



U.S. Congress could stretch out approval process for new NAFTA

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WASHINGTON—Elizabeth Warren, Bernie Sanders and Sherrod Brown say the new NAFTA needs big changes. Joe Biden, Kamala Harris, Beto O'Rourke and Amy Klobuchar, among others, haven't yet offered firm opinions.

Their opinions now matter. Any one of these current and possible Democratic presidential candidates could determine the fate of the agreement, either as the party nominee or as the president.

Although the leaders of the U.S., Canada and Mexico signed the agreement last November, this is not a done deal: there is a real chance more negotiations will be necessary to satisfy the Democrats, who now control the U.S. House of Representatives. And there is a real chance that the approval process will drag on into the next presidential term, which begins in 2021.

Congressional Democrats say they will not approve the agreement unless President Donald Trump, who calls it the USMCA, agrees to add language that would make it easier to enforce provisions on labour and on the environment. Democrats, like Trump, have long expressed concerns about U.S. jobs being lost to Mexico, where wages and labour standards are lower.

Politics are also a factor. Democrats are reluctant to give Trump perceived wins as the 2020 election approaches. House Speaker Nancy Pelosi, who used procedural tools to delay votes on George W. Bush trade agreements, will eventually start taking cues from the person who emerges as the party nominee.

Jennifer Hillman, a senior official with the U.S. trade representative's office during the Bill Clinton administration, said she thinks there is only a 10 per cent chance the current Congress will ratify the agreement.

"What is the incentive for Nancy Pelosi to put this up on the floor of the House?" said Hillman, now a Georgetown Law professor.

In her most positive public remarks about the deal to date, Pelosi told HuffPost's Jen Bendery and a group of other U.S. reporters on Friday that it "has been not as contentious as some of the other trade bills, so far," and she said Trump's trade chief has been "very attentive" to Democrats' concerns.

But Pelosi added: “The fact is that the bill, no matter how good it is, if it doesn’t have enforcement, it’s just a conversation.” And she said, “I voted for NAFTA the first time, and I can just tell you, I can still feel the heat.”

Republicans have a whole separate set of concerns. And Rep. Kevin Brady, a senior Republican on the trade file, said at a Washington event Tuesday that members of both parties have told him they are not even willing to “consider” the agreement until the steel and aluminum tariffs on Canada and Mexico are “ensured to be lifted” and Trump abandons his threat of imposing quotas in their place.

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The process will be delayed at least slightly by Trump’s just-concluded government shutdown. The U.S. International Trade Commission said this week that its report analyzing the economic impact of the new agreement, which Congress originally expected by mid-March, will now come as many as 35 days later.

Current and likely Democratic presidential candidates differ in their trade views. Warren, Sanders and Brown are vehement opponents of NAFTA. Former vice-president Biden voted for NAFTA but has since said it needs to be changed, while O’Rourke, a former congressman from Texas, has been a vocal NAFTA supporter.

Trump is often more aligned with the trade-skeptical views of congressional Democrats than with pro-trade congressional Republicans, and the agreement includes some new protectionist provisions. John Weekes, Canada’s chief negotiator on the original NAFTA, said the Democrats probably see the revised NAFTA as an improvement on the original — but, “of course, politics will enter into this.”

“I think it’s going to be pretty hard,” said Weekes, now senior business adviser at law firm Bennett Jones.

Hillman said passage would likely require Trump to make a significant concession to Democrats on some other big issue, plus an all-out White House persuasion push like the “huge operation” mounted by Clinton’s team in 1993. “I don’t think the Trump administration is capable of doing that. And there is certainly not any sense that they’re starting it,” she said.

Other experts are at least slightly more optimistic. Simon Lester, associate director of trade policy at the libertarian Cato Institute, said on Twitter that there is a 25 per cent to 50 per cent

chance the current Congress does not pass the agreement, although he added it is “very hard to estimate at this point.”

Trump has threatened to play hardball if Congress won’t budge, saying he would begin the process of withdrawing from the current NAFTA to try to give Congress a take-it-or-leave-it decision between the new deal or nothing. Such a move would be challenged in court and would likely anger congressional Republicans.

There is a precedent for newly empowered Democrats forcing a renegotiation of a trade agreement signed by a Republican president. During his 1992 campaign, Clinton announced that he broadly supported George H.W. Bush’s NAFTA but would not bring it into law unless its “deficiencies” on labour and the environment were addressed through what he called “supplemental agreements” — provisions added to the deal package but separated from the agreed-upon main text.

So intensive negotiations started up again when Clinton won, and they lasted more than six months. Canada and Mexico “weren’t surprised” about having to return to the table, said Mickey Kantor, Clinton’s top trade official at the time, but “it was a daunting task.”

“They understood the politics of the U.S. On the other hand, they were pretty adamant about the agreement they had already negotiated with the U.S.,” Kantor said.

Prime Minister Justin Trudeau’s ambassador to the U.S., David MacNaughton, has made a pitch to Congress for the current agreement, noting that it has labour and environmental provisions in the main text and that “there is some enforceability.” He said in mid-January that he is “confident” Congress will support the agreement.

It is not clear if side agreements would work this time as a way to resolve congressional concerns. One possibility that would avoid a broad renegotiation, Weekes said, would be the U.S. making changes through the legislation Congress will have to pass to bring the deal into effect.

One thing seems certain: Canada will face uncertainty through to the very end of the process. Weekes recalled the Canadian side having to fight off last-minute U.S. “shenanigans” when there was an attempt to sneak language into the legislation that differed from what the countries had agreed upon.