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## Industry News

### 2018 Congressional Elections Implications For US Trade Policy

Democrats won the US House of Representatives in the 2018 midterm elections, but lost seats in the Senate. The FHKI appreciates that Sorini Samet & Associates has provided us with its report analysing the implications of the election for US trade policy. Major points of the report are as follows:

#### China Policy

- The shift from Republican to Democratic control of the House will have little practical impact on the ongoing trade war between the US and China.
- President Trump does not require additional Congressional approval to impose Section 301 tariffs on China.
- Democrats in Congress generally favor a strong approach to China.

#### NAFTA and the USMCA(US-Mexico-Canada Agreement)

- With Democrats retaking the House of Representatives, the path to enact implementing legislation for the USMCA becomes more difficult.
- Democrats are generally less inclined to support trade agreements.
- Animosity between Congressional Democrats and President Trump make it unlikely that a deal will be easily or swiftly reached.

#### Other Free Trade Agreements

- Democratically controlled Congress can find pathways forward for other free trade agreements.
- The US-Japan negotiation will see support among many Democrats who found the end result of the Trans-Pacific Partnership terms with Japan compelling.
- Democrats will be supportive of relaunching negotiations with the European Union and the United Kingdom.

For further details, please refer to the report at Appendix.



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## **2018 CONGRESSIONAL ELECTIONS IMPLICATIONS FOR U.S. TRADE POLICY**

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**Election 2018 Outcomes:**

The House of Representatives will shift from a significant Republican majority to a more modest, Democratic majority following last night's elections. When the new Congress takes office in January, Democrats will hold at least 220 seats (218 needed for a majority), with some races still too close to call. Following the 2016 election, the Republican majority was 241 to 194. The Ways and Means Committee, which has jurisdiction for trade and taxes, had 24 Republicans and 16 Democrats following the 2016 election. Committee ratios are determined by the size of the majority; thus, we will not know the breakdown of the committees until all the races have been decided.

The new House Democratic Caucus will meet November 28 and 29 to elect its leadership. At this point, it is likely that current House Minority Leader Nancy Pelosi, California 12<sup>th</sup> District, will regain the title of Speaker of the House, despite pre-election rumblings that she may step aside, or be forced aside. If Pelosi regains the role of Speaker, current Minority Whip Steny Hoyer, Maryland 5<sup>th</sup> District, would become House Majority Leader and current Minority Assistant Democratic Leader James Clyburn, South Carolina 6<sup>th</sup> District, would become Majority Whip. The current Ways and Means Ranking Member, Representative Richard Neal (D-MA 1) will become the next Ways and Means Chairman.

**China Policy:**

The shift from Republican to Democratic control of the House will have little practical impact on the ongoing trade war between the U.S. and China. President Trump does not require additional Congressional approval to impose, remove, or increase the tariffs he has applied or might apply to imports from China under Section 301 of the Trade Act of 1974, as amended.

In fact, Democrats in Congress, and their constituents back home, generally favor a strong approach to China. This likely will embolden President Trump to continue to take an even tougher position on China, including the possibility of a rumored "List 4" of the remaining imports from China that could face import duties if a planned December 1 summit between President Trump and President Xi of China does not produce meaningful results.

Likely incoming Ways and Means Chairman Richard Neal of Massachusetts has not criticized the Trump Administration's imposition of Section 301 tariffs on China. Neal, who has a mixed voting record on trade, instead has focused his public statements on the need for a long-term strategy on China. In June, when the Trump Administration imposed its first list of tariffs, Neal released a statement stating "With respect to these Section 301 tariffs, I recognize they can be an important tool in re-setting the U.S.-China trade and economic dynamic, which has felt like a one-way street for too long. However, I am seriously concerned by the apparent lack of coherence in the Administration's approach thus far with China. Even the best tools, without a plan for how to use them, are useless."

He signed a July 11 letter to Ways and Means Chairman Kevin Brady along with all the other Ways and Means Democrats asking for a hearing with the Trump Administration on its China

strategy. The letter stated “hopefully, the Administration also has a strategy for how it intends to leverage these many tariffs to achieve its policy goals.”

The likely next Chairman of the Ways and Means Trade Subcommittee, Bill Pascrell (D-NJ 9), issued a similar statement in June regarding the use of tariffs on China. His statement said:

“China has been cheating on the world stage for too long, and our trade deficit with China has cost us millions of U.S. jobs. I supported the decision to investigate China’s IP theft and forced technology transfer practices under section 301, and tariffs can be a tool to address their abuses. But we need a coherent strategy to engage with allies to confront China. At the same time that the Trump White House announces new tariffs on Chinese goods, it is finalizing a roll back of sanctions on Chinese company ZTE – a known national security threat that was caught undermining U.S. sanctions on Iran and North Korea. Why is Trump helping Chinese lawbreakers instead of creating jobs here at home? I fear a chaotic and seemingly *ad hoc* trade policy will be ineffective in confronting China. Our trade policy must reflect the needs of U.S. workers and their families, not the whims of an executive who flatters dictators.”

### **NAFTA and the USMCA:**

With Democrats retaking the House of Representatives, the path to enact implementing legislation for the U.S.-Mexico-Canada Agreement (“USMCA”) becomes more difficult. Democrats are generally less inclined to support trade agreements, although the swing districts that flipped from Republican to Democratic control yesterday may produce more members that are willing to consider supporting such an agreement.

The largest question for the fate of the USMCA in the Democratic caucus will be the position of organized labor and unions. Our view is that unions are persuadable to support the USMCA but will have certain “asks” related to implementation, such as a certification system to verify that Mexico and Canada have implemented all commitments under the agreement. If the AFL-CIO, United Autoworkers, United Steelworkers, and other key groups take positions supporting the deal, the agreement could move relatively quickly.

Further, animosity between Congressional Democrats and President Trump make it unlikely that a deal will be easily or swiftly reached. The Democratic-controlled House of Representatives will be motivated to deny President Trump any major victories that he can point to during his 2020 reelection effort. The renegotiation of NAFTA into the USMCA is the President’s signature trade agreement. Regardless of the merits of the changes compared to NAFTA, we expect that any legislation will be held up both as a bargaining tool for further concessions and as a political weapon in the on-going partisan warfare. Unfortunately, the likely near immediate shift to campaigning for the 2020 elections will exacerbate these effects. There is a history of incoming Speaker Pelosi doing this – she previously held up implementing legislation for the Korea-U.S., Colombia-U.S. and Panama-U.S. free trade agreements (FTAs). To avoid this fate Ambassador Lighthizer will need to exercise at least as good negotiating skills with internal political opponents as he has with foreign negotiating partners.

The key strategic question will be whether President Trump initiates the six-month withdrawal procedure from the original NAFTA in an attempt to force Democrats to allow a vote on the USMCA implementing legislation. The risk with such a move is that Democrats may decide to hold firm against a vote, believing that President Trump would get the blame for the economic damage resulting termination of NAFTA.

### **Other Free Trade Agreements:**

Other free trade agreements the Trump Administration has announced or is considering will also see a tougher road in general in the Democratically controlled Congress but can still find pathways forward. SSA believes the U.S.-Japan negotiation will see support among many Democrats who found the end result of the Trans-Pacific Partnership (“TPP”) terms with Japan compelling, particularly with regard to autos. Democrats will be supportive of relaunching negotiations with the European Union and the United Kingdom as well. Support in the Congressional Black Caucus for an FTA with an African country, which the Trump Administration is considering, would be substantial.

The concerns raised by Democrats on the Ways and Means Committee regarding human rights in the Philippines will need to be addressed with the Democratic caucus ahead of a vote on a U.S.-Philippine FTA. The concern of Democrats is similar to the opposition from labor and many Democrats to the U.S.-Colombia FTA, which passed in 2010. Nonetheless, based on significant outreach we believe there is support for deepening the economic relationship between the United States and the Philippines.

### **Ways and Means:**

The Ways and Means Committee of 2019 will have many new faces along with new leadership. Incoming Chairman Neal has a mixed record on trade. He voted against the original NAFTA agreement in 1993 and against granting President Obama Trade Promotion Authority (“TPA”) in 2015. However, Neal voted yes on the U.S.-Korea Free-Trade Agreement and the Panama Free-Trade Agreement, while voting against the U.S.-Colombia Free Trade Agreement and the United States-Central America-Dominican Republic Free Trade Agreement (“CAFTA-DR”). Neal supported the Miscellaneous Tariff Bill and has supported the Generalized System of Preferences.

Neal has not yet taken a position on the USMCA. After the agreement was announced, he released a statement warning that “the bar for supporting the new NAFTA will be high” and that he will be looking at “the enforcement and enforceability of the agreement’s provisions.”

Representative Pascrell, the likely Trade Subcommittee Chairman, has been a fairly consistent opponent of trade legislation, although his rhetoric on trade has mellowed some as the Ranking Member on the Trade Subcommittee. Representative Pascrell circulated a letter to colleagues announcing he would seek the chairmanship of the Subcommittee, promising a push for increased transparency from USTR, and promising to hold regular meetings and hearings with the Administration. Representative Pascrell voted against TPA for President Obama in 2015, and he voted against CAFTA-DR and the free trade agreements with South Korea and Colombia. He voted to support the free trade agreement with Panama and supported the Miscellaneous Tariff Bill

in multiple years. Representative Pascrell was not in Congress when the original NAFTA was voted on in 1993.

On the Republican side, only 14 current members of the committee will be returning in 2019. Even if Democrats' margins increase enough to flip the current ratio of 24 to 16, Republicans would still add two members to the influential committee.

### **What the Newly Elected Democrats Said on Trade:**

Democrats, to a large extent, did not focus on trade policy in the election, so many of the new members do not have public statements regarding trade policy or free trade agreements as they enter office in January. Many of the newly elected Democrats are from suburban districts where labor is less of a factor, and constituents are higher educated. This has traditionally been where the relatively small pro-trade wing of Democrats in the House has come from, with agricultural districts that export being the other area to draw support.

Democrats did not focus on trade for a number of reasons. First, President Trump's "tough" attitude against China resonates with many voters, who support cracking down on China's longstanding industrial policies. Second, candidates relying on the support of trade unions for funding or logistical support could not risk losing an endorsement.

For example, Jennifer Wexton, defeated Representative Barbara Comstock in the closely watched VA 10<sup>th</sup> district, which is a long-held Republican district just outside of Washington, D.C. Representative-elect Wexton did not include a position on trade or trade agreements on her campaign website and did not release any statements on trade during the campaign. Instead, she focused on issues including gun violence, healthcare, immigration, and wages. She also explicitly linked her opponent to President Trump, tapping into significant Democratic opposition to the President.

In the Virginia 7<sup>th</sup> district, which is just outside the state capitol of Richmond, Abigail Spanberger defeated incumbent Representative Dave Brat. Brat, a tea party Republican who famously defeated then-Republican House Majority Leader Eric Cantor in a primary challenge in 2014 by arguing Cantor was not conservative enough for the district. Spanberger won 50.1 percent to 48.7 percent. Spanberger did not comment on free trade agreements during the campaign and also did not take a position on trade in her platform. However, during one debate she was critical of the "trade war" with China, saying on October 15 "if you think the trade war is a good thing, ask the 20,000 Ford workers who were just laid off."

Florida's 27<sup>th</sup> district, which covers southern Miami and Miami Beach, flipped after long-serving Republican Representative Ileana Ros-Lehtinen's retirement, with former Clinton Administration Housing and Urban Development Secretary Donna Shalala winning the district. Incoming Representative Shalala focused on gun violence, wages, and opioid abuse in her race, as well as heavily criticizing the President on immigration. The Clinton Administration in which she served was generally pro-trade, but it is not clear if she will continue that tradition.

In a more mixed suburban-rural districts, such as the Kansas 3<sup>rd</sup> district where Republican Kevin Yoder lost to Sharice Davids, Representative-elect Davids focused on education, health care and gun safety. On the economy, Davids focused on criticizing the Republican-led tax reform and advocating for infrastructure investment, small business health care incentives, and rural broadband access.