

Intelligence MEMOS



From: Jon Johnson
To: Canadians Concerned About the USMCA
Date: February 21, 2019
Re: **US APPROVAL OF THE NEW NAFTA – PITFALLS?**

US Trade Representative Robert Lighthizer on January 29 initiated the process under the *Bipartisan Congressional Trade Priorities and Accountability Act of 2015* (the “TPA Law”) for approving the US Mexico Canada Agreement, by delivering to Congress a description of the required changes to US law.

The president must now submit to Congress the final USMCA text and a draft of a Statement of Administrative Action (“SAA”) describing the administrative action required to implement the USMCA. At least 30 days later, and only when both the House and the Senate are in session, the president must submit to Congress the final SAA together with a draft of the USMCA implementing bill.

The TPA Law sets time limits for congressional committees to consider the implementing bill and prohibits amendments. Time for debate is limited. The House and the Senate each have a choice of passing the implementing bill as presented by a simple majority, or refusing to pass it. If (and only if) both the House and the Senate pass the implementing bill, the USMCA is approved and the US can proceed to implement it.

So what are the pitfalls?

First, with the separation of powers under the US constitution, the president does not control Congress. The majority in the House is now Democratic, meaning that a significant number of them must vote in favour of the implementing bill for it to pass.

Second, the TPA Law requires that the US International Trade Commission report on the likely effects of the USMCA on the US economy. The original due date for the report was March 15, but because of the recent government shutdown, the report could be delayed by the length of the shutdown (35 days). Congress can pass the implementing bill without the report but some Democrats are insisting on reviewing the report before considering the implementing bill.

Third, the Section 232 tariffs against Canadian and Mexican steel and aluminum are still in effect and many members of Congress are insisting that these tariffs be removed before any implementing bill can be considered. This is one pitfall within the power of the president to avoid, by revoking the Section 232 tariffs as they apply to Canada and Mexico.

Finally, some Democrats want to reopen negotiations respecting the agreement’s labour provisions, maintaining that its enforcement procedures are ineffective. Amending the substantive provisions of a trade agreement once signed (as opposed to addressing labour’s concerns through a side letter, which is unacceptable to labour) would necessitate starting the approval process all over again.

Assuming that the Trump administration has no interest in renegotiating any USMCA provision, labour’s Democratic supporters will have to choose between voting for the implementing bill or continuing to live with NAFTA.

While the Trudeau government with its majority will have no difficulty in passing legislation implementing the USMCA, Parliament’s ability to enact legislation will cease after June because of the federal election scheduled for October. Parliament may be faced with the prospect of approving the USMCA with no clarity about ratification in the US.

Approvals by Canada and Mexico may provide some incentive for Congress to vote for the agreement. However, its fate in Washington depends on how deep-seated the opposition of the House Democrats is to what the USMCA does or does not provide, and whether to give the president a victory on this important Trump trade file (renegotiating the NAFTA “disaster”).

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