

Trump Administration Announces NAFTA Renegotiation

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by T. Augustine Lo

After months of public pronouncements on the future, including threatened withdrawal from, the North American Free Trade Agreement (NAFTA), the Trump Administration announced on May 18, 2017, its intention to begin negotiations with Canada and Mexico. Signed by Robert Lighthizer, the newly confirmed U.S. Trade Representative, the notification letters to Congressional leaders do not contain any details on specific targets for negotiations. The letters describe instead broad aims for discussions with U.S. Congressional leaders and industry constituents, and the administration's intention to begin negotiations with Canadian and Mexican counterparts in mid-August or later.

President Trump previously railed against NAFTA and its alleged impact on the U.S. manufacturing sector. However, the agreement's impact has not been uniformly negative, as evidenced by the strong growth of U.S. agricultural exports to Canada,^[1] among other indicators. It is perhaps with this complex situation in mind that Mr. Lighthizer does not threaten to dismantle NAFTA outright,^[2] but rather to "update U.S. approaches" regarding issues in "intellectual property rights, regulatory practices, state-owned enterprises, services, customs procedures, sanitary and phytosanitary measures, labor, environment, and small and medium enterprises," which have developed since NAFTA entered into force in 1994. The notification specifically references "digital trade" as an issue that is not addressed in the agreement.

In an interesting twist, Mr. Lighthizer explicitly cites the same priorities that Congress previously established for trade negotiations prior to President Trump's election – the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, which granted Trade Promotion Authority (TPA) to the President to negotiate trade deals. At that time, Congress authorized TPA to facilitate final negotiations for the Trans-Pacific Partnership – a 12-nation trade pact that was formalized in February 2016, but which President Trump denounced as harmful to U.S. industries during his election campaign, and from which he announced the United States' withdrawal soon after taking office. By referencing these Congressional priorities (which include trade in goods, agriculture, digital trade, and other U.S. industry concerns), and "initial consultations" with various

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Congressional committees and advisory groups, the Trump Administration is signaling its intention to engage with Congressional leaders and industry constituents. President Trump and Mr. Lighthizer will need to garner broad support for its trade agenda (among other issues) at this critical juncture for the current administration.

In view of this evolving situation, and the Trump Administration's outreach to U.S. legislators and industry leaders for the NAFTA negotiation process, Dorsey attorneys will continue to monitor developments.

[1] See our previous eUpdate, "Trump Administration's First Major Statement on Foreign Trade Affects Agriculture"

[2] NAFTA Article 2205 provides for U.S. withdrawal with six months' notice. Opinion is divided as to whether the President can give such notice to withdraw without Congressional approval. See 19 U.S.C. § 3451.