

July 26, 2017

The Honorable Wilbur Ross
Secretary
U.S. Department of Commerce
1401 Constitution Ave., N.W.
Washington, DC 20230

Dear Secretary Ross:

The Environmental Technologies Trade Advisory Committee (ETTAC) is a federally-established committee whose purpose is to advise on the policies and procedures of the U.S. Government that affect environmental technology exports. In this capacity, we appreciate the opportunity to provide the attached recommendations on key objectives for the modernization of the North American Free Trade Agreement (NAFTA).

Since the implementation of NAFTA in 1994, the NAFTA partners have developed an extensive North American production platform and supply chain that have enhanced U.S. companies' ability to compete globally.

We concur with your remarks at the Bipartisan Policy Center that the first guiding principle should be "do no harm." And, we also agree that the negotiations should build upon the current agreement, while addressing remaining barriers as well as new issues, such as digital trade. In the attached paper, we've provided detailed issues and recommendations, but wanted to highlight three specific issues for improvement.

- First, in the area of standards and conformity, Mexico strictly limits its recognition and use of international standards and will need to change domestic laws to fully recognize and use international standards.
- Second, the environmental provisions in NAFTA are currently covered by a side letter, unlike other U.S trade agreements which include an environmental chapter in the core text. We recommend the NAFTA environmental obligations be brought into the core of the agreement with enforceable provisions based on international standards.
- Third, intellectual property protection is essential to maintaining U.S. competitiveness. Since NAFTA was negotiated, the U.S. has consistently included stronger IP protection in its trade agreements. The NAFTA modernization should update the IP Chapter to reflect the current state of the art in IP protection and deterrence.

We look forward to working with you and stand ready to assist as the NAFTA negotiations proceed.

Sincerely,



Ron Swinko
Chair, ETTAC

**Comments of the Environmental Technologies Trade Advisory Committee (ETTAC)
On Negotiating Objectives Regarding Modernization of the North American Free Trade
Agreement (NAFTA) with Canada and Mexico**

Since the implementation of NAFTA in 1994, the NAFTA partners have developed an extensive North American production platform and supply chain that have enhanced U.S. companies' ability to compete globally. For this reason, it is important that the negotiations build upon the current agreement and not revert to pre-NAFTA conditions of high tariffs and a host of non-tariff barriers.

The negotiations should build upon NAFTA's success and address any remaining barriers, especially those affecting newer technologies and modes of trade that have developed since NAFTA's enactment.

Following are some suggestions for your consideration in the negotiations to modernize the NAFTA.

Trade in Goods

Issue: U.S. environmental technologies and services businesses rely on barrier-free access to Mexico and Canada.

Recommendations:

- Maintain or expand the original NAFTA's elimination of tariffs, taxes, or other charges to environmental products and inputs in order for U.S. companies throughout the value chain to continue to benefit from the trade agreement.
- Clarify that the provisions of the market access chapter fully apply to imports and exports of remanufactured goods and used goods. We advocate including the Trans-Pacific Partnership (TPP) clarification on remanufactured goods and used equipment in the market access chapter of a modernized NAFTA.

Technical Barriers to Trade (TBT)

Issue: Mexico strictly limits its recognition and use of international standards to the specific bodies listed in NAFTA Article 915 despite more recent guidance from the World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement. Additionally, Mexico's Law on Federal Metrology and Standardization (LFMN) and the Law on Procurement, Leases, and Services by the Public Sector (LAASSP) deem many of the technical standards referenced by the U.S. Environmental Protection Agency (EPA) and other U.S. Federal agencies as "foreign" standards. Under Mexican law, "foreign" standards cannot be referenced in procurement and acquisition tenders. This adds costs and administrative burdens to U.S. businesses and can limit or block market access.

Recommendation: In article 915 of NAFTA, seek full recognition and use of international standards that meet WTO TBT requirements, and seek commitment to change, as necessary, Mexico's laws that prohibit recognition, use, and reference to international standards.

Issue: Mexico requires duplicative testing in Mexican labs for numerous technologies that share a common standard. These tests are redundant to testing already performed in the US and certified by US and international auditing agencies. For example, in the water sector, CONAGUA, the regulatory agency requires companies that wish to sell into Mexico to have their NOM0001 certification audited by a Mexican auditing firm, authorized by CONAGUA, and tested in Mexican labs.

Recommendations: Require presumption of conformity for all technologies that have been tested in the United States and recognize international certification and test reports. This includes extending Mexico's agreement to accept product safety reports based on the North American product safety standard.

- Include provisions requiring the parties to reference existing international standards in their technical regulations and support existing international agreements concerning regulatory or conformity assessment issues.
- Mexico must address rules, including its LFMN, to support streamlined conformity assessment models including Supplier's Declaration of Conformity (SDoC).
- Add a provision requiring acceptance of electronic labeling (e-labeling).

Environment

Issue: NAFTA, unlike subsequent Free Trade Agreements (FTAs), does not have a chapter on the environment. Instead, it addressed the issues through a side agreement for cooperation.

Recommendation: As part of the modernization of NAFTA, incorporate an environment chapter in the agreement, including provisions that:

- Bring environmental obligations into the core of the agreement with enforceable provisions based on international standards.
- Require parties to adopt, enforce, and not derogate from their environmental laws to attract trade and investment.
- Draw environmental compliance and enforcement into the agreement's dispute settlement mechanisms including environmental consultations, senior representative consultations, ministerial consultations, and dispute resolution.
- Protect marine and coastal waters.
- Require cooperative efforts to address non-tariff barriers in environmental goods and services trade.
- Support transparency and public participation in rule-making, ensuring public disclosure of regulations and laws with adequate time for public comment.

It will be important to integrate the environmental provisions in a way that does not disrupt ongoing cooperation through the Commission for Environmental Cooperation (CEC), which finances a variety of environmental projects that benefit U.S. environmental companies.

Intellectual Property Protection

Issue: Canada and Mexico remain on the USG Special 301 watch list for lack of effective measures to prevent the sale or spread of counterfeit and pirated products.

Recommendation: In any Intellectual Property Rights (IPR) chapter of a modernized NAFTA, we advocate that all three parties reflect the global state of the art in the Agreement's IPR chapter, including:

- Secure additional commitments to apply criminal penalties to activities relating to the sale, manufacture, and transport of counterfeit goods, both physical and digital.
- Additionally, Mexico and Canada should adopt stronger provisions on criminal penalties for the theft of trade secrets, including in cyberspace.

Customs, Trade Facilitation, and Rules of Origin

Trade Facilitation

Issue: NAFTA rules should be updated to facilitate cross-border trade and eliminate onerous regulations and requirements.

Recommendation: Modernize NAFTA to reflect or build on the WTO Trade Facilitation Agreement Category A provisions, such as those concerning simplifying and expediting customs clearance for all three markets, including for low value shipments; aligning customs regulations and procedures across all three markets; and expanding participation in and access to trusted trader programs.

Rules of Origin

Issue: The certification process places a burden of time and cost on producers, and makes it difficult for many products to achieve qualification.

Recommendations: Make the qualification less burdensome. One way this can be done is by including provisions for a common NAFTA reconciliation process.

Government Procurement

Issue: In TPP negotiations, Mexico offered 23 additional statutory bodies not covered in NAFTA.

Recommendation: At a minimum, Article 1003, National Treatment and Non-Discrimination, of NAFTA should be continued. Additionally, seek greater market access for U.S. firms and expanded entity list and other provisions as reflected in the TPP Chapter on Government Procurement.

State-Owned and Controlled Enterprises

Issue: State-owned enterprises often receive unfair support from their governments (e.g. unfair subsidies).

Recommendation: Ensure that State-owned enterprises compete on a commercial basis and that effective enforcement procedures are in place to prevent adverse impact of any unfair advantage on U.S. workers and businesses.

Trade in Services, including Telecommunications and Financial Services

Issue: Services exports to Mexico and Canada since NAFTA's implementation have grown by 216% and 225%, respectively. We recommend that NAFTA's modernization expand the existing NAFTA services chapter and incorporate the market access schedules of the TPP Agreement which would further reduce barriers to trade in services.

Recommendations:

- Include rules and/or commitments that prevent the parties from discriminating against the new services that innovative U.S. companies bring to market.
- Place restrictions on local presence requirements as a condition for market access.
- Reduce burdensome licensing and registration requirements and include recognition of the other parties licensing and registration regimes.
- Enhance cross-border movement of people for business purposes;
- Eliminate restrictions on barriers on cross-border payments and financial transactions.
- Require full market access across all three parties.

We appreciate the opportunity to provide our comments and look forward to working with you to support the growth of U.S. environmental goods and services exports.