RECENT DEVELOPMENTS IN NAFTA

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I. INTRODUCTION

CURRENTLY, the most predominant issue regarding the North American Free Trade Agreement (NAFTA) is whether the agreement should be reopened and renegotiated in the near future. This paper will address this and other issues facing NAFTA right now. First, there is much debate revolving around newly elected President Obama's desire to renegotiate NAFTA. Additionally, the "Buy American" and "Buy Canadian" policies of those two member countries signify a more protectionist approach to trade.

II. THE DEBATE OVER NAFTA RENEGOTIATION

Some believe that all of the benefits that were to be reaped by NAFTA had been fully achieved as of the year 2000.[1] The "current trends in regional economic integration suggest that the post FTA/NAFTA effect is mature and has tapered off."[2] The primary reasons that drew the three nations into NAFTA many years ago are now drawing the nations away from each other.[3] The fact that the United States is seeking out a two-way trade with China, in addition to making investments in China, provides evidence for this theory.[4] But Canada is not engaging in a similar strategy, leaving an opening for China to take over Canada's position as the highest trade partner to the United States.[5]

As the new leader of the United States, President Barack Obama will likely "face more political pressure on protectionism than any other U.S. chief executive since 1930."[6] Many believe that while NAFTA was a "state-of-the-art" agreement fifteen years ago when it was created, this is

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1. BNA's International Trade Reporter, *NAFTA: New U.S. Administration an Opportunity to Improve Trade, Canadian Report Says*, 25 ITR 1785, (Dec. 18, 2008) [hereinafter *New U.S. Administration*].
2. *Id*.
3. *Id*.
4. *Id*.
5. *Id*.
6. BNA's International Trade Reporter, *Trade Policy: Outgoing Trade Official Padilla Describes Lessons Learned for Incoming Administration*, 25 ITR 1640, (Nov. 20, 2008).

no longer the case.[7] During his campaign for the presidency, President Obama made it clear that he supported the reopening of NAFTA, even threatening withdrawal from the agreement entirely if it was necessary to make Canada and Mexico cooperate.[8] However, many economists are expressing concern that renegotiating NAFTA would "reduce trade and stir alarm about a wave of protectionism."[9]

During his campaign, President Obama was critical of the labor and environmental provisions in NAFTA, vowing to make them tougher.[10] He has met with President Calderon of Mexico to "reiterate his continued commitment to upgrading NAFTA to strengthen labor and environmental provisions to reflect values that are widely shared" in both Mexico and the United States.[11] If the member countries decide to reopen NAFTA, the nations will press their agendas in "politically sensitive areas such as lumber, sugar, and immigration."[12]

Senior representatives of the Mexican and Canadian governments have indicated that they would "not be opposed to updating the agreement along the lines suggested by President. . .Obama."[13] President Calderon, however, has said that he explained to President Obama that Mexico is willing to work on additions to "build on NAFTA's achievements," but does not believe NAFTA needs to be renegotiated.[14] He believes that NAFTA was responsible for the past economic growth and stability in the United States and merely needs to be "improved upon."[15] The Mexican farming groups are calling for the re-imposition of tariffs on items from the United States, such as corn and beans, claiming that cheap U.S. imports are forcing Mexican farmers out of business.[16] Some people do believe that Mexico has a substantial interest in renegotiating the provisions regarding both agriculture and immigration for that reason.[17] President Obama's plan for the American economy "includes substantial investments for port modernization and improvements on the Mexican border

7. BNA's International Trade Reporter, *Trade Policy: Possible Picks for Obama's USTR Draw Mainly from Clinton-Era Pool*, 25 ITR 1597, (Nov. 13, 2008) [hereinafter *Possible Picks*].
8. *Id*.
9. Fred Barnes, *The Only Thing We Have to Fear. . .*, THE WEEKLY STANDARD, Jan. 26, 2009, *available at* http://www.weeklystandard.com/Content/Public/Articles/000/000/016/017vzepy.asp.
10. BNA's International Trade Reporter, *Trade Policy: Sen. Obama Supports Free Trade, Favors Hard Line on China, Adviser Says*, 25 ITR 1549 (Oct. 30, 2008).
11. BNA's International Trade Reporter, *Mexico Reluctant to Renegotiate NAFTA, while Canada Appears Ambivalent*, 26 ITR 111 (Jan. 22, 2009) [hereinafter *Mexico Reluctant*].
12. BNA's International Trade Reporter, *Trade Policy: Outgoing Trade Official Padilla Describes Lessons Learned for Incoming Administration*, 25 ITR 1640 (Nov. 20, 2008).
13. *See Possible Picks*, *supra* note 7, at 1.
14. *See Mexico Reluctant*, *supra* note 11, at 1.
15. *Id*.; BNA's International Trade Reporter, *Talks on Possible Trans-Atlantic FTA Could Gain Traction This Year. . .Finally*, 26 ITR 109 (Jan. 22, 2009).
16. *See Mexico Reluctant, supra* note 11, at 1.
17. *Id*.

to facilitate legal trade and commerce."[18] However, the Canadian government has indicated that it would be willing to consider proposals that the new presidential administration would recommend.[19] The Canadian government, along with President Obama, will also be seeking improvements in the labor and environment areas.[20]

Many are hoping that there will be "refinement and modernization of some elements of NAFTA, including the dispute settlement system."[21] President Obama's administration will have to "focus on the short-term economic imperatives of dealing with the U.S. economic recession and financial turmoil, and restoring fiscal stability."[22] While President Obama repeatedly spoke on the campaign trail of his goal to reopen NAFTA, his decision to make Rahm Emanuel his chief of staff has many pro-trade advocates less concerned.[23] Emanuel is widely viewed as a free trade advocate and was a member of the pro-trade New Democrat Coalition.[24] He is known for being the "point man in the Clinton White House in winning congressional approval of NAFTA in 1993."[25] Overall, President Obama appears to have "surrounded himself with a cadre of broadly pro-free trade advisors."[26]

Not surprisingly, AFL-CIO President John J. Sweeney claims that U.S. labor unions will not be happy unless the parties completely renegotiate or even eliminate NAFTA.[27] U.S. labor unions viewed NAFTA as a failure in the area of protecting workers' rights in the three member nations.[28]

III. "BUY AMERICAN" AND "BUY CANADIAN"

Many of the new members of the United States Congress may be "deeply skeptical of any attempt to negotiate new agreements along the lines of [NAFTA]."[29] There are many people who believe this Congress may be more supportive of free trade and open markets.[30] But, there has

18. BNA's International Trade Reporter, *NAFTA: Calderon Tells Obama Mexico Willing to Build on NAFTA Accomplishments*, 26 ITR 80 (Jan. 15, 2009).
19. BNA's International Trade Reporter, *Talks on Possible Trans-Atlantic FTA Could Gain Traction This Year. . .Finally*, 26 ITR 109 (Jan. 22, 2009).
20. *See Mexico Reluctant*, *supra* note 11, at 1.
21. *See New U.S. Administration*, *supra* note 1, at 1.
22. *Id*.
23. BNA's International Trade Reporter, *Trade Policy: Emanuel Seen Pushing Pro-Trade Agenda as White House Chief of Staff Under Obama*, 25 ITR 1602 (Nov. 13, 2008) [hereinafter *Pushing Pro-Trade Agenda*].
24. *Id*.
25. *Id*.
26. BNA's International Trade Reporter, *President Obama's Trade Advisers, Led by Summers, Seen as Pro-Free Trade*, 26 ITR 106 (Jan. 22, 2009) [hereinafter *Trade Advisers*].
27. *See Possible Picks*, *supra* note 7, at 1.
28. *Id*.
29. BNA's International Trade Reporter, *Trade Policy: U.S. Exporters Hopeful New Congress will Support Free Trade, Reject Protectionism*, 25 ITR 1642 (Nov. 20, 2008).
30. *Id*.

been a lot of debate over the recent U.S. economic stimulus package including a "Buy American" clause, even over Canada's objections.[31] Obama's advisors, however, insist that his intent is not to "build a moat around the country."[32] Even before the stimulus package, "Buy American" policies, which are permissible under NAFTA, have been in place in the United States.[33]

Mexico and Canada have voiced their concerns over "expanding the 'Buy American' provisions beyond federal infrastructure."[34] But any such implementation of this policy would have to fall in line with the current trade agreements in the United States.[35] Additionally, many believe that Canada should implement its own "Buy Canadian" policy.[36] Ken Neumann, the United Steelworkers (USW) union's national director for Canada, said the "current challenge for Canada is to develop meaningful policies to support Canadian manufacturing while continuing to be a part of an integrated and co-operative North American market."[37]

Generally, public purchasing policies are subject to NAFTA trade rules.[38] But some legal scholars believe that these international rules do not apply to municipal governments.[39] NAFTA does specifically exclude "certain domestic infrastructure projects."[40] These scholars believe that, because of the NAFTA rules, the federal government is "more constrained" than the provincial governments.[41] Some interpret NAFTA as applying only to federal government commitments and do not "currently apply to municipalities and provinces."[42]

For example, the Canadian Auto Workers' (CAW) President, Ken Lewenza, claims that the Canadian government is wrong to believe that Canadian content requirements are NAFTA violations.[43] He also advocates that the Canadian government should "implement Canadian content policies to promote economic growth during the current recessionary

31. *'Buy American' Clause a Setback, Not a Disaster, in our Trade with U.S.*, VANCOUVER SUN, Feb. 10, 2009, *available at* http://www.vancouversun.com/Health/Americanclausesetbackdisastertrade+with/1272541/story.html.
32. *See Trade Advisers*, *supra* note 36, at 1.
33. *'Buy American' clause a setback, not a disaster, in our trade with U.S.*, VANCOUVER SUN, Feb. 10, 2009, *available at* http://www.vancouversun.com/Health/American causesetbackdisastertrade+with/1272541/story.html.
34. Ken Neumann, '*Buy American' Policies Not All Bad News for Canada; Current Debate in U.S. Should be Seen as Opportunity for Canada to Create Jobs at Home*, TORONTO STAR, Feb. 10, 2009, *available at* http://www.usw.ca/program/content/5615.php.
35. *Id*.
36. *Id*.
37. *Id*.
38. BNA's International Trade Reporter, *NAFTA: Union Argues Canadian Content Policies are not in Violation of NAFTA or WTO Rules*, 25 ITR 1652 (Nov. 20, 2008) [hereinafter *Violation of NAFTA*].
39. *Id*.
40. *See* Neumann, *supra* note 34.
41. *See Violation of NAFTA*, *supra* note 38, at 1.
42. *Id*.
43. *Id*.

period."[44] Lewenza bases his contention on the legal opinion that the Union commissioned which determined that "governments are free to implement 'Buy Canadian' policies at the federal, provincial, and municipal levels."[45] The CAW has developed a resolution which asks municipal councils to try to purchase goods that have the highest Canadian content.[46] The resolution also requires that public transit vehicles have a minimum of fifty percent Canadian content.[47]

Many believe that the new Obama administration should place the "renewal of trade arrangements" with Canada back on the United States' priority list.[48] This trade "slowdown" between the United States and Canada may be a result of numerous factors.[49] For example, an increase in the value of the Canadian dollar, "structural changes in the automotive industry, and growing competition in the U.S. market from foreign suppliers like China" were all factors that lead to this slowdown.[50]

IV. CONCLUSION

President Obama's administration is poised to change the way trade is conducted in North America through NAFTA's renegotiation or reopening. While many argue that member nations have reaped all of NAFTA's benefits, others look to NAFTA as the means for continued trade among member nations in the foreseeable future. The "Buy American" and "Buy Canadian" policies that the respective nations have implemented are a threat to increased trade between the countries, but these policies appear, for the moment, not to be a NAFTA violation.

44. *Id*.
45. *Id*.
46. *Id*.
47. *Id*.
48. *See New U.S. Administration*, *supra* note 1, at 1.
49. *Id*.
50. *Id*.