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Canada unveils its top priorities for NAFTA renegotiations

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On August 14, 2017, Canadian Foreign Affairs Minister Chrystia Freeland outlined the core objectives of the Canadian government for the upcoming NAFTA renegotiations. The three NAFTA countries – Canada, the United States and Mexico – are set to begin the first round of talks on August 16, 2017, in Washington, D.C. The second round will take place in Mexico starting on September 10, 2017.

Minister Freeland’s statement positions Canada as seeking a “progressive” fairer trade regime under the renegotiated NAFTA. Some of these objectives are not likely to be very controversial, but their inclusion will depend on the successful resolution of other more contentious issues. The Canadian statement is quite different in tone and scope from the NAFTA renegotiating objectives released by the U.S. Trade Representative (USTR) on July 17, 2017.

Some of the features that Canada hopes will form the core of the new agreement include the following:

- **Labour standards**: Commitments with respect to labour standards should be brought into the core of the agreement, instead of being in a side agreement as is the case currently. The Trans-Pacific Partnership (TPP), which may yet be revived without the United States, contains such a chapter on labour and will no doubt serve as a model. Chapter 19 of the TPP contains 15 articles dealing with labour standards. The USTR objectives also include bringing the labour provisions of NAFTA into the core of the agreement, as well as other objectives that uphold high standards for labour. Canada may find much common ground with the U.S. on this topic.
- **Environmental standards**: Canada will also seek to include environmental standards within the core of the renegotiated NAFTA, instead of these provisions being part of the existing side agreement. Chapter 20 of the TPP, and its 23 articles, will again likely be the model for the NAFTA renegotiations.
The USTR is also seeking to bring environmental objectives into the core of NAFTA; many of these goals may be acceptable to Canada.

- **Chapters on gender and indigenous rights:** The amended Canada-Chile Free Trade Agreement is the first Canadian trade agreement and the first for any G20 nation that includes a chapter relating to gender rights. The inclusion of indigenous peoples’ rights in a trade agreement is unprecedented for Canada. These two proposed objectives would be historic achievements if included in the renegotiated NAFTA. The USTR document is silent on these issues.

- **Government procurement:** Canada will seek freer trade and market access in relation to government procurement, which was a significant achievement with the Canada-EU Comprehensive Economic and Trade Agreement (CETA). Canadian businesses see this as an important goal due to the requirements in many government contracts in the U.S. of local content provisions and other “Buy America” provisions. The USTR objectives argue for the continued exemption of U.S. sub-federal procurement from NAFTA as well as “Buy America” requirements on federal assistance to state and local projects. This area is likely to be very contentious.

- **Investor state dispute settlement / Chapter 11 reform:** Minister Freeland also indicated that Canada is willing to revisit the investor-state provisions of NAFTA, which allow investors of a NAFTA country to bring arbitration proceedings against the government of another NAFTA country. The reform would confer on governments an “unassailable right to regulate in the public interest” without being subject to a successful NAFTA Chapter 11 claim. Canada has lost several cases under Chapter 11 to U.S. investors. There may be some common ground between Canada and the USTR objective that seeks to eliminate the greater rights of NAFTA investors over domestic investors created by Chapter 11 of NAFTA.

- **Transfer of professionals:** The Canadian government will also be seeking to expand the current Chapter 16 of NAFTA so as to make the movement of professionals and business persons easier, to reflect the needs of cross-border trade and businesses. The USTR document is silent on this issue. The current attitude of the Trump administration to immigration and preserving jobs in the U.S. for American workers, could make this a controversial area during the negotiations.

- **Non-negotiable national interest priorities:** Canada’s “non-negotiable” priorities for cultural industries (publishing, broadcasting) and supply management in the dairy, poultry and egg markets were reaffirmed in the statement of Minister Freeland. Furthermore, while the United States has indicated that it wishes to scrap Chapter 19 of NAFTA, Canada has reaffirmed that Chapter 19 is not negotiable. Minister Freeland made it clear that this might be another deal-breaker for the renegotiations, as it was in 1987, during the original free trade negotiations between Canada and the U.S. leading up to the bilateral trade agreement.

Important, but more technical areas referenced in the USTR objectives that were not included in Minister Freeland’s statement include customs matters, rules of origin, intellectual property, trade in services and energy, and state-owned and controlled enterprises. Nevertheless, productive negotiations can be expected on achieving regulatory harmonization in relation to cross-border trade and other measures towards facilitating trade.

Whatever the outcome, the NAFTA reforms are likely to have a profound long-term impact on Canadian companies and investors, in a wide range of industries, that are involved in cross-border trade and investments in the United States and Mexico.
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