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Hon. Kevin Brady, Chairman
Hon. Richard Neal, Ranking Member
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Hon. Orrin Hatch, Chairman
Hon. Ron Wyden, Ranking Member
Committee on Finance
U.S. Senate
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Ambassador Lighthizer, Chairmen Brady and Hatch, and Ranking Members Neal and Wyden,

Over the 23 years since its inception, the North American Free Trade Agreement (NAFTA) has proven to be a success. Much has changed about the North American economy over this period, but NAFTA has not. Addressing the rise of the digital economy, for instance, is a worthwhile goal for trade negotiators, but we are concerned about the current state of negotiations.

Recent media reports indicate troubling developments in NAFTA's renegotiation. Rather than focusing on expanding the agreement to address areas of the economy that have emerged since 1994, it appears the United States is making unrealistic demands that threaten to derail the entire agreement. This would be a catastrophic mistake.

R Street urges USTR negotiators and policymakers in Congress to consider the following as NAFTA negotiations and oversight continue:

Right-to-Work

R Street supports the right of individuals to choose whether to join or not join any labor organization. However, we are concerned about Canada's protectionist call for the United States to abolish and preempt state-level right to work laws as a condition of NAFTA renegotiation. This imposition of internationally dictated labor laws not only runs counter to the goals of free trade and economic growth but also diminishes the ability of states to tailor individualized solutions to their diverse needs.

Among the many benefits of federalism is that it allows for laboratories of democracy to best meet the needs of citizens. Research on right to work states shows that there are not only an important historical and legal differences in legislation between states, but that the impacts of said legislation—and its absence—also vary by state. Therefore, it is important for states to continue evaluating their own situations before accepting a federal mandate like the one suggested by Canada.

Instead, NAFTA renegotiations should focus on building consensus through leveraging both national and regional comparative advantages and gains from trade. This will not be accomplished through hindering the responsiveness of state policy to regional labor needs.

Rules of Origin

In light of the complex supply chains that have developed as a result of trade agreements and globalization, R Street would like to see rules of origin (ROO) further liberalized as part of NAFTA renegotiations. Currently under NAFTA, at least 62.5 percent of the material in a car or light truck made in the region must be from North America to enter the marketplace tariff-free. This is the strictest automobile ROO of any trade agreement in the world.

Recent calls to increase automobile ROO thresholds (an 85 percent North American content requirement with a 50 percent American-made requirement) would only harm auto manufacturers and ensure that manufacturers use fewer American-made parts. This is because the proposed increase of the ROO—as well as similar increases in U.S. content requirements for imports—will make American auto manufacturers less competitive in a global marketplace. Car companies would likely pay a 2.5 percent most-favored nation tariff on cars in order to bypass the ROO and/or stricter domestic content requirements.

R Street urges trade negotiators to instead use TPP's ROO chapter as the baseline for any NAFTA ROO. Though it suffers from too many product-specific rules, the TPP's ROO chapter is preferable to NAFTA's current ROO and USTR's proposed changes.

Ideally trade negotiators would embrace a simpler way to address ROO issues in future trade negotiations. When regional value content (RVC) are applied, trade negotiators should aim to create uniform, cumulative requirements and generally in line with TPP's baseline.

Trade Deficit

R Street urges the administration and trade negotiators to reject the false notion that trade policy alone can reduce or even eliminate a trade deficit between two nations. Trade deficits are driven by larger macroeconomic events, not trade policy. Economists largely agree that trade deficits pose no threat to the economic prosperity of a nation, and they virtually all agree that bilateral trade deficits are a misguided policy consideration.

Current efforts to reduce trade deficits will backfire. The external pressures generated from the NAFTA discussions have unintendedly begun to depreciate the peso which portends a subsequent increase to the U.S. trade deficit vis-à-vis Mexico by lowering the price of imported goods. Instead, NAFTA renegotiations should continue to maximize the freedom of Americans to trade goods, services, and assets in the global marketplace.

Sunset Provision

The proposed five-year sunset provision on a future version of NAFTA injects unnecessary uncertainty for American business and thus harms private sector growth. Businesses make investment decisions on horizons longer than five years, especially in light of the incredibly sophisticated global supply chains that have developed in North America as a result of NAFTA. Policy uncertainty—whether created through domestic matters or free trade agreements—will hamper the ability of American businesses to grow and create new jobs. Moreover, it maintains a degree of mistrust between partner nations by escalating economic and trade tensions. The best way to protect Americans is to create a stable, market-driven, rules-based NAFTA.

Technological Protection Measures

The administration has expressed interest in expanding the use of digital rights management (DRM) to lock out users from accessing copyrighted materials even for non-infringing uses. This would cause a decline in consumers wanting to purchase and use emerging technologies and prevent researchers from finding vulnerabilities. By digitally locking these technologies we risk creating burdensome monopolies and an almost foregone secondary market. While the U.S. has a system in place for applying for exemptions to unlock DRM, we cannot expect Canada and Mexico to follow our model.

Copyright Duration

Canadian copyright law adheres to the international standard set under the Berne Convention protecting creative works for 50 years beyond the life of the author. This term, which is also required under current NAFTA rules, is more than sufficient to ensure that authors of creative works receive adequate compensation and incentive. The U.S. copyright term, however, is 20 years longer than the international standard. We strongly encourage U.S. negotiators not to press Canada to increase its copyright duration through new NAFTA provisions requiring a minimum term of life plus 70 years. Doing so would cause further confusion and uncertainty for creators, users, and disseminators of creative works; would keep very old works out of the public domain; and would exacerbate the existing problems surrounding orphan works of unknown authorship.

Data Localization

With passage of Trade Promotion Authority in 2015, Congress added a new negotiating objective directing USTR to “protect cross-border data flows and prohibit data localization for all sectors.” Nevertheless, the TPP’s broad ban on data localization requirements was needlessly weakened by an exemption in the financial services chapter. While the overall data localization provisions in TPP were positive, exempting one industry was a mistake that NAFTA trade negotiators should avoid.

Respectfully,

R Street Institute