

## TRADE IN THE 116<sup>TH</sup> CONGRESS

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This year has been one of the busiest in the trade space in recent memory. However, the vast majority of the action took place in the Executive Branch. Congress, which has constitutional authority over both tariffs and regulating international commerce, largely took a back seat. Democrats taking over the House of Representatives combined with a faltering stock market that many have blamed on the president's trade actions, may stimulate an appetite in Congress to reclaim some of the power that they have ceded to the Administration.

Looking over the horizon to next year, trade is likely to continue to be one of the most active – and contentious – sectors.

### USMCA

When President Trump, joined by the leaders of Canada and Mexico, signed the updated version of the North American Free Trade Agreement (NAFTA) in Buenos Aires during the G20 Summit, it marked a key step in the timeline for signing the new agreement. It also means that dealing with the USMCA is likely one of the first big trade fights that Congress will be forced to address.

Democratic House leaders have already begun to express their concerns about some portions of the USMCA text, particularly the enforcement provisions for both the environment and labor sections. Although USTR has been publicly bullish on the chances of securing the necessary Democratic votes for passage, there is no doubt that it will be a process fraught with complications. At a recent meeting with USTR Lighthizer, likely Speaker of the House Nancy Pelosi reiterated concerns that the chapters of concern were “just a list without real enforcement” and vowed that Democrats would do their due diligence; ensure that Members were fully briefed on the implications of the deal; hear from a wide variety of stakeholders. So far, many of the largest and most powerful unions have not taken a position on USMCA, and their involvement – one way or the other – will likely have considerable influence on the Democratic caucus.

Challenges of passing the agreement through the House have often overshadowed conversation around the agreement's chances in the Senate. While Republicans have, traditionally, been more pro-trade, Trump's election and his positions on trade have caused the party to reconsider some of its positions. Sen. Pat Toomey (R-PA) has already registered his concerns, stating that he could not vote for the agreement in its current form. Because of Trade Promotion Authority (TPA), USMCA is guaranteed an up-or-down vote in the Senate, with passage requiring a simple majority. Therefore, it is likely that the current agreement will pass. However, Senate leadership cannot afford many defections, like Toomey, if the agreement simultaneously is unpopular with Democrats.

### NAMES TO KNOW IN TRADE

#### House



**Richie  
Neal**

*Chairman,  
Ways &  
Means  
Committee*

**Kevin  
Brady**

*Ranking  
Member, Ways  
& Means  
Committee*

As the leadership of the House and Senate continue to brief their colleagues, the House Ways and Means Committee and Senate Finance Committee will work in consultation with USTR to draft and finalize implementing language. As we understand, those discussions are in their infancy, and there is some hope many of the concerns and objections raised about the agreement can be dealt with in this forum.

NAMES TO KNOW IN TRADE

## Senate

	
<b>Chuck</b>	<b>Ron</b>
<b>Grassley</b>	<b>Wyden</b>
<i>Chairman,</i>	<i>Ranking</i>
<i>Finance</i>	<i>Member,</i>
<i>Committee</i>	<i>Finance</i>
	<i>Committee</i>

Further complicating the effort, President Trump has threatened to send up a NAFTA withdrawal notice to Congress as early as this month, attempting to force Congress' hand and accept his new agreement. A withdrawal notice would jumpstart a 6-month clock to dissolve NAFTA. Both Republicans and Democrats have told the Administration that Congress is not likely to view this maneuver favorably and it may backfire.

It is important to remember that although TPA guarantees a trade agreement get an up-or-down

vote in both the House and Senate, it does not guarantee passage. President Bush sent implementing language to the U.S.-Columbia Trade Promotion Agreement to a Democratically-controlled House in April of 2007, but the final version did not pass until October of 2011 after President Obama had renegotiated significant portions of it.

### Section 232 Tariffs

The Trade Expansion Act of 1962 gave the Executive Branch the ability to levy tariffs using a "national security justification." Before the Trump Administration, it was infrequently used. However, this Administration has found it a useful tool in waging war on what they consider to be countries taking advantage of the United States.

The Administration's steel and aluminum tariffs caused quite a headache when they were introduced in the spring and continue to wreak havoc in certain sectors of the economy. The tariffs have been paired with an oft-maligned exemption process as well as retaliation by some of our closest trading partners. However, the Trump Administration has refused to back down, even as the domestic price of steel and aluminum has soared, and the massive influx of manufacturing facilities has not come to pass. Meanwhile, with the exception of a non-binding resolution in the Senate that would restore some Congressional power to the Section 232 process that passed 88-11, Congress has chosen to remain inactive.

The 116<sup>th</sup> Congress, however, might choose to take a more active role in overseeing this presidential authority. Incoming Finance Chairman Chuck Grassley (R-IA) has already expressed an interest in at least considering legislation that would scale back the Administration's power to impose tariffs through Section 232, saying that the definition of what could be considered national security grounds was perhaps "a little wide."

Additionally, any Administrative action to levy tariffs on autos or auto parts using Section 232 may be the catalyst for Congressional action. When President Trump instructed the Department of Commerce to begin an investigation into autos at the end of May, there was a groundswell of concern from members on both sides of the aisle. There were quiet rumblings that such an action would be

unjustified and a bridge too far. There was fear that the results of an auto Section 232 investigation could come before the end of the year, but trade talks with China and the European Union have forestalled it for the moment. Most observers think that it will resurface in the first quarter of 2019.

### China and Section 301

There has long been bipartisan support in Congress to address issues relating to China, including but by no means limited to trade. When President Trump initiated a section 301 investigation into Chinese practices, laws, and policies relating to American intellectual property rights; innovation; and technology development in August of 2017, it was seen as a positive step. When USTR released its report this year, as well as the first round of tariffs targeted at the Chinese “Made in China 2025” program, it was also received mostly positively, though some expressed concerns that the tariffs were coming on the heels of the Section 232 actions.

China decided to retaliate and President Trump ordered USTR to add an additional \$200 billion in tariffs,



which targeted a broad swathe of items, including consumer goods and other products that had no relation to the Made in 2025 program, perspectives began to change. As the U.S. added more tariffs and the Chinese retaliated, American farmers and businesses began to feel the pinch. In an effort to aid those effected, the U.S. Department of Agriculture announced a subsidy program and USTR announced an exemption process for the first two tariffs lists.

By the time the administration finalized its third list and the President announced that a fourth list – covering the entirety of all other products imported from China – was being prepared, it looked like the U.S. and China were on the path to a full-blown trade war.

There have been, however, recent positive developments – though temporary – that will influence how the 116<sup>th</sup> Congress chooses to tackle this issue, specifically. At the G20 Summit, President Trump and President Xi reached an agreement to halt all trade-related actions for 90 days, which ends on March 1, 2019. During this time, the Chinese agreed to buy American agricultural and energy products and address their 40 percent tariff on imported American cars. The U.S. agreed not to levy tariffs on any additional products or to raise the current 10 percent tariff on the \$200 billion list to 25 percent in January, as was originally scheduled. In the intervening 90 days, the two countries will attempt to reach a significant trade deal that will address a number of issues, including intellectual property, market access, the trade imbalance, non-tariff barriers, and technology cooperation.

There is no question that negotiations are a positive sign, but there remain concerns that such discussions could become victims to other factors. The arrest of a Huawei executive in Canada at the behest of American law enforcement on charges of violating U.S. sanctions law has the potential to become a significant challenge. Additionally, U.S. actions to tighten export restrictions on technology to China might also throw a wrench in the proceeding. It is also important to remember that there was a tentative deal with China earlier this year that would have halted further trade actions in exchange

for significant purchases of American goods by the Chinese that was blown up when the Administration decided to implement further tariffs.

The 90-day deadline may be a hard deadline, as USTR Lighthizer has repeatedly stated; fungible if negotiations are going well; or immediately terminated if something causes the president to change his mind.

Congress is likely to conduct significant oversight into the Administration's actions on China, mainly to determine what their overarching strategy is and how they believe they are going to achieve it. Congress is likely to give them more latitude on China than on other trade issues, but that latitude could quickly dissolve if negotiations fall apart and the Administration decides to implement further tariffs. As a final list would likely be made up of mostly consumer goods –toys, clothing and electronics – Congress may decide to reassert themselves if they begin to hear from their constituents.

### **Additional Trade Agreements?**

Earlier this fall, USTR notified Congress of its intention to begin trade negotiations with Japan, the United Kingdom, and the European Union. On December 10, USTR held its first listening session on what stakeholders want any trade agreement with Japan to include. In order to formally begin these negotiations, USTR has to provide Congress with negotiating objectives 30 days prior. If USTR publishes negotiating objectives next week, they could begin a formal process with Japan in mid-January. Formal discussions with the EU and UK are likely to wait until those two entities resolve their Brexit issues.

A Democratic House is likely to demand significantly more oversight for USTR actions than the current Republican majority did.

