

Donohue also criticized an idea the administration floated for a sunset clause that would end NAFTA after five years unless all three parties renew it, saying it would not foster a pro-investment environment. The administration is also considering eliminating or making investor-state dispute settlement (ISDS) optional, Donohue said. ISDS ensures that investors are treated fairly and compensated if expropriation occurs, he said. A U.S. proposal that would claw back NAFTA's existing procurement rules would lead directly to reduced sales of made-in-the-USA products and hurt U.S. workers, he said.

"All of these proposals are unnecessary and unacceptable," Donohue said.

'Creative Trade Solutions' But AFL-CIO President Richard Trumka, in an emailed statement, said the U.S. Chamber's negative reaction to discussing "creative trade solutions reveals a lot about how much corporate CEOs benefit under the NAFTA status quo." Trumka said U.S. Trade Representative Robert Lighthizer has engaged with labor and listened to ideas offered.

While the AFL-CIO doesn't agree on everything, "we exchange views and seek common ground that will benefit all North American workers." Trumka said the AFL-CIO will fight against the Chamber pushing "the same old broken trade rules that could keep a new NAFTA from being a trade agreement that benefits working people."

When asked about Donohue's speech, USTR spokeswoman Emily Davis referred Bloomberg BNA to her earlier comments following previous Chamber criticism. "The President has been clear that NAFTA has been a disaster for many Americans, and achieving his objectives requires substantial change. These changes of course will be opposed by entrenched Washington lobbyists and trade associations. We have always understood that draining the swamp would be controversial in Washington," she said.

By ROSSELLA BREVETTI

With assistance from Cheryl Bolen.

To contact the reporter on this story: Rossella Brevetti in Washington at rbrevetti@bna.com

To contact the editor responsible for this story: Jerome Ashton at jashton@bna.com

The speech is available at <https://www.uschamber.com/speech/preserving-north-american-growth-jobs-and-competitiveness>.

The letter is available at <https://www.uschamber.com/press-release/chambers-commerce-all-50-states-urge-trump-administration-modernize-nafta-do-no-harm>.

NAFTA

NAFTA Talks Could Face Stormy Negotiations in Round Four

North American Free Trade Agreement negotiators will face treacherous headwinds during the new NAFTA round that began Oct. 11 in Arlington, Va., to continue hashing out details of NAFTA 2.0, according to trade analysts and private-sector sources.

The gloves are likely to come off as the fourth round will see U.S. offers on some of the most contentious issues in the talks, including rules of origin for autos, dispute settlement, and possibly a sunset clause that would terminate the agreement after five years unless the parties agree to renew it, the analysts said.

Proceeding with these proposals could lead to a "chaotic breakdown in the negotiations," John Murphy, the U.S. Chamber of Commerce's president for international policy, told reporters Oct. 6.

"This could be the round that blows up," an apparel industry source told Bloomberg BNA. Trade attorney Gregory Husician, partner at Foley and Lardner LLP, told Bloomberg BNA in an email that the next round faces a heightened chance of a breakdown as negotiators move from low-hanging fruit to highly controversial items.

As negotiators slog it out in at the negotiation table, here are several crucial issues to watch as the U.S. outlines more details on various positions:

1. Investor State Dispute Settlement Early on, U.S. Trade Representative Robert Lighthizer signaled his concern with investor-state arbitration impinging on U.S. sovereignty. He faces a balancing act trying to satisfy U.S. businesses that view ISDS as an indispensable part of NAFTA and U.S. labor groups that argue it provides one more NAFTA incentive to outsource U.S. jobs.

ISDS provisions allow investors to bring NAFTA governments before arbitration panels for alleged breaches of investment provisions.

Canada has offered an ISDS proposal largely tracking language in the Comprehensive Economic and Trade Agreement (CETA) with the EU, according to several private sector sources who spoke on background. But a CETA-type investment court is viewed as dead on arrival in the U.S. Congress. Mexico's ISDS proposal favors language in the Trans-Pacific Partnership, according to a private-sector source. "They are far apart and they still don't know what the U.S. will offer on dispute settlement," she said. "That will be a big fight in the negotiations because Canada is not reverting to TPP on investment" and sees the CETA as their model, she added.

Unlike NAFTA and the TPP, CETA establishes a standing dispute settlement tribunal to hear investor-state cases and provide for appeals. CETA's provisions for a tribunal—whose members are chosen for fixed terms by the state parties through a joint committee—diverge from the current NAFTA process where tribunals are appointed by disputing parties.

"I think ISDS gets put off [by the U.S.] because they are working on that in a way that doesn't explode in everyone's face," Welles Orr, senior international trade adviser at Miller & Chevalier, told Bloomberg BNA. A source aligned with labor interests told Bloomberg BNA that it appeared that the administration's "opt-in" concept for ISDS still had legs despite efforts by the U.S. business community to kill it.

Under the "opt-in" concept, which has not been formally proposed in the talks, NAFTA parties would have the option of deciding whether to use the system.

Mexico and Canada want to see the language before weighing in on the idea, the source said.

2. Auto Rules of Origin Lighthizer opened the NAFTA talks with a call for higher North American content and substantial U.S. content in auto and auto parts rules of origin. So far, no numbers have been put on the table by the U.S. but that is expected to change in round four. "They have got to spell out in the fourth round what they want," Orr said. "The auto industry is watching this with crunched teeth and bitten nails."

Rules of origin guide determinations on which goods qualify for preferential tariff treatment under NAFTA.

So far, conversations on auto rules of origin have discussed possible changes to the NAFTA tracing list, an auto industry source told Bloomberg BNA. NAFTA requires that a vehicle must obtain 62.5 percent of its content from inside the free trade area to qualify for duty-free treatment. NAFTA includes a "tracing" list. Regardless of country of origin, items that are not on the tracing list are considered to have been sourced from the NAFTA region. The U.S. has discussed adding steel and electronics to the tracing list, according to the source.

Trade attorney Leslie A. Glick, with Butzel Long, D.C., told Bloomberg BNA that the proposal for substantial U.S. content faces heavy opposition in the auto parts industry and elsewhere. Glick, who advises auto parts makers, said that "people are very happy with the 62.5 percent and don't want to see that toyed with." He added that there were questions about whether a NAFTA U.S. content requirement would violate World Trade Organization commitments. "There could be legal challenges," he said, adding that the idea also faces opposition from some key lawmakers. In addition, Glick said that rules of origin discussions in the next round could also focus on heavy machinery.

3. Currency Manipulation The Trans-Pacific Partnership had a side deal with currency manipulation language and the administration has said it wants such language in NAFTA. No proposal has been made yet. "I don't think they can get a consensus within the administration on what they want to put forward," Orr told Bloomberg BNA. "I think there are people holding out for something better [than the TPP language]," he said.

An auto industry source told Bloomberg BNA that the Treasury Department and USTR have been at odds over currency commitments in NAFTA, adding that Treasury has opposed such language in trade pacts. The Treasury Department did not respond to a request for comment. The Trump administration has not accused Canada and Mexico of being currency manipulators. Some analysts said the currency manipulation provision that the U.S. will seek in NAFTA could be a model for future trade pacts that involve the U.S. Manipulation refers to a country devaluing its currency to make its goods more affordable in export markets.

4. Sunset Clause/Dispute Settlement Canada, Mexico, and the U.S. business community have rejected an idea floated by administration officials that NAFTA include a sunset clause that would force a review of the pact every five years with the possibility of termination. "The sunset provision is very troubling. Where is the certainty?" an agriculture industry source told

Bloomberg BNA. The sunset clause idea has not been formally proposed but could add another bone of contention if the U.S. proposes it in the fourth round.

The sunset clause and the U.S. push to eliminate Chapter 19 dispute resolution binational panels are non-starters for most of the agriculture industry, the source told Bloomberg BNA. Without Chapter 19 binational panels, U.S. industry would only be able to challenge Mexican dumping and subsidy determinations in Mexican courts. "That gives pause to a cross section of the U.S. economy—not just agriculture," the source said. Chapter 19 creates a system of binational panel review as an alternative to judicial review by domestic courts of final determinations in antidumping and countervailing duty cases.

But, the U.S. Lumber Coalition, which represents domestic lumber producers, strongly backs the Trump administration's goal to get rid of Chapter 19. Trade attorney David Yocis, with Picard, Kentz & Rowe, told a recent Washington International Trade Association forum that the flaws in the system outweigh the benefits, which are now provided by other means, including the WTO dispute settlement process.

Another industry source, aligned with a trade association, also voiced concern with an idea floated by the administration to do away with NAFTA Chapter 20 state-to-state dispute settlement and to replace it with a system similar to the General Agreement on Tariffs and Trade non-binding dispute settlement. Chapter 20 is applicable to all disputes among or between the countries regarding the interpretation or application of the NAFTA.

5. Dairy Trade The U.S. likely will unveil long-expected demands on dairy trade with Canada at the next round. Dairy trade, which was not liberalized with Canada under the original NAFTA, has been a long-standing source of friction between the U.S. and Canada. "We're going to lay some things on the table in this next round," Agriculture Secretary Sonny Perdue told a Washington International Trade Association forum Oct. 4 in a reference to dairy and poultry trade with Canada.

"Honestly, we've been somewhat disappointed in the first three rounds, but we think that's the way these things get going," Perdue added.

The dairy industry is the largest of the supply-managed industries in Canada. Canadian Prime Minister Justin Trudeau has said that Canada will defend supply management in the negotiations. Supply management controls the price of milk, cheese, eggs, and poultry in Canada.

Jamie Castaneda, senior vice president for strategic initiatives and trade policy with the National Milk Producers Federation and U.S. Dairy Export Council, told Bloomberg BNA that dairy trade is an area where the Trump administration can reduce the trade deficit by billions through increasing trade. "That's a better story than all these other controversial elements of the negotiation that are being discussed," he said.

By ROSSELLA BREVETTI

To contact the reporter on this story: Rossella Brevetti in Washington at rbrevetti@bna.com

To contact the editor responsible for this story: Jerome Ashton at jashton@bna.com