



Getting the NAC[W] for the NALS

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Assessing the Competitiveness Workplan Within
the North American Leaders' Summit 2016

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Assessing the Competitiveness Workplan Within
the North American Leaders' Summit 2016

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May 2016

* This briefing note is based on conversations with officials and stakeholders and reference to public documents. Any errors are the fault of the author. Opinions are solely those of the author and not the Woodrow Wilson Center.



Summary

The easy gains for North American competitiveness are exhausted. Issues that remain are technical and politically unpopular. U.S. political attention has moved to Atlantic and Pacific deals.

Large trade initiatives involving Canada and Mexico will not be possible within the next year or so because of the U.S. election and the anti-trade and anti-immigration rhetoric fueling the campaign.

Nothing can happen without U.S. leadership but Mexico and Canada must be aligned to generate U.S. attention. Under Prime Minister Harper, Canada had cool relations with Mexico and the trilateral dialogue was sidelined by the KXL dispute. Mexico has been a strong partner in terms of proposing new initiatives but has lacked the resources to fully implement its commitment.

If a reset for North American competitiveness is possible, the impetus must come from renewed Canada-Mexico alignment on priorities.

For the coming North American Leaders' Summit, the most effective instrument at play is the NACW. It provides continuity and structure to the competitiveness agenda and is a magnetic north for other, less-developed trilateral initiatives (energy, security, foreign policy).

For the upcoming leaders' summit, the prospects for success for any issues requiring expenditure of political currency through 2016 are weak. What is possible are non-controversial, positive agenda items. Following are some suggestions:

1. Mainstream energy and climate change objectives into the competitiveness workplan through projects focused on information sharing, common nomenclature and regulatory alignment. Advance a dialogue on carbon pricing to ensure that climate objectives do not undercut competitiveness.
2. Explore non-traditional areas of education cooperation such as employer-led programs for skills development in aerospace and automotive, and a young Aboriginal leaders exchange program.
3. Develop skills capacity in high-demand ITC sectors by removing non-immigration mobility barriers.
4. Canada should join the U.S. Known Employer Program.
5. Collect and analyze data to guide policy actions:
 - a. A Canadian cluster mapping project that is compatible with US-Mexico cluster maps
 - b. Trade in value-added in the services sector
 - c. A pilot study in agri-food supply chain traceability
 - d. Develop common nomenclature for understanding cyber threats

- e. Develop common nomenclature for assessing pipeline security
- 6. Canada should consider joining the NAD Bank as a vehicle to advance infrastructure and climate objectives.
- 7. Recommit to, and expand, the work of the Beyond the Border and Regulatory Cooperation Council: Complete trilateral trusted traveler and expand entry-exit information sharing and preclearance to the trilateral level.
- 8. Establish a trilateral initiative on transparency in government procurement to help support Mexico's anti-corruption agenda using lessons from the FCPA and the Integrity Framework.
- 9. Establishing a consultative group to help coordinate the NAFTA and TPP legal agreements with a view to future coordination with EU agreements.

A positive and non-challenging agenda will help to provide action items during the leadership transition, the continued lack of political will to commit to expanded North American competitiveness will cause an inevitable decline in North American prosperity.

Introduction

On June 29, 2016, the three leaders of Canada, Mexico and the United States are expected to meet in Ottawa at a North American Leaders' Summit (NALS). "NALS provides the opportunity for the leaders of North America to discuss their visions for a prosperous and secure future for the citizens of all three countries and their shared commitment to work together to realize that vision."¹

We can expect the NALS agenda to be limited and safe. As Christian Ranger notes, "North America is a small club, even by small club standards. With only three national players at the table, the agenda tends to avoid contentious topics in favor of consensual items."²

On the economic front, there are weak prospects for significant progress for North American economic integration, given the uncertainty surrounding the US presidential election, the challenges of the new Canadian government to operate at full capacity, and the myriad security and economic challenges facing the Mexican government.

The iron law of NAFTA is that Canada and Mexico can do little on their own without US political will and leadership. The election-fueled climate of anti-trade rhetoric, combined with USTR attention focused on domestic implementation of the TPP, means that such US leadership on North American economic issues will not be possible for a year or more, if ever.

The challenge for Canada and Mexico will

be to insert North American economic interests into initiatives that the U.S. is interested in: TPP and TTIP, climate change, and non-controversial issues such as innovation and education that have few domestic opponents.

Despite the hype, the 12-party TPP agreement is likely to contribute little to the deepening of the North American trade regime. At best, it will broaden the agreement through commitments in areas not considered in the 1994 negotiations, such as cross-border data and biologic drugs.

But, are new political commitments really necessary to deliver the benefits of the NAFTA to a wider constituency of stakeholders? The three prevailing challenges that authors of a new NAFTA governance regime must grapple with are:

1. U.S. Department of Commerce, <http://trade.gov/nacp/nals.asp>
2. Christian Ranger, "A Roadmap for North America: Building the North American Leaders Summits," *Americas Society / Council of the Americas* (January 2015), <http://www.as-coa.org/articles/roadmap-north-america-building-north-american-leaders-summits>

1. An agreement that lacked sufficient facilitation measures (border processes, infrastructure, regulatory compliance) to allow the majority of North American businesses, particularly SMEs, to benefit from the market access benefits NAFTA provides.
2. Rules for the movement of goods, services, investment and people that have become more rigid due to expanded anti-terror measures and more complex because of globalization of production – accompanied by changes in manufacturing technology, – as well as new global competitors and customers.

As a trade agreement, the NAFTA works well to govern the vast majority of traditional goods traded among the three countries. What it lacks are durable mechanisms to update the agreement and ensure the continued commitment by the three parties to the economic integration principles envisioned by its founders.

But even without a comprehensive governance system, work continues at the official level to try to enhance and streamline North American competitiveness. While most of the original NAFTA supervisory mechanisms and working groups have faded away, out

of their ashes has risen the North American Competitiveness Workplan (NACW), which continues to guide the agenda for trilateral trade and business facilitation measures.

Fortunately, much of what North American competitiveness needs at the moment does not require large amounts of political leadership or legislative action. Real progress can be made through the NACW process where government officials have shown a renewed commitment to cooperation and coordination in this small, fragmented, yet important sphere.

Leaving aside aspirations for big political deals in the near future, this briefing looks at the best developed area of cooperation and the most likely area of progress: the NACW workplan -- how well it is delivering on its initial goals and how the plan is likely to be modified in 2016.

The NACW is also a sub-set of a broader agenda under consideration for the North American Leaders' Summit, that includes Climate Change, Environment and Energy, Competitiveness, Regional Issues, Global Issues, and Security and Defense. This briefing focuses on the NACW, but provides consideration of the other four pillars where they overlap with competitiveness recommendations.

NACW

Overview and Progress to Date

The NACW provides a coordinating structure that supports the development of a trilateral workplan and the alignment of efforts from numerous departments, agencies and organizations in all three countries. It outlines the key objectives, timelines and responsibilities of each agency involved and has mandated periodic reviews. It is accountable to relevant ministers in each country and ultimately to national leaders.

The 2015 NACW workplan included 25 initiatives grouped under 12 thematic areas. The key achievements emerging from the 2015 workplan have been the entry into force of the Trilateral Patent Prosecution Highway and the signing of an MOU for a Trilateral Trusted Traveler Arrangement that aligns the U.S. Global Access (GOES), Canadian Nexus and Mexican Sentri programs. At mid-2016, other aspects of the workplan are in various stages of development but it is fair to say that many have been frustrated by scope, jurisdictional and institutional capacity issues.

GENERAL ASSESSMENT

Strengths

The NACW provides defined objectives with timelines and actors tasked with delivering results. Mandated meetings and deliverables help ensure continuing interest in North America, particularly at a time with so many distractions elsewhere.

Weaknesses

NACW challenges include:

- Political leadership - Lack of political will has led to a non-ambitious workplan

in which few existing problems can be solved. The focus instead is on positive, non-controversial issues that do not require legislative action. Unless it can be reversed, this trend will generate trivial and lackluster results.

- Difficulty maintaining momentum and delivering tangible results.
- Mismatches between political direction, institutional capacity and actual stakeholder interest.
- Mismatches between lead institutions - Mexico and Canada are represented by broad-scope trade ministries; the U.S. lead is Commerce, which has limited authority to amend or expand trade rules.
- Capacity - Big ideas need to be matched with the institutional capacity and resources to implement them. For example, completion of the trilateral trusted traveler program has been impeded by lack of implementation capacity in Mexico.
- Unilateralism - There are still very few issues where countries will put trilateral interests ahead of national or bilateral.

The following provides a summary of progress to date in the main categories of the 2015 NACW workplan:

ISSUE	ASSESSMENT
01. North American Patent Prosecution Highway 	Successful; allows patents filed in one country to more easily be recognized in all three countries.
02. Border facilitation cooperation 	Moderate progress with trilateral trusted traveler MOU but incomplete implementation. Single window initiative to streamline customs procedures is promising.
03. North American cluster/asset mapping 	Slow progress; financial concerns from Canada may be an issue but could become an important tool to increase and monitor competitiveness.
04. North American collaboration on SMEs, entrepreneurship, and innovation (including women's entrepreneurship) 	Challenged by asymmetrical interest and participation.
05. North American stakeholder outreach 	Stakeholder engagement is key to legitimacy. Outreach to local governments (cities and communities) seems particularly useful at present.
06. Investment cooperation 	Competition among the three countries for foreign investment makes collaboration difficult.
07. Cybersecurity collaboration with the commercial sector 	Slow progress; a mismatch between policy agencies and enforcement agencies among the three leads
08. Open data and big data collaboration 	Very difficult to identify and secure cooperation of relevant agencies.
09. North American workforce development 	Initial study on workforce development is out of date. Canadians and Mexicans seeking to expand the list of approved professions under the NAFTA temporary entry; US unwilling.
10. Tourism collaboration 	Competition for tourism makes collaboration difficult.
11. Regulatory cooperation 	Canada-US bilateral cooperation through Regulatory Cooperation Council (RCC) functioning well. Addition of Mexico as observer/participant has yielded limited results so far.
12. Alignment of international trade 	An overly broad mandate in terms of markets and policies made this difficult to fulfill. Competitive positions in the TPP also worked against success. May be possible to re-work under a narrower scope, e.g. coordinating NAFTA commitments to TPP.

LINKAGE TO NALS

The 5 focus areas of the NALS are:



The latter three are outside the scope of this briefing. They cover regional cooperation in areas such as Haiti and Cuba, a North American Caucus on global issues such as peacekeeping and pandemics; and issues such as disaster risk reduction and anti-crime capacity building covered under the mandate of the North American Defence Ministers (NADM process).

Meanwhile, the energy, environment, and competitiveness objectives have intrinsic connections, for example in sharing information and aligning regulations to improve competitiveness and providing incentives for firms to enter the green tech space.

What's Next

The U.S. leadership vacuum and campaign backlash against trade and immigration means that this NALS must focus on non-controversial issues — preferably new initiatives without political baggage — that can be managed at the bureaucratic level, within the operational sphere of those governmental organizations that have already committed to the advancement of North American interests. Project scope must be limited and objectives clearly defined.

Drawing from personal observations and conversations with officials, stakeholders and North America watchers, the following is a partial list of new and refurbished issues to consider:

1. Energy and Climate Change

Many stakeholders are enthusiastic by the renewed focus on climate change but there is increasing concern about losing sight of business competitiveness as a result of insufficient coordination among authorities and insufficient attention to trade-exposed industries. Meeting external climate change commitments is important but so is maintaining North America's competitive advantage as an energy producer.

Recommendations

- Continued focus on energy information sharing, harmonized measurement systems etc., as set out in the North American Cooperation on Energy Information (NACEI) MOU.
- Expand the energy regulatory measures covered by the RCC beyond energy efficiency and natural gas, to include aspects of energy infrastructure such as a common nomenclature for reporting on pipeline safety.

2. Youth and Education

Education linkages between the U.S. and Mexico are strong and growing. Linkages between Mexico and Canada are much weaker. New approaches are needed to depart from traditional marketing of tertiary level education “junior-year abroad” programs. Expanding skills-development, language, and cultural opportunities to a more diverse range of incomes and social groups also makes sense.

Recommendations

- Explore new employer-led initiatives modelled on Bombardier aerospace training in Montreal and Queretaro.
- Consider the trilateral young Aboriginal leaders program being developed by Fulbright Canada.

3. Labor Market Flexibility/Workforce Development

Insufficient access to skills, where and when they are needed is one of the largest impediments to competitiveness cited by North American industries. The U.S. is unwilling to consider expanding the list of eligible professions covered under the temporary movement chapter of NAFTA. One of the frequent arguments in favour of updating the NAFTA list is that almost none of the high-tech jobs that are now part of the contemporary commercial landscape are covered by the NAFTA. Given that the NAFTA (TN-1) visa may itself be problematic in terms of coverage and administration, the North American partners should attempt to achieve some of the workforce goals without touching the third rail of visa policy reform.

Recommendations

- The three countries should identify one or two ITC sector group partners and work with them to develop a pilot project to eliminate non-immigration barriers to the movement of personnel within North America. The video game industry, for example, has been very active in seeking skills development and mobility solutions. More efficient deployment of high-tech workers is unlikely to provoke populist backlash. This initiative could be paired with employer-led youth and employment programs listed above.
- Canada and Mexico should join the U.S. Known Employer Program. This is a positive initiative being offered by the U.S. and it should be taken seriously by the other partners.

4. Border Facilitation and Regulatory Cooperation

The Beyond the Border and Regulatory Cooperation Council initiatives are the leading examples of Canada-US economic cooperation. More efforts should be taken to ensure their longevity by bringing Mexico into the process wherever possible.³

Recommendations

- Continued commitment to the BTB workplan, especially single window for cargo and full implementation of trilateral trusted traveler.
 - Build out bilateral entry-exit to the trilateral level
 - Expand pre-clearance/pre-inspection initiatives
- Expand RCC principles to energy and climate change initiatives. (Key principles include

3. There are challenges with trilateralization because the three countries have different priorities and capacities to implement, but not every cooperative initiative needs to produce equivalent trilateral results, as long as there is trilateral consultation and provisions for docking on in the future.

MOUs between regulators, obligations for regular consultation between regulators and with stakeholders, and the objective of reducing unnecessary duplication where possible.)

- Launch a study to evaluate how the safe and secure perimeter principles embodied in the Canada-U.S. Beyond the Border program can be extended to Mexico and southern border(s).

5. Metrics

Continued attention to trilateral research initiatives such as cluster mapping and supply chain tracing.

Recommendations

- Develop a Canadian cluster mapping project that is compatible with US-Mexico cluster maps.
- Traceability of origin and inputs in agri-food supply chains is an important and increasingly problematic area of North American food security and competitiveness. With industry and agriculture ministries, launch a pilot traceability project in key supply chain groups (e.g. oilseeds).
- Lack of common nomenclature in such areas as pipeline safety and cyberthreats is a key challenge for all three countries. Launch common nomenclature projects for these and other key sector areas.

6. NAD Bank

Canada has long resisted the suggestion that it should join the North American Development Bank (NADB), not seeing the point contributing to U.S. funding for infrastructure and environment projects on the U.S. southern border region.⁴ It may be time for a re-think. If the NAD Bank mandate was expanded to include study and cost-benefit analysis of all North American border infrastructure projects, this could help to put Canada's infrastructure priorities onto the broader U.S. political agenda. Moreover, joining the Bank could help Canada reach some of its climate objectives. It provides Canada with a mechanism to drive down GHG emissions, to establish Canada as a priority supplier of clean energy and water technologies in Mexico, and help Canada to meet its UNFCCC Climate Finance obligations.

Recommendations

- Explore Canada's participation in the NAD Bank.

7. Anti-Corruption Measures in Government Procurement

Mexico has a demonstrated interest in fighting corruption and promoting rule of law. Cooperation on anti-crime measures is identified as a NALS priority. This interest overlaps

4. The border region is defined as 100 miles north of the international boundary and 300 miles south, covering four U.S. states and six Mexican states.

with the competitiveness sphere in the area of transparency in government contracting. The privatization reforms in Mexico's energy sector put anti-corruption high on the agenda. The U.S. Foreign Corrupt Practices Act and the OECD Anti-Bribery Convention (to which all three countries are a party), lead the way in establishing mechanisms to monitor and enforce transparent practices. Canada's recent experiences with its procurement Integrity Regime reveal the challenges of implementing an effective system that does not hinder legitimate business activity or investment.

Recommendations

- Launch a trilateral anti-corruption initiative to share best practices in transparent government contracting and provide, where appropriate, capacity building support to Mexico to fully implement its commitments under international and domestic law.

8. Trade

Recommendations

- It is unlikely that much progress will be possible on a proactive trade agenda or the resolution of current irritants (see note below). Focus instead should be on establishing a consultative group and institutional arrangements to bridge NAFTA to TPP and lay the framework to coordinate the individual agreements that Canada, Mexico and the United States have, or are negotiating, with the EU.

A Word About Trade

The North American Free Trade Commission (NAFTC) was established as the central operational institution of the NAFTA, intended to supervise the implementation and further elaboration of the agreement and its various working groups. The Commission is made up of the trade ministers of the three countries. It has not met since 2012, when Ron Kirk was USTR and, reportedly USTR Froman is not willing to schedule a meeting anytime soon. Within the U.S. political landscape, NAFTA issues are dull, difficult, and politically unpopular.

To fill this gap, the NACIC/NACW was formed, led by the Canadian and Mexican trade ministers together with the US Secretary of Commerce. While Commerce Secretary Pritzker's leadership in the trilateral space has helped to fill a void, most of the trade law and regulatory aspects of the NAFTA are outside of the Commerce mandate, which is largely focused on trade promotion.

The promise of "updating NAFTA through TPP" is not realistic. While TPP helps to broaden the trade agenda to issues not considered during the 1994 NAFTA negotiations (e.g. nationalization of data servers), the NAFTA has achieved deep integration among the commercial policies of the three parties. By contrast, the depth of TPP commitments is constrained by the capacity of newly industrializing trading partners such as Vietnam to effectively implement these new rules.

The NACW trade commitments can be loosely grouped as border and implementation measures, new areas of cooperation (outlined elsewhere in this briefing) and NAFTA updates. Border and implementation measures are a productive area for NALS discussions because they do not require any legislative action in the U.S. However, they also tend to be complex, technical, and poor feedstock for ministerial press conferences.

NAFTA updates, for reasons outlined above, are very unlikely. The Canadian and Mexican request to expand the list of professions

approved for temporary entry/eligible for the NAFTA visa is a worthwhile issue to press (especially when focusing on occupations in the high tech sector which are in high demand but provoke relatively low political backlash). However, USTR cannot expand the list without consulting Congress and it is unwilling to expend any political currency with a NAFTA-related trade request when all resources are being marshalled for the TPP.

The anti-trade sentiment in the US suggests that very little progress will be possible on the trade agenda for at least 18 months. TPP has a limited to moderate chance of passing during the lame duck and TTIP negotiations are likely to stretch for several more years. (The CETA negotiations took about six years, the TTIP negotiations are into year three.)

One of the few areas where new developments are possible is the establishment of a trilateral committee to review and coordinate the NAFTA and TPP. There are a number of open questions that need to be addressed in order to increase the inter-operability of the agreements. The work of this committee could later be extended to coordinate NAFTA/TPP and the EU agreements.

USTR officials might be more favorably disposed to this proposal if Canada were to provide early ratification of the TPP to help bolster their own efforts to secure domestic TPP approval.

What about softwood lumber? Most decision makers at USTR and the White House did not experience the bitter and expensive fights that led up to the 2006 agreement and do not realize how acrimonious the battle is likely to become. There are no substantive actors in the U.S. pushing towards an early settlement and market forces are set against Canadian interests. The 100-day review period was a good idea to help spur some productive thinking but a protracted dispute is still the most likely option.

Conclusion

There are enough useful initiatives in play that the North American competitiveness agenda can be sustained through this period of political transition without new political commitments. But, in the long term, North American competitiveness will become weaker and more fragmented without U.S. political attention to this important relationship.

Meanwhile, Canada and Mexico must work harder to coordinate their efforts on priority agenda items. The Canada-Mexico relationship is in a good position for rebuilding under Prime Minister Trudeau. Renewed efforts on collaboration and developing joint proposals will help to guide progress for the remaining months of the Obama presidency and set the stage for the next administration.

Annex 01

Origins: From the SPP to the NACW

The Security and Prosperity Partnership of North America (SPP) was launched in 2005 to North American Leaders' Summit (NALS) process through greater cooperation and information sharing.

While widely regarded as a significant contribution to continental integration, the SPP could not survive the weight of political criticism and became inactive in 2009.

The NALS continued supported by ad hoc processes and bilateral forums among the three nations such as the US-Mexico 21st Century Border Initiative and the US-Canada Beyond the Border Action Plan and Regulatory Cooperation Council launched in 2011.

The North American Competitiveness Workplan (NACW) is the result of a commitment made by ministers of trade in Canada and Mexico and secretary of commerce in the

United States at the North American Competitiveness and Innovation Conference (NACIC) held in San Diego in October 2013. The objective of the NACW is to create a road map to promote prosperity across North America and maintain North America's competitive global position. Commerce Secretary Penny Prtizker provided strong leadership for this renewal despite weak or negative support for NAFTA among many U.S. stakeholders.

The NACW took shape during the NALS in Toluca in February 2014 and the resulting 2015 scope of work identifies 25 initiatives grouped under twelve areas of trilateral collaboration.





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