

# Intelligence MEMOS



From: Christopher Sands  
To: The Hon. Chrystia Freeland, Minister of Foreign Affairs  
Date: April 11, 2019  
Re: **WASHINGTON AND THE USMCA DELAY: CAUSE FOR CONCERN?**

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Four months after its signing, the United States Congress still has not acted on approval the replacement for NAFTA. Why not? And should Canadians be worried?

International trade is assigned by the US Constitution to the legislative branch because tariffs were the primary means of raising federal revenue before the introduction of income taxation. Legislation to implement trade agreements must be introduced first in the House of Representatives since they affect the tariff and are therefore [“money bills.”](#) This is similar to the practice in the Canadian Parliament, where money bills must originate in the House of Commons.

The [2018 U.S. elections](#) gave the Democratic Party a majority in the House of Representatives, and [Nancy Pelosi was elected Speaker](#) of the House for a second time. Three factors have made her the central figure in the fate of the USMCA.

First, during her previous term as Speaker of the House, [Pelosi refused to introduce implementing legislation for the U.S.-Colombia Free Trade Agreement](#) negotiated by the George W. Bush administration, which was delayed for four years [and ratified](#) only when Republicans reclaimed the majority of House seats in the 2012 midterm elections. There is no timetable in the [Bipartisan Congressional Trade Priorities and Accountability Act of 2015](#) (TPA 2015) that requires the speaker to begin the ratification process, only a strict schedule for legislative review, debate, and voting that begins once the implementing legislation is introduced in the House.

Second, the administration is submitting [draft implementing legislation under TPA 2015](#), but for Pelosi it is only a draft. While no amendments to the legislation are permitted after it has been introduced, changes to the draft may be made by Congress prior to introduction in the House, giving her a second source of leverage over the agreement.

Third, [the traditional partisan positions on trade have been shifting](#), and the Trump administration has sought to win over Democrats through careful consultation and by including their priorities in the USMCA. Members of the House of Representatives are famously independent (raising most of their own campaign funds). Newly elected progressive members of the House Democratic Caucus have challenged Pelosi to act on the [Green New Deal](#) and [impeachment](#), priorities that could prompt moderate members to defect and vote with Republicans. It is not certain that Pelosi can keep her caucus united on trade or any other issue, particularly as the November 2020 elections approach.

Even if Pelosi allows the USMCA implementing legislation to be introduced in the by May 1, [the TPA 2015 timetable for congressional action](#) on the legislation is measured in legislative days rather than calendar days. Thus the 45 days for committee review and 15 days for chamber debate could extend to 20 weeks in each chamber, and if the Senate chose to wait for House passage before taking up the legislation, a full 40 weeks might pass before the legislation reached President Trump’s desk for signature.

If the approval process is delayed and the expected date for congressional approval stretches into 2020, many in Congress will hesitate. A trade vote before an election will make many incumbents nervous. Democrats will consider that they might have a chance to reopen the USMCA negotiations under a Democratic administration in January 2021 and get a “better deal.” Republicans will hope that they might regain a majority in the House and avoid changes demanded by Pelosi now.

Meanwhile NAFTA continues to govern Canadian access to the US market, and President Trump’s threats to withdraw the United States from the agreement are widely discounted in Washington. Yet the continuing uncertainty is unhelpful to business as it considers new investment and production plans. The US-China trade war along with Brexit confusion compound the problem of uncertainty for Canada and the global economy. US partisan politics are a perennial factor, but the consequences of USMCA delay make the clash between Trump and Pelosi of critical importance to Canadians and their future prosperity. However uncomfortable, Canadian diplomacy must be prepared to step into the arena of US domestic politics and urge an end to gamesmanship and a resolution of economic uncertainty as soon as possible.

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