

Intelligence MEMOS



From: Jon Johnson
To: Canadians Concerned About US Trade Policy
Date: November 27, 2024
Re: **HERE COMES THE TRUMP TRADE HURRICANE**

It has not taken US President-elect Donald Trump long to show concretely why US trading partners had reasons to be concerned about his approach to trade.

The President-elect believes strongly in tariffs, having suggested a blanket 10-20 percent levy on all goods entering the United States, and much higher for Chinese imports.

Monday night, however, Mr. Trump demonstrated spectacularly how he intends to use tariffs to extract action from trading partners in areas of concerns other than trade. His Truth Social post declared he would sign executive orders “to charge Mexico and Canada a 25-percent tariff on ALL products” until the flow of drugs and illegal migrants was halted.

Does a president have that power?

As clearly set out in Section 8 of Article 1 of the US Constitution, Congress has the power to impose taxes including duties. Article 2 sets out the powers of the president, which do not include the power to impose any sort of taxation.

Congress has delegated the power to the president to impose duties under certain circumstances. For example, the *Trade Expansion Act of 1962* empowers a president to impose duties for national security purposes, and Mr. Trump used this authority in 2017 to impose tariffs on steel and aluminum.

Mr. Trump’s proposed course of action would have to be justified by some act of Congress.

Canada’s trading relationship with the United States is governed by the Canada-United States-Mexico-Canada Agreement (CUSMA) – USMCA in US law – which eliminates tariffs on most goods traded among the three nations. There is nothing in CUSMA that justifies the course of action proposed by Mr. Trump.

A CUSMA party can withdraw on six months notice. The Trump administration could invoke this provision but so could any US administration and any CUSMA party.

CUSMA differs significantly from NAFTA in that CUSMA has a termination date. CUSMA terminates on June 30 2036 unless the parties agree to extend for another 16 years. The first date for agreeing to extend CUSMA falls on June 30 2026. If the parties agree to extend, CUSMA will terminate on June 30, 2052 (with further 16-year extensions possible). If the parties do not agree to extend, the question is revisited yearly until the parties agree to extend, or CUSMA terminates.

A US withdrawal on six months notice is a possibility, however one factor favouring CUSMA is that it was Trump’s baby, and there are signs it retains his affection.

“I overhauled the disastrous NAFTA Agreement, the worst trade deal in the history of the United States, which was switched to the USMCA (Mexico/Canada), which no one thought could be done,” Mr. Trump said as he introduced his choice of Pete Hoekstra as the new US ambassador to Canada.

Meanwhile, the Canada section of the US Trade Representative (USTR) 2024 National Trade Estimate [Report on foreign trade barriers](#) lists Canada’s sins, including: Agricultural supply management; dairy products; wine, beer and spirits; various technical barriers to trade; intellectual property issues; and digital services taxation. The incoming administration may add some others and will likely pursue these more aggressively than its predecessors.

There are several factors that may temper US policies. The President-elect closely follows the stock market and negative stock market reaction to the increased tariffs could dampen his enthusiasm.

It is not possible at this early stage to predict where this will end.

However, one intriguing element has been intervention by the Canadian premiers, to the effect that Canada should do a bilateral trade deal with the United States and leave Mexico out.

There is nothing in the CUSMA that provides for a party (Mexico) to be kicked out. Canada would have to withdraw from the CUSMA and initiate negotiations with the Trump administration for an entirely new agreement, which may never come into existence, bringing disastrous results for Canada.

That doesn’t mean that agreements such as these can’t contain provisions applying specifically between two parties – and Mexico did try to negotiate separately with the United States in 2017, leaving Canada out of the NAFTA renegotiations. However, back then it was clear that NAFTA was going to come to an end. In this case, do the premiers want CUSMA to come to an end?

Mr. Trump’s pronouncement that he will seek to punish both Canada and Mexico equally, unless they are able to tighten their borders satisfactorily, shows that he is thinking of North America as a whole, as the US backyard. Mexico realizes this and has already started to move to assuage US concerns on Chinese auto parts coming through Mexico, showing a viable path to preserving CUSMA despite significant US concerns.

Canada should likewise start thinking of constructive moves that will help preserve – or even enhance – the benefits of CUSMA.

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