

22 March 2017 A

DRAFT

United States Senate/United States House of Representatives
Washington, D.C. 20510/20515

Dear Senator/Speaker:

In accordance with section 105(a)(1)(A) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (the Trade Priorities Act), and pursuant to authority delegated to me by the President, I am pleased to notify the Congress that the President intends to initiate negotiations related to the North American Free Trade Agreement (NAFTA) and its architecture. We will be consulting closely with Congress in developing our negotiating positions to ensure that they are consistent with Congressional priorities and objectives.

In 2016, voters in both major parties called for this Administration to rethink the issue of trade. This is why, on his third day in office, President Trump withdrew from the Trans-Pacific Partnership. However, while taking that action, the President made clear his intention to continue strong engagement with our trading partners on a bilateral basis. This letter is the next step in strengthening our trading relationships in North America.

Through this engagement, and using other trade policy tools, the Administration seeks to increase our economic growth by making it more profitable to manufacture within the trading bloc. This strategy will promote job creation in the United States, strengthen our manufacturing base, and help expand our goods exports to each our trading partners. It will support our rural communities by expanding access for our agricultural exports, as well as promote our vibrant services and innovation industries.

The case for beginning this process with Canada and Mexico is compelling. The United States' largest export markets are Canada and Mexico, and we are by far the largest destination for Mexican and Canadian exports as well. Our proximity is one reason our trade flows are so large, but our shared borders also mean shared goals, shared histories and cultures, and shared challenges.

More than 30 years ago, we began bilateral trade negotiations with Canada. The resulting U.S. - Canada Free Trade Agreement entered into force on January 1, 1989. In 1991, bilateral talks began with Mexico, which Canada joined. The NAFTA followed, entering into force on January 1, 1994. Tariffs were eliminated progressively, with all final duties and quantitative restrictions eliminated by 2008.

Since 1993, U.S. trade with Canada and Mexico has more than tripled, from \$293 billion to \$1.07 trillion in goods in 2016 and from \$43 billion to \$139 billion in services in 2015 (latest data available). The two countries account for 29 percent of total U.S. goods trade, and are among the largest export markets for manufacturing, the first and third largest markets for agricultural goods, and are the second and third largest sources of imports. For reasons of scale alone, improving the NAFTA has the greatest potential to benefit the workers, farmers, and firms of the United States.

The persistent U.S. deficit in goods trade with Canada and Mexico demands that this administration take swift action to revise the relationship to reflect and respond to new 21st century challenges. The NAFTA was negotiated 25 years ago and while our economy and businesses have changed considerably over that period, the NAFTA has not. Most chapters are clearly outdated and do not reflect the most recent standards in U.S. trade agreements. For example, digital trade was in its infancy in 1994. Labor and environment were an afterthought to the Agreement. Rules for intellectual property rights, state-owned enterprises, rules of origin, customs procedures, and ensuring the benefits of trade benefit small and medium businesses have all been improved in newer trade agreements. Effective implementation and enforcement of trade agreements is also much more critical today than a generation ago, and an area where much can be done.

Reviewing these relationships will also demonstrate new leadership by the United States on trade. The very highest standards, the broadest coverage, and the most effective oversight and execution of the agreement's obligations will make the United States, and North America, stronger, a more attractive place to do business and a model for the rest of the world in the 21st century. This will reinforce our shared interests, promote our common values, and reinforce cooperation beyond economic issues to shared bilateral and regional security concerns. We expect to obtain results that improve on previously negotiated outcomes.

The Administration is committed to negotiating and implementing trade agreements which open markets to benefit our businesses, farmers, workers, and families. With the help of Congress, we can move promptly to advance America's trade and commercial interests.

The United States intends to preserve U.S. rights and obligations under the NAFTA, in particular with respect to market access. Although at this time, it is premature to say what final form the negotiated outcome will take, our specific objectives for negotiation are as follows:

Trade in Goods:

- Seek to maintain and expand current market access on trade between each NAFTA country and the United States on the broadest possible basis, and seek to improve competitive opportunities for exports of U.S. goods exports, including through the utilization of global value chains, while addressing U.S. import sensitivities.
- Seek to eliminate non-tariff barriers to U.S. exports, including permit and licensing barriers, and other trade restrictive measures.
- Maintain fully reciprocal access to NAFTA country markets for U.S. textile and apparel products and seek to improve competitive opportunities for exports of U.S. textile and apparel exports while addressing U.S. import sensitivities.
- Seek to level the playing field on tax treatment.

Agriculture and Sanitary and Phytosanitary (SPS) Measures:

- Seek to reduce or eliminate non-tariff barriers to U.S. agricultural exports, including permit and licensing barriers, restrictive administration of tariff-rate quotas, unjustified trade restrictions that affect new U.S. technologies, including biotechnology, and other trade restrictive measures.
- Maintain commitments to eliminate all export subsidies on agricultural products, while maintaining the right to provide *bona fide* food aid and preserving U.S. agricultural market development and export credit programs.
- Seek to secure more open and equitable market access for agricultural products through robust rules on SPS measures and eliminate any SPS restrictions that are not based on science.
- Seek to strengthen cooperation between U.S. and NAFTA countries' SPS authorities.

Rules of Origin:

- Seek rules of origin that ensure that the Agreement supports production and jobs in the United States, procedures for applying these rules, and provisions to address circumvention that ensure that preferential duty rates under the agreement apply only to goods eligible to receive such treatment, without creating unnecessary obstacles to trade.

Customs Matters and Enforcement Cooperation:

- Seek to have the NAFTA countries improve upon their WTO trade facilitation commitments, including rules requiring that each NAFTA country conducts its customs operations with transparency, efficiency, and predictability, and that customs laws, regulations, decisions, and rulings are not applied in a manner that would create unwarranted procedural obstacles to international trade.
- Seek to strengthen collaboration in implementing the WTO Trade Facilitation Agreement and create a procedure for exchanging information on trade facilitation-related issues.
- Seek terms for cooperative efforts with the NAFTA countries regarding enforcement of customs rules and related issues, including in the areas of trade in textiles and apparel and agricultural products of concern and to enhance our ability to prevent and address antidumping and countervailing duty evasion and transshipment.

Technical Barriers to Trade (TBT):

- Seek to have the NAFTA countries improve upon their WTO TBT commitments and eliminate any unjustified TBT measures.
- Seek to strengthen collaboration in implementing the WTO TBT Agreement and create a procedure for exchanging information on TBT-related issues.

Intellectual Property Rights:

- Seek to establish standards to be applied in NAFTA countries that build on the foundations established in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and other international intellectual property agreements, such as the World Intellectual Property Organization (WIPO) Copyright Treaty, the WIPO Performances and Phonograms Treaty, and the Patent Cooperation Treaty;
- Seek to secure fair, equitable, and nondiscriminatory market access opportunities for U.S. persons that rely on intellectual property protection.
- Where appropriate, seek commitments from the NAFTA countries to strengthen their laws and procedures on enforcement of intellectual property rights, such as by ensuring that their authorities have authority to seize and destroy pirated and counterfeit goods, equipment used to make such goods, and documentary evidence.
- Seek commitments from the NAFTA countries to: (1) strengthen their measures that provide for compensation of right holders for infringements of intellectual property rights, and (2) provide for criminal penalties under their respective laws that are sufficient to have a deterrent effect on piracy and counterfeiting.

Trade in Services:

- Seek commitments from NAFTA countries to expand competitive market opportunities for United States services, to obtain fairer and more open conditions of services trade, to improve transparency and predictability in their respective regulatory procedures, and to pursue specialized disciplines for financial services, and additional disciplines for telecommunications and other sectors, as appropriate.
- Pursue a comprehensive approach to market access, including any necessary improvements in access to the telecommunications, financial services, express delivery, professional services, or other sectors and address the operation of any designated monopolies or state enterprises, as appropriate.

Investment:

- Seek to establish rules that reduce or eliminate artificial or trade-distorting barriers to U.S. investment in the NAFTA countries.
- Seek to secure for U.S. investors in the NAFTA countries important rights comparable to those that would be available under U.S. legal principles and practice, while ensuring that NAFTA country investors in the United States are not accorded greater substantive rights with respect to investment protections than U.S. investors in the United States.
- Seek to ensure that U.S. investors receive treatment as favorable as that accorded to domestic or other foreign investors in the NAFTA countries, and to address unjustified barriers to the establishment and operation of U.S. investments in the NAFTA countries.
- Maintain and seek to improve procedures to resolve disputes between U.S. investors and the NAFTA countries through, among other things, mechanisms to deter the filing of and eliminate frivolous claims; procedures to ensure the efficient selection of arbitrators and the expeditious disposition of claims; and procedures to ensure transparency and public participation in dispute settlement proceedings.

Digital Trade, and Cross-Border Data Flows:

- Seek commitments from the NAFTA countries not to impose customs duties on digital products or unjustifiably discriminate among products delivered electronically.
- Seek to ensure that the NAFTA countries refrain from implementing measures that impede digital trade in goods and services, restrict cross-border data flows, or require local storage or processing of data, including with respect to financial services, and that where legitimate policy objectives require domestic regulations that may affect such trade or flows, obtain commitments that any domestic regulations are the least trade restrictive, non-discriminatory, and transparent, and promote an open market environment.

Government Procurement:

- Seek to establish rules that require government procurement to be conducted in a manner that is consistent with U.S. law and the Administration's policy on domestic procurement preferences.
- Seek to expand market access opportunities for U.S. goods, services, and suppliers of goods and services in the government procurement markets of the NAFTA countries.

Transparency and Regulatory Reform:

- Seek commitments to make each NAFTA country's administration of its trade and investment regime more transparent, and pursue rules that will permit timely and meaningful public comment before a NAFTA country adopts trade-and investment-related measures.
- Seek to establish consultative mechanisms and other commitments, as appropriate, to improve regulatory practices and promote increased regulatory coherence, including through increased transparency, elimination of redundancies in testing and certification, early consultations on significant regulations, the periodic review of existing regulatory measures, and the application of good regulatory practices.

Anti-Corruption

- Seek commitments to ensure that the NAFTA countries apply high standards prohibiting corrupt practices affecting international trade and investment and have effective domestic enforcement mechanisms.

Competition:

- Address anticompetitive business conduct, and other competition-related matters, as appropriate.
- Seek provisions that provide, as appropriate, for cooperation on competition law and policy and consultations on competition issues that may arise.

State-Owned and State-Controlled Enterprises:

- Seek commitments to eliminate or prevent trade distortions and unfair competition favoring state-owned and state-controlled enterprises to the extent of their engagement in commercial activity.
- Seek commitments to ensure that state-owned enterprises engaging in commercial activity do so on the basis of commercial considerations, in particular through disciplines that eliminate or prevent discrimination and market-distorting subsidies.
- Seek commitments that ensure transparency in the level of ownership, control, and support of state-owned enterprises.

Trade Remedies:

- Seek a safeguard mechanism to allow a temporary revocation of tariff preferences, if increased imports from NAFTA countries are a substantial cause of serious injury or threat of serious injury to the domestic industry.
- Seek to preserve the ability of the United States to vigorously enforce and promote its trade remedy laws - including by addressing diversionary dumping and subsidization and market access barriers that lead to dumping and overcapacity.

Environment:

- Consistent with U.S. priorities and objectives, seek appropriate commitments by the NAFTA countries to effectively enforce their environmental laws and undertake implementation of applicable multilateral environmental agreements.
- Seek to improve mechanisms, including those for consultations and cooperation to work with the NAFTA countries, with a view to promoting sustainable development and addressing environmental issues of mutual interest, and as appropriate helping strengthen their capacity to protect the environment.
- Seek to eliminate fisheries subsidies that distort trade, including subsidies that contribute to overcapacity and over-fishing; pursue transparency in fisheries subsidies programs; and address illegal, unreported, and unregulated fishing.
- Seek enforceable environmental obligations within the body of the agreement that are subject to the same dispute settlement and remedies as other enforceable obligations.

Labor:

- Consistent with U.S. priorities and objectives, seek a commitment by the NAFTA countries to adopt and maintain measures implementing internationally recognized labor rights and effectively enforce their respective labor laws concerning those rights.
- Seek to improve mechanisms for consultations and cooperation to strengthen the capacity of the NAFTA parties to promote respect for internationally recognized labor rights, including those embodied in the ILO Declaration on Fundamental Principles and Rights at Work and ILO Convention 182 on the Worst Forms of Child Labor, and to effectively enforce their respective labor laws.
- Seek enforceable labor obligations within the body of the agreement that are subject to the same dispute settlement and remedies as other enforceable obligations.

Antidumping and Countervailing Duty (Chapter 19) Dispute Settlement:

- Eliminate Chapter 19 dispute settlement of antidumping and countervailing duty determinations in light of U.S. experiences where panels have ignored the appropriate standard of review and applicable law, and where aberrant panel decisions have not been effectively reviewed and corrected.

State-to-State Dispute Settlement and Institutional Provisions:

- Encourage the early identification and settlement of disputes through consultation.
- Seek to improve procedures designed to increase compliance with the agreement.
- Seek to review the agreement after five years of its entry into force with a view to ensuring its proper implementation.

In addition, we will take into account other U.S. objectives including, but not limited to, the protection of health, safety, environment, essential security, and consumer interests.

Since the President invited Congressional leaders to begin this process with him on February 2, Senior Administration officials have frequently engaged with Congress to solicit views on these matters. We have held initial consultations with Members of the Senate Committee on Finance, the House Committee on Ways and Means, and other Members of Congress regarding a proposed NAFTA renegotiation. We have also held initial consultations with the trade advisory committees. The Administration will continue to consult closely with Congress and other stakeholders as the negotiations proceed.

We are committed to concluding these negotiations with timely and substantive results for U.S. workers, consumers, businesses, farmers, and ranchers, keeping in mind U.S. priorities and negotiating objectives. We look forward to continuing to work with the Congress as negotiations with the NAFTA countries begin, and we commit to work with you throughout the process.

Sincerely,

Stephen P. Vaughn
Acting United States Trade Representative