

# Intelligence MEMOS



From: Christopher Sands  
To: The Hon. Chrystia Freeland, Minister of Foreign Affairs  
Date: April 10, 2019  
Re: **WASHINGTON AND THE USMCA DELAY: WHY IS THIS HAPPENING?**

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Four months after Prime Minister Justin Trudeau signed the Canada United States Mexico Agreement (CUSMA, or USMCA as it is known in the United States) the US Congress still has not acted on approval of the agreement. Why not? And should Canadians be worried?

There are three reasons for the delay. The [Bipartisan Congressional Trade Priorities and Accountability Act of 2015](#) (TPA 2015) is the statute that governs the process. The US Constitution establishes certain prerequisites for the approval of a trade agreement. The 2020 presidential and congressional elections are another factor in US decision-making, often implicitly.

The Trump administration [has so far been careful](#) to fulfil the requirements and meet all deadlines in TPA 2015 to ensure that the legislation implementing any resulting agreement receives an up-or-down vote without amendments in Congress. Following the signing of the draft agreement last November 30, the US administration must send six things to Congress in a submission package that must be complete before legislators can begin consideration of the agreement. Of the six items, two have upcoming deadlines, three have no deadlines at all, and one has a deadline related to the submission of the package to Congress (and not date of signing). Keeping the timetable for each of these six elements in mind will make the status of the agreement in Washington clear.

Sixty days following the signing of the agreement, the White House administration must send Congress a description of legislative changes required to implement the agreement. The deadline for this element was shifted by the federal government shutdown, which lasted for 35 days. Originally due January 30, the administration [made its submission](#), which had to be prepared by workers furloughed by the budget impasse, earlier than expected on February 5.

The next requirement in TPA 2015 is that the administration submit to Congress an analysis by the [U.S. International Trade Commission](#) of the impact of the proposed agreement on trade 105 days after the signing. That submission was also affected by the federal shutdown; originally due on March 15, it now must be submitted no later than April 19, next Friday.

There are three further elements of the submission package that have no deadlines attached. The administration must submit draft implementing legislation for the agreement, a labour market and environmental impact assessment of the agreement, and an enforcement plan. Democrats in Congress have [reviewed the labour](#) and environmental provisions in the draft agreement [but have called for “teeth” in the enforcement plan](#). US Trade Representative Robert Lighthizer has emphasized that the most important enforcement provisions will be those in [the draft implementing legislation](#), since these will become law and not merely a pledge of enforcement action by this administration. Negotiations on these elements of the submission package are ongoing and have been the subject of intense lobbying by business and advocacy organizations.

The final element is a draft statement of administrative action for the implementation of the agreement. Administrative action refers to amendments to existing regulations and new rulemaking to be proposed as part of meeting US commitments to Canada and Mexico as part of the agreement. This list, which would be acted upon after Congress approves the agreement, must be submitted 30 days before Congress can begin consideration of the agreement. When issued, this list will be a sign that the full package will be sent to Congress within 30 days.

Until then, USMCA negotiations will continue between the White House and Congress. Canada must carefully monitor these ongoing talks to ensure that nothing new that could impair Canada’s trade is slipped into a deal between the two ends of Pennsylvania Avenue.

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