



Mexican President Carlos Salinas, U.S. President George Bush and Prime Minister Brian Mulroney watch as trade ministers Jaime Serra Puche, Carla Hills, and Michael Wilson sign the NAFTA for their three countries in San Antonio, Texas in October 1992. *George Bush Presidential Library photo*

What a Difference a Decade Makes: Free Trade at 30

Robin V. Sears

Donald J. Trump's disruptive ascension to the presidency of the United States has injected a new protectionism into what had evolved over three decades into a continental consensus in North America on the benefits of free trade. As the NAFTA renegotiations evolve, the process could end up as a model for trade deals in the 21st century, or as a cautionary tale on the value of leaving well enough alone.

Jacques Delors, the former French socialist finance minister who was the most effective head of the European Commission since the European Union's creation, and who almost single-handedly created the world's modern free trade agreement, spoke to the British Trades Union Congress in September 1988. In a powerful address about the benefits of the EU Single Market agreement to the British union leaders, he outlined the benefits of the 200-million strong free trade area to European progressives: tougher labour standards, health and environmental regulations, a level playing field across the whole of Europe for the smallest companies and countries.

Across the ocean a month later, a history-making campaign debate took place among the leaders of Canada's three federal political parties. Liberal John Turner scored heavy blows against Prime Minister Brian Mulroney, claiming that the October 1987 free trade agreement between Canada and the United States would "erase the border" separating us. "I believe you have sold us out," Turner told Mulroney in the defining moment of the debate. NDP Leader Ed Broadbent was similarly harsh in his critique of what was widely seen by progressive Canadians as a blow to our sovereignty.

Partly as a result of Delors powerful advocacy, European social democrats were convinced of the benefits to social justice of a broad agreement on trade and investment. Their Canadian cousins were on the other side. European conservatives were lukewarm about the single market, Canadian Conservatives were free trade evangelists. Today the roles have reversed again, with Canadian progressives fighting for changes to improve the Canada-U.S. FTA's successor negotiated in 1992, NAFTA, with Liberals leading the charge, and Conservatives taking shots from the sidelines. What a difference a decade can make.

Three things have changed since North American free trade turned 20. The first is that what was once considered radical is now the norm. Regional and bilateral trade agreements now circle the globe in an ever-tightening web of interconnected trade and investment policy networks.

The second is named Trump.

For the first time since Herbert Hoover, the United States is led by an overtly nationalistic, protectionist president. Among his first acts was to rip up the Trans-Pacific Partnership, an astonishingly damaging move to American self-interest. Instead of an agreement that placed the United States at the centre of almost every fast-growing economy on either side of the Pacific, Trump has handed an huge opportunity to China to re-organize those trading relationships in

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its self-interest. Chinese President Xi Jinping was openly celebratory about Trump's disastrous decision.

Now he is threatening NAFTA, having issued a list of demands impossible for either national partner—Canada and Mexico—to meet as outlined. The issue that stalled the original Canada-U.S. Free Trade Agreement, and remained a friction point in the NAFTA talks, was dispute settlement. Brian Mulroney pulled his negotiating team home over the Reagan Administration's unwillingness to give on the issue. That decision, a tactical echo from Mulroney's past as a labour lawyer, worked.

Establishing an independent panel with its own rules, staffed by "foreigners" as well as your own nationals, is clearly worrying to economic nationalists. It's much less desirable than having disputes—in the case of the United States—settled by U.S. judges, in U.S. courts, according to U.S. jurisprudence...unless you are not an American. Then some more neutral forum is clearly essential. Trade agreements will always throw up winners and losers, cheaters and boundary testers. Their competitors will cry foul and seek legal redress.

But it is surely not serious to suggest that a Canadian plaintiff should expect a neutral—let alone an informed—judgment from an American circuit court judge, not experienced in international trade law or non-American jurisprudence. Nor could an American complainant expect any more from a Canadian-only tribunal. So, dispute settlement mechanisms that are expert, independent and effective are essential to modern trade

agreements. Perhaps Trump intends his opposition to NAFTA's Chapter 19 dispute settlement provision to be a bargaining chip but for Canada, maintaining that provision is as much a deal-breaker for Justin Trudeau today as it was for Mulroney 30 years ago.

But here he will run into the third major change since NAFTA's last big birthday: Canadians and Mexicans are now acknowledged world leaders in trade negotiation skills. U.S. Secretary of State Rex Tillerson returned from his first encounter with senior Mexican ministers and officials apparently shaken by how well the Mexicans had prepared their "Plan B" options in the event that the NAFTA talks failed. They outlined for him all the bilateral partner shifts they had begun to develop as alternatives to U.S.-Mexican trade. The Canadian NAFTA team, and its list of outside advisers, is equally impressive and deeply experienced.

While the current fast track authority, renewed in 2015 to expedite the now-defunct TPP, doesn't expire until 2021 if the president requests an extension before June 30, 2018, and current United States Trade Representative Robert Lighthizer has said there is no official deadline, most of the parties to the negotiations are considering June 30, 2018 the operative deadline.

Though Canada and Mexico have agreed to the agenda and timetable, conditionally, it is clear that completing talks by next spring is a pipe dream. From the American perspective, however, the last thing they want is a looming trade war as they head into the U.S. mid-term elections. If, as



“I believe you have sold us out.” The defining moment of the 1988 leaders’ debate on free trade in which John Turner accused Brian Mulroney of selling out Canada to the United States. As Robin Sears writes, it was the most consequential campaign of the modern era. *Montreal Gazette archives photo*

seems increasingly likely, the GOP loses control of the House, the entire discussion will be moot as the Democrats are highly unlikely to give approval to a Trump designed-trade deal.

Some of the changes included in any new deal will no doubt be impossible for some Republican politicians to swallow in an election year. Given the increasing unravelling of the Trump administration’s authority overall, it seems unlikely that they would want to expend much of their seriously depleted political capital attempting to force an unpopular deal through Congress.

How shifting are the winds of politics. In 1975, Ed Meese, one of the senior players in the Reagan campaign against Gerald Ford in the 1976 Republican nomination battle and later Reagan’s attorney general, came to Canada to test the political waters about his man. At a lunch with three Canadian political hacks, he raised the prospect of a free trade agreement. Each of the Liberal, Tory and NDP participants shuffled nervously at the question. After some polite Canadian hemming and hawing, one of the Canadians decided to be candid with the earnest American visitor. “That would never be politically pos-

sible in Canada, Mr. Meese,” I said, with youthful certitude.

Just over a decade later, the Macdonald Commission on the economy launched the FTA project, and today it is a foundation stone in the continental economy, whatever games Trump may think he can play. Even some of the most bitter opponents in labour and the cultural sector in Canada have grudgingly come to terms with the new structures now in place for a generation.

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Unifor—the successor to the Canadian United Auto Workers and then the Canadian Auto Workers—is this time being consulted regularly by the government’s negotiating team. The prospect of any deal was anathema to labour 30 years ago. Today it is pushing a set of negotiating demands it wants the Canadian side to seek. As long as the culture sector—and its connections into telecom and technology sectors—remains off-limits to American demands for change, few Canadians are likely to mount the barricades this time.

For what has taken place in the years since the first consideration of such a deal is that the multilateral process given birth as the General Agreement on Tariffs and Trade [GATT] and its successor, the World Trade Organization [WTO] has effectively died. The Doha round of talks has been paralyzed on agricultural and service industry battles since 2008, with no meaningful prospect of the North-South divide behind the deadlock being resolved, soon, if ever.

In its place has emerged an increasingly dense and interwoven set of regional and bilateral trade agreements. They have many common elements and each new generation typically builds on the experiences, successes

and failures of the earlier versions. Yes, there have been too many losers at the individual, sectoral and even national levels as a result. Many of them could have and should have been avoided. Adjustment and re-training programmes have been weak, underfunded and ineffective. That failure contributed signally to both Trump and Brexit.

But the Canada-Europe and TPP negotiators were informed by those failures and the backlash they provoked. They worked to improve labour codes, environmental standards, and intellectual property protections. They will need to go further to win wider political acceptance, especially in the largest richest nations. But the burden of economic adjustment needs to be better met by national and local governments, as well. Germany and Scandinavia are the leaders in ensuring that re-training and re-equipping assistance has kept their labour forces and SMEs not only afloat but prospering. The NAFTA partners would do well to emulate their approach.

What will the North American and global economies look like as we pass the

50th anniversary of the dramatic changes delivered by NAFTA and its cousins? If we have avoided the destruction of much of the globe either militarily by mishandling China's rise, or environmentally by drowning ourselves in rising oceans—big ifs, granted—we might see a dream, at least in part, come true.

The dream of the post-war founders of the global institutions that have provided stability and security for 75 years was that they were creating a seamless network of institutions to provide governance, direction and standards on security, trade, dispute settlement and legal and social standards. By the end of the Cold War, that dream seemed unrealistically ambitious. Even today with the assault on globalization, and the renaissance of the most primitive slogans of economic nationalism, we seem to be farther away from such a consensus than after the collapse of Communism.

But today's doomsters are more like the wrong-headed—me, among others—in 1975, than believable forecasters. The drive of technology and the global networks it facilitates, more cheaply at higher speeds, is not stoppable. Some nations may try to erect electronic fences against the

waves of data sweeping in and out of their economies, but they will fail. The fences will be penetrated by persistent effort or the successfully isolated nations will decline.

If North America, Asia and the EU were to be connected by such an interlocking set of trade and investment agreements, they would set the framework for economic relations across borders for the rest of the global economy. The next generation of trade negotiators can aim high on workers' rights, health and safety, environmental protections, as set out in the United Nations International Covenant on Economic, Social and Cultural Rights. After all, virtually every trading nation is already a signatory to the treaty, even if most—including Canada—cannot claim to have fully implemented its protections.

Even if patchy, such a network would represent an unprecedented advance toward a global foundation for social justice. Surely a dream worth striving for. **P**

Contributing writer Robin V. Sears, a principal of Earncliffe Strategy Group, is a former national director of the NDP during the Broadbent years.
robin@earncliffe.ca

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