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# The Future of NAFTA: Rip it up or Renegotiate?

By R. Kevin Williams / Nov 28, 2016

During the campaign season, candidate Donald Trump railed against the North American Free Trade Agreement, more commonly known as NAFTA. He decried it as the “single worst trade deal ever approved in this country” and promised to renegotiate or withdraw from the agreement.

The election is now over and candidate Trump is the President-elect. According to a memo drafted by his transition team and obtained by CNN on November 16th, these weren't empty threats. The renegotiation or withdrawal from NAFTA will be a priority in the first days of the Trump administration.

This plan raises many questions. This article explores a few of them.

First, does the President have the authority to withdraw from NAFTA? Article 2205 of the agreement allows a party to withdraw six months after providing written notice of withdrawal to the other parties. But neither the NAFTA text nor the U.S. NAFTA implementing legislation establish a process for withdrawal. In the absence of such legislation, we turn to the Constitution for guidance.

Article II, Section 2 grants the President the power to make treaties with the advice and consent of the Senate. The Constitution is, however, silent on whether the Senate's consent is required to withdraw from a treaty. The scholars who have written on this subject are divided and the Supreme Court has not issued a definitive decision. In a suit brought Senator Barry Goldwater and other Senators after President Carter withdrew from a mutual defense treaty with Taiwan, the Supreme Court dismissed the case without resolving the underlying constitutional question.

The unique nature of NAFTA and other trade agreements adds to the complexity of this puzzle. These agreements are not treaties nor are they strictly legislation enacted by Congress. They are instead a hybrid of the two in which Congress authorizes the President to negotiate the agreement and propose implementing legislation. Congress, in turn, agrees to consider the implementing legislation as presented without proposing amendments.

So, can President Trump unilaterally withdraw from NAFTA? He certainly can provide the requisite notice to Canada and Mexico and then it would be up to Congress to challenge his action in court.

The second question is will President Trump trigger our withdrawal from NAFTA? The current thinking is that withdrawal will not be the first step. Instead, the President plans immediately after taking office to initiate a study of the withdrawal process and the possible economic consequences. He will also seek to amend the agreement through negotiations with Mexico and Canada. The likely target areas are currency manipulation, lumber, country of origin labeling and environmental and safety standards. Other possible topics include environmental and labor provisions.

Negotiation, of course, requires more than one party so President Trump would have to convince Canada and Mexico to participate. Prime Minister Trudeau has indicated Canada's willingness to do so, but Mexico has thus far expressed no interest.

Of course, any U.S. demands in the negotiations would be countered by demands from Canada and Mexico for concessions from the U.S. Say, for example, that the U.S. proposes a mechanism to level the disparity between U.S. and Mexican wages. What would Mexico demand in exchange? Possibilities include increased quotas for Mexican potatoes, tomatoes, citrus and other fruits and vegetables. This would not be well received by the U.S. producers of those products who are currently protected by the quotas. Or would Mexico seek to reduce the amount of corn and other agricultural products that can enter Mexico from the U.S. to counter the impact NAFTA has had on Mexican farmers who are unable to compete with U.S. farmers?

Then there's Congress to consider. Any renegotiation of NAFTA would require Congress to pass implementing legislation. There are strong anti-trade agreement voices in both parties so Congressional approval of a new NAFTA is not a slam dunk.

So let's assume renegotiations don't succeed or they do succeed and Congress refuses to go along. What next? Will the President roll the dice and initiate the withdrawal process? And if so, what would it look like?

Much like the reality of Brexit after the UK's referendum this past summer, triggering the withdrawal of the United States from NAFTA would lead to uncertainty in the North American and perhaps the world economy. One obvious outcome would be that many U.S. businesses, most significantly the auto industry, would be forced to reconfigure their supply chains to bring production back into the U.S. to avoid the costs of higher tariffs. This could not happen overnight and would be costly. Would Mexico respond by raising tariffs on U.S. goods? Would this lead to a trade war? If so, would there be a downturn U.S. economy and increased unemployment? Would domestic demand in the U.S. decline as higher tariffs lead to higher prices?

Hopefully the studies initiated by the new administration will provide answers to these questions and countless others. In the meantime, we will closely monitor these developments in an effort to help you prepare for what promise to be interesting times.