

Political Change from the Outside In: U.S. Trade Leverage and Labor Rights Reform in Mexico

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Abstract: This article examines Mexico-U.S. negotiations over labor rights in Mexico in the context of the Trans-Pacific Partnership trade agreement and a revised North American Free Trade Agreement. Strong U.S. pressures caused Mexico to adopt constitutional reforms that significantly strengthened the legal basis for democratic worker rights. Not only did these changes affect an area of core state sovereignty and a pillar of Mexican political economy, but they also constituted the only known instance of Mexico adopting constitutional amendments in response to an explicit external demand. In the interdependent but asymmetrical relationship between Mexico and the United States, what factors—power asymmetries between the two countries, the decision-making context, and/or Mexican government officials’ negotiating strategies and political goals—explain the character and outcome of these interactions? The conclusion highlights the implications of this crucial case for future bilateral relations.

Key words: Mexico-U.S. relations, asymmetrical complex interdependence, labor rights, Trans-Pacific Partnership, NAFTA

The North American Free Trade Agreement (NAFTA) significantly reshaped relations between Mexico and the United States. Not only did the agreement represent a historic shift in Mexican foreign policy, but it also further institutionalized government-to-government exchanges and greatly accelerated economic integration between the two countries. Contemporary Mexico-U.S. relations clearly constitute an example of “complex interdependence.” In such contexts, according to Keohane and Nye, multiple channels connect governments and societies, the interstate issue agenda is not arranged in a consistent hierarchy, and military force is not employed to settle disputes.¹ But despite major changes in the relationship, there remains a

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¹ Robert O. Keohane and Joseph S. Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown, 1977), 9, 24-25, 30-32. Blanca Torres, ed., *Interdependencia: ¿Un enfoque útil para el análisis de las relaciones México-Estados Unidos?* (México: El Colegio de México, 1990), was the first to apply this framework to Mexico-U.S. relations. Wyman’s assessment of Mexico-U.S. relations during the 1920-1975 period underscores how substantially the character of bilateral relations has changed; Donald L. Wyman, “Dependence and Conflict: U.S. Relations with Mexico, 1920-1975,” pp. 83-141 in Robert L. Paarlberg, Eul Y. Park, and Donald L. Wyman,

fundamental asymmetry in U.S. and Mexican power capabilities that challenges Mexican leaders' capacity to preserve their decision-making autonomy in bilateral interactions and thereby defend national sovereignty.²

Since the NAFTA took effect in 1994, both the overall Mexico-U.S. relationship and particular topics and disputes in bilateral affairs have been the subject of extensive examination.³ Yet there has been almost no attention to the dynamics of post-NAFTA government-to-government interactions, the bargaining strategies adopted by Mexican and U.S. officials, and the outcome of negotiations over specific issues.⁴ This absence is striking because the increasing complexity of Mexico-U.S. relations and the fact that several key bilateral issues are intermestic in character—that is, they are simultaneously of domestic and international importance⁵—make these particularly important questions. The literature on complex interdependence suggests that the Mexican government might seek to expand its bargaining influence vis-à-vis the United States over a particular subject either by linking it to other issues on the multifaceted bilateral agenda, or by forging a cross-border negotiating coalition with potential U.S. governmental and/or nongovernmental allies.⁶ Similarly, closer economic and societal integration between the two countries could give transnational policy coalitions greater influence over government-to-government interactions. However, no previous study has investigated these possibilities in depth.

Diplomatic Dispute: U.S. Conflict with Iran, Japan, and Mexico (Cambridge, Massachusetts: Center for International Affairs, Harvard University, 1978). See also Karl Schmidt, *Mexico and the United States, 1821-1973: Conflict and Coexistence* (New York: John Wiley and Sons, 1974), chapters 7-8.

² Keohane and Nye (op. cit., pp. 10-11, 15) characterize asymmetrical interdependence as a power resource for the more influential state.

³ Among many examples, see Guadalupe González González, “Las estrategias de política exterior de México en la era de la globalización,” *Foro Internacional* vol. 41, no. 4 (October-December 2001): 619-71, and Jorge I. Domínguez and Rafael Fernández de Castro, *The United States and Mexico: Between Partnership and Conflict*, 2nd ed. (New York: Routledge, 2009).

⁴ Tom Long, “Coloso fragmentado: La agenda ‘interméstica’ y la política exterior latinoamericana,” *Foro Internacional* vol. 57, no. 1 (January-March 2017): 5-54, analyzes in detail Mexico-U.S. interactions over cross-border trucking between 1995 and 2011 (pp. 22-37), but he does not directly examine bilateral negotiations over the issue. Domínguez and Fernández de Castro (op. cit., pp. 36-37) discuss in general terms Mexico’s “bandwagoning” strategy in Mexico-U.S. security affairs.

The dearth of post-NAFTA analyses of bilateral negotiating processes contrasts with the rich historical literature on the subject. See, for example, Lorenzo Meyer, *México y los Estados Unidos en el conflicto petrolero (1917-1942)* (México: El Colegio de México, 1975); Susana Chacón, “La negociación del acuerdo militar entre México y los Estados Unidos, 1940-1942,” *Foro Internacional* vol. 40, no. 2 (April-June 2000): 307-44; Blanca Torres, “Estrategias y tácticas mexicanas en la conducción de sus relaciones con Estados Unidos (1945-1970),” *Foro Internacional* vol. 50, nos. 3/4 (July-December 2010): 661-88; Gustavo Vega Cánovas, *México y Estados Unidos: La economía política del libre comercio* (México: El Colegio de México, 2014), chapter 3. On the NAFTA negotiations, see Arturo Santa Cruz, “Domestic Politics and International Negotiations: NAFTA’s Two-Level Games,” *Journal of International and Area Studies* vol. 4, no. 1 (December 1997): 1-16; Frederick W. Mayer, *Interpreting NAFTA: The Science and Art of Political Analysis* (New York: Columbia University Press, 1998); Maxwell A. Cameron and Brian W. Tomlin, *The Making of NAFTA: How the Deal Was Done* (Ithaca, New York: Cornell University Press, 2000); Maryse Robert, *Negotiating NAFTA: Explaining the Outcome in Culture, Textiles, Autos, and Pharmaceuticals* (Toronto: University of Toronto Press, 2000).

⁵ Bayless Manning, “The Congress, the Executive, and Intermestic Affairs: Three Proposals,” *Foreign Affairs* vol. 55, no. 1 (January 1977): 306-24, p. 309.

⁶ Keohane and Nye, op. cit., pp. 31-32.

In this article, we examine bilateral negotiations over the Trans-Pacific Partnership (TPP) trade agreement (2011-2016), the revision of the NAFTA (2017-2018), and labor rights reform in Mexico. We selected these interlocking sets of negotiations for close analysis because together they constitute a crucial case of government-to-government bargaining under conditions of asymmetrical complex interdependence. Because U.S. demands for labor rights reform in Mexico focused on what in Weberian terms is an area of core state sovereignty (“the ability of public authorities to exercise effective control within the borders of their own polity”⁷), and because Mexico had in the past deflected U.S. demands for fundamental changes in its labor relations regime, the negotiations constituted a “least likely” case of the United States’ capacity to employ its disproportionate power resources to effect significant change in Mexico’s domestic political arrangements—or, conversely, a “most likely” case of Mexican government officials’ ability to preserve national decision-making autonomy despite underlying power asymmetries in the bilateral relationship.⁸ This case is of broader importance in the study of U.S.-Latin American relations because the Mexico-U.S. relationship is by far the most conspicuous Western Hemisphere example of asymmetrical complex interdependence.

The Mexican officials engaged in TPP labor rights negotiations did not pursue issue-linkage or cross-border coalition strategies.⁹ Instead, they sought to bolster their bargaining position vis-à-vis their U.S. counterparts by invoking Mexico’s strategic importance to the United States as a NAFTA partner and by asserting national sovereignty. Mexican officials delayed in-depth negotiations with the United States over labor rights questions so that the topic would not impede progress on trade issues important to Mexico. Even more important, in order to contain potential domestic opposition to any Mexican concessions, they sought control over the public flow of information concerning these sovereignty-sensitive bilateral discussions and the principal form—whether reforms to federal labor law, or amendments to the Constitution—in which the government would address U.S. demands. In the short term, these tactics were successful.

Nevertheless, U.S. pressures finally compelled the Mexican government to adopt constitutional reforms that significantly strengthened the legal basis for workers’ ability to form politically independent unions, elect union officials democratically by secret ballot, and protect rank-and-file members’ rights in collective bargaining. Not only did these changes affect a pillar of Mexican political economy, but they also constituted the only known instance of Mexico adopting constitutional amendments in response to an explicit external demand. The integrity of these reforms came under threat from domestic opponents in 2017-2018, but a Mexico-U.S. labor rights coalition successfully took advantage of the political opportunities offered by highly public negotiations to re-formulate the NAFTA (hereinafter NAFTA 2.0) and Mexico’s 2018 presidential election contest to repel it and secure a victory for labor rights advocates on both sides of the border.

⁷ Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, New Jersey: Princeton University Press, 1999), p. 4.

⁸ On “least likely” and “most likely” crucial cases, see Harry Eckstein, “Case Study and Theory in Political Science,” pp. 79-137 in Fred I. Greenstein and Nelson W. Polsby, eds., *Handbook of Political Science*, vol. 7, *Strategies of Inquiry* (Reading, Massachusetts: Addison-Wesley Publishing Co., 1975), pp. 104, 118-19, 126-27.

⁹ We return to this question in the Conclusion.

Because one of our central goals is to explore how domestic political considerations shape Mexican and U.S. foreign policy goals and government-to-government negotiations, and how these negotiations might in turn produce outcomes with important domestic political consequences, we employ Putnam's metaphor of international diplomacy as a two-level game as an analytic guide to reconstructing bilateral interactions over the TPP, NAFTA 2.0, and labor rights reform. Putnam's framework focuses our attention on four principal elements:¹⁰ (1) the identity and motivations of the main actors on each side the negotiating table, including the domestic constituencies most affected by the issues under discussion and their influence over the goals pursued; (2) the character of domestic institutional arrangements and their potential impact on both the bargaining process (particularly the relative autonomy of the chief negotiator) and legislative ratification of any agreement the negotiating parties reach; (3) transgovernmental and/or transnational (societal) linkages that may form to influence negotiations or ratification; and (4) the distribution of wins and losses (both for negotiating states and key domestic constituencies) and the strategies that national leaders might consequently adopt (for example, side payments to one or more interest groups to relax domestic constraints and ensure that an agreement will be ratified).

We address four main research questions. First, in the complex-interdependent but asymmetrical Mexico-U.S. relationship, what was the character of bilateral negotiations, and what specific bargaining strategies did Mexican and U.S. officials adopt, over an issue of central domestic importance to Mexico? Second, to what extent did domestic interests and calculations in both the United States and Mexico shape the terms and outcome of the TPP and NAFTA 2.0 negotiations over labor rights? Third, what factors—power asymmetries between the two countries, the nature of the decision-making process, and/or Mexican government officials' negotiating strategies and political goals—explain how U.S. pressures overcame long-standing Mexican resistance to major reform of its labor relations regime? Fourth, in terms of the research agenda on Mexico-U.S. relations, in what ways does a complex-interdependence framework help us understand the dynamics of contemporary bilateral affairs, and what are the implications of this crucial case for future bilateral relations?

In order to trace in detail Mexico-U.S. interactions over labor rights during the TPP and NAFTA 2.0 negotiations,¹¹ we draw extensively on 27 semi-structured interviews we conducted in 2017-2019 with former senior government officials, trade union representatives, and labor rights activists in Mexico and the United States. We selected interviewees based on the occupational position they held and their degree of involvement in the negotiations and political actions surrounding them.¹² Because of the sensitivity of the issues involved, many of our interviewees

¹⁰ This synthesis draws on Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* vol. 42, no. 3 (Summer 1988): 427-60, and Andrew Moravcsik, "Introduction: Integrating International and Domestic Theories of International Bargaining," pp. 3-42 in Peter B. Evans, Harold K. Jacobson, and Robert D. Putnam, eds., *Double-Edged Diplomacy: International Bargaining and Domestic Politics* (Berkeley: University of California Press, 1993), pp. 24-25.

¹¹ On process tracing as a research methodology, see Andrew Bennett and Jeffrey T. Checkel, "Process Tracing: From Philosophical Roots to Best Practices," pp. 3-37 in Bennett and Checkel, eds., *Process Tracing: From Metaphor to Analytic Tool* (Cambridge: Cambridge University Press, 2015).

¹² On purposive sampling in qualitative research, see Alan Bryman, *Social Research Methods*, 4th ed. (Oxford: Oxford University Press, 2012), chapter 18.

requested anonymity.¹³ We therefore identify them only by the general occupational position they held during these negotiations, and in order to safeguard further the confidentiality of our sources, we cite specific interviews only when necessary. On points of particular importance, we systematically sought confirmation from more than one interview source, and whenever possible we triangulated our evidentiary sources by supplementing interview materials with documentary reports and journalistic accounts.

Mexico-U.S. Negotiations over the Trans-Pacific Partnership and Labor Rights in Mexico

The TPP, negotiated by twelve Pacific Basin states between February 2008 and October 2015, was without doubt one of the most ambitious free-trade agreements (FTAs).¹⁴ The 30-chapter accord promoted trade among countries that together accounted for approximately forty percent of global commerce.¹⁵ Proponents maintained that the TPP was especially innovative in its advocacy of international labor and environmental standards. Indeed, the U.S. decision in 2008 to join what had originally been a more limited free-trade initiative made labor and environmental issues key topics in the multilateral negotiations.¹⁶

The final text included a separate Chapter 19 on labor rights that embraced the International Labour Organization's (ILO) 1998 Declaration on Fundamental Principles and Rights at Work.¹⁷ Of particular note, the United States negotiated separate bilateral labor-rights agreements with Brunei, Malaysia, and Vietnam that were to be implemented before the TPP took effect.¹⁸ These so-called labor consistency plans, all dated November 2015, addressed highly sensitive issues (including freedom of association and collective bargaining, trade union leadership, strikes, forced labor and trafficking, child labor, employment discrimination, acceptable conditions at work, labor inspection procedures and complaint mechanisms, and labor subcontracting and outsourcing arrangements) in detail, frequently citing specific provisions of domestic law and regulations that were to be modified consistent with ILO labor rights standards. In all three cases, the agreements established timetables for these reforms and annual reviews by special bilateral committees to evaluate progress in bringing them about. This

¹³ For this reason, the interviews were not recorded.

¹⁴ The United States withdrew from the agreement on 23 January 2017. The remaining countries (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam) signed a "Comprehensive and Progressive Agreement for Trans-Pacific Partnership" on 8 March 2018 in Santiago, Chile.

¹⁵ The White House, "Statement by the President on the Signing of the Trans-Pacific Partnership," 3 February 2016 (www.whitehouse.gov/the-press-office-2016/02/03; accessed 25 May 2016).

¹⁶ The TPP originated in the "Trans-Pacific Strategic Economic Partnership Agreement" conceived of by Chile, New Zealand, and Singapore in 2003 and signed (with Brunei) in 2006. Ian F. Fergusson, Mark A. McMinimy, and Brock R. Williams, *The Trans-Pacific Partnership (TPP): Negotiations and Issues for Congress*, CRS Report R42694, 20 March (Washington, D.C.: Congressional Research Service, 2015), p. 1.

¹⁷ Trans-Pacific Partnership (5 November 2015), Art. 19.1 ("Definitions") (<https://ustr.gov/ppp>; accessed 24 May 2016). The Declaration highlighted (citing specific ILO conventions) freedom of association and the right to collective bargaining (conventions 87, 98), elimination of forced and compulsory labor (conventions 29, 105), abolition of child labor (conventions 138, 182), and elimination of discrimination in the workplace (conventions 100, 111). See www.ilo.org/dyn/normlex.en (accessed 9 October 2018).

¹⁸ <https://ustr.gov/ppp>; accessed 24 May 2016. The United States had similarly insisted on changes in domestic labor legislation prior to U.S. congressional votes on FTAs with Peru (2007), Panama (2011), and Colombia (2011) (*Inside U.S. Trade*, 18 February 2016).

intrusive U.S. approach regarding countries with notoriously poor labor rights records significantly shaped Mexico-U.S. interactions around the TPP.

Mexico announced in November 2010 that it would not take part in the TPP.¹⁹ Only a year later, however, it reversed its position because of concerns that U.S. participation in the pact would allow economic competitors around the Pacific Rim to undercut its position in its principal export market. It joined the fifteenth round of multilateral negotiations in December 2012.²⁰ The United States, the largest economy among TPP states and the most insistent advocate of labor rights provisions in the agreement, was the de facto gatekeeper in these multilateral talks. The Mexico-U.S. negotiating agenda included several difficult issues (concerning, for example, automotive industry rules of origin, patent protection for pharmaceutical products, and sanitary and phytosanitary measures affecting agricultural products), but labor rights in Mexico were a major point of contention.

Opening Positions: The United States

Both legal requirements and domestic political constraints shaped the way in which the administration of President Barack Obama (2009-2013, 2013-2017) approached bilateral negotiations over labor rights in Mexico.

Since the mid-1980s, U.S. legislation has formally linked labor rights and trade. The 1983 Caribbean Basin Economic Recovery Act, the Trade and Tariff Act of 1984, the Omnibus Trade and Competitiveness Act of 1988, and related legislation all required the U.S. government to ensure that trading partners respect such core worker protections as the rights to organize and bargain collectively. On 10 May 2007 the administration of President George W. Bush (2001-2005, 2005-2009) and leading Democrats in the U.S. House of Representatives reached a “Bipartisan Agreement on Trade Policy” stipulating that all future U.S. FTAs would recognize the core labor principles in the ILO’s 1998 Declaration, and that labor obligations would be subject to general dispute-settlement procedures and enforcement mechanisms. All of these legislative departures resulted from successful domestic lobbying by the U.S. labor movement, which sought to prevent foreign countries from basing their economic competitiveness on lower labor standards.²¹

The second factor motivating the Obama administration was the political challenge of winning congressional ratification of the TPP. A substantial majority of Democrats in the House of Representatives had voted against NAFTA ratification in 1993, and President Obama faced an even more uphill struggle in this regard because of the U.S. labor movement’s unrelenting opposition to the TPP and many congressional Democrats’ continued reliance on trade unions for financial and organizational support during election campaigns. The Democrats’ capacity to place labor rights issues at the center of FTA negotiations had been amply demonstrated in the

¹⁹ Luz María de la Mora, “La política comercial de México durante el gobierno del Presidente Felipe Calderón (2006-2012),” *Foro Internacional* vol. 53, nos. 3/4 (July-December 2013): 794-815, pp. 801-802.

²⁰ *Inside U.S. Trade*, 16 December 2011; Joe Barnes, “The Trans-Pacific Partnership Agreement: The Stakes for Mexico and the United States,” Issue Brief, 14 September. (Houston, Texas: Baker Institute for Public Policy, Rice University, 2014), p. 4.

²¹ Kevin J. Middlebrook, “The International Defense of Labor Rights: The North American Experience in Comparative Perspective,” manuscript, chapter 2.

earlier case of Colombia.²² Indeed, one telling indication of Obama administration sensitivity to the issue was that the United States had declined to invite Colombia to join TPP negotiations specifically because of continuing concerns about the labor rights situation there.²³ Whether significant numbers of congressional Democrats would ever have voted for the TPP remains an open question because organized labor's opposition to the agreement went well beyond specific objections to its labor rights provisions (including, for example, investor-state dispute settlement provisions).²⁴ Nevertheless, Obama administration officials clearly understood that demonstrating firmness over labor issues in bilateral negotiations with Mexico was essential to win TPP ratification.

The commitment that senior Obama administration officials shared regarding the importance of Mexican labor rights was strongly reinforced by past bilateral interactions under the North American Agreement on Labor Cooperation (NAALC), the labor "side agreement" negotiated in conjunction with the NAFTA. The NAALC was historically important as the first agreement linking labor rights to a bilateral FTA, and it created mechanisms to investigate and potentially sanction rights violations. However, the NAALC did not form part of the main NAFTA text. An appendix recognized a wide range of labor rights (including freedom of association and the right to collective bargaining), but in only a limited subset of these rights (minimum wages, child labor, and workplace health and safety) were sustained violations potentially subject to trade-related sanctions. In practice, although NAALC public submissions (grievance cases) heightened international awareness of labor rights problems in Mexico and sometimes contributed to change in Mexican government policy (leading, for example, to a ban on the discriminatory practice of pregnancy testing as a condition of employment),²⁵ they did not succeed in fundamentally reforming the existing labor relations regime.

A wide range of U.S. actors—government officials, trade unions, and labor rights activists—questioned the efficacy of NAALC procedures as a vehicle for addressing rights violations in Mexico. Over time, their concerns came to focus on two main issues: respect in practice for the constitutionally and legally guaranteed freedom of association, and the political independence of tripartite (comprised of labor, government, and business representatives) conciliation and arbitration boards (*juntas de conciliación y arbitraje*). Federal and state-level juntas were responsible for resolving worker-employer conflicts and legally registering collective contracts and, in economic activities under state-level jurisdiction, trade unions. In practice, both federal and state-level authorities regularly obstructed the formation of politically independent unions (and favored government-aligned labor organizations). And because government-allied unions dominated labor representation on juntas, rank-and-file challenges to their workplace control and

²² Laura Cristina Silva, "El proceso de negociación del TLC entre Colombia y Estados Unidos," *Colombia Internacional* vol. 65 (January-June 2007): 112-33.

²³ Middlebrook interview with an Obama administration senior White House official, 22 June 2018, Washington, D.C.

²⁴ Labor Advisory Committee on Trade Negotiations and Trade Policy (Office of the United States Trade Representative), *Report on the Impacts of the Trans-Pacific Partnership*, 2 December 2015 (<https://ustr.gov/sites/default/files/Labor-Advisory-Committee-for-Trade-Negotiations-and-Trade-Policy.pdf>; accessed 22 September 2018); *Inside U.S. Trade*, 13 January; 3, 19 February 2016.

²⁵ Graciela Bensusán and Kevin J. Middlebrook, *Sindicatos y política en México: Cambios, continuidades y contradicciones* (México, D.F.: Facultad Latinoamericana de Ciencias Sociales-Sede México / Universidad Autónoma Metropolitana-Xochimilco / Consejo Latinoamericano de Ciencias Sociales, 2013), p. 167.

efforts to win higher wages, improved fringe benefits, and better working conditions often failed. For the Obama administration, therefore, TPP negotiations with Mexico offered an opportunity to strengthen NAFTA/NAALC labor provisions, as Obama had promised to do during his 2008 presidential-primary campaign.²⁶

Opening Positions: Mexico

Mexican government officials understood from the outset that labor rights issues would arise in the TPP negotiations. They had discussed the matter in general terms with senior U.S. officials even before Mexico formally sought to join the negotiations, and they initially expressed willingness to adopt new labor measures under TPP auspices. Mexican officials were also aware of the multilateral debate already underway regarding the content of a proposed labor chapter in the agreement (whether, for instance, labor obligations would be subject to binding dispute-settlement procedures).²⁷ However, even though they knew how sensitive labor rights questions concerning Mexico were in some U.S. political circles, they did not anticipate how important the issue would become in bilateral interactions with the United States. In addition, they may have assumed that the defensive positions Mexico had previously taken regarding its labor regime might still hold. For example, during negotiations over the NAALC in 1993, Mexican officials had successfully invoked claims to national sovereignty and parried many specific U.S. demands by insisting that Mexico's federal labor law offered stronger formal protections in some areas than did U.S. law.²⁸ Moreover, they argued, Mexico had ratified and still adhered to a substantially larger number of ILO conventions (76) than the United States (11), including five of the seven conventions then in effect that the ILO later characterized as "fundamental" (versus only one for the United States).²⁹ Several senior members of Mexico's TPP negotiating team had participated in the NAFTA negotiations and had witnessed how the administration of President Carlos Salinas de Gortari (1988-1994) had deflected U.S. pressures for a stronger NAALC. Even though some of these officials recognized the existence of serious domestic labor rights problems, they may have assumed that they, too, could address U.S. demands without fundamentally altering the labor relations status quo.³⁰

Furthermore, Mexico's TPP negotiators could accurately claim that undertaking major reforms of national labor legislation would be difficult politically. The 1970 Federal Labor Law (*Ley Federal del Trabajo*) had been revised in 2012 only after multiple unsuccessful attempts to do so

²⁶ Middlebrook interviews with senior U.S. government officials, 28 March, 26 April 2018, Washington, D.C.; Alexander Lane, "Obama's Been Critical of NAFTA," *Politifact* (15 October 2008) (www.politifact.com). When Obama announced the final TPP text, he did indeed claim that he had fulfilled his campaign pledge because its labor provisions formed part of the main agreement and recognized the core rights articulated in the ILO's 1998 Declaration (*Inside U.S. Trade*, 9 October 2015).

²⁷ Middlebrook telephone interview with former senior Mexican government official A, 17 October 2018; *Inside U.S. Trade*, 16 December 2011; 14 December 2012.

²⁸ For example, Mexican labor law prohibits employers from hiring replacement workers during a legally recognized strike, guarantees a three-month maternity leave, and establishes both minimum and seniority-based payments when workers with permanent employment status are fired without cause.

²⁹ www.ilo.org/dyn/normlex/en; accessed on 16 February 2016.

³⁰ On the issue-specific nature of bargaining power, see Christer Jönsson, "Bargaining Power: Notes on an Elusive Concept," *Cooperation and Conflict* vol.16, no. 4 (November 1981): 249-57, esp. pp. 249-50; Nikolaj Peterson, "Bargaining Power Among Potential Allies: Negotiating the North Atlantic Treaty, 1948-9," *Review of International Studies* vol. 12, no. 3 (July 1986): 187-203, esp. pp. 188, 198, 201.

dating back to the late 1980s.³¹ And because tripartite juntas had been established by the 1917 federal Constitution (Art. 123, clause XX), fundamental changes in the junta system would require constitutional reform—and thus the support of two-thirds majorities in both chambers of the federal Congress and a majority of state legislatures.

Equally important, both government-aligned labor organizations and the private sector had long defended the legal status quo. Most unions remained dominated by leaders whose entrenched position was underpinned by labor law provisions that effectively blocked rank-and-file efforts to hold them accountable. The labor movement was weaker in organizational and political terms in the 2010s than it had been in 1993, when opposition from the Confederation of Mexican Workers (Confederación de Trabajadores de México, CTM) had strongly influenced Mexican government opposition to a more expansive NAALC. Nonetheless, the CTM held a long record of successfully opposing labor-law and political reforms that threatened its dominant position in industrial relations and its status as the official labor sector of the once-hegemonic Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI).

Preserving the established labor relations regime was also very important to Mexican business interests. The willingness of government-aligned unions to moderate wage demands and limit strikes had for decades been a pillar of the country's political economy, and over time the private sector became increasingly reliant on so-called employer protection contracts (*contratos de protección patronal*). These agreements, signed by unaccountable or corrupt leaders of employer-dominated unions—often even before a workforce is hired—and tolerated by complicit government officials, formally meet minimum legal requirements but in practice give employers unchallenged control over workplace affairs. Once in place, the force of law protects employers from workers' attempts to negotiate a new contract. After the 1980s, protection contracts became ubiquitous in some of the country's most important economic activities, including the autoparts industry, commercial aviation, banks, and especially *maquiladora* (in-bond processing) plants. Because Mexico's export-led development model relied on low labor costs as a basis of international comparative advantage,³² many employers regarded control over unionization and workplace relations as vital to their economic success. The nature of business interests thus substantially raised domestic political barriers to labor reform.

The PRI administration of President Enrique Peña Nieto (2012-2018) was not unconditionally opposed to change in labor law and policy. In 2015, as part of a broad government-sponsored consultation on ways to improve citizen access to justice, the Centro de Investigación y Docencia Económicas (CIDE) proposed substantial reform of conciliation and arbitration boards and their transfer from the executive branch to the judiciary.³³ Senior administration officials also evidenced some sensitivity to the sustained criticism that the ILO had voiced regarding protection contracts and restrictions on freedom of association.³⁴ For instance, in March 2015 Alfonso Navarrete Prida, head of the Ministry of Labor and Social Welfare (Secretaría del

³¹ Bensusán and Middlebrook, *op. cit.*, pp. 108-36.

³² Robert A. Blecker, Juan Carlos Moreno-Brid, and Isabel Salat, "La renegociación del TLCAN: Un enfoque alternativo para la convergencia y la prosperidad compartida," *Economía Informa*, 408 (January-February 2018): 5-15.

³³ CIDE, *Informe de resultados de los foros de justicia cotidiana* (México: CIDE, 2015), p. 44.

³⁴ Bensusán and Middlebrook, *op. cit.*, pp. 162-66.

Trabajo y Previsión Social, STPS), assured representatives of several international labor organizations that Mexico would ratify ILO convention 98 on freedom of collective bargaining, and in June 2015 he and 25 state-government labor ministers “categorically rejected” protection contracts.³⁵ Pressure on the government over this issue was building from brand-name companies with manufacturing operations in Mexico. Under the leadership of the Maquiladora Solidarity Network, a Canadian nongovernmental organization promoting international labor rights, such internationally prominent apparel and footwear companies as Adidas, New Balance, Nike, Patagonia, Puma, and Walt Disney had openly condemned protection contracts and worked to ensure that the agreements they signed with Mexican suppliers met their own codes of corporate conduct and international labor rights standards.³⁶ Nonetheless, domestic opposition to major reforms that would alter the labor relations status quo remained strong.

*The Character and Outcome of Bilateral Negotiations*³⁷

In the United States, the Office of the U.S. Trade Representative (USTR) had statutory responsibility for TPP negotiations. However, with USTR concurrence, senior Department of Labor officials were centrally engaged in bilateral negotiations with Mexico over labor rights. The Department of State and the U.S. embassy in Mexico City played supporting roles. Of particular note, even though the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO, the largest U.S. labor organization) and several national industrial unions held seats on the USTR’s Labor Advisory Committee, they were not directly involved in the negotiations. They did, however, maintain a steady drumbeat of highly public denunciations of labor rights violations in Mexico, which, they argued, resulted in depressed wages and unfairly placed U.S. workers at a competitive disadvantage.³⁸

In Mexico, the Ministry of the Economy (Secretaría de la Economía) took the lead in TPP negotiations. Once labor matters became a core issue, senior STPS officials became actively involved. The Ministry of Foreign Relations (Secretaría de Relaciones Exteriores) also followed the negotiations closely because of its statutory authority in trade negotiations, and the Mexican embassy in Washington, D.C. was well-positioned to gauge the U.S. domestic political

³⁵ IndustriALL, “Se hace justicia: México ratifica C98 de la OIT,” 2018 (<http://www.industriall-union.org/es/senado-de-mexico-ratifica-por-unanimidad-el-convenio-98-de-la-oit>; accessed 29 September 2018); STPS, “Secretarios del trabajo del país rechazan la práctica de los denominados ‘contratos de protección,’” Boletín 435, 22 June 2015.

³⁶ Patricia Muñoz Rios, “Exigen empresarios a la STPS reformar la ley para eliminar los sindicatos de protección,” *La Jornada en línea*, 9 November 2015.

³⁷ In addition to interviews cited elsewhere, this discussion draws on Middlebrook interviews with (a) former Obama administration officials in the Department of Labor (15 May 2018) and Department of State (29 May 2018); (b) a U.S. trade union representative (20 March 2018); and (c) officials in the Mexican Embassy in the United States (18 April, 14 June 2018) and the U.S. Embassy in Mexico (18 June 2018), as well as a confidential interview with another senior U.S. government official (14 June 2018), all in Washington, D.C.

³⁸ Middlebrook interviews with senior U.S. trade union representatives, 23 April, 20 June 2018. The AFL-CIO had, for example, issued public statements on labor rights in Mexico to coincide with President-elect Peña Nieto’s Oval Office meeting with President Obama on 27 November 2012 and Peña Nieto’s state visit to Washington, D.C. on 6 January 2015 (*Inside U.S. Trade*, 6 January 2015). See also the joint statement by the AFL-CIO and the National Union of Workers (Unión Nacional de Trabajadores, UNT) concerning the labor reforms Mexico should adopt before it acceded to the TPP (*La Jornada en línea*, 12 August 2015).

environment. The CTM, despite having had representation in the NAFTA negotiations, played no formal part in the unfolding bilateral discussions.³⁹

Bilateral negotiations were conducted in Washington, D.C. and Mexico City. Mexican officials, in the expectation that the issue would decline in significance as the negotiations advanced, initially tried hard to avoid in-depth engagement with their U.S. counterparts on labor rights questions and concentrate on their TPP trade priorities.⁴⁰ However, U.S. negotiators pushed harder on the question as multilateral negotiations over Chapter 19 neared completion in Summer 2015. Mexican negotiators then shifted to a second strategy, differentiating between possible actions the Mexican government might take to address the labor rights problems highlighted by the United States. They indicated that the Peña Nieto administration was prepared to make legal and procedural changes that would improve the operation of conciliation and arbitration boards, but they resisted constitutional reforms. They also ruled out as entirely unacceptable in domestic political terms the U.S. demand to sign a separate labor consistency plan like the bilateral accords the United States was negotiating with Brunei, Malaysia, and Vietnam. The USTR was under public pressure from Democratic congressional representatives to reach a TPP-linked agreement with Mexico like those it signed with these three countries.⁴¹ However, Mexican officials held firm on this point, arguing that the U.S. demand clearly infringed upon Mexico's national sovereignty.⁴²

Obama administration officials fully understood that they were discussing politically sensitive issues with a NAFTA partner and valued ally. They nevertheless insisted on major labor reforms that would satisfy TPP requirements (regarding, for example, the impartiality of labor tribunals), and they maintained their demand for a labor consistency plan nearly until the conclusion of the multilateral TPP process, perhaps as a negotiating tactic to extract Mexican concessions on other issues.⁴³ In the end, however, they accepted a Mexican commitment to formulate independently significant labor rights reforms.⁴⁴ The U.S. side also agreed to Mexico's request that bilateral discussions on the matter be closely held, and that their joint public position would be that any reforms Mexico enacted were undertaken entirely at the initiative of the Mexican government. U.S. negotiators took these crucially important decisions—in effect endorsing Mexico's third bargaining strategy—because they sought to expand the Peña Nieto administration's capacity to

³⁹ Labor organizations were not included in “side room” (*cuarto de junto*) consultations, even though the private sector was. Francisco de Rosenzweig, “México y su ingreso al Acuerdo de Asociación Transpacífico,” *Revista de derecho económico internacional* vol. 3, no. 1 (December 2012): 89-94, esp. p. 94.

⁴⁰ Middlebrook interview with a former senior Mexican trade negotiator, 25 February 2019, Ciudad de México. Delay is a well-established Mexican negotiating technique; see Torres, “Estrategias y tácticas mexicanas,” *op. cit.*, p. 665.

⁴¹ *Inside U.S. Trade*, 29 May 2014; 9 October 2015.

⁴² In Krasner's (*op. cit.*) terms, Mexican officials rejected this U.S. demand because it threatened both domestic (“the organization of authority within a state,” p.10) and Westphalian (“when external actors influence or determine domestic authority structures,” p. 20) sovereignty.

⁴³ *Inside U.S. Trade*, 25 September, 9 October 2015. Mexican negotiators may have given ground on automotive industry domestic-content rules of origin in exchange for U.S. negotiators' concession on the question of a labor consistency plan.

⁴⁴ The Obama administration drew criticism from U.S. labor and congressional Democrats for not negotiating a labor consistency plan with Mexico. Republican legislators opposed such arrangements. See *Inside U.S. Trade*, 3, 7 October 2015; 13 January, 18 February 2016.

address labor rights issues and avoid nationalist “negative reverberation” in domestic politics that would have narrowed the possible “win-set.”⁴⁵

Still, consensus on the U.S. side regarding the importance of the issue placed labor rights at or near the top of its TPP agenda with Mexico. The Obama administration demonstrated strong credibility on the matter because, unlike in the 1993 NAALC negotiations,⁴⁶ the legislative grounding for its demands (particularly the 2007 bipartisan agreement and the 2015 legislative requirement that the president submit to Congress “a meaningful labor rights report”⁴⁷ on all countries joining the TPP) and the secrecy in which negotiations were conducted left little room for significant internal or public dissent on the question. On this basis, U.S. officials exerted strong, concerted diplomatic pressures to demonstrate the depth of their commitment. Secretary of Labor Thomas Perez bluntly told Mexican officials that labor law reforms would be insufficient and that U.S. support for Mexico’s accession to the TPP depended on reform of the constitutional provisions governing juntas.⁴⁸ Other Department of Labor officials intensively engaged their Mexican counterparts, following in close detail the Mexican side’s development of reform proposals.⁴⁹ Vice President Joseph R. Biden, Jr., who co-chaired the U.S.-Mexico High Level Economic Dialogue, stressed the importance of labor rights reforms both in his interactions with cabinet-level officials and directly with President Peña Nieto.⁵⁰ Representative Sander Levin (Democrat-Michigan and a principal author of the 2007 “Bipartisan Agreement on Trade Policy”) and other members of U.S. congressional delegations to Mexico made clear to Mexican officials that Democratic legislative support for Mexico’s accession to the TPP required serious attention to labor rights questions, and Representative Nancy Pelosi (Democrat-California and minority leader in the House of Representatives) reaffirmed the message in a meeting with President Peña Nieto on 2 May 2016.⁵¹ Most important of all, President Obama, at the urging of Secretary of Labor Perez, personally requested decisive Mexican action on labor rights issues in the course of at least two telephone conversations with President Peña Nieto.⁵²

⁴⁵ Putnam, *op. cit.*, pp. 445, 456. Putnam argues (p. 449) that a negotiating party can often gain leverage vis-à-vis its counterpart by asserting that a proposed outcome would face strong domestic opposition. By insisting that bilateral discussions proceed in secret and thereby precluding public expressions of nationalist opposition, Mexican officials forfeited this theoretical possibility—even though they still argued that constitutional labor reform would be difficult politically. U.S. negotiators largely accepted that claim, but it did not deter them. Middlebrook interview with a senior adviser to President Peña Nieto, 25 February 2019, Ciudad de México.

⁴⁶ During the NAALC negotiations, the administration of President William (“Bill”) Clinton (1993-1997, 1997-2001) was significantly constrained by opposition to stronger labor rights provisions from congressional Republicans, whose support was crucial to passage of the NAFTA (Middlebrook, “The International Defense,” *op. cit.*, chapter 3).

⁴⁷ Bipartisan Congressional Priorities and Accountability Act of 2015 (Public Law 114-26), Section 105(b)(d)(3)(A); www.congress.gov/114/plaws/publ26/PLAW-114publ26.pdf; accessed 17 October 2019.

⁴⁸ Middlebrook interview with former senior STPS official A, 27 February 2019, Ciudad de México.

⁴⁹ They also consulted selectively with independent labor-law experts in Mexico in order to deepen their understanding of specific legal provisions and their likely impact on worker-employer relations.

⁵⁰ Middlebrook interviews with former senior USTR (30 April 2018) and White House (22 June 2018) officials, Washington, D.C.

⁵¹ Bensusán interview with a senior U.S. Department of Labor official, 4 September 2017, Ciudad de México; Middlebrook interview with a former senior USTR official, 30 April 2018; Natalia Gómez Quintero, “Congresistas de EU agradecen diálogo con Peña Nieto,” *El Universal*, 3 May 2016.

⁵² Middlebrook interviews with former senior U.S. government officials, 28 March, 26 April 2018. Presidents Obama and Peña Nieto spoke personally on several occasions over the course of TPP negotiations. It has not been possible to pinpoint the specific dates on which they discussed labor issues.

These intense, sustained pressures continued after the formal conclusion of multilateral TPP negotiations and finally produced results.⁵³ In late 2015 and early 2016, the Mexican government took two major steps to address U.S. concerns. First, on 30 November 2015, despite strong resistance from leading Mexican business organizations, Peña Nieto submitted ILO convention 98 on the right to organize and bargain collectively to the federal Senate for ratification.⁵⁴ Second, in the months following Peña Nieto's announcement on 4 December 2015 that he intended to reform the labor justice system,⁵⁵ the Office of Legal Counsel to the Presidency (Consejería Jurídica de la Presidencia) drafted significant reforms both to constitutional Article 123 and to the Federal Labor Law. Peña Nieto revealed the principal elements of the constitutional reforms at a closed meeting with senior judicial authorities on 8 April 2016, but the complete texts of these measures were not announced publicly until 28 April. He submitted both initiatives to the federal Senate that same day.⁵⁶

The proposed constitutional reforms abolished the conciliation and arbitration boards created in 1917 and transferred all labor justice matters from executive to judicial control, at both the federal and state levels.⁵⁷ The measure shifted the role that juntas had previously played in the conciliation of worker-employer disputes to conciliation centers (centros de conciliación) established in each of Mexico's 32 states, and it created new federal and state-level labor tribunals to resolve strikes and adjudicate individual grievances falling under their jurisdiction. Furthermore, the reforms gave constitutional recognition to freedom of collective bargaining, the need to accredit workers' consent in contract negotiations, and secret balloting in union elections. Even more radically, the initiative transferred all authority to grant unions legal recognition and register collective contracts to a new national agency whose president would be selected in a procedure similar to that employed to appoint Supreme Court ministers.⁵⁸

Whether the Obama administration pressured the Mexican government in other ways remains a subject for further investigation.

⁵³ *Inside U.S. Trade*, 14 January 2016; Middlebrook interview with a former senior Oficina de la Presidencia official, 27 February 2019, Ciudad de México.

⁵⁴ Because of pressures from Mexican business groups (they argued that the measure would threaten "social peace" by multiplying the number of legally recognized unions in a workplace), the Senate took no action (Arturo Alcalde Justiniani, "Petición al Senado: Ratificar el Convenio 98 OIT," *La Jornada en línea*, 1 September 2018). After the Movement for National Regeneration (Movimiento de Regeneración Nacional, MORENA) gained a majority of seats in 2018, the Senate finally ratified the convention on 20 September 2018 (Susana Guzmán, "Aprueba Senado convenio sobre libertad sindical de la OIT," *El Financiero*, 20 September 2018).

⁵⁵ Enrique Sánchez, "Peña alista reforma en justicia laboral," *Excélsior*, 5 December 2015.

⁵⁶ The submissions may have been timed to coincide with Peña Nieto's meeting with the Pelosi delegation four days later.

⁵⁷ Poder Ejecutivo Federal, "Iniciativa de Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de justicia laboral (México: Presidencia de la República, 2016a).

⁵⁸ Art. 123, clauses XVIII, XX. The new agency encharged with registering unions and contracts would also be responsible for conciliating worker-employer conflicts in federal-jurisdiction economic activities, a function previously performed by federal juntas.

The idea of creating an autonomous national agency to register all unions and collective contracts had not been part of either the CIDE-coordinated "dialogues for everyday justice" or Peña Nieto's December 2015 announcement regarding reform of the labor justice system, although it had been proposed by the Party of the Democratic Revolution (Partido de la Revolución Democrática) during earlier debates over labor law reform. See CIDE, *op. cit.*, p. 44; Bensusán and Middlebrook, *op. cit.*, pp. 110, 114. It may have been among the U.S. demands

The proposed labor law reforms, in turn, introduced several measures to combat employer protection contracts.⁵⁹ Employers seeking to register a collective contract would be required to provide evidence that the workplace in question was operational, with a workforce actually present. In addition, the initiative stipulated that an employer demonstrate that at least thirty percent of workers supported the union claiming legal control of the contract, and that all employees covered by the contract had previously had access to a copy of the agreement, the union's statutes, and confirmation that the union and its leadership were officially registered with relevant labor authorities. Of special importance, the secret-ballot procedures employed to confirm that these requirements had been fulfilled (and to resolve any dispute that might arise over which union should have legal control of an existing contract) were detailed, stringent, and designed to ensure that workers exercised a free, fully transparent vote.⁶⁰

Taken together, these initiatives for constitutional and labor law reforms comprehensively addressed the main points that leading U.S. unions had articulated regarding labor rights violations in Mexico as part of their withering December 2015 critique of the final TPP agreement.⁶¹ Why was the Mexican government prepared to take such momentous steps after resisting for many years U.S. and international pressures to address labor rights shortcomings? Multiple political considerations were at play.

Most important, senior Mexican government officials concluded that making significant concessions to the United States on labor issues was the necessary price for an outcome (accession to the TPP) that was both strategically vital for Mexico and politically important to Peña Nieto, whose personal approval ratings had fallen to historic lows.⁶² They judged that, when forcefully confronted with the need to address labor rights questions that had long been an irritant in Mexico-U.S. bilateral relations, it was preferable to adopt in-depth measures rather than try to defend piecemeal reforms. The negative attention that ILO investigations and complaints from international brand-name companies had drawn to protection contracts, which were increasingly identified with the endemic corruption afflicting Mexican public affairs, was one consideration in this regard.⁶³ More generally, some senior officials involved in internal

made during the TPP negotiations (Middlebrook telephone interview with former senior Mexican government official B, 30 September 2018; *Inside U.S. Trade*, 12 August 2015).

⁵⁹ Poder Ejecutivo Federal, "Iniciativa de Decreto por el que se reforman y adicionan diversas disposiciones de la Ley Federal del Trabajo" (México: Presidencia de la República, 2016b). This measure did not affect public sector employees subject to Article 123's "Section B."

⁶⁰ Arts. 390 bis, 390 ter., 895, 931, 931 bis.

⁶¹ Labor Advisory Committee on Trade Negotiations and Trade Policy, *op. cit.*, p. 83. Peña Nieto's proposed reforms also addressed the principal demands listed in the August 2015 joint UNT/AFL-CIO declaration, as well as past ILO concerns (*Inside U.S. Trade*, 12 May 2016).

⁶² Parametría, "¿Estaba el Presidente en la boleta el primero de julio?" *Carta Paramétrica*, 26 July 2018. Failing to bring the TPP negotiations to a successful conclusion would presumably have eroded Peña Nieto's support among Mexican elites, who strongly favored participation in the multilateral agreement (Barnes, *op. cit.*, p. 2 n5).

There is no evidence that Mexico won TPP concessions from the United States in other areas in exchange for the labor reforms it adopted.

⁶³ In this sense, some Mexican decisionmakers may have been sensitive to "wider environmental principles" in modern world society (John F. Meyer, "World Society, Institutional Theories, and the Actor," *Annual Review of Sociology* vol. 36 (February 2010): 1-20, esp. p. 14). See also John W. Meyer, John Boli, George M. Thomas, and Francisco O. Ramirez, "World Society and the Nation-State," *American Journal of Sociology* vol. 103, no. 1 (July 1997): 144-81, esp. pp. 145, 160-61.

debates over the question believed that major labor reforms logically comprised part of the country's pending democratization agenda. Although they were concerned about managing the response of old-guard labor organizations to these measures, they found it difficult to defend the status quo in interactions with their U.S. counterparts.⁶⁴

Two political advantages underpinned President Peña Nieto's decision to proceed with the reform initiatives. First, the government counted on the closely held character of bilateral TPP negotiations over labor rights to limit domestic dissent, and, in part because senior officials publicly denied in the strongest terms any link between the TPP and domestic labor reform,⁶⁵ they proved remarkably successful at keeping secret the substance of the proposed reforms. (CTM secretary-general Carlos Aceves del Olmo later claimed that he learned of their content just twenty-four hours before they were announced publicly.⁶⁶) Second, Peña Nieto could rely on the PRI's legislative majority and strong party discipline to help win ratification of his constitutional reforms. These expectations were also borne out. Despite opposition from business and traditional labor organizations,⁶⁷ these reforms were in the end unanimously approved by the 99 Senators present on 13 October 2016 and by an overwhelming majority (379 to two, with 19 abstentions) of those present in the federal Chamber of Deputies on 4 November 2016. Following approval by a majority of state legislatures, the constitutional reforms took effect on 25 February 2017.⁶⁸

Finally, senior government officials calculated they could make side payments to domestic business and labor "losers" that would limit their opposition at the time President Peña Nieto announced the proposed reforms.⁶⁹ Both government officials and business and labor opponents understood, based on their past experiences with labor law reform, that enacting constitutional changes would not necessarily overturn all elements of the status quo. The content of the secondary legislation adopted to implement the reforms would be of crucial importance, and it was still open to negotiation (see below). Moreover, the concerns of the two dominant labor confederations, the CTM and the Revolutionary Confederation of Workers and Peasants (Confederación Revolucionaria de Obreros y Campesinos, CROC), were muffled by executive-branch assurances that their organizations would receive the lion's share of contracts to be awarded for the construction of a new Mexico City international airport, the country's largest public infrastructure project in a century.⁷⁰

⁶⁴ Middlebrook interview with former senior STPS official B, 1 March, Ciudad de México; Middlebrook telephone interviews with former senior Mexican government official C, 14 March, and a former senior Mexican diplomat, 26 March 2019.

⁶⁵ *Inside U.S. Trade*, 21, 25 August, 9 October 2015.

⁶⁶ Bensusán interview with a Mexican labor attorney, 1 October 2018, Ciudad de México.

⁶⁷ Rosalía Vergara, "La reforma laboral, imposición internacional," *Proceso* 2085 (16 October 2016): 32-33.

⁶⁸ "Decreto por el que se declaran reformadas y adicionadas diversas disposiciones de los artículos 107 y 123 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Justicia Laboral," *Diario Oficial de la Federación*, 24 February 2017 (primera sección).

⁶⁹ On the importance of side payments in international negotiations, see Putnam, *op. cit.*, p. 450.

⁷⁰ Bensusán interview with a Mexican labor attorney, 1 October 2018.

NAFTA 2.0 and the Transnational Defense of Mexico's Constitutional Reforms

The struggle over labor rights in Mexico did not end with the historic constitutional reforms. President Peña Nieto's proposed labor law reforms were never debated in Congress, and business and old-guard labor groups helped engineer alternative implementing legislation that threatened to limit the democratizing effects of the constitutional reforms. The timing of debates about this legislation linked the matter to Mexico-U.S. negotiations over revision of the NAFTA, which had been launched in August 2017, and its labor provisions.⁷¹

On 7 December 2017, PRI Senators Tereso Medina Ramírez and Isaías González Cuevas (members of, respectively, the CTM and the CROC) introduced a legislative initiative that undermined the constitutional reforms' democratizing goals in several ways.⁷² Most conspicuously, the Technical Council (*Consejo Técnico*) of the national agency responsible for officially registering all unions and collective contracts would be comprised of labor, business, and government representatives (four each)—a traditional tripartite arrangement that ensured the majority representation of business and old-guard labor organizations.⁷³ Because this body would have effective control over the agency's daily operations (including decisions over union registration and the validation of collective contracts at the national level), its proposed composition threatened more politically independent unions' organizational efforts and their ability to challenge protection contracts.⁷⁴

In marked contrast to Mexico-U.S. interactions over labor rights during the TPP negotiations, the political fight over the Medina-González bill was highly public. Mexican independent unions and labor rights advocates mobilized against it in three ways. First, the National Union of Workers (Unión Nacional de Trabajadores, UNT) worked with the center-left Party of the Democratic Revolution (Partido de la Revolución Democrática) to introduce its own secondary legislation initiative on 7 February 2018.⁷⁵ It strongly rejected tripartite representation in the new national agency responsible for union and contract registration. Instead, it proposed that the agency's governing board be comprised of the heads of the National Anticorruption System (Sistema Nacional Anticorrupción), the National Human Rights Commission (Comisión Nacional de los Derechos Humanos), and the National System for Transparency, Access to Public Information, and Protection of Personal Data (Sistema Nacional de Transparencia, Acceso a la Información Pública y Protección de Datos Personales).⁷⁶ The bill also underscored the

⁷¹ A detailed assessment of negotiations over, and the content of, the labor chapter in the revised NAFTA is beyond the scope of this article.

⁷² "Iniciativa con proyecto de decreto por el que se expide la ley del Instituto Federal de Conciliación y Registro Laborales; y se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo, de la Ley Federal de Entidades Paraestatales, de la Ley Orgánica de la Administración Pública Federal, de la Ley del Seguro Social y de la Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores, en materia de justicia laboral."

⁷³ *Ibid.*, art. 10.

⁷⁴ Peña Nieto's April 2016 labor law reform proposal did not address the institutional design of the new national agency responsible for union and contract registration.

⁷⁵ "Iniciativa con proyecto de decreto..." The center-right Partido Acción Nacional introduced its own bill on 22 February 2018 ("Iniciativa con proyecto de decreto..."). Like the Medina-González initiative, its governing institutions were tripartite in structure.

⁷⁶ *Ibid.*, art. 590a.

importance of secret balloting in union elections and the negotiation and approval of collective contracts.

Second, opposition forces sought to raise public awareness regarding the Medina-González initiative and its probable impact. Their principal vehicle was the Citizen Observatory on Labor Reform (Observatorio Ciudadano sobre la Reforma Laboral), a network of some 1,400 academic analysts, independent union leaders, labor lawyers, and labor rights activists formed in July 2017 to follow debates over implementation of the 2017 constitutional reforms. Their reports provided valuable, timely information to sympathetic Mexican media sources and international labor allies.

And third, Mexican unionists and labor rights activists appealed to their international (especially U.S.) allies, drawing on the transnational social capital developed among North American unions and labor rights organizations during the 1991-1993 NAFTA debates and subsequent NAALC public submissions.⁷⁷ The UNT had a formal cooperation agreement with the AFL-CIO, and on 25 January 2018 the two organizations jointly filed a NAALC public submission that exhaustively critiqued the Medina-González bill and called for the U.S. Department of Labor to seek immediate ministerial consultations “with the GOM [Government of Mexico] in order to dissuade it from enacting laws that violate the NAALC.”⁷⁸ In March, Mexican unionists, federal legislators from center-left political parties, and a small group of workers with first-hand experience in fighting freedom-of-association violations met with members of a Democratic congressional delegation during the latter’s visit to Mexico City for the eighth round of NAFTA 2.0 negotiations.⁷⁹ AFL-CIO President Richard Trumka registered his serious concerns regarding the pending legislation directly (by letter and in person) with USTR Robert Lighthizer, the lead U.S. trade negotiator.⁸⁰ On 4 April, Trumka also wrote to Senator Ernesto Cordero Arroyo, president of the Mexican Senate’s governing board, urging him to block the legislation on the grounds that it failed to comply with Mexico’s obligations under the NAALC and risked undermining the NAFTA 2.0 negotiations.⁸¹ In all these ways, the Mexico-U.S. labor rights coalition⁸² sought to take maximum advantage of the political opportunity created by the

⁷⁷ On the development of these alliances, see Marisa von Bülow, *Building Transnational Networks: Civil Society and the Politics of Trade in the Americas* (New York: Cambridge University Press, 2010); Tamara Kay, *NAFTA and the Politics of Labor Transnationalism* (New York: Cambridge University Press, 2011); Mark Aspinwall, *Side Effects: Mexican Governance Under NAFTA’s Labor and Environmental Agreements* (Stanford, California: Stanford University Press, 2013), pp. 123-27. See also Blanca Torres, “Transnational Actors and NAFTA: The Search for Coalitions on Labor and the Environment,” pp. 117-34 in Louise L. Faucett and Mónica Serrano, eds., *Regionalism and Governance in the Americas: Continental Drift* (London: Palgrave Macmillan, 2005).

⁷⁸ Public Communication to the U.S. National Administrative Office under the North American Agreement on Labor Cooperation (NAALC) Concerning the Introduction of Reforms to the Federal Labor Law of Mexico that would Weaken Fundamental Labor Rights, including the Right to Freely Associate, to Organize and to Bargain Collectively” (<https://aflcio.org/sites/default/files/2018-01/NAALC%20submission%20JAN%2025%202018%20with%20UNT.pdf>) (accessed 9 September 2018).

⁷⁹ Middlebrook interview with a U.S. trade union representative, 25 June 2018, Washington, D.C.

⁸⁰ Leo Gerard, president of the United Steelworkers (USW) and chair of the USTR Labor Advisory Committee, wrote Lighthizer separately on this question. Middlebrook interviews with U.S. trade union representatives, 23 April, 20 June 2018.

⁸¹ A copy of the letter is in the authors’ possession.

⁸² Jonathan Fox, “Assessing Binational Civil Society Coalitions: Lessons from the Mexico-U.S. Experience,” in Kevin J. Middlebrook, ed., *Dilemmas of Political Change in Mexico* (London: Institute of Latin American Studies,

ongoing trade negotiations. Their high-profile public engagement brought to bear on the Mexican and U.S. governments cross-border societal pressures that had been absent during the TPP negotiations.

In early February 2018, the authors of the controversial implementing legislation revised their initiative (eliminating provisions that permitted expanded labor subcontracting) in an effort to build legislative support for it. They then resubmitted it to the Senate on 22 March. At the time, the consensus among political observers was that the Peña Nieto administration would push the legislation forward to approval. With the July presidential elections approaching and with leftist candidate Andrés Manuel López Obrador holding a firm lead in opinion polls, the bill's business and old-guard labor supporters viewed the legislative session ending on 30 April as their last, best chance to pass the measure. Mexican and U.S. union and labor rights opponents, maintaining close communications, read the political moment the same way. In response, they redoubled their efforts to block its approval. Over the course of just two days, the AFL-CIO and major U.S. industrial unions coordinated an urgent letter from 107 Democratic representatives and senators to Ambassador Lighthizer in which they expressed deep concern that the Medina-González bill would "gut the 2017 reform process," directly undermine "the ongoing effort to create a fair playing field for U.S. workers and U.S. businesses through NAFTA renegotiation," and pose "a potentially devastating obstacle to the success of the NAFTA renegotiation."⁸³ Once the letter became public (20 April), U.S. unionists worked with Mexican media contacts to ensure that it was also widely published in Mexico on the morning that the Senate convened to discuss the implementing legislation.⁸⁴

A week before the end of the Senate's regular session, the Peña Nieto administration suspended consideration of the controversial Medina-González bill. STPS Secretary Roberto Campa Cifrián announced that the government would hold four public consultative fora during June and July 2018 in an effort to reach broad consensus on the content of implementing legislation, with the goal of passing it in a special congressional session in September.⁸⁵

Both external and internal factors influenced the Mexican government's decision. The very real prospect that approval of the Medina-González bill would heighten U.S. congressional opposition to an eventual NAFTA 2.0 agreement was certainly of concern to Ambassador Lighthizer, who understood that the U.S. labor movement's demands had to be addressed if he were to achieve his goal of assembling a bipartisan congressional coalition in favor of the agreement.⁸⁶ Lighthizer made this point directly to his principal Mexican counterpart, Minister of

University of London / Center for U.S.-Mexican Studies, University of California, San Diego, 2004), pp. 475-77, distinguishes among transnational civil-society networks, coalitions, and movements.

⁸³ A copy of the letter is in the authors' possession.

⁸⁴ Middlebrook interview with a U.S. trade union representative, 25 June 2018.

⁸⁵ Foro Jurídico, "Culminar la reforma laboral reto de la actual administración: Roberto Campa Cifrián," 23 May 2018. Campa informed Mexican labor leaders of the decision to withdraw the bill from consideration on 20 April, the same day that Democratic congressional representatives published their letter to USTR Lighthizer; Patricia Muñoz Ríos, "La reforma laboral, detenida en el Senado, será presentada en el próximo periodo," *La Jornada en línea*, 23 April 2018.

⁸⁶ Jacob M. Schlesinger, "Trump Officials Court Democrats Amid Nafta Talks," *Wall St. Journal*, 28 February 2018.

the Economy Ildefonso Guajardo.⁸⁷ Because Guajardo had also led the Mexican team during most of the TPP negotiations, he fully appreciated the threat that passage of controversial labor legislation might have posed to U.S. congressional ratification of a revised NAFTA.

When Campa Cifrián announced suspension of Senate consideration of the Medina-González initiative, he cited the “rarified” political environment during the final phases of the Mexican presidential campaign.⁸⁸ The negative publicity that its approval could have generated at a time when PRI presidential candidate José Antonio Meade ran third in opinion polls may have been a consideration in this regard. However, given that the NAFTA 2.0 labor chapter had not yet been finalized, the more important consideration was that senior Mexican officials hesitated to incur any additional risk in the unpredictable negotiations over a revised North American trade agreement,⁸⁹ a measure they judged critical to Mexico’s economic future. Whatever the calculations, the government’s decision constituted a major political victory for pro-democracy labor forces in both Mexico and the United States. It cleared the way for President López Obrador (2018-2024) to implement legislation congruent with the goals of the 2017 constitutional reforms, which was officially enacted on 1 May 2019.⁹⁰

Conclusions

In what ways does framing contemporary Mexico-U.S. relations in terms of asymmetrical complex interdependence help us understand the dynamics and outcome of bilateral negotiations over labor rights in Mexico?

Certainly the core factor shaping these negotiations was the United States’ international economic preeminence, which both allowed U.S. officials to position themselves as gatekeepers in TPP negotiations over labor rights issues and gave them the leverage required to compel compliance from Mexico in the form of the 2017 constitutional reforms. The source of Mexico’s vulnerability interdependence,⁹¹ and the reason why Mexican officials placed such strategic importance on joining the TPP in order to defend export access to the U.S. market vis-à-vis Pacific Basin competitors, was the deepening of Mexico-U.S. economic ties under the NAFTA. Mexico’s already high export dependence on the U.S. market did not vary greatly between 1995 and 2015,⁹² but total trade (exports plus imports) as a proportion of gross domestic product

⁸⁷ Middlebrook interview with a senior Mexican trade negotiator, 25 February 2019.

⁸⁸ María del Pilar Martínez, “Senado abrirá etapa de consulta para reforma laboral,” *El Economista*, 1 May 2018.

⁸⁹ Foro Jurídico, op. cit.

⁹⁰ “Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Federal de la Defensoría Pública, de la Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores de la Ley del Seguro Social, en materia de Justicia Laboral, Libertad Sindical y Negociación Colectiva,” *Diario Oficial de la Federación*, 1 May 2019.

⁹¹ Keohane and Nye (op. cit., pp. 12-13) distinguish between sensitivity and vulnerability interdependence, defined in terms of “the relative availability and costliness of the alternatives” an actor faces. In this case, the bargaining outcome cannot be explained by any difference in the intensity with which the parties approached the issue (ibid., p. 18).

⁹² Exports to the United States represented 83.3 percent and 81.2 percent of Mexico’s total exports in, respectively, 1995 and 2015. Authors’ calculations based on data in Presidencia de la República, *Quinto informe de gobierno, 2016-2017: Anexo estadístico*, p. 471 (http://framework-gb.cdn.gob.mx/quintoinforme/SIG_ANEXO_FINAL_TGM_250818.pdf; accessed 15 June 2019).

expanded to 34.6 percent over this period.⁹³ Its most important export manufacturing industry, automotive vehicles and parts, grew significantly in economic importance (rising from 21.7 to 30.1 percent of total exports between 1995 and 2015),⁹⁴ and the industry became tightly integrated into North American production networks whose disruption would have severe negative effects for the entire economy. Failing to gain access to the TPP or, later, successfully conclude NAFTA 2.0 negotiations were outcomes that no Mexican government could seriously contemplate.⁹⁵

Although the advantages the U.S. government held in the 2011-2018 bilateral interactions over labor rights were rooted in Mexico's vulnerability interdependence, structural conditions were a necessary but insufficient explanation for its bargaining effectiveness in this case. The character of the decision-making context greatly increased U.S. leverage. In the 1993 NAALC negotiations, Mexican officials managed to turn aside U.S. demands for a more expansive "side agreement" in part because the two governments had previously agreed not to re-open discussions concerning the NAFTA itself, removing a vulnerability that would have otherwise limited Mexico's negotiating options. In contrast, during the TPP negotiations it was the "up-or-down" nature of the accession decision that caused Mexican officials to accede to U.S. pressures in what is, in Weberian terms, an area of core state sovereignty.⁹⁶ This same logic shaped Mexico-U.S. interactions over labor rights during the NAFTA 2.0 negotiations. Paradoxically, in order to reach final agreement in timely fashion, the Mexican government accepted a separate agreement on labor rights linked to the main labor chapter—precisely what it had avoided during the TPP negotiations.⁹⁷ Despite persistent lobbying on freedom-of-association issues by domestic (pro-democracy political parties and labor activists) and international (both the ILO and the U.S. and Canadian governments through NAALC processes) actors, major changes in this area were not on the national policy agenda at the start of TPP negotiations. It was strong external pressure

⁹³ World Bank, *World Development Indicators* (data@worldbank.org; accessed 14 June 2019).

⁹⁴ Authors' calculations based on data in Presidencia de la República, op. cit., p. 470.

⁹⁵ On how participation in a free-trade agreement can shape a smaller state's perception of its own interests, see Rawi Abdelal and Jonathan Kirshner, "Strategy, Economic Relations, and the Definition of National Interests," *Security Studies* vol. 9, nos. 1-2 (Autumn-Winter 1999-2000): 119-56, esp. pp. 120-21.

⁹⁶ It is unlikely the outcome would have been different had Mexico joined the multilateral negotiations earlier than it did, when the content of the TPP labor chapter was still under discussion.

⁹⁷ Annex 23-A ("Worker Representation in Collective Bargaining in Mexico," <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/united-states-mexico>; accessed 15 October 2018) laid out detailed substantive requirements for secondary legislation implementing the 2017 constitutional reforms (for instance, worker support demonstrated "through exercise of a personal, free, and secret vote" for new collective contracts and all subsequent contract revisions addressing wages and working conditions). It stipulated that the United States-Mexico-Canada Agreement would not become operative until after this legislation took effect, the target date for which was 1 January 2019. Moreover, the Annex directly addressed the problem of employer protection contracts by requiring that all contracts be revised at least once in the subsequent four years (item 6).

Following López Obrador's landslide presidential election victory on 1 July 2018, the Peña Nieto administration could not have won congressional approval of secondary legislation similar to the Medina-González bill. These transformed political circumstances, combined with explicit support for the Annex's content from the López Obrador transition team (Bensusán interviews with a Mexican labor attorney, 14 October 2018, and a U.S. trade union representative, 21 October 2018, Ciudad de México), eased Mexican negotiators' agreement to it. The Annex requirements provided the López Obrador administration with valuable political leverage in enacting the May 2019 labor law reform; see Jorge G. Castañeda, "El T-MEC y la reforma laboral," *El Financiero*, 15 April 2019.

exercised in particular bargaining settings that reconfigured an important part of the Mexican political landscape.

Nevertheless, Mexico did derive some advantages during the TPP process from the institutionalization of bilateral government-to-government relations via the NAFTA. Even though labor rights issues in Mexico were of much more immediate concern to U.S. trade unions and their Democratic congressional allies than were those in small Southeast Asian countries with a far lower trade profile in the United States, by invoking national sovereignty and Mexico's status as valued NAFTA partner the Peña Nieto government initially deflected the politically problematic U.S. demand that it sign a labor consistency plan like those the United States had negotiated with Brunei, Malaysia, and Vietnam. The Mexican government's success in delaying in-depth discussions with the United States over labor rights may also have been due to Obama administration officials' diplomatic caution regarding how they conducted politically sensitive negotiations with a country they regarded as a strategic ally. Even more important, U.S. officials acceded to the Mexican demand that the two governments' public position be that any labor reforms Mexico enacted were undertaken entirely as a domestic policy initiative. The joint agreement to conduct labor rights discussions in secret reinforced presidential control over negotiations on both sides, but it was crucial to the Peña Nieto administration's capacity to manage potential domestic political opposition to the 2017 constitutional reforms. At least in the short term, then, Mexico employed its NAFTA status and sovereignty claims to positive bargaining effect.

In adopting this approach, Mexican officials forewent two possible negotiating strategies outlined by the literature on complex interdependence: linking labor rights to other issues in the TPP (and NAFTA 2.0) negotiations, and forging a cross-border coalition with potential governmental and/or nongovernmental allies in the United States. There is no evidence that the Peña Nieto administration ever considered either of these possibilities, the latter of which would have necessarily negated the advantages it perceived in tightly controlling information about bilateral TPP negotiations.⁹⁸ Although bureaucratic divisions within the U.S. government in principle offer its negotiating counterparts points of leverage,⁹⁹ during the TPP negotiations there was sufficiently strong consensus across the U.S. political spectrum on the importance of labor reform in Mexico that the Peña Nieto administration would have had great difficulty encountering any significant U.S. governmental or nongovernmental allies.¹⁰⁰ Similarly during the NAFTA 2.0 negotiations in 2017-2018, Democratic congressional support for strong labor rights provisions and USTR Lighthizer's goal of assembling a bipartisan congressional coalition to ratify the agreement meant that, even had it sought them, the Mexican government would not have easily identified potential U.S. governmental allies to support its position. Whether the practical availability of these bargaining-strategy options depends on Mexico being the initiator of negotiations over a specific subject or being placed on the defensive by U.S. demands, or

⁹⁸ During the 1991-1993 NAFTA negotiations, the Mexican government specifically avoided issue linkage based on its estimation that this approach would in fact favor the stronger party, the United States. Víctor Arriaga, "El manejo de la relación con Estados Unidos, 1990-1994," *Foro Internacional* vol. 34, no. 4 (October-December 1994): 572-91, esp. pp. 583-84, 591.

⁹⁹ Long, op. cit., p. 20.

¹⁰⁰ During bilateral negotiations in 1993 over the NAALC, Republican opposition to a stronger agreement might have offered the Mexican government potential U.S. allies. However, there is no evidence that Mexican officials sought to mobilize them on their behalf (Middlebrook, "The International Defense," op. cit., chapter 3).

whether the viability of alternative bargaining approaches varies depending on the nature of the issue involved, is a question for future research.

The complex-interdependence approach also highlights an element that proved important in the outcome of Mexico-U.S. negotiations over labor rights issues in 2017-2018: the role that a transnational labor-rights coalition played in derailing proposed secondary legislation that would have undercut the democratizing impact of the 2017 constitutional reforms. Broad, intense societal interactions are a key feature of contemporary bilateral affairs, creating the potential for transnational policy coalitions to exert significant impact on government-to-government relations. However, when and how they can be most effective remain open questions. In this case, the “up-or-down” character and public, highly contentious nature of the NAFTA 2.0 negotiations, combined with the political opening created by López Obrador’s electoral rise, offered Mexican and U.S. unions and labor rights advocates a propitious opportunity to bring accumulated transnational social capital to bear in favor of a progressive goal.

The complex-interdependence framework does not, however, capture the changing domestic political circumstances that influenced Mexico’s response to U.S. labor rights demands during the TPP negotiations.¹⁰¹ Democratic change in Mexico and government officials’ changing perceptions of the national interest were contributing elements in determining the Peña Nieto administration’s response to U.S. labor rights demands. A marked decline in the PRI-allied labor movement’s political influence was certainly a factor. More important, however, was the fact that it was difficult for senior Peña Nieto administration officials—despite the PRI’s historic identification with both revolutionary nationalism and assertive advocacy of Mexican sovereignty vis-à-vis the United States¹⁰²—to defend the labor-regime status quo when significant reforms were publicly perceived in both the United States and Mexico as part of deepening democratization.

Finally, this article makes two additional contributions to the study of Mexico-U.S. relations. First, it demonstrates the value (and viability) of fine-grained research on government-to-government negotiations over major policy issues. This example may stimulate other researchers to undertake similar investigations on other topics, with the goal of developing a more nuanced understanding across different issue areas of the bargaining strategies Mexican government officials employ and their efficacy in preserving decision-making autonomy in a bilateral relationship characterized by marked power asymmetries. Second, this case study highlights the ways in which a more politically open, “internationalized” Mexico potentially offers the U.S. government and transnational actors greater scope to influence its domestic politics.¹⁰³ How

¹⁰¹ As Robert O. Keohane and Joseph S. Nye, “*Power and Interdependence Revisited*,” *International Organization* vol. 41, no. 4 (Autumn 1987): 725-53, themselves acknowledged (pp. 739-40), their approach does not focus on the domestic considerations shaping international interactions.

¹⁰² Lorenzo Meyer, “México y la soberanía relativa: El vaivén de los alcances y los límites,” *Foro Internacional* vol. 48, no. 4 (October-December 2008): 765-84, esp. pp. 767, 783.

¹⁰³ This possibility was anticipated by Humberto Garza Elizondo, “La política exterior de México: Entre la dependencia y la diversificación,” *Foro Internacional* vol. 36, no. 4 (October-December 1996): 641-66, esp. pp. 663-64. See also González González, op. cit., p. 620; Domínguez and Fernández de Castro, op. cit., pp. 107, 110-11; Soledad Loaeza, “La política de acomodo de México a la superpotencia. Dos episodios de cambio de régimen: 1944-1948 y 1989-1994,” *Foro Internacional* vol. 50, nos. 3/4 (July-December 2010): 627-60, esp. pp. 640, 653; Alain

government representatives of a democratic Mexico perceive the national interest and state sovereignty, how they frame strategies to respond to external pressures, and the ways in which democratic domestic politics affects the dynamics of asymmetrical complex interdependence with the United States are increasingly important subjects of research.

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