

## As Trump Digs In, NAFTA Reaches Its Boiling Point

By **Alex Lawson**

*Law360, New York (October 18, 2017, 7:49 PM EDT)* -- The Trump administration's dogmatic negotiating style has pushed the effort to overhaul the North American Free Trade Agreement to the brink, creating an environment that former trade officials say raises serious questions about the future of the trilateral accord.

After issuing a lukewarm joint statement that acknowledged "significant conceptual gaps" among negotiators after this week's fourth round of talks, top trade officials for each side did not mince words in expressing their dissatisfaction with the process.

Among the more eye-popping moments of the closing press conference was Canadian Foreign Affairs Minister Chrystia Freeland blasting the U.S. for its "unconventional proposals" that violate World Trade Organization rules and U.S. Trade Representative Robert Lighthizer sharply criticizing his counterparts for refusing to accept his side's missives.

By the standards of otherwise docile early-phase trade negotiations, it was a donnybrook, and one that had the White House press corps asking press secretary Sarah Huckabee Sanders on Wednesday whether the agreement was dead in the water. Sanders' answer likely offered little comfort to the deal's backers.

"Not yet," she said.

Trump's team has pushed a variety of aggressive proposals — from a tighter rule of origin for cars, a restrictive offer on government procurement, and a sunset clause that would make it easier to terminate NAFTA — that are largely without precedent in regional trade negotiations. Thus far, the U.S. side has not budged an inch on these asks, and tensions are on the rise.

The big question, according to former U.S. Trade Representative and current Mayer Brown LLP partner Mickey Kantor, is whether the administration actually intends to implement these policies or is setting the stage to finally make good on its long-standing threat to pull the U.S. out of NAFTA altogether.

"I'm afraid they may be trying to justify a failed negotiation, to justify pushing NAFTA aside, which would be terrible not just for our country, but for Canada and Mexico as well," Kantor told Law360.

Trump spent the bulk of his campaign pummeling NAFTA as a job-killing trade deal and vowing to

drastically overhaul its terms or tear it up entirely. As the White House got the ball rolling on the renegotiation effort, they seemed to have softened a bit, but after four rounds of talks, the administration shows no signs of backing down from its big asks.

Kantor pointed out that the discord on display after the fourth NAFTA round was due to Trump's departure from the so-called bipartisan consensus on trade, which has seen administrations from both parties in general agreement that liberalization of trade is a worthwhile U.S. policy goal.

"It's not surprising that there would be difficulties, because the approach of this administration is so different than any other U.S. administration since the 1930s, and that is isolationist and protectionist," Kantor said. "I am not surprised, but I am discouraged from what I see."

For as bleak as the fourth round was, the negotiators have not abandoned ship, and in fact pledged to schedule more negotiating sessions to take place throughout the first quarter of 2018. The officials also announced they would be taking more time in between rounds to consult with one another.

Those two announcements essentially amount to an abandonment of the soft deadline the U.S. had imposed to wrap up the talks before the end of the year or in the early part of 2018, which is likely a prudent step at this juncture, according to former Deputy U.S. Trade Representative and Crowell & Moring LLP partner Robert Holleyman.

"Speed at this point is not helpful to a successful resolution, particularly when the U.S. is putting forward proposals that are largely unique in global trade agreements," he said.

The parties had been holding negotiating sessions roughly every three weeks, a remarkably rapid pace for a trade agreement on NAFTA's magnitude, and Holleyman suggested that the quick turnaround time may have been a driving factor of the friction on full display at Tuesday's press conference.

While the administration had hoped to put a bow on NAFTA before the Mexican presidential election in July and its own midterm elections in November, Holleyman said that all sides appear to be learning that the process will take considerably more effort, and may well bleed into 2019.

Still, that timeline assumes that the U.S. has any intention of negotiating in good faith, which will become easier to ascertain in the coming weeks.

"Given the nature of the U.S. positions, this is now much riskier than before that it might collapse, but given the economic consequences in the U.S. of a collapse, I hope that calm heads prevail and they agree to give this as long as it needs to come to a successful completion ... otherwise we end up with these sharp conversations among ministers," Holleyman said.

--Editing by Katherine Rautenberg.