

## North America International Business in the 21st Century: Alternative Legal Strategy — Mexico Case

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**Abstract:** In the last 15 years, NAFTA has been one of the legal instruments that has driven the creation and consolidation of international business (IB) in the North American region around various productive sectors of goods and services, which has also led to the growth of supply and value and chains in this region. The current international business environment recognizes the need to incorporate new issues and actions that seek to continue or deepen the interdependence of economies within a region to improve and maintain their economic and social development. This approach identifies international trade policy as the main way — through regional international trade agreements — to achieve these objectives but it is not the only one, there are governmental actions around the negotiation, assimilation and application of national legal frameworks that can be as or more efficient to build an efficient and secure international business environment for the North American region and other regions of the world.

**Key words:** international business; North America; NAFTA; negotiation; assimilation; application

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### 1. Introduction

In the last 15 years, NAFTA has been the main legal instrument that has driven the creation and consolidation of international business in the North American region around various productive sectors of goods and services, which has also fostered growth of supply and value chains in this region. At this moment at the international level, it is recognized the need to incorporate new topics and actions that will achieve this path or even deepen the interdependence of economies within a region to improve and maintain economic and social development of it. For some experts, the North American region needs to deepen its process of economic integration through transport networks, expansion of single-window programs in the customs, improve the functioning of supply and value chains, all in order to promote companies of the three countries in the region, so they can compete in the global economy nationally and regionally.

The role of Mexico in the growth and consolidation of the North American region, as one of her main agents of international trade, requires the construction of a long-term national strategy that takes into account the technological future as the digitalization of systems, automation and the fusion of technologies, actions that will impact Mexico and the region sooner or later, will have repercussions in various areas such as employment —

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advantages such as cheap labor, development and innovation, processes of production, rendering of services, everything that has to do with environmental care, such as the circular and non-linear economy approach, where each product has multiple cycles of use and production — reduce, reuse and recycle, will bring a new business scheme where the productivity and competitiveness of the economies will continue to be the main promoters of sustained and sustainable economic development of the countries in the world (CEEG1, 2017)<sup>1</sup>.

The agents of international trade, like state-government, companies and consumers, have a great challenge in this drastic change in trade relations that is inherited in the context of regional and global insecurity, the evolution of commercial development among the countries of the NAFTA region, has been directed towards the creation of supply and value chains that are covenanted by contracts, whose conditions could vary depending on whether NAFTA remains in force or not, the reality is that the preferential scheme that has been constituted by the treaty is what has allowed these chains to develop and grow, although greater expansion can still be obtained if the companies are able to increase in quantity, quality and productivity at the regional level.

In this work, we will analyze the international business (IB) model prevailing in North America under the context of NAFTA, specifically the MEXICO case; with the objective of proposing an alternative legal strategy for strengthen the IB in Mexico and in the region. Basing us in the approach that international trade policy considers international trade regional agreements as the best legal instrument to develop the intra-regional trade in North America, which we judge as a limited vision of international business. Our hypothesis consists in analyzing if there are alternative ways around a series of governmental actions like negotiation, assimilation and application of the national legal framework that can be as or more effective than international trade agreements to build an effective and secure international business environment for the North America region?

In the first section we study the *International business under the NAFTA*, where we will make a brief conceptual tour of IB, its characteristics and objectives, and how is working under NAFTA.

In a second section, *Present and future of international business in the North American region*, we focus on studying international business in the region as they have been developed, mainly in the context of regional supply and value chains, as well as, the way of negotiation and content of the necessary conditions to do business in the region, with an international trade agreement or not.

Finally, in the third section, *Alternative legal strategy: negotiate, assimilate and apply the Mexican legal framework for the development of international business in North America*, we analyze a legal strategy that consists of governmental actions aimed at negotiation, assimilation and application of a national legal framework that grants the conditions to do IB in the North America region efficiently and effectively, based on the principles of equality, transparency, anticorruption, the rule of law, deregulation, alternative dispute resolution and regional integration.

## 2. International Business Under NAFTA

NAFTA is the second largest regional trade bloc in relation to the value of exports (OMC, 2011) in the world, the export/import sectors of the three countries are basically the same, so that the supply and value chains are deeply related, that is to say, that American and Canadian products have a significant percentage of Mexican

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<sup>1</sup> Executive Committee of Global Companies in Mexico, made up of companies from the aerospace, agribusiness, food and beverages, insurance, automotive and auto parts, retail, consulting, education, electrical, electronic, energy, logistics and infrastructure, machinery and equipment sectors. materials for construction, multisectoral, products of personal care, chemical and pharmaceutical, financial services, iron and steel and ICT.

inputs and vice versa.

The reality is that intra-regional trade between Mexico, the US and Canada, since NAFTA came into force, has increased but not in the same way in the sector of goods and services, where Mexico is in deficit, being a large recipient of US and Canadian services providers both with investments in sectors of manufacturing, energy, mining and construction, situation that is not balanced for Mexican services providers, which do not find the same reciprocity in the US and Canadian markets, as we acknowledge that the large transnationals Mexican companies, such as Grupo Gruma, Bimbo, Cemex, Mexichem and others, continue to obtain their highest profit percentages in the Mexican market (Hernández, 2016).

We know that businesses in a region or within a process of economic integration, have the aforementioned conditions and even other advantages that eliminate various restrictions on regional businesses, such as the case of the NAFTA process of economic integration, which not only includes the business sector as such with a special visa and other measures, but with an agreement on foreign investment that includes its own dispute settlement mechanism (Chapter XI, Section B), which during these 22 years has allowed the realization of IB in the North American region in a favorable scheme to any person or company or government that wants to carry out commercial transactions of this type, for their personal, societal and national benefit, which in turn promoted the development of large supply and value chains throughout the region that makes them more interconnected and interdependent; in sectors as we have already mentioned, energy, automotive, aerospace, agri-food and other smaller sectors such as those of certain manufactures, for example, electronical appliances.

Knowing that IB is a component of the process of economic globalization, as an economic inter-relation between people, companies and governments who are looking for the production of goods or provision of services in the most efficient and competitive way, accessing to the markets of other countries or global markets. In this context, free trade is the theory that has allowed the deepening of business processes in the world; its principles, such as non-discrimination — Most favored nation treatment and national treatment — transparency and reciprocity contribute to the construction of international business relations, as the process of economic globalization advances creating these conditions of stability for business that ensure the connection between supplies and markets (Stephenson, 2015).

As pointed out by Daniels, Radebaugh and Sullivan (2007), “International business understood as private and governmental business transactions, purchases, investments and transports that take place between two or more countries.” Where private companies carry out these transactions for profits, and governments for profits and for political reasons, who are the main players in the expansion of markets. The economic actors involved in international business work in different business modalities, such as export and import of goods; licensing and franchises, investment portfolio, and others, must face more complicated environments than those that are dedicated only to businesses at national level.

The business at international level, requires a legal framework that regulates it, that creates the necessary conditions for companies or people that get involved in these actions, in the case of profits, labor and salary, rules of protection and prices to the consumer, national security schemes and stability for investments; those are some part of the conditions that are taken into account by IB entrepreneurs, to decide to make a commercial transaction of this type and not at national level.

We have identified, like many specialists, that the international business model prevailing in the North American region is that of supply or value chains, where there has been an increase in the flow of intermediate goods since the signing of NAFTA, and which ends up strengthening the services sector by being a key part of the

operation of the value chains, especially in transport, communications and insurance sectors, which most of the times, become the most valuable part of the chain, which implies that the final product is not always the part with the greatest value of the chain, as Stephenson (2015) clearly explains, this increases the value of each stage of the production process and the services that these entail, this means that each stage of the chain has different value, and there are countries that within those chains, although it seems that they produce more, they do not really benefit from the higher value stages of them.

Currently in the North American region there are very strong sectors, such as automotive and spare parts, energy, some manufacturing and food sectors that work through these transnational supply and value chains — Mexico, USA and Canada, which count with the conditions for its operation and even expansion, among these conditions are the tariff preferences for goods agreed in the NAFTA, as well as the conditions regarding the services and investments that are indispensable for the merchandise production chains as the providing of services. Despite this, there has not been an expansion of the same and the profits of each country are too variable to be able to affirm who are the true winners of these trade transactions.

In fact, when thinking about economic cooperation in the region, this is not entirely effective, as the increase in trade figures and the flow of foreign investment, has not managed to diminish the socio-economic asymmetries that existed before the entry into force of the NAFTA (Escamilla, Martinez and Sotomayor, 2014). Even when analyzing the commercial relationship between Canada and the United States, we clearly note that it is more interdependent, integrated and focuses on three specific areas: defense, trade and development — especially in the energy sector — but both countries have a very different relationship with Mexico, in the case of Canada, the relationship is minimal despite the fact that NAFTA has been in force for 22 years (Moreno & Pino, 2014).

Based on these data, it is necessary for Mexico to carry out a series of governmental actions to ensure that trade relations in North America are developed considering the formal differences between our countries and the potential of international business in current and new sectors, with or without NAFTA.

### **3. Present and Future of International Business in the North American Region**

As noted by Stephenson (2015), the pattern of international business has changed over the last 25 years, since companies carry out activities in any part of the world, participating in any of the productive stages, from product design, manufacture of the pieces, the assembly and its commercialization, and these divided actions give way to the production chains or global chains of value, where not only the production of goods has to do but the provision of services and investments around the first.

Globalization is the context in which these supply and value chains are developed, that are carried out as part of cooperation or economic and regional integration schemes, for example, the main regions are North America, Europe and East Asia, where regional trade agreements have been indispensable for the emergence and functioning of these chains, since they incorporate important rules that create legal certainty and stability frameworks such as rules of origin, technical barriers to trade, trade facilitation and rules for investment; all these rules promote and facilitate the actions of subcontracting and offshoring, which reduce costs in the production processes and service provision at the international level (Stephenson, 2016).

The North American region, as we pointed out in the previous section, has several supply and value chains in the sectors<sup>2</sup> of energy, automotive and other vehicles — aerospace, agri-food, and manufactures (household

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<sup>2</sup> Specifically for Mexico are the following sectors: Crude oil, refined oil and gas - energy - spare parts automotive and automotive -

appliances) — so far thanks to NAFTA, they have been able to develop and expand by the border and transport operational facilities<sup>33</sup>, since the distance between suppliers and markets is shortened in time and space, but it has not been enough to create more jobs that are better paid, nor that more companies of different sizes are involved in the chains that allow obtaining a greater percentage of the GDP in each country, it seems that the three countries compete for the same, when they really must be complementary, for example, we must consider that the level of Mexican competitiveness cannot be assimilated to the American and the Canadian.

This requires government actions aimed at creating the conditions so that small and medium-sized (SMEs) enterprises can join existing chains in the indicated sectors or start new chains in new sectors in the region, but under conditions of equality, this means more than interstate, that a country like Mexico should take action within it to achieve that parity of conditions, as this will strengthen our country to achieve a more significant internal and regional development.

In the new NAFTA negotiations, we know that these new lines of action have been incorporated to strengthen and improve the conditions for the emergence of new regional businesses that result in the growth of the economic activities of multiple sectors and sub-sectors; as in the case of services related to biotechnology, tourism, telecommunications and information technologies, for the specific case of Mexico.

These sectors, together with those already semi-consolidated by the NAFTA scheme, could mean an increase in employment and even local growth in our country, which is understood to be replicated in the US and Canada. As explained by experts, when companies enter the value chain, first generate jobs, then companies must create productive capacities, technology and work skills or specialization to generate the added value, which results in better jobs, greater competitiveness, product quality, consolidation in the markets as a supplier of goods and services, as well as the consolidation of micro-regional development and innovation centers.

When one thinks of international trade policy as the unique axis of government actions to define the type of tools necessary for the development of international business in the North American region, it is a limited vision, because possibly with local or national governmental actions or with government advice to companies around international business, can be created a valid strategy that allows the setting up of the conditions such as institutional quality, incentives for investors and companies within local economies and controlled corruption that allows the approximation of the economic agents of the region.

The development of a domestic base with regional projection, which is backed by national legal frameworks, must have flexible legal norms that facilitate international-regional business that are the result of local public-private negotiations that prioritize the creation or maintenance of supply and value chains, or the development through regional projects with budgetary allocations or multi-year governmental actions in the clearest sense of global governance, with an integrational vision.

That is why most of the current international trade negotiations consider it essential to incorporate issues not

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automotive, delivery trucks, tractors, aircraft, helicopters, trailers, rail cars, parts of aircraft, machinery — aerospace, plastic products, metal products — iron, copper, chemical products, medical instruments, household appliances, wood and paper products, corn, soybeans, wheat, malt, barley, frozen fruits, rye, concentrated milk, vegetables, tomatoes, tropical fruits, frozen vegetables, coffee, onions, cabbages, cucumbers, melons, grapes, lettuce, bananas, pepper, cut flowers, avocado, papaya, mango, lime and lemon, foliage, peanuts, nuts, processed cereals, potatoes, sorghum, tomatoes, fruit juices, rice, apples and pears, frozen fruits, jellies, jams and purées, pork and poultry, beef, whey, eggs, dairy products, horses, butter, bovine, crustaceans, fish fillets, frozen vegetables, vinegar, tobacco, pasta, cocoa — agri-foods, fabrics, glass and ceramic articles, jewelry, precious stones, leather products, footwear, paints, military weapons and ammunition; to name a few (Datosmacro.com, 2014).

<sup>3</sup> Agreement on trade facilitation of the WTO, which includes the relevant services in terms of logistics, such as cargo handling, storage, deposit, agency and auxiliary services, air, land, rail, maritime, express and courier services.

only about the elimination or reduction of tariff and non-tariff barriers that apply to goods, but rules related to services and investment; on the commercial facilitation for the creation and growth of value or supply chains — in cross-border services, on the promotion of innovation, competitiveness, development of the digital economy and the promotion and protection of intellectual property; or how to promote that the productive processes of goods and the provision of services have a focus on protecting the environment; in addition to incorporating SMEs in international trade actions, as key pieces for the creation of high-level jobs, as well as the stimulation of financing flows, since all these impact on positive consumption cycles and with it, in the sustainable national and regional economic reactivation.

They are also incorporating actions on transparency, anti-corruption rules and regional security, which are raised in multilateral and regional forums, but which must also be assimilated at the national level by the States, since their compliance, monitoring and consolidation requires national budgets.

All these challenges require governmental actions that promote and develop of international and national conditions to achieve their incorporation into the legal frameworks and administrative regulation of States, since they are indispensable for the development of economic relations, specifically, global trade relations. At the international level, commitments are always under an atmosphere of tension, since the principle of reciprocity plays an important role in international trade negotiations, that is, that no State is willing to grant a concession unless it is assured of other equal rights or similar by its partners or trading States, this is what has prevented important advances in important forums such as the WTO and the possible entry into force of an agreement such as the Trans-Pacific Partnership or any other akin trade agreement.

States must broaden the vision of their strategies, and not base all their actions on their international trade policy, as we will analyze in the next section.

#### **4. Alternative Legal Strategy: Negotiate, Assimilate, and Apply the Mexican Legal Framework for the Development of International Business in North America**

As we pointed out in the previous section, the actions of the States at the governmental level should not be limited to international trade negotiations, the internationalist approach is not the only way, nor exclusively of a regional trade agreement such as NAFTA; because when speaking of international business, the States, through their governments, need to carry out actions with the objective of creating favorable conditions for economic activities around IB from an internal point of view, where reciprocity is not always necessary to create advantages and take advantage of opportunities arising from the dynamism of regional markets; in the end, the great trade powers such as China, India, South Korea, Australia and New Zealand have not required 100% reciprocity to achieve their trade goals.

National legal frameworks have different legal standards with different objectives or purposes and these can be the great tools that drive governmental actions around the development of IB in the various regions of the world, of course, within these are the international treaties on trade or investment but they are not the only tool; in the end, international agreements require the adaptation of national legal frameworks to be complied with.

In the case of Mexico, it is necessary to identify its trade objectives from a holistic point of view, this would allow an approach that could find support in the national laws and institutions and not only in international legal instruments; in this case, we detect that an alternative legal strategy is necessary, which allows the government to build a legal framework for maintaining and strengthening IB in the North American region that currently operates

under NAFTA and that may be affected by a change in the international trade policy of the US or Canada, acts that have a direct impact not only on established businesses but also on the country's macroeconomy, which in turn affects the expectations of trust and stability necessary to maintain these businesses and create more.

This legal strategy should have as its main objective, the creation of a national legal framework that allows the consolidation of an international business scheme in North America, for achieving sustained economic development at the regional and national levels; it must include actions related to the negotiation, assimilation and application of laws in Mexico, based on the promotion of an effective Rule of Law as a prelude to an effective system of regional international business.

The negotiation actions consist mainly in the work of the *executive power* that is in charge of reviewing and evaluating the international trade policy, specially, the place of international trade agreements as main instruments or its role as a part of the creation of a national legal framework that consist in national laws that have to be modified allowing the realization of IB, in this case, it will depend on detailed, transparent and coordinated analysis in conjunction with the productive sectors of goods and the providers of services of the country, in the context of their creation, expansion, development and consolidation.

In this regard, the analysis focuses not only on labor issues, but on innovation and competitiveness, on the access of SMEs to financing, on special fiscal schemes that contribute to a transition from informality to economic formality, among others. On the subject of investments, we should think of laws that not only cares about foreign investment, but that also creates the conditions so the national and foreign investments have access to the same rights and obligations; and a flexible scheme that allows an efficient administrative regulation that improve the conditions to do business, from the creation of companies or societies, its registration, access to property and basic services, as well as reciprocal conditions with other countries with which we don't have international investment agreements, including thinking about alternative dispute resolution mechanisms that speed up the solution of problems related to the establishment, performance and consolidation of investments in the country (Macro data, 2017), and other trade issues, for example, the creation of special section in the Federal Tribunal of tax and administrative justice, which already includes the knowledge of this subject in its jurisdictional regulation.

The assimilation actions are entrusted to the *legislative power*, either through the approval of international agreements in trade, investment, and financial matters; and on the other hand, creating or modifying the necessary laws that contribute to the objectives of international trade policy, by facilitating trade and, in the case that concerns us, international business. This legislative work is not limited to the elaboration of laws, it should also be a holistic evaluation of the economic system and to the harmonization and synchronization of the laws for their effective functioning as a system by itself.

The legislative work has to go hand in hand with a real evaluation of how the operation of all the laws that have to do with the way in which IB in Mexico are made, creating the parity of conditions for both national companies and foreigners, with a regional focus, since this geographical advantage must be exploited with a micro-macro approach, that is, from the needs of local-municipal development in the case of Mexico, to its incorporation of these projects into the projects of regional development of North America. For this we require a legislative work at federal and local level, so that the laws are harmonized and there are no gaps or contradictions that hinder the creation of international business, because these are the way to create productive projects of trade of goods and services that can have a real impact at local level in the creation of employment, technification, specialization, innovation and competitiveness of local companies, and with it an increase in the standard of living of these local companies and consequently at the national level (Hernández, 2011).

It is necessary to make a revision of the local legislations, as well as the international legal framework in the matter of regional economic cooperation, possibly a proposal to develop the regions is the signing of agreements on cooperation that promote the improvement of all those conditions related to the standard of living, such as education, employment, public health, and economic development (Hernández, 2017).

The actions of application, will correspond to the *administrative and judicial justice*, in the sense, of having the necessary knowledge to be able to solve all those controversies that are presented before the national courts and that are in conditions to give answer to the administrative or judicial problems around IB, which have clear interests of the parties and national interests, to ensure that international trade policy, is one of the axes of sustained and sustainable economic development of the country.

In the field of IB, this point is essential, because it relates to the security, reliability and stability of how international business are done, developed and consolidated. In this area, we could think of special procedures of administrative or judicial justice, by people specialized in the matter, in efficient times, to achieve a timely solution and with a global vision of what this type of trade controversies implies, a sort of institutionalization of the international commercial arbitration within national institutions governed by principles such as autonomy, efficiency and procedural economy.

In this matter, new institutions had been established and evolved because of the international trade, like the Federal Tribunal of Tax and Administrative Justice that counts with specialized rooms in the solution of conflicts in international trade and intellectual property. Also, we consider that the judicial instrument of “Amparo” gives greater legal certainty. It is also feasible that when faced with a question of continuing or suspending a treaty such as NAFTA, we would have to establish in its case, the institutions that give certainty and confidence in the resolution of international business.

We know that in Mexico, various structural reforms have been carried out in the last 10 years, which are aimed at the development of programs and actions around important issues such as education, labor, the environment, corruption, and investments. All these actions are in a process of construction that is indispensable in the legal and institutional training and are necessary to create or improve the conditions for doing IB in the North American region and with the world. Therefore, it is required that these governmental actions of negotiation, assimilation and application that we exposed should be carried out from a *good governance* approach, where public policies and regulation will play an essential role for the adaptation of national, regional economic and global needs, that develop actions focused on modifying the weak environment of business and investment, as well as to reduce regional and sectoral gaps within Mexico and the North American region.

## 5. Conclusion

We recognize that regional value chains are the mechanisms that economically integrate countries, where national economic objectives become regional or global objectives, when chains incorporate productive actions in different regions of the continents, they can become really in an integrating mechanism based on efficient public laws and policies that focus on the conformation, functioning and sustainable development of them, without requiring other more complex mechanisms, in the end the commercial agreements contribute with these but do not create them, nor they control them in all their stages, so, these can have a greater effect on the economic-social development of the countries if they are focused in this way, since the level of regulation and public policy would be lowered to the true operators of commerce and development, based on national and even local laws, taking care



of its harmonization with federal, general or international norms, but without depending on them in their entirety.

In this regional context, Mexican SME's and new services sectors like biotechnology, tourism, telecommunications, and information technology, should join the supply and value chains of the North American region trade.

If NAFTA ceases to exist or its conditions change, in its renegotiation, like the imposition of taxes on imports, one option for business may be all those local contractual mechanisms implemented by natural or legal persons, in which the parts can agree favorable conditions to carry out productive and commercial economic activities that have to do with the exchange of goods and the provision of services, that is why the IB should rely on this contractual mechanisms which can allow persons to continue trading as part of a regional strategy for development, with or without trade agreements.

Mexico has been evolving in the implementation of international trade agreements, but needs to review its entire legal system to be adapted for the promotion of IB in the North American region, to create a legal framework that encourages government actions: negotiation, assimilation, and application of Law (LEGAL harmonization technique), with conditions of competitiveness that are required to facilitate the IB environment and with this achieving sustained and sustainable economic development. Therefore, it is necessary to create a legal framework that encourages government actions addressing economic and commercial problems with a macro and micro regional focus.

This regulatory framework must be effective in terms of transparency and anti-corruption actions, which promotes a more efficient operation in economic matters and encourage the participation of all sectors: public, private and social, in accordance with the provisions of Article 25 of the Constitution of Mexico, as this will help to consolidate the conditions to deepen the process of North American regional economic integration.

It is important to reaffirm that trade relations between States have reached a point, where, the law, and the legal norms are indispensable elements for its maintenance, development, and consolidation, from international treaties, national laws to public and private contracts.

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