

# Intelligence MEMOS



From: Gilles Gauthier  
To: Canada's NAFTA Negotiators  
Date: June 26, 2018  
Re: **THE NAFTA TALKS: TOWARDS A NEW PARADIGM? (PART ONE)**

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In early spring, Prime Minister Trudeau and President Trump were optimistic about an imminent conclusion of the NAFTA renegotiation. Then came the imposition of tariffs on steel and aluminum by the United States, followed a few days later by the announcement of equivalent Canadian retaliation, and then more US threats, this one targeting the automotive sector, the largest sector of bilateral trade.

These recent developments are disrupting the timelines, and most importantly are forcing a reflection on the future of NAFTA. What scenarios are emerging in the coming months? What strategies are available to Canada?

NAFTA has been an unpopular US political issue for at least a decade. Under Barack Obama, the very name of the agreement was for all intents and purposes outlawed in any of the administration's communications. During the last electoral cycle, NAFTA simply became toxic, and candidate Trump's unequivocal condemnation certainly played a significant role in the election results. In both Congress and the administration, priority has been given to measures to strengthen trade laws against imports. Among other things, there has been the "Trade Facilitation and Trade Enforcement Act 2015," which has strengthened import protection measures, and the adoption of proposals to extend Buy America policies.

Even more significant is the fact that all the major players in the current administration, at least those directly responsible for trade issues, do not believe in free trade.

In Congress, Republican leaders have more traditional and trade positions, although they have their particular demands on certain issues. On the Democratic side leaders are traditionally skeptical about all trade agreements. They will put sticks in the spokes of any agreement, or at minimum, will want to renegotiate some aspects.

Canada is stuck in a defensive position. The status quo is acceptable. We must make the minimum concessions to reach an agreement, or to prevent the president from putting his threats into action and tearing NAFTA apart.

Canada has major offensive interests, but for all intents and purposes these are impractical. For example, Canada would like to thwart the expansion of Buy America and ideally be exempt from its provisions, but simply keeping current access to US public procurement markets will be difficult.

Canada has also traditionally sought to counteract the misuse of trade remedies: particularly anti-dumping and countervailing duties. Counterbalances to these are very low given administrative discretion in investigations. However, given the views of Congress and the administration, it is impossible to envisage better rules in these areas and Canada will struggle to maintain the dispute resolution mechanism of the existing NAFTA's Chapter 19, our only shield against unilateral action.

Even concerning more modest goals, such as the mobility of professionals, there is strong opposition to the Congress to any change through trade agreements.

The United States, on the other hand, has many offensive objectives, many of which hit sensitive strands in Canada. There was a lot of talk about the rules of origin on cars, about which the American goal is clear: they want to repatriate production to the US. There is also the abolition of tariffs on supply-managed products that would result in the elimination of the entire system; strengthening intellectual property rules, including measures to block counterfeit goods that could transit through Canada, raising the "de minimis" level for duty and tax exemption on online purchases; the practices of provincial liquor boards, a five-year sunset clause, and drastic changes to dispute settlement mechanisms, including the elimination of Chapter 19.

Tomorrow, we discuss what to do.

*Gilles Gauthier is a former federal trade official, who served as economic affairs minister at the Canadian embassy in Washington, chief agriculture negotiator with the department of agriculture and four years at the Canadian mission at the WTO.*

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