

# Will NAFTA Be Fixed?

**WASHINGTON** – It is not a bad idea to look at ways to improve NAFTA, the Free Trade Agreement linking Canada, the U.S.A. and Mexico that came into force in 1994. Back then, we had a different world. The Internet was just beginning to blossom; the on line giant Amazon did not exist, and Apple's future was uncertain. Energy production and possible new cross border investments within North America did not even remotely resemble what we have now. Think of the incredible shale oil and gas revolution in the U.S., large scale oil extracted in Canada from oil sands in Alberta, and then exported to the United States, and the recent liberalization of the energy sector decided upon by Mexico, simply because they are shipped from Mexico.

## **Make it better?**

What is not entirely clear at this early stage in the process is the spirit animating the American negotiators. As a presidential candidate, Donald Trump argued that NAFTA is a horrible arrangement that hurt the U.S. economy and workers, a key item within a long list of fatally flawed trade agreements.

So here is the question. Is the goal here to improve NAFTA or to try to kill it? We shall soon find out.

## **Key issues**

Among the many issues that will be addressed by the U.S., Mexican and Canadian negotiators, "rules of origin", "dispute resolution" and "government procurement" stand out.

## **Rules of origin**

In order to qualify for the NAFTA free trade preference, (this means no customs duties within the free trade area), goods

coming into the United States –say from Mexico– must qualify as “made in Mexico”. For example, they cannot be sneakers or T-shirts made in China, exported to Mexico and then re-exported tariff free to the U.S.A., pretending that they are made in Mexico.

However, in this global economy sustained by global supply chains, how does one establish clear rules aimed at determining the origin of complex products? Think for a moment of automobiles assembled in Mexico. Almost by definition they contain many foreign made parts –parts not originating from other NAFTA countries.

Well, here is the question. What is the limit of foreign (non NAFTA) made components (in terms of value of the components, and in terms of overall percentage of parts) beyond which the car assembled in Mexico no longer qualifies as “originating in Mexico” and therefore not qualifying for the NAFTA preference?

### **How strict?**

How high do you set the bar? Is a car with 30% non NAFTA components still qualifying for tariff-free NAFTA status? Or can the NAFTA negotiators be more lenient and set the bar at 40%? This is a big deal.

More or less stringent rules of origin will affect established trade relations with a global web of suppliers. No wonder the Japanese are following the NAFTA renegotiation issue very closely. The Japanese brands assemble cars in Mexico. Ostensibly those cars are “made in Mexico” and so they can be exported to America customs free, as they benefit from the NAFTA trade preference.

### **Components made in Japan**

But here is the thing. Everybody knows that these cars contain a large amount of components made in Japan. If adopted by the three partners, more stringent NAFTA rules of origin will

inevitably disrupt established supply chains created by the Japanese brands to export components that end up in cars that until today met the minimum NAFTA origin criteria to be considered as “made in Mexico”.

So, here is the issue that will affect the negotiations. America wants much stricter rules of origin, because it does not want what the U.S. considers to be essentially Japanese cars, disguised as “made in Mexico”, to come into the USA tariff free, (because of the NAFTA preference),

Can a compromise be reached regarding what percentage of a finished product must be made of components made in Mexico, Canada or the U.S.A. in order to give this product “NAFTA origin”?

### **Dispute resolution provisions**

The Americans also do not like the “dispute resolution” mechanism included in the original NAFTA Treaty. Many in the U.S. look at it as a binding arbitration process which amounts to an infringement of US sovereignty. Americans do not like to be bound by a process whereby non-U.S. judicial bodies decide the outcome of trade disputes. The other two NAFTA countries would like to preserve it this dispute resolution mechanism. Is compromise possible?

### **Public procurement**

Public procurement is another sticky issue. The three countries would like to have free and equal access to public procurement bids (think of government contracts which may include IT services, or infrastructure projects) put out by their NAFTA partners. Except when they do not.

Especially with President Trump pushing for an “America First” general approach on all trade and non trade issues, when it comes to public procurement, Washington wants to privilege U.S. companies through “Buy American” policies.

And this would include all or most government contracts. This is obviously against the spirit of wide open procurement with a bidding process open to all firms within NAFTA.

### **Uncertain outcome**

In the final analysis, all these are very complex and technical issues –on a good day. If the parties are willing to compromise, there is an opportunity to improve NAFTA.

But if there is a negative bias against NAFTA, it is relatively easy to tear apart this free trade area linking the 3 economies of North America.