

An aerial photograph of a city with a river and mountains in the background. The city is densely packed with buildings, and the mountains are covered in green vegetation. The sky is clear and blue.

DICKINSON WRIGHT

NAFTA  
NORTH AMERICAN FREE TRADE AGREEMENT

**NAFTA NEXT, NO NAFTA,  
“NOTTY” NAFTA**

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# TODAY'S SPEAKER



**Daniel Ujcz**  
Cross Border  
Business Development Director



# NAFTA NEXT



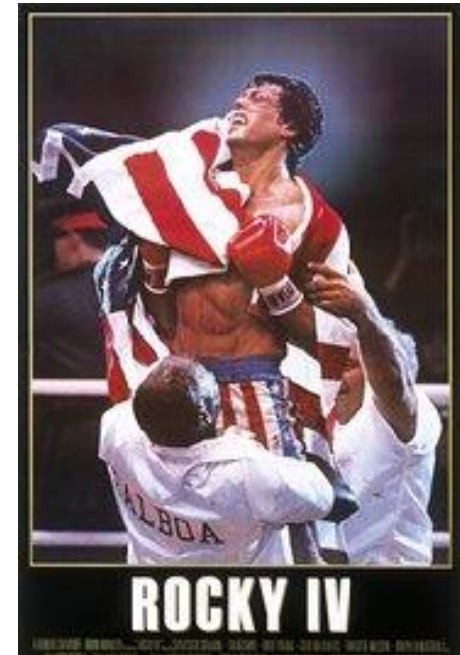
# OVERVIEW

- Washington D.C. = Round I (August 16-20)
- Mexico City = Round II (Sept. 1-5)
- Ottawa = Round III (Sept. 23-27)  
(Labor and Government Procurement)



# OVERVIEW

- Arlington = Round IV (October 11-17)  
“New” Proposals
- “Sunset”
- Auto Rules of Origin
- Supply Management
- Dispute Resolution
- Textiles



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# OVERVIEW-NEXT STEPS

- TIMEOUT!!!
- Mexico City-Round V (November 17-21)
- Negotiators Meeting in December (likely D.C.)
- Likely at least 9 total rounds, restarting in Q1 2018



# OVERVIEW-NEXT STEPS

- POTUS cannot “Agree” to any new deal before March 21, 2018 (180 days from Sept. 22, 2017) via trade remedy notice
  - Dispute Resolution, Seasonal Growers, Safeguards
- POTUS must seek extension by April 1, 2018 (for all trade agreements)
  - Advisory Committee on Trade Policy & Neg and ITC Economic Impact Report by June 1





# OVERVIEW-NEXT STEPS

- TPA-2015 (aka “fast track”) expires on June 30, 2018
- Can be extended by POTUS unless an “EXTENSION DISAPPROVAL RESOLUTION” in either Chamber to House Ways and Means or Senate Finance with expedited procedures (at least 30 days)
- Extension would be to July 1, 2021



# OVERVIEW-NEXT STEPS

- Ontario Provincial Elections June 7, 2018 (on or before)
- Mexico National Elections July 1, 2018
- US Primary elections – TX and IL in March, May/June (incl. Ohio, SC, W. VA), August (incl. MI, WI, MN, AZ, FL)
- US Elections Nov. 6, 2018



# FRAMEWORK

1. TIMING & TEMPO
2. TONE AND TENOR
3. TARGETS AND TOPICS



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# TARGETS & TOPICS

## Key Elements of a Model Trade Agreement

1. Rules of Origin Percentages & Loopholes
2. Trade Deficit Reduction
3. Dumping, Diversionary Dumping, and Evasion of AD/CVD Duties
4. Currency Manipulation
5. Strict Environmental and Labor Standards
6. Intellectual Property Protection
7. Restrictions on State-owned and State-financed Enterprises.
8. Investor State Dispute Resolution
9. Chapter 19
10. Non-Tariff Barriers
11. Government Procurement
12. Joint Cooperation on Issues Related to the WTO
13. Enforcement, Monitoring, and Compliance
14. Corruption
15. Country of Origin Labeling
16. Evasion of Antidumping and Countervailing Duties
17. Forced technology transfer
18. Geographical indications to restrict trade
19. Quotas
20. Phytosanitary standards
21. Processed foods
22. Stumpage
23. Tax rebates on exports
24. Technology transfers



# TARGETS & TOPICS

- USTR *Summary of Objectives for the NAFTA Renegotiation*
  - 22 Headings, 170 Specific Recommendations
- Canada Formal Process Concluded / August 14 CITT Hearings
- Mexico Process Closed End of July



# TARGETS & TOPICS (USTR)

- The “Cut and Paste” – I.P., Investment, and Currency
- The “Templates” – TBT, Anti-Corruption, Good Regulatory Practices, Transparency, Competition, General
- “The Hybrids” – Digital, Labor, Environment, SMEs



# TARGETS & TOPICS (USTR)

- The “Good” – “Don’t Go Backward”, Border, Regulatory Cooperation, SPS, Food Safety
  - *Then ... Rules of Origin (ROO)?*
- The “Not So Good” – Agriculture, Government Procurement, Chapter 19, Trade Remedies, Import Sensitive
- “The Ugly” – Workforce Mobility and Development



# TARGETS & TOPICS (USTR)

- The “Interesting” – Trade in Services (financial services, telecom), Energy, “Committees” (border, labor, environment, TBTs)





# TARGETS & TOPICS (CANADA)

- Progressive – Gender, Labour, Indigenous/Aboriginal/First National
- Red Lines-Chapter 19, Supply Management, ROO
- Want Worker Mobility
- Softwood Lumber and Boeing/Bombardier Resolved



# TARGETS & TOPICS (Mexico)

- Same Access
- The “Wall”



# TARGETS & TOPICS (Rounds I-IV)

1. Templates or “Boilerplates”
2. “Modernization” Provisions
3. “New Proposals” aka the “Hard Stuff”



# TARGETS & TOPICS (“Boilerplates”)

1. Small and Medium-Sized Enterprises (“Parked”/Done in Round III)
  - NAFTA Trilateral SME Dialogue
  - Competition (“Parked” before Round IV)
  - Technical Barriers to Trade (TBT)
  - Anti-Corruption
  - Good Regulatory Practices



# TARGETS & TOPICS (“Boilerplates”)

6. Sanitary and Phyto-Sanitary Measures (SPS)
7. Telecommunications
8. Environment
9. Financial Services



# TARGETS & TOPICS (“Modernization”)

## 10. Digital Trade in Goods and Services

- “TPP Plus Proposal”
- **Customs and Trade Facilitation**
  - But not de minimis / e-commerce \$ thresholds
- **Energy**
  - Mexico on Regional Coop. Separate energy chapter unclear



# TARGETS & TOPICS (“HARD STUFF”)

## 13. Automotive Rules of Origin

- 85% N.American Content, 50% US Content
  - Tracing List
  - De facto Removal of Tariff Shifting/Accumate only N. American parts
  - 2 year phase-in (could be 1 yr in some areas)
- Textiles
- Elimination of tariff preference levels (TPLs) and move to short supply list as in DR-CAFTA



# TARGETS & TOPICS (“HARD STUFF”)

## 15. Supply Management

- Elimination of National Ingredient Strategy / Class 7 / Ultrafiltered Milk
- Phase-in 5% increase for dairy, poultry, eggs annually until 0 quotas by 10 years

### – Labor

- Canada-International Agreements for Mexico and Prevent US Right To Work Federal Law targets
- No wage request by Mex has advised told need to increase of 8Xs





# TARGETS & TOPICS (“HARD STUFF”)

## 16. Dispute Resolution

- Chapter 11 / ISDS Opt-in / US has already advised opt-out
- Chapter 19 elimination
- Chapter 20 non-binding
- Seasonal Growers
- Government Procurement
  - \$ for \$ match



# TARGETS & TOPICS (“HARD STUFF”)

19. Trade Deficit Reduction

20. Sunset Review Clause

- Expires after 5 years unless renewed (Congress?)
- May be tied back to deficit reductions



# TARGETS & TOPICS (“NEW STUFF”)

21. Intellectual Property

22.X-Border Trucking

23.Currency

24.Gender

25.First Nations/Aboriginal/Indigenous

26.Other ROO (chemicals)

27.Temporary Entry for Business Persons



# TARGETS & TOPICS- WHAT TO DO?

- Review your supply chain and certificates of origin to ensure accurate origin. Keep it Tight.
- Ensure that all of our Record Keeping Protocols are in Place
- Update/Renew Truster Trader / Traveler if eligible



# TENOR AND TONE

- POTUS Trump – Withdrawal
- U.S. Congress
- Canada Response
- Mexico Response



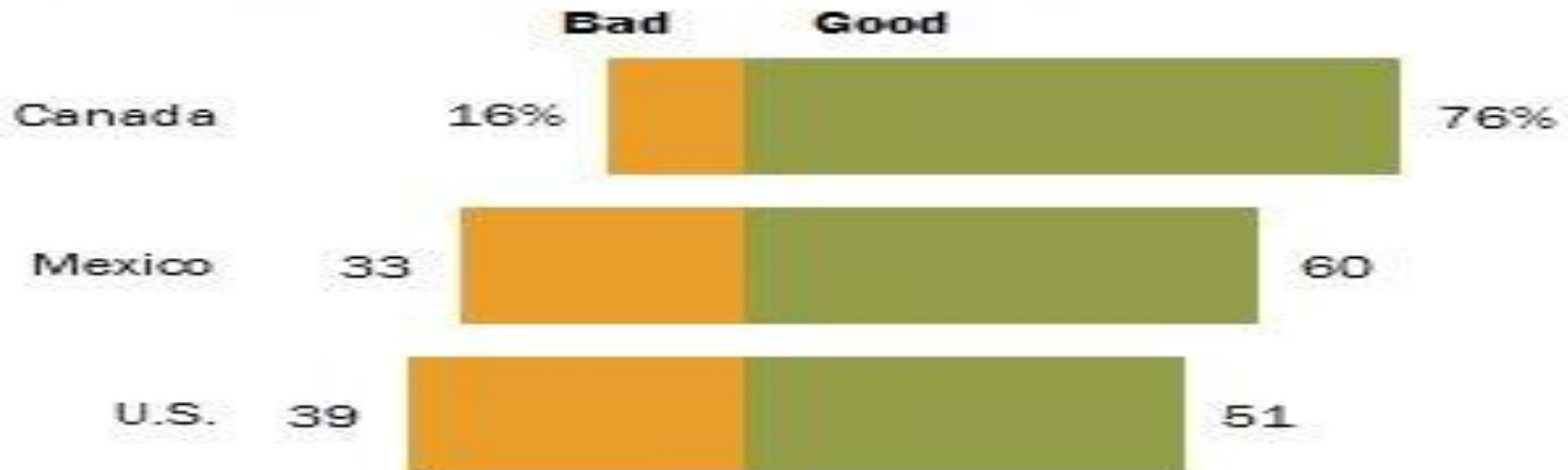
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# The Public

## U.S. most negative on NAFTA

*The North American Free Trade Agreement, or NAFTA, has been a \_\_\_ thing for our country*



Source: Spring 2017 Global Attitudes Survey. Q16.

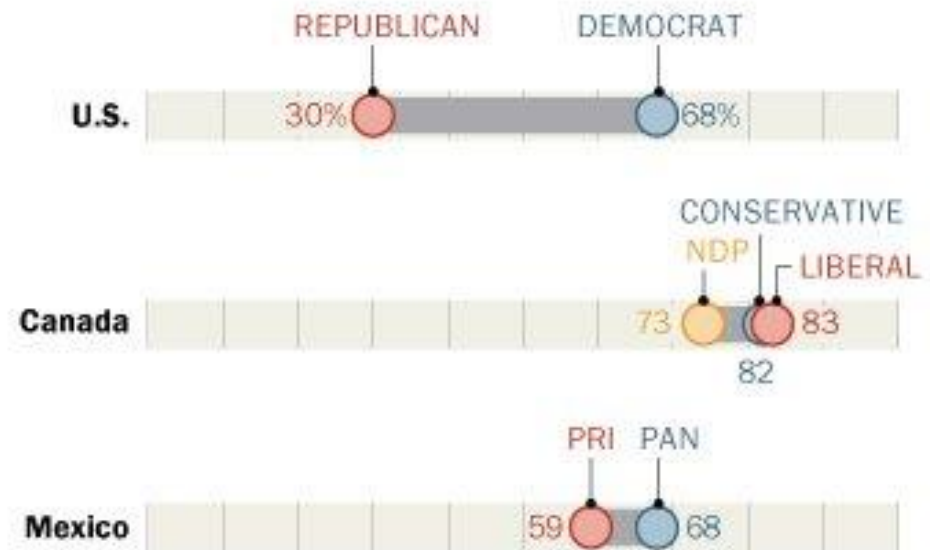
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# The Public

## Large partisan gap in American views of NAFTA

*The North American Free Trade Agreement, or NAFTA, has been a good thing for our country*



Source: Spring 2017 Global Attitudes Survey. Q16.

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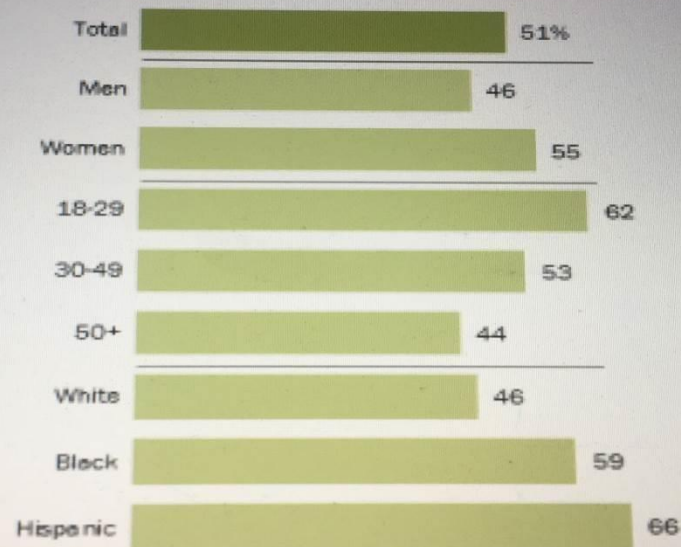
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# The Public

## In U.S., demographic differences on views of NAFTA

### In U.S., demographic differences on views of NAFTA

*The North American Free Trade Agreement, or NAFTA, has been a good thing for the U.S.*



Note: Whites and blacks include only those who are not Hispanic. Hispanics are of any race.

Source: Spring 2017 Global Attitudes Survey, Q16.

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# The Politics

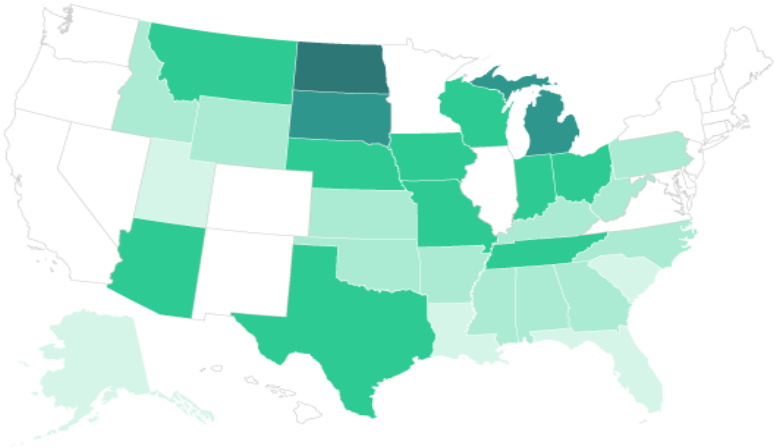
## Trump States Depend Heavily on Nafta

Many states that voted Republican send a large share of their total exports to Mexico and Canada.

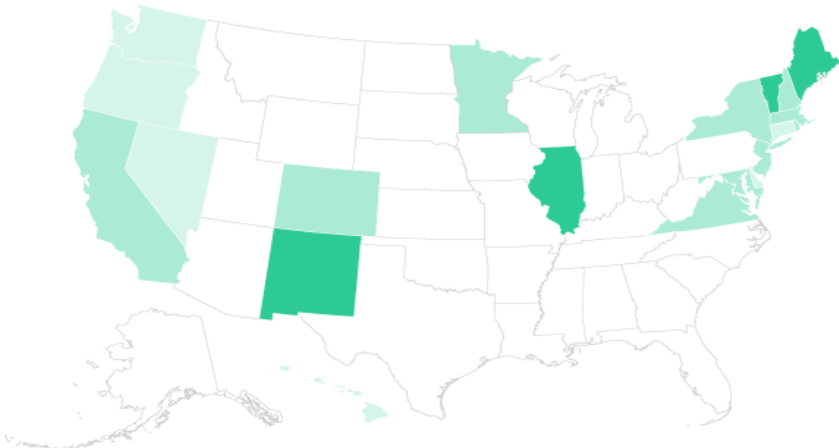
Share of 2016 exported goods to Canada and Mexico



States won by Trump



States won by Clinton



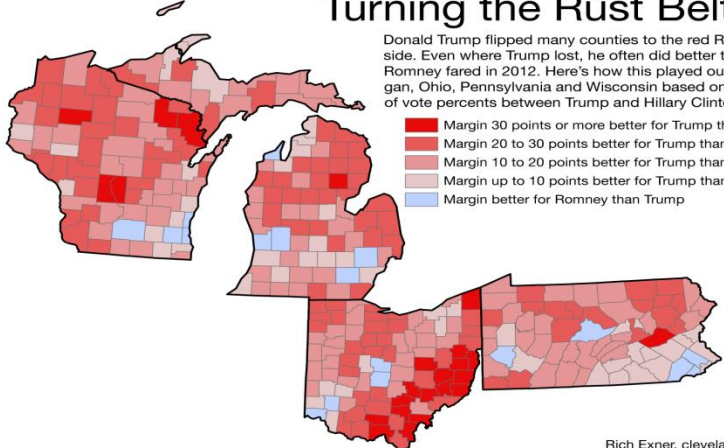
Sources: U.S. Census Bureau, U.S. Electoral College



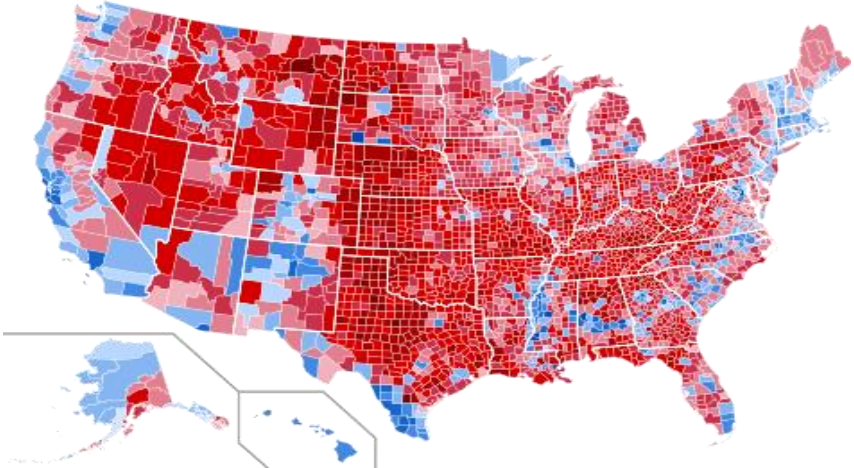
# The Politics



## Turning the Rust Belt red



Rich Exner, cleveland.com



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# Trump Trade Agenda

- *Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement, January 24, 2017*
- *Presidential Memoranda Regarding Construction of the Keystone XL Pipeline; Regarding Construction of American Pipelines; Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects, January 24*



# Trump Trade Agenda

- *Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, January 24, 2017*
- *Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs, January 30, 2017*
- *Presidential Executive Order on Enforcing the Regulatory Reform Agenda, February 24, 2017 (90 days – RROs)*



# Trump Trade Agenda

- *Presidential Memorandum on The White House Office of American Innovation, March 27, 2017*
- *Presidential Executive Order Regarding the Omnibus Report on Significant Trade Deficits, March 31, 2017 (90 days)*
- *Executive Order on Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws, March 31, 2017 (90 days)*



# Trump Trade Agenda

- *Executive Order on Buy American and Hire American, April 18, 2017 (60 & 150 & 220 days)*
- *Presidential Memorandum for the Secretary of Commerce re: Steel Imports and Threats to National Security, April 20, 2017 (50-270 days)*
- *Executive Order on Identifying and Reducing Tax Regulatory Burdens, April 21, 2017 (150 days + 10 + 180)*



# Trump Trade Agenda

- *Executive Order on Promoting Agriculture and Rural Prosperity in America, April 25, 2017*
- *Presidential Memorandum to Secretary of Commerce re: Aluminum Imports and Threats to National Security, April 27, 2017 SECTION 232 (50-270 days)*
- *Executive Order on Establishment of Office of Trade and Manufacturing Policy, April 29, 2017*



# Trump Trade Agenda

- *Executive Order on Addressing Trade Agreement Violations and Abuses, April 29, 2017 (180 day review – October 2017)*





# Other Actions

- Anti-Dumping (AD) and Counter-Vailing Duties (CVD) – Korea Oil Country Tubular Goods (OCTG) “Particular Market Situation”
- More than 60 AD/CVD actions in 2017 – 44 in 2016 (48% increase)
- SECTION 301
- SECTION 201 *Suniva*



# TIMING & TEMPO

- If/Once there is an Agreement:
  - Not before March 21, 2018
  - 90 days notice to Congress before Agreement and ITC Assessment
    - Publication of Text (60 days)

## AGREEMENT SIGNED



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# TIMING & TEMPO (cont.)

- Agreement Signed:

- 60 days – Description of US Laws that Need to Be Changed
- 105 days – ITC Report Due
- 30 days before Implementing Bill- Draft statement of administrative action, final legal text
- Text, Implementing Bill, Statement of Administrative Action, Environmental Review, Employment Impact Review, and Plan for Implementation  
(No Date – this is the grey area)



# TIMING & TEMPO (cont.)

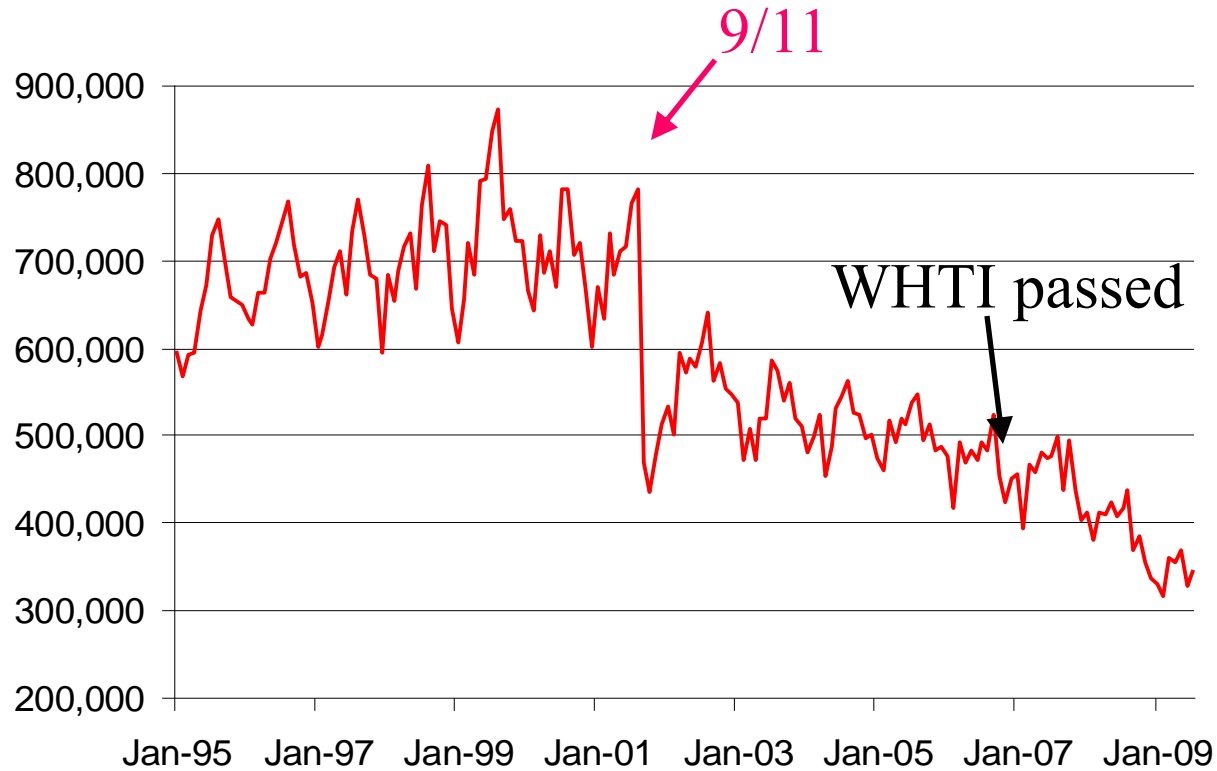
- To Congress:

FAST TRACK – Maximum of 90 Days  
in Session

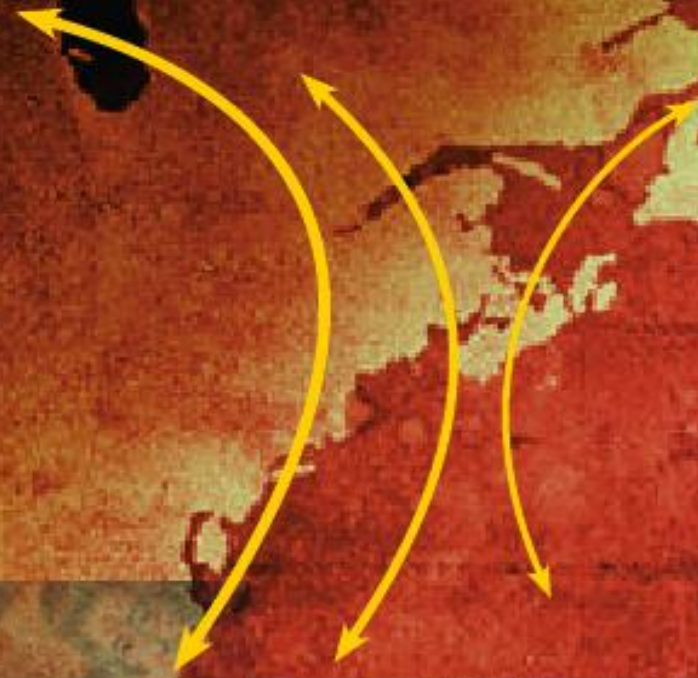


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# Status Quo? NO!!!



# NO NAFTA



# WILLING WITHDRAWAL FROM THE UNWILLING

- POTUS ISSUES NOTICE OF WITHDRAWAL
- CONGRESS (& STAKEHOLDERS) NO OBJECTION
- MEXICO & CANADA NOT AT TABLE
- NO APRIL 1, 2018 EXTENSION NOTICE
- TPA-2015 EXPIRES on JULY 1, 2018
- CONGRESS and EXECUTIVE UNWIND NAFTA OVER 1 YEAR
- *RESULT – MASSIVE LOBBYING EFFORT to SAVE NAFTA-LIKE PROVISIONS*



# WILLING WITHDRAWAL FROM THE RELUCTANT

- POTUS ISSUES NOTICE OF WITHDRAWAL
- CONGRESS (& STAKEHOLDERS) NO OBJECT
- MEXICO & CANADA TO TABLE AT SOME STAGE
- APRIL EXTENSION NOTICE (YES/NO)
  - NO. TPA-2015 EXPIRES in JULY. Clock is Ticking.
  - YES. DOES CONGRESS GIVE POTUS EXTENSION TO GET DEAL DONE?





# WILLING WITHDRAWAL FROM THE RELUCTANT (cont.)

- Deal Done by June 30, 2018. 90 Day Notice of Agreement while Congress in session. Guarantees NAFTA is FALL 2018 Issue. But potential for lameduck.
- No deal by June 30, 2018 and POTUS did not request April extension. Withdrawal resume? Does Congress issue a new TPA-2018 as mid-range measure? Ever a New NAFTA after Mexico election?



# UNWILLING WITHDRAWAL

- POTUS WITHDRAWAL NOTICE UNDER 2205.
- CONGRESS SAYS “NO”
  - Files Suit to Enjoin? Unsettled law. Standing? Political question doctrine in US courts now likely narrow under Roberts Court? Court likely will assert juris.
  - Political consequences for Congress if files suit?
- Congress uses other measures until TPA expiry – Disapproval Resolutions on Trade Remedy Notice and Consultations; Committee Appointments; and Tax Reform/other legislative activities.
- LIMBO



# “NOTTY NAFTA”



# “NOTTY” NAFTA

- Willing Withdrawal leads to a scenario where companies end up lobbying to keep “their” part of the NAFTA in U.S. law as Congress attempts to unwind. Challenge is not only status-quo/”good stuff” comes in.
- Unwilling Withdrawal scenario leads to Hokey-Pokey scenario where the Executive Branch is “out” of NAFTA and Legislative Branch is “in”.



# “NOTTY” NAFTA

- Broad powers of Executive Branch on trade, customs, immigration, etc. De facto withdrawal unless Congress steps in.

AGAIN, while focus is on President and Congress,  
2018 is an election year.

Tone and Tenor of electorate will matter.



# NOTTY NAFTA - MYTHS

- Canada-US FTA is another grey area. U.S. implementing legislation only “suspended” certain measures, not whole agreement (arguably). Outdated. And U.S. likely will recognize FTA issue and address with withdrawal.
- Most Favored Nation (MFN) Tariffs are not a blanket 2.5% It is product specific. You need to know your products.



# NOTTY NAFTA - MYTHS

- **GATT ARTICLE XXIV** – Absent a NAFTA, Canada and Mexico likely will have to reciprocate on MNF tariffs. Other issues?
- **Immigration** NAFTA/TN visas likely do not have an independent basis of authority outside of NAFTA. Question mark on E-Visas (Treaty Investor Visas)



# WHAT CAN I DO?

- **KNOW YOUR PRODUCT/SUPPLY, VALUE, INNOVATION CHAIN?** Where do I rely on NAFTA preferences?
- **DETERMINE WHERE MFN** or other rate changes would apply.
- **RENEW, RENEW, RENEW** all certifications, immigration issues, etc.
- **STAY INVOLVED** This isn't going away.





# QUESTIONS AND DISCUSSIONS



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