

NAFTA: RENEGOTIATION OR MODERNIZATION, DIFFERENT GOALS?

By Alejandro Gomez and Andres Alvarez

WHILE THE MODERNIZATION OF AN AGREEMENT IMPLIES ITS RENEGOTIATION, A SUBTLE DIFFERENCE IN A TITLE MAY ALSO IMPLY DISTINCT APPROACHES TO A NEGOTIATING TABLE. THE NAFTA RENEGOTIATION PROCESS IS CURRENTLY FACING SUCH A CHALLENGE. THIS ARTICLE PROVIDES AN OVERVIEW OF THE NAFTA MODERNIZATION DISCUSSIONS UNDERTAKEN BY CANADA, THE UNITED STATES AND MEXICO, DESCRIPTION OF THE CURRENT STANCE AND EXPECTATIONS.

When the discussions about reopening NAFTA for negotiation started, the Mexican administration presented a document to its senate entitled "Mexico's Priorities in the Negotiations for the Modernization of NAFTA." A similar formality was undertaken in the United States with a document named "Summary of Objectives for the NAFTA Renegotiation."

Much has been said and discussed about these documents and their intent to deal with the objectives that each country wants to accomplish during their corresponding negotiation process. The subtle difference in the title of the documents (*i.e.*, renegotiation vs. modernization) and the different approaches and intentions of the negotiation have also been discussed at length; in sum, whether the U.S. wants to "correct" what is

being perceived as an unbalanced trade agreement, and Mexico wants to set the groundwork for enhanced, future trade. From the room next door to the negotiating tables, it is reasonable to say that there have been positive developments during the process, but we still have a lot of room to cover.

There is progress on uncontested topics where there is consensus from the three NAFTA parties about the need to modernize the agreement. These topics range from small business matters, to customs procedures, technical barriers to trade and e-commerce. The discussion of the contested topics, however, is yet to come. It will be interesting to see how the negotiations develop when the parties start taking about rules of origin, dispute settlement on investment matters, labor, environment, and dispute settlement on anti-dumping and countervailing duty issues.

The negotiators will surely chart the path marked by their political leaders, so while the professionals negotiating the agreement may find good technical arguments and grounds to modernize NAFTA, there is still a political front that has to be addressed, and perhaps, tamed. Indeed, there is a political veil that keeps embracing the negotiations. This political veil is not only related to what the United States may understand as a good outcome for the negotiations, but also relates to the timeframes under which this process is occurring.

There has been substantial push to finalize the negotiations as soon as possible, as the political agenda for 2018 involves a presidential election in Mexico, provincial elections in Canada by mid-2018, and the United States mid-term Congressional election by late 2018. With this in mind, it has been said that it will be hard to find agreement on a modern NAFTA text if the parties are not able to conclude the negotiations by late 2017 or early 2018 at the latest.

At this point, companies still need to identify the impact to their supply chains and other business interests that may be adversely affected by this process. They must begin or continue to engage with industry trade groups, international clients and suppliers, as well as policy makers, in order to minimize the negative effects on their businesses to the extent possible.

It is hard to imagine North America without NAFTA. Mexico has relied heavily on the U.S. market for more than 20 years and the Mexican and U.S. economies are so integrated that changing the trade rules will have a significant impact on both economies. The same can be said about the United States and Canada, and even the three countries collectively.

In any event, under the worst possible outcome, the North American sourcing and manufacturing region would have to readjust to new rules, if any, at a substantial cost to all involved.

Having said this, Mexico has been open to foreign investment and international trade since the mid-eighties when it joined the World Trade Organization. Since then, Mexico has relied on international trade to incentivize growth and prosperity in the country, which in turn has resulted in consistently encouraging exports as a public policy for growth. After NAFTA was negotiated, Mexico entered into free trade agreements with 44 other countries on nearly all continents.

It will be interesting to consider the alternatives for Canada and the United States, as the three countries will need to be part of the agreement for it to continue with its existence. Keeping a close eye on the manner in which the negotiations progress is not only advisable but strongly encouraged as the outcome will most likely have a significant effect on the three economies individually, and in the region as a whole. ▽

Alejandro Gomez, is a partner with Gardere Wynne Sewell LLP in Mexico City. He is former Undersecretary of Economy in charge of Foreign Investment, Standards and Trade Remedies and currently attending the room next door to the NAFTA negotiations.

Andres Alvarez, Alvarez is a foreign legal consultant with Gardere Wynne Sewell LLP in Dallas.

THE POWER OF BEING UNDERSTOOD

AUDIT | TAX | CONSULTING

rsmus.com/mexico

RSM