POLICY OPTIONS POLITIQUES

THE *POLICY OPTIONS* SPECIAL DOSSIER ON THE NAFTA TALKS

DOSSIER SPÉCIAL D'*OPTIONS POLITIQUES* SUR LA RENÉGOCIATION DE L'ALENA

Canada's prosperity depends on international commerce, but recent political shifts are threatening the global trading system. Protectionist sentiment has risen, most importantly from our top trading partner, the United States. Canada's quest to diversify trade through the Trans-Pacific Partnership was stopped in its tracks shortly after President Donald Trump's inauguration, and that deal seems moribund, at least for the time being. Now Canada's negotiators are embroiled in contentious and important talks over the future of the North American Free Trade Agreement – NAFTA. In this special collection of recent *Policy Options* articles, some of the country's top experts in trade policy offer their insights into what we should be watching for during the negotiations, the strategies that Canadian decisionmakers should be exploring, and what the potential opportunities are for Canada (including ones that don't involve NAFTA at all!).

Alors que la prospérité du Canada repose sur le commerce international, de vastes changements politiques ébranlent aujourd'hui le système commercial mondial. Qu'on pense simplement à la montée du protectionnisme, surtout aux États-Unis, notre premier partenaire commercial. C'est ainsi que l'ambition du Canada de diversifier ses échanges grâce au Partenariat transpacifique a été freinée par l'entrée en fonction du président Donald Trump, et que l'accord lui-même est pour l'instant sérieusement compromis. Les négociateurs canadiens entament aujourd'hui des pourparlers qui s'annoncent houleux sur l'avenir de l'Accord de libre-échange nord-américain (ALENA). Dans ce recueil d'articles récemment parus dans *Options politiques*, d'importants experts en matière de commerce examinent les enjeux à surveiller pendant cette renégociation, les stratégies qui devraient guider nos décideurs et les opportunités que le Canada pourrait mettre à profit (dont certaines ne concernent aucunement l'ALENA!).

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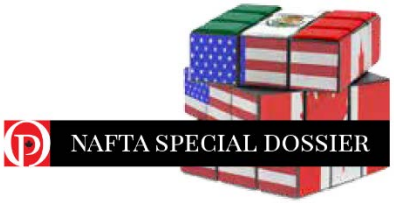
US NAFTA position: more than a tweak, less than do-over



Washington's report on its negotiating position for revising NAFTA reflects Trump's hard line on trade. But it is also a document for domestic consumption.

SARAH GOLDFEDER

As promised, the Office of the United States Trade Representative (USTR) issued a 17-page report Monday on Washington's negotiating goals for the upcoming NAFTA talks. The release came an hour after President Donald Trump hosted an event highlighting goods made in each of the 50 states for "Made in America week." The sequence ensured that the Made in America event got top billing on the US evening news, and the NAFTA report was only a footnote for Americans. Although there were rumours that the report was not quite ready, with even the late-afternoon timing thought to be a result of last-minute edits, the document turned out to be thoughtful, even clever. It will give the Canadians and the Mexicans plenty of material to parse, muse over and debate in the 30 days before negotiations begin.

It's a notable accomplishment for an administration that, until that day, had not met any of its other self-imposed deadlines. As if to reinforce that, the latest health care bill died yet another death — the second time the attempt to repeal and replace Obamacare has gone down in flames. Section 232 reports, designed to evaluate whether levels of certain imports are threatening national security, have yet to be released on steel and aluminum. They were promised for the end of June. There are few signs of compromise on the budget or on tax reform, and the debt ceiling looms like a storm cloud on the horizon. The border wall has taken on mythic proportions but is no closer to being built. Foreign policy goals are confused, restated and reinvented on an almost weekly basis. The one part of Trump's administration that appears able to strike a deal is his trade team.

By appointing a trade hawk, Wilbur Ross, to the Department of Commerce and choosing the relatively moderate, eminently professional Robert Lighthizer as the Trade Representative, Trump has placed his trade strategy in the sweet spot. He is able to tweet, threaten and cajole the other NAFTA partners while at the same time presenting them with a team that appears ready to negotiate a "win-win-win" result. The list of goals released on July 17 is a masterpiece of quiet trade diplomacy, designed to drive the hard bargain that the Trump political base is looking for. Rumours that the administration will pick a career bureaucrat, John Melle, as the lead NAFTA negotiator suggest an unexpected respect for trade professionals. John Melle has spent his entire career on trade issues in the Western hemisphere. It would be hard to find an American with more experience working on NAFTA.

The new document reflects, in many ways, the draft letter sent by the then acting USTR to the Republicans on the House Ways and Means Committee in April. The language is more measured, the crafting careful, but the intent is clear: the US wants more than a tweak of NAFTA, but less than a do-over. The aim is clearly a modernization of NAFTA; goals and language from the Trans-Pacific Partnership (TPP) agreement, negotiated only a year or two ago, are found in the document on many issues that have yet to be addressed in the NAFTA setting. Using words of diplomacy – *maintain*,

promote, *seek*, *provide*, *build*, *ensure*, *improve* and *establish* – the USTR has built a foundation for a reasonable discussion.

But read between the lines and you'll find glimpses of the zero-sum game President Trump prefers.

From the veiled threat of U.S. import "sensitivities" (ie. higher tariffs on certain commodities) to the clearly stated demand for *de minimis* standards for cross border deliveries that match those of the US (ie. $800), the USTR has included specifics that Canadian and Mexican negotiators will note. The language on agriculture will have Canada preparing its defence of supply management policies on dairy, poultry and eggs. The proposed elimination of the Chapter 19 dispute settlement mechanism in NAFTA takes aim at the softwood lumber industry in Canada. Robert Lighthizer (and John Melle) will remember the history of that chapter and understand exactly the degree of concern the stated goal of elimination will provoke in Canada.

All that said, it is important to note that none of this comes as a surprise to anyone watching this file with professional interest. The document reflects exactly what most trade watchers expected. As a statement of US intentions, it is, by definition, one-sided. To look for concessions at this juncture is to miss the point: this document was created to support the Trade Promotion Authority (which gives the President the authority to present a negotiated agreement for a direct, up or down vote in Congress.) The report is also not final: the USTR has a lot of work yet to do, the language is more vague than specific and many of the points are reworkings from earlier documents related to the TPP. Changes in posture and details that reflect the focus back to a tripartite agreement rather than the 12-party TPP are yet to come.

Canada should read the USTR report as a document for US domestic consumption. It is directed at Congress. The USTR must gain the trust of the House of Representatives to ensure a clean vote at the end of the Trade Promotion Authority process. If the legislative branch is not convinced that the executive has listened to it, and Congress gets out the microscope on every detail of the negotiations, constituent politics may overwhelm the process. Trade, in the Trump vocabulary, is synonymous with unfairness, with an overall sense of having been robbed of what is rightly yours. It is not, in Trump terms, a way to ensure economic growth, or create a strong middle class, or stabilize the neighbourhood. This document is the USTR's first attempt to gain the necessary political support from Congress to tame the domestic discussion.

The one clear take-away from this week's release is that this administration is serious about starting talks on August 16. Ready or not...

Who has leverage in the NAFTA renegotiation?

The US holds considerable leverage in the NAFTA renegotiation, but to achieve an effective deal it must accommodate Canada's and Mexico's interests.

ROBERT WOLFE

President Trump says that if he doesn't get the renegotiation he wants, "we will terminate… NAFTA forever." Canadians didn't ask for this tempest. A positive outcome for all three parties is possible, but not if renegotiation implies capturing more of the benefits for the US at the expense of Canada and Mexico. Time is on our side. The President can't be too ambitious because he needs the negotiations to wrap up quickly. The Canadian government has started off well by energetically seeking friends wherever it can find them — in Congress, the states, and industry associations. But what options does Canada have if that's not good enough either to resist Trump or achieve our own objectives?

Answering this question starts by asking another: How much leverage does the US really have? That depends on the type of deal the Americans want. They have quite a bit of leverage for a good agreement that strengthens North American trade relations; but not so much leverage for a bad agreement that Canada and Mexico would find hard to accept.

President Trump started from false premises, thinking that NAFTA was a disaster. The loss of industrial jobs that he thundered against was primarily due to automation. It may have been due to trade too, but it probably wasn't due to US trade agreements, and it certainly wasn't due to US trade agreements with Canada.

Trump has a political problem of his own making: NAFTA isn't the cause of the problem he wants to fix, and no sensible outcome of the renegotiation will likely help him with his voters. The problem is compounded by the first item in the June 17 Summary of the Objectives for Renegotiating NAFTA: "Improve the U.S. trade balance and reduce the trade deficit with the NAFTA countries." This objective is something that trade deals are rather ill-equipped to deliver. So we now find ourselves entering a hugely complicated negotiation whose outcome can't satisfy the apparent motivations of its instigator. American jobs haven't migrated to Canada (and the US doesn't even have a trade deficit with Canada); therefore, if the US objective is to redress the damage done to its economy by trade agreements, the NAFTA renegotiation will fail.

International relations offers three approaches for thinking about what determines negotiating outcomes. The first stresses the salience of power or material interests, such that outcomes are the result of coercion or power. This perspective rightly worries Canadians who think Trump might try to bully us. Others think that outcomes depend on bargaining, based on the interests the parties bring to the table. This perspective assesses what each side ought to want from the renegotiation to estimate the outcome. In contrast, many people think the outcome of negotiations is influenced by interaction and deliberation. These three theories construct a familiar trinity of explanations for international action. In reality no one factor dominates, and each influences the other.

Can Canada be bullied?

Let's consider whether Canada could be bullied in the negotiations, by thinking about who has power and what it's good for.

- Does the US have the power to compel Canada and Mexico to accept a deal that isn't in their interests? In trade negotiations the attractiveness of a large and rich market like the US is powerful, but only as an inducement, not as a compulsion. Moreover, trade policy remains foreign policy, and US bullying on NAFTA could harm its security interests on the country's northern and southern borders.

- Would such power, if it exists, also compel compliance with the new agreement's provisions? Much of what NAFTA covers is actions of the three governments within their own borders, which are based on the implicit social and legal practices, as well as the formal legal systems of the parties. Deals that are perceived by one side as unfair will fail. Everybody needs to see themselves gaining, on balance, or they won't play by the rules after the fact.

- How much power does the President have to determine the outcome? It's convenient to think that what the President wants is what the US will do, but the country and its government are not a unitary actor controlled by the White House. Congress has enormous influence over trade negotiations, and negotiators will ensure that congressional priorities are addressed. Negotiators will also make sure the package has something for everybody — or at least something to get enough votes for passage. Even if President Trump exercises his presidential power to abrogate the treaty, NAFTA provisions are given effect by legislation that Congress has to change, not the President. Trade legislation requires compromise involving pro-trade groups of Democrats as well as Republicans, which may in any event be improbable in a polarized, dysfunctional Congress.

- How much power do the President and Congress have, given the political economy of US economic interests? Congress is heavily influenced by lobbies, especially the interests of the representatives' home states, as communicated by governors and local politicians. It's easy — but wrong — to think that on every issue where some American group has ever stated a maximal demand (like dairy farmers in Wisconsin) that this is what the administration will seek in the renegotiation. But there's a reason why maximal demands haven't succeeded in the past. The US Trade Representative's call for NAFTA comments generated over 12,000 responses. Not surprisingly, they offer offsetting positions, even within the same industry.

Consider agriculture: Some farmers have done very well exporting to Canada and Mexico; others resent competition from farmers in those countries, while many food processors depend on those imports. No deal gets through Congress without support from agriculture, which is the number one industry in more than two dozen states that voted for Trump. With one small exception (ultra-filtered milk), the issues aren't new, and all were addressed in the Trans-Pacific Partnership (TPP) negotiations. Since American farmers as a whole benefit from NAFTA, showing the attractive power of Canadian and Mexican markets, a small group might not get much support from the rest to take a hard line if it risks undermining the whole agreement — which is perhaps why dairy is mentioned only by inference in the negotiating objectives.

The worst case scenario

President Trump is in a corner given the need to put something in the window for his supporters for the 2018 Congressional elections. He might again threaten to rip up NAFTA if Canada and Mexico refuse to accept what he wants. Without NAFTA our trade with the Americans would be governed by WTO rules. Would that be good enough for us? On financial services, telecom, government procurement, food safety, and non-tariff barriers, the WTO framework has moved beyond NAFTA (although on temporary entry for service providers, NAFTA is better; supply management is safe under the WTO, and the softwood lumber dispute may end up there anyway).

If we lost NAFTA, which removes tariffs on trilateral trade for over 95 percent of tariff lines, prices would rise for consumers and on intermediate inputs imported from the other NAFTA countries. The Canadian Centre for Policy Alternatives compared NAFTA tariffs with those that would apply to any US trading partner under the WTO. It finds that much of Canada-– US trade would continue to enter the US market duty free even without NAFTA (including products such as natural gas, hydroelectricity and aircraft). Half of Canada's exports would face new tariffs, although most of these tariffs would be below 3 percent.

American firms would also face higher tariffs in Canada and Mexico without NAFTA. Even a small tariff can be serious in an industry where profit margins are slim, but such tariffs are especially problematic in industries, like automobiles and light trucks, where complex supply chains criss-cross the border. Canada would prefer to keep NAFTA, but it's not so valuable that we must accept a bad deal. Moreover, many of the reasons that Canadians want NAFTA also apply to many Americans, whose interests would also be harmed if the President tried to abrogate the treaty.

Can NAFTA be modernized quickly?

For Trump to have something to show voters in the 2018 Congressional elections, a deal must be submitted to Congress by January 2018. This makes speed a bargaining chip for Canada and Mexico. It's no accident, therefore, that the US summary identifies many issues already addressed in TPP, which in effect modernized NAFTA, since the TPP approach is well understood by the three parties. Starting from the TPP is not simple though, even if it's quick. Each of the NAFTA parties must ask if the TPP texts include provisions inserted only to gain the agreement of the other nine or if the other nine had blocked provisions that the three might want to bring back. Canada must also consider whether we made concessions to the Americans in the TPP only because we were obtaining a concession from one of the others.

Part of the initial bargaining will be agreeing on the issues for negotiation, and ensuring the agenda meets everyone's needs, while excluding issues that will be too complicated given the time available (such as US offensive investment interests) or too protectionist for Canada and Mexico to accept (such as eliminating the global safeguard exclusion). All of the NAFTA parties might want easier terms for pipeline construction. Canada might want to make it easier for professionals to cross the border to provide services, including in sectors not covered in NAFTA.

But the Americans have to avoid stepping on landmines if they want to move quickly — i.e., issues that could slow the renegotiation considerably or even blow it up. Commentators have found problematic elements throughout the summary. My list includes the following:

- *Government procurement:* The TPP chapter left "Buy American" provisions untouched, but any attempt by the US to devise a more restrictive chapter will be resisted by Canada (although the US might discuss applying the higher standard Canada agreed to with the EU).

- *Changes to NAFTA rules of origin*: If they tried to shift production of motor vehicles and parts to the US would be unacceptable to Canada and Mexico.

- *Eliminating chapter 19 on review and dispute settlement in antidumping/countervailing duty matters:* It would be hard for Canada to accept absent an alternative, but no new system could be devised quickly. Canada fought hard for this provision, but has used the current rules only three times in the last decade. Is it worth much to Canada? The answer hinges on why its use has declined. If its existence restrains the use of trade protection measures against Canada (which could be why lobbies like the softwood lumber industry want it eliminated), then taking it away would be a bad idea. Alternatively, as cross-border supply chains grow in importance, maybe trade protection measures that are self-defeating are behind the decline. In sectors of homogenous upstream commodity trade, disputes may not be much of a constraint anyway — softwood may end in another long-term managed trade arrangement. In short, the Canadian strategy may be to make the Americans worry that chapter 19 is a landmine, while being prepared to exchange it for something more important, like relief from Buy American rules.

It would be foolish to pretend that the US has no leverage in the NAFTA renegotiation. Their tough negotiators will have a lot of weight behind them, but they will have to listen to Canada and Mexico and accommodate their interests if they want to achieve a quick outcome and an effective deal. Since the results may look like the outcome of the TPP negotiations — most of which would have been acceptable to Canada — the prospects look good for a reasonable outcome, at least among negotiators. Their challenge will be to find something that can be presented as a political victory for President Trump.

Four ways to keep our eyes on the prize in NAFTA talks

One way is to focus on a future economy that is service oriented and built on artificial intelligence. Are NAFTA'S trade rules still relevant?

MEREDITH LILLY

The US recently set out its NAFTA negotiating objectives. As reported elsewhere in this series, there were few surprises for close watchers of the file. Foreign Affairs Minister Chrystia Freeland is scheduled to outline Canada's agenda on August 14, just days before Canada, Mexico and the US meet in Washington to begin formal negotiations. Given that Canada will be largely focused on maintaining US market access, while playing defence on supply management and a few other areas, it would be smart for Freeland to keep her cards close to her chest.

Now that we know what the US wants, how can Canada best position itself? Here I offer four principles for contributing to a negotiating strategy that can protect and further Canadian interests.

Offer Trump a gift but no free lunches

Donald Trump's 1987 book *The Art of the Deal* demonstrates that he has always derived satisfaction from naming and shaming his adversaries and crushing any opponent — even one he admires and respects. The book also reveals that he has long practised a hokey sort of showmanship around his projects, something he has continued to roll out as president (for example, his overhyped deal to "save" US jobs at the Carrier plant). He knows and doesn't care that it's mostly smoke and mirrors, and he's betting that Americans don't dig too deeply into the real stories underlying his attention-grabbing headlines.

In this vein, Canada should give Trump a couple of easy wins that he can gloat over in the press. For example, I've previously argued that Canada should unilaterally raise our comparatively low C$20 *de minimis* customs duty threshold to something closer to that of the US (US$800). This could be a gesture of goodwill toward Trump's goal of breaking down barriers to US exports. The increase would be welcomed by Canadian consumers, would benefit many small businesses and would reduce costs for our government to collect nuisance duties on small purchases.

Conveniently, the US has set a goal of convincing Canada and Mexico to increase our *de minimis* levels to $800 as a NAFTA objective. This is a great opportunity: we can negotiate a sensible dollar value and either seek something in return or offer it to Trump as a gift. Although this action would actually be a very small concession by Canada, in a nod to Trump's love for

ostentation, our leadership would be wise to feign great injury when Trump calls a press conference to announce how he stuck it to Canada over customs duties.

In this calculated manner, Canadian negotiators should also ration generosity at the table, cashing in chips with the brass tacks US administration whenever possible. One area would be over the American goal of replacing NAFTA's current side letters on labour and the environment with enforceable chapters based on the now defunct Trans-Pacific Partnership (TPP) text. Although Canada has already pledged its support, Mexico is much less enthusiastic about both chapters and the US remains the *demandeur*. If Canada is now going to work with the US to pressure Mexico, we must seek something from the Americans in return.

Insist on reciprocity

US objectives that seek to stack the deck in favour of Americans on government procurement or would thwart Canada's ability to resolve disputes successfully must be firmly rejected. Reciprocity is a core principle that governs Canadian trade negotiation policy. Among other things, it helps ensure that our "nice Canadian" reputation isn't confused with "pushover" by our trading partners. Our use of reciprocity was honed in TPP negotiations, when Canada stringently adhered to this principle. For example, on temporary entry provisions for skilled professionals, Canada offered broad labour mobility provisions to any country that would extend the same privileges to Canadians. According to his own accounts of bullying business partners, Trump doesn't respect or value reciprocity. But many in Trump's administration *do* understand the give-and-take required and can be helpful in this respect. All the same, negotiating asymmetrical outcomes that potentially kneecap our businesses is not in Canada's national interest and we must stand firm.

Focus on today and the future

It's easy — and usually politically necessary for our elected representatives — to get caught up in today's trade battles: softwood lumber, dairy, steel, manufacturing jobs. The Trump administration is more than seized with trying to negotiate NAFTA to "fix" its grievances. While Canada must strongly defend current sectors of our economy targeted by the Americans, we also must resist US attempts to keep the North American economy from moving forward to the future.

According to the Bank of Canada, for every goods-producing job that has been lost since 2001, 30 services sector positions have been created. In this respect, it will be worthwhile for Canada to work with the US on its objectives to expand trade in services, as well as digital trade. Previously agreed TPP text on telecommunications, financial services and e-commerce offers the three countries a logical path to move forward quickly, allowing them to avoid many of the political landmines that could drag down negotiations in these areas.

But we need to think even bigger and more urgently about the future economy — one that will be digital, service-oriented and increasingly built on artificial intelligence. Will our traditional

trade rules remain relevant for such a future? For example, NAFTA's rules-of-origin chapter pertains only to goods. But the future is in services, where there are no requirements around regional content. Further, one of the primary purposes of rules-of-origin chapters is to create and protect jobs for domestic citizens. Yet if many goods-oriented assembly jobs will soon be performed by machines, rules about "final assembly" designed to retain jobs in home jurisdictions are less useful. Further, there is often much less economic value in the source materials (which count toward regional content) that go into manufactured products compared with the innovation and R&D processes involved (which don't count).

Canada can't be complacent: the future will soon be upon us. The 3D printed shoe is already being produced today in North America by robots. As it stands, the source materials used to generate the shoes are what is tracked for NAFTA preferential treatment. But virtually all of the economic value and human jobs involved in the overall production of those shoes are in the innovation and design elements, marketing and customer interfaces. NAFTA negotiators would do well to ensure that the rules they negotiate today make sense for the economy of 2025.

Use our other trade partners as swords and shields

Finally, it's important to remember that trade negotiations almost always involve absent partners — future trading partners and other countries with which we already have signed agreements. When Canada negotiated the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), Europe was preoccupied with its future deal with the US, and thus advanced positions to improve its separate negotiations with the US. (In fact, European concerns about its future US deal were at the heart of last year's Wallonia debacle that almost sank CETA.) In short, the Europeans were using the CETA negotiations as both a sword and a shield with the US. Canada must do the same with NAFTA negotiations in two respects.

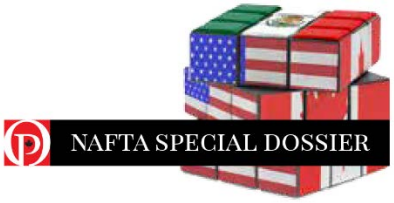
First, on issues such as rules-of-origin for vehicles, Canada will need to carefully ensure that anything we negotiate in NAFTA will not be incompatible with — or disadvantage Canada — in agreements we have already negotiated with other countries.

Second, Canada and the US should look down the road and consider China when negotiating NAFTA. We should cooperate with the Americans and use NAFTA negotiations to set standards around nonmarket and anticompetitive trade practices used by China and others, with an eye to potential future trade deals with such countries. Specifically, US objectives to promote transparency and competition while placing limits on state-owned enterprises should receive Canada's support and would enable us to point to these provisions in any future trade negotiations with China.

In its previous trade negotiations with the US, Canada entered talks with a willing partner keen to reach an agreement that both parties supported. This time will be different. There will be no joyful renditions of "When Irish Eyes Are Smiling" by our national leaders at the end. Nevertheless, our many decades of experience negotiating trade arrangements with Americans has made Canada's team of negotiators second to none. In a long essay on the TPP negotiations

in *Politico* magazine last March, the US's agricultural negotiator Darci Vetter said that negotiating dairy access with Canada was "the most painful thing [she'd] ever done." No higher compliment could be paid to Canada's trade negotiators as they seek to defend Canada's interests in NAFTA and modernize it for the 21st century.

NAFTA challenges ahead for Canada and Mexico



For the NAFTA region to compete globally in the 21st century, the US, Mexico and Canada should move forward, not backward, in economic integration.

YVONNE STINSON ORTIZ

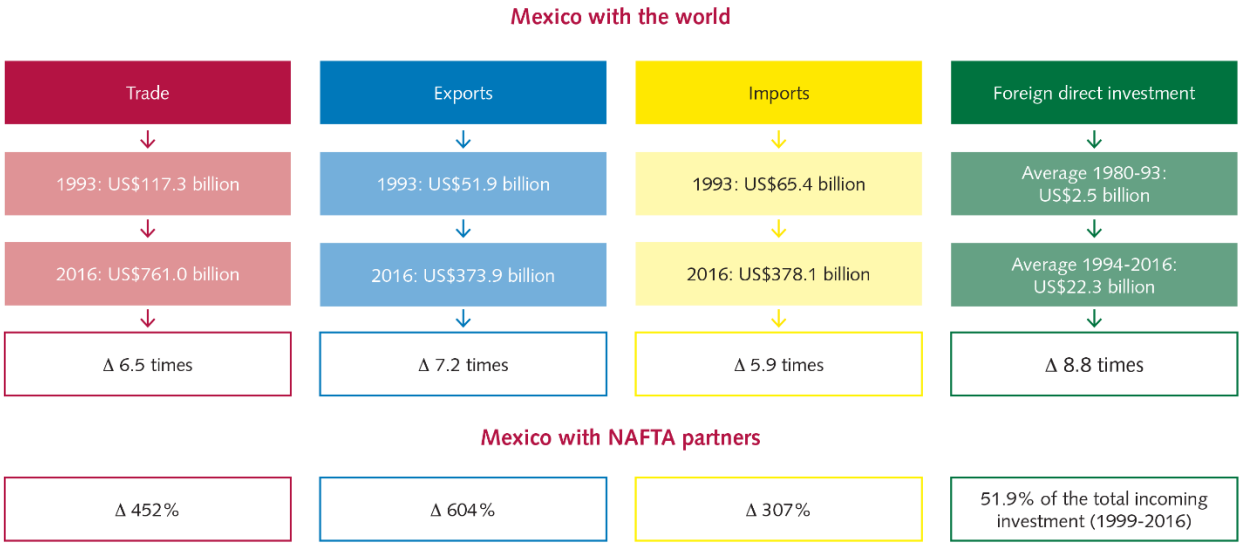
Mexico has a highly diversified and stable economy and is one of the most open free-trading nations in the world. In 2016, it was the most open economy in the G20, measured at 73.8 percent on the openness trade index (ratio of trade to GDP). It has 12 free trade agreements across North America, the Asia-Pacific region, Europe, the Middle East and Latin America. It belongs to the World Trade Organization (WTO), the Organisation for Economic Co-operation and Development and the Asia-Pacific Economic Cooperation forum, so its trade policy leadership has contributed to growth in every corner of the globe.

Since becoming a member of the General Agreement on Tariffs and Trade (now the WTO) in 1986, Mexico has consolidated its customs duty rights and implemented liberalizing trade policies related to import licences, nontariff barriers and quotas, among other matters, aiming to boost and promote Mexican trade all over the world. According to the Mexican Ministry of the Economy (with data from Banxico), Mexico's trade-to-GDP ratio has grown from 20 percent in the 1980s to 73 percent currently, reflecting the importance of international trade to its economy. After two decades, sound macroeconomic policies and free trade leadership are paying off.

Mexico has transformed its export structure to become a global manufacturing powerhouse. In 1982, oil accounted for 70 percent of Mexico's total exports; by 2016, manufactured goods made up 89 percent of total exports. As part of this transformation, the North American Free Trade Agreement has been a valuable tool for Mexico's trade policy. It has allowed Mexico to move from the simple exchange of goods to the building of a sturdy production platform that is highly integrated with the economies of the United States and Canada.

Mexico's total trade with its NAFTA partners grew 452 percent from 1993, when the agreement was signed, to 2016; its exports grew 604 percent (figure 1). It is important to underscore that more than 50 percent of the total incoming foreign direct investment from 1999 to 2016 came from the US and Canada. This increased integration lowered costs and increased efficiency in all three countries.

Figure 1.
Mexico's trade and incoming investment



Source: Ministry of the Economy, with data from Banxico and General Directorate of Foreign Investment.

In 2016, total trade in the NAFTA region was worth almost US$1 trillion, representing an average annual growth rate of 5.5 percent from when NAFTA first came into force. The rates for Mexico-Canada and Mexico-US total trade were 9.8 percent and 7.7 percent, respectively.

Mexico's total trade share with its NAFTA partners was 30.9 percent in 1993; after the deal went into effect, this figure went up significantly, climbing to 51 percent in 2016. This increase reflects the outstanding importance of Mexico as a trading partner of Canada and the US.

President Trump and NAFTA

With Donald Trump now president of the US, Mexico and Canada face an administration that has declared that it promotes trade protectionism to favour its domestic industry and workers. One of the Trump administration's top trade priorities is the renegotiation of NAFTA, which requires Mexico to develop a new way of engaging with the US government.

From Mexico's perspective, the Trump administration's move to reopen NAFTA is an opportunity to update trade relationships to incorporate the new dynamics and realities of the 21st-century global economy.

More than 23 years have passed since NAFTA's entry into force, and the world has changed dramatically. Therefore, the parties should set a far-reaching scope and broad vision for the renegotiation to create conditions that upgrade and enhance the economic integration of North America. Mexico will enter these talks with an approach that rests on three pillars: 1) NAFTA has brought benefits for all three signatories; 2) there is always room for improvement; and 3) the outcome must be a win-win-win.

NAFTA 2.0: Moving forward, not backward

As a free trader, Mexico believes in open markets and will not accept any steps backward from NAFTA, such as new tariffs and quotas. Mexico will not accept opening a Pandora's box of new trade restrictions. That would mean a disastrous setback for North America's competitiveness and create uncertainty for business and workers in all three countries. Disrupting highly integrated supply chains would increase costs, punish consumers and kill jobs throughout North America.

A NAFTA modernization process should include a range of objectives: dealing with new trade-related issues including e-commerce; providing better support for small and medium-sized businesses; updating existing rules; and handling contentious issues such as trade deficits through trade expansion.

Although Mexico has been working to diversify its trade with other nations, its northern neighbour will remain its most attractive and most important market. Therefore, there will always be tension between the goal of continued trade diversification and the need to continue supplying products that feed the valuable mass consumption that defines the US market. In many respects Canada shares this dilemma. Both Canada and Mexico have a major trading partner in the middle, but both are simultaneously looking to move to other markets for their goods and services.

What the three partners must remember is that they are not simply selling things to one another; as NAFTA partners, they are making things together. Therefore, they must enhance and improve these cross-border supply chains. Mexican exports to the US market contain 40 percent US content; Canadian exports to the US contain 25 percent US content. NAFTA provides a basket of options for consumers, industries, agriculture and agribusiness in terms of quality, variety, availability and price. The partners have also entrenched the integration of the three economies in technological development, production processes and standardization. Simply put, rolling back these competitive advantages would not serve anyone.

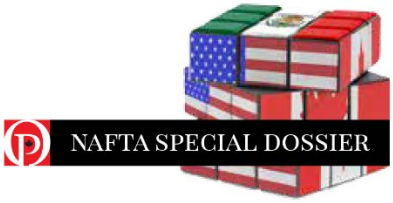
North America has to be rethought from a new perspective. Revision of NAFTA should focus on making North America more competitive and open to international trade, setting a strong framework to develop and boost the three economies. Furthermore, under NAFTA modernization, Canada and Mexico have a very good opportunity to work together and develop a clear understanding of the importance of their domestic markets for trade, as well as to generate value-added goods and services and attract new investment.

In the current scenario, both countries should be ambitious to reach a good deal for the North American region that will promote common interests — a win-win. But beyond the NAFTA talks, a coordinated and permanent dialogue should be established to move forward on the shared goal of making North America an even more dynamic region for global trade. The design of joint strategies will strengthen cooperation, create new trade and investment arrangements, and enhance the North American production platform.

On July 17, the United States Trade Representative tabled negotiating objectives for the NAFTA talks in August. Like any other negotiation, the process is likely to be a roller coaster, with very good, good, bad and horrible days. It is important to bear in mind that Mexico has presidential elections next year and the US has midterm elections; Canada's next federal election is in 2019. It is desirable to conclude negotiations before those political events take place.

This is the time to move forward, not backward, in economic integration. After 23 years, NAFTA has made Mexico, Canada and the US more competitive, more efficient and more prosperous. If we want the NAFTA region to become an international trade platform that can compete globally in the 21st century, the three countries should enhance and improve NAFTA in ways that benefit them all.

Seizing the opportunity at the NAFTA talks



The NAFTA talks are a major source of uncertainty, but Canada could also view it as an opportunity to advance our nation's interests.

PATRICK GEORGES

Despite the uncertainty raised by the NAFTA renegotiations that start next month, seizing the opportunity to update a 23-year-old trade agreement can be a positive development. Notwithstanding the significant benefits that NAFTA has provided its three members in recent decades, the agreement no longer reflects many important intervening economic and technological developments. To name a few key areas, NAFTA rules of origin (which determine whether goods qualify for North American tariff preferences), labour and environmental standards, intellectual property rights, investor-state dispute settlement, and government procurement rules could all be updated and improved.

Modernizing NAFTA could also advance Canada's interests in services and internet commerce — areas that would also support U.S. jobs and innovation. Fortunately, recent negotiations on next-generation trade agreements, such as the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), can be a model for NAFTA renegotiations in key areas. So too could the Trans-Pacific Partnership (TPP), even though the U.S. has withdrawn from it.

NAFTA's eroding benefits

There are three main reasons that NAFTA's benefits have eroded over time. The first relates to the era in which the agreement came into force in 1994. At the time, the World Trade Organization concluded the Uruguay Round negotiations that reduced "most-favoured nation" (MFN) tariffs for many countries, across many sectors. As a result, the tariff preferences enjoyed by Canada and Mexico relative to other countries in the US market shrunk over time. It's not surprising, then, that NAFTA utilization rates (i.e., the share of firms that seek tariff preference when exporting to another NAFTA country) have fallen, since many NAFTA preferences are no longer big enough to offset the cost of demonstrating compliance with NAFTA rules of origin (requirements to qualify for NAFTA's preferential tariff rates instead of the MFN rate).

Second, the U.S. has subsequently signed new trade deals with 20 other countries (including with Australia, South Korea, and countries in Central and South America), and the tariff preferences that were extended to these countries further dilute the notion of 'preferred' market access for the original NAFTA partners.

Canada's preferred access to the US market has been further eroded by a third development: enhanced security measures introduced after the terrorist attacks of 2001, which have thickened the Canada-U.S. border. There's little chance that the U.S. under Trump would relax its security measures, but NAFTA renegotiation might offer a chance for fresh talks between Canada and the U.S. that would combine the

issues of trade and security, as part of a win-win strategy. In effect, Canada could offer a security deal to the U.S. in return for a better trade relationship.

For instance, Canada might propose a North American 'security perimeter' in exchange for a Canada-U.S. custom union. Such an approach could establish a common external tariff (i.e., a common Canada-US tariff policy with respect to other countries). This would define a clear external *trade* perimeter, on which an external *security* perimeter could be imposed. This could, at least theoretically, be designed so as to liberalize (i.e., to remove) the post 9/11 security measures and decongest the Canada-U.S. border while possibly shifting these security measures (and associated direct administrative costs) at the external border for relations with the rest of the world. Decongesting the Canada-U.S. border would encourage production and foreign investment in the U.S. (and Canada) — something that President Trump would welcome.

In previous research, Marcel Mérette and I estimate that liberalizing the 9/11 security measures at the Canada-U.S. border would increase trade between Canada and the U.S., coming at the expense of American trade with the rest of the world. It seems that firms located in North America, and especially in the U.S., reacted to additional security requirements by shifting some of their exports away from Canada to the rest of the world. Liberalizing security measures at the Canada-U.S. border would help reverse this pattern.

U.S. security measures may also have incented Canadian firms to shift their production directly to the U.S., instead of manufacturing at home in Canada, and then exporting to the US. Thus, we might also expect to see some economic activities repatriated to Canada, from Canadian multinationals now located in the U.S. Finally, U.S. multinationals located in the rest of the world might also reinvest in the U.S. and in Canada, thereby raising continental production.

That said, developing a North American security perimeter would involve trade-offs, with enhanced trade coming at the cost of a potential erosion of Canada's sovereignty over things such as intelligence data sharing, joint law enforcement and migration procedures, as well as pre-screening of foreign imports and travellers. It remains to be seen whether Canadians and Americans could cooperate more fully on these controversial, but important issues.

Renegotiating NAFTA Rules of Origin

In the NAFTA renegotiation, the U.S. is likely to seek changes to rules of origin (ROO). It may seem strange that the U.S., which is the country with the most liberal most-favoured nation tariffs in NAFTA, also insists on strict ROO. This dynamic reflects the outcome of intense lobbying by interest groups. Trade negotiators (in the U.S. and elsewhere) have consistently sought narrow benefits that they could offer stakeholders and key industries in exchange for their support for trade deals. In some cases, rules of origin have fit the bill to offer those benefits, and this game will no doubt continue in NAFTA renegotiations. Several groups will lobby against liberalizing rules of origin, as these rules have helped them secure a market for their intermediate products in Canada and Mexico, and have forged continental supply chains. But other forces will also lobby to prevent excessive new restrictions on trade, such as any withdrawal of the U.S. from NAFTA, because this would disrupt their supply chains, raise their production costs, and might eliminate rules of the game that have been advantageous for them.

If rules of origin are renegotiated, then Canada's strategy should be to seek more consistency between the new NAFTA rules and those recently negotiated under CETA. It would be much better for Canada to avoid having two separate rule books to deal with when our firms seek preferential treatments — one when they export to U.S., and one when they export to the EU. (The best way forward here might be to propose a process similar to the "diagonal cumulation" system implemented by the EU to simplify life for businesses across its numerous FTAs.)

More fundamentally, traditional rules that assign origin to only one country are getting harder and harder to apply in practice given globalized production. Canada could help to develop next-generation rules based on the idea (first expressed by Australian scholar P.J. Lloyd) of designating goods from multiple origin countries. Value-added tariff rates would increase with the proportion of the value that is added outside of the free trade area, and shrink to zero when the value is entirely from the FTA.

Diversify away from the US over the long-term

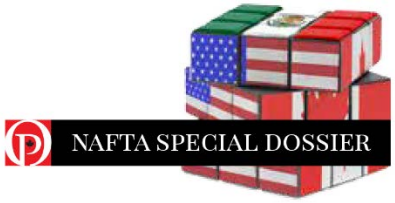
The overarching challenge in NAFTA renegotiations will be finding ways to maintain and enhance Canada's access to North American markets. Over the longer-term, however, our strategy must be to continue to diversify our geographical trade patterns since North America is destined to become a smaller share of the global pie. From this perspective, CETA is helpful, but it's not enough. We need to look beyond slower-growing advanced economies to realize the benefits in emerging markets, such as China and India, which are among the most dynamic producers and major consumer markets around.

My previous research, which focuses on demographic differences across countries, suggests that Canadians would tend to lose from a diversification scheme that simply shifts its trade away from the US, towards other advanced economies such as the EU or Japan. This result is due to the fact that the latter regions are undergoing even faster population ageing than the U.S., so this shift in trade could actually strain Canadian firms' competitiveness, because the prices of EU or Japanese inputs are likely to increase relative to prices in the U.S. On the other hand, diversifying our trade away from the US, but towards India, China and the rest of the developing world is much more appealing proposition, and would tend to raise Canadians' long-term per capita consumption possibilities.

Ironically, the recent and dramatic shift towards protectionism in the U.S. may actually reenergize stalled trade negotiations at the World Trade Organization, as some reluctant countries may refocus their efforts on supporting a global trading system that is now under threat. The current turmoil only strengthens the case in favor of the WTO and its relevance.

But Canada cannot sit idly by. Our negotiators should advance the non-preferential trade agenda at the WTO to the benefit of all countries. Meanwhile, we should also engage with large emerging countries such as China, India, Brazil, and the ASEAN countries. The scale and growth potential of these markets is huge, not just as a destination for Canadian goods, but also as a more efficient way for Canadian firms to exploit global supply chains.

Overcoming Canada's trade complacency



There's reason to question whether the Trudeau government is really committed to doing trade differently.

KEVIN CARMICHAEL

I had the impression that Canada was a player in international trade when I went to work for the Canadian Federation of Agriculture (CFA) in the late 1990s. But that's not what I observed during a short stint with Canada's main farm lobby.

Gone were the days when Canadian negotiators set the global trade agenda alongside its counterparts from the United States, the European Union and Japan. The CFA spent much of its time reacting to an agenda shaped by the push and pull between the US, the EU and some newer power-brokers: Australia, the champion of small, open farming economies, and the emerging markets of China and India.

I don't know that things have changed much since then. We talk about Canada as a "trading nation," yet the only thing that Canadian companies do exceptionally well is sell their excess production to the neighbouring country that speaks the same language, shares its values and happens to be the most voracious consumer on Earth. Others recognize this and take Canada less seriously as a result. Canada still has a place in the dramatis personae, but it had been upstaged by hungrier actors.

Prime Minister Justin Trudeau seems to desire a starring role. "Canada is back," he said in his speech at the Paris climate talks in April. But why did Canada go away? Experts such as Robert Wolfe of Queen's University speak highly of Canada's negotiators, so we can't blame the bureaucracy. A schizophrenic agriculture policy is an issue, but not the most important one. The problem is us. We've focused almost exclusively on the United States since the 1980s. The Canada-US Free Trade Agreement was great for the country, but it exacerbated the gravitational pull of the world's largest economy. It was like donning blinders. The opportunity cost can be measured in the tens of billions: in 2013, demand for Canadian exports would have been $60 billion higher had we had the same exposure to emerging markets as to the US, according to Tiff Macklem, former deputy governor at the Bank of Canada and now dean of the Rotman School of Business, University of Toronto.

This will sound like an old lament for some, but there is reason to come back to it now. Canada has been presented with an unexpected opportunity to take back its place at the head table of international trade. The election of Donald Trump was supposed to inspire copycats. Instead, many of the nations with which Canada wants to do business are clamouring for more trade. Canada could be a player, but only if we avoid losing ourselves in the renegotiation of the North American Free Trade Agreement. The NAFTA talks must be the priority, of course; they needn't become our sole preoccupation.

It should be clear by now that the US isn't a bottomless well of demand for our stuff. More competitive exporters such as China, Mexico and Germany are winning market share in the US at Canada's expense. This would be a small concern if Canada were returning the favour. It's not: since 2000, Canada's share

of global merchandise trade has shrunk to about 2.5 percent from 4.3 percent, while its share of the market for commercial services has dropped by a percentage point to about 1.7 percent.

The failure is in Asia. Compared to its peers, Canada missed out on the hyper-growth phase of China's remarkable rise from poverty. The US did a free trade deal with South Korea three years sooner than Canada. Asia's fourth-largest economy has struggled in recent years, but export data suggest American companies have retained more business there than Canadian ones. In 2016, US exports to South Korea were 5.5 percent lower than in 2011, while Canada suffered a 15 percent decline over the same period.

Head starts matter. So does orientation. Australia and Canada completed trade agreements with South Korea at roughly the same time. (Australia's went into effect in December 2014, Canada's in January 2015.) Yet there is no comparing the economic impact. In 2016, Australia sent merchandise goods to South Korea worth (US) $11.7 billion, while Canada shipped only (US) $3.3 billion, according to the International Monetary Fund's Direction of Trade Statistics. Australia's advantage is ambition, not proximity: Vancouver is about 150 kilometres closer to Seoul than is Sydney. Canada's disadvantage is complacency.

Little Canada might be growing up. Trudeau insisted that the NAFTA renegotiation would be a trilateral discussion, ignoring old-timers who wanted to Ottawa to abandon Mexico. The enthusiasm around the Canada-EU trade agreement is encouraging. Canada's business associations now push for greater access to China and other Asian nations almost as forcefully as they insist Ottawa keep the US border open — an important shift. It also is significant that both the foreign affairs minister and the trade minister have spent most of their adult lives abroad. Former prime minister Stephen Harper and his cabinet had significant experience in only one country: Canada. To do business in the world, it helps to have lived in it.

Still, there is reason to question whether Trudeau is really committed to doing trade differently. There is no mention of the World Trade Organization (WTO) in International Trade Minister François-Philippe Champagne's mandate letter, an omission that Wolfe interprets as telling. Chrystia Freeland's reboot of Canada's foreign policy in June was followed by big announcements by Defence Minister Harjit Sajjan and International Development Minister Marie-Claude Bibeau. Champagne was left out, suggesting it's business as usual when it comes to trade.

That business does appear to include a greater emphasis on Asia. There is specific mention in Champagne's mandate letter of China and India, two countries with which Trudeau has suggested he would like to secure free trade agreements. Certainly, Canada must keep open the possibility of gaining improved access to two markets with populations that each exceed 1 billion people. But the odds of a win are so remote that it's fair to ask whether Trudeau is just name-dropping. Canada would be at an overwhelming disadvantage in a negotiation with China, and therefore Trudeau must proceed carefully. India, meanwhile, where bilateral talks with Canada have been painfully slow, has shown no inclination to trade with anyone on terms other than its own. It will take more than appointing four Sikh cabinet ministers to secure a breakthrough with India; otherwise, there would have been one by now.

Since NAFTA will consume so much bandwidth, Trudeau would be better off practising the art of the possible when it comes to the non-US elements of his trade strategy. There are three things he could do.

One, offer the WTO more than rhetorical support. The federal government insists it prefers multilateral trade agreements, yet its emphasis on bilateral talks with China, India and Japan suggests otherwise.

The WTO badly needs a champion, and it's in Canada's interest to step up. Canada has a certain amount of protection in NAFTA from the capricious use of punitive tariffs by the US. The Trump administration has said it plans to rewrite those provisions. Canada may come to need the WTO more than it has in recent years.

Second, Trudeau should invest fully in the effort to save the Trans-Pacific Partnership (TPP). Canada may never again have an opportunity to take part in a significant, multi-country trade negotiation that isn't dictated by either the US or China. Carlo Dade of the Canada West Foundation and Dan Ciuriak of the Centre for International Governance Innovation calculate that Canada would actually do better in an 11-country TPP than it would if the US were still in the mix. Some of the gain would come from securing improved access to Japan for Canadian farmers, ahead of their American rivals, which would make up for falling behind with South Korea.

Finally, Trudeau should allow Champagne to accumulate as many frequent-flyer points as he wants. My experience abroad over the past decade leaves me with the impression that Canada is far from top of mind when entrepreneurs and executives think about where they could do business. That's because Canada isn't in their faces enough. We tend to characterize international sales missions as boondoggles, while other countries accept that promotion simply is part of the game. "To be honest, we're just catching up," Champagne told *Maclean's* in July. He was talking about his hyperactive travel schedule, which requires explanation only because it's been so long since we've had a trade minister who spends most of his time actually trying to boost trade.

Later, Champagne told *Maclean's*, "Opening trade agreements, for me, is key, but it's an enabler. The next thing is getting there to make sure you sell something."

It's the right mix. Stick with it — and don't let Trump get in the way.

Putting the "progressive" in a progressive trade agenda

Real reform of the current trade system will require an alternative, progressive vision that truly puts workers and the environment first.

ANGELLA MACEWEN

Sometimes lost in the many details and debates about trade and investment deals is the reason *why* we trade. The economy is meant to serve the interests of society — not the other way around. Popular movements in Europe and the United States are questioning the current economic consensus, and trade and investment deals are often lightning rods for this debate.

While some see these popular movements as nationalistic and protectionist, it would be wise to consider the possibility that they are a warning sign that the current economic consensus is flawed and failing many. In the intervening decades since NAFTA was first signed, a disproportionate share of economic growth has gone to the very, very wealthy, and labour's share of the economic pie has shrunk. At the same time, governments in many developed nations have cut social services and begun to unwind social safety nets. The economic anxiety fuelling antitrade protests is real, and it must be addressed if we are to foster peace and prosperity globally.

Free trade models vs. free trade treaties

Economists have sometimes quipped that a true free trade deal would be only a few pages long, specifying tariff elimination schedules and not much else. Economic models and theory clearly show that removing barriers to trade in this way would increase competition and encourage more productive specialization and allocation of resources. The end result should be enhanced productivity and economic growth, and lower prices for consumers.

Unfortunately, these models don't reflect the reality of today's trade and investment treaties, not least because they don't account for major power imbalances and the undue influence of large multinational corporations in treaty negotiations. Rather than getting shorter (and therefore closer to economists' theoretical ideal), trade treaties are getting longer. NAFTA was more than 1,700 pages long and the now-defunct Trans-Pacific Partnership (TPP) was over 5,000 pages.

More often than not, treaties actually include specific protectionist measures for influential industries. Take, for instance, measures in the Comprehensive Economic Trade Agreement between Canada and the EU, which are designed to extend patent protection periods for pharmaceuticals that are estimated to cost Canadian governments and consumers a billion dollars per year.

The expansion of global value chains (GVCs), which has been supported by trade agreements, has been credited with contributing to economic growth in emerging market economies such as China, Colombia and Bangladesh. But GVCs can also exploit governance gaps that allow corporations to take advantage of weak labour and environmental laws, weak enforcement of existing laws or even corrupt legal systems in host countries. The consequences of this can be significant, as we saw with the devastating

loss of life at Rana Plaza in Bangladesh, and include human rights and labour rights abuses, environmental exploitation and tax avoidance that weakens public services in both developed and emerging market nations.

NAFTA was supposed to raise wages and working conditions in Mexico, lift workers out of poverty and increase domestic demand. Instead, Mexico's economic growth has stagnated compared to similar Latin American nations and more than half of the country falls below the poverty line. NAFTA and its labour side agreement have not observably improved wages or working conditions for workers in Mexico, as only about 1 percent of Mexican workers belong to a democratic union. Most workers are covered by "protection contracts," which are agreements between the company and a company-approved union. If workers try to vote in a democratic union, the results are often ignored, or even worse, union organizers face harassment and threats. While corporations benefited from lower-cost labour in Mexico, these gains were not really shared with the wider population.

Economic policies beyond trade liberalization matter too

Trade and investment treaties such as NAFTA are not the only way that the current global economic model is created and recreated across the world, but they have significant symbolic value both for proponents and for those opposed. Trade liberalization is part of a package of related economic policies, often referred to as "neoliberalism," which includes lower corporate taxes, reduced personal income tax rates for higher-income earners, deregulation and regulatory harmonization, and privatization of public services.

Critics of neoliberalism argue that these policies interact to undermine the social welfare state, making workers more vulnerable to trade and other market shocks. In this context, a "progressive model of trade," as understood by labour groups and civil society, requires a repudiation of neoliberal economic policies, and a turn to more equitable models of political and economic governance, both domestically and internationally.

Is progressive trade possible?

The current trade model is a long way away from what workers would call "progressive trade," as it often leaves people and the environment vulnerable to exploitation. A worker- and climate-friendly trade model would establish binding linkages between human rights, labour rights, environmental standards and any benefits from trade.

Stronger labour and sustainable development chapters, with clear language and effective enforcement mechanisms, are necessary but not sufficient. This could be accomplished by combining the best qualities of Canadian- and US-style labour chapters.

For example, the TPP labour chapter was built on the US model where violations are subject to the same dispute resolution mechanisms as other parts of the treaty. However the violations must be proven to have happened "in a manner affecting trade or investment between the Parties." It turns out that this is so difficult to prove that no labour violation complaint under a United States free trade agreement has ever been successful.

The Canadian approach has leaned more on the International Labour Organization's core labour conventions, which should also be expanded to include conventions on the rights of migrant workers, and labour inspections.

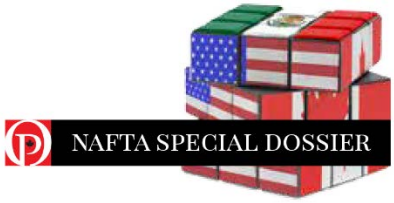
Investor-State Dispute Settlement (ISDS) mechanisms are especially unpopular, as they prioritize investor rights over investor responsibilities. Canada and Mexico have had similar dismal experiences under NAFTA — while the US has never lost a NAFTA investor-state case. ISDS chapters should be eliminated from progressive trade agreements, and any new investor protections should be subsidiary to national judicial processes and privilege state-to-state settlements.

The most effective way to compensate and transition people who lose out from economic shocks — whether from trade, automation or a variety of other sources — is to have a well-financed social safety net and universal public services. Employment Insurance and associated active labour market policies are important, but so are universal health care, child care, affordable housing and other elements of the welfare state. This is why public services must be fully carved out.

Transparency and accountability are missing from the current trade model. We need more than token stakeholder meetings or vague gender chapters to correct this gap. Environmental, human rights and gender audits can reduce exploitation and guide policy-makers toward better policy. Initial audits would be enhanced by a public system for regular monitoring and assessment of specific outcomes over time. Finally, economic development strategies, such as strategic government procurement and community benefit agreements, must be available to domestic governments at all levels.

All of these areas represent untapped opportunities for significant improvements based on an alternative vision of a real "progressive trade agenda" — one that truly puts workers and the environment first.

NAFTA and a made-in-Canada IP framework



The upcoming NAFTA negotiations are an opportunity for Canada to better protect its national interests around intellectual property.

NATHANIEL LIPKUS

Nearly a quarter-century ago, the United States, Canada and Mexico concluded the North American Free Trade Agreement (NAFTA), implemented in 1994, and it included the first intellectual property (IP) chapter in an international trade agreement, chapter 17. This chapter was negotiated against the backdrop of negotiation of the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), which has served as the backbone for global intellectual property standards for over two decades.

Since NAFTA and TRIPS, the United States has worked to commit its trading partners to expand their IP protection beyond the TRIPS requirements. The US achieved this through the Trans-Pacific Partnership (TPP), committing Canada and other TPP members to abide by numerous intellectual property treaties, codify minimum pharmaceutical IP protection standards, and increase copyright terms and the scope of protection. That was, until President Donald Trump withdrew the US from the TPP, just a week after his inauguration.

Now, Canada, the US and Mexico will negotiate over updates to the NAFTA IP chapter. A critical question will be whether Canada's negotiators will spend their time playing defence against US demands, or whether they can summon some offence of their own by making demands designed to promote Canadian interests.

Setting the battle lines

Despite the US withdrawal from the TPP, Washington has not changed its position on intellectual property. Drafts of the TPP IP chapter, leaked by Wikileaks throughout TPP negotiations, revealed the US was pushing for the expansion of copyright term and scope, and enhanced pharmaceutical IP protection; stricter enforcement measures to combat counterfeiting and piracy; and greater availability of patent term extensions.

The US will almost certainly use the final draft of the TPP IP chapter as the notional starting point for negotiations and seeking to further expand IP rights. Canada was instrumental in striking balance between the US's and developing countries' positions on key IP issues, finding the middle ground on such issues as pharmaceutical data protection and Internet service provider liability for third-party copyright infringement. Expect the US to continue to push Canada to ratchet up its IP protection or, at a minimum, to use IP concerns as negotiating leverage for more contentious issues.

Canada is unlikely to capitulate on IP issues this time around. It made IP concessions in the Comprehensive Economic and Trade Agreement (CETA) with the European Union, expanding IP protection for pharmaceuticals and signing on to all major IP treaties. The Canadian Intellectual Property

Office has begun consultations to implement CETA-related changes this summer. Canada is far better prepared for a trade-related IP negotiation than it has ever been, and it may even push back on concessions it made during the TPP talks, including extended patent terms.

The federal government is developing a 21st-century intellectual property strategy, which will be pertinent to NAFTA as well as to other trade talks. Innovation, Science and Economic Development Canada is tasked with enabling Canadian inventors and organizations to protect their IP, improve the IP trade balance with the US and the rest of the world (the notional amount countries pay each other to use IP), and fairly distribute the benefits from Canadian IP among Canadians. The federal government will bristle at new commitments pushed by American negotiators that undercut these critical objectives.

Expect Canada (and Mexico) to question the need for significant new IP commitments in NAFTA, now that Canada has implemented TRIPS and has committed to implement major IP treaties in CETA. Unlike during NAFTA negotiations in the 1990s, there is a multilateral IP treaty to set minimum requirements for all forms of IP. Canada provides substantially more IP protection than does TRIPS. Except for a couple of issues that are of concern to the US (which I discuss below), there is no clear motivation or justification for Canada to make any further international IP commitments.

Big-ticket IP issues on the table

The Canadian IP issue that was of greatest concern to the US – the promise doctrine, or utility requirement, in patent law – is now no longer an issue. For a decade or so, Canadian courts had issued decisions finding pharmaceutical patents invalid because inventions failed to achieve the promised level of utility. Although the application of this doctrine had narrowed significantly since 2013, for some years the US trade representative has applied sustained pressure on Canada to abolish the doctrine. On June 30, 2017, the Supreme Court of Canada found that the promise doctrine was not good law in Canada, overruling the doctrine and obviating the entire issue in one fell swoop.

Another Canadian IP issue of great concern to the US is Canada's unwillingness to seize shipments of counterfeit goods that are en route to the US and originate from abroad. The US views Canada as a weak link in the global counterfeit goods supply chain, because counterfeiters abroad can ship goods to Canada and then route them south at lower risk than if the goods were shipped directly to the US. The US negotiated a bilateral arrangement with Canada, as part of TPP, to stop such trans-shipments and require Canada to report to the US on its enforcement of this. However, now that the US has withdrawn from the TPP, the arrangement to stop trans-shipments has not yet taken effect. The US will expect Canada to recommit to this concession.

Unlike the US, Canada does have a wish list for changes to other countries' IP systems. However, there will still be opportunities Canada can seize during the negotiations of an NAFTA IP chapter. For example, Canada should take steps to immunize Canadian businesses against opportunistic patent lawsuits in the US. Recently, the US Supreme Court made it far more difficult for foreign companies to sue US companies for patent infringement in patent-friendly courts like the US District Court for the Eastern District of Texas, nicknamed the "rocket docket." However, foreign companies can still be sued anywhere in the US, including in the Eastern District of Texas. In NAFTA negotiations, Canada could insist that Canadian companies receive the same protection from patent-friendly venues as American companies.

Canadian negotiators could also negotiate protections against foreign capture of Canadian IP. The US government influences the IP trade balance with Canada through its funding of Canadian research. When

accepting US government funds, Canadian researchers often agree to restrictions on IP; for example, to give American funding agencies the option to patent Canadian work. Restrictions imposed by Canadian governments for funding are typically less onerous. NAFTA presents an opportunity for Canada to review this issue carefully and ensure that IP generated at Canadian universities stays in Canada and is not being captured by US interests as a result of domestic US funding policies.

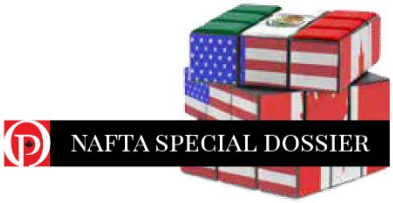
Can we win?

As was the case with the NAFTA negotiations 25 years ago, other countries will be watching closely to see where NAFTA ends up on IP issues, as Canada has a reputation for taking a balanced approach to the promotion of innovation and affordable access to goods and services. Canada should recommit to its balanced approach, while also striking an IP bargain that will protect Canadians from American IP policies that could harm Canadian companies and result in their exclusion from the US market, or in the American capture of Canadian IP through the requirements imposed on researchers.

To be able to win in the NAFTA IP negotiation, Canada's negotiators need to understand the importance of IP: where it creates winners and losers across borders, and how it drives growth. The US negotiators are driven by a deep understanding of these issues. Will Canada finally offer its own blueprint for cross-border IP that will promote Canadian innovation far into the future? These negotiations present an ideal opportunity to do so.

Privacy rights on the NAFTA agenda

Will the new NAFTA allow Canadian governments to ensure that private data collected from Canadians will not be stored outside this country?



VINCENT GOGOLEK

As we get readDRy to enter what promises to be a very contentious renegotiation of the North American Free Trade Agreement (NAFTA), we should keep in mind that supply-managed milk and chickens are not the only things the Americans will want to have on the table. The list of items for negotiation includes a number of sectors that were not included in the original agreement, often because those industries did not exist in the mid-1990s, at least not on the scale they do now.

In fact, the United States has made it explicit that it intends to "establish rules to ensure that NAFTA countries do not impose measures that restrict cross-border data flows and do not require the use or installation of local computing facilities." British Columbia's public sector privacy law does just that, and we can expect that the domestic data-storage requirement in its *Freedom of Information and Protection of Privacy Act* (*FIPPA*) will be a bone of contention.

And no, this intention of the Americans' isn't some new zaniness from the mind of President Donald Trump, but a long-standing claim by successive administrations.

BC is one of two provinces in Canada that have a domestic data storage requirement in law (the other is Nova Scotia). In BC the law came about as a way out of a huge controversy during the first government of Liberal premier Gordon Campbell. In 2004, Campbell undertook a number of outsourcing initiatives, one of which involved the health ministry contracting out the administration of BC's public health insurance program to Maximus, a US-controlled private service provider.

The centre of the controversy was the prospect of the application of the *USA Patriot Act* to British Columbians' personal health information. The *USA Patriot Act* contained a number of measures allowing American security and law enforcement agencies to gain access to personal information. This caused a huge uproar in BC.

BC's information and privacy commissioner demanded that protections be brought in, requiring that this data be stored in Canada (among other things), and Campbell agreed. As a result, BC's law requires public bodies in the province to "ensure that personal information in its custody or under its control is stored only in Canada and accessed only in Canada," subject to a few limited exceptions.

The BC and Nova Scotia laws have been targeted by the Office of the US Trade Representative (USTR). In the latest annual report on what it considers to be trade barriers around the world, the USTR claims these laws are barriers to digital trade:

British Columbia and Nova Scotia each have laws that mandate that personal information in the custody of a public body must be stored and accessed only in Canada unless one of a few limited exceptions applies. These laws prevent public bodies, such as primary and secondary schools, universities, hospitals,

government-owned utilities, and public agencies, from using U.S. services when there is a possibility that personal information would be stored in or accessed from the United States.

Internal USTR documents we obtained through the American *Freedom of Information Act* show that major US companies (Rackspace/Salesforce) complained to the USTR about BC's requirement that government and other public sector data be stored in Canada. The documents also show the USTR took those complaints seriously, and it made a point of calling the BC ministry responsible for the law in early 2012 to discuss the issue. We didn't get a record of what precisely was said during the call, but the USTR officials' e-mails we did receive indicated they were interested in what they heard from the BC Ministry of Citizens' Services.

When the BC Freedom of Information and Privacy Association (FIPA) tried to find out the Canadian version of events, our freedom of information request came up with nothing. The BC Ministry of Citizens' Services claimed that although it received a call from the USTR to set up a later call, and although its officials actually talked on the phone with the USTR for at least a half hour on the day in question, it didn't have any agenda, minutes, notes or anything else. The BC Ministry of International Trade was similarly bereft of documentation about this call, so we have no idea what BC government officials told the USTR, nor do we know what, if anything, they told their political masters about this.

One thing we do know is that the Americans will want to open up opportunities to do business in BC's public sector, which they are currently denied, and that they will probably be looking for language that will prevent other governments in this country from requiring that data collected from Canadians in this country be stored in this country.

When FIPA asked about this issue during the recent provincial election, the major BC political parties stated unequivocally that they would take whatever measures were available to them to protect this part of *FIPPA*. Where the federal government (which will be conducting the actual trade negotiations) stands on this question is considerably less clear.

As Canadians increasingly become concerned about their personal information being shared in any way with an increasingly erratic United States, pressure will likely build for legislative action to keep this personal information inside our borders. Some American companies have already started offering a Canadian data storage option in response to market demand by Canadians, but other large players in the American tech sector will undoubtedly keep the pressure on the US negotiators to ensure the free flow of data by preventing Canadian governments from using law or policy to protect privacy rights with domestic data storage.

We deserve a firm commitment from the Canadian government that the coming negotiations about trade in goods and services will not see our privacy rights used as a bargaining chip.

The environment in Canadian trade agreements

Since NAFTA, Canada and the US have included the largest number, worldwide, of environmental clauses in their trade agreements.

JEAN-FRÉDÉRIC MORIN, LAURA MORDELET, MYRIAM ROCHETTE

The number of trade agreements that include environmental clauses is on the rise. Many agreements devote an entire chapter to environmental protection and address a broad range of issues including the protection of endangered species, hazardous waste management, climate change and forest conservation. Some of these clauses are even more specific and restrictive than those in multilateral agreements on the environment.

At the same time, trade agreements are often criticized for their harmful effects on the environment. Some nongovernmental organizations are concerned that trade agreements limit a government's ability to enact environmental protection measures that run counter to the interests of exporters and foreign investors. According to them, trade agreements do not provide sufficient environmental exceptions to trade commitments.

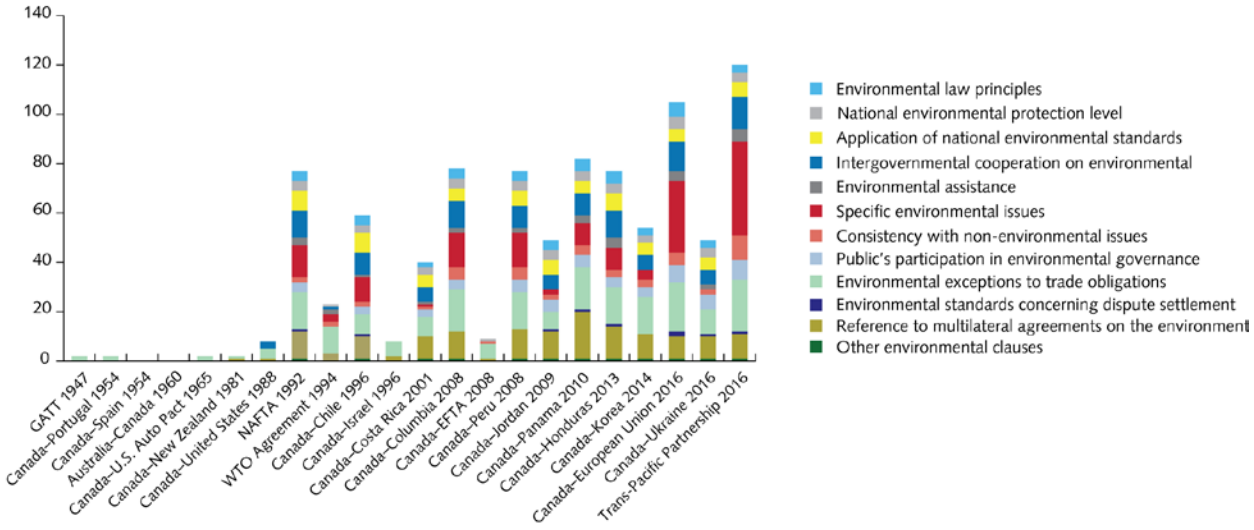
What is the Canadian practice in this regard, and how does it differ from those of other countries? To answer this question, we used the TRade & ENvironment Database (TREND), developed at Université Laval based on the trade agreements collected by the Design of Trade Agreements project. The TREND data set identifies almost 300 different categories of environmental provisions in approximately 700 trade agreements signed since 1947.

Our examination of that database led us to make three observations. First, Canada incorporates a large number of environmental clauses in most of its trade agreements. Second, environmental clauses differ significantly from one agreement to the next. Third, Canada could improve on the environmental portions of its trade agreements by looking at what other countries are doing. We elaborate upon these observations below.

The Canadian approach

The conclusion in the early 1990s of the North American Free Trade Agreement (NAFTA) and its parallel environmental agreement marked a turning point in Canadian trade policy. While Canadian agreements up to that time contained few environmental provisions, after NAFTA was adopted, Canadian trade policy began truly integrating environmental protection, as shown in the figure below.

Figure
Number of environmental clauses in Canadian agreements



Source: TRade & ENvironment Database (TREND), Canada Research Chair in International Political Economy, Université Laval, 2017. http://www.chaire-epi.ulaval.ca/en/trend.

In fact, since the adoption of NAFTA, Canada and the US have included the highest average number of environmental provisions per trade agreement, worldwide. These two nations have also developed the greatest number of innovative clauses, that is, environmental protection clauses that did not exist in previous trade agreements. In particular, NAFTA was the first trade agreement that required its signatories to apply their national environmental laws, and Canada and the US can be considered pioneers in this regard.

There are five features distinguishing NAFTA's approach, which Canada subsequently also followed. First, Canadian agreements have attempted to level the playing field with respect to commercial competition conditions by encouraging the maintenance of, and even improvement in, national environmental protection standards. For instance, they include a clause prohibiting the lowering of national environmental protection standards to attract foreign investment.

Second, Canadian agreements are based on an adversarial approach to ensure the implementation, application and compliance with environmental measures. This method relies on legal and political confrontation rather than informal dialogue. Most notably, Canadian agreements include mechanisms that allow individuals to report noncompliance with environmental laws.

Third, Canadian agreements encourage public participation in protection of the environment. They usually include provisions concerning transparency, public consultation and reliance on environmental experts.

Fourth, Canadian agreements protect the regulatory sovereignty of the parties by including various environmental exceptions to trade liberalization and investment obligations. These exceptions specifically allow parties to restrict trade to protect plants or animals and conserve natural resources. Similarly, they underscore the parties' sovereignty over establishing environmental protection standards and ensuring that national measures are applied.

Fifth, since the conclusion of NAFTA, Canadian trade agreements have generally provided that, in instances where they are incompatible with certain multilateral agreements on the environment, the latter must prevail. The multilateral agreements cited most often in Canadian trade deals are the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Montreal Protocol on Substances that Deplete the Ozone Layer and the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal.

Variation among Canadian agreements

There is nevertheless significant variation among Canadian agreements. As the figure shows, some agreements, such as that with the European Free Trade Association, include fewer environmental provisions than do others. There are even major differences among recent agreements that do contain a large number of environmental provisions, such as the Comprehensive Economic and Trade Agreement between Canada and the European Union (CETA) and the Trans-Pacific Partnership (TPP).

CETA appears to have been inspired in part by the European model. It integrates several environmental principles that are more often found in European agreements than in North American agreements, such as the precautionary principle (whereby the absence of scientific certainty must not be a pretext for not adopting environmental measures) and the polluter pays principle (whereby the costs of pollution must be assumed by the polluter rather than by society as a whole). CETA also expressly refers to climate change; it requires parties to prioritize trade in environmental goods and services related to renewable energy sources, and to cooperate in their climate change adaptation and mitigation policies. The TPP, in contrast, does not mention "climate change" at all.

The TPP largely reflects the American approach; this is evident in its dispute resolution provisions. For instance, if one of the parties to the TPP does not respect its environmental obligations, the other parties can impose a trade benefits suspension on that party. This adversarial approach is typically American, and is absent in European agreements.

Moreover, both CETA and the TPP were innovative in that they include new provisions not found in previous agreements. CETA is the very first trade agreement to explicitly stipulate that water in its natural state is not a product or merchandise and that, consequently, trade obligations do not apply to water. And the TPP is the first trade agreement to favour the elimination of subsidies that contribute to overfishing.

The differences between CETA and the TPP should not be overemphasized, however. In many respects, European agreements are becoming Americanized and American agreements are becoming Europeanized. CETA, for example, clearly specifies that environmental measures do not usually constitute indirect expropriations. Foreign investors that consider they have been harmed by an environmental measure cannot therefore claim compensation from the government that enacted the measure. This is a direct lesson from the experience of NAFTA's chapter 11, and reflects contemporary North American practices. On the other hand, the TPP borrowed from the European model the idea of addressing a series of specific environmental issues in addition to very general environmental protection rules. As well, the TPP includes clauses dealing with protection of the ozone layer, ship pollution, invasive species and biodiversity. Prior to the TPP, this sector-based approach was more typical of European trade agreements.

Inspiration for future Canadian agreements

Although Canada already includes many environmental clauses in its trade agreements, it could certainly incorporate more. Here it could take inspiration from the clauses other countries include in their trade agreements.

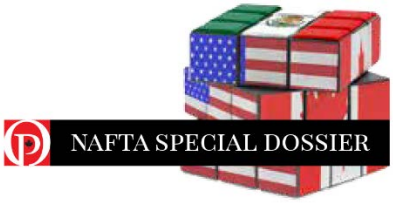
For instance, Canada could follow the example of Latin American and Asian countries, which include detailed environmental norms on genetic resources in their trade agreements. These agreements have adopted the Nagoya Protocol's principle on sharing the benefits that accrue from the use of genetic resources in pharmaceutical or biotechnological products. To facilitate the application of this principle, some trade agreements encourage their parties to require disclosure of the origin of genetic resources in patent applications. They also recommend that they implement a system to protect the traditional knowledge of Indigenous peoples regarding genetic resources. Given the wealth of traditional knowledge of Canada's Indigenous population, Canada should include such provisions in its agreements.

Canada could also draw inspiration from climate change clauses in certain European trade agreements. For example, its trade agreements could include reference to the principle of common but differing responsibilities, that is, those differing between developed and developing countries, which currently is completely absent in Canadian trade agreements. Canadian agreements could also impose the ratification and implementation of multilateral agreements on climate change, as do certain European trade agreements.

The TREND database reveals several other environmental clauses that other countries have developed and that Canada could incorporate in its own trade agreements. These include the essential role of women in the protection of natural resources, promotion of agro-environmental methods, protection of natural heritage sites, development of joint scientific projects, control of mercury emissions, protection of organic food certifications and development of environmental inspection mechanisms.

NAFTA and its parallel environmental accord were indisputably important advances. However, these agreements are 25 years old. Since that time, trade agreements have continued to evolve and incorporate even more environmental protection provisions. Representatives from Canada and the United States have expressed the hope that NAFTA renegotiation will be an opportunity to further increase environmental obligations. At the very least, we expect the environmental provisions envisioned by the TPP to be incorporated into NAFTA. Hopefully, though, negotiators will be even more ambitious and make the renewed NAFTA as innovative as the original agreement was in 1992.

L’environnement dans les accords commerciaux canadiens



Depuis l’ALENA, le Canada et les États-Unis sont les deux pays qui incluent le plus grand nombre de dispositions environnementales dans leurs accords commerciaux.

JEAN-FRÉDÉRIC MORIN, LAURA MORDELET, MYRIAM ROCHETTE

Les accords commerciaux incluent de plus en plus de dispositions environnementales. Plusieurs d’entre eux consacrent un chapitre entier à la protection de l’environnement, abordant une foule d’enjeux, de la protection des espèces menacées à la gestion des déchets dangereux en passant par les changements climatiques et la conservation des forêts. Certaines de ces dispositions sont même plus précises et contraignantes que celles contenues dans les accords multilatéraux sur l’environnement.

En même temps, les accords commerciaux sont régulièrement décriés pour leurs effets néfastes sur l’environnement. Plusieurs organisations non gouvernementales craignent que ces accords restreignent la capacité des gouvernements à adopter des mesures environnementales qui contreviendraient aux intérêts des exportateurs et des investisseurs étrangers. Selon elles, les accords commerciaux ne prévoient pas suffisamment d’exceptions environnementales aux obligations commerciales.

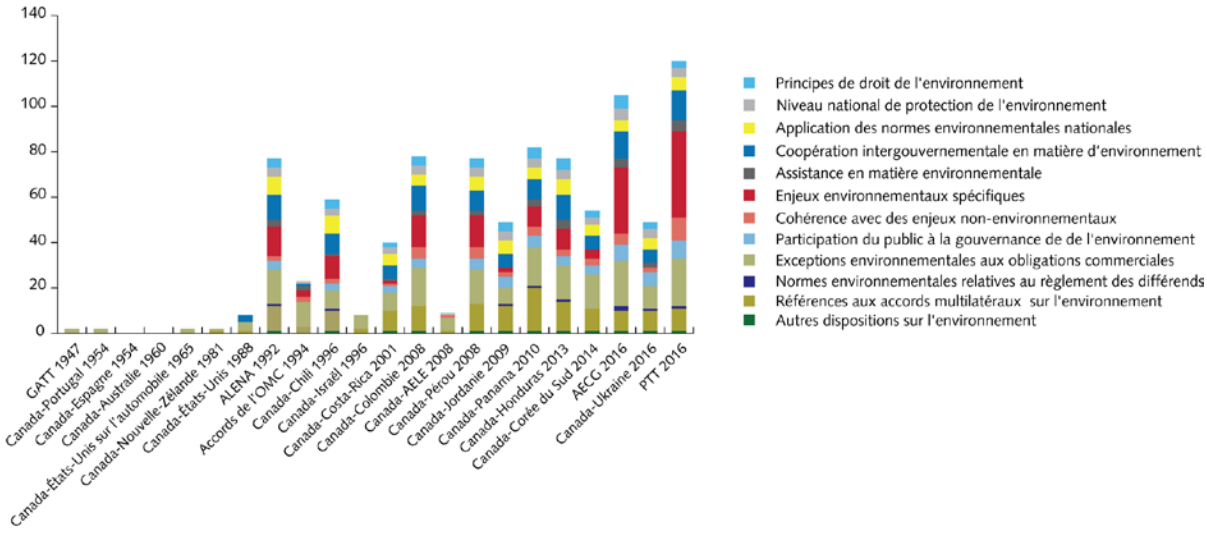
Quelle est la pratique canadienne à cet égard, et comment se distingue-t-elle des autres pays ? Pour le savoir, nous nous appuyons sur la base de données TRade & ENvironment Database (TREND), développée à l’Université Laval à partir du répertoire des accords commerciaux du projet Design of Trade Agreements (DESTA). Elle recense près de 300 différentes catégories de dispositions environnementales dans environ 700 accords commerciaux signés depuis 1947.

L’exploitation de cette base de données permet de dégager trois observations principales. Premièrement, le Canada intègre un grand nombre de dispositions environnementales dans la majorité de ses accords commerciaux. Deuxièmement, ces clauses environnementales varient sensiblement d’un accord à l’autre. Et troisièmement, le Canada pourrait améliorer le bilan environnemental de ses accords commerciaux en s’inspirant d’autres pays. Ces observations sont détaillées dans les paragraphes qui suivent.

L’approche canadienne

La conclusion de l’Accord de libre-échange nord-américain (ALENA) et de son accord parallèle sur l’environnement au début des années 1990 marque un tournant dans la politique commerciale canadienne. Si les accords commerciaux canadiens ne contenaient auparavant que très peu de dispositions environnementales, c’est à partir de l’ALENA que la politique commerciale canadienne intègre véritablement la protection de l’environnement, comme l’illustre la figure ci-dessous.

Figure
Nombre de dispositions environnementales dans les accords canadiens



Source : Trade & ENvironment Database (TREND), Chaire de recherche du Canada en économie politique internationale, Université Laval, 2017.

En fait, depuis la conclusion de l'ALENA, le Canada et les États-Unis sont les deux pays qui incluent le plus grand nombre moyen de dispositions environnementales par accord commercial. Ce sont également eux qui ont élaboré le nombre le plus élevé de dispositions innovantes, c'est-à-dire qui n'existaient dans aucun accord commercial antérieur. L'ALENA fut notamment le premier accord commercial qui imposait aux pays signataires d'appliquer leurs lois environnementales nationales. Le Canada et les États-Unis peuvent être considérés à juste titre comme des pionniers dans ce domaine.

L'approche développée dans l'ALENA et que le Canada a poursuivie ensuite se distingue par cinq aspects. Premièrement, les accords canadiens tentent de niveler par le haut les conditions de concurrence commerciale en encourageant le maintien, voire le rehaussement, des normes nationales sur la protection de l'environnement. Ils incluent par exemple une clause interdisant d'abaisser le niveau national de protection de l'environnement pour attirer des investissements étrangers.

Deuxièmement, les accords canadiens se fondent sur une approche antagoniste pour assurer la mise en œuvre, l'application et le respect des mesures environnementales. Cette approche mise sur la confrontation judiciaire et politique plutôt que sur le simple dialogue informel. Les accords canadiens prévoient notamment divers mécanismes permettant à des individus de dénoncer le non-respect des lois environnementales.

Troisièmement, les accords canadiens favorisent la participation de la société civile à la protection de l'environnement. Ils contiennent habituellement des dispositions relatives à la transparence, à la consultation du public et à la valorisation des experts en matière d'environnement.

Quatrièmement, les accords canadiens protègent la souveraineté réglementaire des parties en prévoyant diverses exceptions environnementales aux engagements sur la libéralisation du commerce et de l'investissement. Ces exceptions permettent notamment aux parties d'adopter des mesures qui freinent le commerce afin de protéger les animaux et de conserver les ressources naturelles. Dans la même veine, ils rappellent la souveraineté des parties à fixer eux-mêmes le niveau de protection environnementale et à assurer l'application des mesures nationales.

Cinquièmement, depuis la conclusion de l'ALENA, les accords canadiens prévoient généralement qu'en cas d'incompatibilité juridique avec certains accords multilatéraux sur l'environnement, ce sont ces derniers qui doivent prévaloir. Les accords multilatéraux les plus fréquemment cités dans les accords canadiens sont la Convention sur le commerce international des espèces de faune et de flore sauvages menacées d'extinction, le Protocole de Montréal relatif à des substances qui appauvrissent la couche d'ozone et la Convention de Bâle sur le contrôle des mouvements transfrontières de déchets dangereux et de leur élimination.

Des variations entre les accords canadiens

Il subsiste néanmoins des variations importantes entre les accords canadiens. Comme l'illustre la figure, certains accords canadiens, comme celui conclu avec l'Association européenne de libre-échange (AELE), incluent moins de dispositions environnementales que les autres. Il existe même des variations importantes entre des accords récents contenant un grand nombre de dispositions environnementales, comme entre l'Accord économique et commercial global entre le Canada et l'Union européenne (AECG) et le Partenariat transpacifique (PTP).

L'AECG semble en partie inspiré du modèle européen. Il intègre plusieurs principes environnementaux qui se retrouvent plus fréquemment dans les accords européens que nord-américains, tels que le principe de précaution (selon lequel l'absence de certitude scientifique ne doit pas être un prétexte à la non-adoption de mesures environnementales) et celui du pollueur-payeur (selon lequel les coûts de la pollution doivent être assumés par les pollueurs plutôt que par l'ensemble de la société). L'AECG fait aussi explicitement référence aux changements climatiques ; il demande aux parties de favoriser le commerce des biens et services environnementaux liés aux énergies renouvelables, et de coopérer dans leurs politiques d'atténuation des effets climatiques et d'adaptation aux changements. En comparaison, le PTP ne mentionne pas une seule fois le terme de « changement climatique ».

Le PTP reflète davantage l'approche américaine, comme on peut le noter en matière de règlement des différends. Si une des parties du PTP ne respecte pas ses obligations environnementales, une autre partie peut lui imposer une suspension de bénéfices commerciaux. Cette approche coercitive typiquement américaine est absente des accords européens.

Par ailleurs, tant l'AECG que le PTP ont innové et prévoient des dispositions novatrices, qui n'existaient pas auparavant. L'AECG est le tout premier accord commercial qui stipule explicitement que l'eau dans son état naturel ne constitue pas un produit ou une marchandise et que, par conséquent, les obligations commerciales ne s'appliquent pas à l'eau. Le PTP, de son côté, est le premier accord commercial qui favorise l'élimination des subventions qui contribuent à la surpêche.

Il ne faut toutefois pas surestimer les différences entre l'AECG et le PTP. À plusieurs égards, les accords européens s'américanisent, alors que les accords américains s'européanisent. L'AECG, par exemple, précise clairement que les mesures environnementales ne constituent normalement pas des expropriations indirectes. Les investisseurs étrangers qui s'estiment lésés par une mesure environnementale ne peuvent donc pas réclamer une indemnisation au gouvernement qui a adopté cette mesure. Cette précision est une leçon directement puisée de l'expérience du chapitre 11 de l'ALENA et reflète la pratique nord-américaine contemporaine. Inversement, le PTP emprunte au modèle européen l'idée d'aborder une série d'enjeux environnementaux précis, en plus de règles générales sur la protection de l'environnement. Le PTP inclut ainsi des articles ayant trait à la protection

de la couche d'ozone, à la pollution navale, aux espèces invasives et à la biodiversité. Cette approche sectorielle était auparavant l'apanage des accords commerciaux de l'Union européenne.

Une inspiration pour les prochains accords canadiens

Bien que le Canada inclue déjà un grand nombre de dispositions environnementales dans ses accords commerciaux, il peut certainement en ajouter de nouvelles. Il serait d'ailleurs avantageux qu'il s'inspire des dispositions qui se trouvent déjà dans les accords commerciaux d'autres pays.

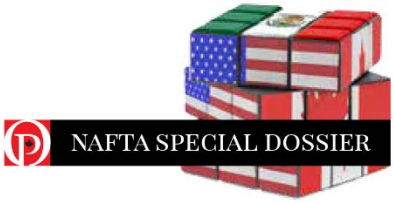
Le Canada pourrait notamment prendre exemple sur des pays latino-américains et asiatiques qui intègrent des normes détaillées sur les ressources génétiques dans leurs accords commerciaux. Ces accords réitèrent le principe du Protocole de Nagoya sur le partage des avantages qui découlent de l'utilisation des ressources génétiques comme composantes de produits pharmaceutiques ou biotechnologiques. Pour faciliter l'application de ce principe, certains accords commerciaux encouragent leurs parties à exiger la divulgation de l'origine des ressources génétiques dans les demandes de brevet. Ils les invitent également à mettre en place un système de protection des savoirs traditionnels des communautés autochtones relatifs aux ressources génétiques. Compte tenu de la richesse des savoirs traditionnels des peuples autochtones canadiens, il serait pertinent que le Canada reprenne ces dispositions dans ses propres accords.

Le Canada pourrait également s'inspirer des clauses sur les changements climatiques de certains accords commerciaux européens. Il pourrait par exemple inclure dans ses accords commerciaux une référence au principe des responsabilités communes mais différenciées entre pays développés et pays en développement, laquelle étant complètement absente dans les accords commerciaux canadiens. Il pourrait également imposer la ratification et la mise en œuvre des accords multilatéraux sur les changements climatiques, comme le font certains accords commerciaux européens.

La base de données TREND révèle plusieurs autres clauses environnementales élaborées par d'autres pays et dont le Canada pourrait s'inspirer. Mentionnons notamment la reconnaissance du rôle essentiel des femmes à la protection des ressources naturelles, la promotion des méthodes agroenvironnementales, la protection des sites patrimoniaux naturels, l'élaboration de projets scientifiques conjoints, le contrôle sur les émissions de mercure, la protection des certifications d'aliments biologiques et l'élaboration de mécanismes d'inspections environnementales.

L'ALENA et son accord parallèle sur l'environnement furent indiscutablement des avancées importantes. Ce sont toutefois des accords qui ont 25 ans. Depuis, les accords commerciaux ont continué d'évoluer et d'intégrer encore davantage de dispositions relatives à la protection de l'environnement. D'ailleurs, tant les représentants du Canada que ceux des États-Unis ont dit souhaiter que la renégociation de l'ALENA soit l'occasion de rehausser les exigences environnementales. On peut s'attendre, au minimum, à ce que les dispositions environnementales prévues dans le PTP soient alors intégrées à l'ALENA. Mais on peut également espérer que les négociateurs soient encore plus ambitieux et fassent en sorte que l'ALENA renouvelé constitue une avancée aussi importante que le fut l'accord signé en 1992.

NAFTA and the Great Lakes-St. Lawrence region



Can we improve the coordination of trade agreements to better support the important supply chains that cross the Canada-US border?

MARK FISHER, JEFF PHILLIPS AND JESSE SHUSTER-LEIBNER

Over the last decade, world trade in goods has increased dramatically from US$10 trillion in 2005 to US$16 trillion in 2015, while trade in services has doubled, from US$2.5 trillion to US$5 trillion. Much of this trade occurs within regional trade agreements (RTAs), of which there are currently over 600 around the world.

The most important RTA for both Canada and the United States is the North American Free Trade Agreement (NAFTA), with two-way trade in goods and services doubling since its implementation in 1994. Canada sells more to the United States in one year than it does to the rest of the world combined in three years. This represents over $2 billion in goods and services crossing the Canada-US border every day.

The Great Lakes-St. Lawrence region is a key driver of the Canada-US economic relationship and a critical continental and global trade corridor. The region employs 51 million workers, or nearly 30 percent of the combined American and Canadian workforce. The eight Great Lakes states (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin) and the Canadian provinces of Quebec and Ontario represent 50 percent of the total value of goods imports and exports between the two countries. Further, the region boasts one-fifth of US and one-half of Canadian manufacturing.

The auto sector — which remains a manufacturing juggernaut in the region — best illustrates how intertwined we are, with its just-in-time supply chain that relies on speed, reliability and predictability at the border. It's also the sector that best demonstrates the opportunities both countries could realize by pursuing a more coordinated approach on its common commercial interests.

The Auto Pact, signed in 1965, recognized that shared industrial and trade policy objectives were required for an industry that dominated the two economies and spanned the border. It allowed a single plant to produce specific vehicle models for both markets, which rationalized production and led to significant economies of scale. Unfortunately, the enthusiasm for pursuing shared policy objectives like the Auto Pact has waned, with President Trump today advocating for a "Buy American, Hire American" approach to trade policy.

One area with potentially important implications for the Great Lakes Region in the upcoming NAFTA renegotiations is "rules of origin," which describe content requirements for goods — including autos and parts — to trade at the preferential NAFTA rate. The summary of the US objectives for renegotiating NAFTA highlights an objective to "ensure the rules of origin incentivize the sourcing of goods and materials *from the United States* and North America" (emphasis added).

It may be appealing to assume that setting rules that require more domestic inputs into the production process to qualify for preferential tariffs will increase employment and output in the home country, but in

reality that usually isn't the case. If any new jobs are created in the input sector, this can also lead to higher costs for all downstream industries, which makes final goods more expensive and thus less competitive overall.

Every country wants to drive more jobs and output in their economy using native material. However, in a borderless and increasingly liberalized global economy, and with the rise of global supply networks and value-added production, rules governing country of origin must be carefully calibrated to reflect and take advantage of this reality. This will be especially challenging in the upcoming NAFTA negotiations, where the three countries must work together to find new ways of leveraging and improving the performance and competitiveness of commercial platforms that extend across the border or the continent.

Negotiated outcomes from recent trade negotiations with South Korea exemplify the potential dangers of disintegrated trade and industrial policy for integrated sectors like autos. The Korea-US Free Trade Agreement (KORUS) was signed in 2011, and was later followed by the Canada-Korea Free Trade Agreement (CKFTA) in 2015. Both deals included important provisions for the auto industry, such as the treatment of tariffs, internal taxes, enforcement and standards. Yet, ultimately, uncoordinated outcomes were achieved.

For example, the US secured a snap-back provision that allows Washington to impose a 2.5 percent tariff if South Korea violates the agreement; an Automotive Working Group to address nontariff barriers; and an expedited dispute settlement procedure. Alternatively, although Canada's deal with Korea also included an expedited dispute settlement procedure, it had no snap-back provision and no working group. Now the US has indicated that it wants to renegotiate its deal with South Korea, raising additional possibilities for major differences to arise between the Canada and the US with respect to South Korean trade in autos and other goods and services.

Overall, while it is still too early to assess the full impact of both agreements, the CKFTA is expected to increase Korean auto exports to Canada, which will have a modest impact on the Canadian auto sector, as Korean gains will come at the expense of third parties like US firms. Likewise, the trade diversion effects brought about by CKFTA will likely hamper the anticipated bilateral export gain between the US and Korea expected from KORUS.

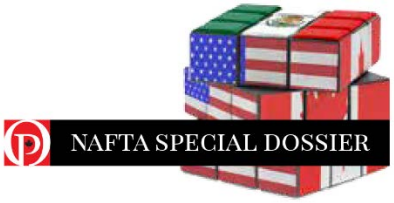
What KORUS and CKFTA show is that, despite the high level of integration in the auto sector and the recognition that we are each other's most important trading partners, when it comes to international trade agreements, Canada and the US part ways and hope that things work out for the sectors most impacted, many of which transcend the 49th parallel. This approach unintentionally creates supply chain inefficiencies and represents a missed opportunity to fully leverage our combined strengths — which include transportation infrastructure, skilled labour, advanced research and development, access to capital, affordable energy, etc.

As both countries pursue global trade policy agendas beyond North America, with Europe, countries in Asia and the Pacific Rim and other emerging markets, we need to consider how to better leverage binational economic platforms like the Great Lakes region and integrated industries like the automotive, aerospace and agri-food sectors with an aim to attract more foreign direct investment and do more business together and with the rest of the world.

In today's global marketplace, the US and Canada, as well as Mexico, need to work closer together in negotiating future trade agreements, particularly with respect to cross-border or continental industries. If

we fail to do so, we are cheating our families, our workers and our businesses out of the full benefits of these agreements and are creating unnecessary drag on our productivity and competitiveness.

Team Canada should pull the NAFTA agenda toward a postcarbon world



In the NAFTA negotiations we should advance our own interests and make climate protection the centrepiece of our strategy.

MITCHELL BEER AND DIANE BECKETT

One of the early pieces of advice Canada is receiving as it prepares its strategy for renewed NAFTA negotiations with the United States is that when you're up against a schoolyard bully who is determined to win at all costs, the best defence is a good offence.

So could Donald Trump's decision to pull his country out of the Paris climate change agreement be a cornerstone for that strategy? Particularly if Canada can morph the United States' erstwhile border carbon tax threat into a defence of its own trade and climate interests?

At least two different formulations of a border carbon tax have been presented since the Americans went to the polls last November.

Within two weeks of the US election, Nicolas Sarkozy, a French presidential candidate at the time, proposed that if Trump took the US out of the Paris deal, Europe should impose a 1 to 3 percent border carbon tax on US goods, reprising an idea that Sarkozy and German Chancellor Angela Merkel had floated in 2009.

In March, US House Speaker Paul Ryan and Ways and Means Committee Chair Kevin Brady mooted a plan to tax US imports at the border while exempting exports, as part of a wider effort at tax reform. That idea ran into fatal opposition from Trump administration officials (and at least some sources of bedrock Republican support). But not before Canadian Foreign Affairs Minister Chrystia Freeland raised the issue with US Commerce Secretary Wilbur Ross and Secretary of State Rex Tillerson, warning Tillerson that "if such an idea were ever to come into being, Canada would respond appropriately."

Carving out a new agenda

Freeland's response was appropriate, and it was a solid opener for Canada's "doughnut" strategy, "aimed at advancing Canada's interests on issues ranging from trade to climate change, in the face of an unpredictable if not outright hostile White House," as we wrote on the *Energy Mix.* This strategy has since seen the Trudeau government work to isolate the Trump administration by cultivating a wider network of US friends and allies. But state governors whose economies depend on Canadian imports — including in some cases clean energy imports — will have only limited influence over trilateral negotiations led by the executive branch in Washington.

This leads us back to the matter of offence versus defence, and whether Trump's Paris misadventure represents an opportunity for Canadian negotiators. Parkland Institute founder and former director Gordon Laxer framed the underlying strategy question in a *Vancouver Sun* op-ed in June, suggesting that

Canadian thinking has focused too narrowly on trade staples like dairy, softwood, buy-American policies and trade dispute panels.

“They’re important issues, but Canada is playing defence,” he wrote. “A hockey team that only plays defence will lose. Going up against a U.S. president who boasts that he is the winner who takes all, Canada must lead with its own demands.”

What if a close symmetry between trade and climate strategy is one of those demands?

Chris Hope of Cambridge University’s Judge Business School estimated a border carbon tax would be US$150 to $250 per tonne of carbon dioxide, or about 6 to 10 percent on US exports.

“If it is to be proportionate, it should cover the harm caused to the Earth from the production of the goods, a harm that will not be reflected in their price if the US presses ahead with the unfettered use of fossil fuels,” Hope wrote.

In his report on the idea of a border carbon tax, Quartz London reporter Akshat Rathi said that the “diplomatic fallout from such a move...would surely test America’s trading partners’ resolve in their commitment to reducing emissions.”

But a more selective measure that favours US states that have effective carbon prices or clean energy industrial strategies could be part of a determined subnational diplomacy on Canada’s part, allowing it to stand firm on climate at the NAFTA table.

Regaining control over Canadian energy

The NAFTA negotiations are also an opportunity to reopen a battle Prime Minister Jean Chrétien fought and lost against the Bill Clinton administration in 1994, says Laxer.

Canada “signed away to another country first access to its energy resources” under NAFTA, Laxer writes. NAFTA’s proportionality rule, which Mexico successfully fought but Canada ultimately accepted, “obligates Canada to make available to the U.S. the same share of its oil, natural gas and electricity as it has in the previous three years,” currently more than 50 percent of natural gas and about 75 percent of oil production.

At stake is Canada’s ability to guide the pace of oil and gas production as the industry enters a period of “managed decline” and the country’s deliberately diminished fossil fuel workforce shifts to more economically sustainable work. Whether the proportionality rule can be reopened and resolved is one question for Canadian negotiators. The far more important issue is whether Canada can align its trade position with its attempts at climate leadership and energy innovation, to prevent a failure from a bygone era from limiting progress on the most important economic and geopolitical issue the country faces.

In the not-too-distant future, an important issue may well be how NAFTA rules will affect clean electricity imports and exports, which will be cornerstones of a 21st-century postcarbon economy. But how can we get from here to there? And do NAFTA’s current rules make it more challenging to draw down Canada’s fossil fuel production in response to crashing world oil prices and mounting concern about greenhouse gas emissions?

“The proportionality rule has never been invoked,” Laxer writes, “but its existence in NAFTA deters Canadian governments from winding down carbon exports” at a time when Ottawa’s ability to meet even its Harper-era climate targets is still in doubt.

Making trade a tool for climate action

If Canadian trade negotiators want to play offence on trade and climate, they will find that clean energy advocates have already looked at a policy pathway to reposition NAFTA.

In April, Sierra Club Canada Foundation presented its list of “eight essential changes to an environmentally destructive deal,” which started with a pitch for enforcement of the Paris agreement.

“Any deal that replaces NAFTA must create a fair playing field by requiring each participating country to adopt, maintain, and implement policies to ensure compliance with domestic environmental laws and important international environmental and labour agreements, including the Paris climate agreement,” the foundation stated. “These commitments must be included in the core text of the agreement and made enforceable via an independent dispute settlement process.”

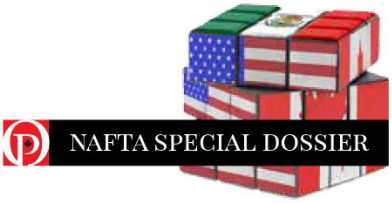
In November 2016, the US Sierra Club had issued a discussion paper on a “climate-friendly approach” to trade. Styled as “something positive for people to rally behind” in the wake of the US election, the paper called for trade rules that protect existing climate policies, support new climate protections and reduce the climate impact of cross-border commerce.

“While trade agreements should encourage trade in goods that meet public interest criteria, they should discourage trade in climate-polluting fossil fuels, in addition to tackling the climate emissions that result from shipping and international shifts in production,” the paper stated. “To secure trade agreements that include such climate-friendly rules, the opaque and corporate-dominated system for negotiating U.S. trade deals should be replaced with an open, public process,” it went on.

In today’s trade policy environment, it may almost be a non sequitur to suggest climate protection as a centrepiece of Canada’s NAFTA strategy. But the postcarbon transition is about economic opportunity as much as it is about environmental survival. And a compelling, well thought out surprise may be exactly the type of offence Team Canada needs to present in order to change expectations at the NAFTA negotiations and pull the North American agenda in a direction the rest of the world is already headed.

Thanks to Guy Dauncey of EarthFuture for sourcing some of this story.

Le rôle des provinces dans la renégociation de l'ALENA



Les provinces n'ont pas seulement un important rôle à jouer dans la renégociation de l'ALENA, leur implication permettra au Canada de gagner du temps.

STÉPHANE PAQUIN

Dans *The Strategy of Conflict*, paru en 1960, le Prix Nobel d'économie Thomas Schelling développe une notion qui est désormais connue sous l'appellation « conjecture de Schelling ». Selon cette conjecture, l'exécutif américain est avantagé dans sa négociation d'un traité commercial avec un autre gouvernement lorsqu'il est évident que le législatif (le Congrès), qui devra ratifier le traité, a une position ferme sur certains enjeux. Ainsi, lors d'une renégociation comme celle de l'Accord de libre-échange nord-américain (ALENA), dans laquelle le Congrès aura un rôle beaucoup plus important que par le passé en raison de changements législatifs récents, les négociateurs américains peuvent se servir de ce prétexte pour aller arracher des concessions supplémentaires à leurs partenaires commerciaux.

Le Canada, où la séparation des pouvoirs est plus théorique que réelle, ne peut bénéficier d'une telle conjecture, à moins d'être en situation de gouvernement minoritaire. Car, dans un contexte majoritaire, la « menace » de voir une défection de députés du parti au pouvoir est plutôt faible et serait peu crédible. Mais d'autres acteurs importants dans les négociations d'accords commerciaux de nouvelle génération peuvent jouer le rôle du Congrès des États-Unis : les provinces canadiennes.

Traditionnellement, le gouvernement canadien a toujours été réfractaire à inclure les provinces dans ses négociations commerciales, considérant celles-ci comme un monopole constitutionnel. Il se satisfait des mécanismes de négociations existants, où les provinces sont informées de l'avancement des négociations commerciales par l'entremise d'un mécanisme de coopération intergouvernementale : les forums C-commerce (*C-Trade meetings*).

Plusieurs provinces sont cependant critiques à l'égard de ce forum intergouvernemental et souhaitent plutôt être davantage impliquées dans les négociations. Selon un fonctionnaire ontarien près du dossier, le forum C-commerce n'est ni plus ni moins qu'un « déversoir à information » (*information dump*) où l'on sature les provinces de volumineuses informations complexes sans leur laisser assez de temps pour réagir. Un autre représentant provincial a décrit le processus comme une forme de « liste de vérification » (*checklist*) où le fédéral ne consulte que très superficiellement les provinces, essentiellement pour la forme. Dans tous les cas, à l'exception notable de l'Accord économique et commercial global entre le Canada et l'Union européenne (AECG), les provinces sont marginalisées dans le processus de négociation même si les accords de commerce de nouvelle génération ont des effets très importants dans leurs champs de compétence.

Dans le contexte de la renégociation de l'ALENA, où le temps joue pour le Canada, il y a pourtant un avantage stratégique clair à user du précédent de la participation des provinces aux négociations commerciales entre le Canada et l'Union européenne (UE). Pour le moment, on sait que le président américain Donald Trump veut une renégociation éclair. « Six mois », a-t-il déjà dit. Accepter de renégocier

en quatrième vitesse jouerait en sa faveur. Il voudra probablement limiter la négociation à peu de sujets où il cherchera à obtenir des victoires décisives.

Mais plus le temps passe, plus le Congrès, qui est moins protectionniste, interviendra dans la négociation. En outre, l'autorité du président américain devrait aller en s'affaiblissant. Bref, le Canada doit gagner du temps. S'il accepte l'ordre du jour du président américain, il sera obligé d'adopter essentiellement des positions défensives, protéger la gestion de l'offre par exemple. Les concessions seront alors inévitables, car le rapport de force joue résolument en faveur des États-Unis.

L'intérêt premier du Canada est donc de ralentir le rythme de la négociation pour ne pas être cantonné à des positions défensives. Et une façon simple d'y parvenir est de consulter et d'impliquer les provinces dans la renégociation de l'ALENA, selon le modèle de la négociation de l'AECG. Rappelons-le, près de 10 ans se sont écoulés entre le moment où le Canada et l'UE se sont entendus pour lancer l'exercice d'établissement de la portée (*scoping exercise*) et l'adoption de la loi de mise en œuvre par le Canada cette année. Et les négociations ont réussi.

Pourquoi impliquer les provinces ?

Selon plusieurs spécialistes, les provinces (et même les territoires) sont devenues des acteurs de plus en plus importants dans les négociations commerciales du Canada. Bien que le gouvernement fédéral détienne, selon la Constitution, les pleins pouvoirs en ce qui concerne la conclusion de traités et qu'il a la responsabilité exclusive du commerce international, on peut qualifier le processus de négociations commerciales de *juridiction partagée dans les faits* pour deux raisons.

Premièrement, le gouvernement du Canada ne peut contraindre les provinces à mettre en œuvre les traités commerciaux qu'il ratifie. Une intervention provinciale, que ce soit l'adoption d'une loi de mise en œuvre ou le changement de règlements, est incontournable. Deuxièmement, les traités commerciaux, notamment ceux de nouvelle génération, concernent de plus en plus des champs de compétence des provinces, que ce soit les marchés publics, la mobilité de la main-d'œuvre, les monopoles publics et les sociétés d'État, l'investissement, la diversité culturelle ou encore le développement durable. En clair, les provinces doivent inévitablement être consultées, puisqu'elles détiennent l'expertise et parce qu'elles devront procéder à la mise en œuvre.

Le précédent de l'AECG

Les négociations passées avec l'UE revêtent une importance toute particulière dans le contexte de la renégociation de l'ALENA, car elles constituent un précédent de taille. En effet, pour la première fois dans l'histoire des négociations commerciales canadiennes, les provinces ont été représentées au sein de la délégation canadienne, et elles ont même directement participé à plusieurs sujets de négociation. Cette participation des provinces découlait d'une exigence de l'UE qui en a fait une condition pour relancer les négociations. En s'appuyant sur les leçons des échecs de négociations passées, l'UE a jugé que les négociations ne pouvaient avoir des chances de succès sans la présence des provinces. Cela s'explique notamment par son intérêt pour les marchés publics des provinces canadiennes qui ne sont pas couverts par les traités commerciaux ou par l'Accord sur les marchés publics de l'Organisation mondiale du commerce.

Comparativement aux négociations précédentes (et même présentes) portant sur la libéralisation des échanges, les provinces ont vu leur rôle s'accroître, et ce, à presque toutes les étapes de la négociation.

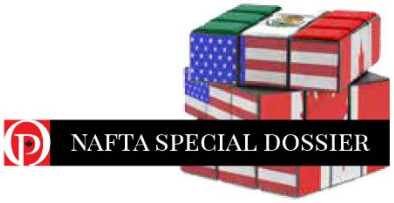
Bien qu'elles n'aient pas pris part au processus de sélection du négociateur en chef, Steve Verheul, elles ont été présentes aux étapes cruciales de la rédaction du rapport conjoint et lors de la formulation du mandat de négociation. Au cours de l'exercice d'établissement de la portée, elles ont aussi été consultées sur des questions liées à leurs champs de compétence. De plus, pendant l'ensemble de la négociation, elles ont été très largement impliquées et ont eu accès aux séances de stratégie et aux documents de négociation. Le Québec, par exemple, a présenté plus de 150 notes de positionnement stratégique. En outre, on estime que plus de 275 rencontres entre les négociateurs fédéraux et provinciaux ont eu lieu.

Les provinces n'ont toutefois pas eu accès à tous les sujets de négociation. Elles ont participé activement aux discussions portant sur les obstacles techniques au commerce, la coopération règlementaire, l'investissement, y compris le mécanisme de règlement des différends entre État et investisseurs, les échanges transfrontaliers de services, la reconnaissance mutuelle de la qualification professionnelle, les marchés publics, les monopoles publics et les sociétés d'État, le développement durable (travail et environnement), le vin et les spiritueux, et la coopération (matières premières, et innovation et recherche en science et technologie). Elles ont cependant été largement exclues des discussions liées à l'agriculture, aux procédures douanières et à la facilitation du commerce (règle d'origine et procédure d'origine), aux mesures sanitaires et phytosanitaires, aux recours commerciaux, aux subventions, aux questions liées au transport maritime et aux entrées temporaires, aux services financiers, aux télécommunications, au commerce électronique, à la propriété intellectuelle (appellations géographiques et brevets), aux politiques de compétition et aux questions institutionnelles, et à la coopération bilatérale sur les biotechnologies.

Pendant le processus, Steve Verheul a reconnu à plusieurs reprises l'apport inestimable des provinces. Le rôle plus important des provinces, du Québec en particulier, a d'ailleurs été reconnu et soutenu par le gouvernement fédéral de Justin Trudeau. Le premier ministre du Québec Philippe Couillard a même été invité à assister à la séance protocolaire de signature de l'AECG à Bruxelles — avec Pierre Marc Johnson, négociateur en chef pour le Québec, et l'ancien premier ministre Jean Charest. Le gouvernement fédéral et Pierre Marc Johnson se sont concertés également pour convaincre des députés français et wallons de ne pas bloquer le processus de ratification.

On pourrait objecter que les États-Unis risquent de s'opposer à la participation des provinces à la renégociation de l'ALENA. Cela est improbable, car les pays étrangers ne s'ingèrent généralement pas dans la façon dont les parties conduisent leurs négociations commerciales. Si jamais (on parle tout de même de Donald Trump) les États-Unis devaient contester avec force l'inclusion des provinces, la conjecture de Schelling aura fonctionné. Les négociateurs du gouvernement canadien pourront alors exclure de la négociation tous les sujets de la négociation qui touchent les compétences constitutionnelles des provinces où inclure une clause fédérale — qui limite l'application du traité aux compétences fédérales — dans le traité. Ils pourraient en effet déclarer avoir les mains liées par les provinces et donc ne pas pouvoir s'engager dans les champs de compétence de ces dernières, car les provinces pourraient choisir de ne pas mettre en œuvre l'accord.

Border efficiency – the forgotten side of NAFTA



It's time to speed up the border preclearance process and get people moving, for the health of the deeply integrated Canada and US economies.

MARYSCOTT (SCOTTY) GREENWOOD

After years of functioning in relative obscurity, the North American Free Trade Agreement is now making news, as the August start date for its renegotiation approaches.

Border management is a side of the NAFTA coin that perhaps does not get sufficient attention. The border is where many Canadian and American business travellers get close and personal with NAFTA. Fees are collected. Shipments are inspected for compliance. Those trying to work or do business stateside can be held up depending on whether they qualify for the appropriate NAFTA work visas.

The work of government agencies on both sides of the border of managing our shared boundary matters to the health of our integrated economies, the viability of our businesses, and even the quality of life of those living near the border, and is nearly as important as the implementation of any trade agreement.

Canada and the US have had various forms of border preclearance since the 1950s. Preclearance allows Canadians to be screened and given the green light by American officials for immigration, customs and agriculture purposes, before entering the US and while still on Canadian soil. In recent years, there's been real progress in moving screening away from the actual border to prescreening clearance facilities at airports in Calgary, Toronto, Edmonton, Halifax, Montreal, Ottawa, Vancouver and Winnipeg.

In practical terms, preclearance means air travellers can breeze through any American airport as if they were domestic passengers, with no need to go through customs once they've landed in the US. That opens up flight routes to any town that has a commercial airport, rather than limiting the routes to major cities with built-in US customs facilities. Any Canadian who has landed at JFK or O'Hare and stood in a long line behind travellers from far-flung places appreciates the convenience and efficiency of preclearance.

At its core, preclearance serves two significant policy goals: it helps Canadian and US officials zero in on potentially bad actors and dangerous or illegal goods, while at the same time making it easier for upstanding citizens and legitimate commerce to cross the border with relative ease and minimal hassle.

Despite the 50 year history of preclearance measures at the border, everything changed after the terrorist attacks of September 11, 2001. The US and Canada beefed up security at the border, and the boundary became mired in congestion, delays and hassles for those who did cross-border business or travelled frequently between the two countries.

Canada began to complain, as inefficiencies at the border have a disproportionate impact on the Canadian economy. And, for more than a decade, a frustrated Canada pushed the US to co-operate on initiatives aimed at fixing what had become a woefully inefficient boundary.

The US balked, and then, in 2011 a border deal was announced between then-prime minister Stephen Harper and former US president Barack Obama. This was followed in 2015 with the signing of an updated and expanded preclearance agreement.

But there's been an odd reversal of fortunes recently. The enabling legislation for this preclearance agreement easily passed both chambers of US Congress late last year. Now Americans are intently waiting for Canadians to enact its own preclearance law. Usually Canada's parliamentary system is far more efficient than the process in DC. Not so on this issue.

Canada's Bill C-23 would implement the 2015 border pact. It was introduced in June 2016 and is still working its way through the parliamentary process; a Commons committee only recently gave the Bill the green light. The legislation, when passed, will expand the number of preclearance locations at airports and at various other land, rail and marine crossings, including Montreal's central train station.

In order to comply with the new agreement, US Customs and Border Protection officials would need to clear legal authority to question and search those in preclearance areas seeking to enter the US, and Canadian border officials operating in preclearance areas in the US would get equivalent powers — as should be the case in a truly reciprocal initiative. Canada agreed it was a fair trade-off that would give Canadians and Canadian businesses easier access to the US, and at long last we had a deal to create an efficient border.

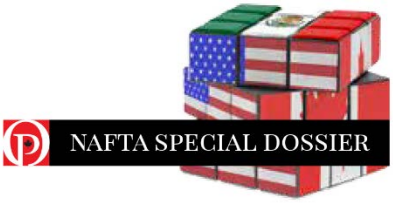
And yet, we're still waiting for Canadian parliamentarians to bring the preclearance deal to life.

A few weeks ago, I had the pleasure of speaking with Canadian Minister of Public Safety Ralph Goodale in Minneapolis, for a CABC dialogue on security and prosperity in the run-up to the NAFTA renegotiation. During our talk, Minister Goodale spoke about the preclearance, calling it an issue with "both security and economic implications" that will be a "great advantage for travellers moving in both directions." Minister Goodale praised the potential expansion of the program, especially the inclusion of cargo shipments, as a "very good advantage for Canada/US trade moving in both directions."

Hopefully, when Parliament returns this fall there will be an effort to complete the process and get people moving, for the benefit of both Canada and the United States and the health of our

deeply integrated economies. Without a more efficient border, NAFTA is a one-sided coin and thus only half as valuable.

La gestion de l'offre devant la nouvelle réalité des marchés agricoles



Le Canada ne doit laisser s'effriter le système de gestion de l'offre à force de concessions commerciales sans en faire une évaluation globale.

RICHARD OUELLET ET ÉRICK DUCHESNE

En raison de son climat, de son étendue géographique et de son voisinage avec le géant américain, le Canada a une économie agricole très particulière, qui rend l'adoption de politiques publiques souvent difficile. En effet, ces politiques ne manquent pas de provoquer des tensions et d'engendrer des polémiques, particulièrement en ce qui a trait aux catégories de produits agricoles que le Canada a choisi de stabiliser et de protéger par des systèmes de gestion de l'offre.

Récemment, le président américain Donald Trump a dénoncé ces systèmes, qui ont, dit-il, des effets désastreux sur les producteurs laitiers américains. Au Canada, un ancien candidat à la chefferie d'un grand parti politique n'a pas hésité à qualifier la gestion de l'offre de « cartel » qui « force les familles à payer des centaines de dollars de plus chaque année pour leurs produits laitiers, leurs œufs et leur volaille ». Malgré ces critiques, le gouvernement canadien maintient une position ferme et défend la gestion de l'offre autant dans les tractations qui ont cours à l'Organisation mondiale du commerce (OMC) que dans les négociations bilatérales ou régionales dans lesquelles il est impliqué. La question qui se pose aujourd'hui avec plus d'acuité est de savoir de quelle manière il peut continuer à protéger ce système.

Le fonctionnement de la gestion de l'offre

Au cours des années 1960, avec le développement de nouvelles technologies de production et l'essor du commerce interprovincial et international, l'agriculture canadienne a subi les contrecoups d'un important mouvement des prix. Il est devenu essentiel alors de mettre certaines productions à l'abri de l'instabilité des marchés. Ainsi, au fil des années 1960 et 1970, le Canada a décidé d'établir un système de gestion de l'offre pour cinq catégories de produits : le lait et les produits laitiers, le poulet, le dindon, les œufs de consommation et les œufs d'incubation.

La gestion de l'offre d'une production agricole repose sur l'équilibre entre l'offre et la demande. Pour assurer cet équilibre, le gouvernement doit évaluer fréquemment et de façon précise la consommation nationale d'un produit donné et, en fonction de la quantité consommée, allouer aux agriculteurs des quotas de production. Il atteint ainsi l'équilibre entre l'offre et la demande et, par le fait même, un prix stable assurant des revenus suffisants et prévisibles aux producteurs.

Les partisans de ce système insistent sur le fait qu'il ne nécessite pas de subventions étatiques. Ses adversaires relèvent plutôt qu'il empêche le jeu de la concurrence et de la compétitivité, et sclérose les secteurs ainsi gérés.

Les heurts avec les règles du commerce international

L'équilibre entre l'offre et la demande sur un marché national ne subsiste que si les produits étrangers sont empêchés d'y entrer ou n'entrent qu'en quantité limitée. En effet, le Canada ne peut maintenir son système de gestion de l'offre qu'au prix de ce qu'il est convenu d'appeler des « pics tarifaires ». Alors que la vaste majorité des marchandises qui sont importées au Canada entrent en franchise de droits ou sont soumises à de faibles droits de douane excédant rarement 6 %, les produits sous gestion de l'offre sont admis selon deux régimes (et deux tarifs) différents. Le premier régime, que l'on appelle « engagement d'accès », concerne une quantité modeste de produits que le Canada veut bien laisser entrer sur son marché. Ces produits sont assujettis à des droits de douane relativement bas, avoisinant souvent 7 ou 8 %. Le deuxième régime s'applique aux produits excédant l'engagement d'accès, qui sont frappés de droits de douane prohibitifs.

Les droits de douane pour le yogourt, par exemple, sont de 6,5 % pour les quantités visées par l'engagement d'accès canadien, mais montent à 237,5 % pour les quantités dépassant cet engagement. Il en va de même pour le parmesan, dont les droits de douane passent de 3,32¢/kg sous l'engagement d'accès à 5,11 $/kg au-delà de l'engagement.

Le système de gestion de l'offre repose donc sur d'importantes limitations à l'accès au marché canadien pour les producteurs et exportateurs étrangers. Il soulève aussi des questions en matière d'exportation vers d'autres marchés. En 1997, il a ainsi fait l'objet d'un grief important des États-Unis et de la Nouvelle-Zélande contre le Canada devant l'Organe de règlement des différends (ORD) de l'OMC. Le système canadien prévoyait que le lait produit en excès des quotas imposés aux producteurs ne pouvait être vendu tel quel sur le marché canadien. Il était exporté à moindre coût ou, à prix réduit, mis à la disposition des transformateurs, notamment les fromagers. L'ORD de l'OMC a jugé que ce système répondait à la définition de subvention à l'exportation au sens de son Accord sur l'agriculture. Le Canada a donc dû changer son système en modifiant ses structures de prix.

Les récentes concessions

La compatibilité du système de gestion de l'offre canadien avec les principaux accords de libéralisation économique n'est pas parfaitement claire, mais jusqu'à aujourd'hui, ni le régime juridique de l'OMC ni l'Accord de libre-échange nord-américain (ALENA) n'a eu pour effet de forcer le démantèlement du système canadien.

Toutefois, le Canada a de plus en plus de mal à résister aux pressions extérieures. Dans les récents chantiers de négociation, il a dû faire des concessions que d'aucuns considèrent comme un effritement du système. L'Accord économique et commercial global (AECG) n'aura pas d'effet sur l'entrée au pays des œufs et de la volaille, mais il prévoit une

des contingents d'importation de fromage de 16 000 tonnes, en plus de 1 700 tonnes de fromage destiné à un usage industriel. Le texte du projet du Partenariat transpacifique — duquel les États-Unis se sont retirés dès l'entrée en fonction du président Trump — prévoit pour l'heure que, si l'accord entrait en vigueur tel quel, le Canada concéderait un accès accru à ses marchés pour les cinq catégories de produits sous gestion de l'offre, soit 3,25 % du marché du lait et des produits laitiers, 2,1 % du marché du poulet, 2 % de celui du dindon, 2,3 % pour les œufs de consommation et 1,5 % pour les œufs d'incubation de poulet de chair.

Jusqu'à récemment, le Canada a aussi acheté la paix avec son voisin du Sud dans le dossier du lait diafiltré. On sait que ce produit obtenu par une deuxième filtration du lait de vache est classé comme ingrédient laitier et n'est pas soumis à un pic tarifaire. Grâce à cet ingrédient bon marché qui entre dans la composition de plusieurs produits laitiers, les producteurs de lait américains trouvent donc des débouchés auprès des transformateurs canadiens. Les producteurs laitiers canadiens ont tout de même voulu colmater la brèche en vendant à leur tour du lait diafiltré, mais à un prix très réduit. Le président Trump a vivement dénoncé cette pratique canadienne lors d'un récent discours à l'occasion d'une visite auprès de producteurs laitiers du Wisconsin.

Les débats et les choix à faire

La renégociation de l'ALENA est annonciatrice de compromis. Dans l'énoncé des objectifs de cette renégociation qu'il a transmis au Congrès à la mi-juillet, le représentant au Commerce des États-Unis ne cache pas son intention d'obtenir un meilleur accès au marché agricole canadien et de réduire à leur plus simple expression les barrières commerciales liées au système de gestion de l'offre.

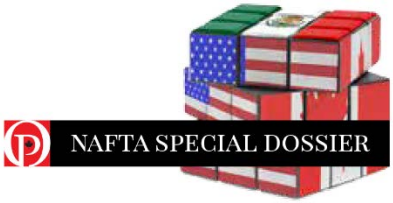
Le Canada doit-il résister aux pressions externes ? Comment et jusqu'à quel point doit-il le faire? Il y a quelques années, la Nouvelle-Zélande a renoncé à un système ressemblant à la gestion de l'offre canadienne. Au printemps 2015, l'Union européenne a mis fin aux quotas de production laitiers. Pour ce qui est des effets de ces démantèlements sur le prix du lait sur ces deux marchés, les avis des observateurs et acteurs divergent. Mais tous s'entendent pour dire qu'une réforme rapide ou draconienne du système canadien n'est pas vraiment possible. Sa remise en cause devrait se faire avec patience et longueur de temps, en tenant compte de la valeur des quotas que possèdent les producteurs.

Si la gestion de l'offre a sans doute bien servi l'économie canadienne, il est temps de réfléchir aux ajustements qui pourraient être apportés à cette politique conçue il y a près d'un demi-siècle. Le contexte international a changé, et il n'est pas souhaitable de laisser le système s'effriter à coups de concessions commerciales sans avoir une conception claire des résultats finaux espérés. Depuis le début des années 2000, de nombreuses études provenant de gouvernements, de centres de recherche et de groupes d'intérêts ont été publiées au Canada sur l'opportunité de maintenir ou de réformer la gestion de l'offre. Si plusieurs concluent à la nécessité de préserver le système actuel, d'autres prônent une augmentation des quotas de production, notamment dans le secteur laitier. Certains spécialistes estiment qu'une telle augmentation n'est pas suffisante et qu'il faut absolument s'assurer que les prix pratiqués au Canada se rapprochent

considérablement des prix mondiaux. D'autres enfin pensent que les systèmes de gestion de l'offre sont un poids pour l'économie canadienne, notamment pour les consommateurs, et qu'ils doivent être complètement mis à plat.

Deux conclusions nous apparaissent ressortir de ces débats. Premièrement, le Canada ne peut plus éviter de réévaluer et de repenser les systèmes de gestion de l'offre, que ce soit en vue de les renforcer ou de les assouplir. Il doit les adapter à la nouvelle réalité des marchés agricoles tant canadiens qu'internationaux. Deuxièmement, il nous semble qu'en ce qui a trait à la renégociation de l'ALENA, le Canada ne doit pas concéder à la légère de nouveaux accès à des marchés de produits assujettis à la gestion de l'offre. Il ne faut pas perdre de vue que les États-Unis sont demandeurs dans ce dossier, qu'ils offrent eux aussi un soutien substantiel à leurs agriculteurs et que cet enjeu s'inscrit dans un contexte de négociation plus global. Pour l'heure, en attendant une nouvelle politique canadienne en la matière, la défense de la gestion de l'offre est indiquée, et la ligne dure s'impose à l'égard de nos voisins du Sud.

Understanding the NAFTA rules of origin negotiations



The Trump administration is expected to push for stricter rules of origin for goods under NAFTA, and risks undercutting the agreement's benefits.

SANDY MOROZ

NAFTA's rules of origin (ROO) are poised to be a key element in the Trump administration's pursuit of its NAFTA negotiating objectives, including reducing the US goods trade deficit with the other NAFTA parties. The US is seeking to strengthen rules of origin in order to "incentivize the sourcing of goods and materials from the United States and North America," as well as streamline associated administrative procedures and ensure their vigorous enforcement. It's part of Washington's broader "America First" agenda aimed at creating high-paying US manufacturing jobs.

The rules determine whether goods qualify for NAFTA's duty-free (preferential) trade, based on where the goods and/or the components of the goods originate. What happens with the ROO piece of the bigger negotiating puzzle could determine whether NAFTA is ultimately modernized to the benefit of all three partners, or imperiled to their detriment. Domestic American politics is expected to push the Trump Administration to seek tighter NAFTA rules, at least for selected products, even though the rules are already more restrictive than those found in most other free trade agreements.

The challenge facing Canada and Mexico will be to ensure that whatever emerges from the rules negotiating table doesn't undercut NAFTA's current benefits. Producers could decide that the new rules are too restrictive or burdensome, and opt to buy the materials they need from competitive *offshore* (non-North American) suppliers. They would pay the most-favoured nation (MFN) tariff on their exports to other NAFTA countries, but without the hassle of trying to abide by stiffer rules of origin.

Why do rules of origin matter? Using data from the United States International Trade Commission, I calculate that in 2016, half of Canada's commercial exports to the United States entered duty-free by qualifying for NAFTA tariff preferences. Another 38 percent also paid no duties, coming in below U.S. MFN duty-free tariff lines. In cases where Canadian exports faced a positive MFN tariff, the use of the NAFTA preferential tariff was close to 80 percent overall — and rates exceeded 90 percent for some of our major goods exports, like autos.

Autos will be front and centre

Indeed, the major negotiating focus around rules of origin will involve auto products — Canada's largest manufacturing sector and export. As a result of NAFTA, the auto sector has become highly integrated across Canada, Mexico and the United States, with many parts crossing borders multiple times on their way to being assembled into a vehicle. Not only are approximately 85 percent of the light vehicles assembled in Canada exported to the US, but in 2016 they accounted for 16 percent of Canada's total exports and 34 percent of Canada's NAFTA exports to the United States. About half the value of Canadian auto parts production is also exported to the US, representing around 10 percent of Canada's

NAFTA exports. The use of the NAFTA tariff preferences is extremely high in this sector, at over 98 percent for vehicles and close to 90 percent for parts.

The Trump administration is expected to press to tighten the NAFTA rules of origin for autos, despite objections from the major American auto producers. American negotiators are likely to focus on raising the content level, which is currently 62.5 percent North American content for light vehicles and their engines, and 60 percent for heavy vehicles, their engines and all other auto parts. They are also expected to push to change the "tracing list," which identifies which parts must originate in North America, and can thus be considered as using NAFTA regional content in rules of origin calculations.

While NAFTA's restrictiveness has eroded over time because some new parts are not included in the 1994 tracing list, it still remains one of the most restrictive auto rule frameworks in the world. In their recent NAFTA submissions to the US Administration, the major North American assemblers, both US and foreign-owned**,** and the US parts producers, stressed the importance of not disrupting the existing complex trilateral supply chains. Similar views have been expressed in Canada by the Detroit three and Japanese assemblers**.** On the other hand, labour unions (UNIFOR and the UAW) have jointly called for "Made in North America" rules with higher content levels. The American Iron and Steel Institute wants steel added to the tracing list**.**

The Trump Administration's need for a political win likely means the negotiations will result in a higher North American content level for autos, and an expanded tracing list. And there may be some limited scope for tightening the NAFTA auto rules of origin without causing a major disruption to the industry. However, care will be needed against going too far. Tightening the rules too much could backfire, as auto assemblers and parts producers can always opt out of exporting under NAFTA rules and simply pay MFN rates — for instance, the US MFN tariffs on light vehicles and most parts is only 2.5 percent. If auto producers sourced from offshore suppliers, it would be at a cost to US assembly and parts jobs. US-made parts account for around 40 percent of the value of vehicles assembled in Mexico.

Another scenario is that Mexican or Canadian car producers could relocate to the United States, the biggest North American car market. But there they would lose the competitive advantages of sourcing from the supply chains that weave across the continent. They would also face new duty-free competition in Canada from the European Union (EU) with the implementation of the Canada-EU Comprehensive Economic and Trade Agreement (CETA). The EU is negotiating with Mexico to expand its preferential market access under their existing FTA. And eleven of the TPP parties, including Japan, are exploring implementing the TPP without the United States. In short, retrenching to the US to manage a more costly, restrictive auto ROO does not automatically preserve their Canadian and Mexican markets.

Opportunities for Canada

While auto goods will be centre stage during the ROO discussions, the United States may also push to tighten the rules for other manufactured goods – for example, to require the use of North American steel aluminum.

The US textile sector wants to eliminate the special NAFTA Tariff Preference Level (TPL) provisions that allow annual fixed quantities of textile and apparel products from non-NAFTA countries to trade duty-free. This proposal, however, is expected to face strong opposition from US producers that use these provisions.

The NAFTA negotiations, nevertheless, offer Canada an opportunity to address concerns about the rules for specific goods, as well as seek ways to make them more flexible and less administratively burdensome. For example, crude oil accounted for 13 percent of Canada's exports to United States in 2016; yet US$46 million were paid in US duties on 65 percent of these exports because non-originating diluent was used to enable bitumen to flow through the pipelines, thereby disqualifying the oil from NAFTA tariff preferences. The TPP included a fix for this problem, which Canada should pursue in the NAFTA negotiations.

Canada should also encourage its NAFTA partners to modernize the rules around other products, including chemicals, to make trade in these goods less administratively burdensome for both producers and customs officials. For instance, the Canadian government could push to simplify the way that the regional content of a good is calculated, so that the focus is solely on key components or materials (with the so-called "focused regional value-content method"). Canada has made such improvements in its more recent trade agreements since NAFTA, such as in the Trans-Pacific Partnership and the Canada-EU Comprehensive Economic and Trade Agreement.

The United States has indicated that it wants stronger enforcement of rules of origin, although it has not yet publicly offered specific reasons or proposals. Canada should be open to any reasonable proposal to ensure the rules are effectively enforced, but it needs to guard against US efforts to introduce aggressive enforcement methods that don't include appropriate protections for the rights of producers, exporters and importers (such as the right of prior notification to verification visits by customs officials).

Trilateral "cumulation"

Another area where Canadian negotiators will be wary of changes is "trilateral cumulation." This refers to the ability of producers to source, without restriction, duty-free materials and goods from *any* NAFTA country. This ability under NAFTA has fostered the growth of North American-wide supply chains in many industries, which have contributed significantly to both the increased competitiveness of North American producers and the economic benefits enjoyed by all three parties.

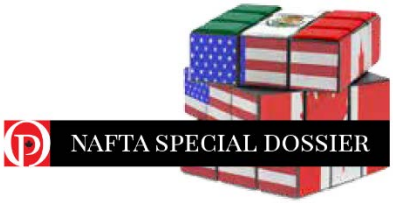
During the NAFTA negotiations, it will be essential for Canada and Mexico to resist any American demands that products contain a specific amount of US content. If the three parties were to impose country-specific (rather than continent-specific) content requirements, producers would have difficulty sourcing competitively priced inputs within North America. Their future competitiveness would also be further jeopardized if, in addition to having to bear the administrative burdens and costs of meeting three sets of country-specific content requirements, they also have to contend with more restrictive NAFTA rules of origin for their products.

The NAFTA modernization negotiations offer both challenges and opportunities for Canada on rules of origin. Canada's economic interests call for liberalizing the rules to reflect the globalization of production since 1994. All of the other FTAs negotiated by Canada, Mexico and the United States in the last 15 years contain more liberal rules for the vast majority of products, including auto goods, than NAFTA. The TPP rules provide a model — indeed, the TPP offered significant economic benefits from its more liberal rules and full cumulation across its 12 members.

But the US administration's anti-globalization and populist tendencies likely mean there will need to be some tightening of the NAFTA rules of origin, at least for specific products like auto goods. Canada and Mexico should strive to minimize any tightening, as well as stop any attempt to limit or disrupt trilateral

cumulation under the NAFTA rules given the importance of the North American supply chains. Canada should also seek to address its priorities, such as the crude oil rules, and take any opening to liberalize the rules for specific products or reduce the administrative costs and complexity of the NAFTA rules of origin.

NAFTA 2.0 and the workforce of the future



To renegotiate NAFTA without enhancing labour integration would be a missed economic opportunity. The agreement needs a renewed labour mobility chapter.

CHRISTOPHER SMILLIE

North American businesses have the moving of industrial goods, raw materials and final products down to a science. According to the Council on Foreign Relations, over recent decades NAFTA has "fundamentally reshaped North American economic relations, driving an unprecedented integration" of the three countries. The caveat to this success, however, is that despite NAFTA and all of the related integration of businesses through continental supply chains, workforce integration in North America remains in its infancy.

Beginning in 1994, Canada, the US and Mexico worked together in a formalized way to recognize and ease the movement of people for economic purposes. NAFTA's labour mobility provisions can be seen as the motherboard of the operation — the brains behind the brawn and is perhaps the most important under-the-radar issue facing the three countries in upcoming negotiations. Unfortunately, this motherboard has become dated and inefficient. The global economy we live in demands more.

Imagine an outcome in the NAFTA renegotiations that results in business travellers facing more hurdles, more delays at airports and more limits on their ability to travel for business meetings. Imagine a continent where a university can't hire a professor from one of the other North American countries in an expedited manner, or where a hospital in Toronto can't easily hire a specialized physician from the United States.

There are two major labour components to NAFTA. First, the NAFTA B1- Business Cycle Activities provisions enable Canadians, Mexicans and Americans to make sales calls, undertake marketing activities, perform after-sales service and provide general service to companies in each other's countries. These provisions mean that commerce can occur with minimal hassle at points of entry, without extra visa requirements. And these provisions are much broader and better than those afforded to other countries — Canada, Mexico and the United States benefit from more commercial labour movement than other foreign nationals in North America. Companies in the three countries would experience significantly more regulatory burdens if NAFTA measures for business travellers were to revert to the World Trade Organization's General Agreement on Trade in Services (GATS) procedures.

The second part is the NAFTA professional list, which permits longer-term employment in all three countries. Enhancing the coverage of this list is essential to continued economic success.

This list was negotiated to improve mobility for professionals and “in demand” occupations. The 60 or so occupations on this list can “engage in a prearranged business activity at a professional level” or arrange a service contract for longer-term, temporary work in another NAFTA member’s economy, without the cumbersome traditional immigration application procedures. For Canadians looking to work in the United States or vice versa, the paperwork can be done at the border in minutes.

This list was negotiated in the early 1990s and there have been many calls to update and revamp it for today’s North American economy. For instance, some occupations in the high-tech sector or specialized occupations in the energy sector didn’t even exist during the first NAFTA negotiations. Other occupations have experienced large demographic shifts, and increased flexibility between NAFTA partners would help address the economic risk of labour shortages in certain areas. While there have been some instances of inconsistency and challenges with these temporary work visas in practice, the overall system is quite effective for the employers requiring employees that fit the current criteria.

In the context of many upcoming large-scale infrastructure and energy projects, there will be new opportunities that require material, people and policies to enable further integration and flexibility of North American labour markets. For example, the US Chamber of Commerce says that the US government needs to invest $2 trillion over current spending levels on infrastructure for the next 10 years. In Canada, according to the Canadian Infrastructure Report Card, one-third of all municipal assets are coming to the end of their useful lives. The kind of economic renewal required in North America is predicted to stretch existing workforce availability, particularly if we restrict ourselves to domestic workers alone.

In order to fully realize our potential, policy-makers and NAFTA negotiating teams need to think about the North American workforce in the context of what companies need to efficiently meet economic demands. The politics of temporary workforces and programs have the potential to be divisive in all three countries. However, the economy of the future relies on smart workforce policy and linkages to training systems that are continental in nature.

A renewed labour mobility chapter should further expedite business travel using existing trusted traveller programs like NEXUS and SENTRI and expand occupations eligible for the NAFTA professional list. These updates should include high-tech workers, skilled trade occupations and managerial-level employees. In addition, the chapter should facilitate a regular review and ability to update the list based on economic conditions and the needs of employers, labour organizations and other economic stakeholders.

With this NAFTA renegotiation, countries that trade with each other have taken a step toward cooperation and flexibility. The successful business of the future needs a workforce with more flexibility, just as do the physical goods being moved across North American borders today. To renegotiate the agreement without improving labour mobility would be a major missed economic opportunity.