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Restrictions to entering into Trade Agreements with other Countries according to the United States-Mexico-Canada Agreement (USMCA)

One of the most paradoxical provisions of the USMCA, published in the Federal Official Gazette on June 29, 2020, is article 32.10[1] of Chapter 32 of the Agreement, related to " Exceptions and General Provisions". Article 32.10 was a condition of the United States government during the negotiations between the three countries in the context of the trade war between China and the United States, and addresses free trade agreements with non-market economies.

Article 32.10 can be construed as a severe restriction for Mexico and Canada to commence trade agreements with third countries in general, but with a crystal clear dedication to China.

This article is paradoxical since it is equivalent to free trade restriction among countries, according to one of the fundamental characteristics of neoliberal globalization. Restriction based on political-ideological arguments.

The first noticeable aspect of article 32.10 is that, from a strictly technical standpoint, the core concept of "a non-market economy" is not defined. Therefore, the determination of whether or not a country has such an economy is left to the discretion of any of the parties of the USMCA, , without establishing criteria for such purposes.

To the extent that if one of the parties to the USMCA signs a free trade agreement with a non-market country -as determined by of any of the other parties of the USMCA-, the other two parties will be allowed to terminate the USMCA, giving a six-month notice replacing the referred agreement with a bilateral one.

Due to the trade war between the United States and China, Canada, which has shown great interest in negotiating trade agreements with China, would initially be unable to enter into such agreements with that country, since the United States would surely resort to the provisions of article 32.10. This resort is equivalent to "a veto power by Washington."

This "veto" undoubtedly disrupts the sovereignty of countries and will serve as a precedent and model for other trade agreements negotiated by the European Union or Japan, for example. The incorporation of this model by other countries would serve the trade war strategy of the United States against the Asian country.

The fact that Mexico and Canada have accepted the serious restriction contained in article 32.10, represents the sacrifice by the two nations of their independent commercial policies.

[1] https://www.gob.mx/cms/uploads/attachment/file/465766/32ESPExcepcionesyDisposicionesGenerales.pdf

Dependence on the will of the United States seems to be an incontrovertible fact in light of the literal content of such article.

Some have said that Article 32.10 is a "poison pill" imposed by Washington with the stated purpose of "fencing off" North America as a closed "free" trade region for China.

However, Canadian authorities have argued that their country "retains full sovereignty and full control over our trade relations," specifying that the USMCA includes a six-month withdrawal clause similar to that of the other FTA.

The degree of limitation to the independence and control of the countries' trade relations will be seen in practice, but in light of the forceful and discretionary article 32.10, it seems clear that the desire of the Canadian authorities is difficult to achieve.

Finally, it is worth noting something of great strategic importance for Mexico and Canada. It is obvious that China plays a transcendent role in global trade that encourages every nation to search for the means, the ideal legal instruments, to establish or strengthen trade ties with the Asian giant. One of means could be the negotiation of sectorial free trade agreements rather than an all-encompassing free trade agreement.

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