United States: Trade Policy In Congress After The 2018 Election

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Writing before the mid-term election results are in, we anticipate that President Donald J. Trump will continue to aggressively pursue his original campaign pledge to rebalance relationships with key US trading partners. Whichever party controls either chamber of Congress, President Trump will likely continue pushing the boundaries of Executive authority to pursue policy objectives unilaterally. The President will not, however, be able to ignore Congress entirely. President Trump will quickly need the new Congress for legislation to implement the US – Mexico – Canada (USMCA) trade agreement. This is a key policy objective for President Trump, and was a leading campaign promise in 2016. Yet, Congressional approval of the deal is far from certain, regardless of which party controls the House and Senate. The President and his team will have to expend significant political capital to move the USMCA through Congress. Similarly, President Trump will need Congressional support to implement any bilateral trade agreements the Administration negotiates with the United Kingdom (UK), the European Union (EU), and other sovereign nations in the next two years. But, because trade does not cut along party lines, President Trump's disruptive trade policies could find allies and opponents on both sides of the aisle.

This memorandum is in four parts. Part One is an overview of the likely political/policy environment in Congress that will impact the trajectory of international trade policy, regulation, and enforcement for the next two years. In Part Two, we suggest who might be the Congressional leaders on trade, highlighting priorities for both new, emerging leaders and more established veterans. In Part Three, we shift to an evaluation of the Congressional dynamics that could impact President Trump's ability to secure legislation to implement the USMCA, and potentially, additional legislation related to bilateral trade agreements with the EU, Japan, the UK, and perhaps others. Finally, in Part Four, we consider how new, more vigorous oversight pressure might impact the

Administration's tariff policies and trade remedy enforcement between 2019–2020.

Part One: Political and Policy Environment for the New Congress

Big Picture Political Dynamics Impacting Congressional Trade Policy

There is a strong possibility that the mid-term election results will disrupt the policymaking status quo for a range of stakeholders that currently operate in a relatively low-risk environment in Washington, DC. Indeed, anticipated Democratic control of one or more chambers in Congress could trigger a dramatic change in direction from the policy choices of the current Republican majority, which often works in concert with the White House.

That is not necessarily the case, however, in the area of international trade enforcement, regulation, and legislation. Here, stakeholders already operate in a uniquely high-risk, volatile environment due to President Trump's aggressive—even disruptive—international trade initiatives. His actions are expected to continue at variance from the traditional Republican orthodoxy favoring trade liberalization.

Moreover, trade is an issue where political party affiliation is not the sole or even primary determinant of a member of Congress's policy stance. Many Congressional Democrats approve of protectionist trade policies, especially when organized labor groups advocate for such positions. More than a few Congressional Republicans have seemingly acquiesced or even embraced protectionist trade policies under the President's influence. Still, most Republicans continue to support free trade principles in their voting patterns, and Congressional Democrats, especially in areas dominated by knowledge-based industries rather than organized labor, often do as well. The fact that trade policy perspective does not break along party lines means it is difficult to forecast what a new Congress will do in response to President Trump's imposition of tariffs, especially until we know the full election results.

"Congressional coalitions on trade policy have been shattered. It is time to fundamentally reassess how we look at Congress as it shifts away from the traditional roles the parties have played in trade policy. It is a new day for trade policy."

– Senator Chris Dodd

We do know, however, that neither political party wants to be viewed as weak on one of President Trump's most effective messages, both in Washington and on the campaign trail. President Trump's unorthodox trade agenda is driven by a strong "America first" instinct aimed at resetting trade relationships worldwide, even if he must sacrifice some degree of civility in order to force changes in the status quo. President Trump's targeting of China's unfair trade practices and his "get tough on China" message have resonated with some key constituencies across the country. While elements of both parties may disagree with his tactics, there is little appetite in either party to challenge the President's agenda for addressing the China problem. Further, for many, a serious challenge to the President is not in the cards. Even if his tactics are harmful, some agree with his end game, while others are afraid their constituents agree with the end game.

The policy divide on trade—extending from "free and fair traders" to "America First" nationalists—is being fought out within both parties, although the balance is different within each party. Thus, we expect only nuanced changes for international trade policy in the 116th Congress, as neither pole in the trade debate is likely to have enough momentum to force the President to change course.

Congressional Policy Will Reflect These Political Dynamics

The evolution in Congressional policy will likely be most noticeable in three key areas: (1) implementation of bilateral trade agreements, (2) appropriations policy riders, and (3) oversight and investigations.

- **Legislation to Implement Bilateral Trade Agreements. Even allowing for the internal debates within each party, if Congressional Democrats win one or both chambers of Congress, they will have the procedural tools needed to frustrate President Trump's timeline for quick action on USMCA. They also could try to secure targeted concessions on Democratic priorities before passing USMCA, if they decided to support the agreement. The President will need to keep these dynamics in mind in order to secure Congressional support. The Trade Promotion Authority (TPA) legislation affords the Trump Administration a number of advantages designed to limit Congress's ability to influence**

the text of a trade agreement itself. TPA does not, however, prevent Democratic majorities in either chamber from squeezing concessions out of the Administration on core priorities (either as part of the implementing legislation for the USMCA or separately). Both chambers also have rulemaking power that would let the majority of a chamber override the TPA's expedited procedures and stall the approval process. Similar use of procedural leverage could play out later in the 116th Congress, if the Administration secures agreements with the EU or other parties currently negotiating with the US on potential bilateral trade agreements.

- **Appropriations Strategies Could Shift. Democratic majorities also could change the Administration's strategy through the appropriations process that funds the federal government each year. Typically, the appropriations process has been a pathway for the party not in the White House to force some policy preferences onto the Executive Branch. So far in the Trump Administration, Republican leaders who control the appropriations process have not shown a willingness to use the process to disrupt the Administration's policies. That is not to say that Republicans critical of the Administration's trade policies completely avoided appropriations as a vehicle to voice concern. Senate appropriators, for example, used the FY 2019 Commerce-Justice-Science (CJS) Appropriations bill—which is still under consideration—to relay concerns tied to enforcement actions, including the Administration's over-emphasis on bilateral trade deficits in guiding US trade policy and the adverse effects that foreign retaliation against US tariffs might have for domestic agriculture. Nevertheless, with Democrats likely to lead the House (where all appropriations bills originate), there is a meaningful chance that future appropriations for trade enforcement-related agencies could come with policy directives from Congress on how the agency can or cannot spend those funds. Thus, Democratic majorities in either or both chambers would empower Democrats to wield appropriations tools to try to limit Presidential authority and shape trade policy and trade enforcement priorities. Given the mixed positions on trade in both parties, complex negotiations between chambers in a divided Congress (e.g., a Democratic House and a Republican Senate) seem likely and could produce unpredictable results in the trade policy arena.**
- **Oversight Pressure Will Intensify. If Democrats take either chamber, they also would shift the oversight and investigations agenda in the 116th Congress and likely intensify pressure on the Administration. The**

Republican-led House Ways and Means and Senate Finance Committees held hearings over the past two years requiring the Administration to defend a range of executive initiatives like the imposition of tariffs, but they did so in a way that was not hostile to the Trump Administration. Conversely, Democratic-led Congressional committees will make tough oversight of the Trump Administration a top priority, and they will conduct oversight in a more adversarial way. A dramatic increase in oversight pressure, including the potential use of subpoenas to secure access to documents and interviews, could pose problems for Administration leadership tasked with implementing the President's agenda. Enhanced oversight also may accelerate departure of political appointees from the Administration, complicating the path forward for new nominees to be confirmed in the Senate.

Part Two: Congressional Leadership Changes

Because of the unusually high number of retirements this year, as well as expected election outcomes, we project somewhere between 60 – 100 new Senators and Representatives, with a substantial number of new members joining the committees that oversee trade issues. Those new Senators and Representatives will be the targets of intense advocacy campaigns early in 2019 to educate them on trade issues and to curry favor on those issues for the long-term.

House. With a flip in House control, the House Ways and Means Committee would likely be run by Rep. Richard Neal (D-MA), currently the Ranking Democratic member, who has a moderate record on trade issues and served on the Trade Subcommittee in prior Congresses. Ranking Member Neal recognizes much of the tariff debate this Congress has divided the Democrats on the Committee, primarily by geography and not by ideology. Rep. Bill Pascrell (D-NJ), currently the Ranking Democrat on the Subcommittee on Trade, will likely emerge as the chair of that Subcommittee. Rep. Pascrell is cautious in conducting trade policy and will likely focus on oversight of the Trump Administration's chaotic approach to trade and the lack of transparency on trade policies. On the Republican side, Rep. Kevin Brady (R-TX) is expected to remain the top Republican on the committee in the 116th Congress and thus would serve as the Ranking Member. He will need to appoint a new leader to serve as the Ranking Republican on the Trade Subcommittee as the current chair, Rep. Dave Reichert (D-WA), is retiring. Reps. Devin Nunes (R-CA) and Erik Paulsen (R-MN) are next in line, but Rep. Nunes already leads

the Permanent Select Committee on Intelligence (PSCI) and may not want to leave that post (indeed Nunes gave up the Trade Subcommittee chair several years ago to take PSCI), and Rep. Paulsen is behind his Democratic challenger in recent polls.

Senate. In the Senate, assuming Republicans hold the chamber, questions remain as to which Republican will emerge to serve as chairman of the Finance Committee as Sen. Orrin Hatch (R-UT) retires at the end of this year. Sen. Charles Grassley (R-IA), who currently chairs the Judiciary Committee but previously chaired the Finance Committee from 2003-2007, could emerge as the consensus choice, at least for a limited time. In a recent press call concerning the Administration's trade policy, Sen. Grassley told reporters: "we thought they didn't know what they were doing. Now it looks like things are coming together." The Senator's statement indicates he might be a strong ally to the Administration if/when he has the gavel. Other leading contenders for the chairmanship include senior members who currently chair other committees, such as Sens. Mike Crapo (R-ID)(Banking) and Pat Roberts (R-KS)(Agriculture). Another potential candidate is Sen. John Cornyn (R-TX), who will likely cycle out of his current leadership position as Republican Whip. If Sen. Cornyn does not move up to chair the full Finance Committee, he will likely remain as chair of the Subcommittee on International Trade, Customs, and Global Competitiveness. Of note, all of these leading Republican contenders are from agriculture states and are likely to address (1) trade priorities led by Senate Majority Leader Mitch McConnell (R-KY) and (2) retaliatory measures aimed at the agriculture industry.

On the Democratic side, Finance Committee Ranking Member Sen. Ron Wyden (D-OR) will likely remain in his current role, as will Sen. Bob Casey (D-PA), who currently serves as the Ranking Member of the Subcommittee on International Trade, Customs, and Global Competitiveness. While Ranking Member Wyden is known for working across the aisle, he has criticized President Trump's trade policies as chaotic and without results.

Part Three: Trade Agreements and the Likely Congressional Response

Moving into 2019, the Administration has a full agenda of new trade negotiations, including passage of implementing legislation for the new USMCA agreement. Regardless of which party is in leadership, Congress will likely look to actively engage with the Administration on the key negotiating priorities for each new agreement. Congressional leaders are likely to point to

this oversight as a necessary means to "check" the Administration's negotiation tactics with key allies such as South Korea, Mexico, Canada, Japan, the EU, and the UK, as the Administration seeks key concessions aimed at "rebalancing" global trade. Commerce Secretary Wilbur Ross has taken a prominent role in the Administration's trade agenda, and spearheaded the use of Section 232 and trade remedies to provide increased protection of domestic industries. However, US Trade Representative (USTR) Robert Lighthizer is the lead on trade negotiations, a prominent feature of the Administration's 2019 agenda. Ambassador Lighthizer, a long-time Washington insider with strong ties to congressional leaders on both sides of the aisle, will need to determine how to incorporate Congressional concerns to secure bipartisan support for any agreement he negotiates, especially if he faces a newly Democratic House of Representatives.

President Trump will of course seek to leverage any decision on trade agreements to his political favor. If Congress passes legislation approving new trade agreements, the President will ensure voters know he fulfilled a campaign promise. However, if a Democratic-led chamber of Congress refuses to approve a new trade agreement, the President could then have ammunition for his 2020 campaign and potentially more reason to continue stricter trade enforcement measures. More importantly, if there is a slowdown in the overall domestic economy, President Trump could then point fingers at Congressional Democrats who do not support his plans to improve trading conditions for the country.

A review of the agreements and what actions may come next are outlined below:

- **US – Mexico – Canada Agreement (USMCA). One of the Trump Administration's top priorities upon entering office was to negotiate an agreement replacing or amending the North American Free Trade Agreement (NAFTA). While the negotiation process took nearly two years to complete, the Administration ultimately did reach agreement with Canada and Mexico and released the text of a new agreement, now called the US – Mexico – Canada Agreement (USMCA), on September 30, 2018. The release of the text triggered the 60-day review period under the Trade Promotion Authority (TPA) statute just in time to ensure the deal can be signed by out-going Mexican President Peña Nieto before he leaves office on December 1, 2018. Congress is now in the midst of reviewing the USMCA and awaiting an International Trade Commission (ITC) report evaluating the economic impacts of the**

agreement, which may influence Congress's drafting of implementing legislation required for USMCA consideration and its vote.

Congress will likely consider the USMCA implementing legislation in 2019. Despite early speculation that Republican leaders might force expedited consideration during the post-election lame-duck session, Majority Leader McConnell and other Senate leaders put that speculation to rest in October by announcing that the Senate would not consider the USMCA until the 116th Congress. If Democrats win control of one or both chambers of Congress, the mandated timeline for USMCA could make that process one of the first tests of the new majority leadership team. That is not a welcome development, as any new majority party would rather spend its first days focused on its own campaign promises.

When Congress does begin consideration of the USMCA, passage will be politically complicated. Democratic leaders will likely push for language in the implementing legislation to address concerns with the labor and environment provisions negotiated in the USMCA. In addition, assuming the Democrats take the House, the Administration will be forced to collaborate with House Democrats to some extent to ensure they do not derail approval of the agreement through a disapproval resolution or other tactics. Democrats could ultimately decide not to introduce such a high-profile resolution, given the threatened alternative of a complete withdrawal from NAFTA, which could provide an unwelcome shock to the economy, disrupting supply chains and leaving domestic industry vulnerable to additional costs. However, use of other more subtle procedural levers could complicate or delay consideration of the USMCA implementing legislation.

The TPA process also could be quite challenging even if Republicans maintain a narrow majority in the House. In that event, Republican leaders would need to garner support from an increasingly conservative Republican Conference, as most Republicans at risk of losing in this election are moderates. The Tea Party block will be big enough to disrupt legislation in a narrowly controlled Republican majority. In contrast to Democrats who may seek to strengthen labor and environment agreements, for example, the conservative wing of the GOP may find certain provisions in the USMCA labor chapter troublesome. President Trump ultimately should be able to corral this restive group,

since many Tea Party members are the President's strongest supporters in Congress. However, the GOP experience attempting to secure a majority in support of TPA's reauthorization in 2015—with a strong majority and smaller Tea Party contingent—suggests hurdles could arise that complicate the President's plans.

- **US – Korea Free Trade Agreement. The Trump Administration also sought amendments to the Korea – US Free Trade Agreement (KORUS) early in the President's first term. Citing the US trade-in-goods deficit with Korea, President Trump instructed Ambassador Lighthizer to work with Korea to gain further access to certain sectors of the Korean economy, including automobiles and pharmaceuticals, by convincing Korea to remove certain non-tariff barriers to trade. On September 24, 2018, with strong Congressional support, President Trump and President Moon Jae-in signed the text of the revised KORUS. In addition to a number of technical amendments, the revisions included commitments from Korea to lower its barriers to imports of US automobiles and permit broader access to US pharmaceuticals in the Korean market. In return for these concessions, the US agreed to remove the Section 232 tariffs on Korean steel imports and implement a steel quota set at 70 percent of 2017 import levels.**

  Congress's role in the KORUS amendment process will be limited, due to the technical nature of the amendments. However, the Korean National Assembly must still vote to approve the amendments. Issues may arise if the Korean National Assembly feels Korea was offered less favorable terms than other trading partners. In particular, the new USMCA deal includes provisions safeguarding Mexican and Canadian automobile imports from potential 232 tariffs. In light of the pending threat of the Section 232 tariffs on US imports of Korean automobiles and automobile parts—described in more detail below—the Korean legislature may defer approving the deal until it is able to secure an exemption from new auto tariffs similar to Canada and Mexico. Similarly, Mexico and Canada are seeking a resolution to the steel and aluminum Section 232 tariffs. If the terms of such a resolution are significantly more favorable than the 70 percent quota offered to Korea, we would expect Korean political leaders to seek parity with the better terms offered to Mexico and Canada.

  In sum, while it is unlikely for technical reasons that Congress will play a formal role on KORUS in the 116th Congress, congressional

policymakers who have a strong interest in Korea, or who sit on key committees in Congress, are instead likely to engage with the Administration to protect stakeholder interests.

- **Intent to Negotiate Other Bilateral Agreements. On October 16, USTR notified Congress that it intends to initiate formal trade negotiations with the European Union, the United Kingdom, and Japan. While informal coordination has begun, formal talks can only begin 90 days after this notice. UK negotiations are set to begin after the country officially exits the EU on March 29, 2019. Because many of these countries are involved in exporting a significant volume of automobiles to the US, the Administration will likely attempt to leverage the pending Section 232 national security investigation of automobile and auto parts imports to gain key concessions.**

    - **Senate leaders have said a bilateral deal with Japan is first in line. They would like to see it include agreements on beef and pork products, which were negotiated during the Trans-Pacific Partnership (TPP) discussions. Any Japan agreement would be less comprehensive than the TPP and likely be negotiated in two phases, including an early phase focused on reducing tariffs on goods between the two countries. Japan, however, may be keeping a watchful eye on USMCA and outcomes for Canada and Mexico with regard to both the steel Section 232 and any future automobile and auto parts 232 proceedings. Japan, which has advocated having the US join TPP, rather than negotiate a bilateral deal, also may prefer to try to delay completion of negotiations to avoid getting a worse deal than other trading partners.**
    - **A transatlantic trade deal with the EU will likely address issues related to agriculture and automobiles, given the imbalance of auto trade that currently favors the EU. Also, it is expected the two nations may consider changes during the initial negotiations to pharmaceutical and digital trade markets, leaving separate negotiations to take place later regarding an insurance "covered agreement" (defined under the Dodd- Frank Act) and other financial services matters. After discussions in Brussels on October 17, Secretary Ross made clear President Trump wants "good faith, quick negotiations that produce tangible results," but European Commission President Jean-Claude Juncker and EU**

Trade Commissioner Cecilia Malmström may want to move more slowly to secure an agreement that represents a broad consensus.

- **Negotiations with the UK will take place after its exit from the EU, but USTR Lighthizer and UK Secretary of State for International Trade Dr. Liam Fox launched the US-UK Trade and Investment Working Group in July 2017, intended to allow both countries to be well prepared when official discussions begin in 2019. Regardless of who controls Congress, President Trump is likely to prioritize a trade deal with the UK to support its exit from the EU. Of note to the world insurance sector, in late October, the Administration gave notice to Congress under certain Dodd-Frank Act authority to initiate immediate negotiations with the UK on an insurance prudential regulatory agreement with the aim of completing a "signature-ready" agreement by March 29, 2019, the date Brexit is scheduled to become effective.**

Early speculation suggests that bipartisan support exists—at least theoretically—for the Trump Administration's commitment to bilateral negotiations with these key allies. Republican trade leaders in Congress support the Administration's move to deepen ties with key allies. Congressional Democrats, on the other hand, have hedged their support with requests to the Administration to allow adequate time for thoughtful negotiations. But even there, many Democratic leaders begrudgingly acknowledge that the prospect for engagement is a good thing, i.e., better than no deal—while the devil will be in the details of any potential agreement. Assuming Democrats are in charge of the House, there will be a greater focus on oversight of the Administration's trade agenda, but they nonetheless could come to support most trade deals with key allies, like Japan, the EU, and the UK.

Part Four: The Congressional Role in the Administration's Existing International Trade Enforcement Proceedings

President Trump's decision to open investigations and impose tariffs under Sections 232 and 301 of the Trade Act of 1974 has been unpopular in many corners of Congress. That is unlikely to change in the 116th Congress, no matter which party holds the majority in either chamber, because Congressional criticism of the President's policies is largely bipartisan. Unless and until the

Administration negotiates deals to wind down the tariffs they have imposed, a divided Congress raises the possibility of more transactional negotiations between the Trump Administration and individual Senators and Representatives to approve specific tariff exemptions and exclusions. Absent a move to ratchet up the use of statutes like Sections 232 or 301 in a manner that threatens the economy or other core US interests, we do not foresee a dramatic change in how Congress will address the Administration's proceedings under Section 232 or 301. There is a very good chance that a Democratic majority in the US House would ramp up pressure via oversight and investigations, given its skepticism of the Trump Administration. This could force the Administration to publicly justify controversial decisions and expose the President's key advisors to more scrutiny.

Beyond oversight, Congress could be tempted to use the appropriations process to limit the Administration's manpower, to review its initiated trade investigations, as well as to develop legislative proposals amending the current statute that delegates power to the Administration on trade matters. For example, there may be renewed efforts by some members to seek out opportunities to rein in the Administration's unilateral authority under Sections 232 or 301. While we may see such action take shape early in the 116th Congress, it is unlikely there will be enough bipartisan and bicameral support for such proposals to move them through Congress or that President Trump would sign a proposal limiting his Administration's authority even if Congress managed to pass it. Examples of trade enforcement actions on which we anticipate Congress could consider and conduct oversight are outlined below:

- **Section 232 National Security Threat Investigations. Congress will continue exerting pressure on the Trump Administration as it implements the Section 232 tariffs on steel and aluminum imports and considers future actions in the ongoing 232 investigation on automobiles and auto parts. To date, Congressional leaders and individual members have been very active in attempting to influence the 232 tariff exclusions. This Congressional pressure, although not reflected in formal action, has been successful to date in creating a fairer process. For example, the Administration ultimately agreed to implement a robust product exclusion process that allows companies seeking exclusions to respond to US industry objections and allows exclusion requests for products from countries subject to quotas, such as Korea and Brazil. We are just now reaching the point in the process where it could be evident whether Congressional intervention has helped secure an actual exclusion or**

sped up its review. We expect that members of Congress will continue to engage with the Department of Commerce, particularly in support of specific exclusion requests for their constituents and to ensure the Department conducts the process in a fair, efficient, and transparent manner. Similarly, we expect that Congressional members will continue to be vocal about the problems that would be caused if the Administration imposed 232 tariffs on automobiles and auto parts.

Additionally, we anticipate re-introduction of proposals that would rein in the Administration's ability to unilaterally impose 232 tariffs in the future. Sen. Rob Portman (R-OH), US Trade Representative under President George W. Bush, may re-introduce the Trade Security Act (S. 3329). This is a bipartisan bill that would provide the Department of Defense a more prominent role in assessing the national security threats posed by certain products in a 232 investigation, and deciding whether the facts merit the imposition of new tariffs. In the House, Rep. Jim Cooper (D-TN) also may reintroduce the Promoting Responsible and Free Trade Act (H.R. 6923), which would allow Congress to review and approve any Administration action in a Section 232 proceeding before it implements tariffs. Rep. Cooper currently serves as the lead Democratic member supporting that bill, which was technically introduced by Rep. Mark Sanford (R-SC), who will not return to Congress in 2019. Despite a number of initiatives, however, absent highly controversial new actions by the Administration, we do not anticipate that legislation restricting the President's trade authority will get much traction in the new Congress. Republican leaders in the Senate, for instance, do not appear eager to pick a fight with President Trump on one of his priority issues. Additionally, key Senators aligned with Sen. Portman, including Sen. Bob Corker (R-TN) and Sen. Orrin Hatch (R-UT), are not returning to Congress next year. Finally, House Democratic leaders may not elect to utilize scarce political capital to advance legislation that may ultimately reduce authority of the Executive Branch that they hope to occupy in 2021. Consequently, while we may see activity in this space next Congress, it seems unlikely that new statutory limits will be imposed on current Presidential authorities under Section 232.

All bets are off, however, if the President imposes tariffs in the automobile and auto parts 232 proceeding that is still pending.

- **China Section 301 Investigation. Regardless of which party controls either chamber of Congress, there is strong bipartisan support for new**

policies combatting unfair Chinese trade practices, including those that harm American intellectual property rights. The President leveraged these concerns by requiring USTR to initiate a 301 investigation to identify such Chinese policies and practices, specifically, forced transfer of technology and theft of intellectual property. After the investigation concluded, the Administration began imposing 25 percent tariffs on imports from China. While the first tranche of tariffs was largely targeted at products related to concerns about China's unfair technology transfer and intellectual property policies and its "Made in China 2025" industrial development policy, additional tariffs were then imposed that hit a broad range of products without any nexus to the original Section 301 investigation. After imposing 25% tariffs on $50 billion of imports in the first two tranches, in response to Chinese retaliatory tariffs, the Administration imposed 10 percent tariffs in September on a third tranche of products worth nearly $200 billion. These imports encompass a broad range of intermediate and consumer goods. Those 10 percent duties are set to increase to 25 percent on January 1, 2019. In addition, the Administration has threatened to impose tariffs on another $267 billion worth of imports if China does not cease retaliation and take action to address the concerns raised in the Section 301 investigation.

Fears regarding China's adverse impact on a range of US industries have so far provided Trump with significant political latitude to impose tariffs via the Section 301 proceedings. Despite the significant economic impacts that tariffs could inflict on a range of industries, leadership in the 115th Congress did not respond to the President's Section 301 decisions with an organized or robust oversight process.

It is unclear whether this will change dramatically in the 116th Congress. Assuming the 301 tariffs remain in place, it seems likely, at minimum, that coordinated grassroots efforts will drive individual members or coalitions of members to take actions on near term issues. For example, there is growing support for creating an exclusion process for the tariffs imposed on the third Section 301 tranche that is similar to the processes used for the first two tranches. There may also be pressure to ensure USTR makes fair decisions on the Section 301 exclusion requests. There also may be some effort to include Section 301 proceedings in broader oversight hearings on the Administration's trade enforcement actions or to provide a platform for stakeholders to

continue to raise concerns. After all, the third list process—which impacts roughly $200 billion in exported goods—is already mobilizing a large trade association movement in support of a formal exclusion process. This effort yielded many recent Congressional letters in support of an exclusion process. If the Administration does not soon address these concerns, Congress may take more aggressive action. However, neither party wants to be seen as hobbling a hard-line position on China.

Conclusion

There is a shrinking chance Republicans will control both chambers of Congress after the election. Most political handicappers expect Democrats to win control of the House, while forecasting the GOP to remain in control of the Senate. Additionally, we expect the dispersion of views on international trade within each party to continue. Without a unified approach to trade that counters the substance and politics of the President's trade policy agenda, we are not convinced that conversations around trade policy will look much different in the 116th Congress than they do today. Democratic control of the House will enable strong oversight activity that holds the Administration accountable for its trade policies, but Democrats may have political reasons not to offer a robust trade agenda as an alternative to the President's policy preferences.