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Briefing, analysis, opinion and insight of legal affairs in Mexico Digital publication by ABOGADOS SIERRA

January 15, 2017 year 06 | No. 02

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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”

Donald Trump and the future of the North American Free Trade Agreement.

by Carlos Sierra.

2017 presents far too many uncertainties for the future of Mexico's economic and political relations with the United States. The position stated by president elect Donald Trump has not been met with a strong equivalent response from the government of Mexico. The ambivalence and passive attitude of the Mexican government is embarrassing in front of the reiterated set of measures that Donald Trump has announced. Naively, the Mexican government as well as many analysis and political insiders remain hopeful that Mr. Trump will moderate his tone, that in real life his threats will not materialize, that he was only using such rhetoric to gain votes, but that he will really not mean what he has been saying he would do.

False. Donald Trump will be only five days from assuming as President of the United States when this article is published, and not only has he reiterated the specific measures that he will adopt which adversely will impact Mexico, but has put words to action with specific results. The withdrawal by Ford Motor Company of an announced US$1.6 billion investment in the state of San Luis Potosi, will have a profound impact in the economy of this region. Not only the already being constructed plant was overnight abandoned causing hundreds of Mexican jobs to be lost. The investment of several US and Mexican companies will be lost as well, along with the jobs related thereto, as they were preparing to supply such manufacturing facility. Words have been turned to reality. What has the Mexican government done about this: Nothing. Is it prepared for what is coming: It is not.

> *"The Mexican government should be warning the U.S. and preparing to implement similar measures against US products and to meet any negative effect caused against the Mexican economy or population with equivalent steps".*

With zero credibility in hand, particularly after the brutal increase in the price of fuel with which Mexicans welcomed the new year, the administration of President Peña is completely lost in the mayhem of current events. It has not announced any measures and it is not ready to face the challenges ahead in the agenda that Mr. Trump is preparing against free trade, immigration and other issues.

The impact that coming events will have in the Mexican economy will be disastrous. No analysis has even been made by the Mexican government of how much damage this will cause. We only need to brace for what is coming.

Worst of all will be the impact that any renegotiation or potential withdrawal by the US from NAFTA[1] will have. The announcement made by Ford is just a snapshot of what this could mean for Mexico. The impact that this will have will expand beyond Mexico's borders and will have tremendous consequences also in the United States and Canada as it affects the complex production chains of North American products that have been developed for the past two decades. How profound this impact will be is yet unknown but it has the potential of derailing Mexico's economic and social stability. This is that serious.

The Mexican government should be warning the U.S. and preparing to implement similar measures against US products and to meet any negative effect caused against the Mexican economy or population with equivalent steps. In accordance with CNN, a news broadcaster, the imposition of tariffs against Mexican imports, which Mr. Trump could impose without Congressional approval under the NAFTA implementation law, could hurt U.S. companies such as General Motors, IBM and Coca Cola, which manufacture in Mexico and ship products back to the U.S. These manufactured products which include cars, auto parts, flat-screen televisions, telephones, computers and refrigerators, would suffer price increases in the U.S. as result of said tariffs. This is not minor considering that the U.S. imported US$259 billion in manufactured products from Mexico in 2015. If Mexico should respond with tariffs also imposed on the importation of U.S. products,

1.- North American Free Trade Agreement of 1994.

these tariffs would also hurt U.S. companies considering that Mexico purchased US$214 billion of U.S. manufactured products in 2015. Mexico is the second largest market for U.S. exported goods.[2]

The United States has not withdrawn from a trade agreement since 1866. Denouncing the NAFTA will undoubtedly result in U.S. importers suing the U.S. government. In summary, withdrawing from the NAFTA will create immense problems for U.S. businesses, will lead to higher prices for U.S. consumers and will not necessary return any meaningful number of jobs back to the U.S.[3]

A lot will be lost for all parties, yes, but Mexico cannot just sit and wait in the hope that nothing will happen or that Mr Trump will be merciful at the end. The Mexican government should be gathering the Mexican society around this common purpose.

> *"After all Donald Trump will not be president forever. Common sense and compliance with the rule of law will eventually return to the prosperous relationship between Mexico and the United States".*

No intent is being made to contest the right of the next President of the U.S. to defend U.S. jobs and to increase the prosperity of his nation. Painting friendly countries and economies as enemies however, inciting racism and insulting the dignity of people should not be tolerated or responded passively. So much has been said about this. So little is being done.

During a campaign speech in 2016, Mr. Trump outlined his trade policy in seven steps:

1. To withdraw the U.S. from the Trans Pacific Partnership.[4]
2. To appoint trade negotiators and to instruct the U.S. Secretary of Commerce to identify current violations against trade agreements by other states.
3. To direct U.S. agencies to use every legal tool to end "abuses".
4. To renegotiate the NAFTA and in absence of such renegotiation to withdraw the U.S. from the treaty under the terms of Article 2205.[5]
5. To label China as a currency manipulator.
6. To impose sanctions against China.
7. To use presidential powers to impose tariffs under Sections 201 and 301 of the Trade Act of 1974,[6] and under Section 232 of the Trade Expansion Act of 1962.[7]

2.- http://money.cnn.com/2016/07/06/news/economy/trump-nafta/
3.- Idem.
4.- Trans Pacific Partnership Agreement, signed February 4, 2016. Not yet in force as it has only been ratified by Japan.
5.- "Article 2205: Withdrawal, A Party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other Parties. If a Party withdraws, the Agreement shall remain in force for the remaining Parties."
6.- The Trade Act of 1974 created fast track authority for the President of the United States to negotiate trade agreements that the U.S. Congress can approve or disapprove but not amend. Section 201 permits the International Trade Commission to investigate claims made by companies or workers alleging injury or threat resultant from growing imports. The ITC should conclude investigation of such claims within 6 months and impose restrictive measures if applicable. Section 301 permits to eliminate foreign trade practices that affect U.S. trade and investment in goods and services. The President of the U.S. has the capacity to determine whether such practices are unjustifiable, unreasonable, or discriminatory and whether these restrict U.S. Commerce. The President has capacity to take all appropriate and feasible actions to secure the elimination of the practice.
7.- Investigations under Section 232 of the Trade Expansion Act of 1962 are conducted in respect to the effects of imports on U.S. national security. These investigations are typically initiated at the request of industry. A report of these investigations including findings and recommendations is submitted to the President of the U.S. within 270 days of commencement of the investigation. If the investigation concludes that imports could impact U.S. national security, the President would determine within 90 days whether imports would be adjusted under his Section 232 statutory authority.

A lot of work will need to be done to deal with the consequences of a renegotiation of NAFTA. The pressure applied against Ford could be said to be already a violation of NAFTA's terms. The three member states of NAFTA are obliged not to apply "measures" that the other states shall consider to violate the rights of the other states that are contained in the treaty.

Chapter 18 of the treaty contains two sub chapters dedicated to the solution of controversies between state parties and it outlines the institutions and proceedings that are in place to resolve such controversies. Under Article 1803 each state party must notify the other when any measure is adopted that can affect the applicability of the treaty. This notice shall be explained and shall outline the potential effects of such measure as far as these can be predicted.[8]

Chapter 19 [9] outlines the solution of controversies arising when one of the states shall attempt to approve laws in relation to dumping, or compensatory tariffs that shall be contrary to the treaty or contrary to the GATT.[10]

The institutions that should deal with the surveillance, compliance and development of the NAFTA are outlined in Chapter 20 and include the Free Trade Commission. Chapter 20 also establishes the essential structure of dispute settlement[11] between the three member states as result of a lack of consensus in respect to the form in which a controversy shall be resolved. The mechanism to appoint a panel to resolve controversies is stated herein and, in principle, this would be the form in which any unilaterally imposed measures by one of the member states should be resolved and, if necessary, how could retaliatory measures could be established.

In accordance with Chapter 20 of the NAFTA, before the adversarial panel proceedings outlined therein are invoked, the treaty requires the parties to engage in formal consultations and alternative dispute resolutions contemplated by the Free Trade Commission. This commission can appoint experts, technical advisers and create working groups; use conciliation, mediation or other dispute resolution mechanisms as well as make recommendations to the parties before resorting to a panel proceeding. The panel proceedings shall initiate when consultation and alternative dispute resolution to resolve any controversies between the governments of the member states shall have failed.[12]

The dispute resolution mechanism of Chapter 20 however, is not mandated to deal with all trade related disputes.[13] It is then to be seen whether this can be the form in which measures imposed by the U.S. could be dealt with if they shall be imposed before any negotiation between Mexico, the United States and Canada could be reached. Considering the statements made by Mr. Trump, it appears that the re-negotiation of the NAFTA will be attempted under an out-of-the box approach and not within the parameters already established by the treaty.

Mexico should be prepared to use all legal tools available under the treaty to contest any measures imposed by the United States. Absent of a total withdrawal from the NAFTA by the United States, which could have disastrous consequences for the United States itself, Mexico and Canada should fight to resolve the ensuing dispute with the United States within the confines of the mechanisms contemplated in the treaty and established by the World Trade Organization[14]. Canada and Mexico should not permit the United States to go rogue imposing measures that violate the NAFTA without vigorously exercising all available mechanisms of defence. Sanctions, retaliation and legal precedent should result of from the exercise of such remedies. These precedents will be relevant for the future establishment of the commercial relationship between the three countries and of how any violation of its obligations by the United States should be interpreted in the future.

After all Donald Trump will not be president forever. Common sense and compliance with the rule of law will eventually return to the prosperous relationship between Mexico and the United States.

8.- http://www.sice.oas.org/trade/NAFTA/chap-18.asp
9.- http://www.sice.oas.org/trade/NAFTA/chap-191.asp
10.- General Agreement on Tariffs and Trade of 1947.
11.- MJ. Treblicock and R. Howse, The Regulation of International Trade, Psychology Press, 3rd Edition 2005, page 149.
12.- R.G. Dearden, Trade Disputes and Settlement Mechanisms under the Canada-U.S. Free Trade Agreement, contained in the book edited by R.G. Lipsey and P. Meller, Western Hemisphere Trade Integration: A Canadian-Latin American Dialogue, Macmillan Press, Ltd., 1997, page 224.
13.- Idem.
14.- Founded on January 1, 1995 to replace the GATT of 1947.

Venezuela's crazy currency swap looks like alchemy, not economics.

President Nicolás Maduro has created a huge demand for the country's long-slumping national currency, the bolívar. After months of mass-printing bolívares to keep his sinking government afloat, Maduro went on television last Sunday night and decreed the country's largest-denomination bank note, the 100, would cease to be legal tender within 72 hours. That set off a scramble to find smaller bills. The bolívar had regained nearly 40 percent of its black market exchange value against the U.S. dollar by Friday afternoon, trading at 2,500 to 1. The 100-bolivar notes that the government has essentially banned amount to nearly 80 percent of the total currency in circulation, said Venezuelan economist Francisco Rodriguez, a former Bank of America analyst how with the New York-based investment firm Torino Capital.
www.washingtonpost.com 17/12/2016.

IMF backs chief Christine Lagarde despite guilty verdict over 'negligence'.

Christine Lagarde looked to be safe in her role as the International Monetary Fund's managing director on Monday night after its board gave her its backing, just hours after she was convicted of "negligence" over a huge payout to a business tycoon while she was French finance minister. France's Court of Justice of the Republic, a special tribunal for ministers, earlier chose not to punish Mrs Lagarde or give her a criminal record. She had faced a one-year term and a €15,000 (£13,000) fine, threatening to derail her career. Proceedings centred on Ms Lagarde's 2007 decision to allow a dispute over flamboyant magnate Bernard Tapie's sale of the Adidas sports brand to Credit Lyonnais bank to be resolved by a rarely-used private arbitration panel, instead of through the courts. *www.telegraph.co.uk 20/12/2016*.

Brexit - get ready for a longer process.

The government has given the strongest signal yet that the Brexit process could take a lot longer than the two years needed for the official Article 50 exit process to be completed. Rather, Britain and the EU will still have a close relationship, with many EU rules remaining in place. They will slowly be unravelled over subsequent years as Brexit is made a reality. The financial services sector and other large UK businesses fear that the substantial amount of work needed to reformulate the relationship with the rest of the EU is simply not possible in two years. *www.bbc.com 26/12/2016*.

The White House is examining various ways to punish Russian hackers.

With the clock ticking, the White House is working on adapting the authority to punish the Russians, according to U.S. officials. President Obama last week pledged there would be a response to Moscow's interference in the U.S. elections. Obama issued the executive order in April 2015, creating the sanctions tool as a way to hold accountable people who harm computer systems related to critical functions such as electricity generation or transportation or who gain a competitive advantage through cybertheft of commercial secrets.The order allows the government to freeze the assets in the United States of people overseas who have engaged in cyber acts that have threatened U.S. national security or financial stability. The sanctions would also block commercial transactions with the designated individuals and bar their entry into the country. *www.washingtonpost.com 27/12/2016*.

In this month extract was prepared by Miguel Ruelas, Carla Espinosa, Luis Salas, Juan R Madero, Diana Aguilera, Selma Gonzalez.

Argentina rakes in cash from new tax law.

Argentina has already collected $5.2 billion in fees related to registering the previously undisclosed assets. Argentina could really use that money. It's in a recession as President Mauricio Macri tries to turn around South America's second biggest economy after 12 years of populist rule left the nation's finances in bad shape. Prat-Gay was brought in a year ago to clean up the mess. Prat-Gay's team crafted the tax amnesty bill. He also lifted former government currency controls, ended a 15-year battle with U.S. hedge funds and brought Argentina back to international bond markets for the first time since 2001. *www.money.cnn.com 28/12/2016.*

Russia announces ceasefire in Syria from midnight.

Russian President Vladimir Putin announced a ceasefire between Syrian opposition groups and the Syrian government starting at midnight on Thursday.The parties were also prepared to start peace talks, Putin said, after Moscow, Iran and Turkey expressed readiness to broker a deal to settle the nearly six-year-old Syrian war. It was the third nationwide ceasefire agreed in Syria this year. The previous two, negotiated by Washington and Moscow, collapsed within weeks as warring sides accused each other of violations. The current deal does not involve the United States or United Nations.
www.uk.reuters.com 29/12/2016.

Mexico Gasoline Prices to Rise between 14-20% in January 2017.

The Mexican government announced on Tuesday that gasoline prices will increase between 14-20 percent in January 2017, an increase forecast by the Pemex state oil company, and before the liberalizing of prices in the sector begins next March. According to the Mexican Secretariat of Finance and Public Credit (SHCP), these new price ceilings represent increases for Magna and Premium gasolines and diesel fuel of 14.2 percent, 20.1 percent and 16.5 percent, respectively, compared with the maximum prices seen in December 2016. On Jan. 1, 2018, the entire country will have deregulated prices on gasoline, as the market shifts from having a single supplier, Pemex, to a system of multiple competing companies providing fuel to the whole country, as part of the energy reform introduced by Peña Nieto during his term in office (2012-2018). *www.laht.com 01/01/17.*

Ford Motors cancels $1.6bn Mexico plant.

Ford has said it will cancel a $1.6bn plant it planned to build in Mexico and instead extend operations at its factory in Michigan. Ford boss Mark Fields said the decision was partly due to falling sales of small cars and partly a "vote of confidence" in Donald Trump's policies. The planned $1.6bn plant in Mexico was to be built in San Luis Potosi, but Ford said it would now invest some of that sum in Flat Rock, creating 700 jobs building a range of electric cars. Mexico's economy ministry said it regretted Ford's decision, adding that it had assurances that the US car firm would pay the state of San Luis Potosi for any costs incurred from the cancellation. *www.bbc.com 03/01/2017.*

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