

E-NAFTA: Canada and Mexico May Be Hot E-Commerce Markets After NAFTA Renegotiation

OCTOBER 2, 2017

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North American Free Trade Agreement (“NAFTA”) renegotiations are presently under way with closed-door rounds of negotiation planned for most of 2017. Fortunately, the proposed “Border Adjustment Tax” is off the table and there is now a spirit of momentum toward modernizing the trade agreement. One of the key areas of relative consensus is the desire to update NAFTA to meet the needs of today’s economic environment.

E-commerce and digital trade are some of the highly anticipated bright spots amid the rhetoric that surrounds renegotiation. The United States, Canada, and Mexico each recognize that commercial behavior is much different than when NAFTA was enacted 23 years ago. The current version of NAFTA does not contemplate the exponential rise of e-commerce or the possibility to generate significant revenues from intangible digital products.

Anyone looking to reach the markets of Canada and Mexico may find barriers to entry, as well as barriers to customer purchases, greatly reduced in one year’s time. A number of proposals are on the table to ease cross-border transactions, especially those involving intangibles and consumer items that are often distributed in small parcels. These improvements may include eliminating tariff duties on digital items, allowing commingled shipments of small parcels across the NAFTA borders, and using technology to increase transparency and the ease of entry through collaboration between the three border security agencies.

The greatest proposed change that could greatly improve e-commerce in Canada and Mexico is the potential for harmonized de minimis values. Today, each country foregoes charging customs duties on low value items - however there is a world of difference between those de minimis value amounts. In the United States, imports valued at or below \$800 qualify for entry without payment of duties. In contrast, the de minimis value is \$50 USD in Mexico and only \$15 USD in Canada. Harmonizing these levels would eliminate a great deal of inconvenience in cross-border transactions and equalize the transaction cost of selling to customers in Canada and Mexico.

We could have a view to the negotiated e-commerce and digital trade improvements by the end of 2017 or in First Quarter of 2018. As a deal nears, we will all have the opportunity to review the updates and make our voices heard through trade groups and comment to congressional lawmakers. The process toward finalizing NAFTA renegotiation may be slow, with significant changes likely requiring the approval of legislatures in the United States, Canada, and Mexico. However, many are increasingly optimistic that the administrative process will indeed conclude in 2018 with demonstrable advancements in facilitating cross-border trade.

The law firm of Benesch, Friedlander, Coplan & Aronoff is a valuable resource for companies seeking to trade in North America or around the globe. Benesch provides business-savvy counsel and representation to manufacturers, retailers, and logistics providers on NAFTA compliance and international trade controls. Jonathan Todd, who is an attorney with Benesch and also a licensed U.S. customs broker, may be reached by telephone at 216-363-4658 or by e-mail at jtodd@beneschlaw.com.