



**BUILDING AMERICA®**

June 12, 2017

Mr. Edward Gresser  
Chair of the Trade Policy Staff Committee  
Office of the United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

### **NAFTA Negotiations**

**[FR-DOC-2017-10603]**

Mr. Gresser:

Thank you for the opportunity to submit comments on the North American Free Trade Agreement (NAFTA) modernization process for the purpose of sharing Union Pacific's views and recommendations.

As the railroad with the largest trade-related volumes in North America and the only one with access to all six rail gateways to Mexico, Union Pacific has a unique perspective on NAFTA. We support the United States Trade Representative's (USTR) efforts to modernize it in ways that bolster free and fair trade with Canada and Mexico. This includes ensuring a level playing field and spurring economic growth and job creation for American workers, farmers and businesses. Rail movements between the U.S., Canada and Mexico include nearly every type of commodity railroads carry, and, for Union Pacific shipments, volumes moving north and south across the continent are virtually balanced.

The products Union Pacific ships to and from Mexico are part of larger supply chains, which support a range of U.S. jobs and workers across multiple sectors, from the Illinois auto worker who molds plastic into dashboards that are shipped to Mexico to be installed in a finished vehicle and sent back to the United States for sale in American showrooms, to the Iowa farmer whose soybeans travel along our rail lines to a Mexican factory, where they are crushed and sent back across the border in the form of vegetable oil to be sold in U.S. groceries.

Therefore, Union Pacific strongly believes a paramount goal of any NAFTA renegotiation should be preserving the many benefits of the U.S. trading relationship with Canada and Mexico.

## **I. General and product-specific negotiating objectives:**

Of particular concern are the benefits to U.S. manufacturers and farmers. Canadians and Mexicans purchased \$445 billion of U.S. manufactured goods in 2016, generating \$37,000 in export revenue for every American factory worker. In addition, U.S. agricultural exports to Canada and Mexico have quadrupled under NAFTA from \$8.9 billion in 1993 to \$38 billion in 2015. As the United States seeks to improve and modernize NAFTA, it should never lose sight of these benefits and the importance of refraining from actions that could jeopardize them, such as imposing tariffs.

Union Pacific also believes any renegotiation should proceed quickly and trilaterally. The longer businesses are left uncertain about the future of U.S. trade with Canada and Mexico, the more likely they are to delay job-creating investments. Maintaining NAFTA's three-party framework is also critical. Without it, businesses will have to navigate different rules in each country, adding complexity and cost.

## **II. Ensuring a level playing field while spurring economic growth:**

Union Pacific recognizes the need to bring NAFTA into the 21<sup>st</sup> century. One way to do so is working with our trading partners to modernize NAFTA to address e-commerce and cross-border data flows. Moreover, it should include measures ensuring state-owned enterprises (SOEs) compete on a commercial basis, so the advantages SOEs receive from their governments do not harm American workers and businesses. It should also establish new standards to protect digital freedom, by warding off requirements that force businesses to locate infrastructure in the markets in which they seek to operate. Moreover, it should set higher environmental and labor standards that level the playing field with U.S. standards while also raising salaries to abate poverty. Improvements in conservation laws' enforcement must also be part of a revised NAFTA.

## **III. Customs and trade facilitation issues:**

Labor laws and inspection practices have a significant impact on NAFTA-related commerce involving railroads. Union Pacific believes that these laws and practices should be flexible enough to allow U.S. rail crews to operate in limited portions of Mexican railways, primarily along the border, as Mexican rail crews currently do in the U.S. Moreover, standard operating procedures required by U.S. and Mexican agencies must be harmonized for the successful use of international crews for trains crossing the U.S. – Mexico border (e.g., Federal Railroad Administration recognizing Association of American Railroads standards for work conducted in Mexico).

Mechanisms that help secure freight and supply chains resulting from NAFTA should also be part of renegotiation discussions. An example is the active involvement of the Mexican Army (SEDENA) in protecting freight. With SEDENA's help, theft and vandalism levels on trains have dropped significantly. Because this must be a sustainable and long-term effort, or until alternative solutions are provided, the ongoing presence of Mexico's military forces will be required. To guarantee SEDENA's presence, the United States should

encourage Mexico's government to allocate additional budget and resources throughout the country.

#### **IV. Sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT) imposed by Canada and Mexico:**

Union Pacific recognizes the importance of preventing the introduction and spread of pests into Mexico and protecting its phytosanitary status. SAGARPA/SENASICA (Mexico's National Service of Health, Food Safety and Quality) sets standards for commodities transported into Mexico, including zero soil tolerance and cleaning rail cars. Costs associated with delays are generally borne by the railroad, but the lost productivity on the rail car asset affects the agriculture sector's supply chain, increasing burdens on international trade and costs to consumers. To minimize operational time and costs associated with these requirements, Union Pacific recommends that as part of any revision, soil tolerance levels should be accepted, car-cleaning requirements should be eliminated and redundant importation steps should be streamlined.

Additionally, renegotiation must include eliminating artificial barriers that prevent the free flow of goods (e.g., sectorial registry, exclusive custom houses, estimated price scheme, automatic notices or automatic permits, grounds for suspension in the importer registry and restriction in the use of the Mexican Customs regime "*Deposito Fiscal*" when it comes to the storage of goods that are known defined as "sensitive"). Formal incorporation of Mexico to the revised Kyoto Convention (to which the U.S. already subscribes) on simplification and harmonization of customs processes would imply acceptance of the principle of "good faith" and presumption of innocence. Mexico should complete implementation of the Trade Facilitation Agreement, better known as "Bali Agreement" negotiated in the World Trade Organization (WTO), to which the U.S. also already subscribes.

Lastly, in UP's experience, about one percent of Mexican exports are targeted by Customs and Border Patrol (CBP), while approximately ten percent of U.S. exports are targeted by Mexican Customs (SAT). We recommend higher levels of reciprocity for targeted inspections to achieve equity and efficiency at inspection points.

#### **V. Appropriate modifications to rules of origin or origin procedures for NAFTA qualifying goods:**

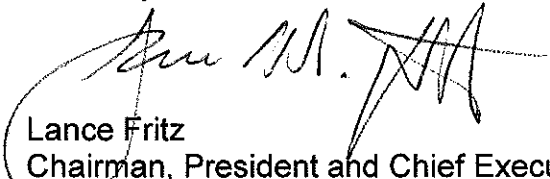
NAFTA sets specific rules governing how much of a product's components must be produced within North America to qualify for NAFTA benefits. For the automotive sector, it requires that 62.5% of a car or truck be produced within North America to qualify for duty-free treatment. Union Pacific agrees with industry experts that raising this percentage risks undercutting U.S. competitiveness in the automotive sector relative to operations in other areas of the world. For this reason, we would urge USTR to carefully consider the ramifications of any changes to the existing standard.

**Conclusion**

Union Pacific appreciates the opportunity to help inform USTR's development of U.S. negotiating positions.

Please do not hesitate to contact me should you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Fritz", with a large, stylized flourish extending to the right.

Lance Fritz  
Chairman, President and Chief Executive Officer  
Union Pacific Corporation