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PRESIDENT, NATIONAL FOREIGN TRADE COUNCIL

Hearing Regarding NAFTA Negotiations
Docket Number USTR-2017-0006
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Introduction

Thank you for the opportunity to testify at this important hearing on behalf of the National Foreign Trade Council (NFTC).

NFTC is dedicated to making America more competitive in the global economy by ensuring the adoption of forward-looking tax and trade policies, by strengthening global rules and by opening foreign markets to U.S. products and services. Our strong support for these objectives, and our belief that their fulfillment is essential to our members' success in a globalized economy, have been unwavering for decades. We therefore believe that it is critical to provide policymakers in the Administration with our clear views about the role that trade and tax policies play in unleashing a new era of U.S. competitiveness.

NFTC represents nearly 200 companies and our membership spans the breadth of the national economy. It includes sectors such as energy products, capital goods, transportation, consumer goods, technology, agribusiness, healthcare products, services, e-commerce and retailing. Our companies account for more than $3 trillion in total sales worldwide, employ over five million Americans and produce a large share of our nation's total exports. NFTC members play an important role in ensuring a healthy national economy and promoting U.S. global leadership.

The success of American companies in world markets would not have been possible without the hard work and talent of those in USTR and other agencies who have negotiated better trading conditions worldwide for our goods and services. Nowhere has that been more the case than in our trade with our two North American neighbors. Canada and Mexico are now our two largest export markets, and altogether they now pay $600 billion annually for American goods and services. Although our exporters still face some problems in these two markets, NAFTA has succeeded in eliminating all tariffs and significantly reducing non-tariff barriers in both Mexico and Canada. As a result, U.S. exports have increased by more than 350% in real terms since the agreement went into effect. The expanding markets for U.S. manufacturers, service providers and agricultural producers have contributed significantly to the bottom line for our companies.

But the gains from NAFTA go beyond our increased exports to these two markets. North American integration of our production platforms has helped our industries compete more effectively with producers in Asia, Europe and other regions. In the autos sector, for example, integrated production has lifted our export competitiveness, increasing U.S. exports of autos to over 2 million vehicles annually – more than five times the volume of exports prior to NAFTA. In our most technologically intensive sectors – such as capital goods, machinery, electronics and IT – the wide-scale integration of production in North America has been critical to maintaining US global leadership in innovation and technological development.

NAFTA benefits our economy in a variety of other ways. Our truck and rail transport companies have a huge stake in the vast movement of goods between our three markets, with more than 100 trains and 5,000 trucks crossing our northern and southern borders each day. Our farmers now export close to $40 billion to Canada and Mexico every year. Our banks, insurance companies and accounting firms have made huge gains selling to both Canada and Mexico, part of the reason we enjoy a $34 billion surplus in services trade with our NAFTA partners. Finally, American consumers benefit from a much wider array of goods available at lower prices – from Mexican avocados to Canadian beer.

NAFTA also has another important benefit: It has given us a much more prosperous, stable and democratic neighbor to our south. Until it began opening up in the 1980s and 1990s by joining GATT and signing NAFTA, Mexico was a one-party state with a highly protected economy, state ownership of most industries, widespread poverty and significant out-migration to the United States. Today, Mexico is a multi-party democracy with a growing middle class, a more open economy a thriving private sector and net in-migration from the United States. It is worth noting that few big developing countries have opened their economies to a powerful developed partner so completely. In fact, U.S. exports to Mexico now represent 20% of its GDP, a remarkably high percentage (by way of contrast, imports from Mexico represent only 1.8% of our GDP). So, in the final analysis, a stable and prosperous Mexico means fewer immigration problems here at home and better customers for American goods and services. That is why it is in our long term national interest to continue Mexico on its path of economic stability and growth.

Guiding Principles for NAFTA Modernization

As consultations begin with Congress and the private sector on how to modernize this vital agreement, the member companies of NFTC want to state our unequivocal support for an outcome that will maintain and build upon NAFTA's success in creating a more open and integrated North American market and strengthening America's competitiveness in the global economy. Our membership includes many of our nation's largest exporters, with extensive North American production platforms. We depend heavily on a smooth-functioning open market among the three NAFTA countries. Any effort to modernize NAFTA must recognize this reality. While it is important to address remaining barriers, especially those affecting newer technologies and modes of trade that didn't exist when NAFTA was enacted, we already enjoy significant gains from the elimination of tariffs and reduction of other barriers achieved under

NAFTA. Any final agreement that diminishes our existing access will have significant adverse effects on our U.S. operations, sales and employment.

It is therefore vital to ensure that negotiations to modernize NAFTA result in a strengthening of our trade ties with our North American partners. We believe there are many ways the agreement can be improved, and are prepared to work closely with U.S. negotiators to identify key potential gains for the United States from a modernization of the agreement. In particular, we see important gains to be made by including new commitments in areas not contemplated when NAFTA was negotiated over 20 years ago, by upgrading the rule-book in traditional areas of non-tariff discipline in ways that will improve trade and by eliminating remaining tariffs that were not removed under the existing agreement. These "upgrades" of NAFTA will set important precedents for any future negotiations with Asia or Europe, and thus it is important to make sure the result of these negotiations can become the template for a new era of trade cooperation.

Based on the aforementioned, NFTC believes that the effort to upgrade NAFTA should be guided by the following basic principles and objectives:

1. **The New NAFTA Should Create More Open Markets and Better Rules, Not New Restrictions.**

Negotiations should be focused on improving market access and ensuring greater fairness, but must not become a pretext for designing new trade restrictions or undermining existing access.

2. **The New NAFTA Should Strengthen the North American Production Platform.**

The agreement should strengthen North America as an integrated production platform for goods and services, enhancing U.S. producers' competitiveness in global markets, while also maintaining strong investment protections in all three countries.

3. **The New NAFTA Should Remain a Tripartite Agreement**.

The final agreement should maintain common rules and commitments among all three NAFTA partners. Separate bilateral agreements create greater inefficiencies for U.S. exporters.

4. **The New NAFTA Should Reflect the Changing World Economy.**

Negotiations should create new rules to ensure open markets in digital trade, e-commerce and other new technologies and modes of commerce that were not covered by the original agreement, establish new disciplines on state-owned enterprises and create better opportunities for small and medium-sized enterprises to compete in global commerce.

5. **The New NAFTA Should Update Rules in Other Areas Covered by the Original Agreement.**

Negotiations should seek to update NAFTA's rules on services, intellectual property, customs and trade facilitation, sanitary and phytosanitary measures, technical regulation, and regulatory coherence to both ensure greater fairness and openness in NAFTA trade and make NAFTA a better model for future negotiations with other regions.

Specific Negotiating Objectives

Consistent with our written comments filed in connection with this hearing, I will now highlight various areas where NFTC has proposed specific goals for the NAFTA modernization.

Customs and trade facilitation:

We need to streamline and make fully transparent the customs clearance process to ensure that movement of goods across borders is efficient and timely. NAFTA should allow for acceptance of electronic signatures for the certification process in all three countries and the use of digital documentation for audits. We should make certain that NAFTA mirror TFA commitments. The NAFTA should ensure publication of laws and regulations, provide for an advance rulings process, and move North America towards a single window system for entries. Finally, NAFTA should establish a commercially-meaningful *de minimis* threshold in Canada and Mexico. We note that the U.S. has an $800 threshold, whereas Canada's threshold is $15 USD, the lowest in the industrialized world and among the lowest globally and Mexico maintains two rates: a $50 USD rate applied to express carriers and a $300 USD rate applied to Mexico Post.

Digital Trade:

We need to ensure a framework of rules for digital trade in North America that will benefit both businesses and consumers. We need to ensure that companies and consumers can access and move information freely, that there are no customs duties on digital products and that we provide for use of electronic signatures and authentication methods to allow transactions through secure online payment systems. Provisions should also guarantee that new digital products are protected against future discrimination. We must prohibit governments from requiring local storage of information or force suppliers to share source codes or other confidential information and include appropriate protections for Internet intermediaries regarding third-party activity that occurs on their networks

Intellectual Property Rights:

The U.S. economy is driven by innovation – our companies develop groundbreaking technologies, products and services which we export to the world. These companies rely on IP protections to incentivize their R&D and innovation. Among the issues to address in a modernization, Canada must address its patent utility standard known as the "promise doctrine," a doctrine which is inconsistent with international practice and has resulted in 28 court decisions invalidating biopharmaceutical patents for "lack of utility." Consistent with current U.S. law, the IP chapter should be updated to include a 12-year period of regulatory data protection for biologic medicines. A modernized agreement should also include provisions on copyright, establishing copyright safe harbors for online service providers consistent with U.S. law and provide effective protections for rights holder while fostering an appropriate balance, including through limitations and exceptions consistent with the internationally recognized three-step test. Finally, the IP chapter should be revised to update the trade secret provisions of NAFTA and require NAFTA members to establish criminal procedures and penalties for trade secret theft.

Rules of Origin:

These rules were heavily negotiated and have functioned well over time – they should be maintained as they currently exist.

Investment:

NAFTA's Investment Chapter should be revised and updated, in particular to apply to state-owned enterprises, and should not contain any industry-specific carve-outs.

Government Procurement:

The NAFTA contains a strong procurement chapter that helps U.S. companies access procurement opportunities in Canada and Mexico. We consider it critical that these provisions be maintained in a modernized NAFTA.

SOEs:

It is important to address SOE behavior by providing a definition of SOEs that is broad enough to include SOEs that are principally engaged in commercial activity as well as SOEs that are acting under delegated authority from a government. When SOEs make commercial purchases and sales, they must do so on the basis of commercial considerations. The agreement should Provide that SOEs cannot discriminate against the companies or goods or services of another NAFTA party.

Thank you for the opportunity to provide our comments to you today. I look forward to answering any questions that you may have.