

Companies Brace for NAFTA Aftermath

Tariffs and visas number among businesses' concerns as U.S.-Canada-Mexico trade talks persist

BY DOUG CHARTIER
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It's a tricky time to be an international trade lawyer. It's likewise difficult to get clear guidance for companies in that area.

As the U.S., Mexico and Canada are entrenched in renegotiating the North American Free Trade Agreement, many corporations that do business throughout the continent are wary of how they might have to respond if NAFTA is revised or even scrapped.

On Aug. 27, Trump administration trade officials struck a preliminary agreement with Mexico to reshape NAFTA. The highest-profile revisions appear focused on the automobile industry, with Mexico agreeing to cede more vehicle manufacturing back to the U.S.

But changes to the massive 24-year-old trilateral trade pact could have ripple effects on companies in

other industries, especially if Canada doesn't sign on.

But it's difficult to gauge how different industries will be affected by a potential NAFTA overhaul, as negotia-

tions remain heated.

"My clients see a lot of uncertainty out there right now," said Marci Stras, a member of Caplan & Earnest in Boulder whose practice deals in in-

ternational trade law. Stras, who until earlier this year practiced in Washington, D.C., added "there's a lot of hype but not a lot of facts" emerging from the NAFTA talks.

Beyond NAFTA, the general uncertainty surrounding trade agreements is making international corporations gun shy on plans for expansion or hiring, said Steve Suneson, an interna-

tional business attorney and partner with Coan Payton & Payne in Denver.

"Companies are holding off on long-term capital expenditures, and specifically in the manufacturing sector," Suneson said. U.S. manufacturers are less likely to commit to building and staffing a new factory in another country as long as new tariffs remain a possibility, he added.

Ratified in 1994, NAFTA eliminated tariffs on a range of goods exchanged among the U.S., Mexico and Canada. It is yet unclear whether the U.S. will agree to lift the tariffs that President Donald Trump placed on steel and aluminum from its neighbors in March.

The preliminary U.S.-Mexico agreement struck last month, if it stands, would pull more auto manufacturing back into the U.S. from Mexico by requiring a greater percentage of each vehicle's value be built in America.

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**"NAFTA without Canada is not NAFTA. ...
The deal with Mexico is not enough."**

— Marci Stras, international trade and immigration attorney

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NAFTA CONTINUED FROM PAGE 4...

Granted, that is expected to raise the prices of many vehicles.

The U.S. and Mexico's preliminary agreement reportedly would include a clause requiring NAFTA to be renewed every six years to extend the deal to another 16-year term. But as of Thursday, Canada was still in talks with the U.S. and it was unclear whether Canada would agree to these and other provisions. Stras said the U.S.-Mexico agreement by itself was little comfort to her clients.

"NAFTA without Canada is not NAFTA," she said. "The deal with Mexico is not enough."

Congress must approve the terms that emerge from the NAFTA negotiations, and if the proposed deal excludes Canada, Congress is unlikely to approve it, Stras said. Republican Sens. Pat Toomey of Pennsylvania and Lamar Alexander of Tennessee, among other legislators, have issued statements urging a trilateral agreement.

In the meantime, legal departments of global businesses have been eyeing contingencies. Suneson, who works with several Canada-based business clients, said he's gotten more questions from them lately on how they might negotiate a way out of a NAFTA-affected agreement.

A NAFTA overhaul wouldn't just affect a company's goods moving across the Canadian and Mexican borders, but also its people.

Stras, whose practice also deals in immigration, said that businesses could lose a convenient visa process if NAFTA flounders. U.S. employers have used the TN visa to hire Canadian and Mexican nationals in specific professions. Stras said her firm uses TN visas "all the time" as a faster, lower-cost alternative to the H-1B program, which is "becoming a nightmare" due to its quotas and increasing strictness of review. The TN, by contrast, isn't restricted by quotas and can be quickly adjudicated at a port of entry for Canadian applicants and at a U.S. consulate for Mexican applicants once they have their petition prepared.

Stras said she hasn't yet seen any proposals coming out of the NAFTA negotiations that implicate the TN visas. It's uncertain, she added, whether the program will continue as-is and what would happen to the workers currently on those visas if it doesn't.

If there's a silver lining to the NAFTA negotiations for U.S. companies, it's that stronger intellectual property protections are being discussed, which Suneson said would be "a good step for the digital trade sector."

But ultimately, clients are hoping that the three countries will come to a resolution before too long, he added.

"Companies by-and-large like predictability, and having this state of flux is not something that they like," Suneson said. "Most people are hoping this comes to an end very soon." •

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LUCERO CLE CONTINUED FROM PAGE 6...

for six months because of how he responded to negative reviews from his clients on Avvo. Defending himself online from the critical posts, Lance Isaac's replies included information related to those clients' cases, including "how he was paid, and allegations that one of the clients engaged in criminal conduct," according to the opinion in *People v. Isaac*. Those disclosures of client confidences violated CRPC 1.6(a), the board found.

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— Presiding Disciplinary Judge
William Lucero

Lucero said he often hears lawyers say there's only a small percentage of their peers who behave unprofessionally. Those few bad actors, lawyers say, continue acting out in court because judges don't call them on it enough. Lucero said that formal consequences tend to come for unprofessional lawyers down the road. "If it keeps going, at some point, they're going to run afoul of the rules of professional conduct."

But besides avoiding his courtroom, there are of course intrinsic benefits to practicing law with professionalism, Lucero said.

"For one thing, it makes you a healthier lawyer. If you act professionally, and you're accepted by your peers and the judges as someone who's a person of integrity, you're going to have respect for yourself, and others are going to have respect for you, and that's going to make for a better career for you — a longer career, a more rewarding career." •

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KAVANAUGH HEARINGS CONTINUED FROM PAGE 7...

During the questioning, Kavanaugh did not answer, saying he'd need to see a list of employees at the firm. The following day, the firm released a statement denying the accusation. Harris asked the judge the same question Thursday evening but after some back and forth he eventually answered "no."

On Wednesday, Harris also questioned Kavanaugh on the matters of presidential powers and reproductive rights. She asked, "Can you think of any laws that give government the power to make decisions about the male body?" Kavanaugh stumbled before answering, "I'm not aware — I'm not — thinking of any right now, senator."

"I think senator Harris has proved herself to be a tough questioner and somebody who doesn't let witnesses get away with big statements," Chen said. "I think she's proved herself quite adept at serving on the judiciary committee."

THE QUESTION OF GUN CONTROL

One of the lasting images of the first day of Kavanaugh's questioning was that of him declining to shake the outstretched hand of Fred Guttenberg, who lost his daughter in the Parkland shootings.

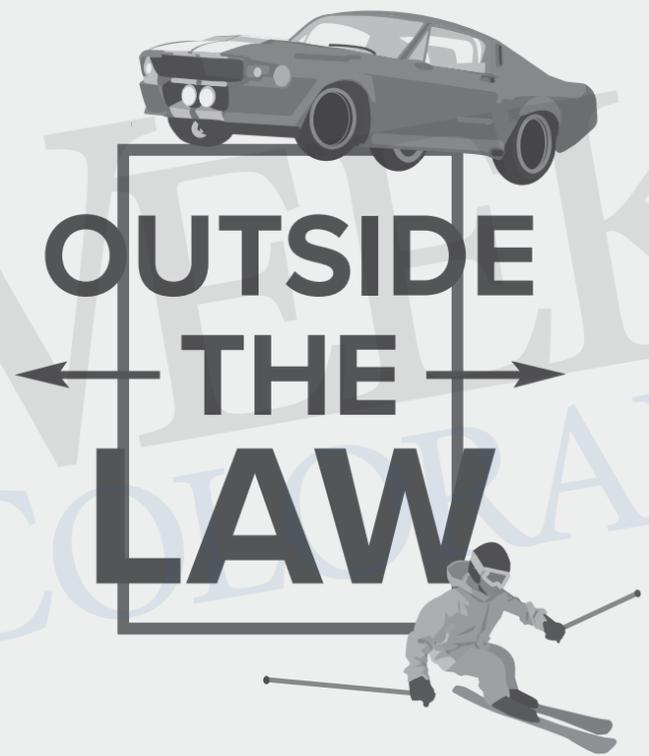
Chen said another gun-control-related matter caught his attention during the hearings. A few years ago, Kavanaugh dissented in a case that had reached the D.C. Circuit questioning the constitutionality of the Firearms Registration Amendment Act of 2008. In his dissent, Kavanaugh said the District's ban on semi-automatic assault rifles was unconstitutional because the gun was commonly used and not "unusual."

In his dissent, Kavanaugh wrote, "There is no meaningful or persuasive constitutional distinction between semi-automatic handguns and semi-automatic rifles. Semi-automatic rifles, like semi-automatic handguns, have not traditionally been banned and are in common use by law-abiding citizens for self-defense in the home, hunting, and other lawful uses."

During the hearing, Kavanaugh defended the dissent by saying, "Semi-automatic rifles are widely possessed in the United States. There are millions and millions and millions. ... As a judge, my job was to follow the Second Amendment decision of the Supreme Court, whether I agreed with it or disagreed with it."

"I think that might strike a chord with some people," Chen said, "that he might be able to strike down a ban on semi-auto rifles." •

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