



The Ambassador Bridge between Windsor and Detroit, by far the busiest land crossing between Canada and the U.S., itself a symbol of the success of free trade. *iStock photo*

## NAFTA 2.0: *Carpe Diem*

Thomas d'Aquino

*The North American Free Trade Agreement was overdue for a proper update. As Canada, Mexico and the United States embark on the renegotiation of the continental trade deal, the process will be a test not only of Canada's negotiators but of what Tom d'Aquino refers to as the sang-froid of the Trudeau government's approach to the Trump administration.*

**D**uring his bid for the presidency of the United States, Donald Trump denounced the North American Free Trade Agreement (NAFTA) as “the worst trade deal in history.” He promised to renegotiate terms more favourable, in his view, to the United States or walk away. The NAFTA, which came into force in January 1994, was built on the foundations of the 1987 Canada-U.S. Free Trade

Agreement. Both agreements at the time represented the highest achievement of tradecraft and inspired a bevy of future trade agreements worldwide.

But even the sturdiest of institutions lose their edge if they do not keep up with the times. It has been clear to continental trade activists such as myself for two decades that the NAFTA needed to be updated. How many of us remember debates in the late 1990s

about the need for a NAFTA-plus? Or the hugely ambitious Security and Prosperity Partnership (SPP) concluded in 2005 by Prime Minister Paul Martin and presidents George W. Bush and Vicente Fox? These initiatives did not bear fruit. So, we should not be surprised or disappointed by calls for a modernization of the NAFTA. After all, the economies, industries and work forces of North America have changed greatly since 1994 and more advanced and progressive trade agreements have been crafted to deal with the new environment shaped in large part by the digital revolution.

The bold and far-reaching Trans-Pacific Partnership (TPP) in recent years was a laudable effort at embracing North America and the Pacific region within a framework of advanced policies and rules. Trashed by the Trump administration, the TPP without the

participation of the U.S. is more or less on life support. On the other hand, the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), while applicable only to Canada and the European Union, is arguably the most advanced agreement of its kind in the world. Some provisions of both the TPP and the CETA provide good examples on how best to improve the NAFTA.

Negotiations on the modernization of the NAFTA offer Canadians, Americans and Mexicans an opportunity to craft “new age” provisions that will enhance job creation and worker adjustment, spur innovation, generate higher levels of prosperity and boost the continent’s global competitiveness. This is a *carpe diem* moment for all three countries which can lead to a triple win.

**B**efore moving from the status quo to the new NAFTA, it is important to accurately assess what has been the effect of the current agreement. In an address in Ottawa on August 14, Foreign Affairs Minister Chrystia Freeland highlighted the successes of the NAFTA. “The North American Free Trade area is now the biggest economic zone in the world,” she declared. “Canada, the U.S. and Mexico together account for a quarter of the world’s GDP, with seven percent of its population. Since 1994, trade among the NAFTA partners has roughly tripled, making this a \$19-trillion-dollar regional market, with 470 million consumers. Canada’s economy is 2.5 percent larger every year than it otherwise would be, thanks to the NAFTA. (It is as if Canada has been receiving a \$20 billion cheque each year since NAFTA was ratified.)”

Add to Freeland’s outline of the benefits of the NAFTA the fact that in North America we have built the most advanced cross-border supply chains in the world. Canada, the United States and Mexico make vast quantities of high quality products together. We share research, technologies, and closely integrated transportation systems. Together we create millions of well-paid jobs.

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The broader achievements of the NAFTA are sometimes overlooked. In Canada, thinking and working within a dynamic continental market has made our workforce and our industries more globally-minded. In Mexico, the NAFTA has helped advance democratization, financial stability and the rule of law. In the United States, the NAFTA has demonstrated that shared sovereignty, as is the case with independent dispute-settlement mechanisms, can lead to a more orderly management of trade.

The NAFTA is far from perfect, however. It clearly has led to some job displacement to Mexico due to its lower wage conditions. It has not lived up to its aspirations via its side agreements on labour and the environment. The hard-won dispute-settlement provisions have not performed optimally. Regulatory reform remains in the slow lane and government procurement is still quite constrained.

On July 17, the Trump administration via the office of the United States Trade Representative (USTR) tabled a summary of its negotiating objectives. A high priority is reducing the United States trade deficit although no indication is offered as to how this would be accomplished. The negotiating objectives include controversial subjects such as the elimination of Chapter 19 independent dispute-settlement panels and tougher rules of origin. At various times in recent months, subjects of special interest to Canada have been targeted for criticism by administration officials. These include: agricultural trade and in particular supply management, foreign ownership restrictions, the protection of cultural industries, and rules governing intellectual property. At the time of writ-

ing, the softwood lumber dispute remains unresolved.

On August 3, the Mexican government released its negotiating priorities. They include maintaining preferential access for goods, eliminating barriers to trade, improving customs procedures and updating labour and environmental chapters. It calls on the United States and Canada to “modernize all NAFTA dispute resolution mechanisms (investor-state, state-state, as well as anti-dumping and countervailing duties, and financial services) to make them more agile, transparent and effective.”

Freeland shed some light on Canada’s negotiating priorities in her August 14 address at the University of Ottawa. While no doubt not wishing to show Canada’s hand in too much detail, the broad outlines of the government’s strategy have begun to take shape. Rather than deal with the United States on a defensive basis, Freeland signaled clearly that Canada sees some attractive opportunities in the negotiations ahead. These include bringing into the NAFTA domain sectors such as services and e-commerce—a move that will be welcomed by Canada’s technology sector. She has identified cutting red tape and harmonizing regulations as a core objective. Drawing on the example of the CETA, she signaled that Canada would seek a freer market for government procurement. Also, drawing on the CETA, the minister is seeking the easing of restrictions on the movement of professionals across borders, indicating a desire to review NAFTA’s Chapter 16.

**A**ddressing Canada’s “national interest”, Freeland insisted that the government will support a process “to ensure anti-dumping

and countervailing duties are only applied fairly when truly warranted” and, significantly, declared that the NAFTA exception to preserve Canadian culture and the system of supply management are to remain untouched. In defending independent binational review panels currently contained in Chapter 19 of the NAFTA, Freeland is echoing the affirmation of Prime Minister Trudeau that this provision remains central to Canada’s negotiating position.

Since it became clear that a NAFTA renegotiation under President Trump was inevitable, the Trudeau government has spoken of the attractions of a modernized and “progressive” NAFTA. The clearest indication to date of Canadian thinking on the meaning of “progressive” was revealed by Freeland’s commitment to push for labour safeguards and environmental protection as part of the core Agreement. Add to this commitment the intention of Canada to propose integrating chapters on gender rights and Indigenous peoples. While the recently updated Canada-Chile Free Trade Agreement incorporates reference to gender rights, the inclusion of Indigenous peoples is a first in North American trade discussions. Explicit language dealing with Indigenous people is yet to be revealed, but we can be certain that this negotiating objective will capture considerable attention in Canada, and especially in Mexico, where the economic benefits of the NAFTA are perceived not to have benefitted the country’s Indigenous population.

The Trudeau government’s desire to introduce such progressivity into a new NAFTA and future binational and multilateral free trade agreements is sensible. The protection of labour rights and the advancement of “fair trade” rules will resonate in both Republican and Democratic circles in the United States. It also will resonate in government and opposition circles in Mexico where NAFTA has not delivered on its promise to promote strong growth and reduce the still broad income gap between rich and poor.

While some critics are concerned about attempts to introduce progres-

sivity into so called “new age” trade agreements, I believe they are shortsighted. When I was a professor of international trade many years ago, it was considered unacceptable to link trade and commerce with social objectives. Forty years of experience at the forefront of private sector engagement with trade agreements and seeing the uneven effects of globalization have taught me otherwise. In this age of raging populism marked by income inequality, nationalist and protectionist fervour, and deep suspicion of elites, trade agreements must serve both economic and social objectives in order to win public acceptance.

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The Prime Minister and his team have managed with skill and *sang-froid* the challenging circumstances brought on by the Trump administration. The vigorous “all America” outreach to the U.S. administration, the Congress and governors, carried out by the federal and provincial governments, the business community and by other interested actors, has been remarkably effective. Close consultations with the Mexican political leadership continue to be fruitful. The Canadian negotiating teams are experienced and ready. And in Freeland, Canada has a knowledgeable and indefatigable spearhead.

With negotiations just getting underway, it is impossible to foretell their direction. One scenario is that

the Trump administration supported by the Congress will push for a rapid outcome with some demonstrable wins. This would give the president a badly needed political victory in advance of next year’s mid-term elections. From Mexico’s perspective, a conclusion of talks by the year’s end would be ideal given its national elections next July. While Canada, if necessary, could play for more time, an early conclusion of the negotiations would serve the national interest so long as primary objectives related to NAFTA market access and dispute settlement are not sacrificed.

**A**s the NAFTA negotiations move forward, Americans, Canadians and Mexicans should embrace a broader vision of North America: of three sovereign nations working in harmony; of a continent where the rule of law reigns supreme, diversity is an asset, and human rights are valued above all; of an inclusive economic system where jobs are plentiful and income inequality is falling; of advanced industries sharing technologies and best work practices; of the best human talent available from any part of the world; of continent-wide educational cooperation; of world-class infrastructure and advanced transportation systems; of energy development that powers our collective strength.

With the exception of a few die-hard advocates, this vision presently has little currency. Some will argue that such a vision in the face of Trump populism does not stand a chance. But the Great Republic is much bigger than any single leader or movement and the logic supporting closer cooperation on many fronts across the continent is overwhelmingly strong. A successful renegotiation of the NAFTA and a modernized Agreement could over time serve as the driving force for a North American renaissance that will secure the region’s global primacy for many decades to come. **P**

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