

Trump and Trade Updates – February 2017

Congressional Research Service – Renegotiation of NAFTA: What Actions Do Not Require Congressional Approval?

2/1/17 – In a recent [legal analysis](#), the Congressional Research Service (CRS) opined that while President Trump may have limited authority to renegotiate NAFTA, any significant modifications requiring changes to U.S. laws that originally implemented the agreement in 1993 could require Congressional consent. The analysis states that, “The Constitution gives Congress specific authority over international trade, including powers to impose and collect tariffs and duties and to regulate international commerce. U.S. free trade agreements, including NAFTA, have historically been approved and implemented as congressional-executive agreements by a majority vote of each house of Congress. In the NAFTA-implementing law, Congress approved NAFTA as it existed in 1993. Accordingly, major changes to the agreement would arguably require legislative approval. Furthermore, the President arguably lacks the authority to terminate the domestic effect of federal statutes implementing NAFTA without going through the full legislative process for repeal.”

Two-Step Process for Negotiating Trade Deals

2/1/17 – On January 31, 2017, the new Trump administration indicated there would be a “two-step process” for negotiating trade deals. White House Press Secretary Sean Spicer stated in a press briefing, “I think, number one, we’re going to reexamine all of the current trade deals, figure out if we can re-improve them. But secondly, I think we’re going to start talking to other countries around the globe, including some of those TPP partners. I think of the 11 other countries, five of them we have current trade deals with. So you would examine those to see if we can improve upon them and then look at the other countries in there and see if there’s a willingness to engage with some of those other countries.” Asked about any potential changes to the roles of official U.S. trade negotiators, Spicer indicated that the “U.S. Trade Representative is clearly the leader of negotiating trade deals.”

Separately, when asked about trade with countries that are parties to the TPP, White House National Trade Council Director Peter Navarro stated that the Trump administration intends to “negotiate bilateral trade deals with every single country that comprised the TPP.”

Trump Administration Puts Iran “On Notice”

2/2/17 – In response to a recent ballistic missile test conducted by Iran, President Trump’s National Security Advisor Michael Flynn made a brief press statement February 1, 2017, condemning the testing and stating that it is in violation of United Nations Security Council Resolution 2231. Flynn stated that the Obama administration “failed to respond adequately” to Iranian transgressions under the nuclear deal with Iran implemented in January 2016 and noted that President Trump has criticized such agreements “as being weak and ineffective.” Without providing any further details, Flynn announced that the United States was “officially putting Iran on notice.”

Iranian Persons and Entities Designated by OFAC as a Result of Recent Ballistic Missile Tests

2/3/17 – On February 3, 2017, the Department of the Treasury’s Office of Foreign Assets Control (OFAC) [designated 13 individuals and 12 entities](#) for placement on its Specially Designated Nationals (SDN) List. This move comes just days after National Security Advisor Michael Flynn placed Iran “on notice” in response to its recent ballistic missile tests. John Smith, acting director of OFAC, said, “Today’s action is part of Treasury’s ongoing efforts to counter Iranian malign activity abroad that is outside the scope of the JCPOA [Joint Comprehensive Plan of Action]. We will continue to actively apply all available tools, including financial sanctions, to address this behavior.”

[Read our full client update on this topic.](#)

Trump Administration – Cabinet Confirmation Status

2/8/17 – All members of a president’s cabinet require the advice and consent of the Senate following appointment by the president and prior to their taking office. For an administration that has given every indication that trade will be a significant agenda item, the Trump administration’s cabinet-level nominees for Commerce, Treasury and U.S. trade representative (USTR) remain unconfirmed as of February 8, 2017.

While each of these nominees is ultimately expected to be confirmed, several reasons are behind the protracted confirmation process for these critical cabinet positions. First, the Trump transition team was slow in vetting its nominees. Second, Senate Democrats are slowing the confirmation process by demanding more scrutiny during hearings and debating the nominations on the floor of the Senate. Third, Wilbur Ross (Commerce), Steven Mnuchin (Treasury) and Robert Lighthizer (USTR) have not been without conflict due to their professional backgrounds; in fact, Lighthizer will likely require a waiver in order to become the USTR due to his past representation of a foreign government. Further, Rolf Lundberg, whom we [previously reported](#) was President Trump’s selection to be deputy director of the “Buy American, Hire American” effort of the newly formed White House National Trade Council, has announced that he will not serve in the administration, opting instead to become the head of public policy at Choice Hotels.

Please [view/download our summary](#) to view the status of President Trump’s cabinet nominees.

Mnuchin Confirmed as Secretary of the Treasury

2/14/17 – By a vote of 53 to 47, the Senate confirmed Steven Mnuchin as the Trump administration’s new Treasury secretary on February 13, 2017. The largely party-line vote followed a lengthy confirmation process that at times became contentious over certain aspects of Mnuchin’s career, specifically his Wall Street ties and the 2008 financial crisis. During his confirmation hearing, Mnuchin took a more moderate tone than President Trump on trade issues and dealing with China.

Please [view/download our summary](#) to view the confirmation status of President Trump’s cabinet nominees.

Congressional Research Service Releases U.S.-China Trade Report

2/23/17 – The Congressional Research Service, a public policy research congressional support agency, has released an in-depth analysis of U.S.-China trade and economic issues. Given the significant amount of political rhetoric that the Trump campaign generated towards China, and the stance of Peter Navarro, who is President Trump’s chairman of the newly formed National Trade Council, an outspoken China critic and author of “Death by China,” this timely report could be a valuable read by those in the international trade arena.

The 80-page report covers a wide variety of specific issues and highlights that U.S.-China economic ties have expanded substantially over the past three decades. Total U.S.-China merchandise trade rose from \$2 billion in 1979 (when economic reforms began) to \$579 billion in 2016. China is currently the United States’ second-largest merchandise trading partner, its third-largest export market, and its biggest source of imports. It also notes that many U.S. firms view participation in China’s market as critical to staying globally competitive.

Despite these growing commercial ties, the report notes that the U.S.-China bilateral economic relationship has become increasingly complex and often fraught with tension. From the U.S. perspective, many trade tensions stem from China’s incomplete transition to a free market economy. Major areas of concern expressed by U.S. policymakers and stakeholders include China’s alleged widespread cyber economic espionage against U.S. firms; relatively ineffective record of enforcing intellectual property rights; discriminatory innovation policies; mixed record on implementing its World Trade Organization

(WTO) obligations; extensive use of industrial policies (such as financial support of state-owned firms and trade and investment barriers) in order to promote and protect industries favored by the government; and interventionist policies to influence the value of its currency.

There are different views on how the United States could better address commercial disputes with China. Trump administration officials contend that the United States should take a more aggressive stance against China's trade policies, such as by increasing the number of U.S. WTO dispute settlement cases brought against China, expanding the use of U.S. trade remedy laws on certain imports from China, designating it as a "currency manipulator" and/or threatening to impose sanctions against China unless it addresses various policies that hurt U.S. economic interests.

The report, "[China-U.S. Trade Issues](#)," provides background and analysis of U.S.-China commercial ties, including history, trends, issues and outlook.

President Trump: "Our country is being absolutely devastated with bad trade deals."

2/27/17 – In a speech to the Conservative Political Action Conference (CPAC) on February 24, 2017, President Trump reiterated his intent to negotiate only bilateral trade deals. In a broad ranging speech before CPAC, the president highlighted his campaign promise to withdraw from the TPP trade deal and again criticized NAFTA:

"I've also followed through on my campaign promise and withdrawn America from the Trans-Pacific Partnership – so that we can protect our economic freedom. And we are going to make trade deals, but we're going to do one-on-one, one-on-one. And if they misbehave, we terminate the deal. And then they'll come back, and we'll make a better deal. None of these big quagmire deals that are a disaster. Just take a look – by the way, take a look at NAFTA, one of the worst deals ever made by any country having to do with economic development. It's economic undevelopment as far as our country is concerned."

The president concluded his comments on trade by stating, "We will fix our broken and embarrassing trade deals that are no good – none of them." President Trump's intention to shift to bilateral trade negotiations and deals will be a significant change in U.S. trade policy after decades of multilateral or regional trade deals.

[View the president's CPAC remarks.](#)

Trump Administration – Key Players in International Trade (Update)

2/28/17 – After much delay, the Senate on February 27, 2017 confirmed President Trump's nomination of Wilbur Ross to be the next secretary of the Department of Commerce. The vote was 72 to 27.

The Trump administration has also announced the addition of two experienced international trade practitioners to the Office of the U.S. Trade Representative and the Commerce Department:

Stephen Vaughn, formerly a partner at King & Spalding, will be named general counsel of the Office of the U.S. Trade Representative (USTR) if USTR nominee Robert Lighthizer is confirmed by the Senate. Vaughn was part of Trump's transition team and is, reportedly, already unofficially working at USTR. He will bring a domestic petitioner's focus to the USTR, having previously represented U.S. producers in trade remedy actions, particularly in notable steel trade cases that resulted in defensive antidumping (AD) and antisubsidy tariffs on imports from China and other countries. According to his bio, Vaughn has litigated antidumping, countervailing duty (CVD) and safeguard cases before the U.S. International Trade Commission, the U.S. Court of International Trade, the U.S. Court of Appeals for the Federal Circuit, and NAFTA and WTO dispute settlement panels.

Gilbert Kaplan is expected to be nominated to be the Commerce Department's undersecretary for international trade now that Wilbur Ross has been confirmed as secretary. Kaplan served in several senior positions in the Reagan administration, including as former deputy assistant and acting assistant secretary for import administration at the Commerce Department. During his previous tenure at Commerce, he supervised the President's Steel Program, the U.S.-Japan Agreement on Trade in Semiconductors, the U.S.-Canada agreement on lumber and the machine tool program. His bio adds that he was also the principal spokesman for the administration on legislative and congressional issues related to AD, CVD and Section 232 national security import relief laws. Kaplan has been a notable proponent of efforts to treat currency manipulation as an illegal export subsidy.

For more information, please see our previous publication, "[Trump Administration – Key Players in International Trade.](#)"