What's New in Washington

Akin Gump
STRAUSS HAUER & FELD LLP

June 2020

The post-Memorial Day summer session has begun in Washington with the House and Senate facing a similar to-do list but with different approaches and philosophies. The main items on the summer agenda include the Phase 4 COVID-19 response package, the National Defense Authorization Act (NDAA), appropriations, the federal highway bill (the FAST Act), water infrastructure legislation (WRDA) and flood insurance.

The negotiations over Phase 4 are expected to gear up in June as the Senate prepares its response to the $3 trillion House-passed HEROES Act. While the two parties have different views on the scope of Phase 4, there is bipartisan agreement that adjustments need to be made to the Paycheck Protection Program (PPP) to ensure businesses can optimally use the program. Last week, the House passed legislation by a 417-1 vote to extend the loan forgiveness period to 24 weeks. The measure, sponsored by Rep. Dean Phillips (D-MN) and Rep. Chip Roy (R-TX), would also modify the 75-percent payroll requirement of the program to provide greater flexibility at a new ratio of 60 percent on payroll costs and 40 percent on other costs. The bipartisan leadership of the Senate Small Business Committee reached agreement on a similar but slightly different package of technical modifications to the PPP just prior to the Memorial Day recess and is expected to resume negotiations this week in an attempt to secure Senate passage as a standalone package in June.

The Senate will be in session for the entire month of June, with the next recess scheduled over the July 4 holiday. Leader McConnell has indicated that the Senate will vote on S. 3422, the Great American Outdoors Act, which would permanently fund the Land and Water Conservation Fund at its authorized $900 million annual level. The Senate continues to process President Trump's nominations to the executive and judicial branches and also plans to take up the NDAA, with the Senate Armed Services Committee recently announcing a revised schedule for marking up the measure in June. The chamber also may take up WRDA this summer, and the Senate Appropriations Committee is likely to begin the process of approving and reporting out appropriations bills in June.

The House will continue their work via proxy voting and remote hearings, and will focus on NDAA, the highway bill, the water resources bill, as well as the appropriations bills. Ongoing COVID-19 business in the House has delayed the chamber's initial plans to pass all 12 of its appropriations bills by June, but subcommittees are working to draft and remotely approve appropriations bills for fiscal year (FY) 2021 with the goal of House passage before the August recess.

IN THIS ISSUE

- Appropriations Update
- Financial Services Update
- Health Care COVID-19 Response
- Surface Transportation
- National Defense Authorization Act
- Regulation Easing Reporting Requirements for 501(c)(4) Organizations

Finalized

- Contact Tracing Efforts Bring Renewed Privacy Focus
- Tax Update
- Telecom Update
- Trade Policy Update
- New Executive Order Calls for Greater Regulatory Flexibility, Compliance Assistance and Enforcement Discretion for Businesses

APPROPRIATIONS UPDATE

Appropriations Update

House Appropriations Committee Chairwoman Nita Lowey (D-NY) has distributed top-line numbers (i.e., 302(b) allocations) to each of the 12 appropriations subcommittees as of April, but these numbers are not yet public. House members had begun the process of collecting appropriations requests from constituents before leaving the Capitol in April and many are now in the process of remotely drafting appropriations bills for FY 2021. Many lawmakers have considered the possibility of exempting certain programs related to the coronavirus response from limits in discretionary spending levels set out in the Bipartisan Budget Act of 2019. Rep. Tom Cole (R-OK), ranking member of the Labor-HHS subcommittee, has agreed with Chairwoman Lowey on these cap exemptions, saying that the Centers for Disease Control and Prevention (CDC), National Institutes of Health (NIH) and other agencies and programs are likely to need significant funding increases. On the Senate side, Appropriations Chairman Richard Shelby (R-AL) has expressed interest on moving forward with funding the government and signaled support for a plan to exempt Veterans Affairs (VA) health care funding from budget caps. Shelby also stated that President Trump understood the need for this exemption and would not oppose it. The Senate has not yet issued top-line numbers to the subcommittees. Specific timelines for markups in June and July have not yet been released for either chamber, but more details are likely forthcoming as the committees shift their focus from COVID-19 relief bills to regular annual appropriations for FY 2021. On Friday, House Majority Leader Steny Hoyer (D-MD) wrote in a "Dear Colleague" letter that he expects the House Appropriations Committee will start marking up the 12 bills in subcommittee and full committee "at the end of June and beginning of July." Hoyer released the updated House calendar on Friday showing the August recess scheduled to begin after votes July 31, and run through Labor Day.

Back to top

FINANCIAL SERVICES UPDATE

Financial Services Update

The CARES Act provided unprecedented support to individuals and businesses navigating the COVID-19 pandemic. The Paycheck Protection Program (PPP) provided for $350 billion in forgivable lending to businesses that primarily used the loans to finance their payroll. The demand for this program was so significant that Congress subsequently supplemented it with an additional $310 billion appropriation. In addition, Congress provided Treasury with at least $454 billion in financing to support lending programs through the Federal Reserve. The Main Street Lending Program, designed to fill the gap between the PPP and the Federal Reserve's Corporate Credit Facilities (PMCCF/SMCCF), promises to be among the more significant financial tools in the federal government's toolkit, but it is only just now coming online. As Congress thinks through a next round of

COVID-19-related legislation, the successes and shortcomings of PPP and the Federal Reserve facilities will be top of mind for legislators.

In the Senate, the Banking Committee has been quite active – not surprising given its role in drafting and overseeing Title IV of CARES. On May 19, it held one of the first high-profile hearings examining the implementation of CARES. Secretary Mnuchin and Chairman Powell testified and provided an update on the programs implemented under the Act. Secretary Mnuchin reiterated the White House's approach of urging states to reopen, while Chairman Powell thought more aid from Congress would eventually be necessary in the hopes of returning the U.S. economy to normal by early 2021. Ranking Member Sherrod Brown (D-OH) was vocal in his disapproval of the administration's handling of the pandemic and has sent several letters to the Treasury and the Fed regarding PPP, access to capital for state and local governments, and other areas.

Over in the House, Chairwoman of the House Committee on Financial Services Maxine Waters (D-CA) helped guide the passage of the Democratic HEROES Act, which included the committee's priority of providing more direct stimulus payments of up to $6,000 per household. Additional provisions included the creation of a $100 billion emergency rental assistance fund,a $75 billion homeowner assistance fund, $11.5 billion for homeless assistance grants, and $1 billion for new Section 8 vouchers to support persons experiencing homelessness. The Act also suspends negative credit reporting and debt collection, and requires forbearance and loan modifications for consumer and commercial loans. While the overall legislation is a non-starter in the Republican-led Senate, several of its core features—aid to states/municipalities and to individuals—will likely become a part of some COVID-19-related bill this summer.

Back to top

HEALTH CARE COVID-19 RESPONSE

Health Care COVID-19 Response

The Department of Health and Human Services (HHS) Office of Inspector General (OIG) announced that it will audit the distribution of payments to health care providers from the Provider Relief Fund established under the CARES Act. Specifically, the work plan indicates that the audit will examine "the effectiveness of HHS controls over the awarding and disbursement of $50 billion in Provider Relief Fund (PRF) payments" and seek to determine whether the payments were correctly calculated and disbursed to hospitals and other eligible providers. The work is expected to be completed in Fiscal Year 2020, which ends on September 30, 2020. Notably, HHS's FAQs on the $50 billion general distribution state that HHS "does not intend to recoup funds as long as a provider's lost revenue and increased expenses exceed the amount of Provider Relief funding a provider has received."

HHS Principal Deputy Inspector General Christi Grimm told the House Oversight and Reform Committee that OIG is looking at whether rules were followed in the calculations of the general distribution payments, but "not second-guessing how those formulas were arrived on as part of our work."

Meanwhile, as the Senate continues to develop its health care policy priorities for a Phase 4 COVID-19 relief package, the House and Senate are holding hearings focused on pandemic response and the health care infrastructure needed to reopen the economy. In the last few weeks, committees have focused their work on CARES Act implementation, health disparities during the COVID-19 outbreak, care for seniors and testing capacity, among other issues. House Energy and Commerce Health Subcommittee Ranking Member Michael Burgess (R-TX) has called for the Subcommittee to hold hearings on a number of topics, including the impact of the pandemic on mental health and substance use disorders. The Senate Finance Committee will hold a hearing on June 2 to examine the status of the Food and Drug Administration's (FDA) foreign drug inspections during the COVID-19 outbreak. The hearing is also likely to touch on other issues related to the supply chain, including the availability of personal protective equipment and other medical supplies. In addition, the Senate Homeland Security and Government Affairs Committee will review the federal government's COVID-19 procurement and distribution strategies at a hearing on June 9.

Back to top

SURFACE TRANSPORTATION

Surface Transportation

With the Fixing America's Surface Transportation (FAST) Act expiring on September 30, there may be bipartisan support for advancing transportation legislation potentially as part of the next coronavirus stimulus bill. House Transportation Chairman Peter DeFazio (D-OR) is reportedly close to completing work on a five-year surface transportation bill but he has not released the bill. Chairman DeFazio's proposal is expected to provide robust funding for transit, resilient infrastructure and programs that support active transportation. The Department of Transportation is set to release its own proposal for the reauthorization. President Trump has previously proposed a 10-year reauthorization of the FAST Act that would include $810 billion for surface transportation programs.

Senate Environment and Public Works (EPW) Chairman John Barrasso (R-WY) has also expressed interest in advancing the bipartisan five-year surface transportation bill, known as the America's Transportation Infrastructure Act, that his Committee passed last year. However, the other Senate committees of jurisdiction (Commerce, Science and Transportation; Banking, Housing and Urban Affairs; and Finance) have yet to unveil or mark up their respective components of the surface transportation reauthorization. While the full Senate has not yet scheduled a vote on the EPW Committee's standalone legislation, Chairman Barrasso has proposed folding the bill into the next coronavirus stimulus bill or the Committee's water infrastructure reauthorization.

House Ways and Means Chairman Richard Neal (D-MA) is continuing to have discussions with Treasury Secretary Steven Mnuchin regarding how to pay for the FAST Act reauthorization. However, neither the administration nor Congress has proposed a mechanism to fund surface transportation programs, a perennial challenge for infrastructure legislation. With gas tax revenues being lower than even originally predicted because of the effects of COVID-19 on travel (as reflected in a recent Congressional Budget Office report), Congress will be under pressure to identify revenue for transportation going into the election. While it is still early to tell whether Congress and the Trump administration can reach an agreement on policy and how to pay for a transportation bill, there may be momentum building for advancing such legislation.

Water Resources Development Act

Like the FAST Act, the current Water Resources Development Act (WRDA), which funds water infrastructure projects at ports, harbors and inland waterways as well as flood control and ecosystem restoration, expires this year. The EPW Committee unanimously advanced a bipartisan WRDA renewal on May 6. The legislation, known as America's Water Infrastructure Act of 2020, authorizes $17 billion in new federal authorizations for infrastructure projects, authorizes 21 Chief's or Director's Reports and sets a two year goal for the U.S. Army Corps of Engineers to complete its feasibility studies for potential projects. The full Senate has not yet scheduled a vote on the bill.

The House Transportation and Infrastructure Committee began soliciting WRDA project, study and policy requests from House members in January and is expected to release its bill in the coming days. Chairman DeFazio has said that WRDA reauthorization is a crucial component of congressional infrastructure discussions and has supported passage of a WRDA bill every two years.

The House bill was initially expected to include Chairman DeFazio's Full Utilization of the Harbor Maintenance Trust Fund Act (H.R. 2440). However, the CARES Act signed into law in March contained several provisions from H.R. 2440. Under the CARES Act, funds in the Harbor Maintenance Trust Fund must be spent on harbor maintenance and cannot be diverted to other purposes. The CARES Act also removes budgetary motivations for Congress to not fully fund the Trust Fund. The provisions will go into effect on the earlier of January 1, 2021, or the date of enactment of the next WRDA.

Back to top

National Defense Authorization Act

On May 26, the Senate Armed Services Committee announced a revised schedule for marking up the National Defense Authorization Act (NDAA) for FY 2021. The Readiness and Strategic Forces Subcommittees will hold markups on June 8 and the remaining five Subcommittees will hold their markups on June 9. The full Committee will then meet on June 10 and, if needed, June 11. The Committee had previously planned to hold markups in May. Chairman Jim Inhofe (R-OK) acknowledged that the pandemic has created "unique challenges" but called for a vote on the bill in the full Senate before Independence Day, arguing that the legislation must remain a priority. Senate Majority Leader Mitch McConnell (R-KY) similarly announced in late May that the Senate intends to debate the NDAA in June.

After indefinitely postponing its April 30 markup, the House Armed Services Committee has not announced a new date to consider its version of the NDAA (H.R. 6395), the base text of which was introduced on March 26. Chairman Adam Smith (D-WA) said he will determine an updated timeline in the coming weeks. Meanwhile, members of the Committee are continuing to prepare their individual proposals for inclusion in the bill from their home districts. In April, Chairman Smith predicted that Congress will not be able to complete work on the NDAA before the current authorization expires on September 30. Chairman Smith cautioned that moving too quickly on the legislation could lead to consequential mistakes.

Ranking Member Mac Thornberry (R-TX) expressed optimism that the bill will pass the House with bipartisan support. Ranking Member Thornberry said both parties are aiming to avoid "red lines" that could impede the bill's progress. The House bill is expected to address potentially contentious issues such as climate change, energy efficiency and cleaning up polyfluoroalkyl substances (PFAS) at military bases. It is also expected to include restrictions on the Defense Department's ability to reprogram funds for unintended purposes, such as construction of the border wall. Although Republicans opposed similar restrictions in the FY 2020 House bill, Ranking Member Thornberry predicted Republicans will be more open to the comparatively broader reprogramming provisions in the FY 2021 bill.

Senate Homeland Security and Governmental Affairs Chairman Ron Johnson (R-WI) and Senate Armed Services member Angus King (I-ME), the federal Cyberspace Solarium Commission's only representative in the Senate, called on the upper chamber to include in the upcoming NDAA the Solarium's recommendation that Congress create a Senate-confirmed national cyber director position. The Solarium, which was created in the FY 2019 NDAA for the purpose of developing recommendations to protect the United States from cyberattacks, released a report in March containing over 75 cybersecurity recommendations. House Armed Services members Jim Langevin (D-RI) and Mike Gallagher (R-WI), the House's two Solarium co-commissioners, previously suggested including the Commission's national cyber director recommendation in the NDAA in April.

Back to top

Regulation Easing Reporting Requirements for 501(c)(4) Organizations Finalized

On May 28, the Department of the Treasury and the Internal Revenue Service (IRS) finalized regulations that eliminate the requirement for 501(c)(4) organizations to report information on their donors to the IRS. Previously, the IRS required 501(c)(4) organizations to identify contributors of $5,000 or more on annual tax filings, however, donor names were not publicly disclosed. The regulation does not alter existing Federal Election Commission (FEC) disclosure and reporting obligations for 501(c)(4) organizations engaged in political activity.

The Treasury and the IRS issued the rule change initially in July 2018, but the action was overturned by a federal judge who found that the agencies had not followed the requisite rulemaking procedures. A notice of proposed rulemaking was issued in September 2019, and the agencies held a public hearing and received comments from the public, which were addressed in the release of the final regulation.

Although the new regulation removes any disclosure requirement to the IRS, 501(c)(4) organizations are still required to collect and keep information on their donors and to provide the information to the IRS if needed for tax administration purposes. Additionally, 501(c)(4) organizations may still be required to disclose certain contributor information to the public under other federal and state regulations. For example, under FEC regulations, 501(c)(4) organizations may be required to publicly disclose donor information on reports filed with the agency where contributions are earmarked for “political purposes” or to further an independent expenditure.

Back to top

CONTACT TRACING EFFORTS BRING RENEWED PRIVACY FOCUS

Contact Tracing Efforts Bring Renewed Privacy Focus

As the COVID-19 pandemic has progressed, a growing number of privacy and surveillance concerns have surfaced as industry develops their own standards for how they will conduct contact tracing and other efforts to slow the spread of the virus.

Republican members of the Senate Commerce, Science and Transportation Committee introduced the COVID-19 Consumer Data Protection Act at the beginning of May to give Americans more control over and insight into how their personal health, proximity and geolocation data is used during the pandemic. One week later, House Energy and Commerce Health Subcommittee Chairwoman Anna Eshoo (D-CA) and Consumer Protection and Commerce (CPC) Subcommittee Chairwoman Jan Schakowsky (D-IL) introduced a bicameral counter-proposal to the measure unveiled by Senate Republicans—the Public Health Emergency Privacy Act (PHEPA). The Senate companion bill is sponsored by Sen. Richard Blumenthal (D-CT) and Sen. Mark Warner (D-VA).

Both proposals would require organizations to receive “affirmative express consent” before collecting, using or disclosing their health information and allow users to opt out of data collection. The measures also give the Federal Trade Commission (FTC) and state attorneys general enforcement authority.

However, a number of key differences exist between the two contact tracing proposals—namely, that the Democratic proposal would not preempt more stringent state and local laws such as the California Consumer Privacy Act (CCPA) and the Illinois Biometric Information Privacy Act (BIPA), which remains a key issue of importance for Democrats such as Chairwoman Eshoo and Chairwoman Schakowsky who represent districts in these states. Further, the Democratic proposal would provide for a private right of action, which remains a sticking point in Senate privacy negotiations.

Congress has yet to reconcile these differences as the privacy debate resurfaces amidst the COVID-19 pandemic. Republican leaders of the House Energy and Commerce Committee have expressed concerns about the “partisan” PHEPA introduced by Democrats, noting that they have worked in good faith with Democrats to develop a broader national standard over the last year and a half and released a bipartisan staff draft in December. Republicans have asserted that Democrats’ new contact tracing proposal jeopardizes broader privacy negotiations by “doubling down on misguided policies” that harm small businesses and innovators. It is unclear whether members will be able to reach agreement with their colleagues across the aisle on these differences as they pertain to COVID-19 contact tracing efforts in the coming weeks.

Back to top

TAX UPDATE

Tax Update

The tax writing committees continue to work with the U.S. Department of the Treasury to ensure the CARES Act is being implemented as Congress intended and provides relief to American businesses and citizens. Several bipartisan provisions were included in the bill, including economic stimulus relief checks issued to taxpayer, the qualified improvement property (QIP) technical correction enabling taxpayers to claim 100 percent bonus depreciation on eligible QIP, delay of payroll tax liabilities until 2022 and other business relief efforts. As the Senate moved to vote on the legislation, a small subsection of Senators opposed the $600 a week boost for unemployment insurance, arguing that it would incentivize individuals to not return to work, but the provision was ultimately passed with the legislation. Ever since President Trump signed the CARES Act into law on March 27, the Treasury has been under intense scrutiny from Congress and the media to make sure programs such as the PPP and additional relief funding for American businesses are being implemented efficiently. On May 5, Chairman Chuck Grassley (R-IA) of the Senate Finance Committee and Chairman Richard Neal (D-MA) of the House Ways and Means Committee, along with Ranking Member of Senate Finance Ron Wyden (D-OR), sent a letter to Treasury Secretary Steven Mnuchin urging the department to allow small businesses to deduct Paycheck Protection Program expenses. Secretary Mnuchin claimed that was a form of "double-dipping" and an unintended consequence of the program, but stated the Treasury would look into it. Congress also established an oversight committee for the CARES Act, and on May 18 a report published by the Congressional Oversight Commission stated that the Treasury has disbursed only $37.5 billion of the $500 billion carved out in the CARES Act to be used for emergency lending to businesses and state and local governments.

The House passed HEROES Act included tax provisions that have been on the Democratic priorities for some time, including major expansions of the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC), elimination of the cap on State and Local Taxes (SALT) deductions and the reinstatement of a limit on the ability of pass-through business owners to deduct business net operation losses over $250,000 ($500,000 for joint filers). The act also provides additional economic stimulus payments in the form of a refundable tax credit of $1,200 for single filers, $2,400 for joint filers, plus $1,200 for each dependent (up to three dependents per household); increases the per-employee limit for the Employee Retention Credit (ERC); and creates a refundable employment tax credit capped at 50 percent of $50,000 per quarter (or $25,000 per quarter) to help certain businesses whose operations have been fully or partially suspended or who have experienced a significant decline in gross receipts with "fixed costs." The legislation will have a difficult time moving through the Senate, with Senate Republican tax writers likely drafting their own proposals for the next round of stimulus legislation. Sen. Todd Young (R-IN) and Sen. Michael Bennet (D-CO) unveiled their Reviving the Economy Sustainably Towards a Recovery in Twenty-twenty (RESTART) Act which offers fixes to the PPP program, including an expansion of the eight-week covered period to deploy PPP funds and earn loan forgiveness to 16-week, and a new loan program to cover the next six months of payroll, benefits and fixed operating expenses for businesses that have taken a substantial revenue hit. Senate Republicans have signaled they want to see how the existing programs operate before addressing additional legislation later in the summer.

Back to top

TELECOM UPDATE

Telecom Update

President Trump Issues Executive Order on Censorship by Online Platforms

On March 28, following a public dispute with a social media company over "fact checking" labels placed on statements made by President Trump, the White House released an Executive Order targeting censorship by online platforms and seeking to challenge the protections offered to those platforms under the Communications Decency Act of 1996 (referred to herein as either "Section 230" or the CDA). The Executive Order takes the following actions:

- Makes a number of findings related to alleged selective censorship by online platforms that is harming the national discourse.
- Mandates that the National Telecommunications and Information Administration (NTIA) file a petition for rulemaking asking the Federal Communications Commission (FCC) to issue regulations regarding the scope of Section 230 protections.
- Requires heads of executive agencies to submit reports on marketing and advertising paid to online platforms to determine whether any online platforms are problematic vehicles for government speech due to viewpoint discrimination, deception to consumers or other "bad practices."
- Encourages the FTC to take action against online platforms for political censorship.
- Establishes a Department of Justice-led working group with state attorneys general to investigate unfair and deceptive practices by online platforms and the application of state law to these practices.

In 1996, when President Clinton signed the CDA into law, the primary intent was to regulate indecency and obscenity on the Internet. Today the main purpose of Section 230 is to shield websites and other "interactive computer services" from lawsuits related to: (1) content posted by their users and (2) "good faith" efforts by the website operators to "restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable."

Proponents of Section 230, including many in the technology industry, assert that the broad protections of Section 230 are a cornerstone of the Internet and have enabled innovation and free speech online by permitting websites to host open dialogue without fear of civil liability. Website operators claim that given the size of many online platforms, it would be infeasible to monitor and prevent posting of all objectionable content. The argument follows that without Section 230 protections, online platforms either would not allow user posts, or would be forced to engage in heavy handed censorship in order to avoid potential civil liability.

Opponents of Section 230 contend that Section 230 enables illicit activity and selective censorship of certain viewpoints on the Internet. According to Attorney General William Barr, Section 230 "has enabled platforms to absolve themselves completely of responsibility for policing their platforms, while blocking or removing third-party speech—including political speech—selectively, and with impunity."

News of the Executive Order was not well received by the FCC's two Democrat Commissioners. Commissioner Jessica Rosenworcel released a statement asserting that "an Executive Order that would turn the Federal Communications Commission into the President's speech police is not the answer." Commissioner Starks urged focus on the fight against COVID-19, noting that "the First Amendment and Section 230 remain the law of the land and control here."

Back to top

TRADE POLICY UPDATE

Trade Policy Update

This year was supposed to go differently for President Trump and his trade policy agenda. There was hope that by May, months after the adoption of the Phase One deal with China and weeks away from the United States-Mexico-Canada Agreement (USMCA) entry into force, the White House could brag about the success of its China deal and shift its focus to negotiating and concluding agreements with other countries. But as summer begins in Washington D.C. and the fallout of the coronavirus pandemic continues to affect much of the world, U.S.-China relations are at a low ebb, leading to questions about the durability of the Phase One deal.

China. Despite the contentious rhetoric between the two countries and their leaders since the emergence of the pandemic, China and the U.S. have so far continued to make progress on the implementation of the Phase One agreement. In a statement from the

Office of the U.S. Trade Representative at the beginning of May, the agency noted that "both countries fully expect to meet their obligations under the agreement." Another more recent statement, put out by both the U.S. Department of Agriculture and the U.S. Trade Representative, repeated this sentiment, confirming that the U.S. was meeting its obligations under the agreement and that China had continued to implement its tariff exclusion process accordingly. While China has apparently thus far made good progress on the substantive commitments it made in the deal, trade data shows that China has not been meeting its purchasing commitments under that deal. In recent weeks, President Trump has repeatedly remarked that he is reevaluating the Phase One deal and has doubts about full implementation. His comments sync with bipartisan pressure to "reshore" critical supply chains from China back to the U.S. after their disruption during the pandemic and to "punish" China for its inability to prevent the spread of the coronavirus. Against that backdrop, the significant deterioration in the U.S.-China relationship throughout the spring after the emergence of the pandemic has accelerated dramatically after Beijing in mid-May announced a new security law for Hong Kong that many believe violates commitments China made as a condition of the handover from the United Kingdom in 1997. That action led President Trump to declare his intention to dismantle Hong Kong's "special status" under U.S. law, including its preferential trade treatment, as well as to sanction China in a variety of others ways. China has vowed to respond but has not yet indicated how it will do so. While the President did not terminate the Phase One deal, it is not difficult to imagine circumstances leading him to do so in this highly volatile environment.

USMCA. With weeks before the entry into force of the USMCA on July 1, the Trump administration has begun talking up its importance to the U.S. economy. In recent comments, White House advisor Larry Kudlow emphasized the greater role the Canadian and Mexican markets play in total U.S. trade compared to China. President Trump has echoed these comments as well saying, "The amount of business that we do with Canada and with Mexica is monumental – bigger than the deal we've made with China." Mexico and Canada have already expressed optimism at the prospect of stronger trade cooperation as overseas supply chain disruption demonstrates a need for closer-to-home manufacturing demand. Like the U.S., both Canada and Mexico are facing significant trade and job losses from the pandemic. In a televised statement, President López Obrador of Mexico affirmed that, following the pandemic, "Mexico is one of the principal countries…to receive investment and develop companies." Some private companies, including U.S. automakers, have expressed concerns about implementing costly new regulations stemming from the agreement during the health and economic crisis, but they and the rest of the U.S. business community welcomes the stability of the USMCA.

U.K. The Trump Administration formally launched negotiations for a comprehensive trade deal with the U.K. in early May. In a joint statement by U.S. Trade Representative Robert Lighthizer and the U.K.'s International Trade Secretary Liz Truss, the pair stated they were focused on negotiating a single comprehensive and "ambitious" deal. The negotiations are complicated by the need for the U.K. to finalize a trade agreement with the European Union by the end of this year, when its interim deal with the EU that left in place the main terms of its EU membership expires. Because the U.S. and the EU have different and incompatible approaches to various regulatory issues, they will both likely compete to lock in place their approaches in their negotiations with the U.K.

Emerging Markets. The Trump Administration is also planning to formally launch negotiations for a comprehensive trade deal with Kenya. As required by Trade Promotion Authority (TPA), the Administration published its negotiating objectives for its negotiation with Kenya in late May. The U.S. International Trade Commission also announced the beginning of an investigation into the impact of eliminating tariffs on goods from Kenya and will deliver its findings to the president on September 16, as required by TPA. In addition, the Administration continues its efforts to finalize a small trade deal with India resolving a variety of trade irritants with the country.

Back to top

NEW EXECUTIVE ORDER CALLS FOR GREATER REGULATORY FLEXIBILITY, COMPLIANCE ASSISTANCE AND ENFORCEMENT DISCRETION FOR BUSINESSES

New Executive Order Calls for Greater Regulatory Flexibility, Compliance Assistance and Enforcement Discretion for Businesses

On May 19, 2020, President Trump signed an Executive Order entitled "Regulatory Relief to Support Economic Recovery." The Order calls on agencies to provide or extend regulatory flexibilities that promote job creation and economic growth, and provide regulatory relief to businesses as they work to recover from the impact of the coronavirus. The Order also reinforces the agencies' obligations to be transparent and fair in administrative enforcement actions.

Read more on the new Executive Order.

Back to top

For more information, please contact your regular Akin Gump lawyer or advisor, or:

G. Hunter Bates
Brian A. Pomper
Hal S. Shapiro