

Intelligence MEMOS



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

From: Jon Johnson
To: Senator Jerry Moran (Republican - Kansas)
Date: December 6, 2017
Re: **DON'T BE NERVOUS. TAKE CHARGE**

In an “Ag News Update” radio interview last week, you said that you “got very nervous when every indication seems to me to be that the administration is going to terminate NAFTA, then indicate that they have six months before it actually expires to get a better deal. In other words, using it as leverage.”

It is clearly time for Congress to take charge of the NAFTA file.

US Trade Representative Robert Lighthizer has told the House Ways and Means Committee that he has only “an audience of one” to please, namely President Trump. But Congress and not the President has the ultimate power over trade through the Commerce Clause. The negotiation of trade agreements is strictly supervised by Congress through congressionally granted trade promotion authority and a trade agreement cannot come into effect unless Congress approves. Similarly, withdrawing from a trade agreement, including notifying an intention to withdraw, should be subject to strict congressional oversight.

On October 17, Lighthizer made the astonishing admission that the administration had not done any analysis on what the end of NAFTA would mean for the US. The actual withdrawal scenario is clearly negative. The damage to the US agricultural sector, of concern to many states like Kansas, has been well documented, with the loss of an export market in Mexico, particularly in corn, that your competitors will be only too glad to fill. Other US industries will be badly hurt. To take just one example, automobile assemblers will face prohibitive barriers in Mexico and high tariffs in Canada, and assemblers in Mexico and Canada will have no incentive to use US parts. The C.D. Howe Institute published an exhaustive deconstruction of the potential effects in a [paper](#) last week from Dan Ciuriak.

The administration’s notion of “rebalancing” will not solve perceived US problems. The administration complains about US trade deficits. However, the US has a significant trade surplus in agricultural goods such as corn that withdrawing from NAFTA would jeopardize. The benefit of possible improved access to the Canadian dairy, egg and poultry markets pales in comparison to the risk of the loss of the Mexican market. The draconian proposed automotive rules of origin will likely not come even close to solving the US trade deficit in automotive goods with Mexico because assemblers in Mexico will have the option of paying the low US MFN duties on light duty vehicles and sourcing parts from cheaper sources.

The administration has been warned that a US notice of intent to withdraw will cause immediate and severe disruption to the supply chains developed by US businesses over the last 25 years.

A notice of intention to withdraw from NAFTA unilaterally delivered by the administration, if left unchallenged by Congress, will also set a dreadful precedent that could permanently weaken the powers of Congress. The validity of the notice will be challenged on constitutional grounds. However, unless Congress takes charge, the US courts may invoke the political question doctrine to avoid making a decision. If this occurs, Congress will have lost control of the US trade agenda.

The Trump NAFTA agenda is driven mostly by campaign rhetoric rather than sound policy. If Congress exercises its constitutional responsibilities and takes charge of the NAFTA file, your Kansas constituents will rest easier and you can stop feeling nervous.

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