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Congressional Debate Begins Over Trade Promotion Authority Bill

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On April 16, long-awaited trade promotion authority (TPA) legislation was introduced in the House and Senate. The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (S. 995/H.R. 1890) is sponsored by the Chairman and Ranking Member of the Senate Finance Committee, Senators Orrin Hatch (R-UT) and Ron Wyden (D-OR), and the Chairman of the House Ways and Means Committee, Paul Ryan (R-WI). The Ranking Member of the Ways and Means Committee, Sandy Levin (D-MI), was notably not a co-sponsor of the bill. The legislation renews presidential authority to negotiate and submit to Congress trade agreements, including the nearly-completed Trans-Pacific Partnership (TPP). Previous trade promotion authority lapsed in 2007.

In addition to providing the President with the authority to negotiate trade deals, the bill also sets out Congressionally-mandated negotiating objectives for such agreements, establishes the requirements for consultations and information sharing with Congress, and permits the removal of fast track consideration of final legislation if the Administration fails to meet TPA requirements.

The legislation is similar in form and content to the TPA bill introduced in January 2014, with several significant changes that provide greater transparency in trade negotiations and enhance Congressional input. For example, the bill requires the President to share draft texts with Members of Congress and their staffs. It also requires that the President submit all agreements to Congress for review 60 days prior to signing an agreement. The legislation also requires the Administration to publish detailed summaries of specific objectives, which will be updated throughout the negotiating process, and establishes a Transparency Officer in the Office of the U.S. Trade Representative with responsibility to consult with Congress. Finally, the TPA bill requires the President to submit both the legal text of any agreement and the Statement of Administrative Action regarding how the agreement's provisions will be enacted at least 30 days prior to submitting an implementation bill to Congress.

The Hatch-Wyden-Ryan agreement and subsequent bill introduction is clearly an important and necessary step in enacting TPA. The Senate Finance Committee held a hearing on the legislation on Thursday, April 16, hours before the bill was actually introduced. The Committee held a continuation of that hearing on April 21. Mark-up

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In This Issue

of the bill occurred in the Finance Committee on April 22, and the bill was favorably reported, as was expected.

It is reasonable to predict that the full Senate will pass the bill that came out of Finance, although perhaps not in the same form, and only with passage of an accompanying bill or bills geared to win sufficient support for TPA from Senators on both sides of the aisle. Without such inducements, it is doubtful that TPA supporters are anywhere near the 60 Senators needed to withstand a cloture vote if needed. What is more likely is that pro-TPP Democratic senators will align themselves with anti-TPP Democratic senators in agreeing to amendments that would require greater concessions from the Obama Administration. Perhaps greatest of these is putative Senate Minority Leader Charles Schumer's (D-NY) efforts to add a currency manipulation provision to the bill. Other provisions include renewal of Trade Adjustment Assistance, renewal of the Generalized System of Preferences, and Customs Reauthorization. Senate Majority Leader Mitch McConnell recently said that he intends to bring the bill to the floor as soon as the Senate finishes dealing with the Iran congressional review bill. Assuming that TPA can pass the full Senate, the hard part would then begin.

Consideration in the House of Representatives began in the Ways and Means Committee on April 22. There was no stopping the bill in committee, as it passed by a vote of 25-13 with two Democrats joining all committee Republicans in support, but the mark-up will set the stage for the floor debate. There, the bill will face a substantial number of Republicans who do not want to give the President the authority to negotiate trade agreements, despite the fact that he has been doing just that for the last six years, even without TPA authority. Even U.S. Trade Representative Michael Froman has acknowledged that the TPP is almost concluded. Admittedly, the most difficult issues in any negotiation are not addressed until just before a deal moves forward or dies. Having TPA authority may be what the Administration needs to pull the agreement over the finish line. And again, a good number of Republicans do not want the President to have that authority. The opposition to the bill, of course, does not stop with Republicans. Many House Democrats are staunch opponents of the bill. Led by labor unions, environmentalists such as the Sierra Club, and liberal organizations such as MoveOn.org, most House Democrats will oppose the bill forcefully. While House Minority Leader Nancy Pelosi (D-CA) has not made a public statement yet on this version of the TPA bill, she opposed the similar one that was introduced last year. This one will contain Trade Adjustment Assistance not only for manufacturing workers, but for the first time, services industries employees. Will that be enough to obtain her critically-needed support for the bill? Ways and Means Committee Ranking Member Levin strenuously objects to the deal-in-waiting for reasons that include his concerns about Japan's continued protection of its agriculture and auto industries.

There are 244 Republicans and 188 Democrats today in the House. It takes 218 votes to pass a bill. Thus, Republicans can lose 26 of their colleagues before needing House Democrats. The last time this issue was seriously considered, over 150 Democrats opposed TPA. That would leave approximately 35 Democrats who might vote for the bill. If there are more than 61 Republicans voting no and no more than 35 Democrats voting yes, the bill would not pass. Passage is possible, but as of today, the votes may not yet be there. On the other hand, House Speaker John Boehner (R-OH) and Leader Pelosi do seem more amenable to working together, most recently to pass Medicare Sustained Growth Rate legislation and, prior to that, the Department of Homeland Security funding bill. It is certainly too soon to call the TPA bill dead.

U.S. Paper Industry Fights Unfair Imports on Several Fronts

Brian E. McGill

Due to abundant resource availability and high demand for printed materials, the paper industry has long been an important part of the manufacturing sector in the United States. But unfair imports from a number of countries have negatively impacted production in key segments of the paper industry, particularly for products experiencing declining demand due to the growth of e-commerce.

In late 2010, U.S. producers of sheeted coated paper suitable for high-quality print graphics, including Appleton Coated, NewPage Corporation, and Sappi Fine Paper North America, obtained relief from dumped and subsidized imports from China and Indonesia. That case will be undergoing a five-year "sunset" review later in 2015. Moreover, on March 13, 2015, Indonesia belatedly requested WTO consultations with the United States with respect to the antidumping and countervailing duty measures imposed. Indonesia also claims that the International Trade Commission's threat of material injury determination was based on speculation and that the determination did not establish a causal nexus between the unfair acts and injury to the domestic industry. Such consultations are a required precursor to a formal WTO challenge.

More recently, the U.S. producers of sheeted uncoated paper, typically used as copy paper, obtained an unanimous affirmative preliminary injury determination from the Commission with respect to alleged unfair imports from Australia, Brazil, China, Indonesia, and Portugal. Petitioners in the uncoated case are Domtar Corporation, Finch Paper, P.H. Glatfelter, Packaging Corporation of America, and the United Steel Workers. In a March 2015 public determination, the Commission rejected arguments that imports from certain of the subject countries did not compete with the U.S. producers. The Commission recognized the importance of maintaining high capacity utilization and reasonable prices due to the highly capital intensive nature of the industry. A new paper machine is estimated to cost over $600 million, and a new greenfield pulp mill would cost over $1 billion. The Commission noted that purchasers had shifted purchases of uncoated paper from U.S. producers to subject imports since 2011 due to lower prices. Purchasers also reported that U.S. producers had reduced prices to compete with subject imports since 2011. The industry's production of uncoated paper, its shipments, its market share, and its employment levels all declined from 2011 to 2013, and continued to decline in 2014. The industry's profitability fell sharply from 2011 to 2013, and, although operating profits improved somewhat in interim 2014 as compared to interim 2013, the ratio of income to net sales in interim 2014 remained below the 2011 level. This case now moves to the Department of Commerce for determination of the margins of dumping and illegal subsidies, and will return to the Commission for a final injury investigation, which is likely to occur in early 2016.

Even more recently, the Commission made a unanimous affirmative preliminary injury determination with respect to supercalendared paper imported from Canada. This paper product is typically used for magazines and advertising circulars. The case was brought by the two largest U.S. mills still producing supercalendared paper, Verso Corporation and Madison Paper Industries. The Commission's public report on its preliminary determination is likely to be issued in mid-May. This case involves only illegal subsidies, primarily to Port Hawkesbury Paper in Nova Scotia, and does not include dumping allegations. The supercalendared paper case will move relatively quickly because it is limited to illegal subsidies, and thus Commerce's preliminary and final countervailing duty determinations will be issued this year and the case will return to the Commission for a final injury determination in early fall 2015.

Progress on Iran Nuclear Deal Contemplates New but Uncertain Path for U.S. Sanctions

Shannon Doyle Barna & Elizabeth Owerbach

On April 2, top global diplomats announced parameters for the Joint Comprehensive Plan of Action (JCPOA) with Iran. This comes as a long-awaited step in negotiations between Iran, the European Union, and the P5+1 countries—China, France, Russia, the United Kingdom, the United States, and Germany—in an effort to scale back Iran's nuclear program. The parameters outline central features of the forthcoming final text of the JCPOA, which must be completed by June 30, 2015. The U.S. Department of the Treasury has confirmed that from now until the conclusion of the JCPOA, "other than the sanctions relief provided under the JPOA, all U.S. sanctions remain in place and will continue to be vigorously enforced."

As reported in the January 2014 issue of King & Spalding's Trade & Manufacturing Alert, the P5+1 first reached agreement on a Joint Plan of Action (JPOA) in November 2013. The plan provided Iran with limited and temporary sanctions relief so that the parties could arrive at a long-term solution for dismantling Iran's nuclear program. Hotly contested issues, however, such as Iran's plans for its nuclear centrifuges, protracted negotiations, and the JPOA was extended twice. The latest extension is set to expire on June 30, 2015. The sanctions relief currently in place under the JPOA provides limited allowances in the crude oil, petrochemical, auto, gold and precious metals, and civil aviation sectors. Importantly, the bulk of these relief provisions **do not apply to U.S. persons or, where applicable, U.S.-owned or controlled entities**. Firms should continue to proceed with caution before engaging in any transactions with Iranian parties.

As part of the parameters announced on April 2, Iran has agreed to cut its installed centrifuges by about two-thirds; to refrain from building any new nuclear enrichment facilities or additional heavy water reactors for 15 years; to submit excess centrifuges to the International Atomic Energy Agency (IAEA); and to comply with IAEA inspections. Iran will also be discontinuing enrichment at its Fordow facility and will only conduct enrichment at the Natanz facility, using specified equipment. The parameters outline a phased approach, with Iran submitting to limitations over a ten, 15, and 25 year period.

In exchange, "Iran will receive sanctions relief, if it verifiably abides by its commitments." The contemplated relief includes the United States and the EU suspending their nuclear-related sanctions upon verification from the IAEA that Iran is complying with its commitments. The United States also plans to reinstate—or "snap back"—nuclear-related sanctions "in the event of significant nonperformance." Under the parameters, the United States will still maintain its terrorism, human rights, and ballistic missile-related sanctions programs on Iran. The parameters also foresee the United Nations lifting sanctions if Iran complies with the JCPOA, and the Security Council issuing a new resolution to implement the agreement. Additionally, the parameters propose a dispute resolution process through which parties to the JCPOA may address disagreements regarding Iran's compliance.

The Iran Nuclear Agreement Review Act of 2015 (S. 615) (the Act), introduced by Senator Bob Corker (R-Tenn.), has become the focal point of Congressional opposition to President Obama's Iran policy. The Act would give Congress the power to approve or reject a nuclear deal with Iran. On April 14, the Senate Foreign Relations Committee unanimously approved the legislation. The bipartisan Committee support for the bill was a result of a compromise led by Senator Corker and ranking member Senator Benjamin L. Cardin (D-MD), which allows Congress to review the final text of an agreement with Iran and decide whether it will eventually end sanctions. If Congress rejects the agreement, President Obama can, with enough congressional support, veto that rejection. The

compromise language reduces Congress's 60-day period to review a nuclear deal to a general baseline of 30 days and eliminates the requirement that the President repeatedly certify that Iran is no longer backing terrorism, instead requiring periodic reports on Iran's activities. On April 23, Senator Corker opened Senate debate on the Act. White House officials have stated that the President would be willing to sign the compromise version of the bill.

Because the compromise has been met with criticism in Iran, its momentum in the United States may make negotiations with Iran more difficult in the months ahead. However, the Act's proponents are fiercely protecting the bill and discouraging further amendments.

Despite what appears to be the beginnings of domestic compromise on the JCPOA, the new parameters have raised questions as to how JCPOA compliance and sanctions relief can be effectively implemented. Some have asked whether the IAEA is capable of the "daunting" task of monitoring and verifying Iran's nuclear reductions as contemplated by the parameters. Others have questioned the timing of sanctions relief, inquiring as to how soon after the completion of a deal the United States will be lifting its nuclear-related sanctions. While the President can waive certain legislatively-imposed sanctions, Congressional action is required to permanently lift them. The current version of the Iran Nuclear Agreement Review Act of 2015 would prohibit the President from suspending Congressional sanctions while a deal is under Congressional review. Some have also raised questions regarding the U.S. commitment to "snap-back" provisions—where sanctions can be reinstated if Iran does not hold up its end of the bargain—and how the snap-backs would practically be implemented.

The timing of sanctions relief remained a key issue going into the late April negotiations between the P5+1 and Iran. Although the timeline for removing sanctions against Iran has not been set in stone, the Obama Administration is pursuing a phased approach, while Iran reportedly is insisting on a simultaneous lift of all international sanctions. President Obama recently indicated that Iran could receive some sanctions relief as soon as the deal is finalized. With reports circulating that the P5+1 agreed to "the complete removal of sanctions," U.S. Secretary of State John Kerry met with with Iranian Foreign Minister Mohammad Javad Zarif on April 27 to discuss the issues that remain unresolved.

News of Note

"Made in the U.S.A." Jeans Case Zips Past Motion to Dismiss

Elizabeth Owerbach

On April 8, a District Judge in Sacramento, CA denied (link accessible to subscribers only) an attempt to dismiss a lawsuit challenging the "Made in the U.S.A." label on Citizens of Humanity jeans. Consumers brought suit against companies including Macy's Inc. and Citizens of Humanity claiming that certain jeans contained fabric, zippers, and other parts manufactured abroad, and thus the companies were in violation of a California law that prohibits selling goods with any foreign parts/components using an unqualified "Made in the U.S.A." label. In allowing the case to proceed, Judge Janis L. Sammartino found that the California law is not preempted by the Constitution or by the U.S. Federal Trade Commission's regulations governing "Made in the U.S.A." labels. As with a similar suit against Nordstrom last year, the Court's ruling concludes that retailers and manufacturers still should be able to comply with rigorous California requirements even though federal "Made in the U.S.A." standards are more flexible than the California law.

United States Requests WTO Panel to Rule on Alleged Chinese Export Subsidies
Marcus Sohlberg

On April 10, the United States asked the World Trade Organization (WTO) to establish a panel to resolve whether China provides export subsidies in violation of its obligations under the WTO Agreement on Subsidies and Countervailing Measures. The United States alleges that China is providing more than 180 prohibited subsidies to a large range of enterprises in the sectors of agriculture, hardware and building materials, light industry, medical products, new materials, special chemical engineering, and textiles.

The request to establish a panel is the second and final step to initiate dispute settlement proceedings at the WTO. It must be preceded by a request for consultations, a step that the United States took in this dispute in February 2015, as reported in King & Spalding's Trade & Manufacturing Alert in March. Because this dispute concerns alleged export subsidization, it operates under expedited procedures under which the Panel must issue its findings within three months of the date of its establishment, which occurred on April 22. If its findings are appealed, the Appellate Body must make a final determination no more than two months from the date of appeal. Thus, a ruling by the WTO can be expected later this year.

South Korea Takes Step Toward Potentially Joining TPP Negotiations
Erienne Kilgore & Clint Long

In November of 2013, South Korea formally expressed interest in joining the ongoing Trans-Pacific Partnership (TPP) negotiations. By March 31, 2015, the 12 countries currently involved in the TPP negotiations, including the United States, had completed preliminary bilateral negotiations with Korea regarding South Korea's eventual participation in the TPP. U.S. Ambassador to South Korea Mark Lippert said that the "U.S. welcomes Korea's interest in the TPP and looks forward to working with and consulting with the government of Korea on this issue." However, the United States is reportedly concerned that, if South Korea were to join now, its addition would delay the ongoing negotiations. Accordingly, it is unclear when South Korea will join the negotiations.

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