

USTR Releases Specific Objectives for the Renegotiation of the North American Free Trade Agreement (NAFTA)

Article By:

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On July 17, 2017, the USTR published a summary of its specific objectives for the renegotiation of the North American Free Trade Agreement (NAFTA) as required by the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. In its July 17th notice, the USTR acknowledged that the NAFTA, since its entry into force in 1994, contributed to the linking of the continent through trade and provided new market access opportunities for American farmers and ranchers; however, the USTR also stated that the NAFTA created new problems for many American workers as a result of the increase in trade deficits and closing of U.S. factories. **U.S. companies doing business in Canada and Mexico, whether sourcing or marketing goods in those markets, should take note of these latest developments, assess how any modifications made to the NAFTA could impact their cross-border operations, and consider reaching out to members of Congress and other Government decision-makers to ensure that their interests are fully protected.**

By way of background, as we have reported previously, the USTR submitted a formal notification to Congress of the Administration's specific negotiation objectives on May 18, 2017, following Robert Lighthizer's confirmation. The USTR subsequently requested public comments from interested parties with regard to the modernization of the NAFTA and held a public hearing at the International Trade Commission. The USTR received more than 12,000 written responses and heard the testimony of more than 140 witnesses during the hearing, representing various industry sectors. The majority of comments that were submitted, as well as the testimony presented, reflected U.S. industries' support of the NAFTA because of increased U.S. exports to Mexico and Canada since 1994. They also urged that negotiations should not jeopardize existing market access gains and that the key negotiating principle should be, "Do No Harm" as suggested previously by USTR Lighthizer during his testimony before a House of Representatives Committee in June.

The USTR noted that its specific negotiation objectives issued on July 17th reflect the input received from Congressional, agency and industry consultations, public comments, and testimony given at the hearing and that it will continue these consultations and will update the objectives as the negotiations proceed. Per the USTR's specific negotiation objectives, the overall goals will be to break down barriers to American exports through the elimination of unfair subsidies, market-distorting practices by state owned enterprises, and burdensome restrictions of intellectual property. The USTR's objectives will also target the modernization of the NAFTA to reflect 21st century standards, address America's trade imbalances in North America, and ensure that the United States obtains more open,

equitable, secure, and reciprocal market access.

The specific negotiation objectives reflect many (but not all of the) items on the wish lists of various U.S. industry sectors, as reflected in the public comments and testimony provided to the USTR. Even though the USTR's list would maintain existing reciprocal duty-free market access for trade in goods (including agricultural products), there was no specific mention of the application of the "do no harm" principle for the jobs, businesses and industries that currently depend upon that trade with Canada and Mexico that was previously discussed by USTR Lighthizer. Many voices across various industry sectors urged the Administration to maintain current NAFTA benefits while at the same time modernizing and enhancing provisions of the agreement in a way that would avoid disrupting any contemplated changes to the rules of origin to avoid undermining demand for U.S. exports or other unintended consequences.

In addition, the proposal to eliminate the Chapter 19 dispute panels from the NAFTA will likely be an issue of contention for both Canada and Mexico. This issue was hotly contested during the initial negotiations of the Agreement with Canada in the 1980's, and Canada will likely push for Chapter 19 to remain in the Agreement in view of the ongoing software lumber anti-dumping dispute. Mexico's Economy Minister Ildefonso Guajardo also noted on Tuesday that the push to eliminate Chapter 19 from the Agreement, as well as NAFTA's safeguard exclusion, will be tough for the U.S. to push through.

The formal renegotiation process with Canada and Mexico could begin as early as mid-August. During the talks with the leaders of Canada and Mexico, the Administration will continue consulting with key congressional committees during the negotiations and will review public comments and the testimony given by interested parties. It is very likely that the negotiations could continue through Mexico's presidential election in July 2018. Upon concluding the formal negotiations with Canada and Mexico, the resulting agreement will ultimately be submitted to Congress for approval. Because the President currently has what is known as "Trade Promotion Authority," Congress must consider the renegotiated agreement, work with the Administration on drafting the implementing legislation, and vote without making any additional amendments to the agreement itself.

As noted above, U.S. companies doing business in Canada and Mexico should continue to stay abreast of new developments as they arise, reach out to members of Congress and other key government decision-makers, assess how proposed changes to the NAFTA may impact their products and supply chains, and ensure that their interests are considered and protected throughout this process. Polsinelli's attorneys can assist companies in all of these efforts.

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