US Trade Representative (USTR) Robert Lighthizer has formally notified Congress and the public of the Trump Administration's objectives for the North American Free Trade Agreement (NAFTA) renegotiation. Issuing the 17 July 2017 Summary of Objectives for the NAFTA Renegotiation begins the final 30-day period before the United States (US) can formally initiate NAFTA renegotiations with Canada and Mexico in accordance with the provisions of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA). USTR Lighthizer had provided notice of intent to renegotiate NAFTA (in accordance with a 90-day Congressional notice requirement of TPA) on 18 May 2017, and appears to be staying on course for a targeted start date for negotiations with Canada and Mexico on or shortly following 16 August 2017. The USTR momentum is consistent with comments from Mexican Foreign Minister Luis Videgaray that the countries had agreed to start renegotiation on 16 August 2017, and will seek to generate agreements, at least in general terms, by year-end.

The impetus for renegotiation

USTR Lighthizer noted, “The America that existed when NAFTA was signed is not the America that we see today,” and while NAFTA provided much-needed market access for some, it also “created new problems for many American workers ... [and] trade deficits [that] have exploded.”
The Administration is focused on addressing America’s “persistent trade imbalances in North America” by promoting US exports. Specific objectives to that end include a focus on non-tariff barriers (such as tariff rate quotas that limit access), regulatory compatibility and improved cooperation on sanitary and phytosanitary measures to avoid unwarranted barriers, and transparency in customs processes and regulations.

Another primary theme continued in the Summary of Objectives relates to “stronger” rules of origin to qualify goods for NAFTA preference. The Administration seeks to ensure that NAFTA benefits are given only to “products genuinely made in the United States and North America.” Presumably, “strengthening” rules of origin could relate to increased regional value content or tariff shift requirements. For products that do qualify, an emphasis is placed on streamlining the customs processes and reducing operational burdens (via automation and paperwork reduction).

Enhanced trade in services and digital trade in goods, services and data were, as expected, included on the list of objectives. Opening investments and protecting intellectual property similarly have remained a priority, as have updating and placing labor and environmental provisions into the core agreement. The full text of the Summary of Negotiating Objectives can be found on the USTR website.

Actions for businesses
NAFTA has set the rules for trade and investment among the US, Canada and Mexico for 23 years, leading to integrated supply chains with an expectation of NAFTA benefits. Many companies have not reviewed their “NAFTA profile,” understanding the benefits tied to specific provisions, in quite some time. Establishing a NAFTA profile is critical to assessing the effect of possible changes. Companies would be well served to identify aspects of NAFTA that currently benefit the business, as well as those specified for modernization that could provide additional benefit.

With a greater emphasis on compliance enforcement, importers and exporters should also assess their NAFTA procedures and internal controls.

Participating in the process
Each NAFTA country has formally sought input from businesses on potential changes. The Summary of Objectives reiterates that USTR will continue to consult with stakeholders. Input can be provided throughout the process, but the input provided during the development of negotiating positions could have the most impact. With the current NAFTA profile understood, companies will be able to provide specific input to each government on changes to NAFTA that could help or harm their business.

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP, Global Trade Practice, New York
- Kristine Price Dozier +1 214 969 8602 kristine.price@ey.com
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