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Former Deputy USTR: USMCA Will Survive but Not Duty-Free

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Former Deputy U.S. Trade Representative Jeffrey Gerrish said that despite the fact that the president has repeatedly said he wants to pull out of USMCA, he does not expect the administration to declare it wants to end the pact.

The way the sunset review clause works, if any of the three countries said this year that they didn't want to continue for 16 years, the pact would stay in force, but each year, Mexico, Canada and the U.S. would decide again if they were ready to renew.

"There's going to be bumps in the road, ups and downs, twists and turns along the way," he said, "but I think ultimately the agreement does get renewed. It's too important for all three countries" to go away.

Gerrish said Congress has been passive on trade policy, but Republican members will put pressure on the administration to preserve USMCA.

"There's going to be pressure brought to bear on the administration to find a way to renew this agreement for another 16 years," though, he added, "it may not happen by the July deadline."

Gerrish was a political appointee at USTR during the first Trump term, and he said that the renegotiation of NAFTA had a similar dynamic to these review negotiations -- Mexico is perceived as being more cooperative than Canada.

"I don't think things are in a good spot between the U.S. and Canada at this point. Now that's not unlike what happened in the first term," he said. "We mainly were talking to the Mexicans first, and then we reached agreement with them and presented it to the Canadians and said, okay, we have six weeks to get this resolved with you as well."

When NAFTA became USMCA, Canada and Mexico convinced President Donald Trump to exempt their steel and aluminum imports from what were then much lower Section 232 tariffs. "I think there's a good chance that that may happen" again for the two metals, and perhaps other 232 actions, too, he said.

However, Gerrish said the trade agreement won't return to the previous status, where all but 2% of tariff lines were granted duty-free access under USMCA. (Sugar and sugar-containing products, dairy and textiles were protected with quotas.)

"I think that Canada and Mexico are going to have to live with the fact that we will still maintain some tariffs against those countries, and that may be a tough pill to swallow," he said.

Gerrish predicted that the rules of origin would become stronger in the auto sector, and that goods produced in Mexico and Canada that otherwise would be considered eligible would not be if the company that owned the facility was Chinese.

Gerrish, who was speaking at the Massachusetts Export Center Export Expo on Feb. 27, predicted the Chinese trade truce would hold, and that USTR and Commerce would be able to finish investigations within five months, when Section 122 tariffs end.

He said he expects further trade restrictions as a result of the Section 232 investigation on semiconductors and products using semiconductors, but said he thinks its release has been delayed "because there's been this concern about potentially blowing up the truce that's been reached between the two countries, and particularly leading up to President Trump's meeting with

President Xi [Jinping] coming up at the end of next month, they've not wanted to do anything that would potentially get in the way of that meeting."

He said he doesn't expect a big development out of the presidents' meeting. "At this point, I think the two sides are at a point where they are really in a divorce," he said. "They're figuring out how to manage that split between them."

Gerrish also addressed how things will be different after Section 301 and Section 232 tariffs replace the reciprocal tariffs, and what may happen in the five-month transition period when Section 122 tariffs apply.

He said the EU is hesitating to ratify its deal, which is typical, and noted that India's trade minister said "they might want to rebalance their commitments under the trade agreement. ... I just think that these countries would be well advised not to pull out, not to stop their implementation, because they're likely to get hit with even higher tariffs if they do that."

In response to a question from International Trade Today on whether countries might have either lower tariffs than the reciprocal rates, or the tariffs might phase out as they fulfill commitments to drop non-tariff barriers and tariffs, Gerrish said he thinks the administration will justify double-digit rates because the Section 301 investigations won't just tackle the traditional irritants, they also will address industrial overcapacity, forced labor, pharmaceutical pricing, and discrimination against American tech companies.

So, he said, while it's possible that the administration may agree to reduce tariffs if countries agree to resolve the non-tariff barriers in the agreements, to "reward countries for taking the actions that we want them to take in these areas. But I think the likelihood is they'll try to keep some tariff level in place. And the administration is very much committed to keeping some level baseline tariff against all the key trading partners around the world, and I think they really want to have that in place to address these lengthy, persistent, significant trade deficits that we've had with a number of countries."

With regard to the Section 122 tariffs, he said it seems like some countries may remain at 10% and others at 15%. "Which I think will raise some issues under the statute, but I think this, the action that they've taken under Section 122, is likely to be challenged before the courts regardless."

He said he expects that courts will show deference to the administration's claim that there is a large and serious balance of payments deficit.