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Negotiating Objectives Regarding Modernization of North American Free Trade Agreement with Canada and Mexico

Docket Number

USTR- 2017-0006

Comments of the International Code Council, 500 New Jersey Avenue, Suite 600, Washington, DC, 20001

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BACKGROUND:

The International Code Council (Code Council) is an international codes and standards developing organization headquartered in Washington, DC, with offices in Alabama, Illinois and California. Through an open and transparent consensus process involving over 63,000 members, CODE COUNCIL develops the model codes used in every state in the United States, as well as in many nations around the world, including in Mexico. Along with hundreds of state and local chapters of code officials and building professionals in the U.S., the Code Council has three chapters chartered in Canada, and one chapter chartered in Mexico. The development of Code Council codes and standards is through a consensus process, open to all without restriction. The Code Council code development process utilizes a voting process that provides any governmental entity involved in the adoption or enforcement of building, construction and fire codes full voting rights, with no charge to participate in the process. Code Council is also an accredited American National Standards developer, using the ANSI process to develop standards for accessible buildings to comply with the Americans with Disabilities Act (ADA), storm shelters recommended by U.S. Federal Emergency Management Agency (FEMA) and the National Green Building Standard, among others. Our development processes are consistent with guidance on requirements for international standards from the World Trade Organization Technical Barriers to Trade Agreement and relevant Decisions of the TBT Committee, as well as U.S. requirements for consensus standards as expressed in OMB Circular A-119, and the National Technology Transfer and Advancement Act (NTTAA).

Code Council subsidiaries are also engaged in accreditation services- International Accreditation Services (IAS); and in certification of products- ICC Evaluation Service (ICC-ES) and Solar Rating and Certification Corporation (ICC-SRCC). Both accreditation and certification activities depend upon internationally agreed-upon norms for standards, and mutual acceptance of accreditation and testing, where international norms are met.

COMMENTS:

The Code Council appreciates the opportunity to offer comments on negotiating objectives that should be considered in efforts to renegotiate the NAFTA agreement. While the Code Council, has since 2000, had a very productive and positive relationship with building professionals, standards and code officials in Canada and Mexico, we believe that revising some of the definitions within the NAFTA agreement would be beneficial, especially since later standards harmonization efforts reflected in definitions in the World Trade Organization Technical Barriers to Trade Agreement (WTO TBTA) have advanced significantly since the signing of NAFTA in 1984.

Several of the Code Council's building codes have been translated and adapted for use in the regulation of construction and building safety and energy efficiency in Mexico since 2010, and those requirements are

currently enforced in that country. In addition the Code Council has worked with the government of Mexico, as well as with numerous private sector entities and construction industry professionals in Mexico at least since 1986, to mutually improve building and construction practices in Mexico and the United States. The Code Council has a chartered chapter of building industry professionals in Mexico, that actively participates in code development and other building safety and building energy efficiency related activities.

In Canada, the Code Council has had a long relationship with the Canadian Standards Association, and is currently involved in efforts to harmonize a number of standards in the construction industry that are commonly used in both the U.S. and Canada. The Code Council also has three chartered chapters of Canadian code officials and building professionals, in Alberta, Manitoba and British Columbia. No Code Council codes and standards are directly adopted in Canada, but a revision of the NAFTA definitions to current WTO/TBT definitions would be useful and would further facilitate cooperative efforts.

While the Code Council takes some pride in the fact that our Residential, Building and Energy Efficiency codes have been incorporated into the Mexican national building code, we are concerned that the government of Mexico utilizes a restrictive view of “international standards”, limiting that title to standards from only the specific organizations listed by name in the definitions in Article 915 of the current NAFTA agreement. This limitation, in spite of clear language in the agreement indicating that the parties may recognize other organizations that meet the criteria of international standards organizations, and the later guidance from WTO TBTA, could potentially impact the use of Code Council codes and standards, for use as reference and/or procurement documents. The purpose of NAFTA is to facilitate trade, and to reduce non-tariff and other barriers to trade that might interfere with cross-border trade. Agreeing on a common definition of “international standards” and “international standards developing organizations” is entirely consistent with the overall goals and objectives of NAFTA, as well as beneficial to the interests of U.S. construction industry manufacturers, who already produce products designed to be used in construction that complies with the Code Council building, residential, energy, fire and plumbing codes.

The Code Council endorses and agrees with the comments filed by ASTM International regarding NAFTA Article 915, and we would support ASTM in efforts to revise this section to reflect WTO TBTA principles, and/or to specifically list additional international standards developers in the list of organizations specifically recognized as “international standards developers.” Since Mexico has already adapted codes/standards produced by the Code Council as the basis of its national building code, Mexico should be open to a revised definition that recognizes the Code Council- either explicitly or by clear explanatory language- as an international standards developer. This recognition of the Code Council would allow Mexico to not only adapt Code Council codes for use, but would facilitate more rapid updating of the Mexican building code, by permitting direct reference to the most current version of the Code Council codes, which are updated and republished on a three year schedule.

The Code Council also agrees and supports the suggestion of the American National Standards Institute (ANSI) to consider utilizing the draft provisions of Chapter 8 of the Trans Pacific Partnership, in particular sub-chapters 8.1 and 8.5, as models for revisions to Article 9 of NAFTA. TPP Chapter 8 specifically references WTO TBT provisions relating to the definition of international standards, a much more up to date definition than the one currently used in NAFTA Article 9.

SUMMARY:

Because Code Council codes and standards are so widely used and adopted in every U.S. state and nearly all local jurisdictions, every U.S. manufacturer of building and construction products designs and manufacturers their building, plumbing and fire protection products to meet requirements of, or standards referenced in, the Code Council codes and standards. For this reason, it is important that in any trade negotiations where building products are a factor, the terms of the agreement assure that where U.S.-based standards developers meet WTO requirements for the development of international standards, such standards be accorded the same respect as standards produced by other international standards organizations.