TRADE

2018 promises to be a significant year in trade as the Trump Administration attempts to balance the campaign promises they made with the realities that many of these promises could result far-reaching negative consequences. Many of these actions are likely to take place before the Trump Administration's March 1 deadline for submitting its 2018 trade policy agenda to Congress.

NAFTA. The United States, Mexico, and Canada continue the process of renegotiating and modernizing the North American Free Trade Agreement. Although originally scheduled to conclude by the end of 2017, the negotiations have hit a roadblock in the form of several proposals tabled by the United States that cross stated redlines for both Mexico and Canada. The sixth formal round of negotiations is scheduled to begin in Montreal on January 23 and will run through January 28.

This round, the last one that is currently on the schedule, is likely a make-or-break session to resolve a number of the most controversial provisions put forward by the U.S., including Investor-State Dispute Settlements, government procurement, seasonal agriculture, rules of origin, and a sunset clause that would require each country recertify the agreement every five years. The U.S. has threatened to walk away from NAFTA if these provisions are not agreed to, even though they are generally not supported by the American industries they purport to help.

In recent weeks, trade-friendly Senators and Governors, especially those that represent agricultural states who depend on the export opportunities that NAFTA provides, have pressed the Trump Administration on the importance of remaining within NAFTA. They have argued that withdrawing from the agreement would violate the "do no harm" principle and could jeopardize the growth that the U.S. economy has seen, both through the successful completion of tax reform and gains in the U.S. stock market.

Whether progress is made in the upcoming round or not, the negotiations have a ticking clock. There is a self-imposed deadline of March 31 to complete discussions, partially due to political considerations for all three countries: the Mexican presidential election is scheduled for July 1; Canada will hold provincial elections; and the U.S. has midterm primaries and elections. Additionally, as the sixth round concludes mere days before the State of the Union Address, scheduled for January 30, a lack of substantial progress could give the president a reason and opportunity to announce withdrawal.

If President Trump does announce that the U.S. is withdrawing from NAFTA, there are substantial legal and procedural questions that would need to be resolved. As the U.S. has never withdrawn from a trade agreement, legal scholars have offered differing opinions on whether a president has the unilateral authority to do so or if Congressional approval would be required. Additionally, as the language implementing the treaty was passed through and codified into law, it would have to be addressed legislatively. Therefore, the withdrawal process, slated to last only six months per the terms contained within NAFTA, could drag on for much longer, leaving businesses with massive uncertainty.

KORUS. In addition to NAFTA, the U.S. is attempting to modify parts of the Korean Free Trade Agreement, a process initiated in July 2017 at the behest of Trump Administration. Negotiators from the

Office of the United States Trade Representative and their Korean counterparts met last week to discuss priorities and timetables for potential amendments to the agreement, though nothing concrete was agreed to. President Trump has previously called the agreement a "bad deal" and pointed to agriculture and automobiles as two sectors that should be considered in any change. It is notable that these negotiations are not taking place under the Congressionally-designated Trade Promotion Authority (TPA), freeing it from specific timelines or mandatory consultations with Congress or stakeholders.

CHINA. There is little question that in addition to renegotiating NAFTA, China is one of the top trade priorities for the Trump Administration, and January is lining up to be a packed month on this front. The Commerce Department in 2017 initiated several actions aimed at rectifying perceived Chinese bad acts. Next week, the International Trade Commission (ITC) is expected to issue a "preliminary injury determination" on a Commerce Department-initiated anti-dumping and countervailing duty investigation into aluminum alloy. Additionally, the Commerce Department will also release two reports on January 15 and 22 detailing how imports of steel and aluminum, respectively are a threat to national security under Section 232 of the Trade Expansion Act of 1962.

Trade actions relating to China will not be limited to steel and aluminum. USTR has initiated a Section 301 investigation into Chinese intellectual property and technology-transfer policies. There is a mid-August deadline for the Administration to act on this investigation, which may include levying tariffs or instituting quotas, and some actions are likely to occur before the deadline.

MORE BILATERAL TRADE DEALS ON THE HORIZON? President Trump, long a critic of multilateral trade agreements, has repeated on numerous occasions that the U.S. comes out ahead in bilateral trade deals (his ongoing attempt at modifying KORUS notwithstanding). Therefore, it is reasonable to assume that the Trump Administration will prioritize opportunities to reach such agreements. There is groundwork currently being laid for a potential free trade agreement with the United Kingdom, though formal negotiations and progress is not likely occur until after the UK has reached an agreement with the European Union on how it will exit from that body. It is possible, however, that the U.S. could attempt to negotiate bilateral agreements with countries who were party to TPP, though that probability may have decreased after those remaining 11 countries agreed to go forward with TPP without the U.S.

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