

New U.S.-Canada-Mexico trade pact promises to strengthen LGBTQ rights

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Politico, 10/23/2018

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Canada wanted an entire chapter on gender equality as part of Canadian Prime Minister Justin Trudeau's "progressive" trade agenda. | Ludovic Marin/AFP/Getty Images

President Donald Trump's new North American trade agreement could benefit an unexpected group: the LGBTQ community.

Buried in the mammoth agreement is a requirement that the U.S., Canada and Mexico take steps to protect workers against discrimination on the basis of sex, including sexual orientation and gender identity.

The provision, if it survives in the final text of the deal, would be a victory for Canada, which wanted an entire chapter on gender equality as part of Canadian Prime Minister Justin Trudeau's "progressive" trade agenda.

Although the draft agreement struck last month fell short of that goal, "we succeeded at getting gender discrimination, more broadly, included in the deal," a Canadian

official said. "We viewed it as important to get gender identity included in the agreement, ... It's a win for us."

The language goes beyond past trade deals, including the Trans-Pacific Partnership negotiated under Barack Obama. That pact raised [concerns](#) for members of the Congressional LGBT Equality Caucus because it included both Bahrain and Malaysia, two countries with penal codes permitting the imprisonment and physical harm of LGBTQ people.

Both Canada and the U.S. agree the provision wouldn't require a new law, but the Canadian official said its inclusion in the agreement could have real-world consequences.

The new trade commitment arrives at a time LGBTQ groups are warring with Trump and Vice President Mike Pence, a Christian conservative, over what they see as a rollback of protections.

The New York Times [reported](#) this week that the Trump administration — through an initiative spearheaded by the HHS Department — is considering narrowly defining gender based on the sex organs an individual has at birth. That could bar protections for individuals who self-identify as some other gender.

"The New York Times story is incredibly alarming," said Cathryn Oakley, state legislative director and senior counsel at Human Rights Campaign, an LGBTQ group. "It is one more of the many things that the Trump-Pence administration has rolled out to try to hurt to the LGBT community and erase us from existing civil rights protection."

The Justice Department, under the direction of Trump's Attorney General Jeff Sessions, also has backed away from the Obama administration's view that gender identity and sexual orientation are protected under Title VII of the 1964 Civil Rights Act, Oakley said. In that context, it's surprising the Trump administration would include LGBTQ protections in a trade agreement — and difficult for LGBTQ advocates to assess, she said.

HHS spokeswoman Caitlin Oakley, who is no relation to HRC attorney Oakley, took issue with The New York Times story, saying the department "does not comment on alleged, leaked documents that purport to indicate the status of deliberations or the focus of the department."

However, she noted that a federal court issued a nationwide injunction in December 2016 against the Obama administration's broad definition of "sex" in interpreting anti-discrimination laws. "The court order remains in full force and effect today and HHS is bound by it as we continue to review the issue," she said.

When asked about the proposal by reporters on Wednesday, Trump said, “We're looking at it. We have a lot of different concepts right now. They have a lot of different things happening with respect to transgender right now. You know that as well as I do and we're looking at it very seriously.”

Canada has workplace discrimination laws designed to protect gays and lesbians, and recently [passed a new law protecting transgender people](#), yet federal stats there show rates of violence and discrimination [were multiple times higher against sexual minorities](#).

The AFL-CIO labor union, which is still reserving judgment on the entire USMCA pact, supports the LGBTQ provision — officially known as [Article 23.9](#) of USMCA Labor Chapter — as an advancement of human rights.

However, the Office of the U.S. Trade Representative, which led the negotiations with Canada and Mexico, made no effort to highlight the measure in a series of [fact sheets](#) issued after the deal was concluded. It also made only a terse statement on Monday, when asked about the measure.

“The draft provision would require no changes to U.S. law,” Jeffrey Emerson, a USTR spokesman, said, apparently referring to the possibility the provision could be changed before the final agreement is signed on Nov. 30.

The administration's quiet approach could reflect concern about pro-sovereignty conservatives "expressing outrage at a treaty that tells us how to define males and females," especially if HHS' rumored policy change goes forward and is seen as putting the U.S. in violation of its new USCMA commitment, said Bill Reinsch, a senior trade adviser at the Center for Strategic and International Studies.

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