

NAFTA renegotiation

Highlights for your business

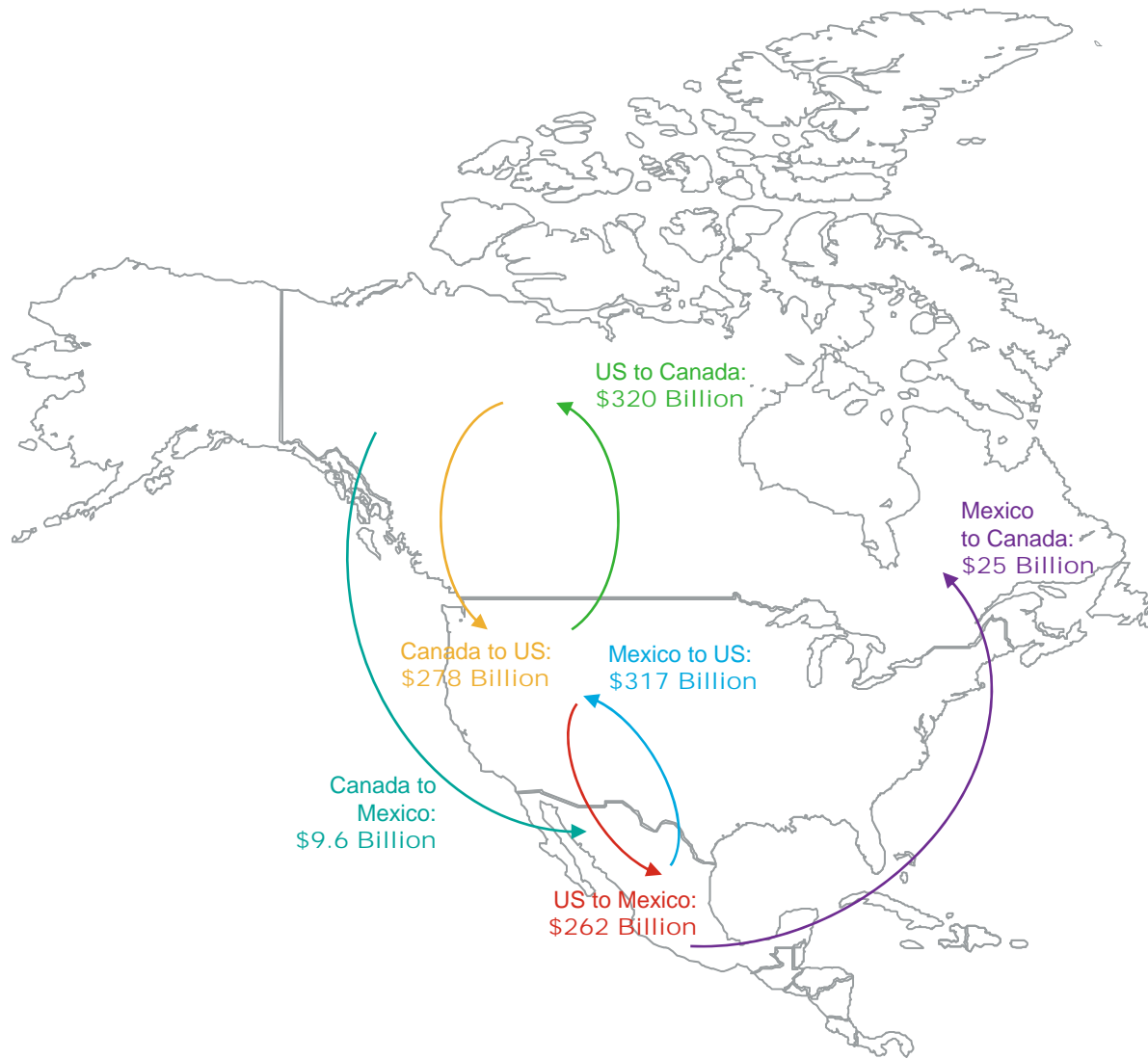
November 2, 2017

Paul Lalonde and Carmen Francis

Overview

- **Introduction**
- **Canada's position**
 - Negotiating priorities/engagement opportunities
 - Sensitive negotiation challenges
- **Negotiation update: Round 4**
 - Key outcomes
 - implications for upcoming rounds
- **What can companies do?**
- **Q&A / Conclusion**

Introduction



1990s FTA v. 2000s FTA

TPP Chapters not in NAFTA

- | | | |
|--------------------------------------------------|--------------------------------------------------------------|-------------------------------------------------|
| 1. Initial Provisions and General Definitions | 11. Financial Services | 21. Cooperation and Capacity Building |
| 2. Trade in Goods | 12. Temporary Entry for Business Persons | 22. Competitiveness and Business Facilitation |
| 3. Textiles and Apparel | 13. Telecommunications | 23. Development |
| 4. Rules of Origin | 14. Electronic Commerce | 24. Small- and Medium-Sized Enterprises |
| 5. Customs Administration and Trade Facilitation | 15. Government Procurement | 25. Regulatory Coherence |
| 6. Sanitary and Phytosanitary (SPS) Measures | 16. Competition Policy | 26. Transparency and Anti-Corruption |
| 7. Technical Barriers to Trade (TBT) | 17. State-Owned Enterprises (SOEs) and Designated Monopolies | 27. Administrative and Institutional Provisions |
| 8. Trade Remedies | 18. Intellectual Property | 28. Dispute Settlement |
| 9. Investment | 19. Labour (NAFTA side letter) | 29. Exceptions |
| 10. Cross-Border Trade in Services | 20. Environment (NAFTA side letter) | 30. Final Provisions |

Canada's position

Canada – Context

- FTA with US since before NAFTA - 1989
- Biggest export customer for US goods
- Generally close to balanced trade with the US (no large trade deficit)
- High degree of political consensus behind NAFTA and FTA's in general
- Competitive access to US market is existential for Canadian industrial/manufacturing base
- Two way trade with the US accounts for almost 40% of Canada's GDP
- Highest possible priority for the Government of Canada – daily front page news

Canada – Negotiating priorities

- Retain as many of the benefits of the current agreement as possible – defensive posture
- Achieve some offensive objectives: Buy America/American, labor mobility, easing border procedures
- Stay the course: Reactive stance

Canada – Negotiating priorities

- Specific targets:
 - Integrated environmental protections
 - Strengthened labour safeguards
 - Freer market for government procurement
 - Easing cross-border movement for professionals
 - Gender equality; indigenous rights
 - Preservation of supply management system
 - Dispute resolution (Chapters 11 and 19)

Canada – Sensitive negotiation challenges

- Low value threshold for duty free imports
 - Current thresholds
 - US: US\$800
 - Canada: CA\$20
 - Mexico: US\$50
- Resistance from traditional retail sector
- GST/HST complications

Canada – Sensitive negotiation challenges

- **Other challenges**
 - Supply management
 - E-commerce: Data privacy/sovereignty
 - Dispute resolution – Chapter 19

Negotiation update:

Round 4

Conclusion of negotiation round 4

- **Formal release of US demands**
 - Gradual elimination of supply management
 - Increase to automobile rules of origin
 - Non-binding / voluntary dispute resolution under Ch. 11, 19 and 20
 - 5-year sunset clause
- **Substantive completion of Chapter on Competition**
- **Tone of negotiations**
- **Poison Pill?**

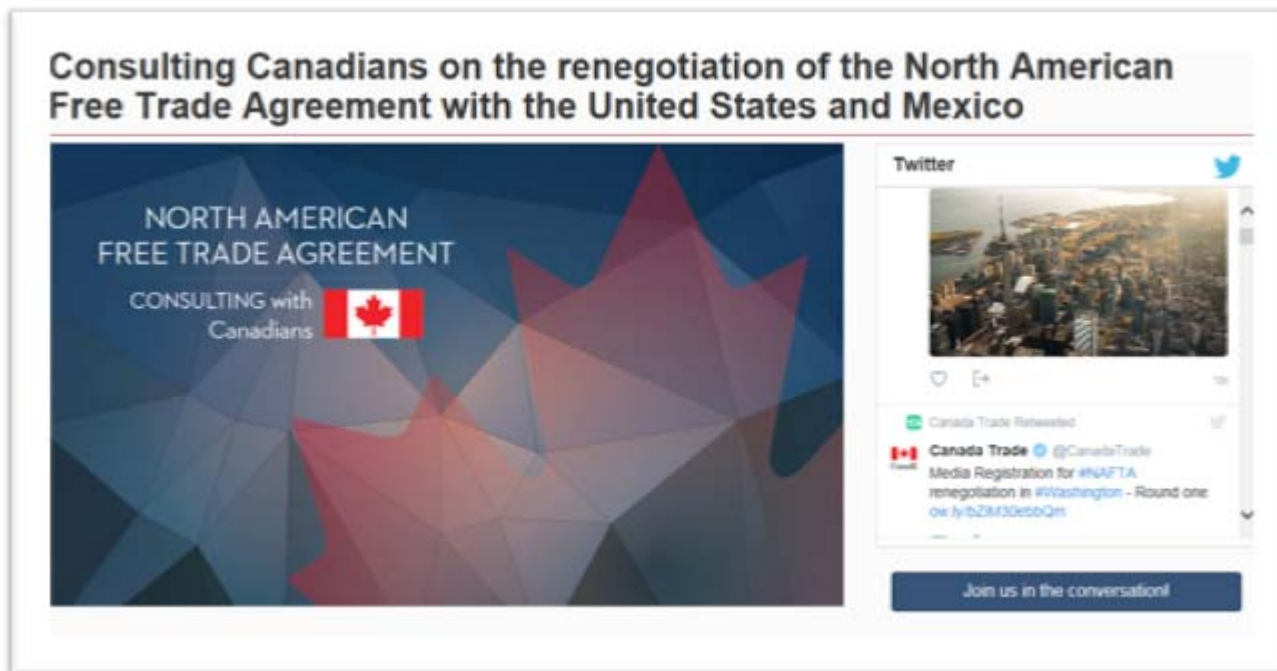
Potential U.S. withdrawal?

- **Can the President unilaterally withdraw the U.S. from NAFTA?**
 - Omnibus Trade and Tariff Act 1988
 - What about Congress?
 - Executive Order as “nonjusticiable political question”
- **Revival of U.S. – Canada FTA?**
 - NAFTA Implementation Act
 - Agreement to “terminate the suspension”
- **Likely outcome of withdrawal:**
 - Proclamation of higher U.S. tariffs
 - Customs fees
 - End of temporary entry business visas

What should companies do?

Engagement opportunities

- Formal consultation process:



- Ministerial advisory NAFTA Council
- Ad hoc industry communications with public officials

Practical guidance for navigating renegotiation

- NAFTA risk/sensitivity analysis
 - What are your top commodity imports/export across NAFTA borders?
 - What is the delta between the NAFTA duties (typically 0%) and MFN duties on these products?
 - Options to paying MFN duties
 - Domestic sources
 - Other free trade sources
 - Duty relief options (drawback etc.)
- Supply chain review
 - Typical trade terms with top suppliers and customers – do they address duty increase risk?
- Impact of “tightening” of origin rules or certification requirements
 - Review of origin certification process – as exporter to NAFTA customers and as importer. Meeting the requirements of other free trade options (e.g. CETA).
- Review of trade compliance policies and practices

Practical guidance for navigating renegotiation

- **Consideration of potential opportunities in the renegotiations**
 - Regulatory coordination
 - E-commerce and data flows
 - Others?

Q&A / Thank You

大成 DENTONS

Paul Lalonde

paul.lalonde@dentons.com

Carmen Francis

carmen.francis@dentons.com

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Labs and the Nextlaw Global Referral Network. Dentons' polycentric approach and world-class talent challenge the status quo to advance client interests in the communities in which we live and work.

www.dentons.com

© 2017 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This document is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. We are providing information to you on the basis you agree to keep it confidential. If you give us confidential information but do not instruct or retain us, we may act for another client on any matter to which that confidential information may be relevant. Please see dentons.com for Legal Notices.