

Two Years In, Trump Makes Play For New Trade Deals

By Alex Lawson

Law360 (October 17, 2018, 8:42 PM EDT) -- After nearly two years in office, President Donald Trump has taken the first steps toward supplementing his enforcement-heavy trade agenda with sweeping new trade agreements by informing Congress that he will formally begin talks with the European Union, the United Kingdom and Japan.

The stated desire for new trade agreements stretches back to Trump's very early days as a presidential candidate and was reiterated throughout the early part of his term as the administration laid the groundwork for its agenda.

Over the last year, though, new talks have been slow to materialize, with the White House instead opting to revisit existing deals and — even more dramatically — prioritize tough and creative enforcement of U.S. trade laws against adversaries and allies alike.

As political blowback from those enforcement actions continues to mount, Trump has started to play nicely with his counterparts on the global stage and solidified his commitment to new trade talks by informing Congress that he would begin the efforts with the EU, Japan and the U.K. at least 90 days from now.

"I think he's been under pressure ... from those who feel like, 'We're doing a whole lot of adding tariffs, and you said you were going to do fantastic new deals, and where are they?' This was a way of saying that he's going to focus on this," former U.S. trade negotiator Chip Roh told Law360.

Tuesday's notifications to Congress did not come as a surprise, as Trump had teed up the talks in summits with EU and Japanese leaders and has long expressed a willingness for talks with London once it completes its exit from the EU trading bloc.

But with the renegotiation of the North American Free Trade Agreement now complete, formally moving ahead with a trio of new partners may well signal the start of a different phase of the administration's trade efforts.

“The completion of NAFTA is really what paves the way for other countries to know that they can actually negotiate with the U.S.,” Crowell & Moring LLP attorney and former deputy U.S. trade representative Robert Holleyman told Law360. “I think it’s a precondition for the other agreements to move forward.”

Still, notifying Congress is merely the first step in a potentially yearslong process to negotiate and ratify new deals.

As those efforts gain traction in the coming weeks, there will be a number of factors for the trade bar to keep an eye on as it evaluates whether the administration is truly changing its course on trade policy.

For one thing, the initial announcements from the White House on the EU and Japan talks appeared to limit the scale of the talks to less-controversial issues that could lead to a deal sooner rather than later. But that approach could turn off free trade backers who prefer agreements to be as ambitious as possible.

“The question is, do they become half a trade agreement or a complete trade agreement?” Holleyman said. “Clearly it should be in the interest of the U.S. to do the biggest deal possible, but the jury is still very much out.”

Related to the issue of scope is the question of what exactly a Trump-style trade agreement actually looks like. The rewrite of NAFTA was only slightly helpful in answering that query, as the talks mostly maintained the status quo, with only a handful of meaningful updates in certain sensitive sectors.

Trump has often taken a zero-sum approach to trade agreements, hinting that each trade accord between sovereign governments must inherently produce a winner and a loser.

But Roh and others have noted that this is antithetical to the way most governments have pursued trade deals for decades.

“The charm of trade negotiations is that when they work they’re win-win, but that’s hard for a guy who is a win-lose, zero-sum guy, and it’s especially hard if you think the measure of triumph is your trade surplus,” Roh said.

Hovering over all trade-related developments within the Trump White House is the ongoing tariff brawl with China. The U.S. and Beijing have been in a tit-for-tat trade escalation for months that has led to new levies on roughly half the goods traded between the two nations.

Traditionally, the U.S. has tried to align like-minded governments like the EU and Japan against China to apply diplomatic pressure. But the Trump administration has also been picking fights with its allies, applying steel and aluminum tariffs that prompted scores of retaliatory duties and escalated trade tensions.

The NAFTA revision did not resolve the steel and aluminum tariff spat with Canada and Mexico, but rather kept the door open for the parties to negotiate a resolution at a later date. If a similar arrangement is struck with this week's batch of impending trade partners, it could put the U.S. on track to tackling Beijing with some of its closest allies in lockstep.

"If you're going to say that the real problem is China, you need a cooperative multilateral solution, and this is not an administration that is instinctively multilateral," Roh said. "This isn't multilateral, but maybe this is a signal they are moving in that direction."

--Editing by Kelly Duncan and Alanna Weissman.