

Emboldened Dems May Push Back On Trump's Trade Agenda

By Alex Lawson

Law360 (November 7, 2018, 1:07 AM EST) -- Democrats seized control of the House in Tuesday's midterm elections, positioning themselves as a potential bulwark against the Trump administration's sweeping trade agenda — if they choose to pick that fight.

The first showdown between the White House and the newly empowered Democrats on trade will be the debate and passage of the U.S.-Mexico-Canada Agreement, which the administration struck in September to replace the North American Free Trade Agreement.

"2019 will be the year when Trump realizes he's going to have to work with Congress," Squire Patton Boggs LLP partner and former House Ways and Means Committee trade counsel Frank Samolis told Law360.

USMCA is a sprawling, complex deal that mostly keeps the NAFTA status quo in place. But it does contain updates that Democrats might be able to rally behind, including a tightening of the agreement's automotive rules of origin and a tethering of automotive tariff benefits to a \$16 minimum wage.

However, it remains uncertain whether congressional Democrats will be willing to hitch their wagon to President Donald Trump's most definitive trade policy achievement, given the party's overarching animosity toward the White House.

"While the agreement includes much of what Democrats sought, it is unclear if that will translate into votes," said Covington & Burling LLP attorney John Veroneau.

There is precedent for an opposition Congress to let a president's trade deals die on the vine, as Democrats did in 2007 with President George W. Bush's pacts with South Korea, Panama and Colombia. The deals were eventually passed years later under the Obama administration after some of their provisions were tweaked.

It's likely too soon to tell if Democrats will go to the hilt on USMCA, but most expect them to mobilize in an attempt to wedge new language on labor, the environment and other priority areas into side letters or the deal's implementing legislation when the time comes.

Depending on how aggressively the Democrats pursue those changes, it could create another hiccup for ultimate passage of the USMCA if the deal is watered down to the point that congressional Republicans

are unwilling to get behind it.

“One of the risks is by chasing for Democratic votes, you’re going to lose Republican votes or at least Republican enthusiasm,” Wiley Rein LLP partner Stephen Claeys told Law360.

Apart from USMCA ratification, a Democratic House may also look to push back on Trump’s imposition of tariffs on steel, aluminum and a litany of industrial and consumer goods from China.

Republicans have introduced various bills to curtail the president’s authority over trade, but none have gained much traction as Senate Majority Leader Mitch McConnell, R-Ky., has publicly said he does not wish to spend political capital on legislation that Trump will veto and potentially sour Capitol Hill’s relationship with the White House in the process.

Democrats will also be faced with a Trump veto threat, but they likely won’t worry about any political blowback from Trump and may opt to put their collective foot down to chill the president’s tariff authority.

“I think the Democrats will want to lay down a marker,” Samolis said. “They’ll say, ‘Here’s our alternative. If you like what Trump has done with trade, so be it, but if you think it’s better to have some checks and balances or restraint on executive power ... this is our way to come up with laws that will have a bipartisan flavor.’ I would guess that would be pretty hard for the Republicans to oppose.”

There are questions as to how active a Democratic Congress will be on trade as it sorts out its own policy priorities, but one event that could push trade up the ladder is if the administration follows through with hefty tariffs on imported cars, trucks and parts.

The U.S. Department of Commerce is still investigating whether to put those duties in place, using the same Cold War-era law the administration used to implement its steel and aluminum duties. There has been bipartisan pushback on the auto probe that could mushroom into full-blown revolt if the White House moves ahead, with Democrats leading the way.

--Editing by Emily Kokoll, Rebecca Flanagan and Adam LoBelia.