

International Trade Alert

May 19, 2017

Ambassador Lighthizer Notifies Congress of the Administration's Intent to Enter into NAFTA Renegotiations

Yesterday morning, the Office of the United States Trade Representative (USTR) formally notified Congress that the administration intends to initiate renegotiations with Mexico and Canada on the North American Free Trade Agreement (NAFTA). The administration is required to submit the notice to ensure that any legislation required to implement an updated agreement can receive fast-track protection under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA). Under the TPA, the USTR may not enter into formal negotiations until 90 days after this notice is provided to Congress. Thus, NAFTA renegotiations can start on August 16, 2017.

Today's letter offers the administration greater flexibility in the renegotiations than the previously leaked draft letter of March 2017. Importantly, the notification also tempers the language that the administration has used to describe its negotiation plans. For example, the letter mirrors language used by pro-free trade members of Congress who recognize the importance of NAFTA to the U.S. economy while understanding the need to update the agreement to reflect modern trade efficiencies and address new trade barriers.

We expect that the NAFTA renegotiations will maintain the trilateral model of the current NAFTA and cover a variety of topics, including cybersecurity, rules of origin, Chapter 19 dispute settlement proceedings, labor and environmental standards, intellectual property rights protection, good governance (i.e., anticorruption), state-owned enterprises and agricultural issues. The recently nominated Commissioner of U.S. Customs and Border Protection (CBP), for instance, announced that he hopes to address customs cooperation issues, and he has requested that the CBP be allowed to actively participate in the negotiations. We also understand that the administration is amenable to borrowing language directly from the previously agreed-to Trans-Pacific Partnership and the Trans-Atlantic Trade and Investment Partnership agreements. Finally, we understand that there is no agreement yet on whether NAFTA renegotiation efforts would include the United States' softwood lumber trade issues with Canada. Under TPA, USTR is required to provide more details regarding its negotiating objectives at least thirty days before it starts negotiations.

The administration and the other NAFTA parties continue to signal that they hope to conclude the renegotiations by the end of this year. However, this proposed timetable is very aggressive; thus, it would not be surprising if the renegotiations were to actually continue into next year.

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