Global Workplace Law & Policy

Whither NAFTA? (Part V: The Mexican Handshake)

Jorge Miranda (Cassidy Levy Kent LLP) · Friday, September 7th, 2018

This the fifth post in a series of posts commenting on the NAFTA renegotiation process. For Part I click here, for Part II click here, for Part III click here, for Part IV click here.

On August 27, the United States and Mexico announced having reached a preliminary agreement regarding the terms under which they would conclude bilaterally the renegotiation of the NAFTA. This development took place roughly a year into the process. Since late July, the renegotiation of the NAFTA had been conducted by the United States and Mexico exclusively to have these two countries resolve their differences separately and in the expectation that, once such bilateral deal was struck, discussions leading to an agreement between the United States and Canada would follow suit. While this approach is eminently practical, it does not work all too well for all the parties involved because it implies that the later-in time bilateral agreement between the United States and Canada would have to be dovetail with the prior bilateral agreement between the United States and Mexico. In other words, Canada gets "boxed in". Unsurprisingly, the Canadians are less than happy with the approach.

Although the actual language of the bilateral deal arrived at between the United States and Mexico has not been released yet, based upon official statements the highlights of such deal could be summarized as follows:

- The new NAFTA ("NAFTA 2.0") would have an initial lifespan of 16 years. At year six, a review would be launched for discussing problems that may have arisen in the operation of NAFTA 2.0, and taking decisions as regards actions that would remedy such problems. Crucially, pursuant to the six-year review, NAFTA 2.0 could also be extended, apparently up to another six years counted from the end of the remaining 10 years. Absent an extension, NAFTA 2.0 would be terminated at the end of year 16.
- The United States dropped its demand that special rules be introduced for agricultural trade on perishable and seasonal crops.
- The regional content in automobiles (to qualify for duty-free treatment) would be increased from 62.5% to 75%.
- 40 to 45% of the content in automobiles has to be made by workers earning at least US$ 16 per hour.
- Chapter Nineteen of the original NAFTA (providing for review by binational panels of antidumping and countervailing duty determinations) would be scrapped. The investor-state dispute settlement mechanism in Chapter Eleven would be maintained for selected sectors including oil & gas, energy, and telecoms; for the remaining sectors it would be retained but only

on a limited basis (for instance, expropriation claims). Chapter Twenty (the state-to-state dispute settlement mechanism, similar to the dispute settlement mechanism under the World Trade Organization) would be kept as is.
- NAFTA 2.0 would incorporate a multiplicity of new disciplines as well as upgrade rules that already exist. In particular, chapters on labor, the environment , and digital trade would be added. The chapters on IP, financial services and SPS measures would be strengthened considerably. Rules regarding geographical indications would also be introduced.
- In subsequent Posts I will comment on the terms of this bilateral settlement, review evidence indicative of the extent to which car manufacturers in Mexico would have to restructure their supply-chains as a result of the overhaul of the rules of origin controlling automotive trade, and explain why the scrapping of Chapter Nineteen makes sense.*The opinions presented in this Post are mine alone and do not represent in any way official views of King & Spalding or its clients

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