

# CLIENT ALERTS

---

## U.S. PROPOSALS IN ROUND 4 OF NAFTA NEGOTIATIONS ALARM AUTO INDUSTRY

10.31.2017

Auto industry groups joined together this week in an unusual display of unity to keep the Trump administration from drastically changing or withdrawing from the North American Free Trade Agreement (NAFTA). The Motor and Equipment Manufacturers Association (MEMA), and the American International Automobile Dealers Association (AIADA), joined with several Original Equipment Manufacturers (OEM) trade associations (Alliance of Automobile Manufacturers (AAM), the Association of Global Manufacturers (AGM), and the American Automotive Policy Council (AAPC)). On October 24, 2017, they launched the "Driving American Jobs" coalition, a grass roots effort enlisting voters to tell Washington: "Don't change the game in the middle of a comeback."

The MEMA began actively advocating its pro-NAFTA position in early June, but some individual OEMs have until recently stayed in the background, working through their trade associations. Industry-wide concern has mounted since formal talks began in August, and reached a peak when the US negotiating team, led by U.S. Trade Representative (USTR) Robert Lighthizer aggressively pressed for changes during the fourth round of the negotiations that Mexico and Canada view as nonstarters, under threat of US withdrawal from the three country pact.

The U.S. proposal last week that galvanized the collective industry into its united front seeks to amend the NAFTA "rules of origin" for autos. The Trump Administration has proposed raising from 62.5% to 85% the amount of vehicle content that must be manufactured in North America in order to avoid tariffs. The controversial proposal would also impose a new requirement that 50% of that content be US-produced. The collective auto industry in all three NAFTA countries agrees with the Mexican and Canadian governments that this (and other U.S. proposals) are untenable. They argue that any changes in the rules of origin

### Related People

Catherine M. Karol  
Of Counsel

### Related Services

International Trade and  
Customs Specialty Team

## CLIENT ALERTS

---

will disrupt long-established supply chains and add significant costs, thereby decreasing the competitiveness of North American-produced vehicles in the world market.

Most observers also believe that implementation of the U.S. proposal would drive U.S. plants in Mexico to find new sites with lower costs in Asia. Production in Mexico, particularly near the border, generates U.S. jobs that would not exist if this production were moved to Asia. Additionally, an estimated average 40% of the value of Mexican exports represent value obtained from the U.S. (From a legal standpoint, lawyers who have studied this proposal believe that having a specific U.S. minimum content could violate rules of the World Trade Organization (WTO).)

On its "DrivingAmericanJobs.com" website, the auto industry coalition expresses its strong support for NAFTA and "its key role in the recent rebirth of the US economy and the US auto industry." The coalition goes on to warn that the proposed rule changes "could have the same impact on the U.S. auto industry as a complete withdrawal, which would be disastrous for the industry, its workers, and the U.S. economy," and undertakes a rarely seen grass roots effort in urging constituents to communicate that view to the President and their governors through its online tool.

In addition to the auto industry coalition, the U.S. Chamber of Commerce and its affiliates have also dramatically stepped up NAFTA lobbying efforts on Capitol Hill. Over 130 representatives of various industries descended upon the U.S. Senate on October 24th to express their opposition to the White House proposals, mirroring a similar activity with the House of Representatives on October 11. The Chamber has stated that the proposals are "poison pills" that would hurt American companies and jobs. Butzel Long attorneys participated in both lobbying events on behalf of individual clients, as well as the USTR "stakeholder" briefings in Washington DC.

In a recent briefing, the USTR general counsel stated that NAFTA is being revisited in the context of President Trump's agenda of preserving and creating American jobs and purchasing American goods. He was unapologetic about the impact on Mexico and Canada, pointing to the U.S. \$65 billion trade deficit with Mexico and claiming that both countries had benefited more than the U.S. over NAFTA's 23-year history. Upon completion of last week's negotiations, Ambassador Lighthizer issued a sharply-worded Closing Statement expressing his "surprise" and "disappointment" at Canada's and Mexico's "resistance to change ..." that "will result in a rebalancing and a reduction in these huge trade deficits [for the United States]." "[T]he President has been clear that if we are to have an agreement going forward, it must be fair to American workers and businesses that employ our people at home." These remarks were not well received by the Mexican and Canadian partners.

A joint statement issued by all three parties (the U.S., Mexico and Canada) was more circumspect: "New proposals have created challenges and Ministers discussed the significant conceptual gaps among the Parties." \*\*\* "Ministers have called upon all negotiators to explore creative ways to bridge these gaps." The next round of NAFTA negotiations is tentatively scheduled for November 17th in Mexico City, allowing the Parties additional time to assess all proposals and in recognition of the difficulty, these new U.S. proposals will face in winning approval from Mexico and Canada.

## CLIENT ALERTS

---

Other controversial proposals by the U.S. negotiating team include:

- an end to the Investor-State Dispute Settlement (ISDS) provisions. These have been very popular with U.S. companies, allowing them to have many investment disputes decided by tri-partite panels of U.S., Canadian and Mexican arbitrators, even if it involves overruling laws in each country.
- addition of an automatic “sunset” clause that would bring NAFTA 2.0 to an automatic end in five years.
- limitation of the currently liberal provisions that allow waiver of buy American requirements to NAFTA members selling to the U.S. federal government. This could result in retaliation against U.S. companies seeking to sell to the Mexican and Canadian governments.

Despite the ramp-up of efforts to bolster the pro-NAFTA profile, grave concern remains that President Trump is ignoring the inputs of the business community and influential members of Congress. Therefore, the business community has begun to focus on “grass roots” approaches (such as “Driving American Jobs”), exhorting individual workers in key states that Trump won by smaller margins (Michigan, Ohio, Wisconsin and Pennsylvania) to reach out directly to the President in support of NAFTA. “Grass tops” approaches, i.e., direct efforts by state and local officials to communicate to Trump the importance of NAFTA to jobs in their states, are also being implemented. Butzel Long lawyers are contributing to these efforts and assisting in drafting letters for workers to send. The timing between now and the next NAFTA negotiating round is crucial.

### **Catherine Karol**

313.225.5308

karol@butzel.com

### **Les Glick**

202.454.2839

glick@butzel.com