



COMMENTARY

NAFTA's Environmental Record: History, outcomes, impacts and options

Scott Vaughan June 2017

The NAFTA renegotiations have begun, and the fate of the various environmental provisions in NAFTA looks bleak. For example, a leaked report of proposed budget cuts by the White House affects the U.S. Environmental Protection Agency (EPA) in several ways. Among a startling list of programs being gutted, it proposes to end all U.S. support for North American environmental cooperation linked to the North American Free Trade Agreement (NAFTA).

That cut would save a mere USD 2.5 million annually, which is minuscule compared to the staggering 31 per cent in proposed cuts that await the EPA.

It is unclear if the proposed White House budget cuts will prevail. What is clear is that the Trump administration's pitting of environmental protection against a jobs agenda is a throwback to an old jobs-versus-environment debate that decades of empirical evidence has discredited.

It is too early to tell what role the environment will play in the NAFTA negotiations: Canada has promoted a new generation of progressive trade policies, while Mexico has shown leadership across multiple environmental, biodiversity and forestry protection priorities. Moreover, many of the flashpoints of dissatisfaction in the United States with NAFTA—softwood lumber and dairy—fall outside of the agreement, while early demands to change NAFTA Chapter 19 dispute settlement rules are bewildering, given the U.S. track record in winning many of those disputes.

The NAFTA negotiations are likely to occur over the next year. Whether the White House can jettison all environmental provisions in light of the current Congressional U.S. Trade Promotion Authority (the so-called fast-track provision) is unclear. That authority includes within its objectives means to ensure that all U.S. trading partners enforce their own environmental laws.

This note is organized as follows: Part One rehearses some of the debate that led to the NAFTA environmental model and recalls why NAFTA was an innovative approach to trade policy at the time. This was in part because of its attempt to balance economic and trade objectives with environmental provisions. Part Two highlights some of the environmental work from the NAFTA model. Part Three notes some outcomes and impacts. Part Four looks ahead to what a new NAFTA environmental deal could entail.





Part One: Rehearsing the Debates and the NAFTA Compromise

Twenty-five years ago, battle lines between free trade and environmental protection were starkly drawn. Alliances among key environmental groups ruptured. On one side were those who opposed free trade under any circumstances. On the other were those who viewed the choice between free trade or a clean environment as a false dichotomy.

The NAFTA debates took place amid a period of extraordinary change within trade policy. After years of negotiation, the Uruguay Round concluded in April 1994. On New Year's Day 1995, a founding Bretton Woods institution—the General Agreement on Tariffs and Trade (GATT)—morphed into the World Trade Organization (WTO) to implement the Uruguay Round of multilateral trade negotiations.

In addition to familiar disciplines on tariffs, the formation of the WTO signalled a new direction in trade policy, composed of 20 agreements covering both familiar border disciplines such as tariff reduction and, more importantly, behind-the-border disciplines such as standards, regulations, intellectual property rights and patents, services and trade-related investment disciplines. In addition, the WTO's dispute settlement and appeal mechanisms are among the strongest found in any international treaty.

The WTO was created when the Washington Consensus of economic assumptions—which revolved around liberalization, deregulation, privatization, macroeconomic stability and globalization—seemed unassailable. The prevailing belief within mainstream economics was the notion that trade openness was the most significant ingredient for economic growth and development.1

With few exceptions (Dani Rodrik being a consistent voice), most economists echoed this view. Jeffrey Sachs and Andrew Warner wrote an influential study in 1995 that found that a country's openness to trade was the key determinant of its economic growth.2

Bridging Trade and Environment

So where did the environment fit into this prevailing trade view of the 1990s?

The 1992 Earth Summit certainly recognized links between trade and the environment, and vaguely called for both to be "mutually supportive." However, a director-general of the GATT—Arthur Dunkel—warned at the time that the

¹ This sentiment—a far more contested notion today—was captured in a 1997 speech by leading trade economist Anne Krueger, who wrote: It is now widely accepted that growth prospects for developing countries are greatly enhanced through an outer-oriented trade regime and fairly uniform incentives (primarily through the exchange rate) for production across exporting and import-competing goods. . . . Policy reform efforts removing protection and shifting to an outward-oriented trade strategy are under way in a number of countries. It is generally believed that . . . liberalization of trade and payments is crucial for both industrialization and economic development . . . while there are still some disagreements over particular aspects of trade policy both among academic researchers and policy makers, the current consensus represents a distinct advance over the old one, in terms both of knowledge and of the prospects it offers for rapid economic growth.

From Krueger, A. (1997). Trade policy and development: How we learn. American Economic Review 87 (1), 1-22

² Sachs, J.D., & Warner, A. (1995). Economic reform and the process of global integration. Brookings Papers on Economic Activity 1995, 1, 1-118.



greatest single threat to open trade came not from tariffs, subsidies, import substitution and other measures, but from environmentalists.

If the trade community fretted about environmental actions, the environmental community was anxious and alarmed by accelerating trade policy reforms. These anxieties took various forms, some of which persist today.

Some were worried about the scale effects of trade and the associated externalities that came from trade expansion. The Uruguay Round promised to add USD 550 billion to global GDP, according to the WTO Economic Research Division. What would be the scale effects of trade-led economic expansion such as increased pollution, freshwater scarcity and other environmental degradation?

Anxiety also focused on the consequences of behind-the border liberalization, and whether domestic environmental regulations, standards and approaches could be weakened to facilitate trade. A high-profile GATT dispute between the United States and Mexico regarding the protection of dolphins killed in tuna fisheries underscored these fears and led to public demonstrations in Geneva against "GATTzilla." The first WTO legal dispute, which involved U.S. domestic air pollution regulations for automobiles, further fanned this narrative.

A key concern was NAFTA's Chapter 11 investment provisions, which were repeated in subsequent bilateral and regional agreements (around which there is extensive debate, based on misdirected case law, that IISD and others have commented on.)

Environmentalists also worried that trade would encourage a race-to-the-bottom, whereby countries would be compelled to weaken domestic environmental standards to remain competitive, or that it would lead to pollution havens, in which companies moved to jurisdictions with weaker environmental standards. A 1991 leaked World Bank memo signed by then-senior economist Larry Summers that called for dirty industries to move to least-developed countries in Africa that were "under-polluted" did nothing to alleviate these anxieties.

In the midst of these questions was NAFTA. It was the first regional trade agreement that brought together industrialized and developing countries. In the early 1990s, many worried that Mexico lacked stringent environmental regulations or the ability to enforce them.

This asymmetry among the United States, Canada and Mexico went beyond economic scale and domestic regulatory stringency. At the outset of NAFTA, and to this day, the three countries have strikingly different economic, ecological and other profiles. Mexico, for example, is one of a handful of mega-biodiverse countries on the planet.

A North American Snapshot

	Canada	USA	Mexico
Population (millions)	36.4	318.9	125.4
GDP (billions)	1,785.4	17,419.0	1,294.7
GNI per capita	51,630	34,280	9,870.
Forest Area (% land area)	38.2	33.9	34
Total Native Species	7,032	21,715	108,519
Total Endemics, Mammal species	5	102	153
Total Endemics, Bird Species	0	650	115
CO ₂ Emission Per Capita (mt)	14.1	17.0	3.9
Marine Protected Areas (% of territorial waters)	1.4	31.7	19.0
Mangroves Area (sq. km.)	-	3,030	6.557

Source: World Bank. (2016). Little Green Data Book. Retrieved from https://openknowledge.worldbank.org/bitstream/handle/10986/24543/9781464809286.pdf
Note: Endemics are species that are known to occur naturally within one country only. Source: IUCN Red List, December 2016. Retrieved from http://www.iucnredlist.org/



Two Visions of North American Cooperation

History matters. The May 2017 summit of the Belt and Road Initiative, hosted by Chinese President Xi Jinping, framed a future partnership between one-quarter of the global population, one-third of global trade among 69 countries, on historical ties:

The ancient silk routes spanned the valleys of the Nile, the Tigris and Euphrates, the Indus and Ganges and the Yellow and Yangtze Rivers. They connected the birthplaces of the Egyptian, Babylonian, Indian and Chinese civilizations as well as the lands of Buddhism, Christianity and Islam and homes of people of different nationalities and races. These routes enabled people of various civilizations, religions and races to interact with and embrace each other with open mind. In the course of exchange, they fostered a spirit of mutual respect and were engaged in a common endeavor to pursue prosperity.

The contrast to U.S. protectionism could not be starker: history is used there not as a means to look outwards, but rather to close borders, build walls and reduce cooperation.

Yet the history of NAFTA, though younger than the ancient Silk Road trading routes, arises from pre-contact trading routes that engaged the continent's indigenous peoples hundreds of years ago:

The more recent vision of NAFTA finds its origin in views framed by two U.S. Republican presidents.

In 1909, U.S. President Teddy Roosevelt called for a North Americanwide partnership in which the United States, Mexico and Canada worked together to support conservation to protect migratory species and the habitats they shared among the three countries. In a trilateral meeting hosted at the White House that year, Roosevelt argued that the:

Prosperity of our people depends directly on the energy and intelligence with which our natural resources are used. It is equally clear that these resources are the final basis of national power and perpetuity. Finally, it is ominously evident that these resources are in the course of rapid exhaustion.³

In 1916, the United States and Canada signed the Convention for the Protection of Migratory Birds, one of the oldest legal environmental treaties. Two decades later, Mexico signed a similar convention with the United States.

A second conception of hemispheric cooperation was founded on the idea of a common economic market. The vision for an integrated North American market was put forth by Ronald Reagan during his 1980 campaign for the White House, and entailed a continent-wide cohesive economic powerhouse linked through trade and integrated markets.



Teddy Roosevelt, c. 1909.

Source: Smithsonian Institution Archives

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 $^{^3\} http://lcweb2.loc.gov/cgi-bin/query/r?ammem/consrv:@field(DOCID+@lit(amrvgvg16div19)).$





Part Two: NAFTA's Environmental Outcomes

The question remains: has the NAFTA environmental side agreement mattered?

Unlike multilateral environmental agreements, the NAFTA environmental side agreement—introduced in 1993 to subdue the fury of many U.S.-based environmental groups—was, at the time, unique in being anchored alongside an ambitious regional trade agreement.

NAFTA included various environmental provisions within the trade text—something the WTO has also included.

The environmental provisions in NAFTA and its side agreement were pioneering in 1994. The NAFTA model became the reference point for over 100 regional and bilateral trade agreements that followed.

Yet NAFTA went further than any previous agreement, as well as most subsequent trade deals, by establishing an environmental side agreement⁴ that, at its centre, was supported by a small secretariat through the North American Commission for Environmental Cooperation (CEC).⁵

The central innovations of the NAFTA environmental regime were two-fold. Over 20 years, programs built around ministry-to-ministry work, supported by a small secretariat, generated an innovative collection of environmental data across the United States, Mexico and Canada. These data streams allowed experts, and to a lesser extent the interested public, to track transboundary pollution, migratory species and important habitat. The information generated a simple picture of the rich and fragile North American ecosystem to which Roosevelt had aspired. Some of these achievements are described briefly below.

The second impact was the space NAFTA opened for public participation, done so through an innovative (but ultimately flawed) citizen's submission process coupled with general public meetings. For example, one of the first public meetings ever to take place between a Mexican minister and the public was a CEC-sponsored meeting held in Mexico.

Some examples of the Commission's two decades of work are briefly described below.

One example of creating a seamless information database to help experts and the public understand shared ecosystems and threats is the North American Environmental Atlas. The atlas has become a model for other countries in assembling accessible geo-referenced environmental data to visualize ecosystems. In addition, it provides online interactive tools to integrate socioeconomic and key environmental statistics.

⁴ The North American Agreement for Environmental Cooperation (NAAEC) was the result of widespread fears from many environmental non-governmental organizations that NAFTA would erode hard-fought domestic environmental standards, regulations and norms as companies lowered their environmental standards to attract jobs. The many other environmental concerns included the fear that NAFTA would lead to the forced export of bulk water. When campaigning, Bill Clinton promised to toughen the environmental as well as labour protections of NAFTA. The NAAEC entered into force in 1994.

⁵ The CEC is overseen by the U.S. EPA Administrator, the Secretary of Mexico's SEMARNAT and the Canadian federal Minister of Environment and Climate Change. Guidance is provided through the Joint Public Advisory Council and program-specific expert groups.



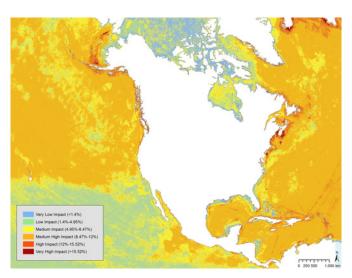
Map samples from CEC's North American Environmental Atlas



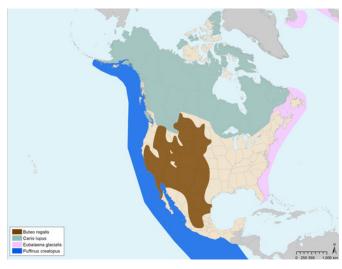
CEC North American Atlas Map: Marine Vessel Pollution



CEC North American Atlas Map: Marine Protected Areas



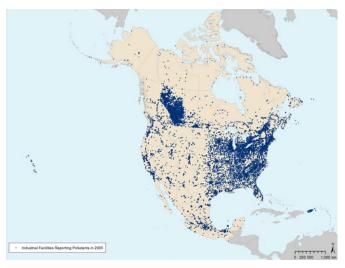
Human Impact on Marine Systems



CEC North American Atlas Map: Marine Protected Areas



Estimated Freight Railroad ${\rm CO_2}$ Emissions along the Mexico City to Montreal Transportation Corridor, 2010



Pollutant Releases and Transfers (PRTR) Reporting Facilities, 2005



Other maps were created to support the joint protection of key marine ecosystems in North America, including the Gulf of Mexico and the Gulf of Maine. Maps were also created to share information among a network of marine protected areas in the Arctic Archipelago and along the Pacific coast, which are vital to migratory wild salmon, whales and other species.

Similar approaches were initiated to map shared grasslands in the midwestern provinces and states. These common maps were used as a tool to bring together different communities, conservation groups, local authorities and others to raise awareness of the continental migratory patterns of the iconic monarch butterfly and the other 800 species that migrate across North America.



Pooling the Science of Common Threats

Much of the CEC's work has focused on identifying and managing various threats and risks to those shared ecosystems. For example, it has improved understanding of the chronic and pervasive risks posed by alien invasive species to native species and to both marine and terrestrial ecosystems.

The CEC issued one of the earliest analyses of continental-wide persistent pollution, including scientific assessments of the extent and patterns of long-range air pollutants such as acid rain, persistent organic pollutants, mercury and ozone.

The annual *Taking Stock* report and online database has provided an annual update that tracks some 500 different industrial pollutants from 35,000 facilities in North America. It thus helps communities gain access to timely and placebased pollutant data.

Taking Stock and the thousands of data sets contained and updated in the Pollution Release and Transfer Registry have emerged as a model that other countries around the world have adopted as a best practice.

The CEC's cooperative programs have also improved on-the-ground pollution mitigation action. For example, they helped advance the phase-out of DDT use in Mexico in 2000; Mexico in turn has shared practical lessons with other countries in Latin America on how the DDT phase-out occurred. It has supported other efforts to reduce the risks to public health and environmental contamination from chlordane, PCBs, mercury and lindane.

These are just some of the outputs over two decades. There are many others that remain relevant today, including: estimating integrated clean electricity integration among the three countries; estimating the scope of energy efficiency in clean buildings standards to reduce air pollution and greenhouse gas; and policy options to accelerate North American electricity integration as part of broader North American energy cooperation.

Trade-Related Environmental Actions

Surprisingly, the CEC paid scant attention to trade and the long list of environmental concerns that arose in the NAFTA and GATT debates, focusing instead on non-trade environmental cooperation programs.

One part of the CEC's work plan assessed the environmental impacts of trade. This work built on ongoing work by the Organisation for Economic Co-operation and Development (OECD) and strategic environmental assessments by the European Commission and others. The merit of this work remains contested, largely because the economic effects of NAFTA-specific economic growth and market change—as opposed to other economic drivers—complicate the attribution of NAFTA policy reforms to changes in either environmental quality or policy.

The major CEC innovation was not assessment methods, but the process by which assessments were done. This was carried out by broadening assessments beyond a few experts to non-governmental groups, international organizations, academic researchers and the business community. Findings were presented in Washington in the fall of 2000 and subsequent initiatives emerged over the next decade.



Some findings pointed to specific trade-induced environmental impacts, especially in areas such as the direct relationship between Mexico-U.S. truck transport, higher-than-average air pollution emission levels at border crossings and observed human health effects in communities adjacent to border areas. Ongoing assessments identified other hotspots, including an increase in alien invasive species through NAFTA-related liberalization and scale impacts, and increased hazardous waste trade and pollution havens.

A 2008 report summarized some of the key findings of different assessments, concluding, for example:

It was largely assumed that the entry into force of NAFTA would lead to increased industrial production resulting in additional environmental pressures. This hypothesis is supported today, especially in the absence of proper policies to cope with fast market liberalization, though it is generally de-linked from gross domestic product (GDP) growth and varies from one sector or country to the other. The most important impact of increased trade was measured in the transport sector, where freight transport expanded massively while local infrastructure had not adapted to the changes.⁶

The CEC also provided early work in identifying how NAFTA could accelerate cross-border trade in environmental goods. These included supporting science-based certification systems for sustainable coffee, palm oil and other agricultural produce. Nearly 20 years ago, it brought together scientists—including from the Smithsonian Migratory Bird Center and Conservation International—and local coffee growers, cooperatives and large buyers and retailers, such as Starbucks, in what soon became a pioneering retail offering of shade-grown, organic and fair trade coffee. However, this work on win-win trade-environment outcomes came to an end nearly a decade ago.

Citizens Voices

The most innovative and contentious aspect of NAFTA's environmental experiment remains the Submissions of Enforcement Matters process, known as the citizen submission process. That central idea—of giving a voice to citizens concerned with governments weakening their environmental enforcement for trade gains—has been replicated in many subsequent regional trade agreements. However, it struggled with two problems from the start: how independent the secretariat could be in pursuing citizen allegations, and a decision-making process that relied on the governments themselves (unlike an independent roster of legal experts in the WTO dispute and appeals process, there were no firewalls in the NAFTA process).

Of all the CEC's work, this legal process has produced the most controversy, recrimination and delays. This 23-year history, the CEC has received 88 citizen submissions alleging non-enforcement of environmental laws, with many containing highly useful information to determine the facts of environmental compliance and enforcement in relation to alleged breaches. However, most environmental groups long ago lost confidence in the process, as it has been slow and opaque.

⁶ http://www.cec.org/sites/default/files/related_documents/green_economy/2598_Lessons_Learned_from_CECs_Trade_and_Environment_Symposia.pdf

⁷ See for example Chris Wold et al. (2004). The inadequacy of the citizen submission process. Retrieved from http://digitalcommons.lmu.edu/cgi/viewcontent. cgi?article=1572&context=ilr





Part Three: Measuring Outcomes

Various efforts have been made to measure the value, outcomes and impacts of the NAFTA environmental model.

In its review of environmental provisions within regional trade agreements, the OECD concluded that Mexico has been, as intended, the largest beneficiary of trilateral cooperation, from supporting the phase-out of DDT, to establishing various environmental tracking systems for key pollutants.⁸

A 10-year review of the work of the CEC, chaired by former Quebec premier and trade expert Pierre-Marc Johnson and released in June 2004, provided a thorough assessment and set of recommendations. It concluded that, overall, the CEC was a "unique, innovative and important institution" that demonstrated through its work that North America comprised a "collection of linked ecosystems" that created a sense of regional environmental awareness. It helped deliver substantial results in such areas as chemical management and built the basis for improved biodiversity cooperation among the three countries.⁹

The review also noted that, while the Commission had advanced the understanding of trade—environment links to various audiences, there was little meaningful cooperation between the NAFTA Free Trade Commission and the Environment Commission. For the most part, the trade community paid little attention to the work of the Environment Commission, until a shift in the mid-2000s, when international climate change policies were regarded by trade ministers as having potentially important market access, technical standards and other effects.

Johnson's recommendation that the CEC expand its work on trade and environment was ignored. 10

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⁸ OECD, (2007). Environment and regional trade agreements. Paris: OECD.

⁹ Report of the Ten Year Review Assessment Committee, June 2004. Retrieved from http://www.cec.org/sites/default/files/documents/reviews/7287_TRAC-Report2004_en.pdf.

¹⁰ A review by the Government of Canada concluded that, broadly, the CEC advanced North American environmental cooperation especially in the area of information sharing and capacity building in a generic way, although it fell short of generating concrete and measurable results. In the area of trade and environment, Canada noted that it no longer viewed this work as relevant for different reasons—limited trade disputes as well as limited collaboration between trade and environment communities—as well as a broadening of discussions to examine economy-environment linkages (Source: Government of Canada, (2007, April). Evaluation of Canada's participation in the Commission for Environmental Cooperation (CEC). Environment Canada Audit and Evaluation Branch. Retrieved from http://publications.gc.ca/collections/collection_2013/ec/En4-225-2007-eng.pdf





Part Four: Options for a New NAFTA

NAFTA negotiations are just beginning, and there are some broad options that could shape a renewed NAFTA environment model.

OPTION ONE would maintain the status quo. This seems the least likely. In addition to the Trump administration's proposed gutting of North American environmental cooperation, exit of the Paris Climate Agreement and slashing domestic environmental programs, none of the government's actions support the CEC enthusiastically.

OPTION TWO would strip out all environmental aspects within the NAFTA legal text, terminate the legal side agreement and close the doors on the CEC's work. This also seems unlikely given Canada and Mexico's commitment to both domestic and international environmental action including the Paris Climate Agreement, the Sustainable Development Goals and advancing a progressive trade policy agenda.

OPTION THREE would delink NAFTA from a new, stand-alone North American environmental trilateral cooperation program. This trilateral cooperation could examine a narrow range of shared issues, notably continental migratory species and habitat conservation—the vision set out by Roosevelt. However, delinking these and other activities from NAFTA still raises the current legal obligation in the U.S. Congressional Trade Promotion Authority to ensure mechanisms for domestic enforcement.

OPTION FOUR would see Mexico and Canada maintain the current structure without the United States and support a pared-down NAFTA-related work plan. This could build upon the 2016 bilateral Canada-Mexico Environmental Cooperation Memorandum of Understanding signed between the Mexican president and Canadian prime minister in June 2016, further linking their promise to advance the Paris Agreement with carved out trade-related actions covering short-lived climate pollutants, carbon sequestration and the exchange of low-carbon technologies in the forestry and mining sectors. However, like Option Three, this has no link or bearing on NAFTA.

OPTION FIVE would see a new NAFTA embed the provisions of the Environment chapter provisionally accepted in the Trans-Pacific Partnership (TPP). While the Trump administration announced that the TPP was dead, negotiations continue, and Canada, Mexico and the United States should look closely at whether all or part of the TPP's Chapter 20 on the environment can migrate into a new NAFTA.

The draft TPP Environment chapter sets out an impressive range of objectives and priority areas. These include supporting the implementation of two international treaties—the Montreal Protocol to safeguard stratospheric ozone and the International Convention for the Prevention of Pollution from Ships (MARPOL). It references the role of corporate social responsibility standards in traded goods, and the importance of trade in relation to biodiversity, alien invasive species and low-emission economies. Since these are integrated within the legal text, there is no role for either a parallel environmental agreement or an independent commission.



While the TPP's breadth is impressive, few of its environmental and conservation provisions are binding, aside from procedural issues. Like the many other regional and bilateral trade agreements that contain environmental provisions, parties focus on internal procedural steps to build coherence. IISD Senior Associate Aaron Cosbey concluded that, while the draft TPP certainly contains positive elements, those may be overshadowed by other TPP provisions, notably investment and intellectual property rights.

OPTION SIX is similar to referencing TPP environmental provisions, but instead includes those environmental and sustainability provisions contained in the Comprehensive Economic and Trade Agreement (CETA) signed between the EU and Canada in 2017. There are a number of welcome provisions in Chapter 24 of CETA, including explicit provisions regarding the right of countries to regulate within their jurisdictions; supporting "trade-favouring environmental protection," including removing trade and investment barriers to climate-related actions such as ramping up renewable energy; promoting the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as well as encouraging trade in sustainably managed forest products. CETA also marks a significant improvement of NAFTA Chapter 11's investment provisions, particularly the investor–state dispute settlement (ISDS) provisions. It is impossible to envision a new NAFTA maintaining an ISDS mechanism adopted 25 years ago.

OPTION SEVEN would see a new kind of cooperation take shape within NAFTA. This would see trade and economic cooperation as an important mechanism to create a new, sustainable economic vision. A new NAFTA could align infrastructure investments among Mexico, Canada and the United States to build 21st century sustainable trade corridors based on sustainable infrastructure; to use NAFTA to accelerate trade in integrated, low-carbon energy and electricity systems; and harness green innovation through information technology platforms.

This last option seems the least likely. Yet as one of the largest trading blocs in the world, NAFTA's trade policy can and should be used as a key engine of innovation and job creation at the continental scale.

This vision of international cooperation in which infrastructure, trade, finance and investment work together are at the heart of China's Belt and Road Initiative. That vision is supported by a commitment to a green, low-carbon and circular economy.

It's too early to see how the Belt and Road Initiative will be implemented. I hope it's not too late for NAFTA.

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