



Can the US exclude Canada from its trade deal with Mexico?

Sean Higgins

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President Trump's trade agreement with Mexico has created a baffling question for members of Congress, trade associations, and legal analysts:

Does Canada have to sign off on the deal before it can go into effect because it impacts the North American Free Trade Agreement, or can Canada be excluded from the U.S.-Mexico agreement altogether?

The White House believes it is the latter, but others aren't so sure and admit the answer is far from clear. Ultimately, whether Trump can get his Mexico deal through Congress is more likely to be a matter of politics than law.

A staffer for one top congressional Democrat generally supportive of Trump's trade policy goals, speaking anonymously, just didn't know if Congress could approve Monday's deal without Canada on board, and wasn't eager to find out. The hope was Canada did sign on so they didn't have to deal with the question.

"For now its just a handshake deal and we'll see what happens with the Canadians next. That's kind of where we are," the staffer said.

The administration notified Congress last year that it intended to renegotiate NAFTA, as it is required to do under Trade Promotion Authority, the law that covers congressional approval for such deals. Many of the provisions of TPA are ambiguously worded and open to interpretation, so it often not clear where the lines are drawn.

It's never been tested whether a U.S. administration has to have both Canada and Mexico on board as part of a NAFTA renegotiation.

Monday's announcement was presented by the administration as a separate bilateral deal with Mexico, not as a renegotiated NAFTA. At the same time, the administration said Monday's deal would supplant NAFTA because it cannot have two different deals with Mexico. If Canada doesn't like that, that's too bad, administration officials said, because it cannot stop it.

"Ideally, we will have the Canadians involved," a senior administration official, speaking on the condition of anonymity, told the *Washington Examiner* Monday. "If we don't have the Canadians involved then we will notify [Congress] that we have a bilateral agreement that Canada is welcome to join. We think that satisfies our requirements and the requirements of the [Trade Promotion Authority] statute."

Adam Austen, a spokesman for Canadian Foreign Minister Chrystia Freeland, insisted that Canada must be included.

"We will only sign a new NAFTA that is good for Canada and good for the middle class. Canada's signature is required," he told Reuters. Canada has yet to say it definitively opposes the deal, and Freeland is expected to come to Washington Tuesday to discuss trade issues.

Mexican President Enrique Peña Nieto implored Trump three separate times in a joint press conference Friday to include Canada in the deal. Trump was noncommittal. "As far as Canada is concerned, we haven't started with Canada yet," Trump said. "We wanted to do Mexico and see if that was possible to do."

Several lawmakers stressed in public statements that they wanted to bring Canada on board with the deal, but stopped short of saying that absolutely had to happen. Rep. Bill Pascrell, D-N.J., for example, said that "NAFTA is a trilateral agreement that includes Canada" and that he hopes to see "significant changes reflected in a trilateral renegotiated agreement," but didn't say he would oppose the deal if that didn't happen.

Simon Lester, trade policy analyst with the free-market Cato Institute, said he was skeptical of the administration's position but added that there was no definitive answer.

"The legalities are uncertain and the politics are uncertain. ... It is completely possible the administration is thinking, 'Well, it is a gray area, so if Canada doesn't give us what we want, we'll just go ahead with U.S.-Mexico.' It is more a question of politics than law," he said.

Dan Ujczco, a trade policy lawyer for Dickinson-Wright, agreed, saying that while there were a number of political reasons why Canada had to be involved, there were no actual procedural ones.

"If Congress doesn't like the fact that Canada is not there, then they need to marshal the votes to stop this in committee," he said. "What Congress has to do is say it disapproves." And it has to do that within 90 days of when the deal is submitted by the administration.

Does Canada have any way to object if the U.S. pushes forward with the Mexico deal? Only if it has friends.

"The way Canada can stop this is by rallying its friends in Congress and in the business community," Ujczco said.