



IFIA Americas Committee
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NAFTA Negotiations

June 12, 2017

Edward Gresser
Chairman Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th St NW Washington, DC 20006
Submitted electronically via www.regulations.gov

Re: Requests for Comments: Negotiating Objectives Regarding Modernization of North American Free Trade Agreement with Canada and Mexico [Docket No. USTR-2017-0006]

Dear Mr. Gresser,

The International Federation of Inspection Agencies, Inc. ("IFIA") is pleased to submit comments on NAFTA Negotiations and requests the opportunity to testify at the hearing on June 27, 2017 to provide the conformity assessment perspectives and assist USTR as it develops its negotiating objectives and positions for the agreement.

IFIA is a global trade federation that represents over 60 of the world's leading international testing, inspection and certification companies. IFIA members have a combined turnover in excess of \$24 billion and over 300,000 employees globally. IFIA members' activities encompass every aspect of inspection, certification and related testing. IFIA member companies offer a number of services, including certification and inspection, systems audits, training, technical and documentary support. Through providing these services, IFIA members help manufacturers gain global market access and help ensure that not only regulatory requirements are fulfilled, but also that reliability, economic value, environmental impact and social responsibility are enhanced.

Thank you for the opportunity to offer the following comments and to testify at the hearing on June 27. If you have any questions regarding our submission, please feel free to contact IFIA's representative in the United States, Roberta Telles at +1.240.507.3392 / rtelles@ifia-federation.org.

Sincerely,

Hanane Taidi
IFIA
Director General
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A. OVERVIEW

The International Federation of Inspection Agencies (IFIA) supports the modernization of the North American Free Trade Agreement (NAFTA) to meet current commercial realities and improve opportunities for greater competitiveness and job creation for the NAFTA parties. IFIA welcomes the opportunity to provide the conformity assessment perspectives and support the administration's goals of reaching a fair and balanced agreement that can be used as benchmark for all future trade agreements. IFIA believes NAFTA should remain a trilateral agreement to ensure most benefits for all stakeholders and proposes the following recommendation for a modernized NAFTA:

1. Establish ambitious horizontal provisions in the Technical Barriers to Trade (TBT) chapter
2. Create a Regulatory Coherence Chapter with Binding Commitments
3. Limit the rise of digital barriers to trade
4. Uphold commitments around temporary entry of business persons
5. Enhance language on competition and state-owned enterprise to reflect agreed text in TPP
6. Maintain mutual recognition of standards and certification bodies for telecom equipment and secure commitment from Mexico to implement the U.S.-Mexico Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment
7. Introduce Labour & Environment Chapters akin to TPP Commitments
8. Enhance IP Protection and Enforcement

B. INTRODUCTION

IFIA is the global trade association representing independent third-party conformity assessment bodies (CABs) that provide testing, inspection, and certification services across a wide range of sectors: medical devices, food, consumer products, industrial plants, power lines, pipelines, petroleum and agriculture among others. IFIA's members are present in more than 160 countries and employ more than 300,000 across the globe, the majority of whom are highly trained sector-specific technical experts.

Third-party conformity assessment provides greater assurance that products have been correctly manufactured, tested, inspected and certified during the production process and that controls are in place to help ensure compliance in all stages of global and diverse supply chains. IFIA's members provide innovative and cost-effective solutions to help manufacturers compete in the global market by providing services that help improve the quality, performance, safety and sustainability of their products and processes. Services include: safety evaluation of sourcing materials, definition of test protocols, supplier validation, factory audits, raw materials checks, testing from the design to final production phases, inspections, container loading supervision, market surveillance, correction plans, social auditing, among others.

Additionally, Independent third-party conformity assessment has been shown to reduce the number of non-compliant products in the market. IFIA Studies have shown that 16% of products with self-declaration of conformity (SDoC) presented safety-critical failures, resulting in a high risk of fire or permanent injury. This compares to less than 1% for products with third-party certification:

IFIA Market studies



Self-declared product compliance (SDoC)

16%

16% safety-critical failures

Third-Party Certified product Compliance



<1% safety-critical failures

Non-compliance: safety-critical failures (high risk of fire / permanent injury)

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While international trade is critical to growth, prosperity, and employment, value creation chains are becoming ever more complex, facing significant variations in safety and regulatory cultures between regions. Products that are sold in the worldwide must meet the relevant legal requirements and standards; they must be compliant. Independent third-party conformity assessment through competence, neutrality, and objectivity, ensures that manufacturers, trading partners, governmental bodies, and consumers can trust in the conformity of products, an integral part of well-functioning trade.

The Testing, Inspection and Certification (TIC) industry is a key partner to manufacturers and retailers in facilitating trade, promoting innovation, mitigating risks and protecting reputation. IFIA supports NAFTA and any trade negotiations that result in a comprehensive, high-standard and market-opening trade agreement that levels the playing field for all industries, including the third-party TIC industry.

C. TIC INDUSTRY RECOMMENDATIONS FOR NAFTA 2.0:

1. **Establish Ambitious Horizontal Provisions in Technical Barriers to Trade (TBT) Chapter:** The objective and the scope of the TBTs Chapter in NAFTA and in all trade agreements should be to promote convergence in regulatory approaches by reducing or eliminating conflicting technical and conformity assessment requirements while not reducing, undermining or otherwise compromising the level of protection in public policy areas such as the protection of workers and consumers' health, public health, and the environment. IFIA recommends that the existing Technical Barriers to Trade (TBT) commitments be updated to reflect improvements made over the years in recent trade agreements, ensuring equal and fair treatment and market access for conformity assessment bodies throughout the region. Specific recommendations:

1.1. **Secure Market Access (National Treatment) for Conformity Assessment Bodies:** NAFTA is the only FTA in which conformity assessment services are provided national treatment, and at a minimum this should be maintained. However, the NAFTA parties can go further and update language to match the agreed text in the Trans-Pacific Partnership (TPP):

“each Party shall accord to conformity assessment bodies located in the territory of another Party treatment no less favourable than that it accords to conformity assessment bodies located in its own territory or in the territory of any other Party. In order to ensure that it accords such treatment, each Party shall apply the same or equivalent procedures, criteria and

other conditions to accredit, approve, license or otherwise recognize conformity assessment bodies located in the territory of another Party that it may apply to conformity assessment bodies in its own territory.”

Rationale: It is critical that current national treatment provisions remain in place or ideally be updated to match language in the TPP. National treatment ensures equal and fair treatment and market access for conformity assessment bodies, generating operational efficiencies and allowing the TIC industry to service clients throughout the region

- 1.2** Any provisions on technical regulations, standards, and conformity assessment-related matters, should be treated horizontally and included solely within the TBT chapter which governs such matters.

Rationale: Inclusion of TBT-like provisions (including language on standards, inspections, market-surveillance, and equivalence) beyond the TBT chapter that are weaker than the overarching TBT obligations sought, undermines the strength of the TBT chapter as a whole. A horizontal approach will provide the most clear and comprehensible framework for addressing regulatory considerations and avoid the creation of technical barriers to trade.

- 2. Create a Regulatory Coherence Chapter with Binding Commitments:** IFIA recommends the creation of a Regulatory Coherence Chapter, which currently does not exist in NAFTA. The Regulatory Coherence Chapter in TPP provides a good basis for NAFTA 2.0, however in the TPP those provisions were not subject to dispute settlement.

Rationale: Binding requirements for good regulatory practices would foster an open, fair, and predictable regulatory environment and enhance competitiveness of companies operating in North America.

- 3. Include provisions on digital trade:** IFIA recommends the inclusion of provisions that address digital trade based on TPP’s Electronic Commerce Chapter, in particular:

- **Prohibition on Localization Requirements for Information Technology Infrastructure:** *No Party shall require a covered person to use or locate computing facilities in that Party’s territory as a condition for conducting business in that territory.*
- **Promote Cross-Border Data Flows:** *Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person*

Rationale: These measures would avoid the creation of new digital barriers that can undermine competitiveness and create unnecessary costs to industry.

- 4. Uphold commitments around temporary entry of business persons:** IFIA recommends that Chapter 16 of NAFTA be maintained or improved upon. This chapter includes important provisions allowing for the temporary entry for business persons, simplifying admission procedures, etc.

Rationale: The provisions grant industry flexibility to make travel and staffing arrangements that best meet their needs, generating efficiencies, cost savings and improving business performance and growth.

5. **Enhance language on competition and state-owned enterprises (SOEs) to reflect agreed text in TPP:** IFIA recommends that Chapter 15 be improved to include stronger provisions for fair, transparent and non-discriminatory competition policy subject to dispute settlement, with commitments that SOEs make decisions based on commercial considerations and do not enjoy unfair advantages. The NAFTA text should secure commitments at least as strong as those found in the TPP.

Rationale: These improvements will ensure that businesses, regardless of ownership, compete fairly through enforceable rules and will foster pro-competitive and market-driven environment and ensure a level playing field in North America and third countries.

6. **Maintain mutual recognition of standards and certification bodies for telecom equipment:** secure commitment from Mexico to implement the U.S.-Mexico Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment

Rationale: A telecom equipment MRA with Mexico would lower costs for U.S. exporters and eliminate some repetitive testing requirements. The U.S. and Canada have a long-standing MRA for telecom equipment. While NAFTA contains a number of provisions calling for the adoption of such an agreement, Mexico and the U.S. have yet to formally implement an MRA. A commitment for the timely implementation of such an agreement would be of substantial benefit to both the ICT industry and their conformity assessment service providers.

7. **Introduce Labour & Environment Chapters akin to TPP Commitments:** A modernized NAFTA should aim to include similar or stronger provisions to those of the TPP to ensure a level playing field.

Rationale: Set an important precedent for future trade agreements.

8. **Enhance IP Protections and Enforcement:** IFIA recommends that NAFTA Chapter 17 be strengthened to require Customs officials to act against counterfeit products. NAFTA should also be updated to reflect current practices in global trademarks, particularly for non-traditional and certification marks, to implement transparent, streamlined trademark registration and opposition procedures.

Rationale: Higher levels of enforcement, better protection against counterfeit goods and ensured value of third party marks.

- D. **Conclusion:** IFIA fully supports a comprehensive, high-standard and market-opening trade agreement that levels the playing field for all industries and enhance the competitiveness of businesses operating in North America. Thank you for the opportunity to provide comments. Should you have any questions, please do not hesitate to contact IFIA.

E. ANNEX: SUMMARY TABLE:

POSITION	RATIONALE
1. IMPROVE TBT PROVISIONS TO AGREED TEXT IN TPP	NAFTA is the only FTA in which conformity assessment services are provided national treatment. It is critical this remain in place so that TIC industry can continue to service clients throughout the region. Ideally language would be improved to reflect all of TPP TBT Chapter.
2. CREATE A REGULATORY COHERENCE CHAPTER WITH BINDING COMMITMENTS	Foster an open, fair, and predictable regulatory environment
3. ACHIEVE COMMITMENTS IN DIGITAL TRADE AREA AKIN TO AGREED TEXT IN TPP, PARTICULARLY AS IT RELATES TO CROSS-BORDER DATA FLOWS AND DATA LOCALIZATION REQUIREMENTS	Ensure companies can send data across borders with ease for internal business operations needs and make capital investment decisions for IT infrastructure based on business needs
4. PROTECT REQUIREMENTS FOR TEMPORARY ENTRY FOR BUSINESS PERSONS OR IMPROVE TO AGREED TEXT IN TPP	Ensure ease of doing business across borders
5. ENHANCE LANGUAGE ON COMPETITION AND STATE-OWNED ENTERPRISE TO REFLECT AGREED TEXT IN TPP	Set important precedent for all US trade agreements in the future and protect competitive TIC industry
6. MAINTAIN MUTUAL RECOGNITION OF STANDARDS AND CERTIFICATION BODIES FOR TELECOM EQUIPMENT AND SECURE COMMITMENT FROM MEXICO TO IMPLEMENT THE U.S.-MEXICO MUTUAL RECOGNITION AGREEMENT FOR CONFORMITY ASSESSMENT OF TELECOMMUNICATIONS EQUIPMENT	Establish access to for TIC industry to test for Mexican telecom requirements
7. INTRODUCE LABOR & ENVIRONMENT CHAPTERS AKIN TO TPP COMMITMENTS	Set important precedent for future trade agreements and maintain potential future business opportunity
8. ENHANCE IP PROTECTIONS AND ENFORCEMENT	Better protect against counterfeit goods and ensure value of third party mark