

The North American Free Trade Agreement: Action plan against uncertainty

We face uncertain times over the recent election of Donald Trump as President of the United States of America (“USA”) and the possible renovation, modification or withdrawal from the North American Free Trade Agreement (“NAFTA”). In this context, we consider that it is possible to carry out certain actions to mitigate and prevent the risks and adverse effects on funds and companies in Mexico in case the ecosystem that the Treaty has generated for 20 years is modified.

Measures announced by Donald Trump

We have identified the following measures announced by Mr. Trump that, if adopted, would have a major impact in the Mexico-US economic and commercial relationship:¹

1. The renegotiation of or withdrawal from NAFTA.²
2. The withdrawal from the Trans-Pacific Partnership Agreement.
3. The introduction of the End of the Offshoring Act, which would seek to establish a 35% import tax in order to discourage American companies from laying off workers to establish in another country.
4. Identifying international trade related abuses to use all the available tools under American and International law to stop them.
5. The deportation of more than 2 million illegal criminals from USA, and the cancellation of visas to countries that refuse to receive them back.
6. Investigation of abuses in the visa programs.

Powers of the President of the United States of America

In accordance with NAFTA, the US or any Party of the Treaty has the ability to withdraw from it by notifying the other Parties of the treaty with at least a 6 months advance notice.³

There seems to be consensus that the President of the USA can do it without Congress’ authorization. Nevertheless, it is predictable that in case the President does so, there would be numerous disputes questioning such power.

There are practically no judicial decisions in this matter, since the last time the Executive of US withdrew from a trade agreement was in 1866.

Action Plan

In the context previously described, it is important for companies to be prepared to prevent or mitigate the effects of a modification of the NAFTA ecosystem, as well as the possible adoption by the US of unilateral measures in other matters.

¹ (i) 7 point plan to Rebuild the American Economy by Fighting for Free Trade, speech by Donald Trump on June 28, 2016, (ii) Donald Trump Contract with the American Voter - 100-day action plan, October 22, 2016, (iii) Trump’s Transition Memo- for discussion purposes, filtered by CNN on November 15, 2016, (iv) A Message from President-Elect Donald J. Trump, published on November 21, 2016, (v) Donald Trump’s tweets published on Twitter on several dates, (vi) Speech by Donald Trump in Carrier’s industrial plant on December 1, 2016 (vi) interview of Mike Pence on This Week show by ABC.

² The Vice-President-Elect Mike Pence linked the payment of the wall with the renegotiation of NAFTA, in the interview granted to This Week show by ABC, on December 4, 2016.

³ Article 2205 of NAFTA.



In this regard, it is recommendable to perform a legal and economic analysis of the implications of the foregoing, and to determine an action plan that responds to the needs of the investors and decision makers of the company and that identifies the negotiations to be carried out before different relevant actors.

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