

Intelligence MEMOS



As NAFTA renegotiations proceed through the fall C.D. Howe Institute Intelligence Memos will be looking at what to expect and provide analysis on the latest developments at the table. This post is part of that series.

From: Jon Johnson
To: Prime Minister Justin Trudeau and President Enrique Peña Nieto
Date: October 17, 2017
Re: **TWO BILATERALS – THE “DOPIEST IDEA I HAVE HEARD THIS WEEK”**

In his press conference with Prime Minister Trudeau last week, Donald Trump floated the idea of negotiating two bilateral trade agreements, one with Canada and the other with Mexico. In order to do this, the US would have to withdraw from NAFTA. The president can negotiate trade agreements only under Congressional authority. The president has no authority to negotiate bilaterals and Congress has not granted to the president authority to withdraw from NAFTA.

Bill Pascrell, ranking member of the Subcommittee on Trade of the powerful House Ways and Means Committee told CBC's Power and Politics that the idea of two bilaterals was the “dopiest idea I have heard this week.” The president “needs to read the Constitution,” said Rep. Pascrell noting that power over trade agreements resides with Congress through the commerce clause. The president can expect massive Congressional pushback if he attempts a unilateral withdrawal from NAFTA.

The path to two bilaterals is filled with obstacles. The withdrawal process takes at least six months, which would extend well into 2018. The president's negotiating authority under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 expires on July 1, 2018, unless the president requests that the authority be extended to 2021. The request must be made by next April 1. Congress may refuse to extend negotiating authority given the administration's recent track record of proposing poison pills seemingly designed to scuttle negotiations. Without negotiating authority, there can be no bilateral.

If the US withdraws from NAFTA, the original Canada-US Free Trade Agreement (CUSFTA) comes back into effect unless the US withdraws from that agreement as well. The NAFTA regime cannot seamlessly flow into the CUSFTA regime. For example, the CUSFTA rules of origin are different from the NAFTA rules and the producer supply chains developed under NAFTA include Mexican inputs that would no longer count as originating in North America. The US would demand changes that would effectively lead to the negotiation of a new trade agreement, which can only occur if negotiating authority has been extended. The president would have to give at least 90 days' notice to Congress before commencing negotiations and comply with any other conditions imposed by Congress. The time frame would now be towards the end of 2018 and likely after the US mid-term elections. If the administration continues its poison pill approach, Canada may conclude that no agreement is better than a bad agreement, with no bilateral ever resulting.

There is no fallback position as between the US and Mexico if the US withdraws from NAFTA. Mexico may not even be interested in negotiating a bilateral with the US, and prefer to focus on more reliable trading partners through its free trade agreements including those with the EU and Japan. Without a bilateral, Mexico would revert to its pre-NAFTA regime with the US, with high tariffs on many US products, including agricultural goods and automobiles, and no obligations respecting protection of investors or access to procurement markets.

Any attempt by the Trump administration to withdraw from NAFTA and pursue two bilaterals will subject the US checks and balances system to a major test.

The excellent groundwork that your respective administrations have completed in meeting with Congressional committees and in maintaining contacts in Congress, at the state level and throughout the US business community will be critical in coming days.

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