Who Won in the NAFTA Renegotiation? A Preliminary Assessment

[Kimberly Ann Elliott]
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Deadlines can be useful in negotiations since they often force sides to act. If there is a difference in the intensity of interest in reaching an agreement, however, leverage shifts to the party less desperate to get a deal. That is evident in the now-successful effort to renegotiate the North American Free Trade Agreement.

Canada clearly wanted to remain part of the deal. But up to the end, Canadian negotiators behaved as though the deadline was not as hard as their American counterparts insisted. President Donald Trump seemed to badly want an agreement that he could tout as a win before the midterm elections—and that worked in Canada's favor. Canada's position was also bolstered by those in Congress and the U.S. business community who insisted that a bilateral agreement with Mexico was not good enough and not what Congress had authorized the Trump administration to negotiate.

Absorbing the hundreds of pages of text in the new United States-Mexico-Canada Agreement, or USMCA—otherwise known as the revised NAFTA—will take a little time. But there is enough information already to assess who won and who lost on a few key issues. First and foremost, all three economies are, broadly speaking, winners. Two and a half decades of NAFTA mean that supply chains across a range of sectors are now deeply integrated. Disrupting those relationships would have entailed high costs for workers and consumers across all three countries. Closing the deal avoids the disruptions that either no agreement or a bilateral agreement just between the U.S. and Mexico would have entailed.

On some of the specifics, Canada won big on a couple of key demands. The USMCA will retain NAFTA's Chapter 19 dispute settlement mechanism, which provides for independent review of the parties' decisions on antidumping and countervailing duties. Canada will also be able to keep an exception that allows it to protect its cultural industries, including television stations and newspapers, from foreign takeover.

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Mexico, for its part, badly wanted an agreement that outgoing President Enrique Pena Nieto could sign before he leaves office at the end of November, and they got that. Mexican negotiators were also able to get substantial changes to the U.S. proposal for a sunset clause that would have discouraged investment in Mexico by raising the possibility that the agreement might terminate after five years. Canada strongly opposed the sunset proposal, too.

Both Canada and Mexico got assurances that their automobile exports to the U.S., and automobile parts in the case of Canada, would not be hit with tariffs from Washington in the coming months. Oddly, however, the three countries were not able to reach a deal to remove the American steel and aluminum tariffs imposed as part of Trump's trade wars, or the retaliatory tariffs on American agricultural and other exports to Canada and Mexico. That's a loss for American farmers and consumers, as well as exporters in all three countries. And it is not clear who wins from the failure to resolve the issue, especially since the claim that imports from Canada and Mexico pose a national security threat—the basis of Trump's steel and aluminum tariffs—is specious. Presumably, Trump believes it has political benefits in key swing states in the Rust Belt.

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A big, if symbolic, win for Trump is that he gets to spend the next month ahead of the midterms trumpeting the fact that he delivered on his campaign promise to "replace" NAFTA. Beyond that, Trump's No. 1 priority was getting new rules to shift some automobile production back to the United States. But that could well turn out to be a Pyrrhic victory. On paper, the USMCA's new rule of origin for automobiles would shift more production to North America, and specifically to the U.S., by requiring—by 2020—that 75 percent of components be manufactured in the U.S., Mexico or Canada, up from 62.5 percent, and that a portion of automobile production take place in factories where average wages are at least $16 per hour. That wage is well above what Mexican workers currently earn. In practice, the new rule will be costly for consumers and could well have negative effects for both workers and the auto industry because of the increased costs involved. But those effects will not become clear until well after the election.

U.S. negotiators also won a bit of new market access in Canada for American dairy and poultry farmers, and pharmaceutical companies. Though Canada's complex agricultural supply management programs will remain in place, elimination of a complicated milk pricing rule could have significant benefits for U.S. dairy exporters. Those exporters will also get a little more guaranteed access than what the Obama administration had won in the Trans-Pacific Partnership that Trump rejected—3.6 percent of the Canadian market versus 3.25 percent under the TPP.

Canada and Mexico also agreed to provide two additional years of patent protection for biologic drugs—beyond the eight years that they and other countries accepted in the TPP. But they rejected the American demand for 12 years as in U.S. law. There are also new or updated provisions on other intellectual property issues, worker rights and the environment, digital trade and other areas. Indeed, the list of chapters in the revised NAFTA and the TPP is strikingly similar. As the details become clearer, the interesting question will be how much the content differs from what was in the TPP.

My guess is that the new USMCA is going to turn out to look a lot like the TPP that Trump walked away from. If so, what American negotiators achieved after roughly a year of tough and divisive negotiations could have been achieved on day one of the Trump administration by not withdrawing from that earlier deal. And the "win" would have been with 11 countries around the Pacific Rim, not just with Canada and Mexico.

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