

The CSCA Canadian SmallSat Symposium 2018

NAFTA Renegotiation: Current Status and Implications for Your Business

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The logo for the law firm Blakes, featuring the name "Blakes" in a stylized, cursive script font.

Order of Presentation

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- Timetable of Negotiations
- Canadian Objectives
- Contentious Issues
- Implications of a US Withdrawal
- Possible Scenarios
- Planning Best Practices

Introduction to NAFTA

- **January 1, 1989** – the Canada – United States Free Trade Agreement (CUSFTA) comes into force. Staged tariff elimination over 10 years.
- **January 1, 1994** – the North American Free Trade Agreement (NAFTA) comes into force between Canada, the United States, and Mexico. The CUSFTA is not repealed, rather CUSFTA is “suspended” while NAFTA remains in effect.
- **Between 1993 and 2015:**
 - Greater than 2x increase in Canada – U.S. merchandise trade
 - Greater than 8x increase in Canada – Mexico merchandise trade
 - Canada’s goods exports to the U.S. grew at an annualized rate of almost 4.6%
 - Canada added nearly 5.2M new jobs, with unemployment rate dropping from 11.4% to 6.9%
 - US exports to Canada increased by 179%
 - US imports from Canada increased by 165%

Introduction to NAFTA, cont'd

As of 2015:

- Despite conflicting calculations of the balance of trade between USTR Lighthizer and Canada's Foreign Affairs Minister Freeland, total (goods and services) trade between the US and Canada stated to be \$663B, U.S. has trade surplus of \$12B
- **Goods** trade between the US and Canada was \$575B; the US goods trade deficit was at \$15B
- Top **US exports to Canada** include: vehicles, machinery, mineral fuels, plastics
- Canada is the top importer of US agricultural products, including: prepared food, fresh vegetables, fresh fruit, snack foods, beverages
- Top **US imports from Canada** include: mineral fuels, vehicles, machinery, plastics
- Canada is the top supplier of agricultural products to the US, including: snack foods, red meats, live animals, other vegetable oils, processed fruit and vegetables

Key Provisions of NAFTA

- **Tariff elimination:** Customs duties for goods originating in the NAFTA territory were either eliminated upon entry into force, or progressively phased out over a 5, 10, or 15 year period.
- **Rules of Origin:** The NAFTA introduced detailed rules of origin specifying when goods will qualify as “originating” in the NAFTA territory, entitling them to preferential tariff treatment. The rules stipulate that goods produced in part from non-originating materials must undergo a specified change in tariff classification within the NAFTA territory, or in some cases must contain a specified percentage of North American content.
- **Investment:** The NAFTA grants protection to investors in the form of commitments by member states to the most-favoured-nation and national treatment principles. The NAFTA further provides investors with the ability to challenge allegedly discriminatory measures under an Investor-State Dispute Settlement (ISDS) mechanism.
- **Dispute Settlement:** The NAFTA provides member states with the option to have antidumping and countervailing duty determinations reviewed by independent binational panels as an alternative to judicial review by domestic courts.
- **Other areas of significance:** Government procurement, intellectual property, sanitary and phytosanitary measures, cross-border trade in services, and temporary entry for business persons.

NAFTA Renegotiation

- As candidate, Donald Trump was critical of the NAFTA during the election campaign in 2016
- As President, Trump threatened to withdraw from NAFTA before agreeing to renegotiate the Agreement after speaking with the leaders of Canada and Mexico on April 26, 2017
- The US formally launched the NAFTA renegotiation on May 18, 2017 when USTR Lighthizer advised Congress of the Administration's intentions and negotiating objectives
- NAFTA renegotiations commenced in August 2017

Timetable of Negotiations

- Round 1 – Washington: August 16 – 21
- Round 2 – Mexico City: September 1 – September 5
- Round 3 – Canada: September 23 – September 27
- Round 4 – Washington: October 11- October 15
- Round 5 – Mexico: October 29 – November 2
- Round 6 – Montreal: January 23 – 28
- Round 7 – Mexico City: February 26 – March 6
- Round 8 - ?

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:

- Modernization of NAFTA
- Make NAFTA a more “progressive” trade agreement
 - bringing strong labour and environmental provisions into the agreement
 - introducing chapters on gender rights and Indigenous peoples
 - reforming the ISDS mechanism - right to regulate in the public interest
- Make life easier for business and people
 - cutting red tape
 - harmonizing regulations
- Increasing market access for government procurement
- Expanding the provisions on temporary entry for businesspeople
- Upholding and preserving elements that Canada deems to be in its national interest
 - AD appeal process in Chapter 19
 - preservation of Canadian culture
 - Canada’s system of supply management

Contentious Issues

- Changes to Rules of Origin (esp. for autos)
- 5-year sunset provision
- Elimination of Chapter 19 dispute settlement mechanism (appeals of anti-dumping decisions)
- Changes to Chapter 11 and 20 dispute settlement mechanisms
- Government Procurement
- Supply Management

What if US Withdraws?

- Article 2205 of the NAFTA permits any country to withdraw from NAFTA upon providing 6 months written notice
- President Trump cannot withdraw by executive order alone
- Complete withdrawal only possible once Congress repeals the NAFTA implementing legislation
- NAFTA would remain in force for remaining two Parties

Possible Scenarios

- US, Canada and Mexico reach consensus on NAFTA changes
- US Withdraws from NAFTA, maintains CUSFTA
 - Mexico status?
- US Withdraws from NAFTA and CUSFTA
 - NAFTA remains between Canada and Mexico

Planning Best Practices

- Assess your company's exposure and reliance on NAFTA (both sourcing and sales)
- Assess alternative sourcing to maintain NAFTA treatment or to replace NAFTA treatment (i.e., CETA, CPTPP, other bilateral FTAs)
- Assess logistics alternatives to transshipping through US
- Assess implications of US tax reforms
- Move/divide production facilities

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Questions?

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