

# BERDEJA ABOGADOS, S.C.

## PROSPECTS OF NAFTA NEGOTIATIONS

### **Introduction**

President Donald Trump has called to renegotiate the North American Free Trade Agreement signed on December 17, 1992 (“NAFTA”) so as to incorporate substantial changes, or altogether depart from the same.

For an assessment of NAFTA, please see our Client Update: “[What’s Next for NAFTA](#)”.

Canada, Mexico and the United States are taking preparatory measures relating to a possible renegotiation of NAFTA. Negotiations may occur provided each of the partners feels there is more to gain than to lose as a possible outcome of the same.

### **NAFTA Impact**

NAFTA is not the failure some critics claim it to be. Trade among the three partners has grown substantially since it came into effect in 1994. 14% of world trade in goods takes place under its rules. Cross border supply chains have made North American firms more competitive. The manufacturing jobs it has created in Mexico have slowed migration to the United States.

The NAFTA partners, however, have not achieved all the goals they originally set in connection with the agreement.

We understand that Canada’s goal of achieving greater productivity has been less than entirely attained.

A number of studies have found that NAFTA has brought economic and social benefits to the Mexican economy as a whole, but that the benefits have not been evenly distributed throughout the country. The effects of NAFTA in Mexico were limited by the fact that NAFTA was not supplemented by complementary policies that could have promoted shared development in the country. These policies could have included improvements in education, industrial policies, investment in infrastructure and mitigation measures in the agricultural sector. One should note, however, that new jobs which require higher skills and provide better pay have been created in Mexico as an effect of NAFTA implementation.

U.S. labor groups and some consumer-advocacy groups argue that the agreement has had negative effects. They maintain that the agreement resulted in outsourcing and lower wages that have had a negative effect on the U.S. economy.

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Experts consider that at most, 5 percent of dislocated U.S. workers can be traced to imports from Mexico. Additional job opportunities and higher wages have been offered as a result of NAFTA and other factors. This is consistent with the fact that export jobs are considered to pay, on average, 18 percent higher wages than non-export jobs.

Most proponents and critics of NAFTA agree that the three countries should look at what the agreement has failed to do as they look to the future of North American trade and economic relations. Policies could include strengthening institutions to protect the environment and worker rights; fostering the implementation of a border infrastructure plan; increasing regulatory cooperation; promoting research and development to enhance the global competitiveness of North American industries; investing in more border infrastructure to make border crossings more efficient; creating more efforts to lessen income differentials within the region; promoting education, including among other technical schools to increase a trained work force; and addressing fundamental security concerns, including the need to impose and effectively enforce regulations that will restrict the ability of Mexican cartels to purchase, smuggle and use assault weapons made in the United States against Mexican security forces.

## **Preparatory Measures for a Possible Renegotiation of NAFTA**

### **Canada**

The Foreign Affairs Minister of Canada, Chrystia Freeland recognizes that if there were to be any negotiations, those would be three-way negotiations. There will be however, bilateral issues Canada and the United States will want to discuss separately. Likewise, Mexico and the United States may want to discuss separately certain matters.

According to the *Toronto Globe and Mail*, Flavio Volpe, president of the Automotive Makers Association of Canada expresses concerns about the effect of separate bilateral trade deals, since the auto-sector relies on trilateral relationships and product flows. Mr. Volpe indicates that there are about 60 Canadian part makers, which operate 120 factories in Mexico and employ approximately 40,000 people.

### **Mexico**

On February 3<sup>rd</sup> the Mexican government began a 90-day consultation with business on what its negotiating position should be.

In addition to matters to be identified as a result of such consultation, Mexico is interested in discussing flow of illegal immigrants, drug smuggling and security concerns, including as mentioned before, the need to impose and effectively enforce regulations that will restrict the ability of Mexican cartels to purchase, smuggle and use assault weapons made in the United States against Mexican security forces.

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## United States

The Secretary of Commerce Wilbur Ross, will head the trade negotiations. The U.S. Senate is in the process of confirming Robert Lighthizer, the nominee for U.S. trade representative.

Notification to the U.S. Congress, which must happen 90 days before talks can start, could occur soon.

According to a report by the Toronto *Globe and Mail*, the United States has identified two priorities for a NAFTA renegotiation: the dispute-settlement process and “rules of origin”. Such rules put a ceiling on the value of inputs that an exporter to another NAFTA country can buy from outside the area.

The United States has expressed dissatisfaction about the independent NAFTA panel that rules on anti-dumping duties, which a country imposes when it thinks that its trading partner is competing unfairly. It has ruled, for example, that duties on softwood lumber from Canada are a violation of applicable rules. The United States is likely to demand changes that weaken the panel.

Tightening rules of origin is another goal. The United States probably wants to raise the requirement and close loopholes within it, which could encourage firms to source more parts from suppliers in the three countries.

The idea poses certain risks. If North American firms had to buy more inputs within NAFTA, they may become less competitive against companies from China and Japan. A tightening of rules may disrupt supply chains.

There is a need for the three partners to discuss a creative and balancing way to raise the regional value added in North America, without disrupting supply chains.

The United States may seek to review the NAFTA labor side agreement to strengthen workers’ rights to bargain and strike collectively, as well as to include rules for technology trade, similar to those negotiated in connection with the Trans-Pacific Partnership (“TPP”) from which the United States has now withdrawn. Such rules would punish online piracy and bar governments from imposing customs duties on digital devices, among other.

The three partners should look at ways to mitigate negative effects of deals like NAFTA, such as expand trade adjustment assistance programs and expand wage insurance.<sup>1</sup> They should also

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<sup>1</sup> See James McBride and Mohammed Aly Sergie, *CFR Background*, Council on Foreign Relations (January 24, 2017).

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seek to attain a deeper North American cooperation in matters related to energy, board security and immigration reform.

The current pre-negotiation stage should focus around finding an agreed framework that defines the universe of problems or concerns to be addressed. A productive delineation of the issues is likely to be highly influenced by the framing, wording, order or method of presentation of the relevant options put forward for discussions.

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We will keep you posted regarding developments on this matter. Please do not hesitate to contact us at any time with questions that you may have about how changes to NAFTA may affect you.

Berdeja Abogados, S.C.

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