

Drinker Biddle

Now You See Them, Now You Don't!  
The Fate of Multilateral, Regional and  
Bilateral Trade Agreements

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## Presentation Coverage

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- U.S. Trade Representative Robert Lighthizer Speaks
- Negotiating “New and Better Trade Deals?”
  - President Trump Rebuffs Trans-Pacific Partnership (TPP)
  - Is the Transatlantic Trade & Investment Partnership (TTIP) on Ice?
  - Possible U.S. – Japan FTA in 2018?
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## Overview of the Trump Administration's Trade Policy

- Introduced March of this year, but still light on specifics.
- Main theme is a “more aggressive approach” to trade.
- Trade actions will be designed to:
  - Increase economic growth
  - Promote job creation
  - Promote reciprocity with trading partners
  - Strengthen the manufacturing base
  - Strengthen ability to defend ourselves



I pledge to never sign any trade agreement that hurts our workers or that diminishes our freedom and our independence. We will never, ever sign bad trade deals. America first again.  
America first!

Donald Trump

QuoteAddicts.com

## Overview of the Trump Administration's Trade Policy (cont'd)

- Major priorities:
  - **Defend U.S. national sovereignty** over trade policy.
  - **Strictly enforce U.S. trade laws.**
  - Use all possible sources of leverage to encourage other countries to **open their markets to U.S. exports** of goods and services.
  - Negotiate **new and better trade deals** with countries in key markets around the world.

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## U.S. Trade Representative Robert Lighthizer Speaks

- Appeared before the House Ways & Means Committee and Senate Finance Committee in September to discuss progress in four vital areas:
  - **NAFTA Renegotiation** – Original intent was “to move very quickly” and conclude talks this year. This week, all three trade ministries agreed to extend negotiations into Q1 2018 due to significant remaining roadblocks.
  - **Strong Enforcement** - Aggressive pursuit of countries that violate trade deals with potential cases already under review.
  - **Opening Markets for U.S. Exports** - Engaging with major trading partners to lower trade barriers.
  - **Lowering Trade Deficits** – When deficits persist (hundreds of billions of dollars) that is “indicative of structural problems in global trade.”



## Executive Order on Trade Deficits (March 31, 2017)

- One of the administration's top objectives in revising existing trade agreements is to reduce the U.S. trade deficit.
- U.S. trade deficit in goods for 2016 exceeded \$700 billion (*i.e.* the degree to which U.S. imports exceed its exports).
- Commerce and USTR ordered to review trade deficits and issue a report with their findings.
- 13 trading partners are under review -
  - Canada, China, France, Germany, India, Indonesia, Ireland, Italy, Japan, Malaysia, Mexico, South Korea, Switzerland, Taiwan, Thailand, and Vietnam
- Report was due on June 29, 2017, but has not been released yet.
- Commerce Secretary Ross emphasized that the final report on trade deficits will provide “empirical basis” for determining U.S. trade policy and conducting trade negotiations.
- The administration has received consistent pushback from economists, business interests and the media for focusing too narrowly on trade deficits.

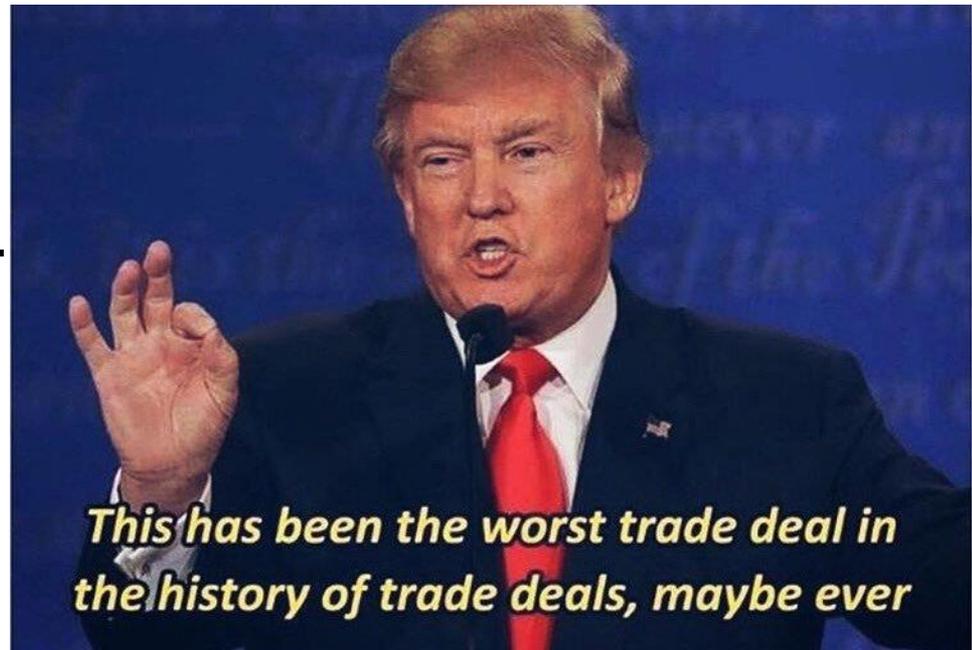


## Negotiating “New and Better Trade Deals?”

- *“For decades now, the United States has signed one major trade deal after another – and ... the results have often not lived up to expectations.”* (USTR Robert Lighthizer referring to U.S.-Korea FTA, 3/2/17.)
- U.S. has 14 Free Trade Agreements in place.
  - Most are bilateral (Australia, Bahrain, Chile, Colombia, Israel, Jordan, Korea, Morocco, Oman, Panama, Peru, and Singapore).
  - Two are multilateral (NAFTA and CAFTA).
- The Trump administration is focused on **bilateral** negotiations rather than multilateral negotiations.

## President Trump Rebuffs Trans-Pacific Partnership (TPP)

- Trump campaign promise to withdraw from the TPP.
  - Asia-Pacific regional/multilateral agreement
  - U.S. withdrew in January 2017, but other 11 countries vow to carry on
- U.S. will pursue bilateral trade negotiations with “willing partners” in Asia-Pacific region.
- Japan? Vietnam?



## Is the Transatlantic Trade & Investment Partnership (TTIP) on Ice?

- There is uncertainty about continuing trade negotiations between the EU and the U.S.
  - In April, Commerce Secretary Ross said he was “open” to resuming negotiations with Brussels.
  - Brussels sources quipped in June that the trade deal is in a “deep freeze.”
  - Most insiders believe that the UK has a better chance of negotiating a bilateral trade deal with the U.S.
- Now that Chancellor Merkel has won another term, trade talks between the EU and the U.S. are expected to resume.

Chancellor of Germany Angela Merkel



President of France Emmanuel Macron



## Possible U.S. – Japan FTA in 2018?

- Shortly after withdrawing from TPP, Vice President Pence and Commerce Secretary Ross visited Japan for the first meeting of the U.S. – Japan Economic Dialogue.
- *Simultaneously, Japan and the EU*, which have been negotiating a trade deal since 2013, dramatically sped up the process and touted their talks as a counter-balance to the protectionism sparked by President Trump's trade policies.
- *Why push things?* From the U.S. standpoint, Japan is the largest Asian-based direct investor in the U.S. The two countries share roughly \$200 billion in annual cross-border trade. In addition, both countries are focused on increasing trade and investment with each other.

## Possible U.S. – Japan FTA in 2018? (cont'd)

- Due to already low tariffs between the two countries, future U.S. – Japan talks will likely focus on specific sectoral cooperation, such as within infrastructure and energy, and on promoting a pro-business environment in that country.
- USTR's current view is that the bilateral agreement between the U.S. and Japan will lay the framework for future free trade agreements in Asia – Pacific.

Prime Minister of Japan Shinzō Abe



## U.S. – Korea FTA (KORUS): The Art of the Deal?

- Candidate Trump called the agreement “[A] Hillary Clinton disaster, a deal that *should’ve never been made.*” USTR attributed the unfavorable U.S. trade deficit with Korea to the anti-U.S. bias of the agreement, stating “*Needless to say, this is not the outcome the American people expected from that agreement.*”
- Initially, Korean officials stated in March that they saw no need for revisions to the agreement.
- In August, Seoul rejected a U.S. proposal to renegotiate the agreement and instead called for a joint study on its effects before any further decisions are made.
- In October, the Korean trade ministry issued a statement stating both sides now share an understanding of the need to amend the agreement to further strengthen their mutual benefits.

Prime Minister of South Korea Lee Nak-yeon



## U.S. – Korea FTA (KORUS): The Art of the Deal (cont'd)

- No details have yet been made available on the specific changes the two sides might seek, though there are some indications:
  - The U.S. top priority is to reduce its trade deficit with Korea, which has doubled since KORUS took effect in 2012, and particularly in the automotive sector (accounts for nearly 90 percent of the total deficit of \$27.6 billion).
  - Another issue the U.S. seeks to resolve is lack of growth in U.S. services exports.
  - A reduction of tariffs on agricultural products is also a likely objective.

## Honorable Mention . . . .

### Thailand

- Early this month, President Trump met in Washington with Prime Minister Prayut Chan-o-cha. That meeting signaled the beginning of warming ties between the two countries, following the 2014 military coup.
- *Why is the U.S. interested in trade talks with Thailand?* That country runs the 11th largest trade deficit with the U.S.
- President Trump focused the discussions on the need to reduce the U.S. trade deficit with Thailand.

### Vietnam

- The President will travel to Vietnam in early November for an official visit and “bilateral engagements.”

## Honorable Mention . . . (cont'd)

### Ukraine

- President Trump has agreed to continue bilateral trade and investment talks with Ukraine, which were initiated in 2008.
- Considerable progress has been made between the two countries:
  - Ukraine has committed to improve the protection and enforcement of IPR and to modernize its tax system and customs procedures.
  - U.S. agreed to continue the provision of technical assistance.

## Renegotiating NAFTA – “Can’t We Just All Get Along?”

- In April, the administration *drafted* an Executive Order that withdrew the U.S. from NAFTA.
- Due to extreme business and political pressure, President Trump agreed not to terminate the deal “at this time” but to attempt renegotiation instead.
- To date, four negotiation rounds have taken place with further talks delayed until later this year.
- USTR Lighthizer announced earlier this week that the trade talks are not likely to conclude until next year.
  - Fourth Round ended this week - *Three more rounds scheduled.*
  - Next round of talks pushed back to Nov. 17-21 (Mexico City).
  - Negotiations extended into Q1 2018 (still want to wrap up before Mexico’s presidential election in July 2018).

President of Mexico Enrique Peña Nieto



Prime Minister of Canada Justin Trudeau



## Renegotiating NAFTA - “Can’t We Just All Get Along?” (cont’d)

### ■ U.S. Renegotiation Priorities

- Reduce trade deficits.
- Improve U.S. manufacturing.
- Increase U.S. input in rules of origin (directly or indirectly).
- “Do no harm” to agriculture trade.
- Improve labor standards (aimed at Mexico to make U.S. labor more competitive).
- Eliminate Chapter 19 dispute mechanism.



### ■ Threat of Withdrawal Remains

- Administration has not backed down from possibility and has emphasized this is more than just a negotiation threat.

## NAFTA Renegotiation – Where Are We Now?

- Major sticking points have arisen, including –
  - **Dispute Settlement** - U.S. has proposed to:
    - Allow “opt-in” for Chapter 11 (Investor-State Disputes)
    - Eliminate dispute settlement mechanism under Chapter 19 (AD/CVD)
    - Allow Chapter 20 panel decisions to be disregarded (State to State Disputes)
  - **Automotive Content** – U.S. has proposed to change Rules of Origin to increase the required NAFTA content for automobiles from 62.5% to 85%, require a minimum level of 50% U.S. content, and expand the tracing list.
  - **Government Procurement** – U.S. has proposed to replace current proportional system with a “dollar for dollar” system. This would cap the market access for U.S. contracts to the same amount as Mexico and Canada’s market access figures over a certain time frame.

## NAFTA Renegotiation – Where Are We Now? (cont'd)

- **Dairy** – U.S. has proposed to eliminate tariffs on Canada’s “Supply-Managed” products over 10 years (Canadian practice of tariffs and quotas to stabilize prices and supply).
  - US wants greater access to Canadian market for dairy, poultry, and eggs.
- **Sunset Clause** – U.S. has proposed to include a sunset clause that would end the FTA every five years unless agreement to extend (based on trade deficit review).
- **Textiles** – U.S. proposed to limit exceptions to NAFTA’s yarn-forward rule of origin, including tariff preference levels (TPLs) and short supply.
- **De Minimis for E-commerce** – U.S. has proposed for Canada and Mexico to increase *de minimis* thresholds for express shipments from \$20/\$50 to \$800.
- **IP** – U.S. proposal does not have “safe harbor” limitation for copyright.

## NAFTA Renegotiation – Where Are We Going?

- Canada and Mexico feel current demands are so outrageous/unrealistic that they wonder if U.S. is trying to sabotage the deal.
- U.S. is disappointed that Mexico and Canada are refusing to accept some changes that were previously agreed during TPP negotiations.
  - USTR remarked that TPP language was being used as a starting point for topics such as digital trade, telecommunications, anticorruption, and certain sectoral annexes.
- Idea of quick/easy renegotiation has disappeared (end of year not going to happen).
- Nobody walking away, but
  - U.S. could still cancel the deal on 6 months notice.
  - No indication that this is currently under consideration by U.S.
  - USTR confirmed that U.S. HAS NOT conducted any analysis on the impact of withdrawal and does not have a back up plan if renegotiation fails.
- **IMPORTERS SHOULD CONSIDER IMPACT OF NAFTA WITHDRAWAL.**

## TPP-Based Enhancements for NAFTA?

- Some considered TPP to be the “gold standard” for a modern FTA.
  - Includes strong provisions on environment, labor, IP.
- NAFTA did not address labor and environment issues.
  - Side agreements.
- TPP has –
  - Higher **environmental** standards (e.g., protect/conservate wildlife, plants, areas and sustainability).
  - Higher **labor** standards (e.g., unions/collective bargaining, child labor, work conditions).
  - Other areas not covered by NAFTA –
    - **Digital trade** – security and digital freedom (free flow of information across borders).
    - **State-owned enterprises** (SOEs) must compete on commercial basis.
- TPP provisions have dispute settlement and enforcement mechanisms, including the availability of trade sanctions.

## Impact of TPP on Asia/Pacific FTAs

- U.S. withdrew in January 2017, but –
- TPP negotiations continue in the Asia-Pacific region.
  - *Australia*, Brunei Darussalam, *Canada*, *Chile*, Japan, Malaysia, *Mexico*, New Zealand, *Peru*, *Singapore*, and Vietnam.
  - Issues include duty elimination, trade in services, IP, investment, data, competition, environmental, workers rights, etc.
- Still important for U.S.?
  - Could revisit if new administration in 3 years.
    - Parties could suspend U.S.-related clauses.
  - TPP will likely set rules for the Asia-Pacific region.
    - Many issues previously agreed during TPP negotiations.
  - Could impact negotiations for new bilateral FTAs.
- Parties still negotiating TPP, so may be skeptical of U.S. bilaterals.

## Trade Promotion Authority (TPA)

- Trade Promotion Authority (TPA) permits the administration to pursue fast-track negotiations of multilateral trade deals and submit them to Congress to approve or deny without amendment.
- This is important for NAFTA renegotiation.
- Current TPA expires on July 1, 2018, but expected to be extended until 2021.

## Implications of NAFTA Renegotiation

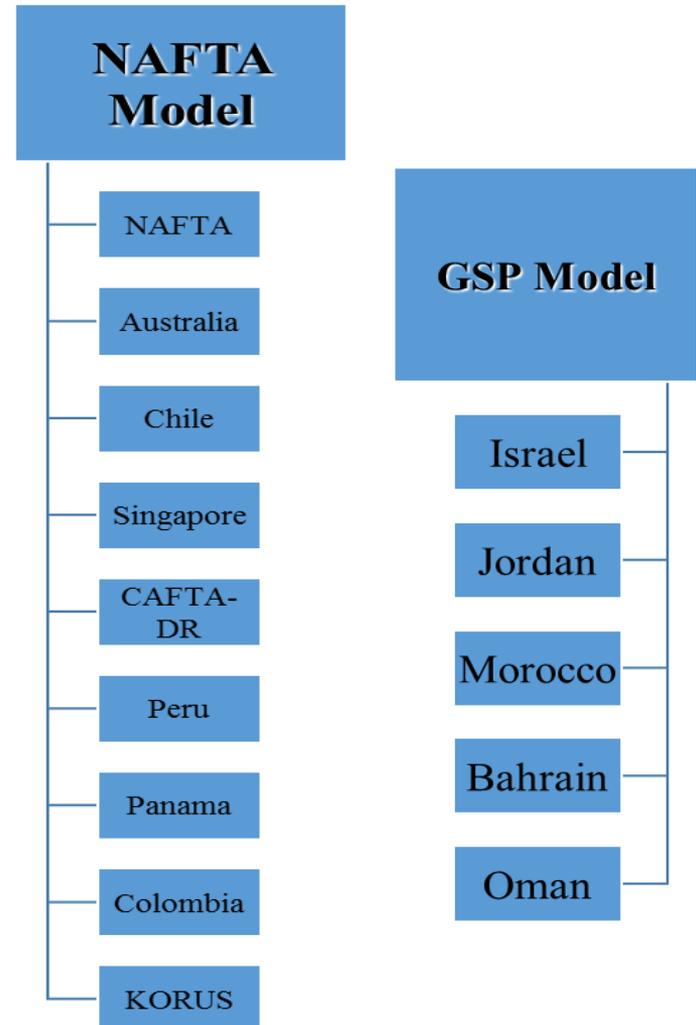
- NAFTA renegotiation has a global impact.
- The world is watching for valuable intel -
  - Want to see how Trump Administration negotiates.
    - Is threat of withdrawal real or just early bargaining tactic?
    - Are outrageous demands a ploy to ask for a lot, but settle for less?
  - Want to see the issues addressed.
- May impact future U.S. negotiations –
  - Existing FTAs - After NAFTA, U.S. may focus on other Latin America FTAs.
    - CAFTA, Chile, Peru, Panama, Colombia.
  - Future FTAs – Asia/Pacific region.
- May impact Canada/Mexico negotiations with other countries (e.g., TPP11).

## Executive Order on Trade Agreement Violations (April 29, 2017)

- Per Trump Administration, ***many FTAs have failed to meet requirements/expectations*** –
  - Do not enhance economic growth, contribute favorably to balance of trade, and strengthen the American manufacturing base.
- U.S. policy to renegotiate or terminate any existing trade agreement that harms the U.S. economy, businesses, IP rights.
- Commerce and USTR ordered to conduct performance reviews of existing FTAs and provide report of violations or abuses –
  - Harm to U.S. workers, manufacturers, farmers, ranchers
  - IP violations
  - Job creation
  - Trade balance
  - Market access
  - Trade barriers
  - U.S. exports
- Also broadly covers review of countries with which the U.S. runs significant trade deficits.
- Reports due end of October 2017.
- ***Will the deadline be met?***

## Bilateral vs. Multilateral

- **Bilateral FTAs**
  - Per USTR - Better negotiating leverage one on one and easier to enforce, but
    - Different rules for each
    - NAFTA versus GSP model
    - Adds complexity to compliance process
  
- **Multilateral/Regional FTAs**
  - More effective for establishing uniform rules of trade for multiple countries/region.
    - NAFTA – 3 countries
    - CAFTA – 7 countries
    - TPP – (would have been) 12 countries
  - But, loss of ability to negotiate specific issues and address specific trade imbalances.



## Generalized System of Preferences (GSP)

- Any impact on FTAs? - *Maybe*
- Unilateral program for certain developing countries.
  - Duty free entry for > 4,800 products from > 120 countries.
- Expires on December 31, 2017.
  - Signs point to renewal.
  - No renewal legislation drafted yet.
- Retroactive application possible after expiration.
- GSP includes countries that may be FTA targets:
  - India
  - Thailand
  - Ukraine
- Vietnam does NOT have GSP benefits, but wants it.

## TAKEAWAYS

- Current environment of uncertainty remains.
- NAFTA renegotiations are setting the stage for the future of U.S. FTAs.
- Withdrawal from NAFTA is a possibility.
- Companies should consider the impact of life without NAFTA –
  - How would this impact our company? Production, inventory, financial, etc.?
  - Do we have agreements/contracts that are dependent on NAFTA?
  - Is our supply chain flexible?
  - What would we change? Why? How?
  - Should we make some changes now?
- Watch FTA negotiation/renegotiation issues closely.
- Be prepared to manage potential and unexpected disruptions based on change in existing FTAs.
- Be prepared to take advantage of new FTAs.

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QUESTIONS??

