

Canada NAFTA Impasse Is No Near Miss

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Canadian Foreign Minister Chrystia Freeland speaks with reporters as she arrives for a meeting at the US Trade Representative's office in Washington, DC, September 19, 2018. SAUL LOEB/AFP/Getty Images

For all of the [escalating trade tensions](#) emanating from the Trump administration, [optimists](#) have taken reassurance from its apparent progress renegotiating NAFTA. Perhaps there would be at least *one* trade win for the administration to brag about heading into November midterms.

President Trump started bragging at the end of August, when he celebrated a deal with Mexico. That agreement in principle actually left a number of [questions](#) unanswered. What's more, it omitted Canada, an integral part of the North American Free Trade Agreement.

The Trump administration, after initially negotiating with both countries, had decided to hold talks with just Mexico and only bring Canada back to the table in late August, after a bilateral agreement had been reached. Presumably, the goal was to present the Canadians with a *fait accompli* and pressure them into quick acceptance. If so, it didn't work.

The first missed deadline came at the very end of August. It stemmed from a combination of a U.S. Trade Promotion Authority (TPA) requirement to give 90 days

notice before signing an agreement and the upcoming December 1st presidential transition in Mexico. As it happened, the deadline was missed when the United States and Canada could not reach even a vague agreement in principle. The Trump administration notified Congress of only the Mexican deal.

That notification set another clock ticking. In theory, under the TPA law, a notified agreement is supposed to be sufficiently specific to allow outside review groups to start analyzing the deal and allow government lawyers to turn broad notions into specific legal text. TPA allows 30 days for this exercise.

The problem for the Trump administration was that the Mexican bilateral did not make much sense in the absence of a broader trilateral. This meant it was hard to start drafting legal text and it was hard for outside advisory groups to analyze non-existent agreements. Such problems could be solved, however, if only the administration could settle its differences with Canada.

Attention turned to a new deadline. Assuming a last-minute Canadian deal, how quickly could sleepless lawyers turn it into an actual legal text to present to the U.S. Congress? The deadline for presentation is September 30. Mexican Economy Secretary Ildefonso Guajardo [suggested](#) that negotiators would need perhaps as little as 10 days for to sort out legalities once there was an agreement in principle with Canada. That suggested a deadline of September 20, which just came and went. The evening of the 20th, Foreign Minister Chrystia Freeland [returned home](#) to Canada and refused to even use the word “progress” in characterizing the latest round of talks.

Lest this sound like a big deal, it really means that the odds of a revised NAFTA being implemented anytime soon just went from slim to slightly slimmer.

To see why, consider what would have happened even had there been a congratulatory televised phone call this week between President Trump and Canadian Prime Minister Justin Trudeau, and even had highly-caffeinated lawyers managed to meet the September 30 text deadline.

There was essentially no chance that the agreement would be considered by the current Congress. The next step is for the U.S. International Trade Commission (ITC) to analyze what a deal means for the U.S. economy. Despite [urgings](#) by U.S. Trade Representative Robert Lighthizer that the ITC start doing so before any deal is finalized, TPA grants the ITC 105 days. That clock would likely start after there was an actual deal. The ITC was unlikely to curtail its analysis, particularly given the [unorthodox nature](#) of some of the Trump administration’s NAFTA proposals (e.g. on rules of origin and minimum wages). So the first big hurdle was that congressional consideration would have been deferred to next year.

The next big hurdle concerned whether the agreement would be granted TPA protections when Congress takes it up. TPA allows an agreement to be considered without amendments, without Senate filibuster, and without endless delays, and is

thus seen as essential for passage. It only applies, however, if the White House follows TPA requirements. One of those requirements is regular consultation with Congress; Rep. Bill Pascrell (D-NJ), the ranking member of the trade subcommittee of the House Ways and Means committee, has publicly [complained](#) that the administration has failed to consult. His objections may carry extra weight, as he could be running the trade subcommittee if Democrats win control of the House in November.

A second requirement concerns notifications. Even had Canada struck a deal this week, it would be hard to argue that the notification deadlines had been met by the administration's [statement](#) to Congress that there would be an agreement forthcoming with Canada "if it is willing." If parliamentarians in the next Congress were to object to either of these points, a renegotiated NAFTA might have been unable to get through Congress intact.

Even had a trilateral deal been granted TPA treatment, its path to passage was far from clear. Both [Republicans](#) and [Democrats](#) have objected to the administration's approach in the NAFTA talks. If Republicans listen to business community objections and Democrats feel unmotivated to embrace NAFTA in order to help President Trump, even a timely deal could have found itself without enough support to pass next year.

So the failure to convince the Canadians this week only slightly diminishes already-difficult chances for a new NAFTA deal. Unless the administration ignores [congressional warnings](#) and tries to push through a bilateral with Mexico, the new challenge will be striking a deal that the [next Mexican president](#) feels he can sign. The major impact of this week's continuing Canadian impasse will be political; the Trump administration will have no illusory trade victory to parade around during midterm election campaigning.

President Trump's trade policy has consisted mostly of picking fights that harm American consumers and businesses caught in the cross-fire. Was this week a major missed opportunity to break that trend and actually achieve something positive? Not even close.