



McLARTY
ASSOCIATES

WASHINGTON | BRUSSELS | BEIJING | SINGAPORE | www.maglobal.com | @McLartyAssoc

NAFTA UPDATE: Preliminary US-Mexico Agreement Announced

August 28, 2018

KEY POINTS:

- The United States and Mexico yesterday reached an agreement in principle, the **“US/Mexico Trade Agreement,”** designed to **revise and replace NAFTA.**
- In a **televised phone call** between President Trump and Mexican President Peña Nieto (EPN), the latter pressed for rapid inclusion of Canada, while Trump noted, “We can have a separate deal or we can put it into this deal.” Canadian Foreign Minister **Freeland will return to Washington today** to continue negotiations.
- **No text** has been shared, but **consensus reportedly was found on sunset, goods and textiles market access, [intellectual property](#), [agricultural trade](#), [rules of origin](#) (RoO) on autos and other products, investment, and dispute settlement**, among other issues. **Mexico agreed to US proposals on Chapter 19 and government procurement**, complicating the picture for Canada.
- It is **unclear whether Congress would consider a bilateral deal under Trade Promotion Authority (TPA), initially granted for a trilateral agreement.** However, Trump reportedly plans to notify Congress of the intention to sign a new deal – with or without Canada – by August 31, although negotiators are likely to continue to attempt to include Canada even if the Friday “deadline” is missed.
- Trump stated after yesterday’s EPN phone call, **“I will terminate the existing deal”** in favor of the US/Mexico Trade Agreement, in an undeniable **effort to put pressure on Canada to join the accord and on the US Congress to pass it.**
- Later this week, McLarty will update its most likely NAFTA Scenarios.

Agreement in Principle Announced (or 2/3 of an agreement...)

In a joint press conference, Trump and EPN (by phone) [announced](#) a **preliminary bilateral trade agreement, following over a year of NAFTA negotiations.**

Trump said that **negotiations with Canada would resume shortly** and that Canada may join the agreement or reach a separate deal with the United States. In an effort to push Canada to make concessions, Trump added that the United States could apply tariffs on Canadian-made cars if a trilateral agreement is not reached.

EPN stressed repeatedly that Mexico hoped Canada would be incorporated into the agreement and, in a [tweet](#) following the call, he reiterated the need for a trilateral deal. On August 26, EPN and Canadian PM Trudeau had spoken about Canada rejoining the talks.

At a Monday afternoon press conference held by the Mexican delegation, Foreign Minister **Videgaray said it was important to Mexico that the agreement be trilateral, but there were issues “out of our control such as the relationship between Canada and the United States.”** He noted that Mexico had **reduced uncertainty** by striking the US/Mexico Trade Agreement, because even if a new North America trilateral were not attainable, **Mexico was covered through its bilateral with the United States and the CPTPP with Canada.** Several times during the press conference, Mexican officials returned to the theme of reducing uncertainty in the Mexican economy – a clear priority.

At the same time, **Mexico’s incoming negotiating team reinforced a preference for a trilateral** agreement. Incoming Mexican President López Obrador (AMLO) said he welcomed the agreement reached with the United States, although his **lead NAFTA negotiator Jesús Seade** added, “The entire time it’s remained clear that [talks] were for a trilateral. **It could be a bilateral if [the United States and Canada] don’t agree, but our strong preference is different.**”

Canadian Foreign Minister Freeland, who had traveled to Europe over the weekend for bilateral meetings, plans to return to Washington August 28. A spokesperson for the Foreign Minister said, **“Progress between Mexico and the United States is a necessary requirement for any renewed NAFTA agreement”** adding, “We will only sign a new NAFTA that is good for Canada and good for the middle class...**Canada’s signature is required.**” The PM’s office released the following [statement](#) yesterday ahead of Freeland’s arrival in Washington: **“The Prime Minister had a constructive conversation today with President Trump regarding the North American Free Trade Agreement.** The leaders welcomed the progress that has been made in discussions with Mexico and look forward to having their teams engage this week with a view to a successful conclusion of negotiations.”

While we suspect Canada was surprised by the blatantly bilateral nature of yesterday’s announcement, **Canada is taking a moderate approach toward its reinsertion into the talks.** The number of red lines Canada maintains in its NAFTA positions plus the difficult relationship between Freeland and USTR Lighthizer will not facilitate negotiations, however.

Furthermore, the US/Mexico deal **does not resolve the issue of Section 232 tariffs on steel and aluminum,** and there is no clarity yet on potential Section 232 tariffs on autos.

Timing and Potential Withdrawal from NAFTA

USTR Lighthizer said he expected to **notify Congress of the new deal on August 31** and that it could be signed by the **end of November.** Per TPA rules, Congress must be advised at least 90 days before a new trade deal is signed, and final text must be presented to the Congress 60 days before signature.

Since yesterday’s announcement was an agreement in principle and Congress has not yet been provided text, time is short to fill in the details. The goal of signing an

agreement before AMLO's December 1 inaugural has been a motivating force behind negotiations in recent weeks.

As this negotiation was **originally authorized under TPA as a trilateral**, it remains unclear whether a bilateral deal could move forward for congressional approval should Canada fail to join the accord by Friday. Given the number of outstanding issues for Canada, it is difficult to imagine the US/Mexico Trade Agreement becoming trilateral in four days' time. **Some have speculated that the Republican-led Congress might tweak the TPA rules** to allow for consideration of a bilateral, or to permit for a vote on the new agreement yet this year, presumably by condensing the timing of the required ITC study. Thus far, we have seen **little appetite** in Congress for this action, but the White House is likely to advocate for it, understanding that a good Democratic showing in the midterms could sink the deal in 2019.

Trump has often intimated that he would withdraw from NAFTA either to achieve a deal or to attempt to force congressional passage. At yesterday's press availability he vowed: **"I will terminate the existing deal. When that happens, I can't quite tell you; it depends on what the timetable is with Congress.** But I'll be terminating the existing deal and going into this deal. We'll start negotiating with Canada relatively soon," Trump added.

Cautious Response from Congress

A number of Republican and Democratic members of Congress responded to the announcement emphasizing that **the agreement should be trilateral and follow statutory requirements for congressional consultation.**

Senate Finance Committee Chairman Orrin Hatch (R-UT) [said](#) that while the announcement was an "important step toward modernizing NAFTA.... **a final agreement should include Canada**" to ensure that NAFTA continues to benefit US businesses and families. However, he stopped short of asserting that a bilateral deal violates TPA.

House Ways and Means Chairman Kevin Brady (R-TX) [said](#) he looked "forward to carefully analyzing the details and consulting in the weeks ahead with my colleagues and constituents to determine whether the new proposal meets the trade priorities set out by Congress under the Trade Promotion Authority...I call on Canada to come back to the negotiating table quickly with the aim of concluding a modern, seamless three-way agreement."

Senate Majority Whip John Cornyn (R-TX) [said](#) a trilateral agreement was the best path forward. He added, "any modernized agreement should do no harm to states like Texas whose economy has seen the benefits of cross-border commerce. Millions of jobs in Texas depend on an updated NAFTA, and it's important that we get it right."

Senate Finance Committee Ranking Member Ron Wyden (D-OR) [said](#), "there are **a lot of details missing from today's announcement**, and there are big unanswered questions as to where negotiations will go with Canada... the administration must follow the laws that I fought to pass to keep Congress and the public informed and give ample time to review any deal before votes are considered."