



Monarch News

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CEO's Executive Summary

The election of Joe Biden as the 46th president of the United States will bring greater predictability to U.S.-Mexico relations. It will also open the door to new opportunities for collaboration on trade and the always prickly issues of immigration and security, even as it creates the likelihood of increased conflict over the implementation of the environmental and labor provisions of the United States-Mexico-Canada Agreement (USMCA) and in energy policy. This is particularly true given Mexico's efforts to favor state enterprises over private producers, including U.S.-based energy companies, often at the expense of clean energy projects.

In Mexico, the Chamber of Deputies approved the federal government's spending program for 2021 with almost no modifications. It is also on track to approve legislation that effectively eliminates outsourcing as a means for contracting labor. This proposal has enraged the private sector, but is strongly backed by President Andrés Manuel López Obrador (AMLO), who continues to enjoy high approval ratings in Mexico. At the same time, the Mexican Supreme Court and the Federal Electoral Tribunal handed down rulings that pleased the AMLO administration, and in the process raised questions about the independence of these two essential institutions.

I. U.S.-Mexico Relations

Joe Biden's victory in the U.S. presidential election should provide greater predictability in U.S.-Mexico relations, but it is also apt to create new points of contention even as it opens new avenues for bilateral cooperation.

Under a Biden presidency, the bilateral relationship will again operate through institutions rather than being driven by the force of individual personalities. It will no longer be poisoned by the anti-Mexico and anti-Mexican rhetoric that dominated much of the Trump administration. And the trade relationship will return to normalcy, no longer hostage to tariff threats intended to coerce Mexico into meeting U.S. policy demands on immigration and security matters.

That being said, there are apt to be new points of contention in the relationship. But this will be driven by policy differences, not personal disputes. Although Democrats strongly believe that AMLO's visit to the White House in the middle of the presidential campaign was designed to offer Trump a campaign boost, and although they deeply resent AMLO's decision to withhold a congratulatory call to President-elect Biden until the results are "official," Biden will not punish AMLO or Mexico for this. Not only is this not in Biden's nature, he also understands the importance to the United States of its bilateral relationship with Mexico and likely recognizes that AMLO would not want to anger Trump during the 2.5 months remaining in his presidency. He will not risk that relationship to settle a personal or partisan score.

But there will be policy disagreements. AMLO's reticence to recognize Biden as the President-elect will reinforce efforts by congressional Democrats to pressure Mexico to meet its labor rights and environmental protection commitments under the USMCA. Biden is apt to respond favorably to these concerns, and to bipartisan congressional efforts to protect the rights of U.S.-based energy companies operating in Mexico. These firms insist that recent regulatory changes unfairly discriminate against their investments, breaking Mexican commitments under both NAFTA and the new USMCA. More broadly, the clean energy component of Biden's proposed Latin American policy runs directly contrary to AMLO's emphasis on promoting oil production at Pemex and the burning of dirty fuels in power production by CFE.

A Biden administration might pressure Mexico on questions of press freedom and democracy, which would be likely to elicit a strongly nationalist reaction from AMLO in defense of Mexican sovereignty. An additional point of bilateral tension is likely to develop this spring when immigration to the United States is expected to increase due to drier weather conditions and continued suffering in Central America, including dislocations caused by the series of hurricanes to hit the region this month, and to Mexico's increasingly weak job market.

Still there are important areas where the two countries can collaborate. The trade relationship would benefit from a bilateral effort to reconcile national regulations and smooth bureaucratic procedures, including aligning national definitions of essential industries, a disjuncture exposed by COVID-19 shutdowns. The 1944 water treaty could be updated to adapt it to the challenge of climate change. And both countries have expressed interest in a development plan for the Northern Tier of Central America that would reduce migration by increasing regional growth, security, and stability.

Finally, a collaborative security relationship is still possible, despite the fallout from the October 16 [arrest of former Mexican defense minister](#), General Salvador Cienfuegos, on drug trafficking and money laundering charges. Never before in Mexican history has a defense minister been arrested, despite a history of government-sanctioned corruption in the military. Equally important, the arrest took place in the United States on a warrant issued in April 2019, but AMLO was informed of the pending arrest only two weeks before it took place. There was no collaboration between the two countries in a case that has been an embarrassment for the Mexican military, a close ally of the AMLO government.

AMLO's initial reaction was muted, merely insisting that the [armed forces not be held responsible](#) for the actions of one individual. Apparently facing pressure from within the army to protect the honor of the institution and broader Mexican sovereignty, AMLO ordered Foreign Minister Marcelo Ebrard to make clear to the United States (1) [Mexico's discontent](#) at not having been informed sooner and (2) [Mexico's willingness to stop collaborating with the DEA on anti-drug efforts](#) should the prosecution go forward. In response, U.S. Attorney General William Barr abandoned efforts by the U.S. government to prosecute Cienfuegos. For its part, Mexico has promised to investigate the former general and, if appropriate, bring charges against him. But at present, since

U.S. charges against him have been dropped and Mexico has yet to charge him with a crime, Cienfuegos went free on his November 19 arrival to Mexico. And given the historical position of the military in Mexico, there are serious doubts that he will actually be prosecuted.

At the same time, the homicide rate in Mexico has reached new heights under AMLO, who has cut federal budget transfers for municipal police forces and focused a significant segment of the National Guard on curbing migration rather than fighting organized crime. Collaboration between the United States and Mexico in the battle against organized crime and drug trafficking has always been challenging. We expect this will be reinforced by a Biden administration focus on the entire bilateral relationship instead of his predecessor's nearly exclusive focus on trade and immigration, albeit with a constant effort to cooperate with Mexico.

II. The Energy Sector

On October 22, a bi-partisan group of 43 members of the U.S. Congress [sent a letter to President Trump](#) complaining about unfair treatment for U.S. energy companies operating in Mexico. They argued that their experiences ran contrary to “the spirit, if not the letter, of the USMCA.” In reply, AMLO stated that he would continue to implement an energy policy that openly favors Pemex and the CFE over private firms. Indeed, he insisted that [the only investments that matter to his government are public ones](#). He also vowed that his government would not break any law or treaty responsibility in its energy policy since the USMCA gives Mexico full sovereignty over its energy resources. Just the week prior, AMLO noted that, if it became necessary, he [would consider a constitutional reform](#) to ensure that Pemex and the CFE recovered their leadership roles in the Mexican energy sector.

Our reading of both NAFTA and the USMCA suggests that AMLO is mistaken about its provisions. The agreements effectively lock in the terms of the 2013 energy reform, prohibiting any backtracking on the part of the Mexican government. Firms may also turn to the agreement's investor-state dispute resolution mechanism to protect their investments. AMLO is thus in a difficult position. His policy of prioritizing the distribution of CFE-generated electricity over private generators has been placed on hold by the

courts, and now he may have to deal with the limitations imposed by the USMCA in both electricity and petroleum.

At the same time, AMLO lashed out against private energy producers. The largest private electricity producer in the nation, the Spanish firm [Iberdrola, announced that it would not make any further investments in Mexico](#) until the AMLO government clarifies its policy toward private energy companies. AMLO replied by accusing Iberdrola of breaking its contractual obligations with Mexico and asserted that his government is simply not interested in private investment in the energy sector. In a separate October 24 statement, he even [mocked clean energy as being “wrong-headed.”](#)

III. The Budget and the Economy

The Chamber of Deputies approved the federal government’s spending plan for 2021, which takes advantage of a revenue increase derived from the [elimination of 109 independently managed federal trust funds](#) (for everything from disaster response to human rights, science and technology, education, victim support, climate change, and film and sport). Eliminating these funds will transfer \$3.2 billion dollars to federal coffers to help AMLO finance his priority social programs and infrastructure projects. Separately, the [Mexican Congress raided a federal insurance fund](#) covering catastrophic illnesses for the poor supposedly to pay for the distribution of a coronavirus vaccine, once it become available, to every Mexican citizen. [The final budget, however, did not include a line item for vaccine purchases.](#)

The decision to eliminate Mexico’s trust funds further centralizes budgetary authority in the hands of the Mexican president while defunding a series of programs important to Mexico’s future. And it demonstrated again the unwillingness of Morena legislators to cross their president. [Despite openly expressed opposition to eliminating several of the trusts](#), at the end of the day [only seven Morena deputies](#) and [two senators](#) voted against AMLO’s initiative.

The 2021 spending plan also maintains a cut in federal government transfers to states and municipalities, one of the issues driving the formation of the Federal Alliance of opposition governors and over which they have threatened to withdraw from the federal pact.

We are also keeping an eye on two other important economic issues in Mexico. First, the federal government and the private sector finally unveiled [a new infrastructure investment program](#) designed to jumpstart economic growth. The proposal's small size and the inclusion of several projects already under way, however, left markets underwhelmed. Finance Minister Arturo Herrera promised [a second set of infrastructure projects](#) will be announced in late November and will include more energy projects than the first round.

Second, AMLO personally revived a [legislative proposal to sharply restrict the outsourcing of personnel by Mexican firms](#), the mechanism through which [nearly 18% of all Mexican workers are employed](#). The [Mexican private sector cried foul](#), arguing that the government violated a specific promise to work with them to formulate a mutually agreeable proposal that would protect worker rights without effectively outlawing a key tool for injecting flexibility into the labor market. The more strident leader of the Coparmex business confederation [accused the government of being "autocratic, despotic and threatening,"](#) in part because violations of the new law will be punishable via automatic detention.

The legislation is currently working its way through the Chamber of Deputies. Senate leader [Ricardo Monreal has offered to talk with private sector leaders](#), but given AMLO's control over Morena legislators, approval of this initiative without significant change seems highly likely.

IV. A Referendum, the Courts, and Mexican Politics

On October 1, a sharply divided Mexican [Supreme Court declared constitutional](#) AMLO's proposal for a referendum on whether or not former public officials (read: five ex-presidents) who are accused of crimes should be prosecuted. The six to five vote, however, did not authorize the original wording of the referendum. The court instead rewrote the text to create a much more anodyne version that a bare majority of justices felt was no longer unconstitutional. It refers to taking "pertinent actions" (it does not identify them) against "political actors" (it names no names) in the process of "clarifying political decisions taken in past years," and in accordance with Mexican laws and the Constitution.

This outcome is problematic for Mexico. AMLO will be able to continue using the referendum as part of his strategy to prosecute past presidents in the court of public opinion for the neoliberal policies AMLO insists are the reason Mexico is struggling today. It doesn't matter that the wording has changed. Indeed, it may even help since there is really nothing to vote against in the new wording. More to the point, AMLO has made clear that, for him, the precise wording is irrelevant. [It ultimately is a yes/no vote](#) on prosecuting ex-presidents.

The vote also undermines the reputation of the Mexican Supreme Court. The ruling created the appearance that, under constant pressure from AMLO, the justices caved. They seem to have bent over backwards to find a way to make a referendum constitutional. We are not arguing that the Court is no longer independent, but instead that this is the appearance this ruling has created. This conclusion was reinforced by the decision of the Mexican College of Lawyers to denounce the ruling, and by the interpretations of the ruling in the international press, the ratings agencies, and from the Mexican private sector. All of this will reinforce weakened investor confidence in AMLO and Mexico.

AMLO hopes to exploit the referendum to improve the prospects of his Morena party in the June midterm elections. To enhance this strategy, the leader of Morena in the Senate, with AMLO's full backing, has [proposed a constitutional reform](#) that will allow it to take place the same day as the June 6, 2021, midterm elections "to save money" (it currently is scheduled to be held on August 1, 2021). It is not clear at this point if Morena has the votes to force this through the Senate where it lacks a 2/3 majority, but there is no doubt that AMLO can push it through the lower house. And it is telling that the 2021 budget does not include any monies to pay for a separate referendum.

The electoral chances of Morena candidates also benefited from an [October ruling by the Federal Electoral Tribunal](#), which affirmed the National Electoral Institute's decision to deny registry to a new political party backed by former President and AMLO political nemesis, Felipe Calderón. At the same time, the Tribunal authorized the registration of two union-back parties that are close to AMLO. These decisions created the impression that this independent institution, like the Supreme Court, chose not to directly challenge AMLO.

V. AMLO's Enduring Popular Support

Despite a weak response to the pandemic, making Mexico a global hotbed for COVID-19, and the associated collapse of the Mexican economy, translating into losses of over a million jobs and tens of thousands of small businesses, and an estimated 10 million additional citizens in poverty, [AMLO's poll numbers remain stable, in the high 50s to low 60s](#). There are at least five reasons for this apparent anomaly.

First, the simple fact is that AMLO is still in a position to argue that the damage to the Mexican economy is not his fault. It is due to COVID, and of course to the “failed neoliberal policies of the past.” Second his social welfare policies are, according to the government, transferring \$28 billion to the lower echelons of society. Third, AMLO faces no real political opposition.

Potentially more important and commonly overlooked are two other factors.

Fourth, AMLO's supporters are accustomed to the economy being bad for them. Most of them never really benefited from the trickle down of economic benefits from years of slow, market-driven growth in Mexico. And they were the first and most effected during economic downturns. So the current situation is not all that different from their reality over the past 30 years.

And fifth, AMLO has given a voice to the voiceless for the first time in living memory in Mexico. He has created an emotional link between himself and his supporters by standing up for their concerns against a Mexican political-economic elite that never took their interests into account. To the contrary, for these Mexicans it seems that the elite has historically benefited at their expense, at the expense of “the people.” And AMLO's populist rhetoric quite intentionally plays into this reality by reminding his followers that he stands for them in a permanent struggle against the elite.

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