

U.S. Withdrawal from FTAs

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NAFTA

Article 2205 of the NAFTA agreement permits a Party to withdraw with six months notice. “Party” means one of the countries. It does not specify whether that means the Executive or the Congress. NAFTA remains in force for remaining parties.

There is debate in the legal community over whether the President can use his executive authority to withdraw or must obtain the consent of Congress.

Section 107 of the NAFTA implementing act implies suspension of the US-Canada FTA once NAFTA is in force and that it remains suspended until said suspension is terminated. (Meaning the US and Canada would have to agree to terminate the suspension. The previous FTA does not automatically come back into force.)

Section 109 of the NAFTA implementing act specifies certain sections of the act which would cease to have effect in event of withdrawal, but most, including tariffs, are governed by the Trade Act of 1974.

Section 125, Trade Act of 1974

125(a) provides for termination or withdrawal of agreements, including NAFTA.

125(b) allows the President to terminate previous presidential proclamations implementing FTA obligations/lowering tariffs.

125(c) permits President to raise tariffs by proclamation in event of withdrawal.

125(e) permits existing tariffs to remain in effect for 1 year unless the President issues a proclamation restoring duties that applied prior to the agreement. President “shall” also send to Congress within 60 days of withdrawal recommendations for appropriate tariffs. No specific requirement either that Congress must act on his recommendations or that they go into effect without Congressional action.

U.S. Tariffs on Selected Products

| Product | Current | Post-NAFTA MFN rate |
|------------------------|---------|---------------------|
| Cars | Free | 2.5% |
| Trucks | Free | 25% |
| Sweet Corn | Free | 21.3% |
| Soybeans | Free | Free |
| Assorted Bakers' Wares | Free | 16% |
| Maple Syrup | Free | 6% |
| Carbonated Soft drinks | Free | 0.2¢/liter |
| Tequila | Free | Free |