

Intelligence MEMOS



As NAFTA renegotiations proceed through the summer and fall, the 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: Christopher Sands
To: Concerned Canadians
Date: August 30, 2017
Re: **NAFTAPOCALYPSE NOW?**

Round one of the NAFTA renegotiation talks in Washington went well. The United States opened with its demands and Canada and Mexico did not walk away from the table.

The fact that Ottawa and Mexico City came prepared for give and take on the 23 year old agreement fulfills one of Donald Trump's campaign pledges in full.

But that didn't help, and even with his conditions to start afresh met, the president [continues](#) to [threaten](#) to withdraw the United States from NAFTA.

What if he means it?

Steven Globerman and I considered various scenarios that could follow US withdrawal in a [recent paper](#).

The treaty's exit clause, Article 2205, requires six months' notice before withdrawal takes effect.

In the United States, Congress has constitutional authority over trade policy. As a result, NAFTA is not a simple treaty and withdrawal is a [complicated, multi-step process](#). When NAFTA was negotiated, it was submitted to the Congress which then drafted and passed implementing legislation; bills that gave statutory authority to various departments and agencies to undertake rulemaking that gave effect to US NAFTA commitments.

For example, the US Customs Service issued a rule indicating that goods entering the United States from Canada or Mexico that met the conditions of the NAFTA Rule of Origin would be eligible to enter tariff free. The former US Immigration and Naturalization Service issued a rule defining a new NAFTA visa category.

Under US [procedure](#), proposed rules and regulations are open for comment for 90 days. After that the agency that proposed the rule must review all comments and may proceed as planned, proceed with modifications, or withdraw the rule and issue a new one. Congress has oversight and can challenge regulations that it believes go beyond the scope of the authority it has granted. Agencies can also be challenged in court.

This means that after President Trump announces US withdrawal from NAFTA, either every agency and department would need to begin to undo its prior regulations, or Congress would need to pass new legislation to withdraw statutory authority for NAFTA-related rulemaking.

Both rulemaking and the legislative process provide opportunities for intervention by citizens, businesses and nongovernmental organizations. Since many businesses benefit from the NAFTA status quo, it is reasonable to assume that some will argue that existing rules not be changed. And if there are changes, litigation will surely follow (we are talking about America, after all).

Time then becomes an important factor: as the effects of US withdrawal remain pending, the Canadian and Mexican governments could work to revive talks and get the United States to revoke withdrawal notification. US state governors and legislators, carefully cultivated by the Trudeau government and Canada's provincial premiers in the lead-up to NAFTA renegotiation, could organize to halt or slow progress toward full withdrawal. Elections would give voters a chance to change US leadership in ways that alter the likelihood that withdrawal will proceed. President Trump, or his successor, could change US policy.

And during all of this, some coverage for Canada's trade with the United States and Mexico would continue to be provided by the Canada-US FTA as well as the World Trade Organization, as Globerman and I discussed in detail in our paper, and as C.D. Howe Senior Fellow Lawrence Herman [argued recently](#).

This is why Canada and Mexico [showed no signs of panic](#) after Trump's latest threat, and carried on with preparations for the second round of talks in Mexico City starting Friday. Most bullies quiet down when they see their threats have no effect on their intended victims. It would be nice to see the invocations of a NAFTApocalypse stop now, allowing the professional trade negotiators for all three NAFTA partners get to work without distraction.

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