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The Pursuit of Food and Energy Security and Sovereignty within the North American Free Trade Area. Impacts for the Future of the USMCA

La búsqueda de la seguridad y la soberanía alimentaria y energética dentro del área de libre comercio de América del Norte. Repercusiones para el futuro del T-MEC

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Abstract

The United States-Mexico-Canada Agreement (USMCA), along with its predecessor, the North American Free Trade Agreement (NAFTA), has established economic interdependence among the United States, Mexico, and Canada by integrating their food and energy sectors. This study seeks to critically evaluate the risks this interdependence poses to the economic security of these nations, particularly with regard to the availability and accessibility of food and energy resources in today's global context. Additionally, the study investigates the recent adoption of protectionist policies by USMCA member states, aimed at securing food and energy resources, and illustrates their incompatibility with the existing USMCA legal framework. The analysis further addresses the implications of these protectionist measures on the review of the agreement on July 2026 and their broader impact on the future (dis)integration within the North American Free Trade Area. Employing an empirical quantitative methodology, the research conducts a comprehensive analysis of treaties, domestic laws, regulations, and pertinent state practices, adopting a multidisciplinary approach that encompasses international economics, politics, and law.

Key words: economic security, food security, energy security, food sovereignty, energy sovereignty, market-access, tariffs, tariff quotas, safeguards, sanitary and phytosanitary measures, embedded liberalism, USMCA.

Resumen

El Tratado de Estados Unidos, México y Canadá (T-MEC), junto con su predecesor, el Tratado de Libre Comercio de América del Norte (TLCAN), han establecido una interdependencia económica entre Estados Unidos, México y Canadá mediante la integración de sus sectores alimentario y energético. El estudio busca evaluar críticamente los riesgos que esta interdependencia plantea para la seguridad económica de estas naciones, particularmente en lo que respecta a la disponibilidad y accesibilidad de los recursos alimentarios y energéticos en el contexto global

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actual. Además, se analiza la adopción de políticas proteccionistas por parte de los Estados miembros del T-MEC, destinadas a asegurar los recursos alimentarios y energéticos, e ilustra su incompatibilidad con el marco jurídico vigente del T-MEC. El análisis aborda también las implicaciones de estas medidas proteccionistas en la revisión del acuerdo, en julio de 2026, y su impacto más amplio en la futura (des)integración dentro del área de libre comercio de América del Norte. Mediante una metodología empírica cuantitativa, la investigación lleva a cabo un análisis exhaustivo de los tratados, las leyes nacionales, las regulaciones y las prácticas estatales pertinentes, adoptando un enfoque multidisciplinario que abarca la economía, la política y el derecho internacionales.

Palabras clave: seguridad económica, seguridad alimentaria, seguridad energética, soberanía alimentaria, soberanía energética, acceso a los mercados, aranceles, contingentes arancelarios, medidas de salvaguardia, medidas sanitarias y fitosanitarias, liberalismo integrado, T-MEC.

Introduction

The strategic competition between states in an era of economic interdependence (Sullivan, 2023) is drastically changing the role of economic security in international law.

Strategic competition is a complex dynamic which can involve contending with adversaries across economic, technological, military, or ideological fields without using armed force (USDOS, 2024). Historically, the concept of strategic competition emerged amidst the *détente* era of the 1970s and was used to refer to the competition between the U.S. and the USSR (Winkler, 2023: 333-56). Nowadays, it is employed to name the competition between the U.S. and China, mainly in the economic sphere. The strategic competition between these two great powers is putting "competitive pressure" (Banasik and Chojnowski, 2024: 29) on all the other states, forcing them to deploy competitive strategies to protect their essential interests.

The strategic competition between states in the global order has simultaneously become an economic competition and a security competition. National security issues are gaining prominence everywhere and a new emphasis is put on the relationship between economics and security (Leonard et al., 2019).

The word security etymologically derives from the Latin *sine cura* (without care, without concern) and implies that individuals should be able to act without fear and worry, minimizing harm, deprivation, suffering, and anguish. For international relations scholars, international security entails alleviating threats to shared values of the members of the international community. For international law scholars, international security implies responding to threats to the interests and territorial integrity of states

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(Williams and McDonald, 2009: 6). This vision of international security traditionally involves a state-centered perspective which identifies it with national security. In a broad understanding, the concept of national security deals with resilience against any threat to the autonomy, internal stability, or territory of the nation-state, encompassing both domestic and external threats (Retter et al., 2020).

In a globally interconnected and interdependent world, the economy is intimately connected with both national and international security (USDOC, 2018). From a general standpoint, the economic security of the state is aimed at deterring the economic risks to its national security. It could be understood as a condition in which it is possible to ensure a high level of protection of the domestic economy from the negative impact of external and internal threats (Golovko, 2019: 8). It also refers to the ability of the state to provide the goods and services it deems critical for its economic welfare, competitiveness, and ability to act, and to be able to develop these or source them from other states without incurring in one-side dependencies (Edler et al., 2023) Therefore, economic security seeks to preserve goods and services, which are considered so vital to societal functions that their unavailability or destruction would have detrimental effect on states national security (Retter et al., 2020).

Many states of the international community have developed domestic policies to protect their economic security interests regarding two essential public goods: food and energy. Food and energy are considered strategic assets, essential to the survival of the state and the protection of its population against military and non-military threats. They are most needed to preserve life, health, economic opportunities, environmental safety, and the general well-being of states' citizens. The adoption of protectionist policies in the food and energy-producing sectors of the domestic economies explains the emergence of the concepts of "food security" and "energy security." For some developing states, the promotion of these new securities is consistent with the assertion of "food sovereignty" and "energy sovereignty."

"Food sovereignty" was first defined during the Nyéléni summit in 2007 and, in 2018, the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) —an international soft law instrument— recognized a right to "food sovereignty" (Azzariti, 2021). "Food sovereignty" promotes food self-reliance policies that ensure rights to healthy and culturally appropriate food, produced through ecologically sustainable methods (Wittman, 2023: 474-78). "Food security" and "food sovereignty" share the goal of achieving food self-sufficiency. However, "food security" places the accent on the "physical, social and economic" availability of "sufficient, safe and nutritious food," while "food sovereignty" also considers food resilience as a way to achieve sustainable development objectives (OHCHR, 2025).

Similarly, "energy security" has been defined as "the continuous availability of energy in varied forms, in sufficient quantities, and at reasonable prices" (Khatib, 2000: 112). In this sense, "energy security" covers a "reliable supply of energy that is accessible, and affordable" (Marhold, 2019). "Energy sovereignty" encompasses not only energy self-sufficiency through accessibility and availability, but also additional aspects, such as "resilience, to maintain production capacities while withstanding socioeconomic, political, environmental and climatic shocks." From an "energy sovereignty" perspective, "energy security" must include a sustainable development perspective, through stewardship in the design and management of renewable energy systems (Timmermann and Noboa, 2022: 28-54).

This research sheds light on the distinct protectionist strategies pursued by Mexico, the United States, and Canada under the USMCA framework to achieve food and energy security and sovereignty. Unlike prior studies, this article provides a comprehensive analysis of these strategies, revealing not only the overt alignment of Mexico's policies with "food sovereignty" and "energy sovereignty" in key sectors such as corn, oil, gas, and electricity but also illustrating how the United States and Canada are implementing similar measures without explicitly using these terms. Specifically, it delineates how Canada's focus on dairy products and the U.S.'s emphasis on steel, aluminum, and solar systems aim to bolster economic security by reducing external dependencies and promoting domestic sector growth.

Furthermore, this study is groundbreaking in demonstrating the clear conflict between these protectionist measures and the existing USMCA legal framework, as illustrated by recent panel reports scrutinizing food and energy sector trade restrictions. It highlights a new perspective on the potential implications of these inconsistencies as the agreement approaches its next review in July 2026. The analysis anticipates the critical need for renegotiation to integrate provisions that address the resilience concerns of all member states. This insight underscores the significant risk of disintegration within the North American Free Trade Area's food and energy sectors, if a consensus on treaty amendments is not achieved, a dimension not extensively explored in existing literature.

Food and Energy as Critical Assets for the Economic Security of USMCA's Member States

To be able to strategically compete within a deeply interdependent and interconnected global economy, states need to protect themselves against other contenders' adversarial economic actions and reinforce their own economic capacity. Therefore,

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the economic security vision which states are developing in the current global conjuncture is based on two main pillars: protection and promotion. The protection pillar of economic security is responding to the geopolitical threats that economic interdependence in the global order is generating for the competing states.

The first threat posed by economic interdependence is its use for geopolitical means (Schindler and Rolf, 2025). In the context of strategic competition, powerful countries no longer abide by the primacy of economics (Edler et al., 2023) and use economics to reach geopolitical goals. Thus, the main problem of strategic competition in an environment of economic interdependence is the possibility to geopolitically leverage or to "weaponize" this interdependence, i.e., to use economic interdependence as a geopolitical arm. After the end of the Second World War, economic interdependence between states was considered a tool for (perpetual) peace. International economic law promoted openness for trade and investment flows to foster this interdependence (Ikenberry, 2020: 17-18) with the aim to achieve development, and maintain international peace and security (Miller, 2021: 1355).

However, excessive reliance on economic interdependence in the midst of strategic competition and geopolitical rivalry poses risks and can be concealed as a "vulnerability," especially if states are not equally or symmetrically interdependent. In fact, in a scenario of asymmetrical economic interdependence, the economic interdependence can become a tool for war, i.e., it can be "weaponized" to coerce other states. The "weaponization of economic interdependence" can be defined as a "condition under which an actor can exploit its position in an embedded network to gain a bargaining advantage over others in a contained system" (Eurasia Group, 2020: 4).

In the current global context, "weaponized economic" practices have become prevalent, particularly evident in recent interactions between Russia and the EU following the onset of the War in Ukraine (Ruggi, 2023: 60-69), China and Taiwan (Chaisse and Su, 2024), Iran and the U.S. (Ruggi, 2023: 60-69), the U.S. and China (Hopewell, 2022: 58-63), and more broadly, between the U.S. and the rest of the world. To defeat the threats of weaponization created by global economic interdependence and to be able to strategically compete, states are enhancing their economic security through economic "de-risking" or "de-coupling" measures from rival "strategic competitors" or "untrustful allies" (Choer Moraes, 2024). From this perspective, economic security means less economic interdependence, more economic autonomy and even greater "economic self-sufficiency" (Miller, 2021: 1055).

The second geopolitical threat which arises from economic interdependence is the risk of disruption of supply chains of critical assets or services for states' national security. In fact, economic interdependence also generates the threat of "shortages" or "unavailability" of critical goods and services that the state must provide to its

citizens (Retter et al., 2020: 4). The Covid-19 pandemic showed the vulnerability of the global supply chains to disruptions and the current blurring lines between economics and geopolitics indicate their vulnerability to politically motivated disruptions. From this perspective, the pursuit of economic security implies the minimization of the negative impact of these disruptions on states' domestic economies. Goods and services considered as strategic, i.e., vital for states' national security, are normally essential to the survival of the state itself and the protection of its population against military and non-military threats (Moon, 2012: 481). They can include a wide range of goods and services, such as food, water, energy, raw materials, semiconductors, communication technologies, internet connectivity, artificial intelligence, etc.

The pursuit of economic security seeks to guarantee the availability and accessibility of these strategic goods and services within states' territories by reducing dependence on strategic competitors or geopolitical rivals for their supply. A lesser dependence on other states is achieved through the diversification of supply chains (depending more on more trustworthy and/or less rival states) or the promotion of a greater "self-sufficiency" in the domestic supply of these strategic goods and services (depending more on yourself). The promotion of "economic self-sufficiency" implies the pursuit of an essentially protectionist objective: the strengthening of states' domestic critical economic capacities and the enhancement of the overall growth of their economies *vis-à-vis* the economies of strategic competitors or geopolitical rivals. Therefore, the "economic security states" are investing in their own domestic critical or strategic industries to be better prepared to compete with other countries (Sullivan, 2023) and, at the same time, to be able to better protect their domestic critical industries from competition from abroad.

The two pillars of economic security are visible in states' recent economic security-related domestic laws and regulations, such as Japan's *Economic Security Promotion Act*, the U.S. *CHIPS and Science Act*, the EU *Chips Act*, the South Korean *K-Chips Act*, the EU *Critical Raw Materials Act* and the UK Critical Imports and Supply Chain Strategy. In addition, the protection and promotion pillar of economic security is currently placed at the core of states' foreign policy objectives and strategies, as shown by the 2025 Decision of the President of the European Commission on the establishment of a Commissioners' Project Group on Economic Security or the Memorandum of January 20, 2025, where the U.S. President Donald J. Trump stated that his "America First Trade Policy" includes "Additional Economic Security Matters" (Executive Office of the President, 2025).

The North American Free Trade Area provides a useful case study of the adoption of economic security-related domestic laws and regulations regarding two strategic assets: food and energy. The USMCA and its predecessor NAFTA promoted the economic

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interdependence between the U.S. Mexico and Canada through the integration of their food and energy-producing sectors. However, in the current global conjuncture, this interdependence is generating risks for the economic security of the three member states regarding the availability and accessibility of food and energy.

In the first place, excessive reliance on the interdependence of the food and energy-producing sectors of the USMCA's member states in the midst of a context of strategic competition and geopolitical rivalry has become a "vulnerability," because the U.S. Mexico's and Canada's economies are not equally or symmetrically interdependent. NAFTA created a free trade area between two highly developed economies (the U.S. and Canada) and an emerging economy (Mexico). The U.S. is the "giant in the middle", with approximately 300 000 000 people driving an extremely consumer-oriented, high-tech and energy-dependent economy. Canada has approximately 30 000 000 people and possesses great natural resources which are key in its industrialized and producer-driven economy. Mexico has a developing economy, which contrasts sharply with the mature economies of its northern neighbors.

The objective of NAFTA was to level these economic power disparities between the three economies of the North American region. However, the agreement didn't reduce the asymmetries between them but rather furthered an asymmetric economic interdependence relationship in which the Mexican economy became almost completely dependent on the U.S. economy and the Canadian economy became highly dependent on the U.S. economy. Around 80 percent of Mexico's exports every year go to the U.S. (BBVA Research, 2025), and around 75 percent of Canada's exports go to the U.S. (CIBC, 2025). In 2022, both Mexico and Canada ranked among the three major U.S. trading partners (Office of the USTR, 2025). In addition, in 2024, trade with the U.S. accounted for almost 30 percent of Mexico's GDP (U.S. Congress, 2024) and for almost 18 percent of the Canadian GDP. In other words, 30 percent of the economic wealth of the Mexican nation and 18 percent of the economic wealth of the Canadian nation depends on its trade relationship with the United States. The asymmetrical economic interdependence between Mexico and the U.S. was one of the main causes of the renegotiation of NAFTA and the entry into force of the USMCA in 2020.

Nevertheless, during its four-year application period, the USMCA didn't change the situation of dependency of the Mexican and Canadian economy towards the economy of the "giant in the middle." This dependency created Mexico and Canada's strong economic "vulnerability" towards the U.S. which has been politically leveraged and "weaponized" by the current U.S. government. For example, the U.S. Government has used the imposition of tariffs and/or the threat of imposition of tariffs to interfere with Mexico's sovereign right to choose its domestic policies in two areas: migration and drug traffic control (White House, 2025).

The asymmetrical economic interdependence between the members of the North American Free Trade Agreement not only creates conditions for "weaponized economic interdependence" and economic coercion, but it also generates the threat of politically motivated "shortages" or "unavailability" of food and energy. For example, after the announcement of the imposition of tariffs on Canadian products by the U.S. Government, Canada stated that retaliatory measures could include cutting energy supplies to the U.S. from Canada. From this perspective, the pursuit of economic security in food and energy implies the minimization of the negative impact of the risk of this type of disruption to states' domestic economies.

The guarantee of the U.S., Mexico's and Canada's economic security in food and energy is achieved through the adoption of protectionist measures in the name of countries' food and energy security and/or sovereignty in specific goods.

The Quest for Food and Energy Security and/or Sovereignty in the United States, Canada and Mexico's Recent Protectionist Policies

Mexico's Food Sovereignty in Corn

Mexico has recently promoted domestic protectionist measures aimed at achieving not only "food security," but even "food sovereignty" regarding the main ingredient of the Mexican diet: corn. At the global level, the Mexican experience is not exceptional, as a growing number of other developing countries have explicitly endorsed a "food sovereignty" agenda in their national legislation, including Ecuador, Bolivia, Nepal, Nicaragua, Mali and Senegal (Clapp, 2015). Article 305 of the Constitution of Venezuela is a prominent example of the recognition of "food sovereignty" in domestic law.

The recovery of Mexico's "food sovereignty" and the protection of the right to food sovereignty of its peasant and indigenous communities constitutes a priority for the current Mexican Government (Wise, 2023). On 30 December 2020, then Mexican President Andrés Manuel López Obrador adopted a decree, whose stated objective was the achievement of "self-sufficiency and food sovereignty." According to the decree's Article 6: "With the purpose of contributing to *food security and sovereignty* the authorities […] will revoke and refrain from granting permits for the release of genetically modified corn seeds into the environment" (*DOF*, 2020). A Presidential Decree of 13 February 2023 complemented the prohibition of the 2020 decree measures' with a ban on the importation of GM corn. According to article 6 of the 2023 Presidential

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Decree: "The authorities in matters of biosafety […] with the purpose of contributing to *food security and sovereignty* […]: I. Will revoke and refrain from granting permits for the release of genetically modified corn seeds into the environment in Mexico […]" (DOF, 2023).

As its title suggests, the *General Law of Adequate and Sustainable Food* was adopted in March 2024 to achieve Mexico's and Mexicans' right to "food sovereignty" through access to healthy and culturally adequate food, produced through ecologically sound and sustainable methods. The law includes elements of "food sovereignty" in the definition of the human right to food. Article 46 of the general law stipulates that programs and actions crafted and implemented under the relevant regulations on food production should aim for self-sufficiency within each locality and region of the country. Similarly, Article 47 emphasizes that food production policies at all three government levels should primarily focus on achieving self-sufficiency and food sovereignty.

Canada's Food Security in Dairy Products

Canada has developed strong protectionist measures regarding trade in dairy products before and after the entry into force of USMCA. These protectionist measures are the main element of the Canadian "supply management system" in dairy products, which is based on planned domestic production, administered pricing and dairy product import controls (Government of Canada, 2025). Under the USMCA, Canada adopted some measures to liberalize its domestic dairy market. In particular, since 2021, Canada established new Tariff Rate Quotas (TRQs) for some categories of imported dairy products, covering an amount equivalent to 3.6 percent of the Canadian dairy market (Rosselli et al., 2021). Up to the defined quota amount, these products were to receive tariff-free access to the Canadian market. However, due to the complex rules of implementation of the TRQs system, Canada continued to allocate 85-100 percent of the quotas to Canadian dairy processors (Holland and Holland, 2025).

Canadian food protectionism in dairy products allowed the country to attain self-sufficiency. In 2023, Canada produced 96 percent of its domestic dairy needs —a total of 832 000 tons of dairy products on a milk solids basis (Duff, 2024)—. Canadian farmer organizations, civil society groups, and indigenous communities have pointed out that the dairy industry helps Canada to be less dependent on foreign countries for food and contributes to the country's "food security" and even to its "food sovereignty" (Gambling, 2011).

With the discussions of Act C-282, which is currently at a report stage at the Canadian Senate, the need to preserve Canada's self-sufficiency in dairy products became part of the political debate. Act C-282 is a domestic legislation aimed to amend the 1 Section 10 Department of Foreign Affairs, *Trade and Development Act* (supply management):

> […] by adding the following after subsection (2): Supply management (2.1) In exercising and performing the powers, duties and functions set out in subsection (2), the Minister must not make any commitment on behalf of the Government of Canada, by international trade treaty or agreement, that would have the effect of *a*) increasing the *tariff rate quota*, within the meaning of subsection 2(1) of the *Customs Tariff*, applicable to dairy products […]; or *b*) reducing the tariff applicable to those goods when they are imported in excess of the applicable tariff rate quota (Parliament of Canada, 2025).

In other words, it seeks to prohibit the Government of Canada from concluding international agreements having the effect of further liberalizing the Canadian dairy sector, i.e., it secures the achieved self-sufficiency in dairy products. Therefore, the Act would prevent the Canadian Government from renegotiating, in any sense, USMCA's rules on access to the Canadian dairy market in 2026.

The pursuit of food security in dairy is meant to guarantee the availability of dairy supplies in Canada, and it also seeks to protect the livelihoods and guaranteed incomes of Canadian dairy producers. According to Luc Thériault, a member of the Canadian *Chambre des Communes*, the Act C-282's main objective is to guarantee "to supply managed farmers that they would never again be sacrificed at the altar of free trade" and to preserve the dairy supply management, "which is a *key strategic tool* for preserving our *food self-sufficiency*, regional development and land use. We also met people who want to keep the supply management system because it has proven to be effective in terms of *food autonomy and food security*" (Parliament of Canada, 2025).

Mexico's Energy Sovereignty in Oil, Gas and Electricity

Since 2022, Mexico has adopted strong protectionist measures to move "towards the construction of a *sovereign*, *self-sufficient* and *sustainable* energy system" (Gobierno de México, 2022). In the electricity sector, the overall objective of the reform was for "the Mexican State to maintain around 65 percent of all electricity production in the country" (Tesorería de la Federación, 2023). The proposals for the energy reform stated that it is aimed to "ensure the *energy security* of the nation […]" (Tesorería de la

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Federación, 2023). Even if the 2022 energy reform didn't nationalize the oil, gas and electricity sectors, it promoted measures tantamount to nationalization. The inalienable and imprescriptible property of the Nation over hydrocarbons in the subsoil was reaffirmed in constitutional Article 27 and constitutional Article 28, established that the exploration and extraction of oil and gas are "*strategic activities*" (Gobierno de México, 2022). In 2025, significant reforms to secondary legislation of the constitutional amendments were adopted (Senado de la República, 2025). The Mexican Secretary of Energy highlighted that the reforms "continue the efforts of the past administration to recover *energy sovereignty* for the benefit of the people of Mexico", stating that "energy is a strategic input for the well-being and development of the country, not a commodity" (Secretaría de Energía, 2025).

United States Energy Security in Aluminum, Steel and Solar Systems

The promotion of energy security in solar systems through the U.S. current protectionist policies is aimed at decreasing dependence on other states for renewable energy supplies. It also seeks to ensure the availability of solar systems supplies by increasing solar energy production from domestic sources and the (re)building of domestic solar infrastructure (Robinson and Featherston, 2025).

The United States has imposed a wide range of protectionist measures in the solar industry since the first presidency of Trump. In 2018, the Trump administration increased tariffs, utilizing the Section 201 mechanism, and presented the tariff increase as a safeguard measure to allow the United States solar systems industry to adjust to surging imports (Congressional Research Service, 2024). The same type of protectionist measures was imposed in 2025, after the second arrival of Trump to the White House. According to a recent United States President's executive order, "President Donald J. Trump is implementing a 25 percent additional tariff on imports from Canada and Mexico and a 10 percent additional tariff on imports from China. Energy resources from Canada will have a lower 10 percent tariff" (White House, 2025). The executive order's definition of "energy resources" includes solar-grade polysilicon, solar cells and wafers.

The promotion of energy security is also centered in United States steel and aluminum industries, as their uses are essential for energy generation by fossil fuels and by green sources. In 2018, United States President Trump imposed 25 percent tariffs on steel and aluminum imports from many countries, originally including Mexico and Canada, which negotiated exemptions during this same year. The second Trump administration imposed new tariffs on these materials at the beginning of 2025.

According to a recent statement of the White House: "By imposing a 25 percent tariff on steel imports, President Trump is leveling the playing field for American manufacturers and workers and helping America *defeat direct threats* to our jobs" (White House, 2025). In the same sense, in 2018, former President Trump's Commerce Secretary Wilbur Ross adopted two reports on the effects of imports of steel and aluminum on United States economic security. In the steel report, he expressed the view that "Economic Security depends upon a broad-based vibrant and self-sufficient economy" (USDOC, 2018: 5).

The Impossible Attainment of Food and Energy Security and/or Sovereignty under USMCA's Current Legal Framework

"Food Security" and "Food Sovereignty" vs. *Free Trade in Agri-food Products*

The "food security" and/or "food sovereignty" policies of Mexico and Canada are inconsistent with their commitments under USMCA and under international economic law, in general. The USMCA promotes economic interdependence and fosters the complementarity between the United States, Canada and Mexico's domestic food markets, which leaves little room for any kind of food resilience. The progressive liberalization of trade in agri-food products through this regional free trade agreement was supposed to facilitate the supply and distribution of food, bringing access to a much wider and cheaper range of types of food. Free trade in agricultural products was also meant to boost the diversification of the regional supply chains and prevent food shortages because countries could source food from different markets.

Therefore, under the USMCA's liberal paradigm, food was conceived as a simple commodity that must be subject to the so-called "free trade disciplines." These "disciplines" include, among others, the reduction and complete elimination of tariff barriers to international trade in food, the prohibition of some types of food subsidies and restrictions on the use of food safety standards and regulations as non-tariff barriers to trade in food. In this sense, the above mentioned Mexican and Canadian domestic protectionist measures in corn and dairy fell within USMCA's "liberal disciplines" on food safety and tariff rates and were considered a prohibited "deviation" from free trade in agri-food products by two panels established under the agreement.

As shown above, the 2023 Mexican Presidential Decree prohibited the imports of a specific type of corn in Mexico —the GM corn— to protect human health from the adverse effects of glyphosate, a pesticide present in GM corn and corn products. This

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prohibition directly affected international trade in corn and constituted a sanitary and phytosanitary (SPS) measure under the USMCA. In the *U.S.-Mexico GM Corn Dispute*, the United States contended that, being a SPS measure, the 2023 Mexican Presidential Decree on the ban on import of GM violated the USMCA's SPS Chapter (Häberli et al., 2024: 181).

The main part of the Mexican defense before the USMCA panel was aimed to demonstrate that, even if it was assumed that the SPS measures were a non-tariff obstacle to free trade in corn, they were justified in the name of Mexico's and Mexican's "food sovereignty." A closer analysis of Mexico's main arguments shows that they relied on the definition of the right to "food sovereignty" under the UNDROP. The Mexican arguments somehow tried to link, without success, the justifications of the SPS measures under the UNDROP "food sovereignty" vision with the permitted exceptions to free trade in corn under USMCA.

In the first place, Mexico invoked the public morals and exhaustible natural resources exceptions of Articles XX *a* and *g* of the GATT 1994 (as incorporated into USMCA by article 32.1) and tried to demonstrate that the SPS measures were adopted in respect of the right of peasant and indigenous communities (and of all Mexicans) to a corn that is culturally suitable (Häberli et al., 2024: 264). Mexico also linked peasant and indigenous rights to food sovereignty to its moral public duty to "preserve […] the livelihoods of communities that derive their income and livelihood from the cultivation and processing" of native corn (Häberli et al., 2024: 266). The panel rejected all the defenses that Mexico based on exceptions to free trade in corn in the name of the protection of "food sovereignty."

In particular, the arbitrators dismissed the "food sovereignty" exceptions advanced by Mexico on the basis of the test of the *Châpeau* of GATT Article XX and considered that the SPS measures constituted "a means of arbitrary or unjustifiable discrimination" and "a disguised restriction on international trade" (Häberli et al., 2024: 298). In the view of the panel, "the purpose of the 2023 Decree as establishing the actions to be taken by the relevant authorities "in relation to the use, sale, distribution, promotion and import" of both glyphosate and GM corn, in order to achieve various objectives, including *self-sufficiency* and the fact that the Decree "refers to Mexico's "*food self-sufficiency policies*" on multiple occasions" proves that it is a *disguised restriction on international trade in corn*. According to the panel, "*self-sufficiency* by definition means the ability to provide for one's own needs independently, without imports" (Häberli et al., 2024: 298).

By considering that the objective of food self-sufficiency amounts, *per se*, to a disguised restriction on international trade in food, the panel report in the *U.S.-Mexico GM Corn Dispute* categorically confirmed that the Mexican quest for "food sovereignty"

is, *per definition*, contrary to USMCA's "liberal disciplines" and might even appear as nonsense from the market-access perspective of the agreement. The conformity of the Canadian protectionist measures in the dairy sector with USMCA's tariffs (and tariff quotas) regulations was discussed in two panel reports.

In May 2021, the United States filed its first demand regarding the Canadian dairy quota administration procedures. The United States argued that the USMCA prohibited allocating the quota exclusively to processors or any specific producer group. According to the United States, Canada's practice of restricting virtually all quota to Canadian processors violated the country's commitments under the agreement's rules on preferential tariff rates on specific quantity of goods (Schaefer and Wolf, 2025).

In the 2021 report, the USMCA panel found that "the current Canadian system, which sets aside significant TRQs volumes only for processors, does not pass muster under the Treaty" (Rosselli et al., 2021: 63). Canada complied with the rulings of this first panel, and, in May 2022, it published new dairy quota administration policies. However, in 2023, the United States submitted another demand against Canada before a USMCA panel and challenged the revised dairy TRQs allocation measures. The United States argued that the new system uses "a market-share approach for determining TRQ allocations, and imposes new conditions effectively prohibiting retailers, food service operators, and other types of importers from utilizing TRQ allocations" (Rosselli et al., 2021: 91).

In the view of the United States through these measures, Canada undermined the market access it agreed to provide in the USMCA and violated paragraph 3 *c* of Section A of Canada's TRQ Appendix. The 2023 panel ruled in favor of Canada and concluded that the new system of allocation of TRQs was consistent with the object and purpose of USMCA, which is to grant "market access with respect to Canada's dairy sector" (Canada – Dairy TRQ Allocation Measures, 2023).

However, even if the revised TRQs allocation system was considered consistent with USMCA, the proposed Canadian Act C-282 is contrary to the agreement. As shown above, the Act's objective is to prohibit further liberalization of the Canadian dairy market. The conservation of Canadian self-sufficiency in dairy products through the "freezing" of the TRQ's, as suggested by the text of Act C-282, cannot be reconciled with Canada's "major commitments" under USMCA, which, according to the 2023 panel report, are to increase the volumes of TRQs and increment market access for dairy products.

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"Energy Security" and "Energy Sovereignty" vs. *Free Trade in Energy Products*

The adoption of protectionist measures to ensure the energy security/sovereignty of the United States, Mexico or Canada must respect many "liberal disciplines" of the USMCA. In the first place, it is worth mentioning that even if the agreement's Chapter 8 is entitled "Recognition of the United Mexican States' Direct, Inalienable, and Imprescriptible Ownership of Hydrocarbons", it doesn't contain, contrary to previous NAFTA, a "carve-out" clause which would exclude the Mexican hydrocarbons sector from the application of these disciplines. Thus, Mexico, as well as the United States and Canada, must guarantee market access regarding trade of energy products, which must respect the agreement's "normal" liberal disciplines on quantitative obstacles to international trade, such as tariffs, quotas, subsidies, or license requirements.

Under Article 2.11.1 of the USMCA, a party may not adopt or maintain any prohibition or restriction on the importation or exportation of energy products. According to Article 2.4 *Treatment of Customs Duties*: "1. Unless otherwise provided in this Agreement, no Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good. 2. Unless otherwise provided in this Agreement, each Party shall apply a customs duty on an originating good in accordance with its Schedule to Annex 2-B (Tariff Commitments)" (Office of the USTR, 2020). The only exceptions to this provision relate to the imposition of antidumping or safeguard measures. However, USMCA member states must also respect the strict conditions set up in the agreement for the implementation of antidumping or safeguard measures.

By imposing tariffs on steel, aluminum and solar systems, in 2018 and 2025, the United States violated the USMCA. Canada and Mexico have not submitted demands against the United States for its energy protectionism under the USMCA. On 5 March 2025, Canada requested consultations with the United States under the World Trade Organization (WTO) dispute resolution framework, claiming that the announced additional United States ad valorem duties of 10 percent on energy goods originating in Canada are inconsistent with GATT 1994 as well as the WTO's Trade Facilitation Agreement (WTO, 2025). In the same sense, in 2018, China attacked Trump's first administration tariffs on these metals before a WTO panel. In a 2022 report, the Panel found that the United States tariffs on steel and aluminum were a violation of GATT Article II:1, as they exceeded the bound tariff rates of the United States' WTO Schedule of Concessions (WTO, 2023). Similarly, if a panel is to be constituted under the USMCA, it will consider that these protectionist measures in the United States energy market are a manifest violation of USMCA Article 2.4, as they increase tariff duties in violation of the United States Schedule to Annex 2-B of the agreement.

The United States energy protectionism in solar systems was declared contrary to USMCA in 2022. Canada challenged the United States imposition of tariffs on imports of crystalline silicon photovoltaic cells ("CSPV products") in the form of safeguard measure (Office of the USTR, 2022: 1). Canada contented that these measures were inconsistent with the USMCA's regulations on safeguards and, because the United States was lacking a valid justification under these regulations, the tariffs were also a violation of USMCA Article 2.4.2. The panel fully embraced these arguments.

Finally, it is worth mentioning that the promotion of Mexico's "energy sovereignty" in oil, gas, and electricity has triggered two separate requests for consultations by the United States and Canada under the USMCA. Both countries contended that the measures taken by Mexico violate: Article 2.3 of the USMCA because Mexico has failed to accord national treatment to United States and Canadian goods, Article 2.11 of the USMCA because they prohibit or restrict imports or exports of a good, Article 22.5.2 of the USMCA because the relevant administrative body is not exercising its regulatory discretion in an impartial manner, and Article 29.3 of the USMCA because Mexico is not administering its laws in a consistent, impartial, and reasonable manner (Office of the USTR, 2025).

The following table summarizes the inconsistency of United States Mexico, and Canada's food and energy security/sovereignty policies with USMCA's legal framework.

Table 1

Food and Energy Security/ Sovereignty Policies	USMCA Framework Violation	Outcome/Panel Decisions
GM Corn Ban: Mexican Presidential Decree banning GM corn imports	Violates USMCA's SPS Chapter and constitutes arbitrary and unjustifiable restriction on trade	Panel dismissed Mexico's justifications of food sovereignty
Canadian Act C-282: Proposed to prevent further Canadian dairy market liberalization	Contradicts USMCA's commitment to increase TRQs and market access	Prevents compliance with USMCA's liberalization objectives
United States tariffs on steel, aluminum, and solar systems	Violate USMCA Article 2.4	Previous WTO rulings against similar United States tariffs (e.g., CSPV products)
Mexico's policies on oil, gas, and electricity	Violates multiple USMCA articles (e.g., 2.3, 2.11, 22.5.2, 29.3)	United States and Canada requested consultations under USMCA

Source: Developed by the author.

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The Impact of the Promotion of Food and Energy Security and/or Sovereignty on the Renegotiation or the End of USMCA

The promotion of food and energy security and/or sovereignty in the recent domestic protectionist policies of Mexico, Canada and the United States might produce three possible outcomes for the future of USMCA.

In the first case, states can decide not to renegotiate the USMCA's provisions on food and energy. The achievement of food and energy security and/or sovereignty in the midst of the deeply interconnected economic cycles of the United States, Mexican and Canadian economies in other sectors might not be translated in new international legal commitments, even if it continues to be an avowed political goal of the Mexican, Canadian and United States Governments. In this scenario, the pursuit of food and energy security/sovereignty will continue to operate in violation of USMCA's liberal disciplines.

A second and better venue would be to renegotiate USMCA's liberal disciplines on food and energy to allow Mexico, Canada and the United States to safeguard their energy and food security and/or sovereignty. In this logic, the USMCA is not viewed as an obstacle for the promotion of protectionist policies in food and energy, as states can amend the agreement in a way that permits rebalancing the divergent interests of food and energy interdependence and economic security in food and energy.

In the area of food security and sovereignty, the USMCA can include novel provisions related to the protection of the human right to food. Respect for the human right to food is a prerequisite for the guarantee of both "food security" and "food sovereignty", as food adequacy means that food should be available and safe for human consumption, as well as free from adverse substances, such as contaminants from industrial or agricultural processes. Adequate food should also be culturally acceptable (OHCHR, 2025). In consequence, "food security and "food sovereignty" could only be reached if the liberal and market-access-oriented provisions of USMCA are consistent with the human right to food.

Since the 1990s, various UN bodies have called for subjecting free trade agreements to scrutiny regarding the protection of human rights. At the EU regional level, a prior examination of the effects of free trade agreements on human rights is already carried out: the so-called Sustainability Impact Assessment (SIA). Similarly, the bilateral free trade agreement between Canada and Colombia establishes a permanent monitoring mechanism of the impact of the treaty on respect for human rights on the territory of the two member countries.

There are concrete examples of carrying out this type of study before the entry into force of a free trade agreement. Thus, for example, before the entry into force of

the African Continental Free Trade Area in 2015, an analysis of its potential negative impact on the human right to food was conducted and the final report proposed the establishment of a list of critical foods, excluded from the liberalization of trade in goods, and the insertion of a clause regarding the guarantee of food security (Zerk, 2019: 10). The USMCA has never been subject to an assessment regarding its impact on the human right to food. However, during the renegotiation of the agreement in 2026, states can develop an assessment of this kind. If the study identifies serious risks for the protection of the human right to food, they can consider, for example, the exclusion of some strategic agri-food products (such as corn and dairy) from the liberalization of trade in goods.

Correlatively, to achieve better protection of the human right to food and/or to ensure sustainable food production and conservation, the USMCA could also include provisions on trade in specific food products, such as corn or dairy. Recent FTAs already incorporate this type of provision. For example, Article 12.8 of the EU-Singapore FTA is related to "trade in fish".

The USMCA's member states might also include in the renegotiated text of the treaty a normative recognition and definition of "food security" and/or "food sovereignty" and "energy security" and/or "energy sovereignty". As noted above, they are emerging concepts, only incorporated in domestic law and in soft law international instruments, such as UNDROP. The USMCA could become a pioneer food and energy security and/or sovereignty-enhancing agreement that promotes free *and* fair trade in energy and agriculture. It could establish that the promotion of free trade should not impede protectionism towards domestic energy and food producers whenever it is necessary to achieve economic security and/or sustainable development objectives. The USMCA's liberal disciplines could be reoriented to serve Mexican and Canadian people's rights to corn and dairy that are available, accessible, safe, healthy, ecologically sustainable, and culturally suitable. Additionally, the USMCA's market access rules could be amended to guarantee that Mexican and United States citizens will have access to clean energies produced at the domestic level, without dumping and undue interference from strategic rivals or socially irresponsible foreign companies.

Finally, USMCA's member states might renegotiate the list of the permitted exceptions to free trade under USMCA's Article 31.4 (and GATT Article XX) to provide a broader range of legitimate purposes that directly include food and energy security and sovereignty concerns. Regarding energy security and sovereignty, it is worth mentioning that NAFTA contained a special Chapter 6 on Energy and Basic Petrochemicals, which included an additional national security exception clause regarding energy products in its Article 607. It permitted member states to restrict imports or exports of energy products in cases of war or to "respond to direct threats of disruption in

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the supply of nuclear materials for defense purposes" (NAFTA, 1992). A new type of energy security exception, which bears from NAFTA Article 607, might be included in a separate energy chapter of the USMCA.

This new energy security exception could also take into consideration the experience of the EU, which has recently incorporated some of the objectives of its 2025 "Energy Security Strategy" in Chapter 16 of its FTA with Singapore. Its Article 16.11 is entitled "Security Exceptions" and states that: "Nothing in this Agreement shall be construed to: […] *b*) prevent either Party from taking any action which it considers necessary for the protection of its essential security interests: […] *iv*) taken in time of war or other emergency in international relations, or to protect critical public infrastructure (this relates to communications, power or water infrastructure providing essential goods or services to the general public) from deliberate attempts to disable or disrupt it" (WTO, 1947).

"Critical public power infrastructure" includes energy infrastructure and the "attempts" to "disable" or "disrupt" it contemplates threats to energy availability and affordability. This new energy security exception is further explained in the agreement's article 7.6-2 and follows the logic of GATT Article XX, which allows states, under respect of the conditions of its *Châpeau*, to adopt trade restrictive measures for a new legitimate purpose: "energy security". It is possible to extend this exception to "food security" and establish that subject to the *Châpeau* conditions. This can be done with a simple declaration, for example: "Nothing in this Chapter shall be construed as preventing a Party from the adoption or enforcement of measures necessary to ensure the security of food supplies." If Mexico, Canada and the United States agree to incorporate provisions of this type in the renegotiated version of USMCA, domestic protectionist measures aimed at achieving economic security in food and energy might be justified under new legitimate public objectives: food and energy security.

Finally, the third outcome of the promotion of food and energy security/sovereignty in the North American Free Trade Area is the end of the USMCA. This is not a utopian scenario, as the "Three Amigos" are no longer considering themselves as strategic and trustworthy allies. They are acting more as strategic rivals, and their trilateral relationship is entering into a state of regional trade war which is aggravated by their exposure to the global conflict conjuncture. The promotion of protectionist measures in the name of food and energy security/sovereignty is only one aspect of the tensions present in many other areas, ranging from migration, drug trafficking, democratic values, criminal justice and non-intervention in domestic affairs. These tensions are breaking the North American consensus and are eroding all certainty about the future of the USMCA.

Conclusion: Towards an "Embedded Liberalism" in Food and Energy within the North American Free Trade Area?

From an economic security perspective, the promotion of food and energy security and/or sovereignty within the North American Free Trade Area provides governments with a contingency against food or energy supply disruptions, a decline in availability of food and energy, or volatile prices of these critical goods in the North American Free Trade Area. Because food and energy are essential for the survival of the USMCA's member states and for the wellbeing of their citizens, excessive reliance on other states for these strategic assets is perceived as a risk which can put the three countries in a vulnerable position. As a domestic protectionist policy, the promotion of food and energy security and/or sovereignty has the potential to strengthen the United States, Mexican, and Canadian economies, by safeguarding the "externalities" of domestic companies in these sectors, promoting technological innovations in the production of energetic or food goods, protecting local industries and jobs in these sectors, restricting technology transfer, responding to perceived unfair trade practices from "strategic competitors" or "untrustful allies", and reaching an increased domestic value added to food and energy exports (Gur, 2024).

From both perspectives, the promotion of food and energy security/sovereignty within the North American Free Trade Area relies on a strong regulatory intervention of Mexico, the United States and Canada in the strategic sectors of their domestic economies, which marks a shift towards the "embedment" of the North American Free Trade Area. "Embedded liberalism" was first defended at the UN Bretton Woods Conferences to support states' right to regulate their domestic economies through trade, monetary, fiscal, and financial policies that stimulate economic growth and resolve market failures. This concept seeks to reconcile free market with state regulatory interventionism, and aims to guarantee social protection and wellbeing in the midst of external economic openness (De Martino and Lepore, 2017: 102). It brings a political economy compromise whereby the promotion of free trade at the international level is accompanied with some leeway given to states to adopt domestic protectionist measures with legitimate social purposes (Gilman, 2015: 1), such as the access to affordable and sustainable food and energy. "Embedded" liberalism might be the best venue to reconcile the conflicting objectives of economic interdependence and economic security in food and energy in the North American Free Trade Area.

The USMCA's current legal framework leaves little room for the regulatory intervention of the three member states in the strategic sectors of their domestic economies. In fact, the aim of the free trade agreement is exactly the opposite: the achievement of "deregulation" in all the sectors of their domestic economies. However, the adoption

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of food and energy security/sovereignty related measures in the North American Free Trade Area is a clear sign that the economic openness promoted by the USMCA must be reconciled with states' inalienable right to regulate the strategic sectors of their economies. Food and energy security and/or sovereignty are not necessarily isolationist or trade-off policies. If correctly "embedded", they will not eschew all trade and will not disintegrate the North American free trade zone. The Mexican, Canadian, and United States experiences in the protection of domestic food and energy products demonstrate that such policies are not necessarily a (geo)political nonsense in the current stage of strategic competition in the midst of economic interdependence. The economic costs and benefits are no longer the only criterion for the adoption of domestic protectionist policies in the strategic sectors of the North American Free Trade Area. Political stability and national development have a new role to play in its uncertain future.

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