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Alert | International Trade

February 2018

Sixth Round of NAFTA Negotiations Wraps Up with Some Progress and a Commitment to Future Dialogue

On Jan. 29, 2018, in Montreal, representatives from the United States, Canada, and Mexico – including U.S. Trade Representative Robert Lighthizer, Canadian Foreign Minister Chrystia Freeland, and Mexican Economy Secretary Ildefonso Guajardo – wrapped up the Sixth Round of the ongoing renegotiation of the North American Free Trade Agreement (NAFTA). In this Round of negotiations, the parties were expected to discuss some of the most contentious proposals of the NAFTA renegotiations.

Some of the key issues addressed were:

- Rules of Origin;
- Sunset Provision;
- Perishable and Seasonal Goods;
- Canada’s Dairy Supply Management System;
- Government Procurement; and
- Dispute Resolution.

However, the Sixth Round ended with little closure on these key issues. Some of these issues continue to be sticking points in the negotiation and create uncertainty as to what a modernized NAFTA might look like. Below, we provide brief summaries of the key issues addressed during the Sixth Round.

Key Issues Addressed

Rules of Origin: The United States proposed increasing the North American content requirement for autos from the current 62.5 percent to as high as 85 percent, and requiring a minimum U.S. content of 50 percent. This proposal was met with strong resistance from Mexico and Canada, as well as several U.S. industry groups. During this latest round of negotiations, Canada presented a counter proposal that would have provided "credit" to companies that invest in North America (including in research and development) and that manufacture vehicles with North American steel and aluminum, which the United States rejected.

Five-Year Sunset Provision: The United States proposed and the parties have continued to discuss a provision under which NAFTA would automatically expire after five years unless all three parties agree to a five-year extension. Critics have noted this would create a great deal of uncertainty to NAFTA's future, making it difficult for North American businesses to make long-term, cross-border plans, while supporters believe that it would allow the opportunity to regularly revisit and renegotiate more favorable terms. In recent rounds, both Mexico and Canada have made counterproposals that would allow for periodic review of NAFTA, but reject the idea of an automatic expiration.

Perishable and Seasonal Goods: This proposal would change NAFTA's trade remedies provisions to create a separate domestic industry provision for perishable and seasonal products in antidumping and countervailing duties proceedings. The proposal would allow U.S. agricultural producers in markets that often compete with Mexican imports during a particular season to initiate antidumping proceedings that address only that season. While this proposal is likely to benefit producers in states that compete directly with seasonal imports from Mexico, it has been criticized for its potential to create higher produce prices for American consumers. Also, the proposal is opposed by key U.S. farm sectors including dairy, grains, oilseeds, pork, poultry, and meat that export to Mexico and fear retaliation that will hurt their sales in the Mexican market.

Canada's Dairy Supply Management System: In October, the United States proposed reducing tariffs placed on dairy imports to Canada which are designed to protect Canada's longstanding dairy supply management system. Through this system, Canada applies tariffs and production quotas in order to stabilize its supply of milk and other staple products. The United States proposal would allow for the flow of U.S. dairy products into Canada. However, Canada strongly rejected this proposal when it was first suggested, and the parties appear to have made little progress on it during this latest round.

Government Procurement: U.S. proposals regarding current government procurement provisions are designed to "ensure reciprocity in market access opportunities" for U.S. contractors in Canada and Mexico. The U.S. procurement market is much larger than that of either Canada or Mexico, so if reciprocity was implemented on a dollar-for-dollar basis as proposed, it would limit access to U.S. government procurement opportunities for Canadian and Mexican entities. A counter-proposal by Mexico suggested reciprocal treatment based on the percentage of contracts won by foreign contractors. In this latest round of negotiations, there appears to have been little discussion or progress on this issue.

Dispute Resolution: The United States has suggested revisions that would make existing dispute resolution provisions optional or nonbinding, and has further suggested the complete elimination of Chapter 19 of NAFTA, which establishes a panel review system for antidumping and countervailing duty disputes between the three member nations. As with several other issues, there has been little progress on this matter since the proposal was made.

NAFTA's Future

Possibility of U.S. Withdrawal

Ever since his election campaign, President Trump has expressed his belief that NAFTA is a "bad deal" for American workers in its current form. As the negotiations continue, there is always the possibility that the United States will withdraw.

This position, however, has arguably put the president at odds with some American businesses including the automotive and agriculture industries, who have pointed to significant export income, job creation, and supply chain efficiencies made possible by NAFTA. As a result, over 30 Republican members of Congress recently signed a letter to President Trump expressing support for NAFTA, sending a message that withdrawal would likely be unpopular.

Even if President Trump were to announce an intention to withdraw, the withdrawal would not be immediate. Under Section 2205 of NAFTA, a member country must provide six months of notice to withdraw – which means the parties could continue to negotiate even after the United States provides a withdrawal notice. Questions have also been raised regarding President Trump's ability to withdraw the United States without the approval of Congress. If congressional approval is required, it could be difficult to obtain given the strong congressional support for the United States to fix NAFTA instead of withdraw.

Timing and Future Negotiations

The next round of negotiations will begin on Feb. 26, 2018, in Mexico City. While the NAFTA renegotiation was initially slated to conclude in March 2018, it is likely that talks will continue well past this spring. In fact, negotiations may overlap with political campaign seasons in both Mexico (where presidential elections will be held in July) and the United States (with midterm elections coming up in November). The upcoming elections in the U.S. and Mexico could potentially change the countries' strategies and negotiating positions.

As negotiations continue throughout the year, it remains important for industry stakeholders to assess the impacts of these changing proposals to their particular industry, and to elevate concerns to government officials.

About Greenberg Traurig's International Trade Practice

Greenberg Traurig's International Trade Group provides continual consultation and advice to clients on expanding trade opportunities and the impact of U.S. governmental action on global trade.

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