

Vol. 34, No. 2

January 13, 2014

## Fast Track Bill Fuels Trade Divisions in Congress

The fate of “fast-track” trade negotiating authority legislation introduced Jan. 9 will depend on the White House’s ability to muster enough support from House Democrats to overcome the loss of Republican votes (see story page 2). As in the past, this will be a tough fight, with leading House Democrats, unions and environmental groups already opposing the measure, also known as Trade Promotion Authority (TPA), and House Speaker John Boehner (R-Ohio) warning that he won’t bring the bill to the House floor unless President Obama delivers Democratic votes for the bill.

“You can look down a whole host of issues, but at some point the president needs to stand up and lead,” Boehner said at a press conference Jan. 9. “I made clear to the president that this can’t pass unless there is bipartisan support for it. And this goes back months, and yet we’ve seen scant attention to this issue by the administration in terms of encouraging Democrat leaders and Democrat members to stand up and vote for it,” he said.

The fast-track legislation (S.1900/H.R. 3830) introduced by Senate Finance Committee Chairman Max Baucus (D-Mont.), Ranking Member Orrin Hatch (R-Utah) and House Ways and Means Committee Chairman Dave Camp (R-Mich.) had no House Democratic co-sponsors. Ways and Means Ranking Member Sander Levin (D-Mich.), echoing statements from other Democrats, issued a statement opposing the bill. The bipartisan legislation “has fallen far short of adequately replacing the failed 2002 TPA model,” he said. “I do not support their proposal and am working with colleagues to develop legislation that fully meets today’s needs in a rapidly globalizing economy,” he added.

Although Democrats will face pressure to support their own president’s trade agenda, it will be difficult to get a majority of House Democrats to vote for the measure when it comes to a floor vote. In November, 151 Democrats wrote to President Obama to complain about the lack of consultations on a Trans-Pacific Partnership (TPP) deal, and many members have voiced objections to TPA (see **WTTL**, Nov. 18, page 3).

On the other side, it’s unclear how many GOP votes might be lost if conservative groups, such as the Club for Growth or Heritage Action, decide to oppose the legislation and put it on their “scorecards” to rate members’ conservative voting records. “What worries me about it is not that they won’t get it done, what worries me about it is it’s going to end up being the same kind of nasty, partisan fight it was 13 years ago,” says National

Foreign Trade Council (NFTC) President Bill Reinsch. The last time the House voted on fast-track legislation in 2001 it passed by one vote (215-214) only after strong arm-twisting of GOP members by then-Speaker Dennis Hastert (R-Ill.), Majority Leader Dick Armey (R-Texas) and Whip Tom Delay (R-Texas). It's unlikely that House GOP leaders will work that hard for TPA this time, and Democratic leaders will be torn between their loyalty to the president and strong opposition from the party base.

"We expect to have a robust conversation on the Hill about how trade agreements should be negotiated and the role of Congress in that process," said U.S. Trade Representative (USTR) Michael Froman in a statement.

"We're eager to engage directly with members of the Finance and Ways and Means Committees and with all of Congress to pass Trade Promotion Authority legislation that has broad, bipartisan support," he added.

## House, Senate Committees Propose Fast-Track Authority Bill

Nothing in the "fast-track" trade negotiating authority bills introduced Jan. 9 by Senate Finance Committee Chairman Max Baucus (D-Mont.), Ranking Member Orrin Hatch (R-Utah) and House Ways and Means Committee Chairman Dave Camp (R-Mich.) is likely to change U.S. positions in current negotiations already underway on a Trans-Pacific Partnership (TPP) or Transatlantic Trade and Investment Partnership (TTIP). That is one reason why the legislation drew immediate opposition from Ways and Means Ranking Member Sander Levin (D-Mich.), many House Democrats, unions, environmentalists and consumer groups (see story page 1).

Baucus is expected to push for Finance's early consideration of the legislation so it can be reported out of committee before he is confirmed to be ambassador to China. President Obama formally sent his name to the Senate for confirmation Jan. 7, and based on past experience with the review of other senators nominated for administration posts, the Senate could vote on his nomination in about a month.

The two identical measures (S. 1900/H.R. 3830) would give the president authority to conclude those two trade deals subject to approval by Congress on up-or-down votes without amendment. In theory, legislation brought to Congress under fast-track rules is supposed to meet the negotiating objectives set by lawmakers in the bill and assure adequate consultation between trade negotiators and Congress before any implementing legislation is introduced.

The bill's main components include a set of negotiating objectives; procedures for consultations between the executive branch and Congress; requirements to give lawmakers access to negotiating information before, during, and after talks; assurance of an open and transparent process for members and the public; preservation of congressional prerogatives and power to approve or reject any accord.

The bill includes 13 "overall trade negotiating objectives," such general goals as more open, equitable, and reciprocal market access; respect for worker rights and the rights of children; economic growth, raised living standards, enhanced U.S. competitiveness and full employment. In addition, it identifies 18 categories of "principal trade negotiating objectives," covering such sectors as agriculture, textiles, digital trade, state-owned

enterprises and labor and environment. Among the dozens of specific goals under these categories are:

- Securing more open and equitable market access through robust rules on sanitary and phytosanitary measures;
- Reducing or eliminating subsidies that decrease market opportunities for United States exports or unfairly distort agriculture markets;
- Requiring that proposed regulations be based on sound science, cost benefit analysis, risk assessment, or other objective evidence;
- Promoting regulatory compatibility through harmonization, equivalence, or mutual recognition of different regulations and standards and to encourage the use of international and interoperable standards as appropriate;
- Obtaining competitive opportunities for U.S. exports of textiles and apparel in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in U.S. markets;
- Ensuring that standards of protection and enforcement of intellectual property rights keep pace with technological developments, including the use of works on the Internet and other global communication media;
- Eliminating or preventing trade distortions and unfair competition favoring state-owned and state-controlled enterprises.

The legislation also attempts to address some concerns that have been raised by members in the past, particularly on currency manipulation. “The principal negotiating objective of the United States with respect to currency practices is that parties to a trade agreement with the United States avoid manipulating exchange rates in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other parties to the agreement, such as through cooperative mechanisms, enforceable rules, reporting, monitoring, transparency, or other means, as appropriate,” the legislation states in its objectives section.

This language failed to satisfy Levin. “On currency manipulation, bipartisan majorities in both the House and the Senate have urged the President to include strong and enforceable disciplines on currency manipulation in trade agreements. Rather than laying out options that the President already has to address currency manipulation, Congress needs to provide direction on this issue, consistent with its Constitutional mandate on trade,” he said in a statement opposing the measure.

Article XV of World Trade Organization rules already say members “shall not, by exchange action, frustrate the intent of the provisions of this Agreement, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund.” Complaints, however, have to be taken to the IMF.

The extent of congressional concerns about currency manipulation was also evident in a bipartisan letter to Obama Jan. 8. “Thus far, United States trade negotiators have failed to propose currency disciplines in any TPP negotiating rounds, and our written concerns have gone unanswered,” said the letter signed by Sens. Lindsey Graham (R-S.C.) and Debbie Stabenow (D-Mich.) and Reps. Mike Michaud (D-Maine), John D. Dingell (D-Mich.), Sam Graves (R-Mo.) and Rick Crawford (R-Ark.). “As you know, Congress ratifies free trade agreements, and we expect our concerns to be addressed in a strong and effective manner,” they wrote, noting that 290 members of Congress “expect foreign currency manipulation to be addressed in our trade agreements.” Also missing from the

bill was any mention of extending expired provisions of Trade Adjustment Assistance (TAA), which many Democrats have said must be in any TPA bill to get their support. “We also need to act immediately to reauthorize Trade Adjustment Assistance,” Levin said. In its statement, White House spokesman Jay Carney highlighted the need to continue this program. “As this process moves ahead, we stand ready to work with Congress to renew the Generalized System of Preferences Program and protect and strengthen Trade Adjustment Assistance for America’s workers,” he said.

## Groups Show Traditional Divide in Response to Fast Track

As expected, manufacturing and business groups flooded e-mail in-boxes Jan. 9 with pre-orchestrated statements applauding the introduction of new Trade Promotion Authority (TPA) bills in the House and Senate, while labor, consumer and environmental groups posted as many releases opposing the measure. Industry statements echoed those of the Trade Benefits America Coalition, which includes such members as the Chamber of Commerce, the American Farm Bureau Federation, Business Roundtable, Coalition of Services Industries, Emergency Committee for American Trade, National Association of Manufacturers, NFTC and U.S. Council for International Business.

“TPA is the Chamber's top trade priority before the Congress,” said Chamber President Thomas J. Donohue in a statement. “To secure new growth-creating trade pacts such as the trans-Pacific and trans-Atlantic agreements now under negotiation, Congress must first approve TPA,” he added.

On the other side, the Sierra Club said it opposes fast track, calling it “an outdated and inappropriate mechanism for trade pacts as expansive as the proposed Trans-Pacific Partnership agreement and the proposed U.S.-EU trade deal.” It said the legislation strips Congress of its defining democratic characteristic -- its check-and-balance structure. “If Congress is not able to fully debate and, if necessary, amend the language of these all-encompassing trade pacts, the environment, our climate, and our families could suffer as a result,” said Sierra Club Executive Director Michael Brune.

Labor unions shared this opposition, noting remaining substantive differences that still remain. “Procedural reforms are vital, but updating the process without revising the underlying policy approach is unacceptable,” said a statement from United Steelworkers International President Leo W. Gerard. “New procedures and greater transparency cannot undo the damage that is being done by trade policies like permanent normal trade relations (PNTR) for China and the U.S.-Korea Free Trade Agreement. Our negotiators should not be able to pick and choose which negotiating objectives are important and which to ignore, and no trade agreement should be protected from Congressional amendments if it fails to achieve *all* of the objectives that Congress sets,” he added.

## Azevedo: “Political Viability” Key to Future Trade Deals

If the World Trade Organization (WTO) wants to be successful in delivering future multilateral trade agreements as it was at its Bali ministerial in December, it will have to recognize the “limits of political viability” of any accord, WTO Director General Roberto Azevedo said Jan. 6. That was one of the lessons learned from the Bali meeting that should guide the WTO in future talks, he suggested. At the same time, he cautioned

against reliance on bilateral and regional trade deals because they fail to produce global gains. In looking toward future deals, it may be necessary to abandon the Doha Round, which is already considered dead by some trade watchers. In addition “WTO disciplines also need to evolve to reduce the gap that will exist between multilateral regulations and the new generation regulations negotiated outside Geneva. The two processes, multilateral and bilateral, must move forward together to reduce costs effectively and to curb protectionism,” he said in his prepared remarks at a seminar in Lisbon.

Without giving specific goals for any new trade deals, Azevedo identified five elements that should guide future negotiations. They are:

- (1) “We must be ready to be creative and keep an open mind to new ideas. We need to be prepared to recognize the most urgent challenges and priorities of the modern world, without ignoring the negotiating mandates.
- (2) “We cannot forget that development has to be preserved as the central pillar of our efforts.
- (3) “We need to explore new ways of making headway on the most difficult negotiating topics. We might even conclude that there are no prospects for progress in those areas, and that we need to seek other negotiating paths. But we mustn't be afraid of that discussion or shy away from it.
- (4) “We need to be realistic. One of the critical factors for success in Bali was respect for the limits of political viability when defining the negotiating targets.
- (5) “Our efforts need to be given a sense of urgency. Rapid changes are taking place in the world, in the business, political and cultural domains. The trade agenda is no longer confined to tariff reduction. Today the regulatory dimension, particularly within national territory, is just as important as what happens strictly on the border, or even more so. The system cannot take two or three decades to respond to those changes; it needs to act much more swiftly.”

“I believe the Bali package provides some useful lessons to this end — not just through the substance and the strong reaffirmation of Ministers’ commitment to the Doha Development Agenda — but also through the procedures we adopted which led us to success in Bali,” Azevedo said. In addition to recognizing the Doha Round’s dormancy, Bali succeeded because the process was transparent and inclusive, he noted. “Instead of small groups of countries negotiating in closed rooms, the entire membership came together to negotiate in open-ended meetings. It was not an exclusive club that was deciding everything,” the DG said.

“Although it was a slow and painstaking process, it was essential to give all Members ownership of the package and the outcomes,” he added. “Lastly, we sought a balanced package that everyone could support. The traditional divide between developed and developing countries, between north and south, was not present in this package,” he said.

While bilateral and regional trade pacts can be parallel to multilateral agreements, they cannot provide the benefits of a global deal, he said. “My view of this is the same as of other potential agreements of this kind: it is a positive initiative to be welcomed - but it can only ever be one part of the wider picture. Agreements such as this cannot be sufficient on their own to ensure globalizable gains. The proliferation of regulations and standards tends to multiply costs rather than reduce them,” Azevedo said. “Nor should we forget the systemic effects that will be felt if non-multilateral under-takings become the sole negotiating channel. We would then have a major problem both in terms of

asymmetry of the agenda and the issues covered,” he warned. “In such fora the Least-Developed Countries tend to lag behind or, worse still, get excluded from the negotiating table,” he continued. “In addition, many of the deals that are currently being discussed ignore the most important and dynamic frontier of international trade: the big emerging players,” he added.

## **Alcoa Paying \$384 Million to Settle FCPA Charges**

Alcoa, the global aluminum manufacturer, agreed Jan. 9 to pay \$384 million to settle government charges that it violated the Foreign Corrupt Practices Act (FCPA) when its subsidiaries repeatedly paid bribes to government officials in Bahrain, including senior members of Bahrain’s Royal Family, to maintain alumina sales.

In its settlement with Justice, Alcoa’s Alcoa World Alumina (AWA) subsidiary pleaded guilty in Pittsburgh U.S. District Court to one count of violating the FCPA and agreed to pay a criminal fine of \$209 million and to forfeit \$14 million. In a civil settlement, Alcoa, will pay \$175 million in disgorgement to the Securities & Exchange Commission (SEC), of which \$14 million will be satisfied by AWA’s criminal forfeiture. All of the penalties will be paid in five equal installments over four years.

“Between 1989 and 2009, Alcoa of Australia (AofA) and Alcoa World Alumina LLC (AWA) retained a consultant to act as their middleman in connection with sales of alumina to Alba [Aluminium Bahrain B.S.C.] and knew or consciously disregarded the fact that the relationship with the consultant was designed to generate funds that facilitated corrupt payments to Bahraini officials,” the SEC order stated.

“The consultant used these funds to enrich himself and pay bribes to senior government officials of Bahrain,” the order added. “Despite the red flags inherent in this arrangement, AofA’s in-house counsel approved the arrangement without conducting any due diligence or otherwise determining whether there was a legitimate business purpose for the use of a third party intermediary,” it continued.

“Employees at AWA and AofA either knew or were willfully blind to the high probability that Consultant A would use his commissions and markup to pay bribes,” the SEC noted. It quoted a member of AofA’s alumina sales staff writing in an internal document: “The methodology of business in the Middle East is a complex web of interactions that are necessarily difficult to understand to disguise the payment of commissions.”

The memo said the company maintained its position in the past by paying its agent a 1% commission on the work he did. “We have also, however, been asked by Alba to supply some cargoes through other intermediaries, including our agent, on various occasions and we can only assume at the purpose this serves....Given that we want to supply the full tonnage going into the future we need to fix on the best methodology for us given the commission requirements and the contract structure,” the memo continued.

“Alcoa welcomes the resolution of this legacy legal matter with the U.S. Government,” the company said in a statement. “There is no allegation in the filings by the DOJ and there is no finding by the SEC that anyone at Alcoa Inc. knowingly engaged in the conduct at issue,” it noted. “The DOJ is bringing no case against Alcoa Inc,” it added.

**\* \* \* Briefs \* \* \***

**EXPORT ENFORCEMENT:** Mark Mason Alexander, aka Musa Mahmood Ahmed, of Roswell, Ga., CEO of Hydrajet Technology, was sentenced Jan. 8 in Rome, Ga. U.S. District Court to 18 months in prison for conspiring to violate IEEPA by sending Hydrajet water-jet cutting systems to Iran via UAE in violation of trade embargo. Jury found Alexander guilty Sept. 26. In 2007, he negotiated sale of two water-jet cutting systems to two companies in Iran: Parand Machine Company and Negin Sanat Sadr Company.

**MORE EXPORT ENFORCEMENT:** BIS issued 180-day Temporary Denial Order Jan. 3 in attempt to block export of two used General Electric CF6 aircraft engines from Istanbul, Turkey, to Iran. Order tries to block exports of 3K Aviation Consulting & Logistics in Antalya, Turkey, Huseyin Engin Borluca in Antalya, Adaero International Trade, LLC in Rockford, Ill., Recep Sadettin Ilgin in Istanbul and Pouya Airline a/k/a Pouya Air in Tehran. BIS said it had been told that 3K Aviation “is preparing to immediately reexport the engines to Iran without U.S. government authorization.” Pouya, Iranian cargo airline, “is scheduled to transport both engines from Turkey to Iran on January 7, 2014,” it added. Sources would not confirm whether order was issued in time to stop shipment.

**RUSSIA:** Moscow is no longer just on receiving end of trade complaints at WTO. Russia filed its first request for dispute-settlement consultations Jan. 6, raising complaints against European Union’s administrative procedures and methodologies for calculating dumping margins in anti-dumping investigations and reviews. Consultations involve antidumping orders on ammonium nitrate, iron and non-alloy steel welded tubes and pipes and seamless iron and steel pipes.

**TRADE FIGURES:** U.S. merchandise exports in November increased 5.7% from year ago to \$137.1 billion, Commerce reported Jan. 7. Services exports increased 4.0% to \$57.8 billion from same month in 2012. Goods imports went down 1.8% from November 2012 to \$191.0 billion, as services imports gained 2.7% to \$38.1 billion.

**TIRES:** ITC voted 6-0 in “sunset” determination Jan. 6 that ending antidumping and countervailing duty orders on off-the-road tires from China would cause renewed injury to U.S. industry.

**MAGNETS:** In another 6-0 “sunset vote” Jan. 6, ITC found that ending countervailing duty order on raw flexible magnets from China and antidumping orders on magnets from China and Taiwan would cause renewed injury to U.S. industry.

**JUSTICE:** President Obama Jan. 6 renominated Leslie R. Caldwell to be assistant attorney general for criminal division, replacing Lanny A. Breuer, who left office in March (see **WTTL**, Sept. 23, page 12). She has been partner at Morgan Lewis & Bockius LLP in New York since 2004. Her division is chief FCPA prosecutor. At same time, Senate Judiciary Committee held hearing Jan. 8 on John P. Carlin, who was also renominated Jan. 6 to be assistant attorney general for national security, post he has held on acting basis since March 2013 when his predecessor, Lisa O. Monaco, was tapped to be assistant to president for homeland security (see **WTTL**, Sept. 16, page 1). Both nominations were among some 200 that president withdrew Jan. 3 under agreement with Senate for renomination later.

**IRAN:** Annual report from Government Accountability Office (GAO) Jan. 7 on foreign firms operating in Iran found only four firms active in country between Oct. 1, 2012, and Nov. 7, 2013 (GAO-14-218R). Based on open-source information, firms actively operating in Iran during that period were China National Petroleum Corporation (China); China Oilfield Services Limited (China); Oil and Natural Gas Corporation (India); and Oil India Ltd. (India). It identified four foreign companies that have “withdrawn” from Iran since its last report and eight firms that were cited in prior reports but for which there is insufficient information to tell whether they are still operating there. “None of the four firms that we identified as reported to

have engaged in commercial activity in Iran's energy sector at some point between October 1, 2012, and November 7, 2013, had U.S. government contracts," GAO said. "We did not identify any firms that were reported to have either sold Iran refined petroleum products or exported technologies for telecommunications blocking between those dates," it added.

FCPA: Federal judge in Camden, N.J., U.S. District Court unsealed indictments Jan. 6 of two former chief executives officers of PetroTiger Ltd., who were charged with violating FCPA. Ex-executives of British Virgin Islands oil and gas company, Joseph Sigelman and Knut Hammarskjold, and others allegedly bribed Colombian official in exchange for assistance in securing approval for oil services contract worth roughly \$39 million. In plea agreement also unsealed Jan. 6 but reached Nov. 8, PetroTiger's former general counsel, Gregory Weisman, pleaded guilty to bribery and fraud charges connected to same scheme. Hammarskjold was arrested Nov. 20 in Newark, N.J. and released on \$700,000 bail. Sigelman was arrested Jan. 3 in Philippines and released on \$1 million bond after appearance in Guam.

TRADE PEOPLE: Former International Trade Commission member Daniel Pearson has become senior fellow in trade policy studies at Cato Institute, DC-based libertarian think-tank. Pearson, who served at ITC for 10 years, including as chairman from 2006 to 2008, can be reached at [dpearson@cato.org](mailto:dpearson@cato.org) or 202-789-5264...President Obama Jan. 7 officially sent Senate nomination of Darci Vetter to be chief USTR agricultural negotiator to replace Islam Siddiqui, who resigned in December (see WTTL, Dec. 23, page 10).

APO: CIT Senior Judge Nicholas Tsoucalas denied motion Jan. 6 seeking to force Commerce to reveal information submitted in antidumping review inside single and double brackets. Papierfabrik August Koehler SE, German paper exporter, wanted to see information that petitioner, Appvion, Inc., had submitted as business protected information (BPI) from confidential informant in administrative review of order on lightweight thermal paper from Germany. "Here, Koehler's motion does not concern a denied APO application, it concerns Commerce's treatment of certain single- and double-bracketed information in the Affidavit. Because Koehler's motion concerns the BPI designations and not access to information under an APO, it is not properly before the court. 19 U.S.C. §1677f(c)(2)," Tsoucalas ruled (slip op. 14-1).

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