue (TABD) to address issues of regulatory coordination and coherence. Throughout the 1990s, the TABD played a key role in identifying behind-the-border barriers to transatlantic trade and investment as well as providing suggestions for mutual recognition of their respective regulatory standards. Some policymakers envisaged that this might lead to common competition rules and standards procedures, resulting in a Transatlantic Free Trade Area.[14] A more modest outcome emerged where institutional arrangements were designed to provide specific initiatives with the launch of the Transatlantic Economic Partnership (TEP) in 1998. The TEP Action Plan called for the removal of technical barriers to trade and enhanced dialogue between the EU and U.S. regulators. Further efforts ensued with the High-

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[11] Ibid.

[12] Alasdair R. Young, "Where's the demand? Explaining the EU's surprisingly constructive response to adverse WTO rulings", *Journal of European Integration* 41, no.1, (2019): 9-27; Alasdair Young "The European Union's Use of the World Trade Organization's Dispute Resolution Process," (Briefing Paper: University of Glasgow).

[13] Michelle Egan, *Constructing A European Market: Government Policies and Business Strategies* (Manchester: Manchester University Press, 2005); Mark Pollack and Gregory Schaffer eds., *Transatlantic Governance in the Global Economy*, (Lanham, MD: Rowman and Littlefield, 2001), https://rowman.com/ISBN/9780742509320/Transatlantic-Governance-in-the-Global-Economy.

[14] Ernest Preeg, *Traders in a Brave New World: Uruguay Round and the Future of the World Trading System* (Chicago: University of Chicago, 1996).

Level Regulatory Cooperation Forum in 2005, which became the Transatlantic Economic Council in 2007. However, the financial crisis in 2008 put paid to further liberalization efforts as the process of responding to the crisis, and the subsequent downturn and impact on the eurozone, particularly, led Europe to focus on austerity to achieve fiscal consolidation and structural reform of specific hard-hit economies.

The competitive dynamics of China's spearheading of a larger alternative Asian-Pacific trade agreement, the Regional Comprehensive Economic Partnership (RCEP), the need for sustainable growth to exit the euro crisis, and the U.S. 'pivot' to Asia together led Europe not to only seek to enhance its own ties with Asia further, but also to press its own economic importance on the United States. Despite the U.S. being a prime recipient of European trade and investment, the U.S. 'pivot' was largely perceived in Europe as a concerning shift towards Asian markets. As Obama reaffirmed the United States' commitment to the TPP negotiations in 2009, followed by Canada and Mexico formally joining negotiations in 2012, the European Union sought to promote the benefits of an ambitious trade agreement with the United States. The Transatlantic Trade and Investment Partnership (TTIP) generated much optimism that this would be a driver for jobs and economic growth.[15] Like the Trans-Pacific Partnership, which was designed to tap into the dynamism of East Asia and ensure a similar set of high-quality rules on trade and investment due to the stagnation of the Doha Round, the Transatlantic Trade and Investment Partnership was viewed as a central element in promoting growth through export promotion with a limited budgetary impact.[16]

In July 2013, the U.S. and EU launched the first round of trade negotiations under TTIP. Most of the estimated gains were attributed to lowering of non-tariff measures (NTM) in goods rather than tariffs, which are generally low between the U.S. and EU.[17] Delivering results would be difficult as both sides have extensive experience dealing with their respective regulatory differences in earlier discussions. Though these initiatives have achieved some important recent agreements on container security, aviation safety and customs cooperation the U.S. and EU, TTIP also expanded the focus to intellectual property issues, state discriminatory practices and subsidization of state-owned industries, increased transparency about ownership structures and investment protection in third countries given business concerns about the trading practices in other economies. The agreement had stalled in 2017. Civil society had mobilized significant opposition to TTIP in Europe, with particularly powerful public resistance in Germany, Austria, and Luxembourg. Despite twelve rounds of negotiations, the TTIP talks failed to resolve differences with the European Union on agriculture, government procurement, and business services.[18] As the new Trump Administration was focused on bilateral trade deficits with U.S. trading partners, the European Commission was able to quietly shelve the negotiations without having to inflame tensions further given the widespread protests across many European member states.

[15] European Union, United States of America, "Joint U.S.-EU Statement following President Juncker's visit to the White House," European Commission (July 2018).
[16] Mireya Solis "South Korea's Fateful Decision on the TPP," *Brookings Foreign Policy Paper Series*, no. 31 (September 2013).
[17] Michelle Egan, "Is TTIP that Different?," (February 2014), doi: http://dx.doi.org/10.2139/ssrn.2393755
[18] Gary Hufbauer and L. Lu, "Global E-Commerce Talks, Stumble on Data Privacy Issues and More," Policy Brief PIE, 19-14.

Yet President Trump upended the global trade order with a slew of tariffs on allies, including the European Union, using national security provisions that forced the Europeans back to the negotiating table. U.S.-EU trade tensions under the Trump Administration, though not as intense as that with China, led to considerable shifts in Europe's approach towards a more transactional strategy after the broad imposition of tariffs in 2018. In an effort to avoid an escalating trade war and punitive tariffs on cars, steel and aluminum, the European Union was able to initiate discussions with the Trump Administration on a modest set of proposals in 2018. Judging from U.S. demands for a reduction in the bilateral trade deficit and duty-free market access for industrial goods and removal of EU barriers on U.S. direct investment – but without mention of US tariff liberalization – Europe's concerns seem well founded.[19] In the always-touchy agriculture realm, the U.S. put forward two contentious issues: sanitary and phytosanitary (SPS) measures and standard-setting. EU practices on food standards have long been a trade irritant with the United States, provoking several formal complaints to the WTO.[20]

Two years of negotiations yielded limited achievements given the initial joint statement on zero tariffs, zero non-tariff barriers, and even zero industrial subsidies that had been hastily agreed after a White House Summit.[21]Though there was a mixed reaction among European member states to the deal, it was viewed as a stopgap measure. Without an official negotiating mandate from the European Council, as lead negotiator the European Commission was limited in the agreements it could, in fact, make.[22] In response to the shift in U.S. trade policy with the adoption of so-called '*America First*' trade policies, the European Union sought to mitigate tensions with the Trump Administration across a range of both old and new issues. Though the European Council had given a mandate for negotiations on industrial goods, the removal of tariffs on steel and aluminum was a key issue at the center of its annual evaluation and reporting on the state of negotiations.[23]

Consequently, the European Union was not able to contain rising U.S. protectionism nor generate American engagement with the urgent need for reform and modernization of global trade rules. Instead, the European Union has placed emphasis on signing trade agreements with other partners as well as on multilateral trade reform. The European Union has made agreements with Vietnam and Japan in 2019 and updated and modernized its agreement with Chile and Mexico. After twenty years of negotiations, it also made an initial agreement with Mercosur in 2020, which is pending ratification. Negotiations are ongoing with Australia and New Zealand.

The European Union has also faced the disruptive actions of the United States in attacking the legitimacy and role of the WTO. As the U.S. actions of blocking the dispute settlement functions

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[19] Ibid; see also European Union and United States of America, "Joint U.S,-EU Statement".

[20] Alasdair R. Young, "Less Than You Might Think: The Impact of WTO Rules on EU Policies," in *The Influence of International Institutions on the EU*, Costa O., Jørgensen K.E. (eds), Palgrave Studies in European Union Politics, (London, Palgrave Macmillan, 2012); Alasdair R. Young, "Of Executive Preferences and Societal Constraints: The Domestic Politics of the Transatlantic GMO Dispute," *Review of International Political Economy*,18, no. 4, (2011): 506–529.

[21] European Union, United States of America, "Joint U.S.-EU Statement".

[22] Simon J. Evenett, "'We Can Also Do Stupid': The EU Response to 'America First' Protectionism" in *Trade in the 21st century: Back to the past?*, Bernard Hoekmans and Ernesto Zedillo eds., (Washington DC: Brookings Institution, 2021), 223.

[23] Ibid. An agreement to ease Section 232 tariffs on UK steel and aluminum and removal of retaliatory tariffs on US good was reached was reached March 2022 significantly later than the US-EU agreement.

also threatened the multilateral system in which Europe had a considerable stake in a rules-based trading system, the European Union has sought to mobilize support to offer alternative options. Trying to find common ground with the United States on multilateral trade reform proved fruitless as the Trump Administration hampered the operating of the WTO appellate body as well as the appointment of a new WTO Director-General. Though the European Union persisted with proposed reforms to modernize the WTO in 2018, the European Union has effectively sidestepped the U.S. by brokering a compromise with a group of sixteen other states including China, Canada and Mexico. As Lester *et al* (2019) note: "without a properly functioning dispute process, the obligations in a trade agreement may not be worth much."[24] Hence, the European Union has sought to promote its new model of dispute settlement in recent FTAs, pushing for such provisions in the recent agreement with Mexico, which is similar in nature to the Canada-EU Comprehensive Economic and Trade Agreement (CETA). Beyond that, the European Union has opted for some of the same strategies that underpin U.S. trade policy even if masked in less confrontational and belligerent terms. The new European trade policy strategy outlined in 2020 talks about resilience of supply chains and strategic autonomy as well as stronger enforcement of trade obligations notably in the environmental and labor field which bears some similarity to the new provisions in USMCA.

The Biden Administration inherited a raft of challenges as his predecessor's term was marked by recurrent tensions at the bilateral and multilateral level between the U.S. and EU. Some have seen resolution such as the long-standing aircraft dispute and the prospect of a new framework for data privacy which has previously been struck down by European courts.[25] That said, Europeans see an opportunity with the new Administration to reinforce the importance of an international system of rules-based trade as well as cooperation in dealing with China on industrial subsidies, technology transfers, and concerns about the security implications of foreign direct investment.[26]

For the EU, regulatory differences will remain at the crux of many of its disagreements with the U.S. Even though there are incentives to foster trade liberalization – including mutual economic benefits or promoting domestic structural reform – the experience under the Trump Administration fostered a stronger emphasis on strategic autonomy within the European Union in trade policy. This was nowhere more apparent than in the response to the incoming Biden Administration effort to work together with Europe on addressing China's economic practices. In December 2020, Europe decided to forge ahead with its Comprehensive Agreement on Investment (CAI), much to Washington's consternation. While the EU highlighted that the market access provisions in the CAI have some commonalities with the Phase One agreement signed by the Trump Administration, the CAI was later effectively aborted due to EU-China conflict over human rights related sanctions and Chinese retaliation, which generated opposition from the European Parliament.

While it appeared that Europeans may have inadvertently sent an initial message to the incoming Biden Administration about their strategic autonomy, there have been subsequent efforts to foster

[24] Lester, Simon & Manak, Inu and Arpas, Andrej, 2019. "Access to Trade Justice: Fixing NAFTA's Flawed State-to-State Dispute Settlement Process," *World Trade Review*, Cambridge University Press, 18, no. 1.

[25] The White House, "FACT SHEET: United States and European Commission Announce Trans-Atlantic Data Privacy Framework," Statements and Releases, (March 2022).

[26] Jim Brunsden and Aime Williams, "EU seeks to 'reboot' US trade relationship in post-Trump," *Financial Times*, Nov 9, 2020.

transatlantic cooperation with the initiation of a Trade and Technology Council (TTC) in November 2021. Aimed at economic issues of geostrategic importance, the U.S.-EU TTC was meant to address strategic engagement on a range of issues including supply chains, export controls, investment screening, and artificial intelligence.[27] The focus was China, which has not reformed its approach to global markets, so the U.S. and EU were working together to coordinate on emerging technologies. These efforts have been overshadowed by the invasion of Ukraine in which transatlantic action has focused on Russian sanctions.

The EU's new trade policy has taken on a more assertive edge, requiring more autonomous (or unilateral) measures to complement actions at the multilateral and bilateral level.[28] Efforts to expand its own trade defensive instruments to plug regulatory gaps match American concerns about mitigating negative market externalities, such as climate change or exploitation of workers. As such, EU trade policy has focused on unilateral tools of enforcement to address what it regards as unfair trade and investment distortions marking a shift from its traditional multilateral orientation.

EU-Canada

Canada signed a framework agreement on trade and economic cooperation with the European Union in 1976. For Canada, the transatlantic economic relationship has been of secondary concern, due to the Canadian prioritization of bilateral relations with the United States since the mid-1980s. The European Union continued to promote dialogue and cooperation with Canada throughout the 1980s and 1990s. Canada fostered strong ties with the United States through the U.S.-Canada FTA, and then NAFTA; relations with Europe gradually weakened in favor of the United States. The United States captures the bulk of Canadian exports and dominates Canadian inward and outward FDI. Yet unlike in Mexico, import levels from the EU began to rise appreciably after NAFTA, so that by 1999, European exports were almost double the levels recorded in 1993. By contrast, Canadian exports of goods to the EU did not increase significantly. The slower growth in Canadian exports between 1990 and1999 was offset by significant growth in two-way services trade.[29] Though Canada advocated repeatedly for the establishment of a Canada-EU FTA, there was less interest on the European side as it produces and trades in largely similar products.[30]

Canadian concerns about the prospect of closer trade terms between the European Union and United States has been an on-going concern in Ottawa.[31] European investors expressed a limited interest in the Canadian market and European external trade in goods is dwarfed by the United States where more than 40% outward foreign direct investment is directed towards Europe, while over 70 percent of US inward foreign direct investment comes from Europe. While Brussels and Washington sought to address barriers to trade through a variety of both government and business dialogues (see above), Canadian efforts to join those efforts were rebuffed[32]. American businesses deliberately excluded Canadian firms from the Transatlantic Business Dialogue, which was an

[27] Office of the United States Trade Representative, "U.S.-E.U. Trade and Technology Council (TTC)."
[28] European Union, *Trade Policy Review: An Open and Assertive Strategy*, European Commission, (2021): 12.
[29] Department of Foreign Affairs and Trade, 2001.
[30] Canadian Department of Foreign Affairs and Trade, 2001.
[31] Hubner, "Canada," 2011.
[32] Deblock C, Rioux M, "Economic Dialogue to CETA: Canada's Trade Relations with the European Union," *International Journal*, 66, no. 1, (2011): 39-56.

influential forum in crafting recommendations for American and European policymakers. European investors preferred the larger US market, even though Canada was very much integrated within the North American economy. Canadian business actively pushed for their own transatlantic forums and roundtables to address regulatory barriers and market access with the EU.

While Canada did not constitute a priority for Europe, the European Union did establish some initiatives that resembled those that they had fostered with the United States. The EU set up a similar Transatlantic Declaration and New Transatlantic Agenda in the 1990s with Canada followed by a Joint EU-Canada Political Declaration and Action Plan in 1996 as well as the signing of sectoral agreements to foster further ties and exchanges.[33] Canada and Europe were able to agree on an EU-Canada trade initiative aimed at addressing various obstacles to transatlantic trade in 1998. Much of it involved dialogue about regulatory cooperation focused on specific bilateral agreements to foster mutual recognition of their respective regulatory standards. It fell short in terms of its relationship with the European Union relative to the other North American countries: while the United States was engaged in discussions on a New Transatlantic Marketplace, it was with Mexico that the Europeans signed a trade agreement in 1997 rather than Canada to offset the impact of trade diversion from NAFTA.[34]

As Canada's strategy became focused on following and, where possible, preceding the United States, Ottawa pushed for a deeper relationship that led to the trade and investment enhancement agreement with the EU in 2002. Quebec also become a critical promoter of overall Canada-EU ties, pushing for a more sustained economic relationship, given that the EU has become an increasingly important trading partner, behind the United States.[35] Discussions faltered between Canada and Europe after three rounds of initial negotiations so that it was not until 2009 when they released a joint assessment laying out the benefits of a trade and investment agreement.[36] After announcing negotiations for a Comprehensive Economic Trade Agreement (CETA) with the European Union, the prospect of a successful ambitious free trade agreement generating liberalization in agriculture, regulation, commercial arbitration, environment, and sanitary and phytosanitary standards caught the attention of American business. A number of trade associations began lobbying the Obama Administration to negotiate a US-EU agreement as they perceived the risks of being the only partner in the NAFTA Agreement without a deal with the European Union.[37]

To generate momentum in the face of concerns that the United States would begin negotiations with the EU, "Canada acquiesced to the EU's demand that Canadian provinces participate directly in discussions, setting an important precedent in the dynamics of Canadian external trade."[38] Yet provinces raised concerns that they were not fully integrated into the negotiations so that they could assess the respective gains and losses in terms a potential free trade agreement with such a

[33] Hubner, "Canada," 2011.
[34] The trade in goods part came into effect in 2000.
[35] Stephen Tapp, "How you can take advantage of the Canada-EU trade relationship," Export Development Canada, 2018, https://www.edc.ca/en/blog/canada-europe-trade-relationship.html
[36] Valeria Erman, "Comparative intergovernmental politics: CETA negotiations between the EU and Canada," *Politics and Governance* 4, no. 3, (2016): 90-99.; "Assessing the costs and benefits of a closer EU-Canada partnership," October 16, 2008.
[37] The Economist, "Finance and Economics: a 60 year old dream," *Canada-EU trade talks,* 391, no. 8630, (2009).
[38] Erman, "CETA negotiations".

large and competitive market. The agreement offered near complete tariff liberalization covering 99% for manufactured goods and 94% of agricultural goods on entry into force. Yet difficulties emerged over the course of the negotiations on beef and pork, cheese and dairy, public procurement and pharmaceutical drugs. Agricultural commodity trade negotiations were contentious, not only due to market access for agricultural and food products, but also due to the acceptance of one hundred and forty-three products as geographical distinct products, which requires changes in domestic trademark law in Canada.[39] While Canada gained tariff free access of cranberries and maple syrup, they did make concessions on government procurement where the EU lobbied hard for as access Canada's sub-federal procurement process.[40] European firms were given unprecedented access to provincial procurement markets to bid on public contracts and participate in private services markets.

The EU sought patent term extensions for pharmaceutical products and access to the Canadian dairy market, which have also been the same issues that have been central to US trade policy offensive interests. However, the European Union sought interprovincial trade cooperation given their jurisdiction in the areas of procurement and investment as well as the need to work with the regional supply management system that regulates these agricultural industries.[41] While there were traditional negotiations in goods and services, there were new provisions on air transport, state-owned enterprises, and regulation of digital commerce. Yet non-tariff barriers often remain some of the most difficult areas to foster reciprocity as goods must generally meet the technical standards and licensing requirements for import. As the EU saw their deal with Canada as a precursor to a larger transatlantic trading block, the regulatory cooperation chapter looks somewhat less ambitious than the EU's proposals for a similar chapter in those stalled TTIP negotiations. The goal was to create a forum for regulatory cooperation to reduce regulatory differences affecting trade in goods and services and investment. While the precautionary principle is a core element of European regulatory policy, the issue of precaution is addressed in a specific manner in relation to environmental protection and health and safety. Yet this issue is subject to intense disagreement with the United States, which did not include such provisions in draft texts of TTIP, so it raises questions for Canada about competing proposals for regulatory cooperation within both the USMCA and CETA. One new feature to address regulatory barriers in CETA is the inclusion of provisions for conformity assessment for goods, good manufacturing practices for pharmaceuticals, and common standards for automobiles. These provisions reflect efforts to address the duplicative costs of regulatory barriers and allow for domestic testing and certification of Canadian products for export to Europe.[42] Despite its ambition, CETA includes a significant number of exceptions ranging from taxation to cultural industries.[43]

The negotiations resulted in a provisional agreement in July 2016. The EU Commission initially took the position that the CETA could be concluded as an EU-exclusive agreement requiring only approval by the European Parliament. This generated strong pushback from member states that

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[39] Patricia Goff, "Canada Trade Negotiations in an Era of Deep Negotiation," (Paper, CIGI 2016), no. 88.
[40] Ibid.
[41] Ibid.
[42] Michelle Egan and Jacques Pelkmans, "TTIP's Hard Core: Technical barriers to trade and standards" in *TTIP in the Balance*, CEPS Special Report No. 117, (August 2015).
[43] Armand De Mestral, "When does the exception become the rule? Conserving regulatory space under CETA", *Journal of International Economic Law* 18, no. 3, 641-654.

found support from the European Court in its judgement on the EU-Singapore Deal concluded that authority is shared with the national and sub-national parliaments in terms of investment protection and investor dispute settlement provisions. Thus, any mixed trade agreement with shared competences requires approval from approximately thirty-eight national and regional EU Member State Parliaments. While CETA hit an initial roadblock with the threat from the Walloon Parliament to refuse statutory approval to the Belgian government to sign the agreement over concerns about investor protection and agricultural products, various assurances provided to Belgium in October 2016 led it to accept the agreement. Legislation to implement the CETA was introduced into the Canadian Parliament and Senate the following day, and the CETA provisional agreement finally came into effect in 2017 after the European Parliament gave its consent.

Not only has the fraying consensus on trade made it difficult in the European Union to have the agreement ratified across all member states but the much-touted effort to foster a bilateral investment system has not been provisionally applied as the EU fleshes out the legal rules and provisions of the investment court. Part of this reflects the increased politicization of trade. While Canadian civil society had lobbied against the agreement as early as 2008, opposition among civil society groups in Europe towards CETA only began with the launch of European negotiations with the United States in 2013. That said, the agreement continues to generate opposition in Europe and Canada. Part of this revolves around the rising opposition to the investment provisions in the agreement that spilled over from similar provisions in TTIP negotiations. Though CETA provisionally entered into force in 2017, except for the investment chapter, it has been subject to continued legal challenges. The European Court of Justice (CJEU) concluded that CETA was a mixed agreement that required ratification by all member states before it can enter into force (Opinion 1/17). This ran into trouble in several member states, notably the Netherlands and Ireland, where legal and political challenges have emerged against concerns about specific commitments.

Provincial and territorial governments in Canada will also need to implement legislation to bind themselves to the CETA provisions related to government procurement.[44] There will be continued discussions on issues ranging from motor vehicle regulations to professional qualifications and geographical indicators for agricultural products. Given Canada's priority exports, such as beef and pork, there will be a strong focus on mutual recognition of food safety rules. However, Canada had to also contend with changes in the deal due to British exit from the European Union. To avoid any disruptions, particularly in the form of new tariffs and restrictions, Canada agreed to the Trade Continuity Agreement (TCA) with the United Kingdom. This came after suggestions that the Canadian government may not conclude a deal, as it offered few, if any, benefits if the United Kingdom was offering tariff-free access to all states. After further discussions, the new deal now temporarily "rolls over," or replicates, most of CETA's terms, until both sides can establish a more permanent free trade agreement. These negotiations were subsequently launched in March 2022. While this alleviates immediate pressure to conclude a bilateral agreement, there would likely be some changes on the Canadian side to accommodate any revisions to tariff schedules, intellectual property rules or health and safety regulations. The rollover agreement raised consternation about the lack of parliamentary scrutiny or stakeholder consultation to meet the impending Brexit

[44] Hederer, C. and P. Leblond, "Implementation of Twenty-First-Century Trade Agreements in Canada: CETA and Intergovernmental Cooperation" in *The Multilevel Politics of Trade,* J. Broschek and P. Goff (eds), (Toronto: University of Toronto Press, 2020), 56-80.

deadline. Depending on negotiations, there is the prospect that a new CETA-type deal may include many of the same issues that underpin the EU-Canada deal, but also include digital trade and financial services as well as non-related trade issues such as those focusing on environmental and gender commitments.

While Canada is highly dependent on the U.S. market, which accounts for three-quarters of Canadian exports, the potential prospect of the United States joining the new CPTPP (after its withdrawal from TPP) as well as removal of punitive tariffs will ease pressure on Canada. Canada may find that its efforts to decrease its high degree of trade dependence on a single partner may also generate cross-pressures of managing different FTAs in which both the U.S. and EU seek to promote their own rules and standards as global norms. While the USMCA has no provisions for investment arbitration between the United States and Canada, there are provisions in CETA for investment arbitration. Canada has also worked with Europe on efforts to reform the WTO dispute settlement system. Canadian officials, according to Goff, are aware of the possibility of conflicting regulations, and pursue their economic policy agenda in discrete, 'parallel' forums.[45] Yet Canada faces differences between U.S. preferences for trademark provisions and European preferences for geographical indications on agricultural products, for example, and needs greater consistency between NAFTA and CETA rules of origin to avoid two separate sets of production schemes whenever firms seek preferential treatments. Canada is conscious of the effect of its regulatory choices on market access given the differences in preferred intellectual property systems between the U.S. and EU.[46] For Canada, efforts to promote regulatory cooperation with the European Union also raise potential impediments to trade with the U.S. so that the CETA agreement provides for a new but limited regulatory cooperation commitment in which Canada must balance its own domestic regulatory preferences against the pressures from two of the leading global regulators. Both imports and exports are vital, and trade with the U.S. is of paramount importance. Since the U.S. has extended preferences to other countries through new FTAs, Canada has sought to secure new markets in Europe through a second-generation trade agreement that has to account for the broader North American regional context. It is also working with the European Union to provide a potential solution to the impasse in the appeals and arbitration system to replace the WTO process that has been blocked by the United States.

EU-Mexico

Mexico has one of the longest institutionalized economic relationships with the European Union. Mexico signed an initial cooperation agreement with the then EEC in 1975, granting most-favored nation status. Their ties were further bolstered by the accession of Spain and Portugal to the European Union in 1986, and the impact of NAFTA in 1994.[47] European firms expressed concerns about the impact of the North American agreement as European trade with Mexico fell by more

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[45] Patricia M Goff, "Limits to deep integration: Canada between the EU and the US", *Cambridge Review of International Affairs*, 30, no. 5-6, (2017): 553.
[46] Ibid.
[47] Domínguez, Roberto, and Marlena Crandall, "EU-Mexico," in *Oxford Research Encyclopedia of EU Politics*, edited by Finn Laursen, (Oxford: Oxford University Press, 2017).; Domínguez, Forthcoming; Antonio Manrique De Luna Barrio, "The Free Trade Agreement between EU and Mexico," *Revista Chilena de Derecho* 43, no. 1 (2016).

than 25% between 1993 and 1995 due to the Mexican peso crisis and NAFTA-related trade diversion.[48]

Mexico's primary economic motivation in negotiating NAFTA had been to improve economic conditions to foster investor confidence and attract foreign direct investment. As Mexico launched NAFTA-linked domestic structural reforms as an essential component of modernization of the economy, Europe also sought more structured relations with Mexico. This brought the conclusion of a Global Agreement in 1997, which led to nine rounds of negotiations to produce an FTA in November 1999 that officially came into effect in 2000.[49] The agreement led to substantial increases in trade in goods, with some further liberalization of services and investment as Mexico sought to attract foreign investment and deepen the process of economic modernization and trade liberalization. The EU-Mexico Free Trade Agreement, which was the first transatlantic free trade partnership, has tripled trade in goods since its entry into force. By 2017, the EU was a key trade partner, accounting for 8.8 % of total Mexican trade. EU goods exports exceed €39 billion a year. The EU is the third largest partner for Mexico after the U.S. and China.[50] Bilateral trade in goods was worth €66 billion in 2019 and trade in services was worth another €19 billion in 2018. [51] Agriculture has achieved parity between the two trade partners, which is important for their respective domestic interests. The flow of investment has continued into Mexico since the entry into force of the 2000 agreement amounting to 37% of total FDI.[52]

In 2013, the European Union and Mexico sought to update and modernize their existing agreement given the need to address changes in technology, digital, and value chains. A new agreement would also upgrade mechanisms for investor protection, intellectual property rights, and regulatory cooperation. The European market had also expanded considerably since the initial trade agreement, with the addition of thirteen new EU members.

New negotiations were launched in May 2016, with a preliminary agreement concluded in April 2018 after nine formal rounds of negotiations. New chapters included trade and sustainable development, small and medium enterprises, trade remedies, technical barriers to trade, and energy and raw materials.[53] The most difficult issues included market access in goods, especially agricultural products, and investment protection. The European Union agreed to phase out tariffs on 82% of imports by value coming from Mexico, and Mexico agreed to eliminate tariffs on 47% of EU imports. In addition, the European Union pushed for recognition of more than four hundred of its geographically designated agricultural products. This spurred a backlash from Mexican domestic cheesemakers, who launched legal action to block provisions in the proposed text that that would prohibit them from using European names for their cheeses. More than sixty such designations were contested by Mexican businesses and by American exporters with strong ties to

[48] Andreas Dür, EU Trade Policy as Protection for Exporters: The Agreements with Mexico and Chile, Journal of Common Market Studies, 45 (4), (2017): 833-855.
[49] Domínguez, 2022.
[50] Roberto Domínguez and Marlena Crandall, "EU-Mexico" in Oxford Research Encyclopedia of EU Politics, ed. Finn Laursen (Oxford: Oxford University Press, 2019); Domínguez, 2022.
[51] European Union, "EU and Mexico conclude negotiations for new trade agreement," European Commission, April 2020.
[52] Domínguez, 2022.
[53] ECORYS, *Ex-post evaluation of the implementation of the EU-Mexico Free Trade Agreement. Interim technical report*, (Rotterdam: ECORYS Nederland BV, 2015).

the Mexican market. Mexico faced a challenging situation in searching for a compromise between the EU's protection-of-origin systems and the Mexican trademark system.

The EU pushed for stronger trade remedies including the new proposed investment court system together with further protections on investment as well as greater emphasis on trade in services including financial services and data flows. Discussions on rules of origin posed additional challenges for negotiators. Mexico is keen to preserve its U.S.- and NAFTA-inspired model of rules of origin, which differs substantially from the European approach. Europe also pushed for liberalization of procurement, particularly at the subnational level. Though Mexico limited foreign bidder's access to only federal-level contracts, the EU secured a considerable success in expanding access to public procurement markets. The agreement with the EU commits Mexico to open its public procurement at the state level to non-Mexican firms, and thus required the Mexican government to negotiate with states and municipalities to enable EU firms to tender for contracts before formally submitting the agreement for ratification[54]. With fourteen states willing to liberalize their procurement markets, Mexico agreed to allow European firms to bid on subnational contracts for the first time in any trade agreement.[55]

Part of the positive Mexican response to deepen the relationship with the EU was due to the growing preference for diversifying its external relations due to its heavy dependence on the U.S. economy which resurfaced under the Trump Administration with threats to abandon NAFTA. In addition, transformations in global value chains, as well as debates on investment protections and regulatory cooperation also propelled bilateral discussions as innovations in other trade agreements made it necessary to update the earlier agreement. The bilateral relations between the EU and Mexico were aided by greater stability through which a more institutionalized framework has evolved, lending itself to regular dialogues to evaluate the implementation of trade commitments, including tariff schedules, service liberalization, and dispute resolution mechanisms.[56]

While the EU engages in different bilateral dialogues with each of the three North American states through various institutional channels, it is Mexico that differs in its interactions with Europe. While Mexico has ceased to be eligible for certain levels of bilateral aid, it does continue to receive funding from several programs to promote development and leverages these grants with co-financing from Mexican institutions and development bank loans to support companies impacted by COVID-19 and to promote sustainable energy and climate finance.

Like Canada, Mexico has also had to adapt to changes within the European Union. British withdrawal from the European Union pushed Mexico into a continuity agreement with Britain to avoid disruptions to trade flows. Mexico has been generally negative about the disruptive effects of Brexit and how it affects the modernization of the trade agreement that it had signed with the European Union in April 2018. In response, both the UK and Mexico agreed to avoid trading on WTO MFN terms so that a temporary agreement would be in place until negotiations start on a new trade agreement which both sides expect to conclude within the next three years.

[54] Roberto Morales, "Unión Europea fija objetivo de compras públicas con México," *El Economista*, 13 February 2019.
[55] Domínguez and Crandall, 2020.
[56] Domínguez, 2022.

Future of North American Relations with the European Union

The dynamics of U.S.-EU relations have changed under the new Biden Administration. This is signified by the re-engagement at the multilateral level through several immediate actions including expressed support for Ngozi Okonjo-Iweala as the WTO Director-General. This means that the members can once again try to address some substantive trade issues on the agenda. The institutional paralysis perpetuated by the U.S. blockage of the WTO appellate body nominations led to a European push for reform as well as the inclusion of its proposed investment court model in FTAs including that with Canada and Mexico. There will still be issues of contention between the U.S. and EU at the multilateral level, but there are opportunities for greater engagement on trade issues. This is helped by the last polls pre-pandemic from the Chicago Council of Foreign Relations found that 83% of Americans think trade is good for American companies, and 63% of Americans believe that trade deals between the United States and other countries benefit both sides. These polls demonstrate significant increases of 25% and 13% in support for trade compared to 2016 and 2017, respectively.[57]

Despite the broad support for free trade, the U.S. and EU economies have each faced increased pressure during the pandemic for domestic investment, repatriation of supply chains, and greater attention to issues of trade enforcement against specific market behaviors. Europe has focused on the importance of 'resilience' of supply chains in key areas as well as strengthening its enforcement mechanisms to protect its internal market, including through investment screening and foreign subsidy control.

The Biden Administration has prioritized the consequences of China as a formidable geopolitical and technological rival. While the United States would traditionally turn to Europe to put pressure on China for improved market access, the U.S. and European Union have opted most recently for separate but parallel bilateral efforts to open Chinese markets through the Phase One and Chinese Agreement on Investment (CAI). While Phase One focuses on export targets, the CAI is about investment given the current advantages that China enjoys from the existing flows of capital.[58] The EU moved quickly before the Biden Administration was in office to sign an agreement, despite internal divisions, which raised concerns that it would undermine efforts to form a joint strategy against Chinese trade and technology. They have both found that that there are limits to their leverage on pushing for Chinese domestic reform. China did not meet its commitments under the Phase One Deal and Europe faced retaliatory sanctions that blocked the deal.[59] Now that the CAI is effectively on hold due to human rights violations,[60] the transatlantic partners have again increased cooperation on defining technical standards and building up global infrastructure to match the Belt and Road Initiative trough their Trade and Technology Council (TTC). The U.S. will want European support to impede China's attempts to reshape the international order to its own benefit. They may also again engage on domestic subsidies reform at the WTO where the

[57] Chicago Council on Global Affairs, "2020 Chicago Council Survey," September 2020, https://www.thechicagocouncil.org/research/public-opinion-survey/2020-chicago-council-survey.
[58] Helen Thompson, "The new EU-China trade deal is driven by a commercial realpolitik – and the world knows it," *New Statesman*, 27 January 2021.
[59] Chad P. Bown, "The US–China trade war and Phase One agreement," *Journal of Policy Modeling*, 43, no. 4, (2021): 805-843.
[60] Daniel Hamilton, "CAI is DOA," *Asia Europe Journal* (2021).

U.S., Japan and EU have pressed for bans on various types of state support and industrial subsidies that distort trade.[61]

While Europe will welcome the support of the United States on upgrading the international rules on trade, there is also the prospect that the Biden Administration may push for carbon emissions as a national security issue and apply the same trade weapons that the Trump Administration used for foreign steel and aluminum producers. Focusing on ways to cooperate to cut emissions through investment in green technology and renewable energy will avoid further trade tensions. Both the U.S. and EU want to push for more rigorous labor and environment safeguards in trade agreements along with greater action on climate change so there is room for closer cooperation. However, the EU must now factor in the British position in its dealings with the U.S. about China as well as climate and energy, where there is a much closer agreement between the U.S. and UK on these issues.[62]

Canada, on the other hand, has found that it has been caught between the United States and Europe on a host of trade issues. Though it always prioritizes the importance of the United States economic relationship, it has continued to try and diversify its economic ties. Canada must navigate the differences in regulatory standards between its two largest markets as there are differences in the acceptance of genetically modified foods and chemical additives in Europe and the United States. Consequently, Canada has found that the CETA trade deal with the European Union has not yielded the highly anticipated benefits in terms of market access for agricultural products. CETA reduces bilateral tariff costs between Canada and the EU, but Canadian agricultural exports have fallen in 2019, in part due to the restrictions on growth hormones as well as the need to have products certified to meet European standards.[63] While Europe is meeting its export quotas, the same cannot be said for Canadian agricultural exporters. Much of the real gains for Canada would be from addressing non-tariff barriers in the food sector, which is the second largest of all manufacturing industries in terms of value and plays a crucial role in the Canadian economy. However, CETA did not address such restrictions as sanitary and phytosanitary measures, restrictions on genetically modified organism (GMO), food labeling requirements, certification, traceability, classifications, security-related measures, geographical indications, and differences in trademark legislation. Since Canada and the EU have not phased out their tariffs on imports coming from the United States, U.S. exporters now face greater competition in these export markets, as the United States is not a signatory to CETA.[64]

Canada has been able to secure a continuity deal with the United Kingdom to avoid potential disruptions from Brexit. After some initial hesitation about whether this would be beneficial if Britain extended tariff free access to all countries, Canada has negotiated a transitional agreement subject to parliamentary ratification. Given its experience with CETA, Canada will likely press the United Kingdom in a future bilateral trade negotiation to eliminate some of the non-tariff barriers

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[61] Jim Brunsden, "US, Japan and EU target China," *Financial Times,* January 2020.

[62] Thompson, "EU-China trade deal realpolitik", 2021.

[63] Charles Mitchell, Canada's farmers struggle to reap gains from EU free trade deal. Financial Times, January 20, 2020

[64] Annegret Bendiek, Milena Geogios, Philip Nock, Felix Schenuit, Laura von Daniels. EU-Canada Relations on the Rise Working Paper SWP October 2018 (https://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/1_WP_Bendiek_etal_EU-Canada_relations_final_01.pdf)

in agriculture that have prevented farmers from taking advantage of market access in CETA.[65] The investor state dispute settlement mechanism carries over from CETA even though implementation is on hold within the European Union as member states still need to continue to ratify. Even so, Canada and Europe's leadership on an interim measure for resolving trade disputes at the WTO modelled on the CETA agreement has gained traction with fifteen additional countries, including Mexico signing on to the agreement.

Mexico will continue to be engaged with the European Union on the implementation of the new trade agreement, having wrapped up an agreement after four years of negotiation. While negotiations concluded in 2020, the ratification process is ongoing as Mexico has been reluctant to split the agreement as the European Commission seeks to have the trade agreement approved cutting out national capitals that have to ratify parts of the investment agreement.[66] There has been pushback from the European Parliament about the respect for human rights in Mexico as well as issues related to drug trafficking and migration. The agreement is also marred by recent changes in the Mexican electricity market which has led to European companies considering litigation to protect their local investments.[67] The changes to various contracts and projects have led to a diminished enthusiasm among European investors, who may also push for international arbitration given the instability of contracts and concerns about expropriation as the new trade deal includes provisions to protect investment. The effect of the EU-Mexico relationship on North America is mostly related to coordination strategies between the regulatory norms of various trade arrangements.[68]

In sum, while all three North American partners embarked on trade negotiations with the European Union with expectations for broad issue coverage and high levels of liberalization, increased trade friction with the United States during the Trump Administration accelerated long-standing Canadian and Mexican trade discussions with Europe. Both have negotiated comprehensive FTA agreements with the European Union that reflect the realities of the changing nature of trade, with new issues that are also prominent in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and in the updating of the North America Free Trade Agreement (NAFTA/USMCA[69]). At this juncture, Canadian and Mexican relations with Europe will revolve around the implementation of their respective agreements. First, there are a significant number of issues related to standards, rules, and procedures that will require coordination to ensure that non-discriminatory principles and regulatory frameworks are in place to facilitate market access and reduce barriers to trade in industrial goods while ensuring food safety, animal health and plant health.[70] This assumes equivalence, which requires mutual trust in the countries' respective regulatory systems, and sustained effort to achieve the same level of reciprocity of rules. Second, the challenge will be implementing the provisions across jurisdictions, where the federal

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[65] A transition agreement is currently in place.

[66] The European Commission is looking for a three-parts ratification process–trade, investment, and political cooperation so the trade elements can come on-line investment elements need to be approved by the national parliaments.

[67] Jude Webber. Investors see uncertain future in Mexico, Financial Times, May 24, 2020

[68] Domínguez, 2022.

[69] USMCA approved in the Senate by a vote of 89-10. Democrats acknowledge that it is less contentious than previous trade agreements, and it revamped the old NAFTA agreement in key areas including labor.

[70] Patrick LeBlond, "Making the Most of CETA: A Complete and Effective Implementation Is Key to Realizing the Agreement's Full Potential," (Paper, CIGI 2016) no. 114, https://www.cigionline.org/publications/making-most-ceta-complete-and-effective-implementation-key-realizing-agreements-full-0.

government has the sole constitutional authority to sign and ratify international treaties, but treaty obligations and commitments may fall within sub-federal jurisdiction. Canada addressed this issue through the participation of provinces in the negotiations as *a condition sine qua non from the European Union,* and select provinces also engaged in informal discussions with EU trade delegates. Such a trade strategy was not undertaken in Mexico, nor would it be feasible in the United States, where many of the European preferences to negotiate greater market access are the regulatory responsibility of American states that are taken 'off the table' in many U.S. trade negotiations.

Creating a North American strategy with the European Union

Having a North American strategy towards the European Union would put the three countries on a par with other regional blocs such as ASEAN and Mercosur that engage as individual states as well as collectively on trade. Yet this is difficult given that the United States dominates the relationship, and the European Union may be less inclined to engage with North America as it already has established a recent trade and investment deal with both Canada and Mexico. All three countries as federal systems could foster intergovernmental engagement at different levels, opting for a regional summit of the two sides to talk about issues of concern such as industrial subsidies, resilience of supply chains, innovation, and rules on foreign direct investment while allowing for subnational forms of coordination and cooperation. How the relationship evolves may also be dependent on how each country recovers from the economic recession and COVID-19 pandemic in the short term. The change of administration and messaging by the United States will also impact how the three countries engage together after a fraught four years. Their respective trade policies will need to work in support of complementary tools to deal with innovation, competition, data flows, investment, sustainability, and labor market outcomes to be able to deal region to region with Europe and provide an opportunity for coordination. The three North American countries need to develop new ideas and approaches that build on the NAFTA/USMCA agreement to leverage their integrated market so that they could in fact more strategically cooperate in terms of their engagement with Europe.

There are areas where more broadly North America could work together with Europe to leverage their cooperation across regions as well as within multilateral fora. First, foreign direct investment, especially in relation to critical infrastructure and technology transfer. This is timely given the recent adoption of a legislation on the review of foreign direct investment and security considerations in Europe that is akin to both CFIUS in the U.S. and Investment Act in Canada. This might be the venue to exert pressure on Mexico to address recent changes in domestic practices in relation to foreign direct investment in the energy sector. It may also provide leverage in dealing with Chinese market distortions and state subsidies at the multilateral level where EU, Japan, and United States had previously sought to address the issue. Both sides of the Atlantic are converging in terms of national security and economics across a range of issues including digital, trade and foreign direct investment.[71]

Second, it could provide an opportunity to discuss issues involving differences in rules between the USMCA agreement and that of the bilateral Mexico and Canada agreements with the European

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[71] Sergio Puig, "The United States-Mexico-Canada Agreement: A Glimpse into the Geoeconomic World Order," *AJIL Unbound* 113 (2019): 56–60. doi:10.1017/aju.2019.6.

Union. While addressing geographic indicators would be far too difficult given the US position on this issue, there might be some value in focusing on areas where each of the respective agreements has set out regulatory cooperation councils to address duplicative standards and promote regulatory equivalence. This will necessitate trust in their respective regulatory approval processes which is difficult in many areas, notably agricultural standards. However, the speed to which vaccines were approved during the pandemic on both sides of the Atlantic should provide a good example of areas where regulatory authorization and approval can be done within their respective agencies.

This is not an easy task as regulatory cooperation which has been a goal for more than two decades between the EU and the United States. Both Europe and the United States see their regulations as global standards, pushing Canada and Mexico, too often to use both to export to these larger markets, leading to duplication and inefficiencies. But if such competition over technologies and standards becomes intense, both Europe and the United States face the prospect that China will push its own domestic standards developed for a mass market onto the global arena in areas of information technology products, artificial intelligence systems, or autonomous vehicles for example. While the United States can set the global standard for North American integration, with Mexico and Canada as standards users, it does not help if a divergence of standards occurs with Europe, which is also keen to be a global rule-maker in many similar digital, environmental, trade and investment areas. A North American strategy needs to also account for the proliferation of cross-investment in North America by European firms as well as the global supply chains and distribution networks that link both continents. Without some form of regulatory equivalence, struggles over technology and privacy between the U.S. and EU could generate competition in extending favored models into other countries and offer an opportunity for China to leverage their divisions especially in developing country markets.

Third, the United States has increased its emphasis on Buy America provisions that will strain relations not only with Europe but also with its closest neighbors. This signals a more protectionist intent by incentivizing relocation of key sectors to the United States by providing preferences for domestic bidders. While the United States can waive requirements of the Buy American Act, it can also limit these waivers by using health and security reasons, as proposed for medical supplies and pharmaceutical products. The recent negotiations of USMCA did not include a government procurement commitment, which is a step back from NAFTA and has led to calls from Canadian policymakers to propose a 'Buy North America' option. Although the USMCA government procurement chapter only applies to procurement between Mexico and the United States, the exclusion of Canada has a limited effect as the northern neighbor retains a level of market access under the WTO GPA agreement. Yet it means that there will be very different procurement rules within North America as both Mexico and Canada have procurement commitments in their respective agreements with the EU as well as under CPTPP.[72]

Fourth, there are also opportunities to leverage North American and European converging positions on competition and technology. While there are disagreements on data privacy provisions, there is a growing consensus around the risks of large companies accumulating power. Huawei, the Chinese telecommunications giant, has found itself subject to a litany of U.S.

[72] "U.S.-Mexico-Canada (USMCA) Trade Agreement," Congressional Research Service (14 January 2021), https://sgp.fas.org/crs/row/IF10997.pdf

restrictions and faces Canadian reluctance to allow it to supply equipment for next generation telecoms network. Debate has also raged across European capitals about the security implications of their reliance on Chinese technology as well as the consideration of alternative European options. There could also be an opportunity in these circumstances to upgrade appropriate competition policy disciplines. The new United States-Mexico-Canada Agreement (USMCA) contains much more robust provisions on competition policy enforcement.

In addition, the United States debate has shifted towards European concerns about the unrivalled advantage of the technology giants and the anti-competitive practices of dominant digital platforms and networks. This may open the door towards closer collaboration with Europe to upgrade provisions and disciplines beyond the North American context to prevent data monopolies as policymakers are also grappling with how to regulate digital markets. However, the new EU-U.S. Trade and Technology Council as well as further dialogue on online platforms and common approaches to critical technologies focuses on one partner. The North American economies could seek to use their recent provisions on digital trade commitments to promote a broader digital trade agreement with Europe given some commonalities on policies and instruments rather than working separately on their own rules.

Fifth, the importance of trade enforcement in Europe in terms of labor and environmental standards matches the efforts within the USMCA. As Europe has included such provisions in its own free trade agreements, taking legal action most recently against South Korea for labor violations, there is an opportunity to focus on trade remedies and enforcement between the North American economies and Europe given that there is an underlying goal of ensuring a level playing field. While the U.S. pushed for dispute settlement and trade remedies on labor and environmental issues, USMCA has scaled back investment protections, with a somewhat asymmetrical agreement between that of the U.S. and Mexico as compared to the U.S. and Canada. The continuation of a dispute settlement process in USMCA is welcome, given the efforts by the EU to reform the multilateral process. However, many of the aspirations in the USMCA are much more limited in terms of legal adjudication.[73]

Conclusion

All three North American partners are operating in a changed global context where the unilateralism, protectionism, and unpredictability of the Trump Administration led the European Union to promote a more assertive trade policy. Facing the rise of systemic competition in the global economy due to China's state-dominated economic system, the vulnerability and critical nature of supply chains during the pandemic, and the disruptions and undermining of the multilateral dispute settlement system by the United States, the increased weaponization of trade policy has led the European Union to promote its own strategic and political goals that combine both legal enforcement and market power. Despite its stated ambitions of fostering 'open strategic autonomy', Europe has been divided between those who push for trade policy as a protective instrument and those that see trade policy as necessitating continued openness. Though Europe is a trade power through the strength of its large single market, the pressures from technological change, income inequality, rising populism, and increased protectionism clearly impact its new trade strategy. It is also not possible to consider the future of trade policy relations with North

[73] Puig, 2019.

America without taking the effects of the COVID-19 pandemic into account as well as the increased recourse to addressing industrial subsidies and other market-distorting actions with trade remedies.

For the three North American countries to think in terms of a coherent economic strategy towards Europe, they should consider that Europe is both a regulatory rival in promoting its rules and standards in third country markets, as well as a strategic ally in seeking to update and modernize trade-rules. There is common concern about the enforcement of rules to ensure a level playing field, the need for strengthening of labor and environmental standards, and reducing trade distorting subsidies and addressing unfair trade practices. In working with Europe, the end goal is not to promote the European single market as a model – given the different levels of institutionalization between North American and the European Union context – but to figure out how to maximize the current strategic economic partnership between Canada, the United States, and Mexico in areas that would allow for less friction and more coordination with Europe. This should build on their interdependence so they can deploy their collective trade priorities to further strategic goals. This has been difficult as the recent U.S. strategy of insulating issues from international adjudication has been at odds with many of its trade partners.

Yet if all three want to leverage their collective strength through a North American partnership, the European Union has experience in negotiating with cross-regional trade blocs. In its newly released strategy on multilateralism for the twenty-first century, the European Union seeks closer cooperation with regional groupings such as the African Union, Association of South East Asian Nations, and the Community of Latin American and Caribbean States. Yet Europe does not view North America as a region but looks at each country separately in terms of bilateral deals. Part of the problem is that there has been a lack of coherence in terms of a North American approach with issues dealt with through bilateral relations between the U.S. and Mexico and the U.S. and Canada. Consequently, when the three states negotiate with the European Union, differences in bilateral negotiations lead to a 'spaghetti bowl' of trade and regulatory commitments which does little to promote North American integration. Moving forward, there needs to be more institutionalized coordination to promote a shared vision of North America to allow the three states to leverage their internal market in the same way that the EU has done for several decades.