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Renegotiating NAFTA: Impact on the U.S. Auto Care Industry

What is NAFTA?

The North American Free Trade Agreement ("NAFTA") is a free trade agreement between Canada, Mexico and the United States that was implemented on January 1, 1994. NAFTA was negotiated by the George H.W. Bush administration and signed into law by President Bill Clinton.

Over several years, NAFTA eliminated import tariffs on goods that qualify under the rules of origin. NAFTA goods are not subject to normal customs duties/tariffs when imported into other NAFTA countries. (NAFTA goods may be subject to antidumping or countervailing duties.) However, NAFTA does much more than just reduce tariffs/duties. It includes provisions to facilitate customs administration to speed the movement of goods, it provides for protections for service providers (including retail establishments), it includes investment disciplines that protect the rights of foreign investors, it protects intellectual property rights and facilitates visa rights for business travel.

The elimination of tariffs, foreign investment protections and opening of the services markets facilitated the integration of regional supply/value chains. In the auto care sector, this includes duty-free movement of raw materials, components and finished goods and favorable investment environments for distributors and retailers seeking to expand to other NAFTA countries.

Today, nearly a quarter of all US imports comes from Canada and Mexico, and one-third of US exports go to Canada and Mexico.

What Happens if the US Withdraws from NAFTA?

If the US withdraws from NAFTA, import tariffs would revert to WTO rates for US exports to Mexico and Canada and imports from those countries. As a practical matter, US exports to Mexico would immediately be subject to duties of approximately 20% for many automobile related items, where similar Mexican exports to the US would be subject to duties of approximately 3%. In other words, for most products, US exports to Mexico will be subject to much higher tariffs than imports from those countries.

More generally, US stakeholders will not be able to take advantage of the rights and protections (equal treatment for service providers, investment protections, IPR safeguards, etc.) that are set forth in NAFTA with respect to their Mexican and/or Canadian operations.

<u>Renegotiation of NAFTA</u>

On May 18, 2017, the US Trade Representative (USTR) notified Congress that the Trump administration intends to commence negotiations with Mexico and Canada related to NAFTA. This commences a 90-day window for consultations with Congress and the public before formal negotiations can commence. USTR is collecting public comments (due June 12, 2017) on the items listed below and will hold a public hearing on June 27, 2017.

We highlight below the areas that may be of most interest to our members:

(a) General and product-specific negotiating objectives for Canada and Mexico in the context of a NAFTA modernization.

- Are there any consistent irritants/friction with respect to Canada or Mexico? These could include:
  - Unfair treatment at the border or by government agencies
  - Lack of consistency in administration of their laws
  - Difficulties getting permits/authorizations
- Are there any "like to haves" such as?
  - Expanded access to government procurement opportunities at the Federal or state/province levels
  - Increase in the "de minimis" value level for personal imports to facilitate shipments from US-based websites to Mexican/Canadian customers

(b) Economic costs and benefits to U.S. producers and consumers for removal of any remaining tariffs and removal or reduction of non-tariff barriers on articles traded with Canada and Mexico.

- Do your exports/imports in the NAFTA region face non-tariff barriers such as licensing regimes, certification requirements, regulatory requirements that negatively impact your operations?

(c) Treatment of specific goods (described by HTSUS numbers), including comments on—

(1) Product-specific import or export interests or barriers,

(2) Experience with particular measures that should be addressed in negotiations, and

(3) Addressing any remaining tariffs on articles traded with Canada, including approaches that would address export priorities and import sensitivities related to Canada and Mexico in the context of the NAFTA.

- The more specific we can identify challenges with particular types of products and/or barriers, the higher the likelihood that USTR will address them in the negotiations.

(d) Customs and trade facilitation issues that should be addressed in the negotiations.

- Are there consistent challenges with clearing goods at the Mexican/Canadian border?
- Are customs decisions (classification, valuation, admissibility) done quickly and consistently?

(e) Appropriate modifications to rules of origin or origin procedures for NAFTA qualifying goods.

- Are you having difficulties qualifying goods as NAFTA-origin?
- Are the rules of origin consistent with your supply chain needs?
- Are competitors from non-NAFTA countries able to take advantage of the rules of origin to get an unfair advantage?

(f) Any unwarranted sanitary and phytosanitary measures and technical barriers to trade imposed by Canada and Mexico that should be addressed in the negotiations.

(g) Relevant barriers to trade in services between the United States and Canada and Mexico that should be addressed in the negotiations.

- Are your Canadian/Mexican operations receiving the same treatment as Canadian/Mexican owned companies?
- Have you been unable to enter/expand your operations in Mexico/Canada? If so, why?

(h) Relevant digital trade issues that should be addressed in the negotiations.

- Are there data privacy, data localization or other e-commerce related rules that put your US web-based operations at a disadvantage in Mexico/Canada?

(i) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

- Have you had issues registering and/or protecting IPR such as trademarks or copyrights?
- Do you have an issue with counterfeit goods in Canada or Mexico? Have the authorities been responsive to your concerns?

(j) Relevant investment issues that should be addressed in the negotiations.

- Are there any government imposed restrictions/impediments to your investments in Canada/Mexico?
- Have you experienced difficulties repatriating funds from those countries?

(k) Relevant competition-related matters that should be addressed in the negotiations.

(l) Relevant government procurement issues that should be addressed in the negotiations.

(m) Relevant environmental issues that should be addressed in the negotiations.

(n) Relevant labor issues that should be addressed in the negotiations.

(o) Issues of particular relevance to small and medium-sized businesses that should be addressed in the negotiations.

- Would requiring Canada and Mexico to maintain publicly accessible websites with customs related information (procedures, tariff rates, etc.) be beneficial to you?
- Should the parties be required to maintain these websites in English, Spanish and French?
- Would you benefit from a single point of contact to address import issues in Canada or Mexico?

(p) Relevant trade remedy issues that should be addressed in the negotiations.

(q) Relevant state-owned enterprise issues that should be addressed in the negotiations.

Next Steps

NAFTA is over 25 years old and reflects a 1995 "state of the art" agreement. There is general consensus that the agreement can be updated to reflect 21st Century trade and business flows without undercutting the overall benefit NAFTA has provided for US stakeholders.

We can help shape the Trump administration's approach to the NAFTA renegotiation by highlighting how the current agreement is beneficial and areas where it could be improved.

For instance, NAFTA does not include ecommerce provisions. In today's world, where nearly 80% of Americans do at least some shopping online (compared to only 22% in 2000), one of NAFTA's largest shortcomings is its lack of ecommerce provisions.

In order to prepare comments, it would be helpful if you could provide by June 6, 2017 examples of how NAFTA is helping your operations, any examples of challenges you face in Canada and/or Mexico, and any areas you would like to see improvement.

Please forward your comments to Angela Chiang at angela.chiang@autocare.org.