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FEATURED Q&A

Will Negotiators Find Consensus on NAFTA This Year?



Mexican Economy Minister Ildefonso Guajardo, Canadian Foreign Affairs Minister Chrystia Freeland and U.S. Trade Representative Robert Lighthizer met last month in Montreal for the latest round of talks to renegotiate NAFTA. // Photo: Canadian Government.

Q Negotiators from Canada, the United States and Mexico met in Montreal at the end of January to continue negotiations to revamp the North American Free Trade Agreement, or NAFTA. Though negotiators seemed cautiously optimistic about the progress made during the sixth round of talks, industry executives and others close to the negotiations said the three countries were unlikely to meet the March 31 deadline for a new agreement, and that talks could even extend until next year. And during the talks, negotiators from Mexico and Canada rejected a U.S. proposal to restructure a corporate arbitration system that is a key component of NAFTA. How are negotiations going? Will the three countries be able to resolve larger sticking points like the arbitration system? What will it take for all three sides to successfully reach a deal before Mexico's presidential election in July?

A Andrés Rozental, member of the Advisor board, president of Rozental & Asociados in Mexico City and senior policy advisor at Chatham House: "Trade negotiations are long, drawn-out affairs, often taking several years to conclude. Thinking that the NAFTA renegotiation could be finalized in several months was always a pipe dream, and the current state of play confirms the difficulties in finding common ground on the proposals put forward by the Trump administration. Even if negotiators had been able to agree by now on the new and revised texts covering dispute settlement, rules of origin, export seasonality and a sunset clause, 2018 is an election year in both Mexico and the United States. Trade agreements are highly sensitive politically,

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Haitian President Condemns Oxfam Over Scandal

Haitian President Jovenel Moise condemned the British charity following reports that its staff members hired prostitutes in Haiti at the same time they were offering aid there following the country's 2010 earthquake.

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Peru's Economy at 'Grave Risk' Due to Corruption: Finance Minister

Investments tied to construction companies that are accused of corruption amount to 4.2 percent of Peru's GDP, said Finance Minister Claudia Cooper.

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POLITICAL

Brazil Won't Closer Border to Venezuelans: Temer

Brazil will not shut its border to Venezuelans fleeing their country's crises, said Brazilian President Michel Temer.

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Temer // File Photo: Brazilian Government.

POLITICAL NEWS

Haitian President Condemns Oxfam Over Scandal

Haitian President Jovenel Moïse late Monday condemned British charity Oxfam following reports that its staff members hired prostitutes while delivering aid in the Caribbean nation in 2011, BBC News reported. "There is nothing more outrageous and dishonest than a sexual predator who uses his position as part of the humanitarian response to a natural disaster to exploit needy people in their moment of



Moïse // File Photo: Haitian Government.

greatest vulnerability," Moïse said in the posting. In a report last week in *The Times* of London, Oxfam was accused of concealing the conclusions of an inquiry that senior aid workers at Oxfam, including its national director in Haiti, paid prostitutes for sex while they were in the country offering relief, following its catastrophic 2010 earthquake that killed more than 200,000 people. Three sources told *The Times* that they were concerned that some of the prostitutes involved were as young as 14. Oxfam has said that allegations that underage girls were exploited have been investigated but "not proven," the newspaper reported. In his Twitter post on Monday, Moïse said the reported actions were an "extremely serious violation of human dignity." A senior government source in Haiti told the BBC that the country's government will launch an investigation into foreign aid agencies operating there. Oxfam has confirmed that sexual misconduct occurred and that several staff members were either dismissed or resigned, including the

country director, Roland van Hauwermeiren, who was allowed to resign in 2011 instead of being fired. However, the charity denies that it engaged in a cover-up. Oxfam's deputy chief executive, Penny Lawrence, has resigned over the group's handling of the scandal. Lawrence said she was "ashamed" and takes "full responsibility." In a statement, she said, "Over the last few days we have become aware that concerns were raised about the behavior of staff in Chad as well as Haiti that we failed to adequately act upon. It is now clear that these allegations—involving the use of prostitutes and which related to behavior of both the country director and members of his team in Chad—were raised before he moved to Haiti." On Saturday, Oxfam was hit by new allegations by former staff members that women believed to be prostitutes were invited to the charity's team house in Chad, *The Guardian* reported. At the time, Van Hauwermeiren was the head of Oxfam in the African nation, before becoming the charity's country head in Haiti. He has admitted to spending time with prostitutes in his residence in Haiti, the newspaper reported. The Charity Commission, a British charity watchdog, has launched an inquiry of Oxfam. Britain's international development secretary, Penny Mordant, has threatened to withdraw Oxfam's funding unless it fixes its problems and displays moral leadership, and the European Commission has also said it is ready to "cease funding any partner not living up to high ethical standards," BBC News reported.

Brazil Won't Close Border to Fleeing Venezuelans: Temer

Brazil will not close its border to Venezuelans seeking refuge by crossing into Roraima State, but will launch a task force aimed at organizing the influx of migrants and providing resources to cities and states taking in refugees from the economic and political crisis in Venezuela, President Michel Temer said Monday, Reuters reported. Over the past few months, thousands of Venezuelans have fled the country and crossed into Brazil. The city of

NEWS BRIEFS

Abducted Mexican Agents Apparently Seen on Video

A video released over the weekend on social media shows two kneeling, bound men, who are apparently Mexican intelligence agents, reading from what appears to be script and confessing to supposed rights violations while five masked men point machine guns and assault rifles at them, the Associated Press reported Monday. A federal official said the two men are apparently agents of the federal Attorney General's Office who went missing on Feb. 5 in Nayarit State. The gunmen have no identifying marks on their clothes, but Nayarit State is dominated by the Jalisco New Generation Cartel.

Peru's Economy at 'Grave Risk' Due to Corruption: Finance Minister

A crisis within Peru's construction sector because of corruption investigations against companies that may be forced to halt projects is posing a "grave risk" to the economy, Finance Minister Claudia Cooper said Monday, Reuters reported. Investments tied to companies accused of graft amount to 4.2 percent of Peru's GDP, Cooper told the country's Congress.

Mexico's Alfa Reports Smaller Net Loss for Q4

Mexican conglomerate Alfa, which works in sectors including petrochemicals, on Monday reported a smaller net loss in the fourth quarter year-over-year, but added that it was also hit by exchange rate losses, Reuters reported. Alfa reported a 590 million peso, or \$30 million, loss in the period from October to December of last year, up from a loss of 1.27 billion pesos during the same period a year earlier, Economía Hoy reported. Revenue increased by 6 percent to 81.3 billion pesos in the third quarter, due to growth in the company's petrochemicals unit Alpek, among other units.

Boa Vista, Roraima's capital, has been facing a humanitarian emergency as a result: local officials say 10 percent of the city's population, or approximately 40,000 people, is made up of Venezuelan refugees, putting a strain on public services. Temer flew to Boa Vista on Monday with some ministers and officials to hold meetings with local authorities and assess what is needed to help the situation. He promised local officials financial assistance for Roraima state and offered the possibility of transporting some Venezuelans to other states. "I will not rest until we have solved the problems of Roraima," Temer said at the meeting. Defense Minister Raúl Jungmann later said the armed forces would establish a field hospital at the border and work with local authorities to build triage centers, GloboNews reported.

BUSINESS NEWS

Heineken Expects Lower Profitability After Brazil Unit Buy

Heineken, the world's second-largest beer distributor, on Monday said its growth in profitability would be lower this year as compared to last year, due to its acquisition of its Brazil business, which it purchased from Japanese brewer Kirin for \$666 million, or 2.2 billion reais, last year, the Financial Times reported. Analysts estimate that Brasil Kirin had seen a sharp decline in profits under Kirin's ownership and was operating at a loss when Heineken bought it in February of last year. Heineken on Monday said its profit margins would expand this year by a quarter percentage point, down from last year's 0.4 percentage point target, due to "a residual dilutive effect from the acquisition of Brasil Kirin." Despite Brasil Kirin's struggles, Heineken's acquisition helps the company challenge Anheuser-Busch InBev in one of its biggest markets, Brazil. Heineken posted better-than-expected full-year revenues and profits Monday, especially in emerging markets, which account for half its revenues and 55 percent of group operating profits.

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and it was never going to be feasible to conclude negotiations and send the results for the respective legislative approvals. As presented, several U.S. proposals on the more difficult issues mentioned above are unacceptable to both Canada and Mexico, both of which are trying to be constructive and understanding of the reasons behind them. Even in the United States, a convincing private sector and political coalition is pressuring the White House to limit overall damage to NAFTA. This is especially true in the case of the agricultural and automotive sectors, both of which are against the changes proposed by the Trump administration. There is little chance of reaching a final agreement before the Mexican presidential election, or even before the November congressional midterms in the United States. For NAFTA to survive as a free-trade pact, with improvements and new agenda issues incorporated, the United States will have to abandon the idea of replacing it with a managed trade agreement whereby Mexico and Canada lose the existing benefits of tariff-free trade in goods and service at the expense of an absurd U.S. attempt to eliminate trade deficits through obstacles to the established, highly integrated, North American economy."

A **Julissa Reynoso, partner, and Michael Fernández, associate, at Winston & Strawn:** "As the United States, Mexico and Canada continue their negotiations to revamp NAFTA, discussions about the Chapter 11 investor-state dispute settlement (ISDS) mechanism have come to a standstill. While Mexico and Canada are committed to maintaining some form of ISDS agreement between themselves, the United States is seeking the right to opt out. Trump administration officials have publicly criticized Chapter 11 as an invasion of sovereignty and as a measure that incentivizes companies to outsource to Mexico. Thus, there is a real possibility that a NAFTA revamp will end up with no ISDS provision. It appears that Mexi-

co and Canada have largely taken a hard line against the United States' reluctance to sign onto an ISDS mechanism. As a result, a deal will depend on how the U.S. position evolves in the coming months. U.S. domestic politics are likely to be a factor. NAFTA's ISDS provision has attracted much criticism. Just recently, a number of high-profile U.S. senators argued for the elimination of NAFTA's ISDS

“A deal will depend on how the U.S. position evolves in the coming months.”

— **Julissa Reynoso and Michael Fernández**

provisions altogether. Ultimately, for some version of ISDS to survive, negotiators will need to address the concern of ISDS' critics that it lacks transparency and inappropriately impinges sovereignty. Absent agreement, U.S. businesses may very well face a future with limited investment treaty protections in Mexico and Canada. The short-term consequences of this are important from an investment perspective, as U.S. investors have growing concerns over the outcome of Mexico's elections."

A **Pablo Heidrich, assistant professor at the Arthur Kroeger College of Public Affairs at Carleton University in Canada:**

"Negotiations are not going well, at least from a Canadian perspective, as the U.S. proposals so far have been unacceptable. It is not only the demands made to restructure the corporate arbitration, but also the claims made regarding Canada having to dismantle its protectionism in dairy, poultry, retail, finance and media industries, plus the fact the United States has not offered anything in return for those concessions. Canada has

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requested changes in U.S. protectionism of its lumber and hi-tech industries, as well as federal rules to limit states' legislation discriminating against international services or goods providers, but so far Canada has not received a positive response. It is unlikely that the three countries can resolve larger sticking points like the arbitration system, given that there are other issues on the table. The arbitration system is of a 'larger' significance only for the United States, not for its partners. U.S. sector-specific protectionism and states' discriminatory laws and practices are indeed more relevant for Canada and Mexico. Without a resolution of at least part of latter, no change can be expected. In order for the three countries to reach a deal before the election, they will need either a change of strategy on the part of the United States, who would have to give up in at least some of issues relevant to its partners in exchange for advancing its agenda, or to find a face-saving compromise among all three countries where the status quo is not radically modified, but perhaps the spectrum of the agreement would be enlarged to cover trade issues not yet included. But neither of these are very unlikely outcomes in the short term. The United States indeed might be seeking to terminate NAFTA in time for the Trump presidency to deliver better results to the Republican Party in the 2018 midterm elections."

A **James R. Jones, member of the Advisor board, chairman of Monarch Global Strategies and former U.S. ambassador to Mexico:** "From my outsider's vantage point, it seems that the climate for a successful negotiation improved after the last round of talks in Montreal. But I still give no better than 50-50 odds of a successful conclusion this year. It appears that in addition to the three completed NAFTA chapters, another dozen or more are 90 percent complete. As with many things in negotiation, whether it's congressional reconciliation or labor-management issues, a sense of good will,

trust and desire to conclude determine the outcome. When I was in Congress, these attributes existed among both Republicans and Democrats, and as a result, things were accomplished. That doesn't exist today. Whether these traits truly exist among the

“ I still give no better than 50-50 odds of a successful conclusion this year.”

— James R. Jones

trilateral negotiators remain to be seen. One possibility to be considered is bifurcating the process and approving the roughly half of NAFTA upon which there can be agreement within the next month. Then come back after the U.S. midterm elections and the Mexican national elections to resume negotiating the modernization of the rest of NAFTA. That would give the beneficiaries of NAFTA, such as the farm interests, the six million Americans whose jobs depend on NAFTA, the energy industry and others a focused chance to be heard, perhaps for the first time. That our negotiators are trying to rid the corporate arbitration protections is baffling to me. These provisions protect U.S. business from less developed and trusted legal systems. I believe there have been eight cases filed by U.S. businesses, and we have won them all. Why would our government disregard America's businesses and so aggressively go against their interests? Elections do matter. They send messages to policymakers. That may be the best way to break the impasse on what remains to be negotiated."

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