

NAFTA Assessment Checklist – Preparing Your Organization For A Nafta Re-Negotiation

Authored by Heather Innes

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President Trump's administration appears sharply divided over what demands to make in the upcoming renegotiation of the North American Free Trade Agreement ("NAFTA"). Some within his Administration seem to favour limited tweaks that would open markets further, while others are pushing for a total overhaul to support a new more protectionist era of "America First" economic nationalism.

Although US NAFTA negotiating priorities remain unclear, we can expect changes in the way that business is conducted within North America and these changes could significantly impact the success of your business and your bottom line. With the US process now formally underway and negotiations expected to begin in August, the Canadian Government is now seeking the views of Canadians on the scope of the negotiations and modernization of NAFTA. In particular, they want to know: (i) what should be clarified or updated; (ii) what new areas should be added; (iii) which portions of the current NAFTA have been most beneficial to Canadian exporters; and (iv) any views Canadians may have on requests for changes or additions that may be made by either the US or Mexico.

So, what do you need to do to best position your business for the coming changes? Consider the following steps as a guideline for developing your position and identifying the steps that you need to take to prepare for changes that could come into play as early as mid to late 2018 or early 2019:

1/ Assess the NAFTA Benefits Currently Enjoyed by your Organization:

i/ **What do you import from NAFTA Countries:** Work with your Customs team/ Broker to fully understand the products and services that you import and for which NAFTA preferential tariffs apply. This represents your current cost baseline that could change if there are changes to the definition of what qualifies for duty preferences (i.e., rules of origin).

ii/ **What do you export to NAFTA Countries:** As important as it is to understand how your current costing structure could be impacted by changes to import duty preferences, understanding how the costing structure of your customers could change and how your potential market could change, is equally important. Take stock of the inputs, services and finished goods you currently export or will export to one of the NAFTA countries. Properly identify the correct Harmonized Tariff Schedule ("HTS") codes (i.e., the tariff codes/items used to import the product into a NAFTA country). If the rules of origin change, so too could the needs of your customers.

iii/ **What are the current Rules of Origin for the products that you import or export:** Identifying the applicable rules of origin for goods you import or export will give you the current baseline from which changes could be negotiated. Understand which of your products and services and those that you currently import qualify and those that do not qualify. For those that do not qualify, make sure you understand why they don't qualify for duty free treatment. NAFTA's renegotiation may create an opportunity to change the rules to enhance your current access to preferential duty treatment for inputs,

services and market opportunities.

iv/ **NAFTA preferential import duties vs MFN import duties (WTO bound tariff rates):** To fully appreciate the costing impact that a re-negotiated NAFTA may have on your organization it is also important to identify the the Most-Favoured Nation (MFN) duty rate for all products that could be affected. If the renegotiation results in rules of origin that you cannot meet then the duties payable on imports by you or your customers will go up to the MFN rates.

2/ Identify your sourcing and export options: Changes to the Rules of Origin could impact the cost of important inputs or services upon which you rely. They could also make your exports more expensive to customers within NAFTA if your products/services no longer qualify for duty free treatment.

i/ If you require more North American content, or more US specific content, are there providers from which you could source your organization's needs to increase your North American and/or US content? Often re-sourcing activities cannot be undertaken overnight, so now is the time to identify and assess your options.

ii/ Additionally, consider suppliers from other countries with which your country has a trade agreement. You should determine whether other tariff preferences may be available and the impact on your acquisition costs of raw materials and other inputs. Review the possibility and/or convenience of replacing them with those currently imported under NAFTA.

iii/ Analyze whether the finished products manufactured by your company comply with the rules of origin provided under other Free Trade Agreements signed by Mexico, USA or Canada. In other words, explore the possibility of exporting goods to other non-NAFTA countries (South America, Europe, Asia).

3/ What about your other stakeholders – How will they be affected and what are their priorities?: If your organization is supported by unionized workers, it is important to understand their NAFTA re-negotiation interests and priorities. It will be important as well to understand the priorities of your key suppliers and service providers. If you are part of a North American or global organization, coordination with your counterparts in the other NAFTA countries is key.

4/ Where does NAFTA need to catch up to your business reality – Re-negotiation Opportunities:

i/ **Harmonization of regulations:** Safety, marking and other regulations differ in each of the NAFTA countries creating a complex and costly maze of regulations with which organizations must comply. Efforts to build “North American” products and services could be enhanced and less costly if certain of these regulations were harmonized as a NAFTA requirement.

ii/ **Should certain protectionist programs be addressed/removed/limited?** Does your organization face any non-tariff barriers, technical barriers to trade, sanitary or phytosanitary measures or other protectionist policies that limit your ability to source from or sell into one of the NAFTA markets (e.g. agricultural supply management programs)?

iii/ Counterfeit Goods: Is your business plagued by illegally imported counterfeit goods? If so, you may wish to identify as a priority, the enhancement and better enforcement of current laws intended to prevent the import and movement of counterfeit goods within North America.

iv/ Immigration needs: NAFTA allows certain individuals with specialized skills or professions to obtain permits to work in NAFTA countries. Do you feel that your needs for intracompany transfers, new hires or the movement of service providers, are adequately met? Would operational mutual recognition for NAFTA professionals be beneficial to your organization?

v/ E-Commerce: NAFTA was negotiated and implemented in the early 90's before e-commerce played a significant role in international commerce. What changes would you like to see to better facilitate your e-commerce opportunities or needs?

vi/ Customs Facilitation: Would your organization benefit from improved customs administration at the border?

vii/ Currency Manipulation restrictions: Certain industries may feel that including currency manipulation restrictions in NAFTA will create an important precedent for the negotiation of other trade agreements. Does currency manipulation impact your organization?

viii/ Trade Remedy laws: Is your business impacted by anti-dumping or countervailing duties applied by one of the other NAFTA countries and if so, were you satisfied with the process used to assess the dumping or subsidy and the resulting duties? If there was a special safeguard rule that permitted one country to impose temporary safeguard duties on a product if that country experienced a surge of imports of that product (thereby adding incremental cost to your exports), how would that affect your export business to that country?

ix/ Antitrust/Economic competition: Is your company able to identify anti-competitive practices/behaviours of your competition? NAFTA re-negotiation may include provisions to address these practices. Is this important to your organization?

x/ Government Procurement: Has your company participated in public/international bids under NAFTA? Is it your experience that these procedures result in fair and transparent competitive conditions? What could be improved?

xi/ Investment: NAFTA has promoted and protected investment and created a favorable climate for doing business among the 3 countries. Do you feel that your investments in the other NAFTA countries have been adequately protected?

5/ **What about your competitors?** Whenever a free trade agreement is negotiated, you have an opportunity to gain a competitive edge. If you have a solid understanding of your priorities, the impact on your organization, your options, and those of your competitors, you can better position your organization and your business sector when making representations to the Governments' negotiating teams.

6/. **Don't Wait For the Changes - Be part of and Influence the Change Process:** In our first NAFTA Update we explained the timing for possible negotiations. In May, President Trump delivered his notice of intent to renegotiate to the US Congress. Now, there will be a 90 day consultation period in the US before a formal notice to start negotiations will be delivered to each of Mexico and Canada. The Mexican Government previously initiated consultations and the Canadian Government has now formally requested input from Canadians, with submissions due by July 18, 2017. NAFTA negotiations could start as early as this August. There is some suggestion that the negotiations will move quickly with a conclusion date in mid 2018 prior to the upcoming Mexican elections. Now is the time for businesses to make their voices heard by:

- Reaching out to business/sector associations which, in turn, can reach out to the Governments
- Encourage your business association to coordinate, as much as possible, with other associations on common issues.
- Coordinate with associations in the other two countries where you have common positions
- Arrange meetings with your local, provincial/state and federal government representatives to ensure that your interests are heard and represented.

All interested parties may submit their views to Global Affairs Canada by July 18, 2017.

This article was prepared by Heather Innes (Counsel, LexSage Professional Corporation) with input from Luis Aguilar (Aguilar & Loera, Mexico) and Danniell Cannistra (Crowell & Moring, U.S.).

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.



Heather D. Innes
heather@lexsage.com
Mobile: (647-449-7807)

The Gooderham "Flatiron" Building
49 Wellington Street East, Suite 501
Toronto, Ontario M5E 1C9

Phone: 416-307-4168/416-760-8999
Main Office: 647-290-4249
Fax: 416-760-899

www.lexsage.com