Pushing For Realistic Tariff Relief Under The New Congress

By **Mark Ludwikowski, Kelsey Christensen and Ashley Gifford** (November 19, 2026)

Editor's note: Law360 welcomes opinionated commentary and debate in our Expert Analysis section. To submit op-eds or rebuttals, or to speak to an editor about submissions, please email expertanalysis@law360.com.



Mark Ludwikowski



Kelsey Christensen



Ashley Gifford

Democratic control of the next Congress could give importers a more receptive audience for tariff relief. But turning that opportunity into lower duties will require action by Congress or the Trump administration.

Even so, targeted tariff relief may be more realistic in the coming months than a broad rollback of existing tariffs. Companies should continue planning around current duties while looking for opportunities to push for specific changes.

Affordability helps explain why tariff relief could gain traction. National voter polls published by ABC News, conducted on and before Election Day, showed 66% of respondents said President Donald Trump's tariff policies were hurting the economy, while 89% said the cost of living was a crucial or major factor in their vote.[1] These findings do not prove that tariffs decided the election, but they give lawmakers a strong reason to take a closer look at the costs that tariffs impose on American businesses and households.

What to Watch in the Coming Weeks

The current Congress will remain in place until Jan. 3, 2027,[2] but Democrats do not have to wait until then to begin negotiations. Democratic lawmakers can use their votes as leverage now, particularly on issues that require bipartisan support.

The Dec.11 government funding deadline offers one possible opening to seek tariff concessions.[3] Any funding agreement could include binding restrictions on tariffs or be paired with an executive commitment to tariff relief. Either way, a political announcement or government funding lapse alone would not change the duties importers owe.

The administration also retains considerable flexibility to pursue trade measures under existing law.

For example, its Oct. 28 action on robotics and industrial machinery calls for negotiations under Section 232 of the Trade Expansion Act but leaves the door open to future tariffs or other restrictions.[4] It does not itself impose a new tariff on robotics products.

Importers should therefore watch for potential new costs as closely as they watch for opportunities to secure tariff relief.

What Changes After Jan. 3

Once the new Democratic majority organizes its committees, importers can expect hearings on tariff costs, closer scrutiny of administration decisions and renewed efforts to limit presidential tariff authority.

These efforts could build momentum for negotiated tariff relief, but any legislative changes would still face significant hurdles. Congress must pass legislation through both chambers and overcome a potential presidential veto. Most contested U.S. Senate legislation needs 60 votes to end debate, and overriding a presidential veto requires two-thirds of members voting in each chamber, with a quorum present.

S. 5390, or the End Trump's Tariff Tax Act, as introduced on Sept. 14 by Sen. Chuck Schumer, D-N.Y., illustrates the proposed direction.[5] It would repeal Sections 122 and 338 of the Trade Act, terminate the specified forced-labor Section 301 duties and provide refunds for defined periods. It would leave Section 232 and the broader Section 301 authority in place. If not enacted before this Congress ends, the bill would need to be reintroduced.

Importers can expect the new Congress to focus on limits to presidential discretion rather than sweeping repeals of Sections 232 or 301 authority. Both Republican and Democratic administrations have used these laws to protect strategic industries and respond to unfair foreign trade practices, giving lawmakers reasons to preserve the underlying authority.

The new Congress may also scrutinize particular Section 301 actions, such as the forced-labor tariffs **imposed** as of July 24, or the ongoing Section 301 investigation into structural excess capacity.[6] The forced-labor Section 301 duties could be reduced, narrowed or terminated without a congressional vote if the Trump administration agrees: The Office of the U.S. Trade Representative may take that action under Section 307 of the Trade Act if it determines the duties are no longer appropriate, subject to presidential direction and the required consultation, notice and reporting procedures.[7]

Reporting such a decision to Congress does not require congressional approval. However, to mandate termination through legislation, the new Congress would need presidential approval or enough votes to override a veto. Ending these particular duties would leave intact the broader Section 301 authority and the separate prohibitions on imports made with forced labor, such as under the Uyghur Forced Labor Prevention Act.

The administrative route remains a negotiating possibility, not a prediction that Trump will reverse course because of the election. Changes could be tied to trading partners' commitments or relief for U.S. businesses, but congressional scrutiny alone cannot compel the administration to act.

Canada as a Possible Route to Negotiated Relief

The tariff measures targeting Canada offer a potential route to negotiated relief. Section 338 of the Tariff Act imposes 50% additional duties on covered Canadian goods, including products that qualify for preferential treatment under the U.S.-Mexico-Canada Agreement.[8] It also imposes separate bans on certain imports. However, Section 338(c) gives the president the authority to suspend, revoke or amend the relevant proclamations in the public interest without waiting for Congress to repeal the statute.

Congress' role would be indirect: Oversight, proposed legislation and funding negotiations

where Democratic votes are needed could reinforce pressure from U.S. manufacturers that are bearing tariff costs. Canadian concessions on retaliation or market access could give the administration a reason to adjust the measures and present that adjustment as achieving its trade objectives. The election alone does not establish that an agreement will follow.

That flexibility allows the administration to negotiate targeted relief without abandoning the statute. The administration could agree to temporarily suspend certain duties or narrow the list of affected products in exchange for Canadian concessions on retaliatory measures or market access. The case for relief is strongest where duties raise costs for U.S. production that depends on Canadian inputs.

Importers should still examine the details of any agreement to determine which duties and import bans would change, since other restrictions could remain in place. Prospective relief would not automatically refund duties already paid.

Negotiations could also address duties already paid, but refunds would need valid legal authority and defined coverage. For example, a retroactive reduction from 50% to 25% could make the difference of 25 percentage points refundable on eligible earlier entries. U.S. Customs and Border Protection would implement the authorized process, potentially through automatic payments or importer filings; reopening final duty assessments would require authority to overcome finality. Schumer's S. 5390 proposes such refunds and reopening of covered liquidated entries, but it has not become law.[9]

What Importers Can Do Now

Importers should use the coming weeks to prepare for potential tariff relief while protecting their businesses against continued or increased tariff costs.

Update duty calculations for major products and countries of origin.

When updating duty calculations, identify the applicable legal authority, available exclusions and any overlapping duties. Keep current rates in the base budget and model possible reductions or increases separately.

Prepare a targeted case for tariff relief.

To prepare a case for tariff relief, identify the affected products, annual duty costs, availability of U.S. substitutes and potential effects on domestic production or employment. Use that information when engaging with congressional offices, industry associations and relevant agency proceedings.

Review purchase orders and supply contracts.

Ensure your purchase orders and supply contracts address who bears the burden for tariff increases, who benefits from reductions or refunds and how potential tariff changes would affect goods already ordered or in transit. Avoid business commitments that depend on relief that has not been formally announced.

Consider commenting on the U.S.-Mexico-Canada Agreement review.

Companies with North American supply chains should consider submitting comments or requesting an opportunity to testify in the 2027 review of the U.S.-Mexico-Canada Agreement.

Comments and requests to testify, with testimony summaries, are due Jan. 12, 2027, at 11:59 p.m. EST. This is a concrete opportunity to document trade barriers and raise concerns; it is not an application for tariff exclusions.

Keep customs filings and refund protections up to date.

When keeping your filings and refund protections current, confirm effective dates and product coverage in the implementing measures and CBP guidance before changing duty payments. Preserve entry records and track applicable protest, refund and litigation deadlines while negotiations proceed.

Mark Ludwikowski is a member and the chair of the international trade practice at Clark Hill PLC, and a senior director at Clark Hill Public Strategies.

Kelsey Christensen is a member at Clark Hill and a senior director at Clark Hill Public Strategies. She previously served as an attorney adviser at the U.S. International Trade Commission's Office of the General Counsel.

Ashley Gifford is a senior attorney at Clark Hill.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] https://abcnews.com/Elections/polls-2026-us-house-election-results-analysis.

[2] https://www.senate.gov/general/common/generic/NewCongress_faq.htm.

[3] https://www.govinfo.gov/content/pkg/PLAW-119publ103/html/PLAW-119publ103.htm.

[4] https://www.whitehouse.gov/presidential-actions/2026/10/adjusting-imports-of-robotics-industrial-machinery-and-their-parts-and-components-into-the-united-states/.

[5] https://www.govinfo.gov/content/pkg/BILLS-119s5390is/html/BILLS-119s5390is.htm.

[6] https://ustr.gov/trade-topics/enforcement/section-301-investigations/section-301-failure-impose-and-effectively-enforce-prohibition-importation-goods-produced-forced; https://ustr.gov/trade-topics/enforcement/section-301-investigations/section-301-structural-excess-capacity-and-production-manufacturing-sectors.

[7] https://uscode.house.gov/us/usc/t19/s2417/.

[8] https://content.govdelivery.com/accounts/USDHSCBP/bulletins/430e931.

[9] https://www.govinfo.gov/content/pkg/BILLS-119s5390is/html/BILLS-119s5390is.htm.