LATIN AMERICA INSIGHTS REPORT

2023

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Contents

Foreword

Welcome to the inaugural edition of FTI Consulting Strategic Communications segment's *Latin America Insights Report*, produced by professionals across our Latin America practice. Our intent with this report is to cover the critical issues and opportunities driving business decisions in the region.

Latin America does not lack potential nor resources. What it has often lacked is alignment and nimbleness to take advantage of opportunities that have the potential to materially change regional investment flows, respond to international demands, curb global geopolitical risks while also meaningfully boosting social spending at home amid growing inflation, and contribute positively to the global economy.

The current political landscape in the United States and the recently passed Inflation Reduction Act is one of those moments in history with potential to unlock new investment and growth opportunities for Latin America if national governments, as well as the private sector, identify the right paths to seize the moment and act proactively.

Through four chapters, the report offers perspectives and analysis of this transformative moment, from our teams based in the U.S., Mexico, Brazil and Colombia.

Chapter 1, "Seizing the Moment: Why U.S. Firms and MNEs Should Invest in Resource-rich Latin America," explores how the IRA could be a recourse for Latin America to benefit from the growing demand for critical minerals. My colleagues Carl Meacham, Erica Chicola, and Isabel Tapies explore how embarking on this path will pose its own set of challenges for governments and multinational enterprises alike. While governments will be required to establish clarity around mining policies and counter the perception that the region is risky for investors, MNEs will need to navigate a multi-stakeholder ecosystem filled with competing priorities, from the governments to local communities to environmental and indigenous groups, among others.

Chapter 2, "North America was Supposed to be Back on Track. Is It?," connects the theme of opportunity (or missed opportunity, depending on your perspective) to the political individualism that has driven the North American agenda for the past few years, much to the detriment of North American competitiveness. Particularly, as it is becoming evident that the global economy is increasingly shaped by economic regionalization. My colleagues Pablo Zárate, Damián Martínez Tagüeña and Juan Bosco R. Ballvé argue that the future can still be bright for North America, but success hinges on building consensus and aligning regional priorities with international trends and necessities – tried and true practice for the North American region, and hopefully will be put into action again.

Chapter 3, "One Green Goal Ahead: Will Brazil's Public and Private Sectors Converge to Make the Country an Environmental Powerhouse?," focuses on Brazil's shifting environmental policy and its renewed potential as a global green powerhouse. Adriana Prado, Gabriel Quiliconi and Natalia Mejía explain how Lula's government will need to set aside political ideology – and state interventionism – and collaborate with the private sector. In turn, businesses must claim their seat at the table, in advancing new regulatory frameworks that bring operational and legal stability to Brazil's green power sector.

Lastly, Chapter 4, "Understanding the Administration of Gustavo Petro," offers a view from Colombia, and makes sense of what is potentially the largest shift forthcoming in the region. Our experts Jorge Del Castillo and Ana María Muñoz lay out the axes of President Petro's expansive and ambitious National Development Plan, as it begins to crystallize in key sectors, such as infrastructure energy and mining. In order to preserve its License to Operate and protect core interests, the private sector must avoid political popularity contests and instead focus on gaining a firm understanding of the government's goals and seek out synergies and solutions at a technical level.

We hope you will find these insights and recommendations valuable and helpful. Please subscribe here to be part of our FTI Strategic Communications Latin America community and receive periodic insights and relevant updates directly. And more importantly, if there are any topics or issues that you would like us to cover in future editions, please let us know via the subscription form.

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Seizing The Moment: Why U.S. Firms And MNEs Should Invest In Resource-Rich Latin America

A View from the U.S.

The problem: Reliable sources of critical minerals are hard to find

Critical minerals were already in high demand at the start of the decade, and are growing more important as electric vehicles ("EVs") and other green technologies that rely on batteries gain market share. Now, clean energy incentives laid out in Section 13401 of the U.S. Inflation Reduction Act of 2022 ("IRA") are bound to catapult them into the heart of the modern global economy.[1]

Yet with only one operating lithium mine and permitting requirements that can take up to a decade to fulfill, the U.S. currently lacks the capacity to source sufficient critical minerals domestically.[2,3]

The solution: Investing in Latin America

Latin America is uniquely positioned to meet the current demand for critical minerals, for several reasons.

To begin with, the region is rich in resources. It is home to the world's largest lithium reserves located in the "Lithium Triangle" countries of Argentina, Bolivia and Chile, while countries including Brazil, Mexico and Peru hold smaller but still significant shares.[4, 5]

The region is also well positioned for investment. In South America alone, foreign direct investment (FDI) grew by 74% in 2021, and all major recipients saw inflows boom in mining and energy.[6] These benefits are only expected to grow, with demand for critical minerals slated to unlock US$50 billion per year by 2050.[7]

Fortunately, the U.S. enjoys healthy relations with Latin America's mining powerhouses and has free trade agreements (FTAs) with Chile, Colombia, Mexico and Peru.[8] These countries stand to gain from the incentives and benefits laid out in the United States' recent clean energy legislation and, for the region's new left-leaning governments, investment inflows could also help expand social spending and advance policy goals amid soaring inflation.

Why is this proposition mutually beneficial? Latin American countries battered by the economic impacts of COVID-19, many of which recently elected left-leaning governments, are in dire need of investment to boost social spending and fulfill campaign promises. Simultaneously, U.S.-based MNEs can benefit from the fact that the recent midterm elections and IRA have created a political environment that encourages expanded mining opportunities in Latin American countries with U.S. FTAs.

Evidently, China's commercial interest in Latin America is active and growing. It is a leading trading partner for Latin America and the top trading partner for South America in particular. China's presence is also deeply felt in the mining sector. It has invested US$4.5 billion in the Lithium Triangle and Mexico and has become the largest mining investor in Peru. [9, 10] If multinational enterprises ("MNEs") do not move fast, China could crowd out additional investment in the region's critical minerals in the near future.

The U.S. political landscape can facilitate mining investment in Latin America

Pursuing these opportunities is timely for U.S.-based MNEs, as the 2022 midterm elections have created a political environment that could spur mining investments.

The IRA extends EV tax credits to countries with U.S. FTAs, and mining has come to enjoy bipartisan support.[11] Republicans point to national security and Chinese mining dominance to justify an expanded U.S. role in foreign mine acquisitions.[12] Although environmentalists and Indigenous groups often oppose mining, Democrats also recognize critical minerals as key to achieving clean energy and energy security goals.[13]

The IRA is designed to incentivize critical minerals sourcing from Latin America. The law creates opportunities for U.S.-based MNEs and regional governments to position their countries as prime destinations for investment.

There is a desire to build a homegrown critical minerals supply chain, but this will take time. Domestic sourcing is limited and though the Republican-controlled House of Representatives has vowed to expedite permitting times, the drawn-out vote for House Speaker has revealed stark divisions within the party which may undercut its agenda.[14] Moreover, the Democratic-controlled Senate may block these efforts due to environmental concerns. As such, sourcing in Latin America could allow U.S. firms to access critical minerals while efforts to build domestic supply take root.[15]

The strategy: Addressing challenges and taking action

Pursuing these opportunities will present challenges.

MNEs must cultivate a nuanced understanding of the region's regulatory and political landscape, which varies across and within countries. For instance, though Argentina has a national framework for mining, authorities govern resources at the provincial level.[16] In Chile, where an investment-grade economy and stable regulatory framework encouraged FDI for years, the Boric Administration is introducing new onerous regulations.[17]

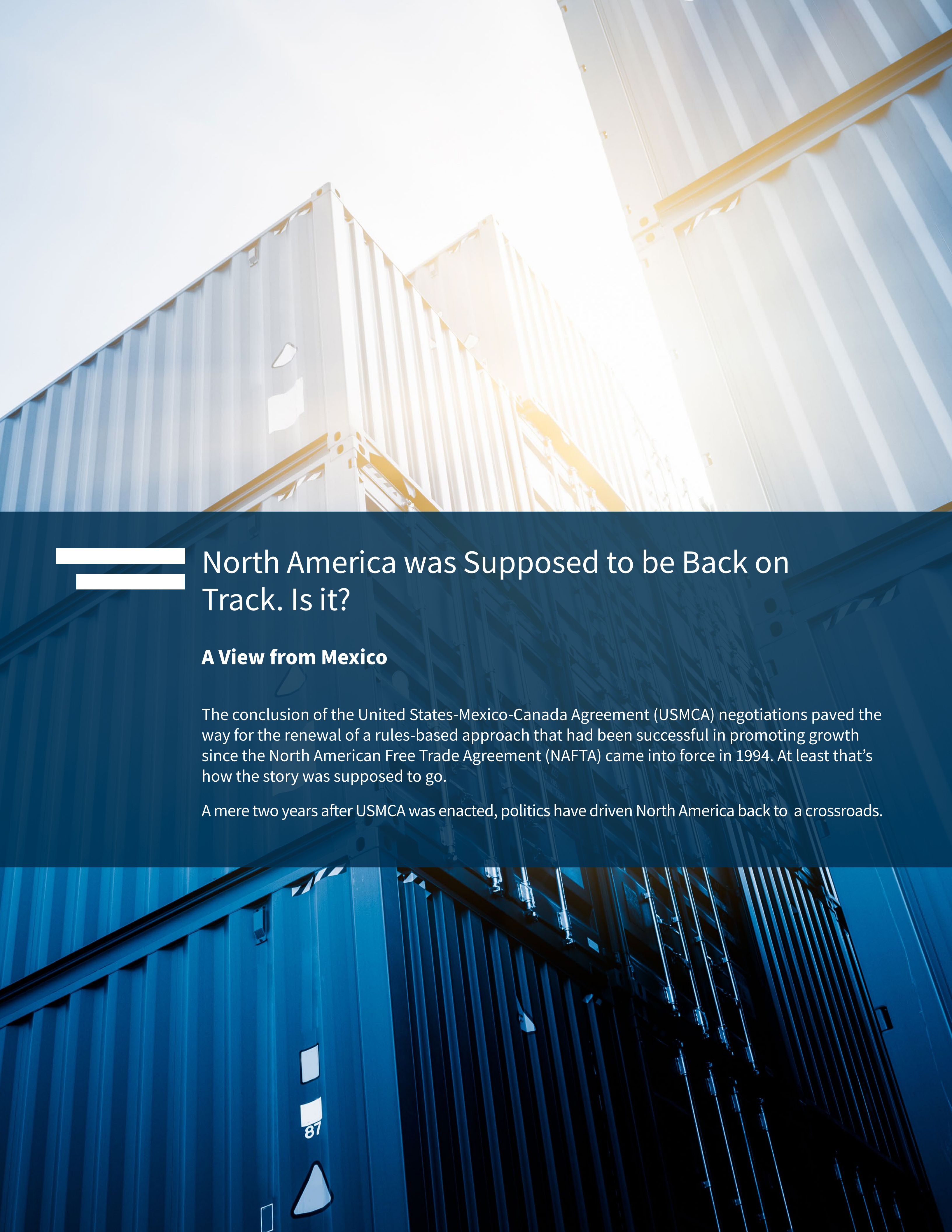
MNEs must also gain and maintain License to Operate ("LTO"). This entails navigating resource governance challenges — which center around environmental opposition and an unequal distribution of benefits — as well as rampant mistrust in government and the private sector.[18, 19] We are already starting to see such trends. For instance, Mexican President Andrés Manuel López Obrador's move to hasten the nationalization of the Mexican lithium industry not only threatens MNEs freedom to operate in Mexico, but could have wider implications should Lithium Triangle countries choose to adopt similar political agendas.[20] These factors combined have made LTO the top risk for miners and their stakeholders, one that must be continuously studied, monitored, mitigated and understood.

For their part, Latin American countries must operate strategically if they hope to benefit from heightened demand for their critical minerals. This will require countries to establish clarity around mining policies and mitigate the perception that the region's mining regulatory regime is in flux. This is especially critical for countries like Chile, a mining powerhouse where the rewriting of the constitution could deter investment. [21]

In addition, a volatile economic trajectory and the recent election of leftist leaders in Brazil, Chile and Colombia who have been critical of the private sector, will necessitate countering the perception that the region is risky for investors. Efforts will need to be made to inform stakeholders on how to capitalize on the benefits offered by the IRA, which includes incentives for mining investments and strict requirements on material sourcing (e.g., the stipulation that 80% of battery metals must come from the U.S. or a country with an FTA by 2027).[22] This will greatly benefit countries like Chile, Colombia, Mexico and Peru, which enjoy FTAs with the U.S., and should encourage their governments to pursue expanded trade relations.

In this setting, MNEs and Latin American countries must act. For MNEs, this will involve taking concrete steps to understand Latin America's political shifts and, in the U.S., engaging political leaders as allies, for instance, by supporting the ratification of the U.S.-Chile tax treaty that would facilitate investments. This will also require engaging stakeholders that determine a company's LTO and embracing the Environmental, Social and Governance ("ESG") principles and other best practices that help firms operate in fluid environments. National governments will need to amplify measures to attract investment, clarify mining regulations and engage U.S. stakeholders in pursuit of the maximum benefit for their countries.

The road to further U.S.-Latin American commercial opportunity needs more paving, but contains great potential. Strategic actions, taken now, to promote investment in Latin America's resources and to capitalize on the United States' political landscape can unleash prosperity for MNEs and the region alike.



North America was Supposed to be Back on Track. Is it?

A View from Mexico

The conclusion of the United States-Mexico-Canada Agreement (USMCA) negotiations paved the way for the renewal of a rules-based approach that had been successful in promoting growth since the North American Free Trade Agreement (NAFTA) came into force in 1994. At least that's how the story was supposed to go.

A mere two years after USMCA was enacted, politics have driven North America back to a crossroads.

An era of economic regionalism

With some observers going as far as declaring globalism and globalization dead, the need for a sound regional business approach has come into focus.[23] Competition between the U.S. and China, Russia's aggression against Ukraine and logistics risks exposed by the COVID-19 pandemic have revealed the fragility of global value chains, leading companies to nearshore production, often accompanied by their major suppliers.

For a region that encompasses economies that rank first, eighth and fifteenth in terms of GDP[24], and all among[25] the 30-largest consumer markets in the world, this is a historic opportunity. Nearshoring is driving investments into the U.S.[26] and Mexico[27], with Canada[28] performing similarly well. This is expected to continue as innovation and climate action are pursued through industrial policy[29] of a scale with no recent precedent.

But, as usual, politics are muddling the picture.

The North American Leaders' Summit that took place in Mexico City in January allowed for displays of unity that matter in a turbulent global environment, more so given the U.S.' shifting trade and investment relationship with China. Regional goodwill, however, will be tested as thorny trade issues were neither resolved nor forgotten. Prime Minister Justin Trudeau publicly aired Canada's concerns over Mexican policies on energy[30], mining[31] and biotech corn[32], leading President López Obrador to propose the well-worn path[33] of meeting individual companies rather than discussing systemic solutions. Rather than make them a public point of contention at the summit, the U.S. chose to address trade issues through technical channels. Yet, on various occasions, National Security Advisor Jake Sullivan confirmed[34] that energy consultations could soon escalate into panels, Secretary of Agriculture Tom Vilsack promised swift and uncompromising[35] action against Mexico's proposed ban on biotech corn and the Office of the U.S. Trade Representative stated[36] that it will review a "disappointing USMCA panel interpretation" on auto parts.

A time of political individualism

Seeking exclusive benefits for some of their constituents, all three countries have taken substantive actions that either impair regional trade or undermine investor rights. The first country to lose a panel under the USMCA was Canada[37], over dairy products, followed by the U.S.[38], over automotive rules of origin. In both cases, it could be argued that the policies of the losing countries hurt North American competitiveness in specific sectors.

Though Mexico has not yet been declared to have violated the USMCA by any panel, its actions are having a broader, deeper impact on regional trade and investment. There are several sector-specific disagreements brewing, including around agriculture[39], fuels[40] and the use of natural gas pipelines.[41] Perhaps more importantly, a systemic dispute has emerged over President Andrés Manuel López Obrador's policies on electricity[42], with implications far beyond power generation.

By explicitly favoring the state-owned Federal Electricity Commission's ("CFE") fossil fuel plants over private renewable energy, the government has made it much more difficult for all companies in Mexico, and those with supply chains stretching into the country, to cut carbon emissions and meet net-zero targets. Mexico's shortcomings in supplying reliable, clean energy increasingly undermine North American competitiveness.

The future is green, but Mexico is holding the region back.

The 2024 elections come to the fore

The centrality of state-owned energy companies to the Mexican President's politics suggests that these dynamics are unlikely to change during the remainder of his term. Moreover, the electoral roadmap on both sides of the border will likely reinforce politically-expedient government positions as opposed to technically sound alternatives. Every 12 years, the presidential election cycles of Mexico and the U.S. overlap, as will be the case in 2024. Both countries are already barreling toward highly competitive contests, if not outright contentious ones.

In Mexico, the government is working to weaken[43] independent electoral bodies. Key local elections will be held in June 2023, and President López Obrador hopes to have an agreement within his party shortly thereafter on who will seek to succeed him.[44] In the U.S., potential candidates are already being encouraged[45] to test the waters and are preparing to fundraise[46] with an eye on the months-long primary process that is only a year away.

Should one or more of the current disputes under the USMCA lead to the establishment of a panel — as is increasingly expected — campaigns will be underway in all but name by the time an arbitral decision is delivered. Elections on both sides of the border are bound to be perceived as choices between continuity and change, making sitting governments more likely to double down on challenged policies than to quickly retreat from them, even if their positions are unlikely to prevail in international arbitration.

If this comes to pass, the private sector will have to keep working hard to identify and expand business opportunities. Companies have succeeded in doing so — projects continue to be announced. For all the talk of doomsday scenarios, President López Obrador continues to speak[47] of strengthening ties with the U.S., even while missing opportunities to do so. As for participants in troubled sectors, such as energy, they will require robust value defense strategies that are likely to include further legal action.

June's gubernatorial elections in Coahuila and the State of Mexico — the latter being home to 12.5 million voters, the country's largest registry — will be a political test of strength on the road to 2024. President López Obrador's MORENA party leads in national opinion polls. A revived opposition coalition, Va Por México, comprised of longtime rival parties PRI, PAN and PRD, has closed ranks and pledged to run together at the state and federal level. As MORENA's geographical footprint expands, it has also proven to be an uneasy alliance of forces. In Coahuila, a leading internal candidate renounced his federal government post and party card and has been nominated by a third party. Meanwhile, President López Obrador has pushed a controversial electoral reform through Congress that curtails the autonomous National Electoral Institute ("INE"). Most legal experts believe many of its components to be unconstitutional and Mexico's Supreme Court is expected to decide the issue.[48]

The future can still be bright for North America

A new Mexican administration will be sworn in on October 1, 2024, followed by a new or incumbent president in the U.S. on January 20, 2025. The countdown to the first review of the USMCA in 2026, where members will decide on the continuity of the agreement, will be well underway.[49]

The two administrations will be under pressure to produce positive economic results. They will be inclined to plan for the medium-term while also considering how to best capitalize on global trends in pursuit of national goals. Even the current government of Mexico, while refusing to change course, implicitly recognized this to be the case when announcing new climate goals.[50]

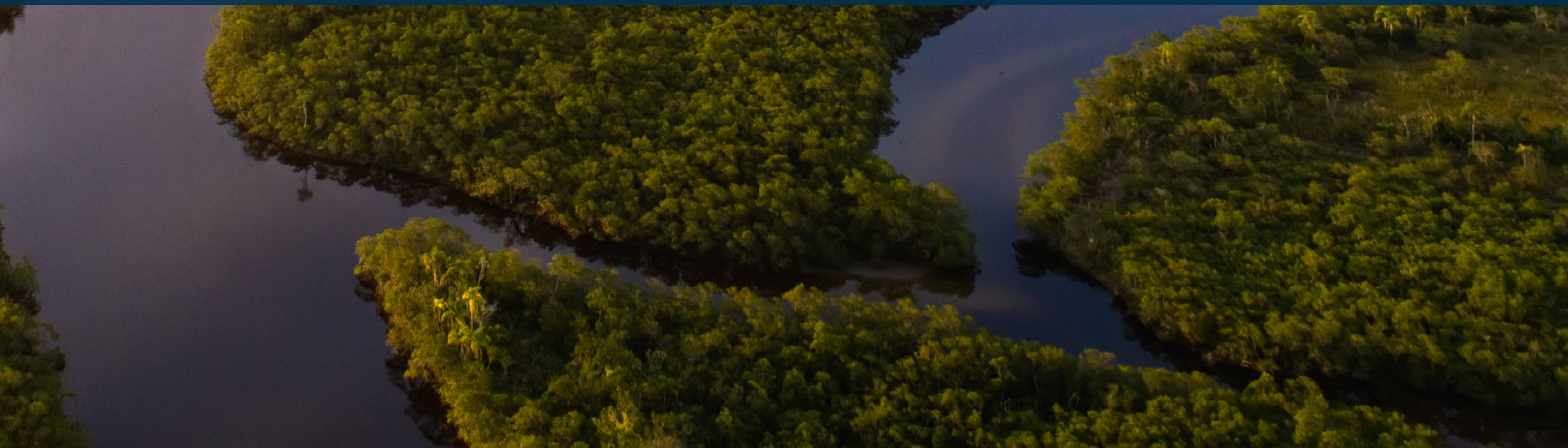
Aligning regional action with international trends would be a big step forward for North America. History tells us this is possible. At other critical moments for the region, most notably the ratification processes of NAFTA[51] and the USMCA[52], broad, cross-border, business-led coalitions put ideas on the table and advocated for their adoption. To fulfill the promise of the region, they must do so again.

One Green Goal Ahead - Will Brazil's Public and Private Sectors Converge to Make the Country an Environmental Powerhouse?

A View from Brazil

Over the last three decades, Brazil has developed a robust legal framework for biodiversity conservation and sustainability issues,[53] trying to leverage its vast biodiversity[54] and become a global environmental leader. However, the path towards this goal has been unsteady, as political instability and a lack of institutional coordination have left the country unable to effectively monitor and enforce existing norms in recent years.[55]

The appointment of career politicians to key posts in state-owned enterprises points towards a more interventionist stance,[56] provoking some uncertainty and speculation about what this might mean for the private sector, particularly how welcoming the institutions will be of private-sector contributions to the development of environmental public policies.



Environmental hype meets private sector skepticism

President Luiz Inácio Lula da Silva's victory on October 30, 2022 sparked euphoria from environmentalists worldwide, with the "superstar" treatment he received at Egypt's COP27 attesting to this.[57] His appointment of the prominent environmentalist Marina Silva as Minister of the Environment was welcomed[58] by those most worried by the policies implemented or overlooked by the previous administration.

It comes as no surprise that this new government will prioritize environmental policies. Thus, environmental agencies nationwide, which have been constantly subjected to contradicting policy changes and fluctuations in budget and personnel allotments,[59] are expected to receive increased support.

The idea that this new government will prioritize environmental policies is no surprise. What raises concerns is the appointment of left-aligned career politicians to key posts at state-owned enterprises, as they may be biased towards state interventionism.

Nonetheless, this hype has been met with skepticism from the national private sector given the sheer size of the challenges ahead.[60] On that same note, there are concerns about the appointment of left-aligned career politicians to key posts at government bodies and state-owned enterprises ("SOEs") raises concerns that they might lead with ideology – and state interventionism – in mind. Ultimately, such political appointments invite uncertainty and speculation and therefore destabilize the market.

A recent change in the Brazilian State-Owned Enterprises Law modified a bureaucratic rule that prevented individuals who had recently participated in electoral campaigns from accepting top posts at SOEs[61] — a mechanism set in 2016 to avoid political patronage and corruption. The modification allowed newly sworn-in Lula to appoint fellow Partido dos Trabalhadores (Workers' Party) members to lead two state-owned companies considered vital drivers of economic growth.

Aloízio Mercadante was named to lead the Brazilian Development Bank ("BNDES").[62] During the previous administration, this public institution stood out for its active participation in structuring the country's carbon market[63] and for leading environmentally sound projects, including new lines for forest preservation and reforestation, clean energy, and low-carbon agriculture.[64]

On the day Mercadante's appointment was announced,[65] Brazil's main stock exchange fell 1.71%, suggesting several market concerns. Firstly, he was a minister under Dilma Rousseff, who was impeached under accusations of criminal administrative misconduct in the handling of the federal budget.[66] Secondly, some fear that Mercadante will help reinstate an interventionist economic model that gave out subsidized loans to large conglomerates to the detriment of public coffers.[67] Finally, it is expected that the BNDES will continue playing a prominent role in issues like energy transition and decarbonization,[68] leading to the assumption that obtaining loans might entail meeting tougher sustainability requirements.

There is a similar distrust of Senator Jean Paul Prates, who was named head of the state-controlled oil giant Petrobras. During his time in Congress, Prates drafted and sponsored bills that proposed a regulatory framework for offshore wind and associated green hydrogen projects, as well as updated proposals for carbon capture and storage.[69] He is expected to assume Petrobras' leadership with a mandate to turn the company into a renewable energy powerhouse, a tremendous challenge for a company that has narrowly focused on oil and gas production in recent years.[70]

Embracing sustainability is a strategic imperative for the private sector

This political context creates a window of opportunity for businesses to act on environmental demands and advance their Environmental, Social and Governance ("ESG") agendas, making their positive impacts visible to improve their reputation and gain goodwill among government entities.

An effective government-backed energy transition will foster innovation and open paths for new investments, helping create new business opportunities for entrepreneurs willing to take advantage of Brazil's abundance of clean energy resources.

Meanwhile, a strong and actionable ESG agenda aligned with international best practices will be necessary to gain access to international investments and loans.

The path forward for different business challenges

At this point, there is no use in laying low and being reactive. The private sector must take initiative and participate in the development of new regulatory frameworks. Businesses must collaborate with all levels of government to revise or implement existing requirements through a multi-stakeholder approach that ensures achievable timelines and goals, flexibility to create necessary exceptions and realistic transition periods.[71]

There is no use in laying low and being reactive. Brazil's businesses must claim a seat at the table where environmental policies are being decided to ensure operational certainty in times of speculation, legal guarantees in times of change, and stability in times of political turmoil.

Businesses with a progressive mindset will be best positioned to pursue a leadership role in the environmental debate. They can set ambitious sustainability goals using science-based targets and proactively incorporate those goals into core business practices while ensuring internal accountability.[72] Furthermore, companies can integrate their positions on climate into their communications and advocacy strategies to mitigate potential policy risks and accelerate change through coalition-building efforts.

In particular, high-impact sectors like mining, oil and gas will need to engage in collective action to attain favorable reputation at the industry level, through such means as self-regulating mechanisms. To be successful, they must approach external stakeholders and policymakers to counter potential opposition and achieve policy outcomes that guarantee their License to Operate ("LTO").

Moreover, multi-dimensional stakeholder engagement combined with a comprehensive advocacy campaign, including stakeholder education, coalition-building and effective media engagement, will help businesses mitigate operational, financial, reputational and regulatory risks.

In this context, eco-minded investors and entrepreneurs seeking to enter new markets or develop new business models and technologies for energy transition can also leverage the aforementioned tactics to advance their interests.

Brazilian businesses must claim a seat at the table where environmental policies are decided to ensure operational certainty in times of speculation, legal guarantees in times of change and stability in times of political turmoil. Now is the time for industries to step up and help lead Brazil into becoming a global green powerhouse.

Understanding the Administration of Gustavo Petro

A View from Colombia

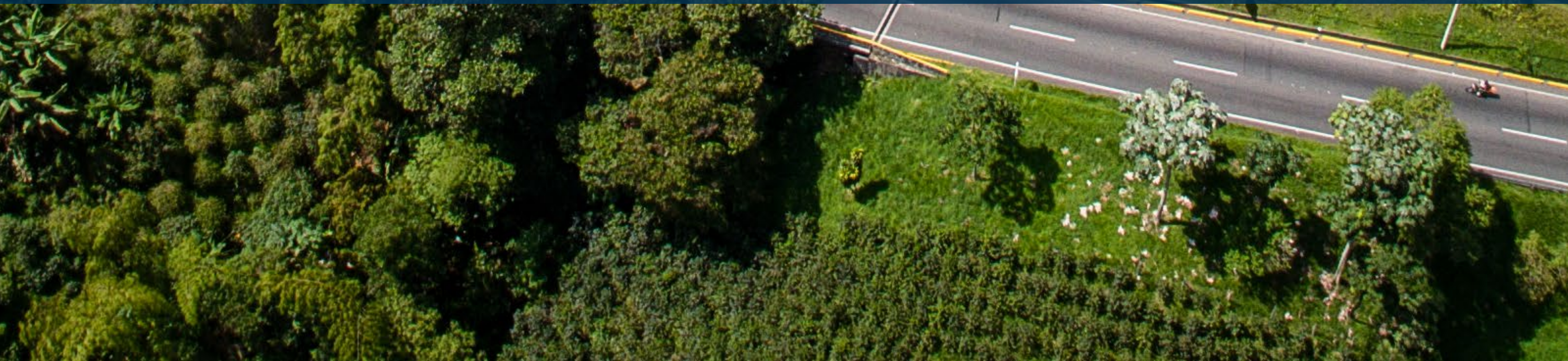
The meaning of License to Operate in Colombia is being redefined

President Gustavo Petro's push to transform Colombia's economic and social model to promote social, environmental and economic justice is just beginning to crystallize.

On February 6, the government presented its official roadmap, the Plan Nacional de Desarrollo 2022-2026 ("National Development Plan"), entitled "Colombia World Power of Life," to Congress.[73]

The document will push five main transformation axes during President Petro's four-year term: (I) Territorial Organization Around Water, (II) Human Security and Social Justice, (III) The Human Right to Food, (IV) Productive Transformation, Internationalization and Climate Action and (V) Regional Convergence.

This requires special attention from the private sector, particularly the oil and gas, infrastructure and mining industries, as the plan introduces legal changes that will affect their License to Operate ("LTO") directly, as well as indirectly, through the social dynamics it sets in motion.



The National Development Plan and its implications for key sectors

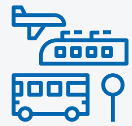
Centrality of water and community participation is elevated via infrastructure development

Water plays a central role in the plan. It is viewed as a fundamental right that should be made accessible, thus making water rights a point of contention between public and private stakeholders in infrastructure projects.

Local communities come to the fore through the plan. Community Action Juntas ("JACs") will gain decision-making clout on municipal rulings and budget distribution, which may signify a shift in local engagement and advocacy strategies for the private sector. Decentralization will likely have an impact on national and regional entity interaction, as well as social and environmental licensing processes. In this scenario, the private sector ought to pursue proactive outreach efforts to community stakeholders to ensure open and effective communication.

The plan's treatment of infrastructure financing is also notable. The government may push a narrative in which it questions the viability of the concession model and, in consequence, of financial mechanisms such as toll payments. In terms of financial instruments, the document contemplates a variety of mechanisms, including public funds, national budget allocation, royalties and public works tax deduction schemes.

Both public and private infrastructure projects will be scrutinized insofar as they contribute to the government's "accelerated energy transition". Firms will need to devote additional resources to the implementation of new processes and baselines, access to commodities and compensation plans for deforestation. At the same time, the transition enables a wider scope for public and private partnerships.



In light of the National Development Plan, the Ministry of Transportation is reactivating the railway and fluvial systems, increasing airport capacity and promoting the development of specialized intermodal logistics platforms. In addition, the ministry's roadmap considers the development of integrated public mobility systems using clean energy, the reduction of bureaucracy and increased transparency in the structuring of projects and government contracts. The ministry demands project participants strengthen dialogue with vulnerable and diverse local communities to encourage their project participation.[74]

Uncertainty surrounds oil, gas and renewables in the energy transition

Energy transition is the foundation of the National Development Plan's fourth axis, "Productive transformation."

Under the plan, gas is considered a key substitute for coal, firewood and household fuels.[75] Green and white hydrogen (hydrogen produced with no greenhouse gas emissions and naturally-occurring geological hydrogen, respectively) are considered valid sources for the energy transition. The omission of oil from the plan, however, is a position in itself. Regarding current and future oil exploration contracts, the government's signaling has been mixed.

The government will continue to evaluate current oil and gas contracts in order to determine what is necessary to guarantee energy security. Fuel price determination will be adjusted to promote energy transition and the creation of "Energy Communities": Indigenous, Afro-Colombian, Raizal and Palenquero communities that self-generate their energy from non-traditional renewable sources will receive support from public funds. [76]

Decarbonization of the economy is an overarching goal. The plan creates a National Registry of Greenhouse Gases ("RENARE"), under the Ministry of Environment, to administer all initiatives aiming to compensate for carbon emissions. [77]

Environmental protection is considered a prerequisite for any energy project. The environmental licensing process will be revised and new control and evaluation mechanisms will be created. Granted licenses may be also revised.

As in the case of infrastructure, energy projects are subject to active community participation, whereby community members will act as decision makers in local planning.

Increased scrutiny confronts mining

The National Development Plan's axes of transformation declare the intention to abandon economic dependence on mining and replace it with other activities that are in "harmony" with nature.

The aforementioned centrality of water as a fundamental human right will impact exploration and mining permits. The new Territorial Water Councils (CTAs) will supervise extractive activities, and it appears that extraction will be impossible when water resources are present.

More specifically, two critical articles in the National Development Plan pertain to mining. Article 184 outlines associative mining projects.[78] It orders the Ministry of Mines and the Colombian Geological Service to structure the National Geoscientific Knowledge Plan to have adequate information on the soil and subsoil, which allows the planning of its use, in accordance with the axes of transformation of the plan. All the while, article 186 prohibits large-scale open-pit mining for thermal coal.[79]

Furthermore, the National System of Agrarian Reform and Rural Development described in articles 38 and 39 entails that mining industries should participate in consultation and dialogue around territorial planning to evaluate the potential impact an extractive project could have on food production in its immediate area.[80]

Large-scale infrastructure, energy and mining projects that are already underway are increasingly vulnerable to the legal uncertainty these politically driven changes are bringing, leaving room for contractual and litigious action.

Private sector to lead the way in times of change

Current trends suggest that disparate commercial objectives, distinct value standards, regional differences and competing projects prohibit the private sector from having productive conversations about business and public policy.

In this context, the private sector continues to face challenges in developing cohesive messaging and an effective engagement strategy with the national government. Perhaps even more troublesome is that some traditional trade associations – historically seen as strong advocates for private sector interests – are encountering serious resistance from their members to engage with the government. This has prompted several trade associations to change their directors in pursuit of a new tone that is less confrontational and more propositional, seeking out synergies between firms' objectives and governmental priorities.

This is a step in the right direction. To advance its goals, the private sector must understand that any approach to the government must leverage the most strategic angle. Firms should avoid falling into political popularity contests around hot-button issues and instead focus on defending the legitimacy of their sector in respectful, constructive and humble terms, by pursuing discussions at a technical level that help foster consensus. Only proactively, with proposals and an empathetic grasp of the government's main goals, will companies be able to discuss solutions to protect their core objectives.

President Gustavo Petro has insisted on the importance of having an open dialogue with all actors in society, prioritizing those who were seen to have no voice. Still, many question who exactly will have access to the government amid an expanding pool of administration influencers and diversity of voices within the administration. The answer lies with effective advocates who can demonstrate a solid grasp of the Petro Administration's governing principles and argue for their positions based on alignment with – not against – those principles.

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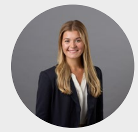

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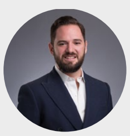

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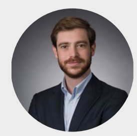

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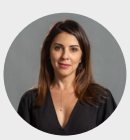

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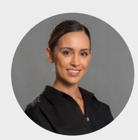

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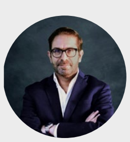

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