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NAFTA Renegotiations: Tri-Lateral Perspective on What is Known and What to Expect

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Current Situation

- Uncertainty derived from the U.S. Administration position towards NAFTA.
- Plan B required?

Mexico's Objectives

- Maintain market access
- Avoid hidden protectionism
- Regional integration
- Trilateral negotiations
- Updating and modernizing NAFTA

Expectations

- Closing topics/chapters where there is an agreement
- Conflict in:
 - Rules of origin
 - Labor standards
 - Chapter 19 - Dispute settlement mechanism (AD/CVD)
- Expediting negotiation timeline

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Canadian Objectives

Canadian negotiating priorities were made public on August 14, 2017 by way of a statement given by the Minister of Foreign Affairs, Chrystia Freeland:

- bringing strong labour and environmental provisions into the agreement
- introducing chapters on gender rights and Indigenous peoples
- reforming the ISDS mechanism so as to ensure the government's right to regulate in the public interest
- cutting red tape
- harmonizing regulations
- increasing market access for government procurement
- expanding the provisions on temporary entry for businesspeople

Canadian Negotiating Positions

It is likely that Canada will take the following negotiating positions regarding these “hot button” topics:

- 1. Elimination of Chapter 19:** Canada is likely to resist the elimination of Chapter 19, as Canada has a strong record of success in disputes under the chapter.
- 2. Increase *de minimis* threshold to \$800:** The U.S. proposal to increase the *de minimis* threshold to \$800 USD is a point of controversy in Canada. While consumers might welcome the increase from the current \$20, Canadian retailers fear a surge of competition from U.S. online retailers.
- 3. Amendments to Chapter 11:** Canada has taken the position that the Chapter 11 Investor State Settlement Dispute (ISDS) mechanism be revised to mirror the new investment court mechanism set to be used in the Canada-European Union Comprehensive Economic and Trade Agreement (CETA).

Canadian Negotiating Positions

- 4. Liberalize Canadian Supply Management:** It is highly unlikely that Canada will agree to make any significant changes to its supply management system, which strictly controls the importation of dairy products, poultry, and eggs.
- 5. U.S. Content Requirement in ROO:** Canada will likely resist the U.S. proposal to add U.S. content requirements to the rules of origin.

Planning for U.S. NAFTA Withdrawal

- A U.S. withdrawal from NAFTA could result in the existing Canada-U.S. Free Trade Agreement (CUSFTA) to be reactivated.
- The CUSFTA is not as extensive as the NAFTA, and many provisions (i.e., rules of origin) are not as refined as those in NAFTA.
- Alternatively, World Trade Organization (WTO) rules would be applicable in respect of trade with the U.S. (and Mexico).
- Canadian-based businesses could look to other free trade regions to maintain/expand their businesses (e.g., CETA)

U.S. Perspective – What Do We Know?

■ U.S. Renegotiation Priorities

- Reduce trade deficits
- Improve U.S. manufacturing
- Increase U.S. input in rules of origin (directly or indirectly)
- “Do no harm” to agriculture trade
- Improve labor standards (aimed at Mexico to make U.S. labor more competitive)

■ Threat of Withdraw Remains

- Administration has not backed down from possibility and has emphasized this is more than just a negotiation threat.
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U.S. Perspective – What to Expect

- **A Renegotiated Agreement**

- White House Approval
- Congressional Approval (July 2018)

- **Withdrawal and Termination**

- A U.S. withdrawal from NAFTA would likely revive provisions of the Canada-United States Free Trade Agreement (CUSFTA), as noted previously. Practical implications (headache) for businesses with automated systems.
 - With respect to Mexico, trade relations would continue to deteriorate. Based on this extreme outcome, we could expect AD/CVD investigations from both parties, a hostile business environment in Mexico for U.S. companies, and a break down of communications with respect to other important bilateral topics (security, immigration, etc.)
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U.S. Perspective – What Do We Do Now?

▪ **A Renegotiated Agreement**

- How do changes impact
 - Qualification of my goods
 - Certificate of origin process
 - Automated systems used for validation

▪ **Withdrawal and Termination**

- What other strategies can I use for duty free treatment?
 - 9801
 - 9802
 - Revisit manufacture of goods in Mexico and Canada current valuation of goods based on increased duty liability.
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Questions?

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