The Shifting of Regional Regime: Study Case of Renegotiation NAFTA to USMCA

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This study was designed using descriptive writing techniques using secondary data, library research techniques, and qualitative analysis. The results of this study indicate that the factors behind the renegotiation of NAFTA to the USMCA come from internal and external factors. From internal factors, there are considerations from each NAFTA member country in the form of profit and loss considerations from an economic perspective, such as gains from Foreign Direct Investment (FDI) and losses in the form of trade deficits. Meanwhile, from external factors, there were considerations related to economic threats from third parties, several NAFTA rules considered detrimental and irrelevant, and concerns about the potential for modernizing NAFTA rules from a digital trade perspective. In addition, the renegotiation of NAFTA to the USMCA also brings those international agreements to a deeper stage of economic integration, where the USMCA is between the Free Trade Agreement (FTA) and Customs Union stages because the USMCA has more profound rules than the FTA stage. However, on the other hand, it still needs to fully comply with the laws at the stage of the Customs Union.

Keywords: *NAFTA; USMCA; renegotiation; economic integration*

Introduction

NAFTA (*North American Free Trade Agreement*) is a regional trade agreement comprising the United States (US), Canada, and Mexico. The agreement came into force on January 1, 1994, and the purpose of NAFTA was to create and enhance economic cooperation and encourage fair economic competition with fellow member countries. In addition, NAFTA is one of the world's largest regional cooperation organizations and the first to agree on a free trade agreement involving rich countries (the United States and Canada) and low-income countries (Mexico).

This collaboration made trilateral trade between NAFTA partners reach US$ 1.2 trillion in 2017 (Sonneland, 2018). Even though NAFTA has provided benefits in the form of increased trade to its member countries, the US, as a member country of NAFTA, instead submitted a notification of NAFTA renegotiation to USMCA (United States-Mexico-Canada Agreement) on May 18, 2017[1].

On August 16, 2017, official talks regarding the renegotiation of NAFTA began between the three countries and were held in Washington, DC. The meeting brought

[1] The intended renegotiation is the original United States-Mexico-Canada cooperation agreement negotiated into NAFTA in 1994.

together representatives from the three countries: the United States Trade Representative Robert Lighthizer, Canadian Foreign Minister Chrystia Freeland, and Mexican Economic Secretary Ildefonso Guajardo. After seven rounds of talks, NAFTA was successfully renegotiated into USMCA. This success is reflected in the official signing of the USMCA on November 30, 2018, by the three countries, namely by the President of the United States, Donald J. Trump, the President of Mexico, Enrique Peña Nieto, and the Prime Minister of Canada, Justin Trudeau (Villarreal & Fergusson, 2020). The success of the renegotiations continued with the effective entry into force of the USMCA on July 1, 2020, which came into effect after Canada ratified the USMCA on March 13, 2020 – in which Canada was the last party to ratify the USMCA.

The renegotiation of NAFTA to USMCA then led to changes in several points of the rules agreed upon in several sectors, such as the automotive sector, labor law, dairy products, technology, environment, and biological medicine. In addition to the several changes to these rule points, there are several policies in the form of additional articles in the new USMCA rules, and one of the additional articles of concern is Article 32.10. That article regulates non-market country provisions, which aim to limit the trade of its member countries with outsiders.

Based on the introduction, the formulation of the problem from this article is "What are the factors behind the renegotiation of the North American Free Trade Agreement (NAFTA) into the United States-Mexico-Canada Agreement (USMCA)?" Thus, this study aims to see, explain, and analyze the factors behind renegotiating the North American Free Trade Agreement (NAFTA) into the United States-Mexico-Canada Agreement (USMCA).

The structure of the article is as follows. The first section introduces NAFTA briefly and how it shifts into USMCA. The second section describes this article's data collection and analysis techniques. The third section is an overview of NAFTA, which explains the origins of trade cooperation between the three member countries and the impact of NAFTA on its member countries. The fourth section provides information on regulatory changes in several sectors, from NAFTA to USMCA. The fifth section describes the application of economic integration theory to analyze the regime's level or position at the economic integration stage. The sixth section attempts to answer the article's question by explaining the factors that led to the renegotiation of NAFTA to USMCA and dividing these factors into internal and external factors. The last section is the conclusions of this article.

Methodology

This research uses a descriptive type of research, which will provide an overview and analyze the various factors causing the renegotiation of NAFTA to USMCA, as well as how the renegotiation affects the changes in the stages of the economic integration of the regional organization. The data sources used in this study are secondary data obtained through reading and analysis of various books, journals, news, articles, and official documents, such as the NAFTA and USMCA agreement documents sourced from the official website of the United States, Canada, and Mexico government. The data collection technique used in this research is library research, namely by collecting various data needed and related to the problem under study. The data analysis technique used in this study is a qualitative data analysis technique. This technique is carried out by explaining the data based on the facts obtained based on the collection of various data, which will then be drawn to a conclusion.

Renegotiation as a Way to Enhance Regional Economic Integration

Understanding the term regionalism is closely related to the integration process – especially economic integration. The word integration can be understood as a unification process, and when combined with the word economy, economic integration can be interpreted as a process of economic unification. Meanwhile, based on Bela Balassa's understanding, economic integration is defined as a process and condition which seeks to design the elimination of discrimination between economic units owned by different countries (Balassa, 1994). Furthermore, Balassa also categorizes the definition of economic integration into six stages, namely:

a. Preferential Trading Area (PTA) is a trade block seeking to reduce tariffs on certain products between member countries.

b. Free Trade Area (FTA), member countries try to reduce trade barriers by eliminating tariffs and quotas to increase trade within the block. Nevertheless, conversely, each member country can still apply tariff policies according to their respective interests against countries outside the membership.

c. Customs Union is at a higher stage than FTA, where member countries not only abolish tariffs and quotas between member countries but also agree to impose tariffs (Common External Tariff) or the same economic policies on non-member countries.

d. Common Market, namely the stages in which there are eliminating obstacles to the various movements of factors of production (services, goods, and capital flows), is done by setting the same price on the factors of production. The similarity of prices for the factors of production will likely result in an efficient allocation of resources.

e. Economic Union is a stage similar to the Common Market but adds rules by harmonizing economic and social policies.

f. Total Economic Integration, namely the stages carried out by unifying monetary, fiscal, and social policies, as well as forming supra-national institutions that bind all member countries. In this stage, the national government surrenders power and sovereignty in the country's economic and social policies to supranational authorities mutually agreed upon.

The theory of economic integration in this study is used to analyze the position (stages) and reasons for renegotiating NAF-

TA to USMCA concerning changes in the stages of economic integration.

Apart from using the theory of economic integration, this study also uses rational choice theory to analyze the considerations of NAFTA member countries in deciding to renegotiate.

The rational choice theory used in this study uses an explanation from Stephen M. Walt, where he states that there are several basic assumptions from rational choice theory. One of the basic assumptions of Walt's rational choice theory, which relates to the case in this study, namely the assumption that "*Rational choice theory assumes that each actor seeks to maximize its "subjective expected utility." Given a particular set of preferences and a fixed array of choices, actors will select the outcome that brings the greatest expected benefits*." Based on this explanation, the state, as a rational actor, will take actions that can provide maximum benefits. So that every action will be chosen based on consideration of various aspects or available options so that the interests of a country can be achieved. In addition, it is undeniable that every choice the state makes will still cause benefits, costs, and risks. This can then be seen as a result of decisions made by the state. Therefore, analysis is needed related to considering the benefits, costs, and risks a country will obtain in making a decision.

Related to that assumption, in this case, each NAFTA member country has considerations in deciding to engage in renegotiations. The consideration analysis is divided into two factors, namely internal factors and external factors. The division of these factors was carried out to analyze internal and external economic interests and threats, which was then seen as a consideration for each country – or regime – in deciding on renegotiations. Then, knowing each country's economic interests and threats can also be known what benefits, costs, and risks are, which is also a consideration by each country in deciding renegotiation.

The Overview of the North American Free Trade Agreement (NAFTA): How It Has Formed and Its Impact on Its Member

In 1984, the US Congress passed the Trade and Tariff Act. This law gives the President fast-track authority, in which the President has the authority to negotiate trade agreements (bilateral) without the direct involvement of Congress (Amadeo, 2022).

Through the Trade and Tariff Act, the United States then discussed the formation of the Canada-U.S. Free Trade Agreement (CUSFTA) in 1986. The negotiations took place from 1986 to 1987, wherein in 1987, the two countries agreed to form CUSFTA, and the agreement became effective on January 1, 1989. In addition to establishing bilateral cooperation with Canada, the US subsequently entered into negotiations on establishing bilateral cooperation with Mexico – which is also part of the North American region – where the negotiations took place in September 1990.

On February 5, 1991, Canada then requested the formation of a trilateral trade agreement with the US and Mexico. This was proposed because Canada was concerned that there would be dissimilarity or an imbalance in the agreement between the US-Canada and US-Mexico bilateral relations. The trilateral agreement was later named the North American Free Trade Agreement (NAFTA). It was signed on December 17, 1992, by Canadian Prime Minister Brian Mulroney, US President George H. W. Bush, and Mexican President Carlos Salinas de Gortari. Furthermore, NAFTA was then officially enforced on January 1, 1994. The purpose of establishing NAFTA was to create and enhance economic cooperation and encourage fair economic competition with fellow member countries.

Since NAFTA took effect, this collaboration has positively impacted the US, Canadian, and Mexican economies. Trilateral trade between NAFTA partners reached US$ 1.2 trillion in 2017, and according to data from the World Trade Organization, exports of NAFTA goods in 2018 have increased almost fourfold compared to 1993 (Kryvenko, 2020).

On the other hand, it cannot be denied that the regional organization has negative implications for its member countries, namely as 682,000 US manufacturing workers lost their jobs in 2011, there was competition between workers from Mexico and US workers, Mexican deforestation increased because US companies used fertilizers and chemicals (to keep costs low).

Considering the positive and negative impacts of the existence of NAFTA, its member countries decided to renegotiate NAFTA to become USMCA in 2017. The renegotiations were carried out to protect state interests and adapt to changing circumstances, and more specifically, to rebuild balance (Maula, 2019).

Outcomes of Renegotiations: The Changes in USMCA

The United States-Mexico-Canada Agreement (USMCA), successfully formed on July 1, 2020, resulted from NAFTA renegotiations carried out in seven talks from 2017 to 2020. In the proposed USMCA, there are 34 chapters and 12 side letters. However, in the completed renegotiations, the USMCA retained most of the contents of NAFTA, with only a few changes.

Table: Changes in NAFTA and USMCA Rules

Sector	NAFTA	USMCA
Automotive	62.5% of vehicle components must be made in one of the member countries.	75% of vehicle components must be made in one of the member countries.
Labor law	Sending jobs to Mexico because of lower labor costs.	Labor reform and compliance with the panel's obligation to review for possible facility violations.
Agriculture (Dairy products)	Eliminate tariffs of up to 0% on most dairy products.	- Maintain a 0% rate. - Expansion of the opening of the Canadian market for dairy products from the US.
Environment	Environmental requirements are difficult to enforce.	Set aside $600 million to address environmental issues.
Intellectual property protections	The term of the author's copyright guarantee is 50 years after the death of the creator or author.	The copyright guarantee period was then increased to 70 years and for publication guarantees to 75 years.
Technology (Digital trade)	Digital trading is not regulated.	Canada and Mexico can no longer force US companies to store data on domestic servers.
Dispute settlement	There is a Chapter 11 law related to Investor-State Dispute Settlement (ISDS) which allows private investors to file claims against a country if there is a violation of the investment provisions in a trade agreement.	Chapter 11 was removed regarding the Investor-State Dispute Settlement (ISDS) system between the US and Canada.
Biologic drugs	Drug company protection.	Removing drug company protection, and being replaced by granting biologic exclusivity for several years. In this case, the US gives exclusivity for 12 years, Canada for 8 years and Mexico for 5 years.

As the changes to the rules from NAFTA and USMCA have been compiled in the table above, here are some sectors that have changed and added to the rules in the USMCA:

i. Automotive

In this sector, there are changes to the Rules of Origin (ROO) regarding the rules for making automobiles. The previous NAFTA stipulated that as much as 62.5% of an automotive component must come from member countries. The minimum amount was then increased to 75% under USMCA rules, which will gradually increase until January 1, 2023.

In addition, in the automotive sector, the concept of "Labor Value Content" was also added, in which the concept stipulates that as much as 40% -of workers must make 45% of vehicle parts with a minimum income of $16 per hour. This is done to provide protection and also so that Mexican labor standards can increase. Then, there is a requirement that as much as 70% of the vehicle's steel and aluminum must come from North America.

ii. Agriculture

Through the USMCA, the US seeks to expand its dairy, poultry, and egg product markets in Canada. This was done because, previously, Canada imposed high import tariffs on dairy products and restricted domestic milk production, causing the price of milk to be very high in Canada. To overcome this, in the USMCA, Canada must expand its dairy sector market for the US by 3.5% of the approximately $16 billion annual Canadian domestic dairy market. This is done by eliminating tariffs and quota limits (tariff-rate quota).

iii. Environment

Enforcement of environmental requirements was strict in the previous NAFTA. However, the USMCA's establishment of environmental rules is more accessible to enforce by removing the requirement to prove violations affecting trade. In addition, the USMCA also stipulates the provision of $600 million to deal with environmental problems in member countries, for example, the overflow of waste from Tijuana (Mexico), which impacts San Diego (USA).

iv. Intellectual Property Rights

The previous NAFTA only provided a period of guarantee for the author's copyright (copyright) for 50 years after the creator's or writer's death. The copyright guarantee period was later increased to 70 years, and for publication guarantees to 75 years under the USMCA. Apart from that, in the HAKI chapter, which also regulates patents, there is a change in the form of removing the protection of drug companies and replacing it with the granting of biological exclusivity for several years. In this case, the United States gives exclusivity for 12 years, Canada for eight years, and Mexico for five years.

v. Digital Trade

The new USMCA added a chapter on digital trade, which was not previously in NAFTA. The three-member countries approved this rule because the USMCA is expected to facilitate economic growth, expand trade opportunities through the Internet, and overcome various potential barriers to digital trade. In general, digital trade rules regulate the protection of consumer privacy data in digital systems and prohibit customs duties and discriminatory actions on digital products such as e-books, videos, music, and software.

vi. Dispute Settlement

In this chapter, Chapter 11 is related to the Investor-State Dispute Settlement (ISDS) system between the US and Canada. However, on the other hand, the system still applies to specific sectors between the US and Mexico (government contracts in natural gas, power generation, infrastructure, transportation, and telecommunications). Where ISDS is an agreement related to the arbitration system that allows private investors to submit claims against a country if there is a violation of the investment provisions in a trade agreement. The elimination of the ISDS arbitration between the US and Canada was carried out in order to encourage US investors to trade more within the US than abroad. In addition, the elimination of ISDS was also carried out to prevent foreign investors who committed violations in the US from being prosecuted in court.

vii. Sunset Clause

There is an addition to chapter 34, a rule related to the Sunset or the "sunset" clause. The clause stipulates that if the USMCA is 16 years old, then the terms of the agreement end. In addition, the members will review the agreement (joint review) six years after the USMCA is inaugurated. If all members agree to continue the agreement, then the agreement will remain in effect for an additional 16 years. Also, in this clause, members can withdraw from the trade agreement after giving six months' notice.

viii. Non-Market Country

In chapter 32, related to Exceptions and General Provisions, an addition is made to article 32.10, which regulates non-market countries. The rules were created to prevent USMCA members from entering into free trade agreements with countries other than member countries. However, it is considered implicitly that Article 32.10 is aimed at China, so the USMCA prohibits its member countries from forming FTAs with China.

Stages of NAFTA Renegotiation To USMCA

The process of the economic integration of the three member countries, the beginning of the economic unification of the US, Mexico, and Canada, and the change from NAFTA to USMCA can be analyzed in the context of the stages of economic integration. Thus, the USMCA's position in the stages of economic integration can be seen. The stages of economic integration that occurred from NAFTA to USMCA were:

a. Preferential Trading Area, the three-member countries are still cooperating bilaterally at this stage, namely the US-Canada (1989) and the US-Mexico (1990).

b. Free Trade Agreement, NAFTA, entered the FTA stage on February 5, 1991, when Canada requested the formation of a trilateral trade agreement with the US and Mexico. At this stage, NAFTA has fulfilled the elements of an FTA because it has article 302 regarding eliminating tariffs and forms chapter 4 concerning the Rules of Origin (ROO).

c. Customs Union, at this stage, NAFTA has been renegotiated into USMCA, where USMCA has article 32.10 regarding non-market country rules, which aim to limit the formation of FTAs between its member countries and outsiders.

Article 32.10, which requires USMCA members to comply with the same rules regarding applying rules to non-member countries, then shows that the USMCA is a more profound – or higher – collaboration than an FTA. This is because establishing restrictions on trade negotiations with third parties can be seen as an impact of implementing profound trade integration (Vidigal, 2020).

Referring back to the link between the Customs Union and article 32.10 in the USMCA, in this case, the existence of article 32.10 has met one of the requirements of the Customs Union. This is because the article complies with CU requirements regarding applying the same duties and trade regulations (economic policies) to non-CU member countries. However, the USMCA cannot be fully categorized as a Customs Union because it needs to fulfill the requirements for implementing the Common External Tariff (CET).

Factors Causing NAFTA Renegotiation to USMCA

In the proposed renegotiation of NAFTA to USMCA, the US, Canada, and Mexico have their respective considerations in deciding to engage in the renegotiation. At first, Canada and Mexico refused to renegotiate because there were differences of opinion on the proposal submitted by the US regarding the Rules of Origin (ROO) for automotive sector products and the sunset clause rules, which establish that NAFTA will be renegotiated every six years. Canada and Mexico rejected the US proposal because Canada believes the sunset clause regulation would not be a good foundation for creating a lasting relationship (in NAFTA). Meanwhile, Mexico, on the other hand, thinks that the US proposal does not benefit the three NAFTA partners (Lopez, 2017).

The refusal arose based on rational considerations of Canada and Mexico. This is because the two countries have economic interests with the US under the NAFTA regime, so it is feared that the US proposal regarding the sunset clause rules will make the regime easier to end because the joint review, which is conducted every six years, can lead to differences of opinion among member countries. Thus, the actions of Canada and Mexico in rejecting the proposed sunset clause from the US can be considered a rational decision to maintain their economic benefits.

Although, in the end, all members agreed to renegotiate, reaching the agreement had to go through seven rounds of talks before the USMCA was officially enforced.

The timeline for the NAFTA renegotiation round to become the USMCA is as follows:

1. Round One: held from 16-18 August 2017 in Washington DC, US. The three countries started talks on two dozen different topics in this round.
2. Round Two: held from 1-5 September 2017 in Mexico City, Mexico. Canada and the US wanted Mexico to raise wages and labor standards in this round, while Mexico wanted greater North American energy market access.
3. Round Three: held from 23-27 September 2017 in Ottawa, Canada. The talks at this round made progress in discussions in telecommunications, competition policy, digital trade, good regulatory practices, and customs and trade facilitation. In addition, this round also discussed strengthening small and medium enterprises (SMEs) and the logistics chain.
4. Round Four: held from October 11-17, 2017, in Arlington, Virginia. At this round, the three countries announced that they had completed a new chapter that could expand trade benefits for small and medium enterprises (SMEs).
5. Round Five: held from 15-21 November 2017 in Mexico City, Mexico. The talk provided little progress at this round because no chapters were completed.
6. Round Six: held from 23-29 January 2018 in Montreal, Canada. At this round, the three countries concluded talks on the corruption chapter, but there has yet to be any progress on other topics.
7. Round Seven: held on March 5, 2018, in Mexico City, Mexico. Again, this round has yet to make much progress; this round only closed the discussion on three additional chapters, namely good regulatory practices, administration and publication, and sanitary and phytosanitary measures. Nonetheless, this round continued to complete other annex works, such as chemicals, food formulas, telecommunications and technical barriers to trade, and energy.

At the end of the seven rounds of NAFTA renegotiation talks, the USMCA still needs to complete all the topics that need to be discussed because only six of the 30 new chapters have been completed. Therefore, the three countries continued discussions regarding the remaining chapters. Finally, on November 30, 2018, the USMCA was officially signed by the three countries: President Donald J. Trump, Mexican President Enrique Peña Nieto, and Canadian Prime Minister Justin Trudeau. The USMCA became effective on July 1, 2020, after the three member countries ratified the agreement.

As mentioned in the previous section on methodology, this study applies rational choice theory analysis by dividing internal and external factors. The rational choice theory is used to look at the considerations of internal and external factors from each country – and as members of the regional regime – in facing and overcoming their problems and interests. Therefore, the actions or choices of countries in deciding to renegotiate NAFTA into USMCA can be seen as a rational choice because they seek to maximize their country's benefits. Then, as for the internal factors, namely:

a. Internal Factors

1. United States

In deciding the renegotiation, the US has several considerations from the side of internal influence. First, there is a trade deficit between the US and other NAFTA members. Even though in 2016, the US had a surplus in the services trade sector of US$31.4 billion through NAFTA. However, in 2017, the US experienced a deficit in the goods trade sector with Canada and Mexico of US$89.6 billion (Villarreal & Fergusson, 2019). Second, the loss of jobs in the United States. Based on data from the US Labor Department, there are more than 980,000 workers who are certified to have lost their jobs due to imports from Canada and Mexico and also due to the relocation of factories from the US to these two countries (Public Citizen, 2019).s

2. Canada

As for Canadian considerations from an internal influence perspective, namely, NAFTA can contribute to improving the Canadian economy, which has implications for strengthening bilateral relations between Canada and the US. This is marked by Canada's dependence on trade and Foreign Direct Investment (FDI) with the US. Canada's trade dependence on the US is shown by the significant exports and imports between the two countries; where since the we enacted NAFTA, it has contributed three-quarters to Canada's exports and two-thirds of its imports. Meanwhile, from the Foreign Direct Investment (FDI) side, there has been a rapid increase in US FDI stocks in Canada; even in 2018, the FDI reached $406 billion. On the other hand, the stock of Canadian FDI in the US in 2018 reached $595 billion (Awwalia, 2022).

3. Mexico

There are several Mexican considerations from the side of internal influence in considering the renegotiation of NAFTA. First, Mexico has experienced an increase in Foreign Direct Investment (FDI) of around 40% since NAFTA was enacted, and 55% of the total FDI is the result of contributions from US investment in Mexico. Second, through NAFTA, Mexico's average total exports grew by 20% because NAFTA's partners – especially the US – became Mexico's leading export destination. Third, Mexico's GDP has grown by 4% since joining NAFTA, whereas Mexico's average GDP was only 2% (Rachmanantya, 2019).

Seeing the many advantages that Mexico has gained since joining NAFTA, Mexico will, of course, try to maintain the existence of the trilateral agreement so that it can continue to receive economic benefits.

Aside from the interest in maintaining the economic benefits that Mexico has gained in NAFTA, Mexico, as a developing country with a low wage level, will also enjoy benefits if it renegotiates NAFTA to become USMCA. The average wage for Mexican workers is $3,60-$ 3,90 per hour, while in the US is $24 per hour. By renegotiating NAFTA to USMCA, the government will seek to support independent trade unions in Mexico to become more effective. Thus, it can be assumed that with more effective Mexican labor unions, workers will get higher wages, and purchasing power will be greater so that the economic turnover will run better (David, 2018).

Thus, Mexico's consideration to renegotiate NAFTA to become USMCA is a rational choice because Mexico seeks to make the renegotiation an action to align its position – in terms of wages – as a less powerful country with more powerful country members.

4. Regional (North American Area)

In addition to the internal considerations of each member country, there are considerations by the three-member countries as a unified regime in the North American region. This consideration is because some NAFTA rules are considered irrelevant.

Because NAFTA was negotiated two decades ago, some of its provisions have been deemed obsolete or irrelevant. NAFTA needs policies that could cover new areas, such as trade policy, as for some parts of NAFTA that are considered obsolete, such as chapters on dispute settlement, competition policy, government procurement, and rules of origin (Lavin & Erixon, 2018).

Concerning the dispute settlement chapter, in this case, chapter 11 related to Investor States Dispute Settlement (ISDS) is considered to be too pro-foreign investors rather than prioritizing the public sector. Even in other international agreements, such as the Comprehensive Economic and Trade Agreement (CETA), many have faced criticism due to the existence of ISDS. In response to the criticism, CETA later amended the ISDS rules by establishing a permanent dispute resolution court and an appeals body. As for the NAFTA case, the ISDS rules have also been criticized for causing losses to Canada. NAFTA can then imitate or adopt the actions taken by CETA in resolving disputes between foreign investors and the state.

In addition to chapter 11 of ISDS, the Rules of Origin (ROO) must also be updated because US President Donald Trump claimed that the old ROO was very weak and had hurt US trade and jobs – especially in the automotive sector (Bergsten and Monica (ed), 2017). As for updating the ROO, the US recommends establishing standards alignment in automotive products. This can be done by limiting imports of automotive products containing high components made outside the NAFTA trade zone (Bergsten and Monica (ed), 2017).

b. External Factors

1. United States

As for external influence, the US sees a threat to China's influence in the North American region. China's rapid GDP growth causes its country to have projected capabilities in the economic and military fields that can compete with the US. China's economic growth is felt to proliferate because it can form rules adapted to current conditions in the international area. This was then seen as a threat by the US because the US was worried that China's economy would outpace the US and have an impact on reducing US capabilities – regionally and internationally. Thus, in order to respond and also maintain its country's capabilities, one of the things the US has done in its regional scope in the North American region, namely by renegotiating NAFTA to become USMCA. The renegotiation was carried out to update the NAFTA rules to suit modern conditions – in line with China's efforts to shape its economic rules in a modern way.

2. Canada

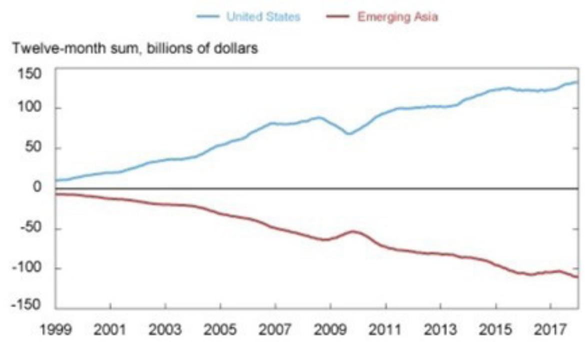
In considering external influences, Canada, in this case, sees a loss arising from Chapter 11 regarding Investor States Dispute Settlement (ISDS) in NAFTA. As for NAFTA, chapter 11 regarding ISDS stipulates that foreign companies can sue the government for compensation when public policies (such as environmental, health, or resource management rules) are deemed discriminatory because they can potentially reduce foreign company profits.

As a result of the existence of Chapter 11, Canada has been sued 41 times by foreign companies from the US and Mexico. While the US has only sued 21 times and Mexico 23 times, Canada became the country with the most lawsuits. Through these lawsuits, Canada has also paid compensation (penalties) of more than $219 million to foreign companies and incurred legal fees of as much as $95 million in the ISDS case (Sinclair, 2018). In addition to generating losses, ISDS was later criticized for the lack of independence of the panelists, the poor quality and consistency of panel decisions, and the lack of an appeals process (Bergsten and Monica (ed), 2017). As a result of the many losses and defeats in the ISDS trial case, Canada then made the abolition of the ISDS rules a consideration for renegotiating NAFTA.

3. Mexico

The considerations from the perspective of Mexico's external influence in deciding to renegotiate NAFTA are related to a trade deficit in goods with countries in the Asian region. The deficit occurred because Mexican imports from China had increased. In 2000, Mexican imports from China only amounted to $3 billion, then increased to $75 billion in 2017. Many imports caused China to become the most significant contributor to the deficit because it accounted for nearly half of the total deficit originating from the Asian region (Klitgaard & Susannah, 2018). Nonetheless, a trade surplus with the US can still offset Mexico's trade balance.

Graphic: Mexico's Trade Balance with the US and Asia



The surplus obtained by Mexico can occur because of the existence of NAFTA, where NAFTA can become a means of providing an export market – in this case, the US – for Mexico. So it can be said that Mexico has a sizeable economic dependence on the US. Thus, if Mexico does not want its trade balance to become harmful – because it cannot offset the trade deficit from Asia – then Mexico must maintain its relationship with NAFTA members to maintain its stability. Therefore, renegotiating NAFTA to USM-

CA became an essential thing for Mexico to do in order to continue to partner with the US and Canada.

1. Regional (North American Area)

As a regional regime, NAFTA has external considerations to renegotiate NAFTA. The consideration is due to the development of the international economy. In the early days of NAFTA, NAFTA rules focused more on tariff regulation, and at that time, the technology was still in its infancy. This then causes regulations related to digital trade or e-commerce that still need to be considered to be implemented in NAFTA regulations, so NAFTA does not have rules related to digital trade. However, e-commerce has become a standard practice in doing business for many companies in domestic and international trade (Lester & Inu, 2017).

Then, NAFTA member countries have great potential to develop e-commerce. The US is a significant player in the global digital economy because it can be home to leading internet and technology companies and also the dominant global supplier of online and cloud computing services. Furthermore, the Canadian e-commerce market has grown alongside the US market, where one-third (1/3) of Canada's digital spending (purchases) comes from US e-commerce or digital markets. On the other hand, Mexican e-commerce has also experienced significant growth in recent years, which has made Mexico the second-largest e-commerce country in Latin America (Bergsten and Monica (ed), 2017). Then, with the potential of each NAFTA member country and the importance of e-commerce in the modern economy, provisions related to this matter need to be considered in the renegotiation of NAFTA.

After knowing the internal and external factors that the three countries consider in deciding renegotiations, there is an analysis related to the benefits, costs, and risks, which is also considered by each country in deciding renegotiation.

1. United States
   - Benefit: First, more US workers will be hired due to the equalization of minimum wages among NAFTA members. Thus, companies will pay more attention to the quality of US labor rather than consider cheaper labor (from Mexico). The renegotiation of NAFTA to USMCA is expected to create 176,000 new jobs in the US (Long, 2019).

     Second, US dairy products will gain more complete access to the Canadian market. This is because Canada must expand its country dairy sector market for US dairy products by 3.5% of Canada's approximately $16 billion annual domestic dairy market.
   - Cost: The US cannot remove Chapter 19 related to the Dispute Settlement because Canada insisted on maintaining the chapter. Chapter 19 allows Canada and Mexico to avoid the US system of justice, and the chapter can also force the US government to reverse the actions taken in a

trade considered unfair by the Defendant's state. As a result of the chapter's existence, as many as 750,000 people in the US wood industry have been disadvantaged because of an unfair trade system. However, because Canada insisted on maintaining Chapter 19, the US must be willing to maintain the chapter to expedite the renegotiating NAFTA into USMCA.

- Risk: If the US conducts a renegotiation, then the US must be prepared that there may be a decline in sales figures in the automotive sector. This decline could occur due to an increase in the price of raw materials and wages of workers in the sector. The increase in automotive raw materials occurred due to an increase in the minimum percentage of raw materials for vehicles originating from member countries (Rules of Origin). The default rule rises to 75% from 62.5% previously. Thus, previously automotive manufacturers could use cheap raw materials from countries other than NAFTA members. However, with the new rules of origin, automotive manufacturers must use raw materials from fellow member countries – where prices can be higher.

2. Canada
   - Benefit: As for the renegotiations that were carried out, Canada succeeded in retaining Chapter 19 regarding dispute settlement – whereas, in the USMCA, the chapter was changed to Chapter 10. Canada seeks to maintain the dispute settlement chapter to allow affected companies and governments to challenge the final determination of anti-dumping or counterweight measures before a binational panel rather than in the court of the party imposing the measure (Kronby et al., 2019).
   - Cost: As previously mentioned, the US experienced an advantage in the dairy sector when it renegotiated NAFTA to become USMCA. However, on the other hand, Canada suffered losses because it had to give up its dairy sector market due to the entry of dairy products from the US. Whereas previously, Canada imposed high import tariffs on dairy products and restricted domestic milk production, causing the price of milk to be very high in Canada – including the price of milk from the US.
   - Risk: Just like the US, Canada must also be prepared that there may be a decline in sales figures in the automotive sector.

3. Mexico
   - Benefit and Cost: There is a paradox between benefits and costs regarding minimum wage regulations. Mexican automotive work-

ers will experience prosperity in terms of wages because they will experience salary increases and labor protection from the USMCA. However, on the other hand, this can also be seen as a cost that Mexico must sacrifice. The minimum wage requirement of $16 per hour will make it difficult for Mexico as a developing country. After all, the average Mexican wage is only $3.60-$3.90 per hour. Thus, automotive manufacturers in Mexico must pay more for their workers, and Mexican workers must also compete with US and Canadian workers in order to be able to maintain their position.

- Risk: The same thing as US and Canada, namely Mexico, must also be prepared for declining sales figures in the automotive sector.

Conclusion

In the change from NAFTA to USMCA, two factors were behind the renegotiation: internal and external. As for internal factors, there are considerations from each NAFTA member country in the form of considerations of profit and loss from an economic perspective, such as Canada and Mexico, which consider the advantages of Foreign Direct Investment (FDI), and the US, which considers losses in the form of trade deficits, as well as regional considerations in the form of several regulations. NAFTA was deemed detrimental and irrelevant. Meanwhile, from external factors, there are several related considerations; (i) there is a threat from outsiders in the form of a decrease in US capabilities and the threat of Mexico's economic deficit with the Asian region; (ii) international economic developments are a consideration for expanding the potential for modernization of NAFTA rules in terms of digital trade or e-commerce.

In addition to seeing internal and external factors that the three countries consider in deciding renegotiations, there are also considerations regarding benefits, cost, and risk. It was found that the three countries had different benefits, such as the US focused on the benefits of increased employment and expansion of the dairy product market, Canada which seeks to maintain Chapter 19 Dispute Settlement, and Mexico which will get an increase in workers' wages in the automotive sector. The cost that each country must lose looks more like a cost for one of the countries, but on the other hand, it becomes a benefit for other parties. While the risk that the three-member countries will face tends to be the same because the new rules in the USMCA related to the Rules of Origin from the automotive sector focus on strengthening the economy between fellow member countries in the automotive sector – economic integration.

Then, back to the two factors causing renegotiation, the most significant factor influencing the renegotiation of NAFTA to USMCA was the external factor regarding regional considerations in the North American region. This is due to changes in market trading patterns, where previously trading was not digital but later developed to become digital-based. In order to adjust to these developments, NAFTA members are trying to deepen their economic integration through renegotiations.

Concerning economic integration, in this case, the regional regime has experienced developments in the stages of economic integration. The stages of economic integration that occurred from NAFTA to USMCA were: (i) Preferential Trading Area (PTA); at this stage, the three-member countries were still cooperating bilaterally, namely the US-Canada (1989) and the US-Mexico (1990) ; (ii) Free Trade Agreement (FTA), NAFTA entered the FTA stage on February 5, 1991, when Canada requested the establishment of a trilateral trade agreement with the US and Mexico. In this stage, NAFTA has fulfilled the elements of an FTA because it has article 302 regarding the elimination of tariffs and forms chapter 4 concerning the Rules of Origin (ROO); (iii) Customs Union (CU), at this stage, NAFTA has been renegotiated into USMCA, where USMCA has article 32.10 regarding non-market country rules which aim to limit the formation of FTAs between its member countries and outsiders.

From the stages of economic integration that occurred from NAFTA to USMCA, the regional regime has undergone significant changes. These changes can be linked to USMCA members' efforts to strengthen and maintain regional economic integration. Where member countries desire to develop trade modernization, this can be done if they strengthen their economic integration by renewing the NAFTA rules. On the other hand, efforts to maintain and also maintain the economic integration that has been built through renegotiations are carried out by adding article 32.10 so that the goals to be achieved by USMCA members do not encounter obstacles from outsiders. The external party in question is China. The addition of article 32.10 can be said as part of the US effort to limit trade between Mexico and Canada with China so that the two countries prioritize their trade relations with the US under the USMCA regime.

References

E-Book

Bergsten, F. C., & Monica de Bolle (Eds). (2017). *17-2 A Path Forward for NAFTA*. Peterson Institute for International Economics. Retrieved from: https://www.piie.com/publications/piie-briefings/path-forward-nafta

Journal Article

Balassa, B. (1961). The Theory of Economic Integration: An Introduction. *The European Union*. doi: 10.1007/978-1-349-23984-9_15

Kryvenko, N. (2020). Trade and Economic Cooperation Between US, Canada, and Mexico in the Context of NAFTA and USMCA Agreements. *Journal of European Economy*, *19*(4), 583–614. doi: 10.35774/jee2020.04.583

Journal Article

Maula, B. H. (2019). Alasan Amerika Serikat Melakukan Renegosiasi North American Free Trade Agreement (NAFTA) ke United State-Mexico-Canada Agreement (USMCA) Tahun 2018. *Jurnal Universitas Airlangga*. Retrieved from: https://repository.unair.ac.id/87607/5/Jurnal_Bella%20Hikmatul%20Maula_071511233032.pdf

Vidigal, G. (2020). A Really Big Button That Doesn't Do Anything? The Anti-NME Clause in US Trade Agreements Between Law and Geoeconomics. *Journal of International Economic Law*, *23*(1), 45–64. Retrieved from: https://academic.oup.com/jiel/article/23/1/45/5809066

Electronic Source

Lavin, F., Deringer, H., Erixon, F. (2018). *Deepening NAFTA and Signing New Trade Agreements: A US Trade Strategy to Boost the Economy and Reduce the Trade Deficit*. ECIPE Policy Brief, No. 3. Retrieved from https://www.econstor.eu/handle/10419/202505

Lester, S., & Inu, M. (2017). *A Framework for Rethinking NAFTA for the 21st Century: Policies, Institutions, and Regionalism*. CTEI Working Papers. Retrieved from https://repository.graduateinstitute.ch/record/295734/

Public Citizen. (2019). *Fact Sheet: NAFTA's Legacy: Lost Jobs, Lower Wages, Increased Inequality*. Public Citizen. Retrieved from https://www.citizen.org/article/fact-sheet-naftas-legacy-lost-jobs-lower-wages-increased-inequality/

Sinclair, S. (2018). *Canada's Track Record Under NAFTA Chapter 11*. Canadian Centre for Policy Alternatives. Retrieved from https://policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2018/01/NAFTA%20Dispute%20Table%20Report%202018.pdf

Newspaper Article

Amadeo, K. (2022, March 18). *The History of NAFTA and Its Purpose*. The Balance Money. Retrieved from https://www.thebalancemoney.com/history-of-nafta-3306272#toc-the-purpose-of-nafta

Klitgaard, T. & Susannah, S. (2018, February 21). *The Evolution of Mexico's Merchandise Trade Balance*. Federal Reserve Bank of New York Liberty Street Economics. Retrieved from https://libertystreeteconomics.newyorkfed.org/2018/02/the-evolution-of-mexicos-merchandise-trade-balance/

Kronby, M., Jesse, G., Milos, B. (2019). *The Amended USMCA: Six Takeaways for Business*. Borden Ladner Gervais LLP. Retrieved from https://www.lexology.com/library/detail.aspx?g=64db2e84-3cc5-4835-b49f-1b8f79dc0fbf

Long, H. (2019). *Winners and Losers in the Final USMCA Deal*. The Washinton Post. Retrieved from https://www.washingtonpost.com/business/2019/12/10/winners-losers-final-usmca-deal/

Lopez, E. (2017, November 22). *NAFTA Round 5 Saw 'Lack of Headway,' But Plenty of Blame to Cast*. Supply Chain Dive. Retrieved from https://www.supplychaindive.com/news/NAFTA-2-round-5-sunset-auto-origin-talks/511503/

Sonneland, H. K. (2018, March 1). *Chart: NAFTA by the Numbers in 2017*. Americas Society Council of Americas. Retrieved from https://www.as-coa.org/articles/chart-nafta-numbers-2017

Thesis

Awwalia, M. (2022). *Analisis Keputusan Kanada Untuk Bergabung dengan USMCA (United States, Mexico, Canada Agreements) 2017-2020* [Thesis, Universitas Islam Negeri Jakarta]. UIN Jakarta Repository. Retrieved from https://repository.uinjkt.ac.id/dspace/bitstream/123456789/62991/1/MALIDA%20AWWALIA.HI.pdf

Rachmanantya, A. (2019). *Kebijakan Meksiko Mempertahankan NAFTA di bawah Kepemimpinan Enrique Pena Nieto* [Thesis, Universitas Muhammadiyah Yogyakarta]. Universitas Muhammadiyah Yogyakarta Repository. Retrieved from http://repository.umy.ac.id/handle/123456789/29628

Reports

Gantz, D. A. (2018). *The United States-Mexico-Canada Agreement: Overview and Analysis*. Rice University's Baker Institute for Public Policy. Retrieved from https://www.bakerinstitute.org/research/usmca-overview-and-analysis

Villarreal, M. A., & Ian, F. F. (2019). *NAFTA Renegotiation and the Proposed United States-Mexico-Canada Agreement (USMCA)*. Congressional Research Service Report. Retrieved from https://crsreports.congress.gov/product/pdf/R/R44981/14

______. (2020). *NAFTA and the United States-Mexico-Canada Agreement (USMCA)*. Congressional Research Service Report. Retrieved from https://www.hsdl.org/?abstract&did=835043