

Fate of New NAFTA Unsettled, Like Everything in Washington, Trade Lawyer Says

Mara Lee | 24 Jan 2019

It remains unclear whether House Speaker Nancy Pelosi will take up the successor agreement to NAFTA in 2019, and whether the president might try to force her hand by submitting a withdrawal notice, according to a Mayer Brown partner who served as chief of staff at the Office of the U.S. Trade Representative before joining the firm. "We're intentionally leaving it with a lack of clarity," Tim Keeler said, "Because that is frankly what the situation is in Washington right now."

He noted that Pelosi chose not to take up the Colombia free trade agreement on the timeline dictated by fast track. As a partner at another Washington law firm noted last year, there is no fast-track jail (see [1810250039](#)) if Congress delays a vote on a trade agreement. Mickey Liebner, a lobbyist at Mayer Brown, said Pelosi's comments after meeting with U.S. Trade Representative Robert Lighthizer "were indicative of the sides trying to feel one another out." He noted that she called NAFTA 2.0 "just a list" if there isn't real enforcement of labor and environment provisions, but also said, "We will be hosting meetings to brief members on the provisions in the proposal, and to hear from various stakeholders as members make their judgments."

Liebner noted that in addition to labor and environment, Democrats do not like the 10-year exclusivity for biologics, which is longer than what was agreed to in the Trans-Pacific Partnership. "With that said, a lot of the Democrats who are new to the House of Representatives ... are fairly moderate and are generally open to these kinds of agreements."

If the new NAFTA were to pass Congress in 2019, "it does hand Trump a major political victory," Liebner said, and giving him that victory is a dilemma for the Democrats. But,

he said, if Trump sets in motion a withdrawal because he's unhappy with where the deal is going in the House, "I don't think that House Democrats want to be responsible for that either. They're really trying to see if they can make some changes to the agreement before they put all their cards on the table, so there's a lot that still needs to play out and it'll be very interesting to see how it goes."

Other big questions include what Mexico would agree to if negotiations were reopened, and how judges would treat the question of whether Trump has the authority to act on behalf of the U.S. to withdraw from NAFTA. Keeler said that even if the courts said he does have the authority, there's still the question: "Does he have the ability to raise tariffs?" Ultimately, the Supreme Court would decide, he said.