MEMORANDUM

To: Interested Parties
From: The Franklin Partnership
Date: September 1, 2019

RE: NAFTA Negotiations Status Update

U.S. and Mexico negotiators reached a new NAFTA agreement in principle on August 27 and Canada resumed discussions with officials in Washington on August 28 lasting through yesterday afternoon. The U.S. and Canada will resume negotiations on September 5.

The goal is to complete negotiations with final text by the end of September, allowing at least the Presidents of the U.S. and Mexico, and hopefully Prime Minister of Canada, to sign the agreement no later than November 29 (within sixty days of completion on September 30). The deadlines are driven by two key actions – a new President of Mexico being sworn in on December 1, who will take a harder line in negotiations with the U.S. The second is a 2015 U.S. law formerly known as Fast Track now called Trade Promotion Authority allowing the expedited review by Congress of a trade agreement without amendments and with only an up or down vote. Once President Trump formally notified Congress of his intention to sign, it triggered a ninety-day clock expiring November 29.

While the Office of the U.S. Trade Representative released four fact sheets on August 27, final language does not yet exist in many key areas. The below is a quick reference guide based on public information and intel received from both government and non-government sources close to the NAFTA discussions as of August 31.

Key Dates
Approximate timeline based on 2015 Trade Promotion Authority law

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tr>
<td>May 18, 2017</td>
<td>President notifies Congress of talks with Canada and Mexico</td>
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<td>August 16, 2017</td>
<td>U.S.-Canada-Mexico start formal NAFTA 2.0 talks</td>
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<td>August 27, 2018</td>
<td>U.S. Mexico announce agreement in principle</td>
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<td>August 31, 2018</td>
<td>President Trump notifies Congress of agreement with Mexico, possibly Canada</td>
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<td>Sept. 30, 2018</td>
<td>Under Trade Promotion Authority (TPA), U.S. Trade Representative must release new text; advisory committees must release analysis reports</td>
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<td>Nov. 6, 2018</td>
<td>U.S. Congressional elections (Democrats must net 23 in House, 2 Senate to win)</td>
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<td>Nov. 29, 2018</td>
<td>Parties must sign new NAFTA (or U.S.-Mexico agreement)</td>
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<td>Dec. 1, 2018</td>
<td>New President of Mexico takes office</td>
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<td>Jan. 28, 2019</td>
<td>President submits to Congress description of changes needed to existing laws</td>
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<td>Spring 2019</td>
<td>Bill to implement new NAFTA possibly begins moving</td>
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<td>Spring 2019</td>
<td>House must vote within 60 legislative days of implementing bill being introduced</td>
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<td>Summer 2019</td>
<td>Senate must vote within 30 legislative days of receiving bill from House</td>
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**Status of Canada**
- Canada did not participate in negotiations for five straight weeks while the U.S. and Mexico directly focused on resolving outstanding issues related to auto, wages, and other items;
- Canada is now negotiating based on the U.S.-Mexico agreement;
- Canada can still sign onto the agreement, likely due to the wording of President’s statement:
  - President Trump sent notification to Congress on August 31, that he intended “to enter into a trade agreement with Mexico -- and with Canada if it is willing, in a timely manner, to meet the high standards for free, fair, and reciprocal trade contained there;”
- Prime Minister Trudeau up for reelection 2019, cannot appear to back down to President Trump.

**Critical Automotive Provisions**
1. **Rules of Origin** – Increases North American content requirement from 62.5% to 75%;
2. **Steel, Aluminum Content** – 70% of steel, aluminum, and glass must originate in North America;
3. **Wages I** – 40% of passenger vehicle final assembly completed by workers avg. over $16/hour;
4. **Wages II** – 45% of light trucks final assembly completed by workers avg. over $16/hour
   - i. Mexico avg. roughly $3-4/hour; U.S. OEM avg. $22/hour
   - ii. Sources indicate possibly a five year phase-in period into 2024
5. **Quotas I** – U.S. can impose Section 232 tariffs on Mexican car/SUV imports over 2.4m vehicles;
6. **Quotas II** – U.S. can impose Section 232 tariffs on Mexican auto parts imports over $108b/year;
7. **3 Levels of Tariffs** – Tariffs on autos(parts) that do not conform to content Rules of Origin rates:
   - i. 0% – Mexican exports conforming with new Rules of Origin rates enter duty-free
   - ii. 2.5% – Non-conforming Mexican exports made at existing facilities, existing lines
   - iii. 25% – Non-conforming Mexican exports made in new facilities/new lines (see note)
     - The 25% rate is part of a separate pending action potentially imposing 20-25% tariff on imported autos and parts under Section 232 national security law.

**Important Non-Auto Provisions**
- **NAFTA “Sunset Provision”** – After six years, parties review NAFTA, if one side does not affirm to stay, party free to leave after ten years of negotiations; if all parties remain, NAFTA continues for an additional sixteen years (22 total years of NAFTA). U.S. sought 5-year termination;
- **Chapter 19 Dispute Settlement** – Mexico agreed to eliminate but Canada will fight to keep some format to allow industries to challenge anti-dumping orders on lumber, paper, dairy, other goods;
- **TN Visas** – Maintains current Treaty NAFTA (TN) Visas policy for eligible professionals;
- **Agriculture** – Maintains existing zero tariff rates;
- **Intellectual Property** – Biological drugs receive 10 year data protection; 75 year for copyrights;
- **Financial Services** – Prohibits forced data storage localization (impacts U.S. companies in Mx);
- **Non-auto Labor** – Mexico must move legislation recognizing right to collective bargaining.

**Impact on Steel, Aluminum Tariffs**
- No firm answer yet on treatment of Mexico under existing Section 232 national security tariffs;
- Despite initial media reports, Mexico is not receiving a permanent exemption from the tariffs;
- A White House official stated on August 27 that 25% tariffs on Mexican steel exports and 10% on aluminum to the U.S. remain in place;
- If press reports are correct, absolute quotas replace current tariffs as is case with South Korea
  - Once certain level of imports reached, no more of that product permitted entry to U.S.
  - No option to pay tariff once limits in effect
  - U.S. just changed rules allowing companies to request exclusion from quotas.
Analysis
There is no question U.S. and Mexico negotiators made tremendous progress in August to reach an agreement with Mexico on complicated and challenging issues, especially autos. Public reports indicate GM, Ford, and Chrysler are generally supportive of the provisions on content requirements and wages. However, Toyota, Honda, and others continue to express concern that the new rules and pay mandates will cause disruptions on their supply chains and expanded manufacturing operations in Mexico. In addition, despite stronger language on increasing wages and collective bargaining to appease unions, those provisions are still unlikely to secure the votes of as many Democrats as the administration hopes. Most in Congressional observers doubt the Trump Administration can rely on Democratic votes in the House to push a new NAFTA beyond the 218 needed to pass.

Canada’s exclusion from the talks for five weeks certainly complicates the thirty day timeline in which the parties now find themselves. Ottawa is unlikely to agree to complete elimination of the dispute settlement provision for all industries, and while the U.S. and Mexico largely left the current agriculture rules intact, a number of disputes exist between Ottawa and Washington including over dairy. Finally, the Canadians remain concerned over whether the Trump Administration is negotiating “in good faith,” a concern reinforced on Friday as it became public that President Trump stated in an off the record interview he is not willing to compromise with Canada on NAFTA.

There remains uncertainty over whether the President has the legal authority to move forward with only a U.S.-Mexico agreement as currently drafted. Under the law formerly known as Fast Track, the President in 2017 technically notified Congress of his intention to renegotiate NAFTA, not talks for a bilateral agreement only with Mexico.

Legal experts agree that the initial notification to Congress referenced NAFTA, though the administration may have room to maneuver with its notice of intent to sign an agreement, which stated, “to enter into a trade agreement with Mexico -- and with Canada if it is willing.” Most influential voices on Capitol Hill are calling on the White House to only send a three party agreement to Congress, however, in a tweet this morning the President said lawmakers “should not interfere with these negotiations or I will simply terminate NAFTA entirely.”

As is the case with almost any law, Congress at any time can change the rules as part of this or other measures, or simply ignore its own process and wait for a third party lawsuit, which may not have standing to intervene in Congressional laws governing Legislative Branch procedures.

The final complication also remains with Congress, regardless of process and inclusion of Canada. Given the current timeline, there exists very little chance to hold a vote in the existing Congress completely under Republican control prior to the end of 2018. Most agree a vote is likely some time in 2019 when many increasingly expect Democrats to take over the House. This brings with it not only political challenges for President Trump but increased influence from unions, environmentalists and other Democratic constituencies who could withhold needed votes for a bill implementing the new NAFTA.

NAFTA 2.0 faces three major tests in order for a new agreement to take effect:
1. Canada and the U.S. address outstanding issues, all three parties able to sign by Nov. 29;
2. Timeline to draft text, issue reports, identify changes in law needed, introduce implementing bill;
3. Securing the votes in either a Democratic or GOP held Congress in 2019.

We will continue to provide updates, in the interim, please feel free to contact us with any questions.