

North American Oil & Natural Gas Industry Positions on NAFTA¹

About API, AMEXHI and CAPP

The American Petroleum Institute (API), Asociación Mexicana de Empresas de Hidrocarburos (AMEXHI), and Canadian Association of Petroleum Producers (CAPP) work on behalf of our international oil and gas member companies to enhance the opportunities for oil and natural gas production and manufacturing and improve the competitiveness of the industry in North America and in the worldwide economy. The 750+ member companies of AMEXHI, CAPP and API support free trade and the North American Free Trade Agreement (NAFTA) that removes barriers, promotes market-oriented policies and creates opportunities for commercial growth and job creation.

Introduction – NAFTA is a Success Story for Energy in North America

The North American energy industry has undergone dramatic changes since NAFTA entered into force 23 years ago. The US has experienced a surge in resource production, making it the world's leading producer of oil and natural gas. Mexico has opened its energy sector to foreign and domestic private investment for the first time in over seventy-five years. In Canada, investment and innovation in oil sands, liquefied natural gas (LNG) and energy infrastructure projects has led that country to become a top five producer of energy. To preserve these achievements and further advance the competitiveness of the North American energy industry, we urge NAFTA negotiators to keep the following joint principles in mind.

NAFTA Works. NAFTA is a success story for energy integration in Mexico, the United States and Canada. Since its inception in 1994, NAFTA has facilitated the greater flow of oil, natural gas and derived products to and from all three countries. As a result, today the US, Canada and Mexico together are a unique global energy center. As soon as 2020, North America will achieve energy self-sufficiency, when measured by production of liquid fuels exceeding consumption of the same across Mexico, the US and Canada. The integrated and interdependent North American market that NAFTA helped create makes energy more affordable in Mexico, the US and Canada and reduces all three countries' reliance on energy supply from other regions.

Do No Harm. Renegotiating NAFTA creates risks. NAFTA is over 23 years old and, while there is an opportunity to update the agreement in some areas, any changes that disrupt energy trade across our North American borders, reduces investment protection, or reverts to high tariffs and trade barriers that preceded NAFTA, could put at risk the tens of millions of jobs that depend on North American trade and interdependent energy markets.

Trilateral NAFTA. The negotiations should be viewed as a trilateral collaboration. NAFTA should enable the US, Canada and Mexico to collaborate fully in order to compete successfully in world markets.

North American Energy Industry Positions on Specific Areas

Tariff Reduction & Elimination

API, AMEXHI and CAPP support the preservation of NAFTA's elimination of tariffs in the trade of crude oil and natural gas, refined products, and other goods supporting exploration, production and manufacturing (refining). NAFTA eliminated tariffs for crude oil, gasoline, motor fuel blending stock, distillate fuel oil and kerosene type jet fuel – all of which would increase without NAFTA. The associations also advocate for the elimination of tariffs of all goods used in the energy industry across oil and natural gas exploration, production and manufacturing (refining). API, AMEXHI and CAPP advocate that further NAFTA drawdowns in tariffs apply immediately rather than over long, multi-year timelines.

Liberalized Trade of all Oil, Natural Gas & Derived Products and Supply Chain Inputs

API, AMEXHI and CAPP support fully liberalized trade across Mexico, the US and Canada in crude oil, gas, liquefied natural gas (LNG) and all refined products and petrochemicals or other energy intensive manufactured goods reliant on natural gas. The associations also support fully liberalized trade of all goods used in the energy industry, which are essential to the oil and natural gas industry's integrated North America supply chains.

Market Access

API, AMEXHI and CAPP support non-discriminatory treatment (i.e., "national treatment") afforded to foreign investors in domestic markets.

Investment Protections, including Investor-State Dispute Settlement (ISDS)

API, AMEXHI and CAPP support preservation of NAFTA's provisions for strong investment protections and Investor-State Dispute Settlement (ISDS), including rules that restrict expropriation of investments and that provide for prompt, adequate and effective compensation if expropriation does occur.

Co-existence Clauses

API, AMEXHI and CAPP support co-existence clauses in NAFTA that preserve the strongest provisions, such as for investment protections and liberalized trade, among overlapping agreements between parties.

Intellectual Property Rules

API, AMEXHI and CAPP support NAFTA intellectual property rules that accord with the norms of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Rules of Origin

API, AMEXHI and CAPP support NAFTA rules of origin that are clear and that promote competitiveness. The associations support the goal for NAFTA to eliminate customs duties on “originating goods” of the NAFTA Parties. Because of the significant production of oil and natural gas and manufacturing of refined products in all three countries, API, AMEXHI and CAPP advocate for a robust regime in NAFTA for rules of origin so that the countries can further strengthen the duty-free trade of oil and natural gas across North America. The rules of origin priorities of the member companies of the three associations are:

- **Open cross-border data flows.** API, AMEXHI and CAPP support NAFTA provisions for open cross-border data flows, without any restrictions.
- **Mobility of infrastructure and personnel.** API, AMEXHI, and CAPP advocate that NAFTA include provisions that would allow for the mobility of infrastructure, such as drilling rigs and vessels, and personnel, including for emergency response, across US-Mexico borders (e.g., a “One Gulf of Mexico” policy) and US-Canada borders (e.g., in the Arctic and Atlantic Maritimes). API, AMEXHI and CAPP advocate for a NAFTA Visa Program to provide access for skilled energy professionals.
- **Certificates of Origin.** API, AMEXHI and CAPP support a NAFTA regime for certificates of origin that reflects the evolution of energy markets since NAFTA was negotiated. NAFTA has not kept pace with the development of the energy commodity marketplace where crude oil and natural gas are digitally traded in an efficient and free liquid market. The rules of origin developed under NAFTA are difficult to apply in the context of a highly liquid commodity market place with electronic bulletin board trading, multiple trades, and commingling of goods in pipeline transport. A new approach is needed for qualification and verification that offers equal protection to producers in all three countries through greater incentives for issuing certificates of origin. First, the three associations support better requirements and incentives within NAFTA for a producer and other sellers of crude oil or natural gas in Mexico, the US or Canada to provide a NAFTA certificate of origin attesting that the oil or gas has been wholly obtained or produced in the territory of Mexico, the US or Canada. Second, all three associations advocate that NAFTA require customs officials in Mexico, the US and Canada, when verifying NAFTA origin for hydrocarbons at the border, to rely on and accept general information and representations that crude oil or natural gas is originating from Mexico, the US and Canada and, therefore, qualifies for NAFTA preferential tariff treatment.

- **Diluent.** API, AMEXHI and CAPP support a product-specific rule in NAFTA for diluent (light products added to heavy crude oil or bitumen) in cross-border pipeline transportation of crude oil. Oil producers often blend bitumen and heavy crude with condensates or other light hydrocarbons to transport the oil by pipeline. When this occurs, in order for the blended crude to qualify for NAFTA status as “wholly obtained or produced” in Mexico, the US or Canada, alternative rules of origin will be necessary. API, AMEXHI and CAPP support new language for diluent rules of origin that allow for up to 40% by volume. This new language would make it easier for importers of crude in Mexico, the US and Canada to apply for NAFTA benefits on entries of hydrocarbons crossing borders between the three countries.

Duty Drawback

API, AMEXHI and CAPP advocate that NAFTA include full duty drawback provisions for Mexican, US and Canadian manufacturers to obtain a refund (or “drawback”) of duties, taxes and fees that were paid on imported goods used in that manufacturing effort. The drawback of duties, taxes and fees helps North American manufacturers (refiners) compete in the global marketplace by reducing the distribution and production costs of exports from Mexico, Canada and the US.

Trade Remedy Measures

API, AMEXHI and CAPP support trade remedy measures in NAFTA that are consistent with Article VI of GATT, which states that “dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry.”

Regulatory Cooperation & Coherence

API, AMEXHI and CAPP support NAFTA provisions that preserve regulatory autonomy – including mutual recognition of Mexican, US and Canadian regulatory regimes for oil and natural gas – and establish a regulatory cooperation process for energy.

ⁱ This document does not represent a position of Petróleos Mexicanos, nor that of its subsidiary productive enterprises (Pemex), on the negotiation of international trade treaties; it is the mandate of the Mexican Secretary of Economy to coordinate international trade negotiations according to the Mexican International Trade Law (*Ley de Comercio Exterior*) and other applicable regulations.