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Trump Administration Issues Draft Notice Outlining NAFTA Renegotiation Objectives

By Douglas J. Heffner and Richard P. Ferrin

The Acting U.S. Trade Representative (USTR), Stephen Vaughn has issued a letter to the chairs and ranking minority members of the Senate Finance Committee and the House Ways & Means Committee. The letter outlines the Trump Administration's objectives in upcoming negotiations to revise the North American Free Trade Agreement (NAFTA).

Under the 2015 law granting "fast track" negotiating authority to the president, USTR is required, prior to the beginning of trade negotiations, to issue letters to the Congressional committees with jurisdiction over trade issues, in order to ensure that the administration's negotiating objectives are consistent with Congressional priorities and objectives. Acting USTR Vaughn informed the House Ways & Means Committee earlier this week that the administration expected to send a final, formal notice to the relevant committees before the April 7, 2017, Congressional recess. This means that the administration and the Congressional committees have approximately one week to reach an agreement on the text of the negotiating objectives before officially sending the final version to Congress. Transmittal of a final negotiating objectives letter triggers a 90-day consultation process before negotiations can begin, under the fast track procedures.

The letter outlines negotiating objectives in the following broad areas: trade in goods, rules of origin, customs matters and enforcement cooperation, intellectual property rights, trade in services, investment, digital trade and cross-border data flows, government procurement, transparency and regulatory reform, anti-corruption, competition, state-owned and state-controlled enterprises, trade remedies, environment, labor, antidumping (AD) and countervailing duty (CVD) dispute settlement, and state-to-state dispute settlement and institutional provisions. Some areas of particular interest are highlighted below.

Regarding *trade in goods*, the draft letter establishes several negotiating objectives, including seeking to reduce or eliminate non-tariff barriers to U.S. agricultural exports, and to "level the playing field on tax treatment." The tax treatment objective appears to refer to the administration's proposal to reform the current corporate tax system with a "border adjusted" tax system as a means to counter perceived trade disadvantages vis-à-vis countries that maintain value-added tax systems.

Regarding *rules of origin*, the draft letter vaguely calls for rules of origin that ensure NAFTA "supports production and jobs in the United States" and addresses "circumvention" to make sure that preferential duty rates under NAFTA "apply only to goods eligible to receive such treatment, without creating necessary obstacles to trade." Press reports indicate that this might mean increasing the minimum NAFTA regional content required for NAFTA duty-free benefits, which would be applicable to automobiles and certain other products where the rules of origin are based in part on minimum value-added requirements.

Regarding *customs matters and enforcement cooperation*, the draft letter calls for "terms for cooperative efforts" with the other NAFTA countries regarding enforcement of trade rules, including textiles/apparel and agriculture products, and to address the United States' ability to "prevent and address" AD/CVD duty evasion and transshipment.

Regarding *government procurement*, the draft letter seeks to establish rules that require government procurement to be "conducted in a manner that is consistent with U.S. law and the administration's policy on domestic procurement preferences." Presumably this objective would address calls by some in Congress and the administration to restrict foreign access to U.S. government procurement in a renegotiated NAFTA.

Regarding *trade remedies*, the draft letter seeks a safeguard mechanism to allow a temporary revocation of tariff preferences, if increased imports from NAFTA countries are a "substantial cause" of "serious injury" (or "threat of serious injury") to the domestic industry. It also states as an objective preserving the ability of the United States to "vigorously enforce and promote its trade remedy laws – including by addressing diversionary dumping and subsidization and market access barriers that lead to dumping and overcapacity."

Regarding *environment*, the draft letter calls for "appropriate commitments" by the NAFTA countries to "effectively enforce their environmental laws." This section also calls for elimination of fisheries subsidies that "distort trade."

Regarding *labor*, the draft letter calls for seeking a "commitment" by the NAFTA countries to "adopt and maintain measures implementing internationally recognized labor rights and effectively enforcing their respective labor laws concerning those rights."

Regarding *AD/CVD dispute settlement*, the draft letter proposes negotiation to eliminate the binational panel dispute settlement mechanism that currently exists in the NAFTA agreement. The letter complains that in the past, binational panels have “ignored the appropriate standard of review and applicable law.”

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