

Trump says he's gotten rid of NAFTA, but has he?

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WASHINGTON—On Monday, U.S. President Donald Trump declared of his trade agreement with Canada and Mexico: “It’s a brand new deal. It’s not NAFTA redone. It’s a brand new deal.” Later in the day, he said, “NAFTA was a disaster for our country...Essentially, we’re terminating NAFTA.”

On Tuesday, the chairman of Trump’s Council of Economic Advisers, Kevin Hassett, went on television to talk about the agreement. He referred to it as the “new NAFTA.” Later in the day, Republican Sen. Chuck Grassley told Bloomberg that Congress could vote quickly on the agreement, since “95 per cent of what we will be voting on is the same as NAFTA.”

Trump’s colleagues are more right than he is.

The president has a political interest in pretending he has eradicated a North American Free Trade Agreement he has called the worst trade agreement in world history. But the new agreement, named the U.S.-Mexico-Canada Agreement (USMCA) at Trump’s urging, retains the central features and most secondary features of the 24-year-old NAFTA, trade experts say.

Trump’s critics are wrong to claim that Trump has changed nothing but the name. The new agreement makes dozens of policy changes, some of them significant.

Many of the changes, however, are incremental tweaks. And where there is entirely new text that was not in the original NAFTA, a significant chunk of it was borrowed from the 12-country Trans-Pacific Partnership, an agreement Trump has disparaged and withdrawn the U.S. from.

The TPP, which included all three of the U.S., Canada and Mexico, was intended in part to serve as a vehicle for modernizing NAFTA.

“I think the president is trying to do a rebranding job on what remains, essentially, NAFTA,” said Robert Fisher, a U.S. negotiator in the original NAFTA talks and now managing director of trade consulting firm Hills and Co. “What the president’s done is taken two agreements he said he strongly disliked — among the worst agreements ever, according to him — and taken bits of each and merged it into a new agreement.”

Matthew Kronby, former director general of the Canadian government’s Trade Law Bureau, offered a similar assessment.

“The bulk of the agreement is NAFTA, or where it’s been modernized, it’s basically the TPP. I think that partly explains Trump’s determination to rebrand it,” said Kronby, a partner at law firm Borden Ladner Gervais.

The central purpose of most trade agreements is to eliminate tariffs between trading partners. NAFTA eliminated almost all tariffs on goods traded between Canada, the U.S. and Mexico. Those tariffs remain eliminated in the new agreement, Fisher noted, while on trade in services, the new agreement “did almost nothing one way or the other.”

Perhaps the most significant change is the introduction of new “rules of origin” for automotive manufacturing. There is a new rule that a car will only get tariff-free treatment if 40 per cent of its contents are produced by workers at North American facilities where the average wage is \$16 per hour (U.S.), and if the automaker has bought 70 per cent of its steel and aluminum from North America. And 75 per cent of the overall contents must be made in North America, up from 62.5 per cent.

For better or worse, Trump can rightfully claim that this is unique. Most trade agreements change rules to make trade freer. These changes move in the direction of protectionism.

“The TPP was going in the direction of greater liberalization; for example, reducing auto rules of origin to around 40 per cent. We have gone a full 180 degrees to higher thresholds from the original NAFTA,” said Dan Ujcz, a trade lawyer at Dickinson Wright in Ohio.

The new agreement also eliminates, between the U.S. and Canada, a system that allows corporations from one NAFTA country to sue the governments of another. It eliminates a controversial Canadian system for pricing certain dairy products. It introduces a novel provision giving each of the three countries the right to cancel the agreement in response to one of the other countries engaging in a trade agreement with a “nonmarket” country, like China. It sets new rules about textiles.

It is “an error,” Ujcz said, “to say this was just a rebranding exercise.” But he also said that various other changes, like the new chapter on the digital trade that did not exist in 1994, were “largely” taken from TPP and other trade agreements, while several chapters from the original NAFTA, such as those on anti-corruption and technical barriers to trade, were merely given a “fresh coat of paint.”

Even some of the most-discussed Canadian concessions, like those on intellectual property, were incremental. For example, Canada currently offers eight years of data exclusivity for sophisticated patented medicines called biologics. Under the new deal, it will offer 10 years.

A meaningful change, but not something “brand new.”

“A very, very tiny fraction of Canadians and Americans will feel any differences in their lives as a result of the transition from NAFTA to the USMCA,” said Dan Ikenson, director of trade policy studies at Washington’s libertarian Cato Institute. He said even the much-discussed agriculture changes, like Canada granting U.S. farmers more access to its supply-managed dairy market, are “so small as to be imperceptible to consumers — even to the farmers themselves.”