

# For President Trump, tearing up trade agreements may be easier said than done.

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*During the campaign, Donald Trump signaled that he would make major changes to US trade policy as president, including renegotiating major existing agreements like NAFTA. Ahead of Trump's inauguration, [Michelle Egan](#) writes that Congress has given the presidency major powers to negotiate trade agreements, meaning that President Trump will be able to change or walk away from existing agreements with relative ease. Though he may face little opposition at home, Trump's efforts may spark disputes from trade partner countries, disrupt supply chains, and exacerbate inter-agency rivalries at home.*



As the incoming Trump administration signals major changes in US trade policy, attention is now focusing on the influence of congressional and presidential decision making in international agreements. President-Elect Donald Trump's campaign pledge to put "America first" has fueled speculation that his trade rhetoric will foster increased protectionism. Promising to 'abandon' the Trans-Pacific Partnership (TPP) trade agreement negotiated by the Obama administration and renegotiate the 'disastrous' NAFTA agreement concluded by the Clinton administration in the 1990s, the current outlook for US-led multilateral trade deals appears unfavorable, although the Trump administration may pursue bilateral agreements with countries in key regions. As the Cabinet takes shape with the creation of a new National Trade Council inside the White House – led by [Death by China](#) author Peter Navarro – along with a more populist interventionist approach to trade and manufacturing, Trump has tapped into populist distrust of globalization. This is reflected in growing unease over trade deals; 67 percent of his supporters having a [negative view](#) of free trade agreements.

Much of our academic scholarship has focused on the establishment and adherence to international agreements by creating credible commitments, without considering the impact on legislative-executive relations that might accompany a withdrawal from such an agreement. [Opinions are divided](#) on whether the President has the constitutional authority to [withdraw](#) from any concluded agreement, or whether the President must seek Congressional authorization. Congress provides approval for new international agreements. In the case of treaties this requires the consent of two-thirds of the Senate. In the case of the WTO, NAFTA or other trade agreements, these are congressional-executive instruments, and as such it is not clear how these agreements can be terminated. While under the Commerce Clause of the Constitution, Congress holds exclusive power over the regulation of trade with a foreign state, Congress has delegated that power through trade promotion authority (TPA).

When last agreed upon in 2015, 15 percent of House Democrats and 30 percent of Senate Democrats joined 79 percent of House Republicans and 90 percent of Senate Republicans to grant TPA, which gives the Executive broad negotiating power and facilitates Congressional approval of trade agreements. However, many contemporary trade agreements also include a withdrawal clause; Congressional approval is not required so if a president wishes to leave an existing commitment, there are few limits. Unless that power is restricted by statute, Trump could seek to terminate designated trade agreements. In the case of NAFTA Chapter 22 Article 2205 provides the option to withdraw from the agreement six months after written notification is given (this is also the case for agreements with Australia, Chile, Colombia, Korea, Panama, Peru, and Singapore), although it may remain in force for the remaining parties. However, renegotiating an established trade agreement requires the participation of the signatory parties, and both Canada and Mexico would have their own specific interests. While a leaked action plan from the transition team indicates that negotiations would need to be concluded within two hundred days, Canada and Mexico have already engaged the issue, indicating a willingness to make improvements on the existing agreement. While Trump, if thwarted, could take action to propose increased tariffs to offset unfair trade, his primary targets are American

firms in Mexico. The incoming Administration is hoping that the prospect of increased executive action over trade will bring trade partners to the table. Engaging the new Administration will be high on the Canadian and Mexican agenda given the degree of integrated production, trade and investment in the region.

Though neither Congress nor federal courts will deter Trump from carrying out trade threats, his policies may generate disputes or retaliation from aggrieved trade parties, given the likely shift in US trade policy towards more intervention, with the prospect of unilateral trade mechanisms and remedies being put to greater use. Threats in this direction could also be a negotiating tactic. From a US perspective, the controversial and still divisive NAFTA agreement signed in 1993 would certainly benefit from being updated and modernized. The labor and environmental terms could be strengthened. The investor state dispute settlement provisions are unpopular among state and local governments as they allow foreign investors to sue a host government, often for spurious investor concerns, which could also lead to potential revisions. These and other high profile issues could increase Trump's domestic support in any effort to renegotiate NAFTA, and make many Members of Congress think twice about opposing the final product.

This is similar to the view taken by the Conservative UK government, that elected politicians should heed the views of their constituency on any Brexit discussions. Of course, the US is in a much stronger position not just economically relative to its trading partners, but due to the delegation of powers given to the executive. While the Conservative government is exerting its executive authority to trigger Article 50 of the EU Treaties, its efforts to circumvent Parliamentary legislative authority have generated a high court legal challenge, which the government lost. Such effects might lead one to conclude that the legislative constraints on the executive – even in a parliamentary system – can make policy incoherent, undermine executive attempts to signal resolve to other governments, and prevent the reaching of meaningful agreements between the United Kingdom and its European counterparts.



The termination of a trade commitment in the US is different; it is a "political question" potentially leaving Trump far freer to discard an agreement than his British counterparts. Though Trump's immediate predecessors have terminated or withdrawn from various other treaties, notably on arms control, generating legal challenges from various parties, that opposition has not prevented the US Executive from moving forward. Arguably, since NAFTA is a congressional-executive agreement rather than a treaty, the President can use the powers granted by Congress for negotiating trade expansion to also curtail its effects. Trump's 'art of the deal' in trade, may be a more aggressive approach to addressing unfair trade practices using measures that remain on the statute books to maximize options

and leverage.

Clearly, the constitutional process to pursue withdrawal is markedly different in the US and UK. Britain faces challenging negotiations with twenty-seven member states, who may raise the political costs of reneging on membership to avoid defection of other member states. Trump, by contrast, has the ability to revive long-dormant provisions of US trade law to protect domestic commercial interests. He has, at least for the short term, the legal means to do so under a variety of economic and security pretexts (the Trade Expansion Act of 1962, and Trade Act of 1974, Section 301, for example). This differs from Britain, which after triggering Article 50, would subsequently have to negotiate new bilateral agreements with multiple partners to replace current trade arrangements that are the result of EU membership, and also negotiate a separate schedule of concessions and commitments in relation to the WTO. Britain will be involved with resetting existing trade arrangements, pursuing new trade commitments, as well as managing trade relations that have previously been undertaken within the European Union.

Yet there are three common issues that come to mind in terms of US and UK plans to substantially reorganize their respective trade relations. First, any action will impact complex supply chains which have evolved between Canada, the US, and Mexico, and between Britain and Europe. Many intermediate goods are important for domestic manufacturing jobs in the US and UK. The auto industry in particular is notable for its integrated supply chains which would be impacted by any tariff changes. Second, the importance of inter-departmental coordination in overseeing trade policy is crucial. Britain has maintained the Foreign and Commonwealth Office (FCO) but has also established Ministerial offices for Exiting the European Union and International Trade generating reports of discord within Whitehall.

Similarly, the incoming Trump Administration will also have to consider inter-agency rivalries. Trump has tapped Paul Lighthizer, known for his pursuit of unfair trade practices both in the public and private sector, for US Trade Representative, which has traditionally been the lead trade body in the White House. Trump has signaled the increased importance of the Commerce Department under Wilbur Ross, as well as creating the National Trade Council led by Navarro, whose role is still unclear in relation to existing White House agencies. The US trade arena may generate the same turf battles that have bedeviled the British cabinet reorganization.

Third, the issue of withdrawal is different from the subsequent need to deal with the implementing statutes and legislation raising important questions of the impact on the domestic legal system. As substantial elements of domestic law are derived from European law, the legal and regulatory arrangements in the aftermath of any substantial treaty changes are more pronounced in Britain. As attention focuses on the agenda of the incoming US administration, the powers to withdraw from an agreement, the effects of modifying implementing legislation, and the legislative-executive implications on both sides of the Atlantic suggest that tearing up an agreement is easier said than done.

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*Note: This article gives the views of the author, and not the position of USAPP– American Politics and Policy, nor of the London School of Economics.*

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