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The USMCA Sunset Clause*

A cláusula de caducidade da USMCA

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Abstract

The Agreement between the United States of America, the United Mexican States, and Canada (USMCA) includes a sunset clause that states that the agreement shall terminate 16 years after the date of its entry into force, unless each Party expresses its will to continue the agreement for another 16 years. We will apply John H. Jackson's theory on power oriented and rule oriented diplomacy to analyze that sunset clause. We argue that the sunset clause will offer strong incentives for power oriented diplomacy, and that this will likely affect USMCA dispute settlement, authentic interpretations and efforts to diversify trade flows.

Keywords: USMCA; Sunset clause; NAFTA; Power oriented diplomacy; Rule oriented diplomacy; John H. Jackson.

Resumo

O Acordo entre os Estados Unidos da América, os Estados Unidos Mexicanos e o Canadá (USMCA) inclui uma cláusula de caducidade que estabelece que o acordo terminará 16 anos após a data da sua entrada em vigor, a menos que cada Parte manifeste a sua vontade de continuar a contrato por mais 16 anos. Aplicaremos a teoria de John H. Jackson sobre diplomacia orientada para o poder e orientada para as regras para analisar essa cláusula de caducidade. Argumentamos que a cláusula de caducidade oferecerá fortes incentivos para a diplomacia orientada para o poder e que isso provavelmente afetará a solução de controvérsias do USMCA, interpretações autênticas e esforços para diversificar os fluxos comerciais.

Palavras-chave: USMCA; Cláusula de caducidade; NAFTA; Diplomacia orientada para o poder; Diplomacia orientada por regras; John H. Jackson.

1 Introduction

The Agreement between the United States of America, the United Mexican States, and Canada (USMCA), done at Buenos Aires, on November 30, 2018, replaced the North American Free Trade Agreement (NAFTA) that had entered into force on January 1, 1994. So far, one of the topics that has not received enough scholarly attention is the USMCA sunset clause. In this

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article, we will analyze whether that sunset clause favors power oriented diplomacy, in light of trade asymmetries between Canada and the United Mexican States (Mexico), on the one hand, and the United States of America (USA), on the other hand. We will also explore possible effects of the sunset clause on dispute settlement, authentic interpretations and the diversification of trade flows.

In the next section, will offer to a brief historical background of the NAFTA and USMCA. Section 2 will present some figures on trade flows between the USA, Mexico and Canada. Section 4 contains an introduction to the theory on power oriented and rule oriented diplomacy developed by John H. Jackson. Section 5 explains USMCA rules on review and term extension, that is, the sunset clause. Sections 6, 7 and 8 explore the possible effects on dispute settlement, authentic interpretations and the diversification of trade flows.

Thus, the theory developed by John H. Jackson is an extremely valuable tool in order to analyze and understand the USMCA sunset clause.

2 NAFTA and USMCA

Economic integration in North America has quite a long history.¹ The USA, Canada and Mexico signed the North American Free Trade Agreement (NAFTA) in 1992 and it entered into force on 1 January 1994. Since its negotiations, NAFTA sparked much political debate. In 1992, US presidential candidate Ross Perot famously claimed during a televised political debate that NAFTA would produce “a giant sucking sound of U.S. jobs headed south of the border”.² In 1993, Ross Perot and US vice-president Al Gore participated in a televised political debate about NAFTA³ that became legendary and was still referred to during the Las Vegas Democratic debate on 15 November 2007.⁴ Over 20 years later, at

the first presidential debate between with Democratic candidate Hillary Clinton, Republican then-presidential candidate Donald Trump claimed that “NAFTA is the worst trade deal maybe ever signed anywhere, but certainly ever signed in [the USA]”⁵. It is fair to say that no US trade initiative before or after has generated the level of domestic political attention as NAFTA.⁶

To be fair, US President Obama had also pursued renegotiating NAFTA. In fact, the Trans-Pacific Partnership (TPP) was a projected free trade agreement originally heralded as a renegotiation of NAFTA:

As President Obama has made clear, past trade deals—including the North American Free Trade Agreement, or NAFTA—haven’t always lived up to the hype. That’s why he has called for renegotiating NAFTA to better address labor and environmental issues. Because TPP includes Canada and Mexico and improves substantially on NAFTA’s shortcomings, it delivers on that promise. TPP learns from past trade agreements, including NAFTA, by upgrading existing standards and setting new high standards that reflect today’s economic realities.⁷

...TPP representing a renegotiation of NAFTA...
(<https://ustr.gov/tpp/>)⁸

However, after Donald Trump took office as US president, one of the first things⁹ his administration did was abandoning the TPP.¹⁰ After the USA left the TPP,

ber 2007). Available at <https://www.nytimes.com/2007/11/15/us/politics/15debate-transcript.html>. See also <https://www.youtube.com/watch?v=LRvJ-o30Sk8>.

⁵ Astrid: Transcript of the First Presidential Debate. Available at <http://www.astrid-online.it/static/upload/tran/transcript-of-the-first-presidential-debate.pdf>. See also <https://youtu.be/6dw7jHHZrQk>.

⁶ Abbott, Frederick M. North American Free Trade Agreement. In: Lachenmann, Frauke; Wolfrum, Rüdiger. *International Economic Law, The Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press, 2015. p. 695-700. p. 696.

⁷ United States Trade Representative. The Trans-Pacific Partnership: Upgrading the North American Free Trade Agreement (NAFTA). n.d. <https://ustr.gov/sites/default/files/TPP-Upgrading-the-North-American-Free-Trade-Agreement-NAFTA-Fact-Sheet.pdf>.

⁸ Available at <https://web.archive.org/web/20191217063334/https://ustr.gov/tpp/>.

⁹ For an overview of US withdrawals and/or renegotiations of international agreements and treaties, see SHEN, Wei; SHANG, Carrie Shu. Conceptualizing unilateralism, fragmentationism and statism in a populism context: a rise of populist international law?. *Revista de Direito Internacional*, Brasília, v. 17, n. 2, p. 161-184, 2020. p. 165. In general, see LIXINSKI, Lucas; MOROSINI, Fabio. Populism and International Law: Global South Perspectives. *Revista de Direito Internacional*, Brasília, v. 17, n. 2, p. 55-65, 2020.

¹⁰ Executive Office of the President. US Letter to TPP Depository. Office of the United States Trade Representative. 30 January 2017. <https://ustr.gov/sites/default/files/Press/Releas>

¹ Gordon, Michael Wallace. Economic Integration in North America: an agreement of limited dimensions but unlimited expectations. *The Modern Law Review*, v. 56, n. 2, p. 157-170, 1993.

² <https://youtu.be/xQ7kn2-GEemM>.

³ <https://youtu.be/GhwhMXOxHTg>.

⁴ “MR. BLITZER: [...] Senator Clinton, all of us remember the big NAFTA debate when your husband was president of the United States, and a lot of us remember the debate between Al Gore, who was then vice president, and Ross Perot. Ross Perot was fiercely against NAFTA. Knowing what we know now, was Ross Perot right?”. *The New York Times: The Democratic Debate* (15 Novem-

the remaining eleven parties approved a slightly revised version called that became the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, also known as TPP-11).

Another thing the Trump administration did soon after, was taking steps to renegotiate NAFTA.¹¹ Renegotiation was swift: “On May 18, 2017, the Government of the United States notified the U.S. Congress its intention to initiate negotiations with Canada and Mexico regarding the modernization of NAFTA. ... On September 30, 2018 Canada and the U.S. reached an agreement, alongside Mexico, on a new, modernized agreement. On November 30, 2018, within the framework of the G20 meeting, Canada, Mexico and the United States signed the USA-Mexico-Canada (USMCA) Free Trade Agreement”.¹² A few days later, on 10 December 2019, they agreed to a Protocol of Amendment to the USMCA.¹³ The USMCA entered into force on 1 July 2020, thus replacing NAFTA.¹⁴

3 Trade flows between parties to the USMCA

Canadian and Mexican trade flows with the USA are quite concentrated when compared with total world exports and imports. Canada exports about 75% of goods to the USA and imports roughly 50% from the USA. Around 80% of Mexico goods exports go to the USA, while approximately 45% of its imports come from the USA. In contrast, US trade is considerably less concentrated in its USMCA partners: 18% of its exports are shipped to Canada, while more or less 12% of US

imports come from Canada. Similarly, just about 16% of US imports are sent to Mexico, while something like 13% of US imports originate in Mexico.¹⁵ These figures stand in stark contrast to almost negligible trade between Canada and Mexico, ranging between 1% and 6% (see Tables 2, 3 and 4).¹⁶ Thus, for the most part, the regional economic relationship consists of two bilateral interactions.¹⁷

Table 1

Canadian Trade Flows with USMCA Parties				
Year	Exports		Imports	
	World			
2016	\$388.853.141.939	100%	\$402.287.821.924	100%
2017	\$420.074.382.189	100%	\$433.045.052.733	100%
2018	\$450.382.382.408	100%	\$459.947.610.210	100%
2019	\$446.079.889.867	100%	\$453.359.841.430	100%
2020	\$389.513.173.529	100%	\$405.390.866.824	100%
	Mexico			
2016	\$5.758.982.841	1%	\$25.040.059.430	6%
2017	\$6.053.378.693	1%	\$27.345.826.480	6%
2018	\$6.342.917.703	1%	\$28.395.495.316	6%
2019	\$5.518.631.071	1%	\$27.873.021.799	6%
2020	\$4.588.610.036	1%	\$22.344.474.174	6%
	USA			
2016	\$296.440.401.327	76%	\$209.921.524.454	52%
2017	\$318.570.259.928	76%	\$222.572.824.420	51%
2018	\$337.502.460.330	75%	\$235.103.888.446	51%
2019	\$336.214.851.377	75%	\$229.985.546.059	51%
2020	\$286.020.101.681	73%	\$197.593.472.806	49%

es/1-30-17%20USTR%20Letter%20to%20TPP%20Depositary.pdf.

¹¹ Villarreal, M. Angeles; Fergusson, Ian F. *The United States-Mexico-Canada Agreement (USMCA)*. Congressional Research Service R44981. 2020. p. 1-2, 11-12.

¹² ORGANIZATION OF AMERICAN STATES. *Canada-Mexico-United States (USMCA)*. 13 January 2020. http://www.sice.oas.org/TPD/USMCA/USMCA_e.ASP.

¹³ UNITED STATES TRADE REPRESENTATIVE. *Protocol of Amendment to the United States-Mexico-Canada Agreement*. 10 December 2019. <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/protocol-amendments>.

¹⁴ Organization of American States. *Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada*. Done at Buenos Aires. 30 November, 2018. http://www.sice.oas.org/Trade/USMCA/USMCA_ToC_PDF_e.asp.

¹⁵ See also e.g. MORALES, Roberto. *México se afianza en abril como el primer socio comercial de EU*. *El Economista* 8 June 2021. <https://www.economista.com.mx/empresas/Mexico-se-afianza-en-abril-como-el-primero-socio-comercial-de-EU-20210608-0169.html>. USLA, Héctor. *México se consolida como el principal socio comercial de EU*. *El Financiero* 9 June 2021. <https://www.elfinanciero.com.mx/economia/2021/06/08/exportaciones-tiene-un-rebote-y-mexico-se-afianza-como-principal-socio-comercial-de-eu/>.

¹⁶ These tables' values are in US dollars. Export figures for party A to party B do not match import figures for party B from party A, probably because “[a]ll commodity values are converted from national currency into US dollars using exchange rates supplied by the reporter countries, or derived from monthly market rates and volume of trade” (United Nations International Trade Statistics).

¹⁷ Condon, Bradly J. *From Nafta to USMCA: two's company, three's a crowd*. *Latin American Journal of Trade Policy*, v. 1, n. 2, p. 30-48, 2018. p. 31-42.

Table 2: Canadian exports and imports

Mexican Trade Flows with USMCA Parties				
Year	Exports		Imports	
World				
2016	\$373.948.263.890	100%	\$387.070.333.024	100%
2017	\$409.396.273.667	100%	\$420.394.594.048	100%
2018	\$450.684.024.620	100%	\$464.294.262.714	100%
2019	\$460.703.804.234	100%	\$455.289.486.227	100%
2020	\$418.140.902.412	100%	\$383.305.535.087	100%
Canada				
2016	\$10.393.144.231	3%	\$9.631.613.071	2%
2017	\$11.338.733.005	3%	\$9.766.367.406	2%
2018	\$14.034.440.768	3%	\$10.752.100.416	2%
2019	\$14.258.677.907	3%	\$9.828.352.339	2%
2020	\$11.046.301.462	3%	\$8.301.634.545	2%
USA				
2016	\$302.904.371.844	81%	\$179.910.182.761	46%
2017	\$327.215.244.413	80%	\$194.978.437.090	46%
2018	\$356.892.798.953	79%	\$216.270.195.340	47%
2019	\$358.660.831.881	78%	\$206.142.139.412	45%
2020	\$330.793.896.851	79%	\$168.223.663.003	44%

Source: The authors, using data from the United Nations Comtrade Database <<https://comtrade.un.org/data/>>, accessed on 11 June 2021. Parameters: Type of product: Goods. Frequency: Annual. HS: As reported. SITC: none. BEC: none. Periods (year): 2020, 2019, 2018, 2017, 2016. Reporters: Canada. Partners: Mexico, USA, World. Trade flows: Import, Export. HS (as reported) commodity codes: TOTAL - Total of all HS commodities.

Table 3: Canadian exports and imports in US dollars.

US Trade Flows with USMCA Parties				
Year	Exports		Imports	
World				
2016	\$1.450.906.272.956	100%	\$2.247.167.254.438	100%
2017	\$1.545.809.598.154	100%	\$2.405.276.626.657	100%
2018	\$1.665.302.936.591	100%	\$2.611.432.490.157	100%
2019	\$1.644.276.220.783	100%	\$2.567.492.197.103	100%
2020	\$1.430.253.623.489	100%	\$2.405.381.557.667	100%
Canada				
2016	\$266.701.920.355	18%	\$282.919.218.117	13%
2017	\$282.450.323.999	18%	\$305.647.659.426	13%
2018	\$299.744.492.536	18%	\$325.683.550.892	12%
2019	\$292.338.433.401	18%	\$326.628.559.104	13%
2020	\$255.021.619.206	18%	\$276.195.545.882	11%
Mexico				
2016	\$230.228.819.652	16%	\$296.199.943.735	13%
2017	\$243.507.465.359	16%	\$315.733.533.681	13%
2018	\$265.434.782.525	16%	\$349.195.245.116	13%

2019	\$256.371.086.497	16%	\$361.320.937.424	14%
2020	\$212.671.750.902	15%	\$328.861.803.529	14%

Source: The authors, using data from the United Nations Comtrade Database <<https://comtrade.un.org/data/>>, accessed on 11 June 2021. Parameters: Type of product: Goods. Frequency: Annual. HS: As reported. SITC: none. BEC: none. Periods (year): 2020, 2019, 2018, 2017, 2016. Reporters: Mexico. Partners: Canada, USA, World. Trade flows: Import, Export. HS (as reported) commodity codes: TOTAL - Total of all HS commodities.

Table 4: Canadian exports and imports in US dollars. Source: The authors, using data from the United Nations Comtrade Database <<https://comtrade.un.org/data/>>, accessed on 11 June 2021. Parameters: Type of product: Goods. Frequency: Annual. HS: As reported. SITC: none. BEC: none. Periods (year): 2020, 2019, 2018, 2017, 2016. Reporters: USA. Partners: Canada, Mexico, World. Trade flows: Import, Export. HS (as reported) commodity codes: TOTAL - Total of all HS commodities.

A first obvious conclusion is that trade between US-MCA parties follows a hub and spoke pattern, whereby the USA are the hub and Canada and Mexico are spokes. Second, the USA show trade deficits vis-a-vis Canada and Mexico. Third, and more important for our present purposes, while integration for the three markets is fairly high, it is also notoriously asymmetrical. Hence, while regional integration is considerable and the absence of a trade agreement would certainly severely damage all three economies, it seems fair to argue that Canada and Mexico are considerably more dependent from the USA than the other way around.

4 Power oriented and rule oriented diplomacy

Much has been written about NAFTA and the USMCA.¹⁸ The aim of this article is to analyze if the USMCA's rules about review and term extension induce or disincentive power or rule oriented diplomacy. This analysis will be significant in order to forecast the relationship among the States that may arise as a result of

¹⁸ Cypher, James M.; Crossa, Mateo. T-MEC en el espejo del TLCAN: Engañosas ilusiones, brutales realidades. *Ola Financiera*, v. 12, n. 34, p. 56-87, 2019.

this agreement. It should be highlighted that we will not analyze the negotiations that led to the USMCA.¹⁹

Thus, we will not examine if the negotiations that led to the USMCA were power or rule oriented. We will rather evaluate whether certain USMCA rules offer incentives for power or rule oriented diplomacy.

In 1978, Jackson introduced the concepts of “power oriented” and “rule oriented” diplomacy. As he put it²⁰,

diplomatic techniques can be roughly categorized into two groups: (1) the technique we can call “power oriented”; and (2) the technique which we might call “rule oriented”. Power oriented techniques suggest a diplomat asserting, subtly or otherwise, the power of the nation he represents. In general, such a diplomat prefers negotiation as a method of settling matters, because he can bring to bear the power of his nation to win advantage in particular negotiations ... Needless to say, often large countries tend to favour this technique more than do small countries; the latter being more inclined to institutionalized or “rule oriented” structures of international activity.

A rule oriented approach, by way of contrast, would suggest that a rule be formulated which makes broad policy sense for the benefit of the world and the parties concerned, and then there should be an attempt to develop institutions to insure the highest possible degree of adherence to that rule.

In the case of disputes between countries, a power oriented approach is often utilized in the negotiation, so that the dispute, even if it involves a breach of a rule, may be settled more from the point of view of who has the effective power, economic or otherwise, than from the point of view of determining whether a rule has been breached. A rule oriented approach, on the other hand, would also involve negotiation for a settlement, but in such a negotiation the negotiators would be more inclined to resolve the dispute by reference to what they would expect an international body would conclude about the action of the transgressor in relation to its international obligations.

All diplomacy, and indeed all government, involves a mixture of these techniques. To a large degree, the history of civilization may be described as a gradual evolution from a power oriented approach, in the state of nature, towards a rule oriented

approach. However, never is the extreme in either case reached. ...

In international affairs, I think a strong argument can be made that to a certain extent this same evolution must occur... but as is true in most evolutions there have been set-backs, and mistakes have been made.

In axiological terms, Jackson argued that rule oriented diplomacy should be pursued, among others because it is (perceived to be) fairer, because it gives economic actors more stability and predictability of governmental action, and because raw power can get out of hand.²¹ In later works, Jackson confirmed his views on power and rule orientation.²² He also clarified that rule orientation does not mean a rule-based system.²³

A first obvious problem with this framework is that it initially defines power oriented techniques as a negotiation technique (“a diplomat prefers negotiation”), whereas the rule oriented approach refers to a rule creation process (“A rule oriented approach ... would suggest that a rule be formulated”). However, not all negotiations will necessarily aim at or result in rule creation. Thus, power oriented and rule oriented diplomacy may arguably be incommensurable under certain circumstances. Nonetheless, later on Jackson concentrates on “disputes between countries”, and here he conceives both the power and the rule oriented approach as negotiation techniques. Thus in this article, we will understand both approaches exclusively as negotiation techniques.

A second obstacle is that rule formulation includes an axiological dimension, and the benchmark for the axiological assessment is external to this theoretical framework (“the benefit of the world and the parties concerned”). Thus, for Jackson the power-neutrality of rules is axiomatic. This framework does not question if and to what extent the definition of “the benefit of the world and the parties concerned”, and hence rules, may themselves reflect power relations. If rules do reflect hegemony and dependence, and if rule oriented diplo-

¹⁹ On the USMCA negotiations, see e.g. N.N. NAFTA Is Renegotiated and Signed by the United States. *American Journal of International Law*, v. 113, n. 1, p. 150-159, 2019. Bahri, Amrita; Lugo, Monica. Trumping Capacity Gap with Negotiation Strategies: the Mexican USMCA Negotiation Experience. *Journal of International Economic Law*, v. 23, n. 1, p. 1–23, 2020.

²⁰ Jackson, John H. The Crumbling Institutions of the Liberal Trade System. *Journal of World Trade Law*, v. 12, n. 2, p. 93-106, 1978. p. 98-99.

²¹ Jackson, John H. The Crumbling Institutions of the Liberal Trade System. *Journal of World Trade Law*, v. 12, n. 2, p. 93-106, 1978. p. 100-101.

²² Jackson, John H. *The World Trading System*. 2. Cambridge (Massachusetts): MIT Press, 1997. p. 109. Jackson, John H. *Sovereignty, the WTO and Changing Fundamentals of International Law*. Cambridge: Cambridge University Press, 2006. p. 88-91, 146-147, 229.

²³ Jackson, John H. *Sovereignty, the WTO and Changing Fundamentals of International Law*. Cambridge: Cambridge University Press, 2006. p. 89.

macy is based on those rules, then rule oriented diplomacy itself may be built upon power relations. In the same vein, the power-neutrality of the “international body” by reference to which the parties to the dispute negotiate, is also axiomatic.

Despite these disadvantages, we argue that Jackson’s theoretical framework is valuable for our present purposes. The reason is that rule oriented diplomacy refers to rules. Even if those rules reflect power relations, the mere reference to rules offers legal certainty. Legal certainty is in itself an expression of justice²⁴, and aims at clarifying and delimitating the powers of the ruler, as well as the rights, duties and obligations of individuals.²⁵ “All law has ultimately to be put to the test of ‘How would a court decide?’ (ubi iudex, ibi jus)”.²⁶ In contrast, power oriented diplomacy does not refer to rules; hence, it does not offer legal certainty nor justice. This, we think, is what Jackson alluded to when he argued why rule oriented diplomacy should be preferred over power oriented diplomacy because the former is (perceived to be) fairer and gives more stability and predictability. Later, Jackson explicitly mentioned that rule orientation is generally “intended to emphasize rule security and predictability”.²⁷ We agree with Jackson that rule oriented diplomacy is axiologically better than power oriented diplomacy because of legal certainty. Legal certainty is an element of the rule of law²⁸; in turn, fair, stable and predictable legal frameworks generate development, economic growth, employment, investment and entrepreneurship.²⁹ Hence the importance of legal certainty in international law.

Jackson’s theoretical framework is not only valuable for evaluating diplomatic techniques, but also international regimes. Jackson himself hinted at it as he men-

tioned disputes between countries and governments. In this sense, one question is to what extent an international regime’s structure offers incentives for hegemonic states to recur to power or rule oriented diplomacy, especially when dealing with less powerful states.

Jackson’s framework was quite popular around the time the World Trade Organization (WTO) entered into force and during the next ten years or so. Conventional wisdom³⁰ at the time among academics was that the fact that the WTO replaced the General Agreement on Tariffs and Trade (GATT) confirmed Jackson’s theory.³¹ It seemed that the international trade regime would indeed gradually evolve (or had already evolved) from power towards rule oriented diplomacy. Then this framework fell into relative disuse yet we think that it is still valuable and effective. In this article, we will apply that framework to the USMCA rules about review and term extension.

5 Rules on Review and Term Extension (sunset clause)

The USMCA includes discrete rules on review and term extension of the treaty. In this section, we will explore if those rules will mostly induce power oriented or rule oriented diplomacy.

Some authors have claimed that reopening old free trade agreements is a manifestation of populism that presents a serious challenge to the post-war liberal international economic order.³² In contrast, we think it seems a sensible idea to periodically revise or renegotiate a treaty, in order to adapt it to face new political, economic or social challenges. When NAFTA entered into force over 25 years ago, international trade was quite different from today.³³ For instance, electronic commerce did not exist, and global value chains were

²⁴ RADBRUCH, Gustav. Gesetzliches Unrecht und übergesetzliches Recht. In: RADBRUCH, Gustav. Rechtsphilosophie. 2. Heidelberg: C.F. Müller Verlag, 1946/2003. p. 211-219.

²⁵ SCHOLZ, Franz. *Die Rechtsicherheit*. Berlin: Walter der Gruyter & Co, 1955. p. 3.

²⁶ THIRLWAY, Hugh. *The Sources of International Law*. Oxford: Oxford University Press, 2014. p. 2.

²⁷ Jackson, John H. *Sovereignty, the WTO and Changing Fundamentals of International Law*. Cambridge: Cambridge University Press, 2006. p. 229; see also p. 88-91.

²⁸ UNITED NATIONS SECURITY COUNCIL. *The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616)*. 2004. para. 6.

²⁹ UNITED NATIONS GENERAL ASSEMBLY. *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (A/RES/67/1)*. 2012. paras. 2 and 8.

³⁰ GALBRAITH, John Kenneth. *The Affluent Society*. 40th Anniversary Edition. Boston: Mariner Books, 1958/1998. p. 6-17.

³¹ Pauwelyn, Joost. The Transformation of World Trade. *Michigan Law Review*, v. 104, n. 1, p. 1-65, 2005. p. 2-4.

³² Lester, Simon; Manak, Inu. The Rise of Populist Nationalism and the Renegotiation of NAFTA. *Journal of International Economic Law*, v. 21, n. 1, p. 151-169, 2018. p. 151.

³³ Villarreal, M. Angeles; Fergusson, Ian F. *The North American Free Trade Agreement (NAFTA)*. Congressional Research Service R42965. 2017. p. 27-31. Villarreal, M. Angeles; Fergusson, Ian F. *The United States-Mexico-Canada Agreement (USMCA)*. Congressional Research Service R44981. 2020. p. 2.

incipient compared with today. Links between international environmental law, international investment law and international trade law were still in their infancy. In 1994, world trade revolved around two poles, the USA and Europe, while China played second (or third) fiddle regarding international trade. Thus, to a great extent, NAFTA was an answer to the European economic integration project that would later coalesce in the European Union. The World Trade Organization still did not exist. Thus, challenges and opportunities regarding international trade have changed quite dramatically since NAFTA came into force. In this context, in principle it makes sense to revamp the treaty.

What is most interesting about the USMCA in this regard is that it includes a programmed review schedule coupled with the treaty's temporal validity. This is one of the biggest innovations in USMCA when compared to NAFTA and most other treaties regarding international trade.

First, the USMCA's temporal validity is definite. According to the sunset clause enshrined in article 34.7 USMCA, the agreement "shall terminate 16 years after the date of its entry into force", unless each Party expresses its will to continue the agreement for another 16 years.

In essence, parties have designed the USMCA as a treaty with a low degree of temporal stability due to its definite temporal validity. In addition, the review schedule will enable parties to adapt the treaty to changes in circumstances. The result will be a threshold of legal certainty limited to a maximum of 16 years. This is arguably the USMCA's most striking innovation. Some authors claim that reduced predictability "takes away 'political risk insurance' from companies that seek to relocate production abroad"³⁴ and will most probably reduce the motivation of the US private sector to invest and build value chains in Mexico and Canada, probably reducing aggregate economic welfare. Other authors have argued that the 16-year term is adequate in our "vastly evolving technological" era and does not reduce the potential of long-term investment.³⁵ Leaving aside questions about its economic soundness, this fits within

Trump's general discourse about encouraging the US private sector to manufacture in the USA. Thus, the USMCA favors periodic adaptation to new challenges over stability. It is difficult to say in the abstract if the balance struck makes sense. Its impact will vary according to the economic sector. On the one hand, periodic review may positively affect sectors that, at the time of negotiating the USMCA, were still unknown or emerging, and sectors that will be affected by unforeseen disruption. On the other hand, reduced predictability may negatively affect stable economic sectors, especially those requiring long term investments, such as infrastructure. The shorter the time span for an investment to yield a profit, the more probable that the periodic USMCA review will not affect the investor. By the same token, the shorter the time span for a company to build a relation with commercial partners from abroad, the less likely it will be affected by periodic reviews.

Second, there is programmed review. While it is true that anyhow parties to any agreement may choose to review it at any time³⁶, reviews of the USMCA are preordained pursuant to article 34.7. Programmed treaty reviews are infrequent, yet not unheard of. In the realm of international economic law, probably the most notorious case is the WTO Dispute Settlement Understanding (DSU). Contracting parties of what was then the General Agreement on Tariffs and Trade (GATT), the precursor to the WTO, adopted in 1994 at their Ministerial Conference in Marrakesh, Morocco a Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes³⁷ in order to

complete a full review of dispute settlement rules and procedures under the World Trade Organization within four years after the entry into force of the Agreement Establishing the World Trade Organization, and to take a decision on the occasion of its first meeting after the completion of the review, whether to continue, modify or terminate such dispute settlement rules and procedures.

However, WTO Members did not complete the review on time. The deadline was renewed a couple of times, until in 2004 the WTO General Council agreed on a further extension that did not set a new deadline.³⁸

³⁴ Lester, Simon; Manak, Inu. The Rise of Populist Nationalism and the Renegotiation of NAFTA. *Journal of International Economic Law*, v. 21, n. 1, p. 151-169, 2018. p. 164.

³⁵ Bahri, Amrita; Lugo, Monica. Trumping Capacity Gap with Negotiation Strategies: the Mexican USMCA Negotiation Experience. *Journal of International Economic Law*, v. 23, n. 1, p. 1-23, 2020. p. 8.

³⁶ Villarreal, M. Angeles; Fergusson, Ian F. *The United States-Mexico-Canada Agreement (USMCA)*. Congressional Research Service R44981. 2020. p. 39.

³⁷ Available at https://www.wto.org/english/docs_e/legal_e/53-ddsu_e.htm.

³⁸ WORLD TRADE ORGANIZATION. *Negotiations to improve dis-*

As mentioned, the USMCA shall be reviewed pursuant to article 34.7. On the sixth anniversary of the entry into force of the USMCA, the Free Trade Commission and the parties shall jointly review the operation of the agreement. During that review, all parties may unanimously extend the term of the USMCA for another 16-year period. If at least one party does not wish to extend the term for another 16-year period, the Commission shall review the agreement every year for the remaining 10 years. The parties' silence regarding the term extension can be broken at any time during those remaining 10 years (that is, before the expiry of the treaty's validity), thus extending the term of the agreement for another 16 years. Thus, that review amounts to a programmed renegotiation.

Most important for our present purposes, are not the treaty's temporal validity and programmed review schedule as such, but these two facets' interrelation. In fact, "[s]ome U.S. negotiating positions could be seen to have the explicit or implicit goal of promoting U.S. economic sovereignty and/or rolling back previous liberalization commitments in specific areas, such as periodically reviewing and potentially 'sunsetting' the agreement".³⁹ Reviews will take place if at least one party has not expressed its will to extend the term of the agreement. Thus, reviews will take place under the threat of termination of the USMCA. Not only that, but since parties may break their silence discretionally before the term expires (from year 6 until year 16), that impending termination will not be definitive. This system offers a very strong incentive for parties not to express their will to extend the term, but instead to use their silent threat of termination as a negotiating tool, and eventually to express their will to extend the term at the very last minute before the 16-year term lapses. In other words, the USMCA offers very strong incentives for parties to use their silence as a tool for hardball negotiation and coercion. Parties that do want to extend the term will be in a very disadvantageous negotiating position and have every incentive for concealing their intentions.

As mentioned above, figures on trade flows reveal that Canada and Mexico are significantly more depen-

dent from the USA than the other way around. Thus, Mexico's and Canada's negotiating position with regard to the USA is rather weak. Consequently, the USA will in all probability be in a favorable position to apply hardball negotiation and coercion.⁴⁰

Withdrawal from the USMCA takes effect six months after a party provides notices thereof pursuant to article 34.6. If a party were irremediably discontent with the USMCA, it might withdraw at any time and without having to wait for the treaty's termination according to article 34.6. Thus, parties will arguably participate in programmed reviews as long as they still have at least a modicum of interest in maintaining the USMCA. This reinforces our assertion that parties will probably use the threat of termination to coerce the other parties to acquiesce to certain demands.

The relation between amendment and review and term extension procedures should be highlighted. Parties will apply the amendment procedure according to articles 34.3, 30.2.1 (b)) and 30.2.2 (c) as long as they agree on an amendment. In contrast, the review and term extension procedure pursuant to article 34.7 will function as a reinforced amendment procedure for cases when parties disagree.

In other words, parties to the USMCA will most probably use the treaty's review and term extension procedure as a tool to negotiate amendments under the threat of termination. This threat will arguably be most credible from parties that depend less on their counterparts, and will hurt most those who are most dependent. Thus, we should expect that Mexico and Canada will be more susceptible to threats from the USA, and that the USA will be in a better position to make credible threats. This, in turn, will arguably offer incentives for the USA to recur to power oriented diplomacy during those negotiations.

6 Effects on dispute settlement

The reinforced amendment procedure will arguably also affect dispute settlement under the USMCA. Of

pute settlement procedures. n.d. 15 01 2020. https://www.wto.org/english/tratop_e/dispu_e/dispu_negs_e.htm.

³⁹ Villarreal, M. Angeles; Fergusson, Ian F. *The United States-Mexico-Canada Agreement (USMCA)*. Congressional Research Service R44981. 2020. p. 2.

⁴⁰ Steinberg, Richard H. In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO. *International Organization*, v. 56, n. 2, p. 339-374, 2002. p. 346-349, has argued along similar lines regarding powerful states, consensus and coercion in the WTO.

course, every treaty that can be amended offers the opportunity to renegotiate any rule that gave or may give rise to a dispute. However, this effect is radically stronger in the USMCA since it includes a review procedure designed for occasions when parties do not agree on an amendment. Every six years at the most, and at least on a yearly basis during the 10 years of reviews and programmed renegotiations, parties will be able to renegotiate every rule from the USMCA that was, is or may become the source of an actual or potential dispute. Parties may be tempted to use their consent to extend the term of the agreement as a bargaining chip: they may offer their consent if the other parties acquiesce to renegotiate certain contentious rules. In other words, the review and term extension procedure is part of an institutional design that will permeate dispute settlement, as it will incentive parties to find mutually agreed solutions to their disputes. If the rule favors the position of a hegemonic party, parties will probably reach a mutually satisfactory solution that is rule oriented under art. 31.1 USMCA, which states that the parties “shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution”. In contrast, if the rule does not favor the interests of the hegemonic party, parties to the dispute will probably find a mutually agreed solution after power oriented negotiations that were not oriented towards the dispute as such, but towards amending the rule that gave rise to the dispute in the first place. To put it differently, the reinforced amendment procedure is an institutional design that offers incentives for parties to settle their actual or potential disputes through power oriented negotiations, especially when the rule that gave or may give rise to a dispute does not favor the position of a hegemonic party. This means that many dispute settlements will mirror power relations among the parties to the dispute. In these cases, and paraphrasing Jackson, parties will not be “inclined to resolve the dispute by reference to what they would expect [the USMCA dispute settlement organs] would conclude about the action of the transgressor in relation to its international obligations”. This, in turn, weakens legal certainty, as hegemonic parties will renegotiate rules that they deem unfavorable for their present or potential interests. In addition, the reinforced amendment procedure offers incentives for hegemonic parties to preventively renegotiate certain rules when they anticipate that they will breach those rules in the foreseeable future. Not only that, but this renegotiation structure offers hegemonic parties an in-

centive to renegotiate rules in order to retroactively validate a breach. With a caveat: this institutional design will affect dispute settlement to the benefit of parties that can credibly threaten to terminate the USMCA.

7 Effects on authentic interpretations

The USMCA Free Trade Commission may issue authentic interpretations of the provisions of the USMCA pursuant to article 30.2.2(f). Those interpretations are binding for tribunals and panels established under Chapter 14 (Investment) and Chapter 31 (Dispute Settlement). The USMCA Free Trade Commission shall take decisions by consensus (article 30.3), including the decision to adopt an authentic interpretation. These rules closely follow NAFTA articles 2001.2(c), 2001.4 and 1131.

Organs that can issue authentic interpretations can exert political control over other organs. For instance, the NAFTA Free Trade Commission issued an authentic interpretation to limit the protection that arbitrators could afford to foreign investors.⁴¹ It should be highlighted that NAFTA did not have reinforced amendment procedures, such as USMCA rules on review and term extension. As a consequence, authentic interpretations were not only a lawmaking constraint on panels without the requirement of formally amending the underlying agreement⁴², but they were arguably the only practical way to constrain dispute settlement organs. This is why NAFTA rules on authentic interpretations played such a significant role.

In contrast, USMCA parties will likely issue authentic interpretations when they reach consensus,⁴³ but (especially hegemonic) parties will most probably apply rules on review and term extension to renegotiate the treaty when parties have not reached consensus. Indeed, rules on review and term extension are designed

⁴¹ NAFTA Free Trade Commission. Notes of Interpretation of Certain Chapter 11 Provisions. 31 July 2001. Organization of American States Foreign Trade Information System. http://www.sice.oas.org/tpd/nafta/Commission/CH11understanding_e.asp.

⁴² Ginsburg, Tom. Political Constraints on International Courts. In: Romano, Cesare; Alter, Karen J.; Shany, Juval. *The Oxford Handbook of International Adjudication*. Oxford: Oxford University Press, 2014. p. 496.

⁴³ In fact, the Free Trade Commission of the USMCA issued its quite lengthy Decision No 1 on 2 July 2020 (Organization of American States).

for issues where parties have precisely not reached a consensus.

Thus, not only rules on authentic interpretations, but also rules on review and term extension will most probably be a powerful tool to amend the USMCA treaty whenever the parties to the treaty wish to exert control over dispute settlement organs. The choice between those rules will probably depend on whether parties have reached a consensus on the subject matter. In other words, the more difficult a treaty renegotiation is, the more practical authentic interpretations may become. Since USMCA rules on renegotiation tend to favor power oriented diplomacy, hegemonic parties will achieve renegotiations relatively easily. Thus, we expect that the Free Trade Commission will issue authentic interpretations on very infrequent occasions; instead, we anticipate that parties will rather renegotiate the treaty applying the rules on review and term extension. USMCA rules on authentic interpretations will most probably be irrelevant.

8 Constricting the diversification of trade flows

As noted above, US, Canadian and Mexican trade flows are concentrated on USMCA parties, especially regarding Canada and Mexico. One may wonder if USMCA parties, especially Canada and Mexico, intend to diversify their trade flows and reduce their commercial dependency on USMCA parties by increasing the share of trade with other countries. An obvious candidate may be China. As tables 5, 6 and 7 show, US export flows to China are considerably lower than exports to Canada or Mexico, whereas imports from China are substantially greater. In contrast, Canadian and Mexican trade flows (especially exports) with the USA are significantly greater than trade flows with China.

Table 5: Canadian exports and imports.

Canadian Trade Flows with China				
Year	Exports		Imports	
	World			
2016	\$388.853.141.939	100%	\$402.287.821.924	100%
2017	\$420.074.382.189	100%	\$433.045.052.733	100%
2018	\$450.382.382.408	100%	\$459.947.610.210	100%
2019	\$446.079.889.867	100%	\$453.359.841.430	100%

Canadian Trade Flows with China				
Year	Exports		Imports	
2020	\$389.513.173.529	100%	\$405.390.866.824	100%
	China			
2016	\$15.825.077.310	4%	\$48.575.917.684	12%
2017	\$18.185.911.190	4%	\$54.652.257.046	13%
2018	\$21.370.546.205	5%	\$58.326.894.311	13%
2019	\$17.536.396.323	4%	\$56.531.338.898	12%
2020	\$18.826.610.760	5%	\$57.220.721.636	14%

Source: The authors, using data from the United Nations Comtrade Database <<https://comtrade.un.org/data/>>, accessed on 11 June 2021. Parameters: Type of product: Goods. Frequency: Annual. HS: As reported. SITC: none. BEC: none. Periods (year): 2020, 2019, 2018, 2017, 2016. Reporters: Canada. Partners: World, China. Trade flows: Import, Export. HS (as reported) commodity codes: TOTAL - Total of all HS commodities.

Table 6: Canadian exports and imports.

Mexican Trade Flows with China				
Year	Exports		Imports	
	World			
2016	\$373.948.263.890	100%	\$387.070.333.024	100%
2017	\$409.396.273.667	100%	\$420.394.594.048	100%
2018	\$450.684.024.620	100%	\$464.294.262.714	100%
2019	\$460.703.804.234	100%	\$455.289.486.227	100%
2020	\$418.140.902.412	100%	\$383.305.535.087	100%
	China			
2016	\$5.397.386.035	1%	\$69.521.661.673	18%
2017	\$6.692.720.094	2%	\$74.150.192.876	18%
2018	\$7.380.208.899	2%	\$83.509.998.846	18%
2019	\$6.930.325.599	2%	\$83.052.433.871	18%
2020	\$7.786.026.842	2%	\$73.608.183.579	19%

Source: The authors, using data from the United Nations Comtrade Database <<https://comtrade.un.org/data/>>, accessed on 11 June 2021. Parameters: Type of product: Goods. Frequency: Annual. HS: As reported. SITC: none. BEC: none. Periods (year): 2020, 2019, 2018, 2017, 2016. Reporters: Mexico. Partners: World, China. Trade flows: Import, Export. HS (as reported) commodity codes: TOTAL - Total of all HS commodities.

Table 7: Canadian exports and imports.

US Trade Flows with China				
Year	Exports		Imports	
	World			
2016	\$1.450.906.272.956	100%	\$2.247.167.254.438	100%

US Trade Flows with China				
Year	Exports		Imports	
2017	\$1.545.809.598.154	100%	\$2.405.276.626.657	100%
2018	\$1.665.302.936.591	100%	\$2.611.432.490.157	100%
2019	\$1.644.276.220.783	100%	\$2.567.492.197.103	100%
2020	\$1.430.253.623.489	100%	\$2.405.381.557.667	100%
	China			
2016	\$115.594.770.317	8%	\$481.310.447.998	21%
2017	\$129.797.515.346	8%	\$525.764.714.470	22%
2018	\$120.147.865.723	7%	\$563.203.119.540	22%
2019	\$106.626.645.076	6%	\$472.464.913.744	18%
2020	\$124.648.507.633	9%	\$457.164.215.509	19%

Source: The authors, using data from the United Nations Comtrade Database <<https://comtrade.un.org/data/>>, accessed on 11 June 2021. Parameters: Type of product: Goods. Frequency: Annual. HS: As reported. SITC: none. BEC: none. Periods (year): 2020, 2019, 2018, 2017, 2016. Reporters: USA. Partners: World, China. Trade flows: Import, Export. HS (as reported) commodity codes: TOTAL - Total of all HS commodities.

Thus, it seems plausible that Canada and Mexico may want to increase their exports to China. To that end, a free trade agreement with China would make sense. Canada and Mexico might also endorse China's accession to the CPTPP.

Yet here comes another intriguing facet of the USMCA. Its article 32.10 provides that a USMCA party that intends to commence free trade agreement negotiations with a non-market country, shall inform the other parties at least 3 months prior to commencing negotiations (article 32.10.2). Before signing the agreement, the party shall provide the other parties with an opportunity to review the full text of the agreement (article 32.10.4). Entry by a party into a free trade agreement with a non-market country will allow the other parties to terminate the USMCA on six months' notice (article 32.10.5, analogously to a withdrawal pursuant to article 34.6), enter into negotiations (article 32.10.7) and eventually replace it with a bilateral agreement (article 32.10.5) based on the text of the USMCA (article 32.10.6).

This may seem surprising, but it is coherent. The USA had in fact spearheaded the CPTPP's predecessor, the TPP, in part to counter China's weight in the Asia Pacific.⁴⁴ Thus, in some respects the US trade policy, es-

⁴⁴ Kim, Young-Chan. RCEP vs. TPP: The pursuit of eastern dominance. In: Kim, Young-Chan. *Chinese global production networks in*

pecially its former support of the TPP and article 32.10 USMCA, seem somewhat reactive to a perception of China as a threat.

Article 32.10 is interesting for it ties USMCA parties closer together. It is an instrument that allows USMCA parties to exert political control on the other parties' international trade policy. The choice between the USMCA parties and non-market countries (essentially meaning China⁴⁵) may become exclusionary, depending on if the other USMCA parties exercise their right to terminate the USMCA pursuant to article 32.10.5. Thus, it will be difficult for USMCA parties to increase exports and imports with China (and other non-market countries) and, consequently, to diversify their trade flows. Two obvious comments are warranted. Firstly, due to asymmetrical trade integration among USMCA parties, it seems plausible that only the USA would have the political clout to make a credible threat to terminate the USMCA. Secondly, Canadian and Mexican trade flows are extremely concentrated on the USA. The more Canada's and Mexico's trade remains concentrated on the USA, the weaker their negotiating position will be vis-a-vis US power oriented diplomacy. Put differently, the Canadian and Mexican negotiating position during USMCA review and term extension negotiations would be stronger if their trade flows were more diversified. In other words, the restriction to sign free trade agreements with China will ultimately reinforce Canada's and Mexico's trade dependency on the USA, hence strengthening US power oriented diplomacy during USMCA review and term extension negotiations. To sum up, we may understand that one of the main functions of article 32.10 is to guarantee that the rules on review and term extension remain effective tools for US trade diplomacy. This reading is coherent with the claim that the USMCA is the result of a US nationalist worldview that does not lead to economic isolationism, but to increased use of the US asymmetrical power.⁴⁶

ASEAN. Cham: Springer, 2016. p. 19-37.

⁴⁵ N.N. NAFTA Is Renegotiated and Signed by the United States. *American Journal of International Law*, v. 113, n. 1, p. 150-159, 2019.

⁴⁶ Lester, Simon; Manak, Inu. The Rise of Populist Nationalism and the Renegotiation of NAFTA. *Journal of International Economic Law*, v. 21, n. 1, p. 151-169, 2018. p. 152-154.

9 Conclusions

The USMCA includes a review and term extension procedure that incorporates a termination date for the treaty (art. 34.7 USMCA). This, as we have argued, is in reality a reinforced amendment procedure. It is reinforced in the sense that standard amendments presuppose unanimity among parties to the treaty, whereas the reinforced renegotiation procedure is designed for those instances when parties dissent.

This reinforced amendment procedure has pros and cons. An advantage is that it will more easily allow to accommodate the rights and duties of the parties to changing circumstances. A disadvantage is that the review and term extension procedure offers incentives for hegemonic parties to threaten and coerce weaker parties to consent to a treaty amendment. Thus, this procedure will most probably turn into planned and recurrent renegotiation under a certain level of coercion. It will probably consist of three phases, the first being six years without negotiations after the treaty enters into force. Second, all parties will not confirm their wish to extend the term of the agreement. The third phase will be ten years of continuous negotiations that will face increasing time pressure, threats and coercion as the treaty's termination date comes closer.

But is there a hegemonic party in the USMCA? Trade flows show that Canada and Mexico are considerably more dependent from the USA than the other way around. This arguably leaves Mexico and Canada in a rather weak negotiating position vis-a-vis the USA. Thus, it seems plausible to argue that the USA is in a hegemonic position.

Periodically renegotiating economic integration treaties in order to adapt them to a changing social context is probably a sound exercise. However, we argue that the USMCA review and term extension procedure (art. 34.7) has several main problems. Firstly, the architecture of the USMCA procedure severely undermines any expectation of a stable treaty. Periodic updates seem sensible, as long the core of the treaty is somewhat stable. In contrast, the USMCA does not even seem to pretend to be a permanent treaty. Secondly, the problem we have detected in the USMCA review and term extension procedure (art. 34.7) is that, according to the theoretical framework developed by Jackson, the institutional design of this reinforced amendment pro-

cedure offers strong incentives for power oriented diplomacy. Thirdly, due to the imbalance among USMCA parties, it seems safe to argue that primarily the USA will be able to meaningfully threaten with an exit from the USMCA. Thus, the USA will arguably be able to apply power oriented diplomacy and threaten to exit, in order to coerce Canada and Mexico into renegotiating the USMCA to achieve outcomes that are skewed in the favor of the USA.

In addition, we expect that USMCA rules on review and term extension will strongly affect the practical application of other USMCA rules, especially on dispute settlement and authentic interpretations. Because of rules on review and term extension, parties will probably settle many disputes through mutually agreed solutions that will mirror power relations among parties. In addition, rules on authentic interpretations will probably be irrelevant for all practical purposes.

In this article, we have also highlighted that USMCA rules constrain Canada's and Mexico's ability to reduce their trade dependency on the USA. In other words, it will be difficult for Canada and Mexico to improve their negotiating position vis-a-vis the USA. This will arguably preserve a certain US hegemony, thus reinforcing the incentives for US power oriented diplomacy.

Last, but not least, we believe that we have shown that Jackson's theory is still useful for analyzing and understanding several current trends regarding international economic law in general, and the USMCA in particular.

The USMCA rules on review and term extension leave open fascinating questions. Besides USMCA, will the USA try to renegotiate other free trade agreements in order to include similar rules on review and term extension that lead to programmed renegotiation under the threat of termination? Will the USA seize the opportunity of the current WTO Appellate Body crisis⁴⁷ and push for a renegotiation of the WTO DSU along similar lines? Will the USA try to insert similar clauses into treaties and agreements on other subjects, such as bilateral investment agreements, environmental agreements, etc.? Will other states emulate the USA? These are questions for future research.

⁴⁷ LEHNE, Jens. *Crisis at the WTO: Is the Blocking of Appointments to the WTO Appellate Body by the United States Legally Justified?* Berlin: Carl Grossmann Verlag, 2019.

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