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The Renewed NAFTA.
by Gerardo Reyes and
José Antonio Dorantes.

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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"



The Renewed NAFTA.

by Gerardo Reyes and José Antonio Dorantes.

The first North America Free Trade Agreement (NAFTA) entered into force in January 1994. The governments of Canada, Mexico and United States of America (USA) led by Brian Mulroney, Carlos Salinas de Gortari and George H. W. Bush signed this treaty in December 1992 in order to develop the economic growth of North America. NAFTA has changed the economic and social conditions of the three countries that agreed the eliminations of tariffs and the encouraging of the economic activities to create a competitive block in the global landscape.

The specific purposes of this international agreement were founded in article 102 of the treaty:

- "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"*¹

"NAFTA has changed the economic and social conditions of the three countries that agreed the eliminations of tariffs and the encouraging of the economic activities..."

Canada published on its official global affairs website² that the NAFTA as a regional treaty contributes to enhance Canada's attractiveness to foreign investors and at the time provides more opportunities for Canadians to invest in NAFTA partners' economies.

Mexican Government affirms that the most competitive free trade zone of the world is the one that was created by NAFTA because the trades between these three countries generate USD\$2.8 Billion of dollars per day. Also, Mexican State informed that in 1993 Mexico only represented the 5% of USA-Canada importations. Nevertheless, due to NAFTA the percentage increase to 12% in 2016³.

The "U.S. Department of Commerce, International Trade Administration" assures that NAFTA grants to American Exporters a greater market access and price advantage over other exporters from other countries like China or Japan. Besides, the American Government recognized that without NAFTA USA would have severe disadvantages regarding to European competitors in Mexico⁴.

Even though regional trade agreement was working as expected by the three nations the President of the United States of America that took the White House on January 2017 expressed his disagreement with NAFTA and threat to withdraw the treaty if the other two countries refuse to renegotiate new terms and conditions.

Since the first renegotiation round held in August 16, 2017 the debate raged on the deficits, the balance of trade and the outsourcing of jobs, a reconfiguration of the policies in the treaty were deeply vindicated by the US.

1.- Article 102 of NAFTA.

2.- <http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/facts.aspx?lang=eng>

3.- https://www.gob.mx/cms/uploads/attachment/file/166615/2_Evaluaci_n_Resultados_TLCAN_Senado_9nov2016_.pdf

4.- https://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_001987.pdf

Firstly, a preliminary agreement between the US and Mexico was achieved through an intense debate and negotiation, with an outstanding effort of the Mexican delegation with specific orders to restore certainty to the markets before a new administration takes control.

One of the two more important agreements between Mexico and USA was about the automobile industry. The countries agreed that at least 40% of the value of cars would be made by workers earning 16 dollars an hour⁵, the USA government is trying to homologate the wages with Mexico to reduce the low-cost manufacturing advantages Mexico has against the US. The other important agreement between the parties was about the “sunset clause”⁶. Mexico and USA have agreed a 16-year lifespan for the New Trade Agreement, with a review every six years⁷.

Several sections of NAFTA have faced criticism, but Chapter 11 has been highly controversial because it grants the action to sue the three governments if they restrict profits, more than 70% of this actions have been used against Canada and in many cases this country has lost in courts. This issue is one of the mayor conflicts between the US and Canada. Investor-state dispute settlement has been agreed only between Mexico and the US.

Another controversial section is the Chapter 19 that gives each nation the right to challenge each others’ anti-dumping and countervailing duty decisions in front of an expert panel with members from both countries involved in a dispute. The Trump administration wants is the elimination of Chapter 19, directly altering the aircraft market. For example, the U.S. Commerce Department proposed a 219.63% tariff on the import of certain commercial airliners made by the Canadian company Bombardier in an effort to protect the Illinois based company Boeing from competition⁸. This is another issue that affects Mexico indirectly because most of the manufacturing of Bombardier is done in Queretaro, Mexico.

Regarding regional authentic products Mexico and USA agreed to make a truce on alcoholic beverages. The U.S. will continue recognizing Tequila and Mezcal as distinctive Mexican products, while Mexico will keep recognizing Bourbon and Tennessee Whiskey.

The new trade deal reached between the U.S. and Mexico contains a myriad of rules and tariffs, and among them include tougher rules on copyright and intellectual property. The preliminary Mexico-USA deal includes areas neglected in NAFTA’s original text, including energy, information technology, intellectual property, digital trade, and more advanced environmental regulations⁹.

The Governments from Mexico and USA have decided that if Canada does not want to subscribe the New Trade Agreement the treaty will became a bilateral agreement instead of a regional agreement. Nevertheless, at the final hours of the term to file the new agreement to each countries’ Congress, Canada agreed to maintain in the trilateral agreement. The new named USMCA (US-Mexico-Canada Agreement) for its acronym in English, became a handshake deal with Canada granting access to its dairy products market in exchange of keeping the Chapter 19 untouched in the new agreement¹⁰.

The great achievement that the three countries reached with a trilateral agreement is the certainty and restoration of the economic region in order to preserve the biggest free trade zone of the world. There are still a few hurdles before USMCA becomes a reality. The revised pact needs to be approved by all three governments, including the US Congress, which won’t consider the agreement until 2019¹¹.

5.- Rappeport, Alan, et al. “North American Free Trade Agreement.” *The New York Times*, *The New York Times*, 25 Sept. 2018, www.nytimes.com/topic/subject/north-american-free-trade-agreement.

6.- Sunset Clause: a provision that determine when the treaty shall cease to have full force and effect.

7.- <http://www.eluniversal.com.mx/cartera/lo-que-mexico-y-eu-cedieron-en-nuevo-tlc>

8.- Swanson, Ana. “Boeing and Bombardier Trade Clash Poses More Risks for Nafta.” *The New York Times*, *The New York Times*, 18 Dec. 2017, www.nytimes.com/2017/12/18/us/politics/boeing-bombardier-trade-nafta.html

9.- Joseph, Rebecca. “New NAFTA Could Include Tough Intellectual Property Laws That Canada Fought against in TPP.” *Global News*, *Global News*, 28 Aug. 2018, globalnews.ca/news/4415386/nafta-intellectual-property-laws/

10.- BLANCO, D. (2018). Pactan TLC trilateral. [online] *El Financiero*. Available at: <http://www.elfinanciero.com.mx/economia/canada-acepta-sumarse-a-acuerdo-con-mexico-y-eu-segun-el-washington-post> [Accessed 1 Oct. 2018].

11.- Kirby, J. (2018). The US, Canada, and Mexico have a new NAFTA deal. It’s called USMCA. [online] *Vox*. Available at: <https://www.vox.com/2018/10/1/17921966/usmca-nafta-agreement-trump-canada> [Accessed 1 Oct. 2018].

Canada triggers NAFTA Chapter 19 over hefty Bombardier tariffs.

The US wants to eliminate dispute resolutions of Chapter 19 of NAFTA.

NAFTA Chapter 19's dispute resolution mechanism means Canada can get a panel of experts to appeal final U.S. decisions to impose duties on imports of Bombardier C Series aircraft and softwood lumber from Canada. <https://globalnews.ca/news/3977126/canada-triggers-nafta-chapter-19-over-hefty-bombardier-tariffs/> 01/09/2018.

Mexico's president-elect sets out plan for new \$8 billion oil refinery.

Mexico's next government plans to build what could be the country's largest oil refinery, with construction set to begin as soon as next year, as stated by the President-elect Andres Manuel Lopez Obrador, in his seek to end Mexico's massive fuel imports, all of which come from the United States, while boosting domestic refining during the first half of his six-year term. <https://www.reuters.com/article/us-mexico-refinery/mexicos-president-elect-sets-out-plan-for-new-8-billion-oil-refinery-idUSKCN1LK2V0> 04/09/2018.

Mexico's new president should postpone oil auctions: former Pemex official.

A former Petroleos Mexicanos ("PEMEX") board member has said that Mexican President-elect, Andres Manuel Lopez Obrador, has enough political support to change the nation's energy law and should postpone planned competitive oil auctions until the law is revised. The auctions were originally scheduled this year in the waning months of President Enrique Pena Nieto's term, but were postponed by the National Hydrocarbons Commission (CNH), as its officials said they wanted to give interested oil companies more time to evaluate the projects. <https://www.reuters.com/article/us-mexico-oil-auctions/mexicos-new-president-should-postpone-oil-auctions-former-pemex-official-idUSKCN1LZ2L3> 19/09/2018.

AMLO: if NAFTA fails Mexico will seek second trade accord with Canada.

Mexico will seek a bilateral trade agreement with Canada if NAFTA talks fail. Mexico and the United States reached a separate accord late last month but so far negotiations aimed at bringing Canada into the deal have failed amid U.S. threats to impose tariffs on auto imports from its northern neighbor. The United States and Canada concluded another round of talks in Washington D.C. without reaching agreement, although Canadian Foreign Minister described the dialogue as "constructive." <https://mexiconewsdaily.com/news/amlo-if-nafta-fails-mexico-will-seek-second-trade-accord-with-canada/> 22/09/2018.

Energy regulator proposes new entity to develop gas production.

Mexico's energy regulator has recommended the creation of a new state-owned entity to focus exclusively on gas production. The National Hydrocarbons Commission (CNH) said in a technical document that the move would help to recover Mexico's natural gas production, as the new upstream company would take control of all non-associated gas areas that are currently managed by the state oil company Pemex. <https://mexiconewsdaily.com/news/energy-regulator-proposes-new-entity-to-develop-gas/> 22/09/2018.

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