

White House's Efforts Key To 'Fast-Track' Trade Bill

By **Scott Flaherty**

Law360, New York (January 10, 2014, 7:52 PM ET) -- With opposition from some in Congress and upcoming midterm elections raising questions about the prospects of legislation to give “fast-track” trade power to the president, the Obama administration will have to make a serious lobbying effort — and soon — to drum up enough support to get the provision passed, experts say.

Three congressional leaders on Thursday introduced a bill to renew trade promotion authority, often referred to as “fast-track” or TPA, which allows the executive branch to negotiate trade agreements while limiting legislators to a yes-or-no vote on the pacts without amendment. Thursday's bill — put forward by Sen. Max Baucus, D-Mont.; Sen. Orrin Hatch, R-Utah; and Rep. Dave Camp, R-Mich. — also included provisions intended to maintain congressional oversight of trade negotiations by imposing consultation and reporting requirements on the administration.

“The TPA legislation that we are introducing today will make sure that these trade deals get done, and get done right,” said Baucus, who serves as chairman of the Senate Finance Committee. The other lawmakers who drafted the bill also hold top Congressional posts — Hatch serves as ranking member of the Senate finance panel and Camp chairs the House Ways and Means Committee.

Though many applauded the bill — including companies such as MetLife Inc. and the Boeing Co. and business groups including the U.S. Chamber of Commerce and the National Association of Manufacturers — it also drew fire from labor unions, including the AFL-CIO, which vowed to “actively work to block its passage,” environmental groups like the Sierra Club and consumer advocacy groups like Public Citizen.

The bill also elicited a mixed response among those in government.

White House press secretary Jay Carney and U.S. Trade Representative Michael Froman both issued statements Thursday applauding the bill's introduction and saying the Obama administration looked forward to working with Congress on trade promotion legislation that could be passed with as much bipartisan support as possible.

But some in Congress, including Rep. Sander Levin, D-Mich., ranking member of the House Ways and Means committee, criticized the proposal. Levin said in a statement that the bill doesn't give Congress enough say in trade negotiations or do enough to help combat foreign currency manipulation through trade agreements, an issue he and other lawmakers have been vocal about. The Michigan Democrat indicated he would not support the bill as it is currently drafted and is likely to submit his own proposal for granting trade promotion authority.

With opposition coming from different quarters of Capitol Hill, trade experts said the prospects are uncertain for the trade promotion bill moving forward in the near term.

“I think it's going to be quite a heated debate,” Gilbert Kaplan, a partner at King & Spalding LLP, said.

Given the uncertainties, experts said if Thursday's bill — or another proposal to grant trade promotion authority to the White House — is to move forward, it will likely take a strong lobbying effort on the part of the Obama administration to build enough support for the provision.

“Having strong administration support is absolutely critical,” Kaplan said.

Welles Orr, a senior international trade adviser with Miller & Chevalier Chtd., also suggested that the Obama administration has a key role to play in improving the chances that trade promotion authority will be passed this year. If the administration “comes out full force” to lobby for the bill in the near term — possibly even including remarks about TPA in the 2014 State of the Union address — it would bolster the prospects that the bill would pass this year, Orr said.

“We need to see the White House really roll up its sleeves on this,” he said. “But I think they will.”

For the administration, and proponents of new trade agreements more generally, part of the effort to drum up support for a fast-track bill could simply be educating legislators on how the current proposal expands on previous TPA legislation, Orr explained. Congress last passed a trade promotion authority bill in 2002, but that expired in 2007 and, in Orr's view, the bill unveiled Thursday significantly enhances Congress' role in overseeing trade negotiations, and would allow legislators to view negotiating texts and serve as advisers on trade issues.

“Congress really has a way now to get their nose under the tent,” he said.

Josh Kallmer, counsel with Crowell & Moring LLP, said it remains to be seen whether the provisions in the bill introduced on Thursday will pick up “full-throated” support from the White House. But whether it's Thursday's bill or another, he added, it is crucial for the administration to have trade promotion authority as it seeks to wrap up its current trade negotiations, such as the Trans-Pacific Partnership with 11 other Pacific Rim countries, and the Transatlantic Trade and Investment Partnership, under discussion with the European Union.

As with other experts, Kallmer said a strong argument from the White House to Congress, as well as to the public and the business community, would improve the chances that a TPA bill would pass.

“The administration needs to be selling the case for TPA generally very vigorously, and putting it in terms of how these trade agreements will affect companies and affect workers,” Kallmer said.

Prospects for a fast-track bill moving forward in 2014 are even further complicated by the congressional elections in November, experts explained. The midterm elections, in turn, create an incentive for quick action on trade promotion authority, something the Obama administration and other supporters of the bill may want to keep in mind as they look to gather support on Capitol Hill, Timothy Keeler, a partner with Mayer Brown LLP, said

“The administration has got to focus on getting ... leadership in the Senate to move on it quickly,” Keeler

said.

Crowell & Moring's Kallmer also noted that the midterm elections create pressure to move the legislation forward quickly, but he said there is some time, given that a bill has already been proposed.

"It's a really important development that it has happened this early in the year," said Kallmer, referring to the introduction of a TPA bill. "Still, there's a long fight to go."

--Editing by John Quinn and Chris Yates.

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