

The Last Four Trade Agreements Congress Enacted Required Changes to Their Texts *After* They Were Signed in Order to Pass

Refusing to Fix the NAFTA Trump Signed in 2018 Risks Its Defeat Because the Text Locks in High U.S. Drug Prices, Undermining the Democratic Majority's Commitment

Pharmaceutical interests that rigged the revised North American Free Trade Agreement (NAFTA) with terms that lock in high U.S. medicine prices now claim that cutting these protectionist terms would somehow kill NAFTA. In fact, Republican and Democratic presidents alike have altered U.S. Free Trade Agreement (FTA) texts signed under Fast Track in order to ensure their congressional passage. To win congressional support, in 2007 President George W. Bush amended the texts of the Peru and Colombia FTAs signed in 2006 as well as the Panama and Korea FTAs whose negotiations had been completed in 2006. Then in 2010, President Barack Obama had to again amend the Korea FTA text signed in 2007.

Today, the Trump administration faces the same situation as Bush did in 2007. The revised NAFTA it signed in 2018 might have passed the GOP-controlled Congress. But it threatens to undermine the key medicine-price-lowering priority of the new Democratic House majority. In 2006, Bush had signed FTAs designed to pass a GOP-majority Congress in 2007. But Democrats won the House in the midterms. The House Democrats insisted that Bush renegotiate aspects of the signed FTAs to cut expansive monopoly rights enabling pharmaceutical firms to charge high drug prices and to improve the pacts' labor and environmental terms. This package of changes is sometimes referred to as the "May 10th Agreement."

The other countries and the Bush administration insisted that it was impossible to alter the signed deals – until shortly before renegotiations started. The fixes were completed in short order. The first revised deal, with Peru, passed with a large number of Democratic votes and strong GOP support. Some years later, the Korean government insisted it would not engage in a second renegotiation with the Obama administration, but then did so to ensure the FTA's passage. All four FTAs were passed.

At issue now, as then, is not restarting broad negotiations nor reopening the entire agreement. Rather, for the revised NAFTA, specific words and clauses in the pact's Intellectual Property, Labor and Environment Chapters require changes. The method used by the Bush administration to modify the signed FTAs in 2007 would also serve today. The United States and its trade partners signed agreements listing modifications to the previously-signed FTA texts. The follow up agreements functioned like packages of self-executing amendments. They altered specific provisions of the underlying FTA text, and then ceased to exist as separate legal instruments. Thus, changes to the signed Peru and Colombia FTAs, and to the Panama and Korea FTAs, the texts of which had been completed but not signed, are reflected in the pacts' texts. When the Korea FTA was amended a second time in 2010, changes were enacted via a different means. The underlying FTA text was not altered. Instead, documents signed by both countries that list amendments are appended to the FTA text, with terms such as: "Notwithstanding paragraph X of Article Y" the United States (or Korea) will do something other than what is required in the underlying text.

Alternatively, refusal to alter the text of the Trans-Pacific Partnership (TPP) meant that it never garnered a majority in the House of Representatives, despite a major campaign jointly conducted by the Obama White House and a broad corporate coalition during the year after the pact was signed in 2016. The TPP also had

Korea's Chief Negotiator Insisted He'd Never Renegotiate the FTA, Until He Did to Ensure It Passed

"The deal has been done and that's it. There will be no renegotiations."

- Kim Jong-Hoon, Korea's chief negotiator, *Yonhap News*, 6/11/08

many of the provisions locking in monopoly protections for pharmaceutical corporations that are included in the revised NAFTA, but the terms in NAFTA 2.0 are more expansive than in the TPP.

The Fate of the Most Recent Five Trade Pacts Signed by the United States: Four FTAs' Texts Were Amended After Signing to Gain Congressional Majorities, the TPP Was Not Amended and Never Obtained Majority Support

Peru FTA: Signed April 2006. The initial agreement was passed by Peru's Congress in June 2006. On May 10, 2007, the Bush administration and the Democratic House Ways and Means committee agreed to changes to Intellectual Property, Labor and Environment terms in order to obtain Democratic support. In June 2007, the United States and Peru agreed to amend the FTA text, and the Peruvian Congress approved the amendments. The U.S. House approved the revised FTA in November 2007 by 285-132.

Colombia FTA: Signed November 2006. The initial agreement was passed by Colombia's Congress in April 2007. The U.S. and Colombian governments signed a Protocol of Amendment in June 2007 to enact the "May 10th Agreement" changes to Intellectual Property, Labor and Environment terms required to obtain Democratic support. Colombia's Congress approved the amendments in October 2007. The Obama administration then negotiated an additional labor side agreement, and the U.S. Congress passed the agreement in October 2011.

Panama FTA: Negotiations completed in December 2006. President Bush notified Congress of his intent to enter into the agreement in March 2007. But the text had to be reopened to add the "May 10th Agreement" amendments. The modified agreement was signed in June 2007. Panama's National Assembly ratified it in July 2007. The U.S. Congress passed the agreement in October 2011 after Panama signed an additional agreement on tax haven practices.

Korea FTA: Initial version signed June 30, 2007 after the text of a deal completed months earlier was modified to include elements of the "May 10th Agreement" terms. Terms of the signed FTA were then renegotiated in 2010, with amendments agreed by the two countries in December 2010. The U.S. Congress passed the agreement in October 2011 with a House vote of 278-151. It was ratified by the National Assembly of South Korea in November 2011.