

Intelligence MEMOS



From: Christopher Sands
To: David MacNaughton, Canada's Ambassador to the US
Date: November 9, 2018
Re: **HOW U.S. MIDTERM RESULTS WILL AFFECT CONGRESSIONAL APPROVAL OF THE USMCA**

The results are in, and Democrats have successfully won a majority and control of the House of Representatives. Republicans retained control over the Senate (with a slightly larger majority). What does this mean for the United States Mexico Canada Agreement (USMCA)?

The USMCA needs approval from the new 116th Congress. As an agreement rather than a treaty, USMCA requires implementing legislation to pass both houses of Congress before President Donald Trump can sign it into law.

The terms of [the Bipartisan Congressional Trade Priorities and Accountability Act of 2015](#) (TPA 2015) in which the Congress granted authority to the executive branch to negotiate new trade agreements, set timelines and deadlines for the executive branch negotiation of those agreements and for congressional approval.

The Trump administration has met its deadlines so far, and the next step is the signing of the agreement by all three countries, expected on November 30.

Next, TPA 2015 Section 6 (a)(1)(C) states that no later than 60 days after signing (that is, by January 29 if counting calendar days) the administration must provide Congress with a detailed description of US statutes that would need to be revised in order to implement the USMCA.

The U.S. International Trade Commission (ITC) has 105 days after signing to produce its assessment of the USMCA. It may take less time, but the latest it can be submitted under TPA 2015 Section 5 (c)(2) would be March 15, 2019.

This analysis will be an important component of the USMCA submission package required by Congress, but it is not the only required item. Section 6(a)(1)(D) and (E) of TPA 2015 requires that 30 days before final submission the administration must send Congress a final legal text of the USMCA, draft implementing legislation, and a statement of administrative action that specifies the planned changes to regulations and procedures that will be made in order to give effect to the USMCA that do not require changes to legislation, and can be implemented under prior statutory authority given by Congress.

For the executive branch submission of the USMCA to Congress to be considered complete, TPA 2015 sections 5 (d)(1), 5 (d)(2), and 5(3) require the administration to submit an analysis of the environmental impact of USMCA commitments, a review of the labour market impact of the agreement on employment in the United States, and an enforcement plan for the USMCA.

On condition that the administration meets all of the requirements and deadlines in TPA 2015, Congress is committed to an expedited approval process. The House Ways and Means Committee and Senate Finance Committee each have 45 days to review the USMCA and related documents submitted by the administration, after which the implementing bills are automatically sent forward and the House and Senate have 15 days to debate the legislation before an up-or-down vote must be held with no amendments allowed.

During the congressional process, the timeline refers to days when the legislature is in session (legislative days). The entire approval process takes just 90 days in legislative session or sitting, as little as three months.

But there is no fixed time for starting this final phase. And since the USMCA changes tariffs, it is considered a Money Bill and implementing legislation must be first introduced in the House of Representatives. It will now be up to Democratic leaders to initiate this process. They may delay and use this as leverage to obtain concessions from the Trump administration on other issues.

Trade itself was not a major issue in Tuesday's midterms. The blue-collar voters who shifted from Democrats to Donald Trump two years ago because of his feisty trade stance are viewed by both parties as swing voters. Democrats hope to win them back, and therefore will be reluctant to oppose a deal that Trump has proclaimed as a triumph. Republicans, too, want to hang on to these votes, and will be similarly inclined to support the USMCA in spite of the party's historic past for freer trade. Although Trump's trade policy has unsettled global markets and US trade partners, the midterm results suggest his approach retains popular support for now.

Congressional approval of the USMCA prior to Canada's federal election next October would benefit the Trudeau government and the Canadian economy by confirming Canada's market access to the United States and Mexico. The path to approval specified in TPA 2015 makes this goal attainable, but not guaranteed.

The challenge before you, Ambassador, is to manage Canadian expectations as the USMCA moves through the complex congressional approval process, while standing on guard against surprises that may emerge as the text and supporting documents are finalized and the complete package is reviewed by Congress.

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