

Intelligence MEMOS



From: Lawrence Herman
To: Trade Observers
Date: July 23, 2024
Re: **CLOCK IS TICKING ON 2026 CUSMA REVIEW**

No one knows how the US presidential political circus will end, but either tariff-loving Donald Trump or a protectionist Democrat will make for challenging trade relations. And nothing will be more exposed than the Canada-US-Mexico Trade Agreement (CUSMA).

It isn't widely appreciated that CUSMA terminates on June 30, 2036. It continues beyond that date only if the three governments agree to extend it for another 16 years. Whether that happens depends on a wide-ranging review of the agreement that starts in 23 months. The review would face more serious headwinds in a Trump administration than a second Democratic term. Trump's former trade representative, Robert Lighthizer – widely expected to have a major role in a second Trump administration – is a die-hard “America First” trade advocate and highly critical of trade agreements generally.

In fact, in the 2017-2018 negotiations that brought CUSMA into being, Lighthizer wanted the agreement to last just five or six years. Canada and Mexico refused, so the result is the forthcoming bizarre three-country review. Because of Canada and Mexico's heavy dependence on continued access to the vast American market, the review gives maximum advantage to the US side.

Technically, the review is to be carried out by the CUSMA Free Trade Commission. But since the Commission consists of the three countries' trade ministers, it is effectively a re-negotiation of the agreement in key areas.

Rumblings out of Washington, even at this early stage, indicate that the Americans will want major changes in the deal, clawing back compromises they made earlier or adding new provisions that work in the US interest.

The first order of business, however, will be process, which the treaty text only describes in general terms. A protocol needs to be settled on beforehand to ensure the review doesn't go off the rails, with all the commercial uncertainty that could generate. For example, how long does the review last? The agreement says it begins June 30, 2026, but spells out no timeframe. How does the Commission handle the briefs the governments are supposed to submit? What if there's no agreement in the Commission? If the process doesn't extend CUSMA, the text mandates annual reviews until the deal ends in 2036. How will these annual reviews work? These points might seem technical, but it's important to establish procedures before any review starts. Leaving things to chance in the hope they sort themselves out once the review starts isn't a good idea.

Administrative matters are important. But what's crucial are the substantive parts of the deal on the table. The possibility of changes in government in both the US and Canada clouds the picture, but whatever the political situation in 2026, the US position will be the dominant factor, and we'll know where we're headed come November. US law requires the US Trade Representative to report to Congress by the end of next year on the operation of CUSMA and any areas that need updating.

The details of that report will be important but it's not hard to anticipate four main areas of US concern: Mexico's protected energy sector and transshipments of Chinese goods into the US, together with Canada's new digital services tax and the never-ending US irritation at dairy import restrictions. Canada needs to be armed with its own “offensive list,” like protectionist US policies on infrastructure and government procurement plus American refusals to comply with CUSMA panel decisions. But we also need to start thinking about how to address US concerns on these tough issues.

In other areas, however, things need not be so contentious. All three countries have a clear interest in modernizing and improving the agreement in a myriad areas: Services, information technology, environmental goods, decarbonization issues, supply chain facilitation, nearshoring policies, critical minerals, improved border and customs clearance procedures, human rights and forced labour and national security.

Going into the review with this kind of positive menu wouldn't prevent tough bargaining on irritants, but at least there would be a set of less contentious areas that could bear fruit as events unfold. A set of three-party initiatives aimed at modernizing trade rules in individual sectors could form the basis for an updated CUSMA down the road.

At the end of the day, no matter what emerges from the review a proper, stable treaty is needed. This should be the ultimate goal of the three governments as they prepare for the review. Whoever is inaugurated next January 20th, persuading our US partners of that necessity needs to be the top Canadian priority.

Lawrence Herman is an international lawyer with Herman & Associates and senior fellow at the C.D. Howe Institute.

To send a comment or leave feedback, email us at blog@cdhowe.org.

The views expressed here are those of the author. The C.D. Howe Institute does not take corporate positions on policy matters.

A version of this Memo first [appeared](#) in the Financial Post.