



Trump takes charge: How NAFTA renegotiations might unfold

Will the new U.S. administration focus its energy on a few quick tweaks? Or dig deeper for a full renovation?

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The soundbites from Donald Trump's inauguration speech could strike fear into a free trader's heart.

"We must protect our borders from the ravages of other countries making our products, stealing our companies and destroying our jobs," he vowed Friday.

"We will follow two simple rules: Buy American and Hire American."

Minutes later, a rewritten White House website:

"President Trump is committed to renegotiating (the North American Free Trade Agreement.) If our partners refuse a renegotiation that gives American workers a fair deal, then the president will give notice of the United States' intent to withdraw from NAFTA."

So it's on, then. But what, exactly, does renegotiating mean?

'Key is not to panic'

The new White House press secretary, Sean Spicer, said Thursday that Trump would not wait for his cabinet to be confirmed before he acted on two priorities:

- Withdrawal from the Trans-Pacific Partnership trade deal, a 12-country agreement Canada and Mexico also signed.
- Renegotiation of NAFTA — unless Canada and Mexico won't cooperate. Then he'd use his powers to give six months' notice of termination.

"The key thing is not to panic," says Mark Warner, a Toronto-based trade lawyer who practices in both Canada and the U.S.

Trump doesn't mention termination first. That's plan B.

But threatening termination does focus minds.

Canada and Mexico **huddled** and **agreed to come to the table**, something **not everyone thought was wise**. (Mexico's president agreed there was **room to improve** the trade agreement even before Trump's election.)

Trump's strategy, as described in his book *The Art of the Deal*, is to soften up the other side by making them sweat, Warner said.

Could he raise the stakes by giving notice of termination first?

"I suspect that Canada will go crazy if he does it," Warner said. "It's just a negotiating tactic."

President can't act alone

Negotiations require negotiators.

Yet a confirmation hearing date for Robert Lighthizer, Trump's nominee for trade representative, hasn't been set.

Simon Lester, a trade policy analyst with the Washington-based Cato Institute, believes assembling the U.S. trade representative's team could take a few months.

All the departments and agencies — state, commerce, labour, environmental protection and more — must get on the same page before negotiating positions are finalized.

Then there's America's division of powers.

The president's in charge of foreign policy. But Congress controls the money — and from that, has authority over things like tariffs.

Barack Obama needed to go to Congress to get "fast-track" authority to negotiate the TPP — a process used in trade talks since the Nixon administration to make sure trade officials don't agree to things Congress later tries to amend.

Once negotiated, Congress has to take it or **leave it**.

Could the TPP authorization also cover NAFTA? Lester thinks Trump's team might propose that, to expedite things.

Will Congress oblige?

Otherwise: "We could spend the next two or three years, I think, just talking about what we want NAFTA to say," Lester said.

If the renegotiation objectives are modest, Congress may oblige. NAFTA provisions allow for straightforward amendments.

But a fundamental overhaul?

"They'll definitely weigh in," Lester said. "If they object, they could definitely put up a fight."

Behind-the-scenes talks are probably underway with Congressional leaders, Lester said.

"I'm not sure how much (the incoming administration) understand(s) what a trade negotiation looks like," Lester said. "In their mind, they do business deals and you can get those done in three months."

"If the Americans open NAFTA wholesale, depending on how ambitious they want to be, it will take years," said Meredith Lilly, a former trade adviser to Stephen Harper.

"There are many members of Congress that are not unhappy about NAFTA, so it will not be an easy road," she said.

TPP is dead. Long live TPP

A year ago it seemed NAFTA might be superseded by the TPP. All three NAFTA countries were onboard.

Now it's the other way around.

At his confirmation hearing Thursday, treasury secretary nominee Steven Mnuchin said the TPP could be a "starting point" for NAFTA talks.

Already-agreed-upon TPP chapters — on labour, environmental standards, **intellectual property**, or e-commerce — could migrate.

If seen as minor amendments, TPP text could become NAFTA annexes or side letters.

But it won't all translate.

TPP bargaining concessions made to achieve gains from non-NAFTA countries might be off the table, such as the **market access to Canada's supply-managed dairy, egg and poultry sectors** given up in return for lower Asian tariffs.

"I think that it would be extremely risky to open up agriculture chapters," Lilly said. "(All three countries) have protectionist sentiments. If you're going to get, you also have to give."

NAFTA needs updating

It's not like NAFTA is just fine, as is.

Consider its labour mobility provisions, such as the list of professions that qualify for temporary entry to the U.S.

If a job didn't exist in the early '90s — like digital technology worker, or nurse practitioner — it's not listed.

Canada may push to open up government procurement so companies compete on cross-border infrastructure projects — something its **European Union trade deal** achieved.

But fighting "Buy America" rules has been a tough slog for years. Trump's **"America first" attitude** doubles down.

Leaked memos — **early** and **recent** — suggested U.S. priorities for renegotiation:

- Country-of-origin content rules: The automotive industry's use of Asian parts **remains contentious**. The livestock sector has a **long-running labelling dispute**.
- Softwood lumber, a **perennial trade irritant** not covered by NAFTA, is heading towards a **fresh round of duties and litigation**.
- Dispute arbitration panels (NAFTA's Chapter 19) frequently rule against Americans. (Canada's anticipated NAFTA challenge on presumed new lumber duties will get tricky if the U.S. simultaneously moves to eliminate these panels.)

Are these leaks credible? "We don't know," Lilly said.

Commerce secretary nominee Wilbur Ross told his confirmation that everything's up for grabs.

"If they're looking for short-term gains, they'll want to keep the negotiations fairly tight, and really focus on things that are going to make a big difference for the U.S. economy," Lilly said.