

# Client Alert

Government Advocacy & Public Policy Practice Group

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## **Is Congress Ready To Act On Trade Legislation? *Bill To Renew Trade Promotion Authority About To Be Considered***

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 necessitates that the President share draft texts with Members of Congress and their staff. 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. Next up is consideration by the Senate Finance Committee, which held a hearing on

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the legislation on Thursday, hours before the bill was actually introduced. The Committee held a continuation of that hearing on April 21. Mark-up of the bill will occur in the Finance Committee on April 22, where it is expected to be favorably reported.

It is reasonable to predict that the Senate will pass the bill that comes 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 they are anywhere near the number of Senators needed to withstand a cloture vote if any were ever needed. What is more likely is that pro-FTA Democratic senators will align themselves with anti-FTA Democratic senators in agreeing to amendments that would require greater concessions from the Obama Administration. Perhaps greatest of these is putative Senate Minority Leaders Charles Schumer's efforts to add a Chinese currency manipulation provision to the bill. Other provisions are likely to include renewal of Trade Adjustment Assistance, renewal of the Generalized System of Preferences, and Customs Reauthorization. Assuming that TPA can pass the full Senate, the hard part begins.

Consideration in the House will begin in the Ways and Means Committee later this week. There is probably no stopping the bill in committee, 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 USTR Michael Froman has acknowledged that 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 there. Many House Democrats are profoundly against the bill. Lead 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 as yet on this version of the TPA bill, she did oppose the comparable 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 move her critically needed support to the bill? And Ways and Means Committee Ranking Member Levin strenuously objects to the deal-in-waiting because of continued support for Japan's agriculture and auto industry.

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, there were over 150 Democrats who 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 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 the Medicare Sustained Growth Rate (SGR) legislation and, prior to that, the DHS funding bill. So, it's certainly too soon to call the TPA bill dead.

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