

Trump Administration Officially Initiates the Renegotiation of the North America Free Trade Agreement

MAY 23, 2017

On Thursday, May 18, the Trump administration delivered to Congress a written notification of the President's intent to renegotiate the North America Free Trade Agreement (NAFTA). This notice triggered a 90-day consultation period, the first phase in a formal process by which the President may negotiate international trade agreements on behalf of the United States. The administration has noted an intent to modernize the agreement with respect to digital trade, labor and environment, intellectual property rights, state-owned enterprises, rules of origin, customs procedures, and ensuring benefits of trade for small and medium-sized businesses.

U.S. law requires the administration to solicit and consider the input of representatives of impacted industries in the process of creating new trade agreements. This development represents a significant and time-sensitive opportunity for companies with a business stake in the terms of international trade. The first notice to solicit public commentary was published May 23, 2017, and requires responses by June 12.

Legal Background

The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 grants the President "fast-track" authority to negotiate with international trade partners, and then submit the finalized agreement to Congress for expedited review. The law establishes a multi-phase negotiation process, starting with a pre-negotiation period in which the administration is required to work with interested U.S. parties on the formulation of trade priorities. After 90 days, the administration may begin negotiations with foreign counterparts, but must continue to accept written comments and hold periodic hearings to accept oral testimony. Any negotiated agreement is subject to final review by Congress and certain parties drawn from private industry.

Interested companies can influence the direction of trade negotiations in multiple ways: by submitting written commentary, by testifying at public hearings, and by engaging Advisory Committees.

Written Comments and Oral Testimony

The Office of the U.S. Trade Representative published on May 23, 2017, a notice in the Federal Register to solicit public commentary about the direction and focus of U.S. trade priorities in negotiations. Because the administration’s initial negotiation policy will take shape during this phase, set to end no earlier than August 16, 2017, impacted companies should prepare to participate quickly.

The U.S. Trade Representative has released the first round notice requesting public comments. The notice can be found [here](#). The first round deadline for written comments is Monday, June 12, 2017. Written comments are accepted at the Regulations.gov online system. The notice also details submission guidelines for written comments. As periodic public hearings are also required by law, interested companies should keep abreast of new notices throughout the consultation and negotiation periods.

The notice invites interested parties to comment on a broad range of issues, including general and product-specific negotiating objectives, the economic costs and benefits of removing or relaxing tariffs and other trade barriers, and many other issues related to trade in the modern economy. While submissions of written comments are generally made available to the public, companies may also share confidential business information as necessary. Federal law requires the Trade Representative to not disclose such information.

Interested companies may also wish to provide oral testimony. The first public hearing is set for Tuesday, June 27, 2017, and periodic hearings are mandatory throughout the consultation and negotiation periods. Parties who wish to testify in the June 27 hearing must submit a written request by Monday, June 12, 2017, detailing the scope and basis of their interest in the negotiation, and what businesses or industries the speaker purports to represent. Where time constraints limit the number of speakers who may testify at a given hearing, the department organizing the hearing will select a representative range of views to speak. All hearings are public, and recordings will be made available online.

Advisory Committees

While written commentary and information gleaned at public hearings are an essential part of the administration’s duty to work with interested members of industry, the President will also work closely with certain Private Sector Advisory Committees on an ongoing basis. These committees were created by Congress in the Trade Act of 1974, and broadened in scope in successive legislation in 1978 and 1988. These Advisory Committees represent members of major industries, impacted government units at the state and local levels, and various other parties with specialized knowledge and interest in trade policies.

Of particular interest to companies whose operations will be affected by these negotiations are Industry Trade Advisory Committees (ITACs), which are staffed and organized to represent specific industries. Currently, there are 16 sector-specific ITACs, plus a “committee of chairs” which coordinates ITAC activities and membership. ITACs are an important resource for companies interested in future trade policy. Industry partners with ITAC representation can act as a conduit for input.

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