



KYLE PITSOR

Vice President, Government Relations

June 12, 2017

Mr. Edward Gresser
Assistant U.S. Trade Representative for Trade Policy & Economics
Chair, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Request for Comments on Negotiating Objectives Regarding Modernization of the
North American Free Trade Agreement with Canada and Mexico
Docket No.: USTR-2017-0006

Dear Mr. Gresser,

As the trade association representing U.S. manufacturers of electrical and medical imaging equipment, the National Electrical Manufacturers Association (NEMA) requests an opportunity to provide testimony at the June 27 public hearing and provides the attached summary and comments in response to the Request for Comments on Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico, published in the *Federal Register* on May 23, 2017.

NEMA, founded in 1926 and headquartered in Arlington, Virginia, represents nearly 350 electrical and medical imaging manufacturers. Our combined industries account for more than 400,000 American jobs and more than 7,000 facilities across the U.S. Domestic production exceeds \$117 billion per year and exports top \$50 billion.

Please find our comments attached. Our member companies count on your careful consideration of these comments and look forward to outcomes that meet their expectations.

If you have any questions, please contact Craig Updyke of NEMA at 703-841-3294 or craig.updyke@nema.org.

Sincerely,

A handwritten signature in black ink that reads "Kyle Pitsor". The signature is written in a cursive, flowing style.

Kyle Pitsor
Vice President, Government Relations

attachment

NEMA Comments on Updating the North American Free Trade Agreement

Executive Summary

NEMA welcomes that the U.S, Canada, and Mexico intend to open negotiations to update the North American Free Trade Agreement (NAFTA). Working together with advice from industry and other stakeholders, the three governments can modernize the Agreement in several ways – including by removing barriers and enabling greater cooperation – to better support current and future trade by NEMA Member companies.

Discussion

NEMA welcomes the Administration’s focus on modernizing NAFTA. NEMA encourages and supports government and private-sector efforts to open and maintain effective access to U.S. and foreign markets for electrical and medical imaging equipment, components and other necessary manufacturing inputs.

The present NAFTA commercial environment: Importance and magnitude of North American partners for the U.S. electroindustry

The economic importance of the Canada-Mexico-U.S. trade relationship cannot be overstated. For the U.S. electroindustry, Mexico and Canada are far and away the largest and second-largest export markets, respectively. Specifically, the value of U.S. domestic exports to Mexico within NEMA’s scope totaled \$11 billion in 2016, while similar shipments to Canada topped \$6 billion. In terms of imports, Mexico is the second largest source of U.S. imports of NEMA-scope products, while Canada is the fifth largest.

Over twenty-plus years, U.S. electroindustry companies have made investments in facilities and workers in the NAFTA territory that are supported by global supply chains that enable global competitiveness. These investments should be enhanced by the trade agreement, not punished.

The importance of the integrated North American commercial environment is reflected in results of a recent survey of NEMA member companies. For example, twice as many respondent companies export from the U.S. to Mexico than manufacture in Mexico for export to the U.S. Slightly more responding companies import finished goods from Mexico manufactured by others than manufacture finished goods themselves in Mexico for export to the U.S. NEMA companies that manufacture in Mexico sell in Mexico and also export from Mexico to Canada and other countries. Seventy-eight percent of responding companies export finished products from the U.S. to Canada.

General negotiating objectives for NAFTA modernization

First, the central negotiating objectives of the Administration must be to support and enhance the current North American commercial environment discussed above.

Second, working together, the U.S., Canada and Mexico can craft a state-of-the-art trade agreement that can set a new high standard for other trade negotiations.

Third, NAFTA can be updated to support cooperation and collaboration on regulatory and technical standards matters to reduce and eliminate trade frictions while upholding safety, security, and other national objectives such as environmental protection. Greater collaboration can also enhance North American competitiveness vis-à-vis the rest of the world.

Overall, the Administration's aim must be to further rules-based open trade among the three countries and remove unnecessary frictions and barriers to make North America a manufacturing location of choice for companies to do business.

Technical barriers to trade

An updated NAFTA should include process improvements to reduce the amount of complexity and resources necessary to comply with the agreement.

In summary, the renegotiated agreement should encourage and enable elimination of all types of technical trade frictions in the NAFTA region, and harmonization of requirements to the extent reasonable. Improvements can be made via the Technical Barriers to Trade chapter of NAFTA in the areas of standards development, acceptance, and adoption as well as acquisition and use of national certification marks.

With cooperation and collaboration, national regulators should strive to define harmonized requirements to which manufacturers can certify once and achieve market access in the entire three-country region and even beyond. This will result in a common, shared regulatory space with high standards but lower product-development costs and therefore lower prices for users and consumers in the market.

Moreover, an updated NAFTA should include robust requirements for regulators in the U.S., Canada and Mexico to confer regularly and to follow Good Regulatory Practices, including ensuring that regulatory measures are science-based, are justified by cost-benefit analysis, and represent the least trade restrictive method necessary to achieve the regulatory objectives. However, NEMA opposes mutual recognition agreements or regulatory harmonization for products that are not U.S. federally regulated.

NAFTA modernization presents an opportunity for reassessment of national systems for development of technical standards. A modernized NAFTA, by making it easier to adopt each

other's safety and product standards and to develop such standards together, would support advancements toward a genuine North American international standards system. Emphasis must be placed on development and adoption of common, shared standards that serve the North American marketplace and can promote broader international competitiveness.

At present, when new standards, codes, and regulations that reference standards are adopted by governments, the adopting agencies do not currently coordinate sufficiently with each other with regard to several key requirements, such as:

- The time from publication of new requirements to their effective date is sometimes too short. We recommend as much as three years from date of publication to allow manufacturers to comply.
- The number of accredited testing laboratories is sometimes insufficient, and products cannot be tested in time. We recommend that at least three laboratories be accredited at least two years before new requirements become effective.
- Sometimes the testing laboratory marking is required on the product packaging in addition to the certification mark. This causes operational difficulties to manufacturers when for any reason the products are tested by a different laboratory. The testing laboratory marking should be eliminated as unnecessary since other less onerous methods are available for tracking.
- Audits of manufacturing facilities are sometimes required more than annually. We recommend that agencies adopt audit policies with a frequency of no more than annually.

It is also important for NEMA members to have an array of accredited third-party conformity assessment and certification providers from which to choose when necessary. An updated NAFTA should deliver on the promise of national treatment for each country's conformity assessment bodies, providing for increased efficiencies, elimination of redundant testing and certification requirements, lower costs, and shortened time to market.

Customs and trade facilitation

Modernization of the NAFTA should include harmonization of the duty drawback provisions with global best practices and the "lesser of the two rule" for refunds should be dropped. The additional documentation requirements for Canada and Mexico should be removed also. The authorities should recognize and achieve their goals of reducing frictions such that qualification for duty drawback can be done once for all three countries.

Canada, Mexico and U.S. Customs authorities should reach an agreement to coordinate, align, and harmonize their classification of products by Harmonized System codes as well as their interpretation of those classifications.

There is great potential for digital integration among the customs authorities of the three countries in order to speed up the customs clearance process and accept paperless customs product clearances. High-volume known, approved, compliant traders should receive preferential treatment at border crossings for regular transactions at particular ports of entry. Negotiations should include provisions for efficient border crossing and freight transfer capabilities. NEMA members report that shipment times from the U.S. to many Mexican destinations are currently excessive due to the Mexican practice of recounting the number of products for every border crossing.

Modifications to rules of origin and certification procedures

Rules of origin can influence or incentivize investment in U.S. manufacturing and sourcing location decisions and competitiveness. In general, NEMA opposes changes to the current NAFTA rules of origin – including qualification under tariff shift rules or under Regional Value Content rules – that would make it more difficult for NEMA member companies to maintain their current supply chains and take advantage of the Agreement’s benefits.

Creating additional hurdles or higher thresholds for origin certification under NAFTA could drive supply chain sourcing and manufacturing out of the NAFTA region. Further, small and medium-sized businesses that currently struggle to comply with NAFTA rules of origin will be further disadvantaged by the additional complexity. NEMA favors rules of origin that better support how manufacturing has and will continue to evolve. In fact, many NEMA members favor further liberalization and simplification of the NAFTA rules of origin.

In any case, the Administration must be clear-eyed about the possible and likely employment effects of rules of origin changes, especially if those changes disadvantage U.S. companies that have made significant investments to optimize their supply chains in the face of strong global competition.

NEMA members strongly support efforts to reduce the costly administrative burden of certifying that a product meets the applicable rule of origin, which weighs heaviest on small and medium-sized businesses. With the full implementation of the “Single Window” for customs entries and customs authorities’ commitments to process improvements, the time is ripe for the North American customs services to collaborate on ways to reduce compliance reporting burdens. The NAFTA territory governments should facilitate legitimate and fair duty-free trade, not settle for complexity that imposes needless compliance costs on NAFTA-territory companies.

Specifically, the certification requirement to solicit vendors annually is costly and inefficient. Allowing for multiyear certification would benefit companies. In addition, many companies have systems that generate certificates with electronic signatures but Mexico refuses to recognize these as valid. Businesses are required to manage these separately. All signatories should be required to accept electronic signatures on a certificate. Lastly, NAFTA certificates have an expiration date. For smaller companies consuming inventory over longer periods of time, a raw material can lose its NAFTA status just by the passage of time, even when the finished good would qualify had the certificate remained valid. As the preferential origin does not change on manufacturing inputs, the certificate should have no expiration date.

Barriers to trade in services

As discussed above under *Standards and conformity assessment*, an updated NAFTA should broaden and level the playing field for testing/conformity assessment and inspection services in Canada and Mexico.

An updated NAFTA should also be “forward compatible” to enable U.S., Canadian and Mexican companies to compete on a level playing field to provide services that enable and advance the new and future digital and energy economies in North America.

Digital trade issues

The Administration recognizes, as do NEMA and our Member companies, that digital technologies are critical to the future of market access, trade, and economic growth. With NEMA’s support, previous negotiations have advanced the subject of digital trade significantly and, at a minimum, the results thereof should be folded into an updated NAFTA. If the three governments can go even further to remove barriers to North American digital trade and the free movement of data, it would be welcomed by NEMA Members.

Trade-related intellectual property rights issues and enforcement cooperation

As discussed above, the regulators and customs authorities of the U.S., Canada and Mexico should work more closely together, including through better use of data, to enforce their laws and regulations while minimizing compliance burdens on legitimate and trusted traders. Two key areas are:

- prevention of trade in electrical products that are counterfeit or otherwise infringe on intellectual property rights and

- interdiction of products intended for sale in North America that do not meet mandatory safety, energy conservation, or other national regulations.

Government procurement issues

Since most U.S. electric utilities are not state-owned, Mexican and Canadian manufacturers do not face Buy American requirements for utility products. Utilities in Canada and Mexico should drop their procurement preferences for domestic companies. Specifically, in Mexico the incumbent state-owned utility, CFE and the state-owned oil-and-gas company, Pemex, allow for local bid preferences, with U.S. suppliers penalized by as much as 10 percent.

As Mexico continues to implement its energy reforms, it should open up CFE procurement and remove preferences for Mexican suppliers.

On the Canadian side of the border, utilities show a clear preference for small Canadian manufacturers. These policies should be removed as part of the broad efforts in NAFTA to lower barriers to trade and lower costs for purchasers.

END