

NAFTA Watch Newsletter Vol. 8 – NAFTA Renegotiation

Part 2: Much Work Remains

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This publication is our eighth installment in a series designed to provide our clients in the manufacturing, transportation and logistics, and related industries with monthly updates on any action taken by the Trump Administration, Congress, and/or federal governmental agencies with respect to the North American Free Trade Agreement (“NAFTA”).

As noted in our prior installment, content of the first round of meetings was not made public, but a joint statement by the three countries noted that they had made “detailed conceptual presentations” and began working on specific textual modifications. The second round of negotiations began on September 1 and continued until September 5 in Mexico. Later in the month, a third round of negotiations occurred in Canada where all sides signaled plans to come to negotiations with a heavier hand.

United States negotiators have proposed controversial audit rules related to the rules of origin requirements aimed at protecting the automobile industry. Canadian officials want to resolve an aerospace dispute between a Montreal-based manufacturer, Bombardier, and United States-based Boeing. Mexican leaders continue to propose a NAFTA alternative by looking to Latin America amid President Trump’s NAFTA threats.

Tensions mounted between the United States and Canada when the United States imposed a significant tariff on passenger plane manufacturer, Bombardier, related to its top-end passenger planes after U.S.-based Boeing sued Bombardier in April 2017, alleging that Bombardier had engaged in unfair trade practices by selling its marquee jetliner in the U.S. at less than fair value, while benefitting from unfair government subsidies in Canada. The U.S. Department of Commerce has affirmed that Bombardier has taken massive illegal subsidies in violation of existing trade law. Prime Minister Trudeau has made it clear that he wants this dispute settled or Canada won’t continue to do business with Boeing.

At the core of the Trump Administration’s renegotiation motivations is President Trump’s desire to end the United States trade deficit with Mexico by creating manufacturing jobs in the United States. President Trump wants to focus on the automobile industry and the rules of origin rule, which stipulates that at least 62% of the parts sold in a car in North America must come from one of the three NAFTA countries. Secretary of Commerce, Wilbur Ross, has argued that the old rule is outdated because it doesn’t consider parts that include Bluetooth speakers, back-up cameras, and other electronics. He argues that the percentage from the NAFTA nations needs to increase, although he has not stated to what threshold.

The fourth round of negotiations is scheduled to occur in Washington from October 11-15, and with the end of 2017 quickly approaching, many have speculated that negotiations will carry over to 2018. From the start, the participants set an informal goal of concluding before the end of 2017 because both the Mexican presidential election and the United States midterm elections will occur in 2018, and the parties are keenly aware of the political difficulties of talking NAFTA in the midst of a campaign. Even before the negotiations tackle some of the most controversial issues, the negotiations appear to be on a slow path toward compromise. Benesch will continue to monitor negotiations to provide monthly updates to our clients in the manufacturing, transportation and logistics, and related industries of any developments.