MEXICO – UNITED STATES

Redefining the Relationship for Prosperity in North America
The Mexican Council on Foreign Relations, COMEXI, is a nonprofit independent organization, dedicated to the analysis, study, and debate of the major global trends and their impact on Mexico. We seek to inform society with insightful up-to-date information, as well as to impact opinion leaders, and influence public policy.

We organize discussion panels, roundtable meetings, high-level conversations and international fora on the most pressing topics of the global agenda. Through public discussions and publications, we promote a non-partisan vision of the country’s international agenda.

COMEXI’s membership consists of more than 500 associates, including recognized experts in various fields, Mexican companies with an international reach, global corporations based in Mexico, embassies, international organizations, academics, research centers, among others.

Our members share their knowledge and expertise through Working Groups, they participate in our public events, conferences, webinars and other activities we organize specifically for them. In order to motivate public debates on the issues and priorities that interest Mexican society, COMEXI aims to engage on a regular basis, with government, civil organizations, the private sector, and other relevant stakeholders.
Mexican Council on Foreign Relations (COMEXI, for its acronym in Spanish) submits for the consideration of political and business leaders, as well as of public opinion, ideas to help guide the US-Mexico relationship in the new binational context.

The initiative is made up of general guidelines, as well as a series of specific recommendations for each of the main components of the relationship: NAFTA, Security, Migration, Border, Consulates, and Communications.

Because of the impending NAFTA re-negotiations, the document related to trade is much more detailed, and much longer, than the other position papers. For this reason, we have chosen to keep the recommendations and quotes from the text of the agreement within the main body of the text. The issues are, by nature, technical and detail-driven. The upshot is one of the most complete papers that has been published on the topic in recent times. We are confident that it will become required reading during the long negotiation process that is just beginning.

This English-language compendium contains a complete translation of the text related to NAFTA, as well as an overview, and executive summaries, of the papers that are being presented by the Council in the original Spanish. Our guiding principle is that what is good for Mexico is good for the rest of North America, and viceversa. For this reason, we are fostering this dialogue in both languages, confident that a mutually beneficial, “win-win” view of the relationship will ultimately prevail for the benefit of the 475 million inhabitants of our region.

This product of the Working Group on the Future of the US-Mexico Relationship is the culmination of an effort on behalf of COMEXI, under the leadership of its president, Luis Rubio. It is born out of the participation of the membership of the Council, as well as other recognized experts, who came together on an issue-by-issue basis to give rise to the works that are collected here. Finally, it is important to highlight the valuable collaborations of Mariana Campero, director of COMEXI, and Miguel Toro, whose help in editing and formatting the work were fundamental to its fruition.

Agustín Barrios Gómez / Working Group on the Future of the US-Mexico Relationship
Mexico's relationship with the United States has gone from broad and deep cooperation that served both countries' economic and national security interests, to a cooperative, but tense, relationship that, even five months into the new US administration, has yet to be articulated as new American policy. After two years of anti-Mexican rhetoric during his presidential campaign, and now as President, Mr. Trump has put a significant strain on the relationship that, for a quarter of a century, had been based on seeking out “win-win”, mutually beneficial solutions. He has created a negative environment in his country for Mexico and Mexicans, and has fostered a negative opinion about the US government in Mexican public opinion. This Mexico-bashing has raised the specter of anti-Americanism in Mexico that had all but disappeared over the last twenty years, and has been detrimental to the interests of both our countries.

Because of the asymmetry that exists between both countries, decisions made in Washington have disproportionate impacts on Mexico. Barring a major crisis in Mexico, the reverse is not true (there is no better example of this than the effect that Mr. Trump’s statements had on the Mexican Peso). The upshot is that a feeling has emerged in the United States that Mexico is to blame for many of the ills that afflict the economy and society of the neighboring country. According to this narrative, Mexico and/or Mexicans are responsible for drugs, for social crime, for unemployment, and for unjust bilateral trade. This adversarial view of our shared relationship is fundamentally wrong and needs to be effectively repudiated. For both country’s sakes, it is imperative that Americans understand that Mexico is a strategic partner for the United States, and that only a stable, prosperous, and friendly Mexico will give them the national security Americans need in an otherwise very hostile world. Further, as an economic partner, Mexico is key to the competitiveness of the US economy and only together can we be successful in a global economy where the rise of Asia represents significant challenges.

For the coming months and years, the main objective of Mexico regarding the United States should be to create, in the eyes of that country’s public opinion, an awareness that we have a common destiny. Proximity and integration have given us the concept of co-responsibility, as highlighted in Secretary of State Rex Tillerson’s recent speech. This must be the priority across the board for current and future Mexican administrations, besides becoming the umbrella under which we conduct every aspect of the bilateral relationship.

The Mexican government has decided to focus its strategy on the relationship as a whole, changing the previous methodology of isolating different issues to avoid one issue, or dispute, “contaminating” others. The relationship between the United States and Mexico, with all of its components and issues, contains areas that are of greater interest for one country, whereas other issues are more important for the other. Therefore, only the totality — the recognition that everything constitutes the relationship, and not just the parts — will allow for a negotiation in which both nations can gain something. Accordingly, the concept of common destiny must be, from now on, the guiding principle. In commercial issues, it is both countries’ economic security and competitiveness. In migratory issues, it is Mexico's collaboration that allows the US to keep track of who enters North America, on the one hand, and the recognition of the contribution of Mexicans in the United States to its economy and its social fabric, on the other. An integral focus for the relationship should not imply that all fronts be addressed and/or negotiated simultaneously. What it does mean, however, is that a holistic vision needs to permeate all discussions in order to avoid disrupting a relationship that is fundamental for both countries.
The new administration’s decision to blame Mexico and, therefore, to attempt to isolate Mexicans behind walls, either physical or conceptual, will end up impacting both countries and their societies, but the effect will be much greater in Mexico, possibly exacerbating basic governance issues that already threaten stability, and feeding social unrest. By any metric, social, economic, strategic, military, etc., it is the wrong approach.

A much more effective framework can be seen in the Security and Prosperity Partnership (SPP, or ASPAN, in Spanish), which was created in 2005 by the Bush, Fox and Martin administrations of the US, Mexico, and Canada, respectively. The belief that economic and national security complement each other, and that only by cooperating on both fronts can North America flourish, is the same cornerstone that is needed today.

Recommendations and Talking Points

- American prosperity, and national security, directly depend on a prosperous and cooperative Mexico. Only a stable Mexico, willing to cooperate with the United States government, can guarantee US security and hemispheric interests in a very hostile world.

- Our economic alliance, mainly within NAFTA, has created jobs, fostered competitiveness, and contributed to an integration whose value chains make North America competitive and an economic powerhouse on the world stage.

- The Mexican government must position itself strategically within the context of the relationship as a whole, without focusing on its individual parts. We share a common destiny, a reality that constitutes the over-arching narrative.

- The idea of a common destiny in the context of a win-win relationship should be the guiding principle of all bilateral exchanges, be they in commerce, investment, migration, or security. On the commercial front, it is about shared prosperity and the opportunities to build competitive that compete, as a team, on the world stage. In migratory issues, it is about the recognition of the contribution Mexicans make to the US economy and society. This at the same time as Mexico assumes its responsibility to promote the wellbeing of its citizens and help to control immigration from third countries seeking to enter the United States through our shared border.

- A Mexico with internal governance issues, with widespread criminal violence, and a Mexico that is under the threat of social unrest, is a serious problem for Mexicans, but also constitutes an important danger to the United States.

- As was stipulated under the Security and Prosperity Partnership/ASPN initiative of 2005, shared prosperity should be the guiding principle for regional security and the North American security perimeter should cover the region from the Canadian Arctic to Mexico’s southern border.

- Trade issues should be addressed from a trilateral perspective. Canada is a market of growing importance for Mexican imports and exports and all three countries participate in the North American supply and production chain. The three nations would be strengthened by a fruitful NAFTA modernization process.

- The Mexican government’s policies of cooperation with the US give it bargaining chips that could allow it to react firmly in the face of further provocations. Playing them intelligently, and publicizing the fundamental importance of Mexican cooperation, would reduce the political benefits of insulting Mexico and Mexicans, and would show the country as a strong and serious partner.

- Mexico must open back-channel lines of communication and bring together natural allies of the relationship between both countries, many of whom are not aware that their prosperity depends on the bilateral relationship’s functionality and success. Further, many of those that do know have no idea how they can participate in promoting their own interests. Both of these issues must be dealt with immediately.

- Civil society participation is key to nurture and strengthen Mexico’s stance through its own connections with their North American counterparts. Again,
an action plan is required to organize and mobilize societal actors.

- It is urgent to create a central Mexican message (government, businesses, workers, civil society, and academia) to take control over the narrative, and to reduce the political benefits of using Mexico as a scapegoat. This is similar to “The Mexican Agenda”, a document put out quarterly in the early 1990s that was instrumental in promoting NAFTA.

- The Mexican Council on Foreign Relations (COMEXI) believes that these ideas help illustrate the framework that Mexico must navigate in its relationship with the new American administration, as well as the tools and arguments it has at its disposal. The sole purpose of the proposals that are put forth in the following chapters is to promote the general welfare of our country, specifically, and of the North American region, in general.

**Proposals by topic**

**NAFTA**

NAFTA’s renegotiation is the most pressing issue. In North America as a whole, trade must be addressed from a trilateral perspective, since the three countries take part in North America’s supply and production chains. Mexico has insisted on this and has sought to create awareness in the Canadian government of how dangerous it would be to try to negotiate separately. Recent threats and trade barriers put forth by the American administration have helped bring our Canadian partners around.

The NAFTA document encourages the establishment of shared objectives, based on the necessity to increase our region’s competitiveness in the world. We highlight that the two pillars of the original negotiation must be kept: universality (everything is included, except that which is mentioned explicitly), and symmetry (the three countries are treated equally).

This is, by far, the COMEXI Working Group’s most detailed and extensive document. It highlights that there are mechanisms within the original agreement that are useful for its modernization. In terms of expanding the Agreement to other sectors, we consider: Energy, licensing and certifications standardization (“single window” initiatives), transport and logistics integration, expanding the remit of the North American Development Bank (BDAN-NADBANK), medical tourism, and demographic complementarity.

It is clear that the internal struggle within the new administration between isolationists and experts has created (and still generates) a lot of uncertainty. However, this document offers a great deal of opportunities that can be built on in order to generate growth for Mexico, the US, and Canada, building on top of what we already have, for the benefit of all three countries.

The worst mistake we could make would be to fall for the simple arguments of protectionism. The Mexican government’s negotiation must be focused on improving the Mexican economy’s capacity to flourish in the context of the international trading system. As such, we must keep a clear eye on increasing the productivity of industry, specifically, and of the rest of our economy, in general. We must take advantage of new opportunities to reduce costs in the Mexican economy — in both traditional industries and new, tech-based ones, with cloud computing access, data mining, etc.. We must focus on how to improve Mexican producers’ ability to compete, which could mean making difficult decisions, like, for example, keeping tariffs low even in the face of a commercial conflict with the United States, avoiding all kinds of service traffic restrictions, regardless of where servers and providers are located. In the end, what is crucial is to keep in mind the country’s long-term development, beyond the current complexities of our relationship with the United States.

**SECURITY**

The document regarding security explains the Mérida Initiative as a cornerstone for security cooperation between Mexico and the United States. It highlights
that the security relationship with the United States is deeper and more complex than is generally known. Mérida’s relevance is not limited to mere collaboration in the fight against organized crime. It is also a coordination and cooperation mechanism and a way to share responsibilities. It is an instrument that recognizes the co-responsibility inherent to the security relationship. The Initiative was not conceived as a funds channeling program (in cash, or in kind), nor as a mechanism to obtain funds or critical equipment, per se. What the program does is to allow access to a certain kind of operations, communications, and intelligence equipment (SIGINT) that otherwise would have implied a very cumbersome financial and bureaucratic processes.

Since the Initiative began, the Mexican government has budgeted and spent much larger amounts than those earmarked in the Initiative for the country’s public and national security. The importance of Mérida is the consolidation of a profound collaborative relationship that is not assistance-based, but is effective at facing the integral security needs of the North American region in the 21st century. It implies an ongoing exchange of intelligence and cooperation, underpinned by the shared responsibility paradigm. This program’s implementation closed off channels that were formerly independent, uncoordinated, and often politically-driven. Channels previously used by American agencies to transfer equipment to their favored counterparts. Therefore, it enabled the standardization and interoperability of equipment and capacities in Mexico’s interior, as well as on both sides of the border. Likewise, the Mérida Initiative established a level of strategic regional, and global, cooperation that was without precedent.

The Mérida Initiative thus became the cornerstone of what is arguably the most important relationship for the United States (that with Mexico) and, within that context, it provided a best-in-class framework for executing cooperation in the most important issue for the United States, security. Therefore, it is imperative that Mexico emphasize the transcendent importance of the Mérida Initiative as the guiding principle of the bilateral relationship in the area of security, independent of the amount of resources assigned, or of the past political objectives that led to this advanced level of cooperation.

In the document about Security, there is an emphasis on how Mexico’s main challenge is to strengthen the rule of law within its territory. To be more precise, Mexico’s biggest problem is not a drug problem, or a terrorism problem, or a violence problem: It is the lack of basic governance in large parts of its territory; the lack of a government that actually governs. Left unattended, the serious flaws in the field of public security will come back to haunt any and all effort undertaken by Mexico, whether economic, social, or in the area of international relations.

After establishing the primacy of the issue and its impact across the board, the document analyzes the issues across five fronts: border security; drugs, arms and illegal financial flows; corruption and rule of law; handling of migratory quotas and binational communities; pacification and socioeconomic stability.

For border security, the document collects the contributions of former American “Border Czar” Alan Bersin, and The 21st Century Border. It considers that it is essential to expand the border security zone inland to face challenges before they arrive at our territorial limits. Regarding drugs, arms and illegal financial flows, the document urges to reevaluate the drug policy based on criminal justice, and not public health, and it urges to redouble efforts regarding arms trafficking into Mexico. The document also calls upon the authorities to leave behind anti-money laundering regulations that have hindered legitimate commercial activity without tackling the money laundering problem. Simply put, banks should not be prosecutors and basic government responsibilities, such as vetting people, should not be delegated to them.

Regarding corruption and rule of law, the document recalls the modern concept of national security established by the Security and Prosperity Partnership (SPP/ASPAN) of 2005, in which the government, civil society and the private sector coordinated efforts. The United States has a lot to contribute in this area: intelligence, technology and best practices. However, the main element for its success is Mexican political will.
Regarding the handling of immigration enforcement, the document suggests that Mexico ask the US government for the participation of representatives from the Mexican government in deportation processes of Mexican citizens, with the aim of guaranteeing: a) the origin of those prosecuted, b) the compliance with procedural guarantees and the respect of human rights, c) adequate consular assistance and legal defence of their cases (allowing for the legalization of their status in the United States, or their orderly repatriation to Mexico), and d) the organization of a shelter strategy designed to prevent violence and crime.

Finally, the document suggests that, regarding the full cooperation on issues of national security, it will always be necessary to base the bilateral relationship on friendship and trust. Mexican administrations will be pressured to end cooperation with the United States if Mexico is seen as the victim of smears from the American federal government. Or, for example, if American protectionism were to cause an economic crisis in Mexico. Misunderstanding the nature of the relationship could create geopolitical fallout and generate severe instability in our region. This must be avoided at all costs.

After re-affirming a “win-win”, mutually beneficial, model of cooperation, we can go further still. There is much to do in terms of binational law and order initiatives, taking advantage of dual citizenship, and other “outside the box” thinking that could finally solve, not just mitigate, the security problems that obstructs progress along so many fronts.

**THE BORDER**

This document aims for much greater binational institutional cooperation at every level of government, as well as the development of binational economic-commercial relationships (“mega-regions”), and the strengthening of a safer and more efficient border.

A fundamental issue is the systematization and institutionalization of cooperation between the various border states in each country. Here, it is urgent to re-launch the Border Governor’s Conference as the mechanism for high-level dialogue. In the same spirit of strengthening local action, the North American Development Bank (NADBank) must be able to fund urban development, as well as its current portfolio of infrastructure and border environmental initiatives. Border cities have a big impetus for growth and prosperity. Each side of the border is growing faster than the interiors of their respective countries and we are not taking advantage of the critical mass that is already established there. An example is Laredo/Nuevo Laredo, the biggest international inland port in the world, with $270 billion dollars worth of commerce that just goes through it’s four area bridges without generating much value-added.

Above all, it is urgent for Washington and Mexico City to see the border region as the opportunity that it is, rather than see it through the lens of fear that is created by ignorance. It is very hard to find, in either country, an area with a bigger economic and social development potential than our shared border. This has to be reflected on mutual support policies, instead of in rhetoric of repudiation and division.

**MIGRATION**

The starting point to approach the migration phenomenon has to be that, territorially, our two peoples were born together and grew up linked to each other. All approaches to the migration issue must highlight that the Mexican experience in the United States goes back to the founding of the two countries and is, mostly, an orderly and legal phenomenon. Today, almost 80 percent of the 36.9 Million Mexicans and Mexican-Americans in the United States are American citizens, or immigrants with papers, not undocumented immigrants. Also, our migration narrative has to recognize that it is a two-way street: Mexico is, by far, the main destination of the American diaspora, with somewhere between 1 and 3 million Americans in Mexico at any given time, which is between 4 and 12 times more than second-place Canada.

After establishing the basic narrative of our shared history, the document urges the creation of proto-
cols among CBP officers, reducing their discretion and removing the arbitrary way that so many visitors are treated at US Immigration facilities. The objective is to allow for enough leeway for officers to do their jobs, all the while respecting the entrant’s right to privacy and expeditious crossing. Mexicans go through to obtain their B1/B2 visas/“Border Crossing Cards”, which means that it should be in truly exceptional circumstances that they need to be checked, again. Clear legal recourse should be established when a visitor’s privacy, rights and/or personal dignity have been infringed.

The Migration document then divides the issues in three topics: Border Wall, Deportations, and Central America. With respect to the Border Wall, Mexico needs to be clear that it will not pay for any physical barrier along the border. It must prohibit this clearly in law, and stipulate specific sanctions in case the resources of Mexico, or Mexicans, are illegitimately siezed for this purpose. It is obvious that Americans have the right to build what they please on their territory, but the document makes the case for protecting the delicate environment of our shared border region.

In the field of deportations, the essay calls for the strengthening of our consular presence in the United States. It highlights that our diplomatic representations require more resources to serve Mexicans in situations that become more complex every day. The general theme is that Mexico benefits from its community abroad and must provide them the tools for them to be able to defend their interests, in line with their rights and obligations under US law.

Regarding Central America, the document recognizes that Mexico is able to limit most third-country migration into the United States through its territory. Nevertheless, this is unsustainable in the long term since, more than economic migrants, they are refugees fleeing violence that is partly related to the legacy left by American interventions of the 20th century. The United States, in partnership with Mexico, must work with our neighbors of the “Northern Triangle” to find a lasting solution.

CONSULATES

The section on Consulates recognizes the enormous challenges that both the Mexican Consular System and the Institute for Mexicans Abroad (IME, according to its Spanish acronym) currently face. It proposes overhauling their strategies, and it recognizes the need to deliver the necessary resources in order to allow them to strengthen both their operation capabilities and their reach. The document proposes to revive some of the activities historically performed by our consulates in the United States, which have consisted of strategies for approaching the community, and which have been abandoned over time, as basic citizen consular services have grown more and more important.

Hence, the importance of recognizing consular diplomacy as a key tool of the Secretary of Foreign Affairs is highlighted, with the aim being to leverage the Mexican consular network — the largest of any country anywhere — as a key partner for lobbying and communication strategies at a local level.

Finally, the document recognizes the need to improve the professional services of consulates and consuls in order to streamline procedures and lower costs. The objective being to provide Mexicans with a solid legal defense, as well as acceptable identification, regardless of their immigration status. Similarly, the document suggests increasing the number of consular agencies in key states, with the aim of serving people in vulnerable areas. Further, it recommends the creation of specialized attachés in strategic consulates for issues such as energy, culture, science, technology, and innovation, among others. And, lastly, the document proposes the creation of a Consular Intelligence System that provides appropriate intelligence to the Mexican government about the relationship with the United States at the local level.
COMMUNICATION

Given the decentralized and highly institutionalized nature of the U.S political system, it is indispensable to have a communications strategy that speaks directly to American society and, in parallel, an information and promotion effort regarding Mexican issues and interests at the government level. These are two distinct efforts, each with its respective strategy.

Centralizing the Mexican message (government, businesses, civil society) is urgently required to retake control of the narrative and reduce the political benefits of using Mexico as a scapegoat. This includes recruiting natural allies of the relationship between both nations, many of whom don’t necessarily know that their livelihood depends on the bilateral relationship. Likewise, a permanent communication effort with sympathetic sections of the American population, including groups like American retirees and tourists in Mexico, is required to raise awareness about the importance of the bilateral relationship. The participation of civil society is key to strengthen cross-border ties via their own connections in American society. Every day there are, literally, millions of exchanges that are hugely beneficial for both countries. Building on these exchanges can underpin a more robust and more nuanced narrative, which is lost for two reasons: 1) no one is paying attention, 2) a lack of communication strategy means that these stories don’t generate “content”. The right hand does not know what the left one is doing, which weakens the impact of real and beneficial actions (described in the document as “using micro examples”).

In the early 1990s, Mexico deployed a joint strategic communication and lobbying effort that constitutes the only example of the successful promotion of Mexico’s national interests abroad. In the area of strategic communications, after completely ignoring this issue for the past 20 years, the urgency of making our case has become a cliché in foreign policy circles. The document contains specific actions that need to be taken in order to make it happen.

The issue of lobbying is different. In the 1990s, the objective was clear, and it was focused on a particular event, with a defined date and success criteria: to get NAFTA passed before January 1, 1994. This clarity of purpose allowed for, among other things, a precise mapping of allies and enemies, which is a precondition for success in lobbying, and a precise answer to the question “What does Mexico want, and how can it be achieved?”

These definitions have to be solved before hiring lobbying firms, approaching editorial boards, meeting with senators, starting advertising campaigns, or finding allies. For example, the interests of companies that have investments in Mexico can coincide with those of the Mexican government at the beginning of the negotiation, but will have their own agendas regarding the administrations of President Trump, and of the Mexican government. It is one thing to have a common interest to negotiate, and a different have common interests in the negotiation. American companies will obviously move forward with their own agendas, and will pressure American negotiators into offering them advantages and opportunities. These interests are independent of Mexican interests.

Many lobbying efforts have failed because they focused more on the tactical elements than on strategy. Lobbying firms can lead a project, but they shouldn’t be the ones who define the objectives. An incorrect, or incomplete, definition of objectives leads to a waste of resources. Most lobbying firms follow pre-established mechanisms and are guided by quantitative criteria (number of interviews, meetings, editorials, etc.) and not by concrete outcomes. We should not aim at a mechanical effort, but at a strategic, shared, and highly sophisticated vision that might not yield immediate results, but will be effective in the medium to long term, once influence networks have been established and nurtured, and once the corresponding messages have been developed and disseminated. This is why we decided not to venture a specific chapter on this important subject. Not because it is not necessary, but because the foundations to deploy it successfully are not yet fully established.
CONCLUSION

While the term “intermestic” originated to describe those aspects of international relationships that impact daily life in the United States (and, thus, are often “domestic” issues), in the case of Mexico, the term is especially appropriate. When our country was negotiating its entry into NAFTA, in the early 1990s, the criticisms that emerged regarding a lack of democracy in Mexico were instrumental in Mexico confronting these issues by building one of the most sophisticated electoral systems in the world. This international scrutiny also avoided a bloodbath during the Zapatista rebellion of January, 1994.

But with the United States blockade of drug traffic routes in the Caribbean and Florida, the already weak Mexican justice system was overwhelmed when drugs started to flow through its territory. American money and arms boosted Mexican criminal elements, overwhelming local, state, and federal police departments. It is true that administrations led by the PRI and PAN, which spent more time engaging in clientelism and patronage than in effective basic governance, contributed significantly to the failure of the State with regards to this challenge. However, it is also evident that American drug policy, which channeled unlimited resources, coupled with Mexican criminals’ significant talent, and ruthless ingenuity, undermined basic order throughout Mexico, making existing government institutions irrelevant. That is to say that, even if the central problem of violence, corruption and drugs lies in the weakness, or even the non-existence, of political will vis-à-vis basic law and order, it is impossible to ignore the bilateral dimension intrinsic to this equation. Mexico has to rebuild the capacity to govern itself and, at the same time, demand that the United States government take responsibility for presiding over a multi-billion dollar market that does not care about borders, or jurisdictional authorities.

After more than a century of having been “distant neighbors”, our societies have integrated with an intensity that rivals that of any two countries on Earth. Neither Americans, nor Mexicans, have the “luxury” to ignore the other side, because success for one is, at this moment of our shared history, automatically the success of the other. More than neighbors, we have become roommates, each intimately affected by the challenges the other faces.

That is why our leaders must stop being followers, reacting (often incorrectly) to the processes of integration that our own people have created. The many millions of Mexicans and Americans who live integration (and prosper from integration), have to tell their own story inside their respective countries, or risk losing it all in a squall of ignorance and fear.

The US-Mexico relationship is a space in which Mexicans must participate with a shared sense of purpose. As far as the team represented here is concerned, we manifest that our efforts have no other motivation beyond promoting the common good of all Mexicans, whose well-being is intimately linked with the destiny of every inhabitant of North America.
TRADE (NAFTA)

Issues for a possible agenda for NAFTA's renegotiation

After three months from his inauguration, it is evident that the campaign proposals of President Donald Trump regarding the North American Free Trade Agreement (NAFTA) have to be revisited to truly realize the potential of the regional integration with Canada and Mexico, the main markets for the US. It is rather clear that the renegotiation will not be centred on unrealistic threats, such as discretionary 35 percent duties, but on the principles of modernization, openness and symmetry. Nevertheless, the result of the negotiation seems highly uncertain given the foreseen difficulties regarding both its process and content.

For a successful renegotiation, the definition of common objectives on behalf of the governments of the three countries is necessary. This strategy goes against President Trump’s campaign rhetoric. His original approach, in which he argued for a renegotiation that only benefits the United States, implies that Canada and Mexico would have to grant concessions to the US without reciprocity, therefore, going against two revolutionary and unique characteristics of NAFTA that make it one of the most advanced and comprehensive agreements in the world: symmetry and universal coverage. Rights and obligations are the same for the three partners and apply in the same degree and manner in all goods covered and in all services and investment sectors included, except for reserves that are listed on annexes that would be reduced as each of the countries unilaterally modified its legislation to increase its opening to other markets. Thus, any legislative or regulatory domestic reform post NAFTA in Mexico, the US and Canada to open up previously closed or reserved markets automatically become part of NAFTA.

The NAFTA countries need to arrive at the negotiating table with a clear understanding of the importance of their domestic markets for exports from the two other nations, as well as their capacity to create added value and attract significant levels of investment. Furthermore, the three countries need to be certain that their installed capacity plays an essential role in North America’s production and supply chains. In this sense, the NAFTA countries must not accept a renegotiation that destroys symmetry, undermines trade opening, reduces competitiveness or promotes managed trade, nor which favors a return to favoritism and “below the table” arrangements to protect a given sector from the rigors of open competition, thus, damaging the consumers and the citizens’ rights, as well as hindering economic growth.

Nonetheless, what the three countries can and should entertain is a revision of NAFTA that aims to make North America more competitive and open to the world. Therefore, the three countries need to acknowledge that much can be achieved in terms of modernization using the mechanisms within NAFTA’s current structure. Furthermore, the full use of these mechanisms should serve as a first step before going even further and including new sectors and disciplines.

Twenty years after, NAFTA continues to be an ambitious tool in terms of its institutions, its capacity for improvement and mechanisms to ensure its implementation and to process changes. Nevertheless, these instruments and mechanisms have not been used as often as they could have and require an in depth revision in light of the new technological and productive realities. Therefore, the first essential point in the renegotiating agenda is the commitment of the three parties to fully implement NAFTA and to revise, modernize and optimize these institutions.

Moreover, it is necessary for the United States, Canada and Mexico to propose an agreement with new objectives in key areas, which should be more ambitious in terms of openness, integration and regional competitiveness. These should be aimed at making North America a more competitive region in an increasingly
complex world where eliminating duties and traditional trade barriers are no longer the default option. Therefore, the negotiating priority should be to integrate further in order to take full advantage of human capital and resources to trade with the rest of the world. If NAFTA was conceived, in 1994, as a tool to increase trade and investment amongst Canada, the United States and Mexico, today’s challenge lies in making production in North America competitive worldwide.

This document will be divided in two sections. The first one will provide an assessment of the areas of opportunity, which have not been fully taken advantage of, within the text itself. The second one proposes a complementary agenda to make the NAFTA region more attractive and competitive. Taken together as a common strategy both sections acknowledge the need to have greater openness, more integration and commitments from the three countries.

1. NAFTA’S BUILT-IN OPPORTUNITIES

This section will address the opportunities of improvement that derive from the mechanisms and commitments that already exist in the structure of NAFTA. The section is organized based on the table of contents of NAFTA.

1.1 First Part: General Aspects

Article 102 establishes NAFTA’s objectives, which should serve as a guide for any negotiation. Objective 1(f) highlights the possibility of “further trilateral cooperation... to expand and enhance the benefits of this Agreement.” In other words, NAFTA has built-in provisions for its improvement.

**Article 102: Objectives**

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:

   a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;

   b) promote conditions of fair competition in the free trade area;

   c) increase substantially investment opportunities in the territories of the Parties;

   d) provide adequate and effective protection and enforcement of intellectual property rights in each Party’s territory;

   e) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and

   f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

1.2. Second Part: Trade in Goods

On this matter, much can be advanced using the following provisions to modernize the process of integration and to increase the region’s competitiveness:

1.2.1 Article 316: Jamboree clause

- **Jamboree clause:** One of the most powerful, and unused, NAFTA provision is Article 316, the so-called jamboree clause, that brings together all listed agencies dealing with cross-border trade to examine the issue of facilitating trade in goods and implement measures to eliminate any unnecessary trade barriers. The full implementation of this clause implies the creation of a permanent working agenda to improve border crossing procedures and to eliminate trade barriers. Nevertheless, the parties have met only a few times with this purpose under Article 316.

**Article 316: Consultations and Committee on Trade in Goods**
1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.

2. The Committee shall meet on the request of any Party or the Commission to consider any matter arising under this Chapter.

3. The Parties shall convene at least once each year a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation for the purpose of addressing issues related to movement of goods through the Parties’ ports of entry.

1.2.2 Articles 317, 1504 and 1907: Third Party Dumping, Competition and a Substitute System

- **Dumping and competition:** Although third country dumping provisions have been part of the GATT framework for a long time, they have not been used widely. It is rare that countries see the need for third party dumping cases in the absence of a customs union on duties. A more credible case could be made for third country dumping once the underlying premise is that free trade has fully integrated the regional market holds after years of zero duties and that, therefore, unfair trading practices could be addressed through antitrust mechanisms. For this reason, article 317 should be read in conjunction with articles 1504 and 1907:

  **Article 317: Third-Country Dumping**

  1. The Parties affirm the importance of cooperation with respect to actions under Article 12 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

  2. Where a Party presents an application to another Party requesting antidumping action on its behalf, those Parties shall consult within 30 days respecting the factual basis of the request, and the requested Party shall give full consideration to the request.

Given the possibility of establishing third country dumping cases, the Working Group on Trade and Competition becomes central for a deeper integration either in selected sectors or for the economy as a whole.

**Article 1504: Working Group on Trade and Competition**

The Commission shall establish a Working Group on Trade and Competition, comprising representatives of each Party, to report, and to make recommendations on further work as appropriate, to the Commission within five years of the date of entry into force of this Agreement on relevant issues concerning the relationship between competition laws and policies and trade in the free trade area.

The conclusions reached by the working group could then be used as pillars of a substitute system of rules for dealing with unfair trade practices according to paragraph 2(b) of Article 1907.

**Article 1907: Consultations**

1. The Parties shall consult annually, or on the request of any Party, to consider any problems that may arise with respect to the implementation or operation of this Chapter and recommend solutions, where appropriate. The Parties shall each designate one or more officials, including officials of the competent investigating authorities, to be responsible for ensuring that consultations occur, when required, so that the provisions of this Chapter are carried out expeditiously.

2. The Parties further agree to consult on:

   (a) the potential to develop more effective rules and disciplines concerning the use of government subsidies; and

   (b) the potential for reliance on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization.
The “substitute system” can take several forms. The most ambitious initiative would entail replacing AD/CVD investigations for the NAFTA region with antitrust cases. This would require significant legislation and coordination among antitrust agencies in the three countries, and, more importantly, the recognition that the relevant market is regional and no longer domestic. Recognizing the region as one market would make it much more attractive in terms of investment and would become one of its most appealing comparative advantages.

A less ambitious, but still a very important upgrade, would be to eliminate antidumping cases only in certain sectors with a very high degree of integration and with common challenges regarding dumping cases with third parties.

Alternatively, another possible improvement would be to limit the scope of AD/CVD cases by introducing antitrust elements in unfair trade practices investigations. In this case, small exporters with low market share in the destination country would be exempt from AD/CVD margins on the grounds that they lack an incentive to enter into predatory pricing. Also by analogy, antidumping protection should not be awarded in heavily concentrated domestic markets given that challenging that concentration by low price strategies is, in itself positive.

1.2.3 Article 414: Consultation and Modifications (with regards to rules of origin)

- **Rules of origin:** One of the main proposals of the Trump Administration has been to modify rules of origin to increase regional content in production. NAFTA contemplates the modification of rules of origin. In this sense, Article 414 provides a specific mechanism to address developments in production processes and submit supporting rationale to make modifications to rules of origin.

  Article 414: Consultation and Modifications

  1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter in accordance with Chapter Five.

  2. Any Party that considers that this Chapter requires modification to take into account developments in production processes or other matters may submit a proposed modification along with supporting rationale and any studies to the other Parties for consideration and any appropriate action under Chapter Five.

1.2.4 Article 513: Working Group and Customs Subgroup

- **Customs modernization:** One of the areas that can have a major impact on the integration of the three economies is the improvement of customs procedures for border crossing. The parties have been remiss in scheduling their work obligations in customs matters, in spite of recurrent complaints by importers and exporters. The working group and subgroup, which are established under Article 512, have the mandate to ensure the permanent modernization of customs procedures. It is strategically important that this working group and the subgroup function and comply with their mandates.

  Article 513: Working Group and Customs Subgroup

  1. The Parties hereby establish a Working Group on Rules of Origin, comprising representatives of each Party, to ensure:

  a) the effective implementation and administration of Articles 303 (Restriction on Drawback and Duty Deferral Programs), 308 (Most-Favored-Nation Rates of Duty on Certain Goods) and 311, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations; and

  b) the effective administration of the customs-related aspects of Chapter Three.
2. The Working Group shall meet at least four times each year and on the request of any Party.

3. The Working Group shall:

a) monitor the implementation and administration by the customs administrations of the Parties of Articles 303, 308 and 311, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations to ensure their uniform interpretation;

b) endeavor to agree, on the request of any Party, on any proposed modification of or addition to Article 303, 308 or 311, Chapter Four, this Chapter, the Marking Rules or the Uniform Regulations;

c) notify the Commission of any agreed modification of or addition to the Uniform Regulations;

d) propose to the Commission any modification of or addition to Article 303, 308 or 311, Chapter Four, this Chapter, the Marking Rules, the Uniform Regulations or any other provision of this Agreement as may be required to conform with any change to the Harmonized System; and

e) consider any other matter referred to it by a Party or by the Customs Subgroup established under paragraph 6.

4. Each Party shall, to the greatest extent practicable, take all necessary measures to implement any modification of or addition to this Agreement within 180 days of the date on which the Commission agrees on the modification or addition.

5. If the Working Group fails to resolve a matter referred to it pursuant to paragraph 3(e) within 30 days of such referral, any Party may request a meeting of the Commission under Article 2007 (Commission - Good Offices, Conciliation and Mediation).

6. The Working Group shall establish, and monitor the work of, a Customs Subgroup, comprising representatives of each Party. The Subgroup shall meet at least four times each year and on the request of any Party and shall:

a) endeavor to agree on

i. the uniform interpretation, application and administration of Articles 303, 308 and 311, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations,

ii. tariff classification and valuation matters relating to determinations of origin,

iii. equivalent procedures and criteria for the request, approval, modification, revocation and implementation of advance rulings,

iv. revisions to the Certificate of Origin,

v. any other matter referred to it by a Party, the Working Group or the Committee on Trade in Goods established under Article 316, and

vi. any other customs-related matter arising under this Agreement;

b) consider

i. the harmonization of customs-related automation requirements and documentation, and

ii. proposed customs-related administrative and operational changes that may affect the flow of trade between the Parties’ territories;

c) report periodically to the Working Group and notify it of any agreement reached under this paragraph; and

d) refer to the Working Group any matter on which it has been unable to reach agreement within 60 days of referral of the matter to it pursuant to subparagraph (a)(v).
7. Nothing in this Chapter shall be construed to prevent a Party from issuing a determination of origin or an advance ruling relating to a matter under consideration by the Working Group or the Customs Subgroup or from taking such other action as it considers necessary, pending a resolution of the matter under this Agreement.

1.2.5 Articles 706 and 722: Committee on Agricultural Trade and of Sanitary and Phytosanitary measures

- **Regional agricultural agenda:** The growth of agricultural trade, for the three economies, exemplifies one of the most successful areas of integration under NAFTA. Now, North America has the chance to pursue further integration in this matter in order to export agricultural products all over the world as a region. The agreement stipulates the creation of the Agricultural Trade Committee which has also not done significant substantive work other than be a forum to complain about disputes. Nonetheless it could serve as catalyst for deeper integration and common exporting objectives outside the region.

**Article 706: Committee on Agricultural Trade**

1. The Parties hereby establish a Committee on Agricultural Trade, comprising representatives of each Party.

2. The Committee’s functions shall include:

   a) monitoring and promoting cooperation on the implementation and administration of this Section;

   b) providing a forum for the Parties to consult on issues related to this Section at least semi-annually and as the Parties may otherwise agree; and

   c) reporting annually to the Commission on the implementation of this Section.

**Phytosanitary and sanitary agenda:** From a sanitary perspective North America is a region with common challenges and difficulties. Therefore, the handling of common sanitary issues is key to develop the region’s competitiveness. Due to their integration, the three agricultural sectors have the necessary resources to become Asia’s main source of food. Article 722 stipulated the creation of a committee that, in theory, should foster the cooperation needed for this goal. Nevertheless, this and other committees have been ineffective in solving and advancing sanitary and phytosanitary issues, particularly regarding Equivalence as stated in Article 714. When issues arise, they are solved in an ad-hoc fashion, with scant commitment and lack of transparency. As a result, they have not established useful administrative practices, which would help to facilitate transactions and the region’s sanitary integration.

**Article 722: Committee on Sanitary and Phytosanitary Measures**

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures, comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.

2. The Committee should facilitate:

   a) the enhancement of food safety and improvement of sanitary and phytosanitary conditions in the territories of the Parties;

   b) activities of the Parties pursuant to Articles 713 and 714;

   c) technical cooperation between the Parties, including cooperation in the development, application and enforcement of sanitary or phytosanitary measures; and

   d) consultations on specific matters relating to sanitary or phytosanitary measures.

3. The Committee:

   a) shall, to the extent possible, in carrying out its functions, seek the assistance of relevant international and North American standardizing organizations to obtain available sci-
entific and technical advice and minimize duplication of effort;

b) may draw on such experts and expert bodies as it considers appropriate;

c) shall report annually to the Commission on the implementation of this Section;

d) shall meet on the request of any Party and, unless the Parties otherwise agree, at least once each year; and

e) may, as it considers appropriate, establish and determine the scope and mandate of working groups.

Article 714: Equivalence

1. Without reducing the level of protection of human, animal or plant life or health, the Parties shall, to the greatest extent practicable and in accordance with this Section, pursue equivalence of their respective sanitary and phytosanitary measures.

2. Each importing Party:

a) shall treat a sanitary or phytosanitary measure adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with the importing Party, provides to the importing Party scientific evidence or other information, in accordance with risk assessment methodologies agreed on by those Parties, to demonstrate objectively, subject to subparagraph (b), that the exporting Party’s measure achieves the importing Party’s appropriate level of protection;

b) may, where it has a scientific basis, determine that the exporting Party’s measure does not achieve the importing Party’s appropriate level of protection; and

c) shall provide to the exporting Party, on request, its reasons in writing for a determination under subparagraph (b).

3. For purposes of establishing equivalence, each exporting Party shall, on the request of an importing Party, take such reasonable measures as may be available to it to facilitate access in its territory for inspection, testing and other relevant procedures.

4. Each Party should, in the development of a sanitary or phytosanitary measure, consider relevant actual or proposed sanitary or phytosanitary measures of the other Parties.

1.2.6 Article 801: Bilateral Actions

Injury compensation through bilateral actions: During the presidential election in the US, statements were made relative to the damage that NAFTA has done to whole industries in the US. Nevertheless, the agreement provides for mechanisms to address such injuries through Article 801 paragraphs 3 and 4. These do entitle the establishment of a safeguard to prevent injury from a surge of imports, but also the injuring party to be compensated for an equivalent value. Article 801 provides a mechanism to deal with import surges, but with a compensation mechanism with the dual objective of preventing abuse and rebalancing benefits to exporting countries.

Chapter VIII: Emergency measures

Article 801. Bilateral Actions

[..]

3. A Party may take a bilateral emergency action after the expiration of the transition period to deal with cases of serious injury, or threat thereof, to a domestic industry arising from the operation of this Agreement only with the consent of the Party against whose good the action would be taken.

4. The Party taking an action under this Article shall provide to the Party against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions.
having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take tariff action having trade effects substantially equivalent to the action taken under this Article. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects.

Moreover, it is necessary to highlight that Article 801 contemplates that the party that implements these measures has to provide the other with a compulsory compensation. In this way, NAFTA establishes the conditions so that any of the three governments can adopt safeguard policies, but with appropriate disciplines. It could be proposed to change the language in article 801 in order to make the imposition of the measures less burdensome. This, however, has to apply for the three Parties alike. This would imply that exporters from the United States could be subject to safeguard policies from Canada and Mexico.

1.3 Third part: Technical barriers to trade

1.3.1 Article 913: Committee on Standards-Related Measures

• Relevance of technical standards: Standards have not been the focus of NAFTA disputes or criticism, with few exceptions. However, technical standards are a critical component for trade, competitiveness and future trade negotiations. Canada, Mexico and the US could advance on these issues through the work of the Committee established in article 913, particularly now that negotiations between the US and the EU are on hold.

Article 913: Committee on Standards-Related Measures

1. The Parties hereby establish a Committee on Standards-Related Measures, comprising representatives of each Party.

2. The Committee’s functions shall include:

a) monitoring the implementation and administration of this Chapter, including the progress of the subcommittees and working groups established under paragraph 4, and the operation of the inquiry points established under Article 910;

b) facilitating the process by which the Parties make compatible their standards-related measures;

c) providing a forum for the Parties to consult on issues relating to standards-related measures, including the provision of technical advice and recommendations under Article 914;

d) enhancing cooperation on the development, application and enforcement of standards-related measures; and

e) considering non-governmental, regional and multilateral developments regarding standards-related measures, including under the GATT.

3. The Committee shall:

a) meet on request of any Party and, unless the Parties otherwise agree, at least once each year; and

b) report annually to the Commission on the implementation of this Chapter.

4. The Committee may, as it considers appropriate, establish and determine the scope and mandate of subcommittees or working groups, comprising representatives of each Party. Each subcommittee or working group may:

a) as it considers necessary or desirable, include or consult with

i. representatives of non-governmental bodies, including standardizing bodies,

ii. scientists, and

iii. technical experts; and
b) determine its work program, taking into account relevant international activities.

5. Further to paragraph 4, the Committee shall establish:

a) the following subcommittees

i. Land Transportation Standards Subcommittee, in accordance with Annex 913.5.a-1,

ii. Telecommunications Standards Subcommittee, in accordance with Annex 913.5.a-2,

iii. Automotive Standards Council, in accordance with Annex 913.5.a-3, and

iv. Subcommittee on Labelling of Textile and Apparel Goods, in accordance with Annex 913.5.a-4; and

v. such other subcommittees or working groups as it considers appropriate to address any topic, including:

vi. identification and nomenclature for goods subject to standards-related measures,

vii. quality and identity standards and technical regulations,

eight. packaging, labeling and presentation of consumer information, including languages, measurement systems, ingredients, sizes, terminology, symbols and related matters,

ix. product approval and post-market surveillance programs,

x. principles for the accreditation and recognition of conformity assessment bodies, procedures and systems,

xi. development and implementation of a uniform chemical hazard classification and communication system,

enforcement programs, including training and inspections by regulatory, analytical and enforcement personnel,

xii. promotion and implementation of good laboratory practices,

xiii. promotion and implementation of good manufacturing practices,

xiv. criteria for assessment of potential environmental hazards of goods,

xv. methodologies for assessment of risk,

xvi. guidelines for testing of chemicals, including industrial and agricultural chemicals, pharmaceuticals and biologicals,

xvii. methods by which consumer protection, including matters relating to consumer redress, can be facilitated,

xviii. and (xiv) extension of the application of this Chapter to other services.

xix. Each Party shall, on request of another Party, take such reasonable measures as may be available to it to provide for the participation in the activities of the Committee, where and as appropriate, of representatives of state or provincial governments.

7. A Party requesting technical advice, information or assistance pursuant to Article 911 shall notify the Committee which shall facilitate any such request.

1.4. Fourth part: Government Procurement

1.4.1 Article 1021: Joint programs for Small and Medium Enterprises (SME)

- Joint programs for Small and Medium Enterprises (SME): President Trump has issued an Executive Order to guarantee that US’s government agencies favor US companies in government procurement under the Buy American criteria. A way to address his concern can be found in NAFTA’s provisions (article 1021) which contemplate the creation of a SME Committee, which shall promote SME’s effective participation in government tenders carried out in the three countries. The Committee’s role
and powers may be enhanced in order to secure a tangible commitment of the three members in guaranteeing that regional SME’s actively participate in government procurement.

Article 1021: Joint Programs for Small Business

1. The Parties shall establish, within 12 months after the date of entry into force of this Agreement, the Committee on Small Business, comprising representatives of the Parties. The Committee shall meet as mutually agreed, but not less than once each year, and shall report annually to the Commission on the efforts of the Parties to promote government procurement opportunities for their small businesses.

2. The Committee shall work to facilitate the following activities of the Parties:

a. identification of available opportunities for the training of small business personnel in government procurement procedures;

b. identification of small businesses interested in becoming trading partners of small businesses in the territory of another Party;

c. development of data bases of small businesses in the territory of each Party for use by entities of another Party wishing to procure from small businesses;

d. consultations regarding the factors that each Party uses in establishing its criteria for eligibility for any small business programs; and activities to address any related matter.

• Modifications regarding coverage: Moreover NAFTA’s chapter on government procurement includes the possibility of modifying its coverage, but, as in other treaty dispositions, with the use of disciplines. Section 2(c) of article 1022 mandates granting of compensation measures to the other two members if one of the Parties modifies either the depth or the coverage of trade integration in matters of government procurement.

Article 1022: Rectifications or Modifications

1. A Party may modify its coverage under this Chapter only in exceptional circumstances.

2. Where a Party modifies its coverage under this Chapter, the Party shall:

a. notify the other Parties and its Section of the Secretariat of the modification;

b. reflect the change in the appropriate Annex; and

c. propose to the other Parties appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.

• Future negotiations: NAFTA allows, under article 1024, for a substantial expansion of coverage in government procurement. This is particularly relevant in the Mexico-US relation, since state’s government procurement is not included in the agreement’s coverage. If extended to the state level, the disciplines set forth in Chapter X would be applied to state government budget. This would benefit the three Parties, since the disciplines of Chapter X enhance transparency, accountability and other elements of government procurement that favor, promote and facilitate access to government procurement for all potential suppliers, but especially for SMEs.

Expansion in government procurement coverage to state levels could also achieve a multiplying effect for Mexican exporters of goods and services, who would have access to compete in government procurement in US states such as Texas and California, but also in the rest of the US and in the Canadian provinces. Likewise, Canadian and US companies could compete in government procurement of Mexican state governments. It is worth mentioning that the budget of Mexican states has grown considerably since 1994, at the time of NAFTA’s negotiations, when government procurement coverage was limited to federal expenditure.
Article 1024: Further Negotiations

1. The Parties shall commence further negotiations no later than December 31, 1998, with a view to the further liberalization of their respective government procurement markets.

2. In such negotiations, the Parties shall review all aspects of their government procurement practices for purposes of:
   
   a. assessing the functioning of their government procurement systems;
   
   b. seeking to expand the coverage of this Chapter, including by adding
      
      i. other government enterprises, and
   
   ii. procurement otherwise subject to legislated or administrative exceptions; and
   
   c. reviewing thresholds.

3. Prior to such review, the Parties shall endeavor to consult with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include within this Chapter procurement by state and provincial government entities and enterprises.

4. If the negotiations pursuant to Article IX:6(b) of the GATT Agreement on Government Procurement (“the Code”) are completed prior to such review, the Parties shall:
   
   d. immediately begin consultations with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include within this Chapter procurement by state and provincial government entities and enterprises; and
   
   e. increase the obligations and coverage of this Chapter to a level at least commensurate with that of the Code.

5. The Parties shall undertake further negotiations, to commence no later than one year after the date of entry into force of this Agreement, on the subject of electronic transmission.

Annex 1001.1a-3: State and Provincial Government Entities

Coverage under this Annex will be the subject of consultations with state and provincial governments in accordance with Article 1024.

1.5. Fifth part: Investment, services and related issues

Chapters XI (investment) and XII (cross border-trade in services) include high level disciplines regarding trade. NAFTA differs in this from most trade agreements, including the World Trade Organization, due to the fact that it was negotiated under a negative list approach (all remaining service sectors were automatically opened). Furthermore, articles 1108 1(c) and 1206 1(c) mandate that unilateral opening of the reserves in Annexes I and III (for article 1108) and Annex I (for article 1206) shall be subject to the disciplines of national treatment, most favored nation treatment, performance requirements and local presence, and, therefore, NAFTA automatically includes them. This high level of discipline to services and investment is called “the ratchet clause” in trade parlance.

This implies that investors and services providers from the three Parties are benefited, under NAFTA, from all the reforms that increase the opening of any sector previously reserved, for as long as the agreement is in place. In other words: the recent Mexican reforms in energy, telecommunications and financial sectors are, due to the ratchet clause, part of NAFTA. If either Canada or the US choose to leave the agreement under the provisions of article 2205, their companies would no longer benefit from such reforms.

Financial services and their cross-border trade: the financial integration of the Parties was regarded, during the 1994 negotiations, as a natural complement for the opening of goods, services and investment under Chapter X. Article 1403 sets forth the right of a given Party to establish financial institutions in the territory of the other Parties, while article 1404 establishes cross-border trade of financial services. Both articles aimed to promote the establishment of finan-
cial institutions in the Parties and to allow and facilitate cross-border trade.

For reasons not related to prudential measures, during the last years several measures (informally known as derisking) have been implemented to avoid regulatory or reputational risk. Nonetheless, these measures hinder both the establishment of financial institutions and cross-border trade. Section 3 of article 1403 and section 4 of article 1404 consider that “the Parties shall review and evaluate market access” and “shall consult regarding future cross border liberalization of trade services”. A review of NAFTA must become an opportunity to evaluate how to avoid having derisking become a practice that obstructs opening and integration of the region’s financial sector.

Article 1403: Establishment of Financial Institutions

1. The Parties recognize the principle that an investor of another Party should be permitted to establish a financial institution in the territory of a Party in the juridical form chosen by such investor.

2. The Parties also recognize the principle that an investor of another Party should be permitted to participate widely in a Party’s market through the ability of such investor to:

   a. provide in that Party’s territory a range of financial services through separate financial institutions as may be required by that Party;

   b. expand geographically in that Party’s territory; and

   c. own financial institutions in that Party’s territory without being subject to ownership requirements specific to foreign financial institutions.

3. Subject to Annex 1403.3, at such time as the United States permits commercial banks of another Party located in its territory to expand through subsidiaries or direct branches into substantially all of the United States market, the Parties shall review and assess market access provided by each Party in relation to the principles in paragraphs 1 and 2 with a view to adopting arrangements permitting investors of another Party to choose the juridical form of establishment of commercial banks.

4. Each Party shall permit an investor of another Party that does not own or control a financial institution in the Party’s territory to establish a financial institution in that territory. A Party may:

   a. require an investor of another Party to incorporate under the Party’s law any financial institution it establishes in the Party’s territory; or

   b. impose terms and conditions on establishment that are consistent with Article 1405.

5. For purposes of this Article, “investor of another Party” means an investor of another Party engaged in the business of providing financial services in the territory of that Party.

1.5.1 Article 1605: Work Group (temporary entry)

- Exchange of workers and professionals: Cross-border flows by workers and professionals in North America have been stigmatized for political reasons. This stigma fails to acknowledge the fact that the demographic profile of each of the Parties complements the profile of the other two; this complementarity in North America is, unquestionably, one of the key comparative advantages of the region with respect to the rest of the world.

NAFTA acknowledges this strategic advantage and provide for increased opportunities for the cross-border exchange of professionals and workers under the NAFTA visa. This exchange must also rely on the reciprocal recognition of professional capabilities, certifications, and academic degrees. Achieving this would also serve to positively modify the anti-migration discourse.

Article 1605 of NAFTA establishes a working group for the Parties to advance in the aim of facilitating cross-border transit of workers and professionals. It also mandates the design and implementation of policies and programs that allow for the Parties to take full advantage of the demographic bonus and the de-
mographic complementarity through the access they may achieve, thanks to NAFTA, to the offer of capable workers and professionals in the three countries.

A key element to achieve this is to promote not only temporary entry (which might generate the perverse incentive of overstaying in the receiving country permanently) but rather multiple entry visas, so that workers can provide partial services in the production processes and commute back and forth among the three countries regularly.

Article 1605: Working Group

1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials.

2. The Working Group shall meet at least once each year to consider:
   a. the implementation and administration of this Chapter;
   b. the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;
   c. the waiving of labor certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year under Section B, C or D of Annex 1603; and
   d. proposed modifications of or additions to this Chapter.

1.6. Sixth part: Intellectual Property

Article 1719 sets forth the commitment of the Parties to collaborate and promote technical assistance in terms of intellectual property protection.

Article 1719: Cooperation and Technical Assistance

1. The Parties shall provide each other on mutually agreed terms with technical assistance and shall promote cooperation between their competent authorities. Such cooperation shall include the training of personnel.

2. The Parties shall cooperate with a view to eliminating trade in goods that infringe intellectual property rights. For this purpose, each Party shall establish and notify the other Parties by January 1, 1994 of contact points in its federal government and shall exchange information concerning trade in infringing goods.

1.7. Seventh part: Institutional administrative dispositions

1.7.1 Article 2001: Free Trade Commission

One of NAFTA’s virtues—and also one of its defects—is the absence of a costly and cumbersome institutional framework. Nonetheless, article 2001 mandates the establishment of the Free Trade Commission. It is one of the most relevant institutions of the agreement, but also one of the least used, especially when its performance is weighed against its relevance.

The Commission has not met enough and has not verified if working groups and committees fulfill their responsibilities. This apathy is a clear indicator of the generalized approach of the Parties towards the political agenda and commitment to integration. Nevertheless, the three Parties should consider that if the Commission worked efficiently to its full capacity and exercised its powers it will guarantee not only the correct implementation of NAFTA, but also “oversee its further elaboration”.

Chapter Twenty: Institutional Arrangements and Dispute Settlement Procedures

Section A - Institutions

Article 2001: The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties or their designees.

2. The Commission shall:
   a. supervise the implementation of this Agreement;
   b. oversee its further elaboration;
c. resolve disputes that may arise regarding its interpretation or application;

d. supervise the work of all committees and working groups established under this Agreement, referred to in Annex 2001.2; and

e. consider any other matter that may affect the operation of this Agreement.

3. The Commission may:

a. establish, and delegate responsibilities to, ad hoc or standing committees, working groups or expert groups;

b. seek the advice of non-governmental persons or groups; and

c. take such other action in the exercise of its functions as the Parties may agree.

4. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus, except as the Commission may otherwise agree.

5. The Commission shall convene at least once a year in regular session. Regular sessions of the Commission shall be chaired successively by each Party.

1.7.2 Article 2202: Amendments

Article 2202 allows for changes and reforms to the agreement, which approval depends on the corresponding legal procedures that have to be undertaken by each of the Parties.

Article 2202: Amendments

1. The Parties may agree on any modification of or addition to this Agreement.

2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

1.7.3 Article 2205: Withdrawal

Lastly, NAFTA also provides—as do all treaties without an expiration date— the possibility for any of the Parties to withdraw from it. This process also depends on the specific legal processes of each of the Parties.

It is indispensable to read article 2205 integrally, since it clearly sets forth that “If a Party withdraws, the Agreement shall remain in force for the remaining Parties”. For Mexico, NAFTA is, under article 133 of the Mexican Constitution, supreme law and it precedes federal laws. Thus, in Mexico NAFTA will remain supreme law regardless of the fact that a Party withdraws from the treaty.

2. COMPLEMENTARY CONTENT FOR A PRO-COMPETITIVE RENEGOTIATION

In addition to using NAFTA’s contents to modernize it and deepen the regional integration—as was mentioned above—, it is also possible to consider additional and complementary elements to improve the agreement and, more importantly, to enhance regional competitiveness vis-à-vis the rest of the world. A clear opportunity can be found in the new provisions of the Transpacific Partnership (TPP). Many of TPP’s elements could be included in a renegotiated NAFTA. Hereby follows a list of TPP chapters (as numbered in the text) that might easily serve to complement NAFTA:

- Chapter 13: Telecommunications
- Chapter 14: E-commerce
- Chapter 17: State Owned Enterprises and Designated Monopolies
- Chapter 18: Intellectual Property
- Chapter 19: Labor
- Chapter 20: Environment
- Chapter 21: Cooperation and Capacity Building
- Chapter 22: Competitiveness and Business Facilitation
In addition to the elements of NAFTA and TPP, Canada, the US and Mexico could also consider the opening of other sectors to shore up regional competitiveness and advance regional integration. Amongst them are the following:

Integration program for the energy market

Energy abundance has become a key comparative advantage of North America for its industrial development and for the incorporation of higher regional value added per unit produced. Availability of competitive energy, particularly natural gas, is the main incentive to produce in the region final products and production inputs that are intensive in natural gas (steel, glass, fiber glass and its derivates, petrochemicals, synthetic fibers and fertilizers) and to have these products being exported from North America to the rest of the world. The full integration of the North American energy market is, therefore, a measure with higher probabilities of success (to increase regional value in North American production) than hardening rules of origin in NAFTA.

After the opening of the energy market in Mexico, the key element to achieve an integrated energy market in the region is the construction and development of infrastructure for the transport of energy products. This implies large investments, but also allowing cross-border interconnectivity of ducts and transmission lines, as well as the use of trains, freight transport and maritime transport in energy trade. Cross-border interconnectivity implies strong bilateral cooperation between Canada and the US and between the US and Mexico; it also implies the full opening in the three transport modes, including cabotage, should be negotiated amongst the three Parties as an indispensable element to achieve a highly competitive regional energy market.

An integrated regional energy market also facilitates investment and collaboration for the development of clean and renewable energies.

Harmonization of certifications and efficient and speedy certification through the use of reciprocal exclusive windows

The possibility that each of the Parties establishes exclusive regulatory windows for the other members of NAFTA has been discussed several times. These exclusive windows would serve to harmonize procedures, reach reciprocal and instant recognition of certifications, speed processes, and avoid having regulations, certifications, requirements or norms in any of the Parties that hinder trade with the others. If, even with an exclusive window, one of these obstacles remained, it should be dealt with as a priority of the exclusive windows.

Prioritized attention implies that regulatory agencies, especially sanitary agencies, establish exclusive windows and dedicated personnel to address the needs of the Parties on a reciprocal basis.

Achieve full integration of a transport system for logistic excellence

In 1994, NAFTA was designed to increase trade and investment amongst the Parties. In 2017, the challenge ahead is for North America to compete with the rest of the world. For Mexico, the opportunity lies on becoming North America’s export platform to the world, and not only in manufactured products, but also agricultural and agro-industrial products, as well as services. Thus, regional competitiveness depends on the development of a system of logistic excellence that also contributes to augment the original East-West direction of the transportation systems of Canada and the US East-West, to also be North-South.

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1 In Canada the Public Health Agency (including the agencies of Health Promotion and Chronic Disease Prevention and the Infectious Disease Prevention and Control) in the US the Food and Drug Administration and the Animal and Plant Health Inspection Service (APHIS) and in México the Comisión Federal para la Protección contra Riesgos Sanitarios (Cofepris) and the Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria (Senasica).
The best way to promote the investment in logistics and transport infrastructure is to achieve opening in all the transport modalities (air, land and maritime) and for all routes and transport combinations, including cabotage. This implies a policy of full open skies (up to the ninth freedom) and land and maritime cabotage for North American companies in all the region. Many would consider that achieving this degree of transport opening is politically difficult, if not impossible. Nonetheless, a serious re-negotiation of NAFTA, that is truly committed to deepen the opening and integration and to ensure regional competitiveness, cannot be understood without a system of logistic excellence and a high degree of custom simplification.

Furthermore, the development of a logistic system serves as response to one of the most frequent critics to trade opening and NAFTA: that the benefits of the agreement in terms of investment and job creation have not reached equally all the regions, particularly impoverishes states and communities. An integrated and competitive transport system allows for the integration of regions that are today isolated from foreign trade, not only in West and Southern Mexico, but also in the north of Central America.

One of the most controversial aspects of these negotiations –but also the most relevant one- is that Mexico and Canada obtain from the US an exception to the Jones Act, which would be particularly relevant to transform the economy and psychology of the Gulf of Mexico, and promote the development of southern Mexico, Central America and with Louisiana Alabama and Florida.

The Gulf of Mexico is one of the most valuable geographical resources, but it development potential as an instrument for the impoverished sea front states has been greatly wasted. The Gulf is indeed relevant for littoral states, but, thanks to the Itsmo de Tehuantepec, it is also important for Chiapas, Oaxaca, Guatemala, El Salvador and Honduras. For southern Mexico its value does not reside on connecting the Atlantic and the Pacific (and thus competing with Los Angeles/Long Beach and the Panama Canal) but on its potential as an exports platform.

Developing regular maritime service lines from Coatzacoalcos and Progreso with strategic harbors of the US in the Gulf of Mexico, such as Mobile, Alabama and Saint Peters burg, Florida, would imply opening a new frontier that draws the Mexican Gulf and Itsmo states to eastern US states. If Mexico succeeds in establishing a logistic system in Coatzacoalcos and Progreso, Mexican high quality exports (seafood, fruit, vegetables, drinks, manufactures, chemical products and many more) could reach New York in 72 hours—after crossing the Gulf. This calls for the complete modernization of the Chiapas-Mayab train line that runs from Tapachula to Progreso and goes through the Itsmo. It should also contemplate the extension of this train line to Tegucigalpa in Honduras.

The Mexican energy reform must also become a trigger for the navy and maritime industry in the Gulf. It is now possible to visualize Mexican oil platforms and embarkations established in the Gulf of Mexico having maintenance and repair services by US vessels, and vice versa. Those services are, today, illegal.

To achieve this vision and to change the physiology of the Gulf it is indispensable to reform maritime legislation both in the US and in Mexico. US must grant Mexico and exception to the Jones Act, which not only prohibits cabotage amongst US harbors, but also repair services and the construction of vessels that provide those services. On the Mexican side, changes are called for in article 39 of the Ley de Navegación y Comercio Marítimo, which limits cabotage activities by other states to reciprocity in trade agreements.

The North America Development Bank (NADBANK)

NADBANK began its operations in 1993, after the approval of NAFTA. Its key mandate has been to improve environmental conditions (waste management, water, residues) and strengthening municipal governments in the US-Mexico border. NAFTA re-negotiation is a unique opportunity to optimize the bank’s capabilities and expand its mandate, at least in three areas:

1. Capitalization: It is necessary to augment NADBANK financial capabilities through capital increase, in equal parts, from the governments of
US and Mexico. An invitation to participate could be sent to Canada.

2. Sector expansion: It is highly desirable that NAD-BANK finances transport and energy infrastructure projects in order to achieve an efficient and interconnected border. Financing this sort of projects has the advantage of a competitive instrument to recover the investment, through charging fees for the use of the infrastructure.

3. Regional expansion: It is imperative that North American countries commit resources to expand transport and energy infrastructure to Guatemala, Honduras and El Salvador in Central America. Without this kind on infrastructure, those countries will continue to increase migration flows.

Medical tourism

The largest sector of the US economy and one that is growing rapidly in Canada and Mexico is healthcare. In spite of healthcare accounting for 17 per cent of US’s GDP, the participation of Mexico and Canada in this sector is relatively minor, although not a small one. An important number of patients from both countries seek medical attention in the US, a factor that also attracts human capital (doctors and nurses). Mexico has also become a relevant provider of medical devices and highly technological medical instruments in all the region.

Nevertheless, the largest growth opportunity can be found in medical tourism. Mexico offers important advantages that make it an ideal destination for the treatment of certain conditions and the execution of several medical procedures, while the US has a comparative advantage for highly specialized treatments. In addition to its benign climate, Mexico can also educate an attractive offer of healthcare professionals (to work in Mexico, but also in Canada and the US) and invest in world class medical infrastructure. To promote this development it is indispensable that the Parties collaborate in certification processes of doctors, nurses and other health care professionals, and in hospital and laboratory harmonized certification, as well as in the efficient use of medical insurance to refund medical expenditure in the region.

Demographic complementation

North America has one of the best demographic profiles in the world for the upcoming decades, especially when compared with the high dependency demographic profiles (infants + senior citizens/labor force) in Europe and Asia.

The increase of fertility rates in the US in the last few years, the constant migration to that country and the fact that Mexico is in the region, account for the fact that, in spite of Canada’s aging population, the region is a demographically attractive one.
Therefore, the competitiveness potential of North America when compared to its demographic bonus, presents a possibly unique development opportunity. Nonetheless, the demographic pyramids are not uniform in the three parties, and represent for each of them different tasks at hand:

• Canada has an inverted pyramid. This implies that its population is aging. Thus, its main concerns can be found in comprehensive attention for senior citizens, which must include medical attention, permanent care and a benign climate.

• US has a good profile with a mixed population: a growing young sector that interacts with an important sector of pensioned and retired citizens, who require, as in the Canadian case, specialized care and treatment.

• Mexico must also anticipate an increase in its pensioned population, but it is, undoubtedly, the “youngest” of the three Parties.

Cooperation amongst the three economies in NAFTA can and must become an instrument that contributes to the use of the relatively favorable demographic profile of the region. Some steps have already been addressed in this text (such as professional certification harmonization, temporary entry, deepening of trade exchange, logistics and financial services integration) but it is also necessary to:

• Increase academic exchange and professional residences of students of a given Party in the academic institutions of the others. This calls for the creation and joint financing of NAFTA scholarships.

• Harmonize study plans and establish permanent dialogue amongst universities in the three countries regarding the permanent update of study plans and full incorporation of innovation and technological advances to curricula.

• Advance in bilingual education in elementary and middle school to facilitate cross-border crossings of workers and professionals.

• Advance in quality of schooling and educational interconnectivity in isolated regions, with the aim of incorporating indigenous communities (in the three countries) to harmonized educational processes.
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