

International Trade Policy To Watch In 2012

By **Ryan Davis**

Law360, New York (January 01, 2012, 12:00 AM ET) -- Negotiations for the Trans-Pacific Partnership, Russia's accession to the World Trade Organization and the prospect of tightening sanctions on Iran and Syria are just some of the things international trade attorneys will be watching in the coming year. Here, Law360 examines what's on the radar for 2012.

Trans-Pacific Partnership

In November, the leaders of the nine countries negotiating a multilateral free trade agreement for the Asia-Pacific region announced the broad outline of a deal. This year will be crucial for the plan as the Obama administration seeks fast track negotiating authority and three key countries consider joining the talks, attorneys say.

U.S. Trade Representative Ron Kirk said in a speech in November that the Trans-Pacific Partnership is one of the administration's top priorities and has the potential to be "a real game-changer in terms of trade and jobs" that will enhance America's role in the region.

Kirk also said the administration plans to ask Congress for trade promotion authority, known as fast track, in order to get the deal done. Under fast track, Congress cannot amend trade agreements negotiated by the administration, and that could prove to be a tough sell in an election year, according to Stephen Kho of Akin Gump Strauss Hauer & Feld LLP.

"Getting fast track will be a big fight. The administration will need to appease many who are not free traders," he said.

Fast track authority is needed to give the U.S. credibility with trading partners, according to Bonnie Byers of King & Spalding LLP. If Congress grants the administration the authority, it will come with strings attached that are designed to influence the negotiations.

"The Democrats are not anxious for additional trade deals," Byers said. "They'll try to extract language to box in the administration."

In addition to the U.S., the Trans-Pacific Partnership countries are Australia, Brunei, Chile, Malaysia, New Zealand, Peru and Singapore. Although several of those countries already have free trade agreements with the U.S., negotiating an agreement with multiple countries could prove challenging, Kho says.

"The U.S. will have less leverage when dealing with several countries at one time," he said. "I wouldn't be surprised if a lot of things that were obtained in past bilateral FTAs get pared down."

Canada, Mexico and Japan have recently expressed an interest in the partnership, and attorneys say they are particularly intrigued by the involvement of Japan, which has been reluctant in the past to join free trade talks.

The Trans-Pacific Partnership seems to be on course for an eventual agreement, but it may take some time, John Veroneau of Covington & Burling LLP says.

"I think there will be productive work, but it's unlikely they can conclude an agreement next year," he said.

Russia's WTO Accession

Russia was accepted as a member of the WTO in mid-December, 18 years after it applied, but the U.S. still needs to normalize trade relations with Russia in 2012 to realize the benefits of the accession, and that could lead to a bruising battle on Capitol Hill, according to attorneys.

In order to establish permanent normal trade relations with Russia, Congress needs to repeal a 1974 provision known as the Jackson-Vanik amendment. Passed in response to Soviet limits on Jewish immigration, it bars normal U.S. trade relations with countries that restrict immigration, and while it has been waived in recent years, it now must be stricken from the books.

When Congress takes up that measure, numerous issues will be on the table, including complaints that Russia didn't agree to do enough to join the WTO and concerns about how WTO membership has affected China's trade policy, attorneys say.

"It's going to be a very painful debate," Veroneau said.

One of the main arguments in favor of China and Russia joining the trade body is that it is better to have them inside the club than outside, according to Veroneau. China's critics in Congress will likely use the Russia debate to argue that the U.S. would have more flexibility to address the trade issues involving those countries if they weren't part of the WTO and the U.S. wasn't bound by the body's rules.

And because it is an election year, political considerations will play a major role in the debate, Byers adds. Free trade skeptics wary about Russia's accession will seek to extract concessions on nontrade issues in exchange for normalizing relations.

"This is a no-win issue for the Democrats. They're not going to be pounding the table to get this done," she said, adding that she's "not terribly hopeful" the measure will win passage in Congress.

Chris Cloutier of King & Spalding said that if Congress does not grant permanent normal trade relations to Russia, the U.S. would invoke a WTO provision allowing Russia to join the organization without the WTO agreements applying with regard to the U.S.

Sanctions on Iran and Syria

The past year saw sanctions on the two Middle East countries ramped up by the U.S. and the European Union, and attorneys say to expect more of the same in 2012.

"There is a greater consensus than there ever has been in favor of Iran sanctions," J. Scott Maberry of Sheppard Mullin Richter & Hampton LLP said.

The U.S. has already restricted the ability of American companies to deal with Iran about as much as possible, so one next step has been for the U.S. to put measures in place that cut ties with non-U.S. companies that do business there, he says.

Another tactic would be to close the loophole that allows foreign subsidiaries of U.S. companies to engage in transactions with Iran that are otherwise prohibited, according to Michael Zolanz of SNR Denton.

"That would be a significant legislative effort that would change the landscape of sanctions," he said.

The more countries impose sanctions on Iran, the more opportunities it presents for countries like China that still do business in Iran and the more incentive it creates for suppliers who don't want to impose sanctions, Maberry says.

"A resource-rich country like Iran has the ability to meet demands despite sanctions," he said.

Many countries imposed sanctions on Syria this year after it violently cracked down on protesters, and those countries could push for broader United Nations sanctions on the country next year, according to Peter Lichtenbaum of Covington & Burling.

The sanctions on both Iran and Syria present compliance challenges for companies that do business around the world, particularly as more countries have imposed them, he says.

"The upsurge in non-U.S. actions is an even bigger issue for multinational companies than U.S. actions," he said.

U.S.-China Trade Relations

China's trade policies will continue to be a hot topic in Congress and on the campaign trail, attorneys say, though it is unclear whether the U.S. will take any concrete action to address those issues, or what that action might be.

A bill to treat China's alleged currency manipulation as a countervailable subsidy passed the Senate in 2011, but Republican leaders in the House appear unlikely to bring it for a vote.

Attorneys said they believe there is an appetite in Congress to do something to address concerns about China's trade policy, although that impulse will have to be weighed against the possibility of igniting a trade war.

Maberry said that one area where China could come to the fore is the Committee on Foreign Investment in the U.S., which reviews the national security implications of foreign investments in U.S. companies.

As China seeks to invest more in infrastructure and other sectors, the committee is likely to closely scrutinize deals involving China and could call for them to be restructured or abandoned, he says.

Another issue to watch will be China's National Congress in the fall, when many of the country's top leaders will be replaced, according to Kho.

"If the new leaders turn out to be more hard-line, we could see U.S.-China relations becoming more difficult," he said.

Other Trade Issues To Watch

The Obama administration is continuing its efforts to reform the U.S. export control system, Lichtenbaum says, by proposing rules that would allow products like some military vehicles and engines to be exported to close allies without a license.

Attorneys will be watching for more of such proposals and whether Congress objects to any of them, he adds, but major export control reform efforts that require legislation are unlikely to gain traction in an election year.

Lawyers will also be keeping a close eye on how the recently-enacted free trade agreements with South Korea, Colombia and Panama are implemented and the early indications that the U.S. is exploring a free trade agreement with the EU.

And given the state of the economy in an election year, the job implications of trade issues could become a important topic in campaign rhetoric, Zolandz says.

"Trade issues that are seen as second-tier have the potential to blow up into first-tier issues," he said.

--Editing by Christine Caulfield and Andrew Park.