

Client Alert

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NAFTA Renegotiation: Status Update

The United States, Canada, and Mexico each are moving ahead with preparations for the renegotiation of the North American Free Trade Agreement (“NAFTA”), with the first round of talks to take place in Washington from August 16-20. All of the NAFTA countries appear to agree that opportunities exist—and that common ground can be found—to update NAFTA, which entered into force almost a quarter century ago. In the interim, the internet and the digital economy have taken hold, changing the way that businesses operate; China has joined the World Trade Organization (“WTO”), significantly affecting the international trading landscape; labor policies have become commonplace in trading agreements, expanding the scope of new trading agreements; and the realities of a North American region have taken root, affecting the way that companies source and manufacture their goods. This Alert aims to provide a brief overview of the approaches that Canada, Mexico, and the United States may adopt when negotiations begin next month.

I. Renegotiation Objectives Of The United States

The United States Trade Representative (“USTR”) this week published its objectives for renegotiating NAFTA. The [document](#) covers the following 24 areas: industrial goods, agricultural products, sanitary and phytosanitary measures (“SPS measures”), customs and trade facilitation, rules of origin, technical barriers to trade (“TBT measures”), good regulatory practices, services (including specific objectives for telecommunications and financial services), e-commerce, investment, intellectual property, transparency, state-owned enterprises (“SOEs”), competition policy, labor, environment, anti-corruption, trade remedies, government procurement, small and medium-sized enterprises (“SMEs”), energy, dispute settlement, general exceptions, and currency manipulation.

The negotiating objectives are designed, in part, to improve the U.S. trade balance and decreasing the U.S. deficit with NAFTA countries. Key negotiating objectives include the following:

- **Rules of origin:** The United States will seek to update and strengthen the rules of origin “to ensure that the benefits of NAFTA go to products genuinely made in the United States and North America,” while

streamlining the processes for certification and verification of the rules of origin.

- **Market access:** The United States will seek to maintain existing reciprocal duty-free access for industrial and agricultural goods, as well as aim for stricter commitments for certain U.S. import-sensitive products.
- **E-commerce:** The United States will seek to secure commitments not to impose customs duties on digital products. Further, the United States will aim to ensure that NAFTA countries do not impose data localization measures or restrictions on cross-border data flows for any digital good or service.
- **Investment:** The United States will seek to establish rules that reduce or eliminate barriers to U.S. investment in all sectors in the NAFTA countries. Notably, the investor-state dispute settlement mechanism currently under Chapter XI will be maintained.
- **SOEs:** The United States will seek several new disciplines relating to SOEs. First, it will seek to define “state-owned enterprises” on the basis of government ownership or government control through ownership interests, which somewhat departs from how the Appellate Body has defined such term in the WTO. Further, the negotiations will seek to subject the commercial activities of foreign SOEs to the jurisdiction of U.S. courts as well as to develop a fact-finding mechanism based on Annex 5 of the Subsidies and Countervailing Measures (“**SCM Agreement**”) to facilitate greater transparency in litigation involving SOEs.
- **Labor and environment:** The United States will seek to bring labor and environmental rules into the core of NAFTA. Further, as part of the objectives on environment, the negotiators will aim for provisions on illegal, unreported and unregulated (“**IUU**”) fishing, as well as for rules prohibiting harmful fisheries subsidies.
- **Trade remedies:** The United States will seek to eliminate the Chapter XIX dispute settlement mechanism, eliminate the NAFTA global safeguard exclusion, but facilitate the ability to impose measures based on third-party dumping. The United States also will seek a separate domestic industry provision addressing perishable and seasonal products in antidumping and countervailing duty cases.
- **Currency manipulation:** The United States will table proposals aimed at ensuring that NAFTA countries avoid manipulating exchange rates so as to gain an unfair trade advantage.

II. Mexico Opens Period for Comments and Proposals

The Mexican Ministry of Economy also has opened a period to submit comments and proposals in connection with NAFTA modernization. The deadline for submissions is July 26, 2017.

The Mexican government requested comments and specific proposals from all interested parties, including foreign entities or parties, who may make submissions via Economia’s official website. When submitting comments and proposals, all interested parties are required to provide the following: (1) first and last name; (2) whether the interested party is a national of Mexico or a foreign party; (3) email address; (4) topic(s) covered; and (5) a cover letter of no more than 500 words. Mexican interested parties, in addition, are required to provide their city and state of residence. Interested parties may attach comments or proposals in PDF format to their cover letter, and no word limit, format, or template applies in this respect. The process also allows interested parties to present specific text or policy proposals in connection with the areas covered.

Mexico will consider all submissions, but in contrast with the United States, the deadline for the submission of comments or proposals will not be followed by a public hearing. Even so, interested parties still may request

meetings with the Mexican negotiators, which may be arranged directly through the office of Ildefonso Guajardo, the head of Economia.

Economia has already conducted several meetings with industry associations, agricultural stakeholders, academics, and other entities since February 1 in order to gather views and data concerning the modernization of NAFTA. For example, during February and May, Economia met with the Strategic Advisory Council for International Negotiations, which is a business association composed of the main chambers of commerce and industry associations in Mexico. The following industries were represented in those meetings: automotive, auto-parts, electronics, footwear, textiles, apparel, and the food industry. Thus, it is clear that stakeholders from a wide array of industries across the NAFTA region are taking this opportunity seriously.

III. Canada Extends Public Consultation Period

The Government of Canada also solicited comments and proposals regarding NAFTA renegotiation, and this process was extended after the United States released its NAFTA renegotiation objectives. There are two main ways in which interested Canadian parties may make submissions:

1. By email to NAFTA-Consultations-ALENA@international.gc.ca, or by mail to:

NAFTA Consultations
Global Affairs Canada
Trade Negotiations — North America (TNP)
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2

2. By completing the online consultation form on the renegotiation of NAFTA.

In completing the online consultation form, interested parties are required to provide the following: (1) name, email, and postal code; (2) whether the party concerned is a Canadian company, business or non-governmental organization; (3) what should, in the view of the party concerned, be Canada's priority in the renegotiation process; (4) which elements of NAFTA are working and which need to be upgraded; (5) whether the party concerned is aware of any American or Mexican law or regulation that affects Canadians; and (6) whether in the view of the applicant there are any new issues that should be included in NAFTA.

Canada also solicited views regarding several new trade areas, including e-commerce, trade facilitation, SOEs, SMEs, transparency, anti-corruption, capacity building, and regulatory coherence.

We will continue to monitor the NAFTA negotiations and provide further updates as developments warrant.

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