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March 20, 2020

Washington Update

This Week In Congress

House – The House adopted technical changes to H.R. 6201, "**The Families First Coronavirus Response Act**," and sent the bill to the Senate for consideration.

Senate – The Senate passed H.R. 6201 and the President signed the bill into law. Senate Republicans released a proposal for a third coronavirus response package, S. 3548, "**The Coronavirus Aid, Relief, and Economic Security (CARES) Act**." The proposal includes small business interruption loans, direct assistance to taxpayers, assistance to severely distressed sectors of the economy, and additional health care resources to respond to the coronavirus outbreak. Negotiations on the proposal are ongoing.

Next Week In Congress

House – House Majority Leader Steny Hoyer (D-MD) announced that the House will not reconvene until it is prepared to vote on the third coronavirus response package.

Senate – The Senate will continue work on the CARES Act. Senate Majority Leader Mitch McConnell (R-KY) has said that he hopes to take the first procedural steps on the bill as early as Friday night, with a vote on passage occurring as soon as Monday.

TAX

President Signs H.R. 6201, The Families First Coronavirus Response Act (Stage 2 Bill)

Key Points:

- *H.R. 6201 passed the House by a vote of 363-40 and the Senate by a vote of 90-8.*
- *The bill includes a new temporary emergency paid leave program and matching payroll tax credits.*

The Families First Coronavirus Response Act (H.R. 6201) (Summary) was enacted this week. This legislation includes a new temporary federal emergency paid leave program labeled "The Emergency Paid Sick Leave Act" for businesses with less than 500 employees, and a matching payroll tax credit program for those same businesses.

The JCT issued a Detailed Technical Description of the Payroll Tax Provisions describing the requirements in general and the payroll tax credits that will help offset the costs of both the paid sick and family leave requirements, limited to those same employer

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(less than 500 employees). The legislation also allows the Administration to exclude employers less than 50 employees.

Senate Republicans Propose Phase Three Stimulus for the Coronavirus Response Legislation

Key Points:

- *The Senate has passed the first two phases of their legislation and Phase Three has been championed by Chairman Grassley (R-IA).*
- *Senate Democrats gave offered alternative tax proposals focused on small businesses.*

Rebate Checks

The cornerstone of this legislation is policy for the rebate checks sent to individuals. These checks of up to $1,200 will go to most taxpayers, providing cash immediately to individuals and families. Married couples who file a joint return are eligible for up to $2,400. Those amounts increase by $500 for every child. These checks are reduced for higher income taxpayers and begin phasing out after a single taxpayer has $75,000 in adjusted gross income and $150,000 for joint filers. The IRS will base these amounts on the taxpayer's 2018 tax return. The amount is completely phased-out for single taxpayers with incomes exceeding $99,000 and $198,000 for joint filers.

The bill also does the following:

- extends the April 15 tax filing deadline to July 15, it also allows all individuals to postpone estimated tax payments due from the date of enactment until October 15, 2020;
- waives the 10-percent early withdrawal penalty for distributions up to $100,000 from qualified retirement accounts for coronavirus-related purposes;
- permits charitable above-the-line deductions for up to $300 of cash contributions

Business Provisions

- Allows corporations to postpone estimated tax payments due after the date of enactment until October 15, 2020, and there is no cap on the amount of tax payments postponed;
- allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees;
- allows NOL (Net Operating Losses) carryback for 2018, 2019, and 2020 for five years, and temporarily removes the 80% taxable income limitation to allow an NOL to fully offset income;
- temporarily increases the section 163(j) interest expense limit from 30 percent limitation to 50 percent of the taxable income for 2019 and 2020; and
- addresses QIP technical correction.

A summary of the Senate Republican proposal is here, and the full text is here.

Meanwhile, today the Senate Democrats offered their alternative, focused on small businesses almost exclusively. The Wyden-Cardin proposal offers:

- a small business rebate/credit of the lesser of 30% of gross receipts or $75,000, and allows advance refunds of the credit;
- delay for small business estimated taxes into two installments, on Sept. 15, 2020 and Jan. 15, 2021;
- a 50% employee retention payroll tax credit (refundable) of up to $7,500 for small employers with less than 500 full

time employees, which is required to close under a COVID-19 emergency order or has 30% cut in gross receipts in any given month.

A summary Senate Democratic tax proposal is here, and the full text is here.

Negotiations Ongoing on Stimulus Bill, Action Possible Soon

The negotiations among the Senate and the Administration are ongoing, with Senate Majority Leader McConnell looking to begin procedural actions as soon as tonight and seeking passage by Monday.

Late Thursday, Senate Minority Schumer joined House Speaker Pelosi in a release that raised a dozen or so objections to the Senate Republican proposal, citing groups and sectors they argued it did not help. Recently, Senator Schumer has had several calls with the President and thev Administration. The tax policies above seem likely in play with a resolution on a Stage Three stimulus bill possible over the weekend or early next week.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Josh Hansma contributed to this section.

FINANCIAL SERVICES

Congressional Responses to the Coronavirus Include Financial Services Provisions

Key Points:

- *The Phase 3 stimulus package proposed by Senate Republicans would temporarily suspend the statutory limitation on the use of the Exchange Stabilization Fund for guarantee programs for the United States money market mutual fund industry.*
- *House Financial Services Committee Chairwoman Maxine Waters (D-CA) proposed a wide-ranging response to the crisis.*

On Thursday, Senate Republicans released their Phase 3 coronavirus response proposal, the Coronavirus Aid, Relief, and Economic Security (CARES) Act. In addition to provisions focused on small business loans, direct assistance to taxpayers, aid to affected industries, and support for health care response, the bill also includes a section aimed at providing stability for Money Market Funds (MMFs). Division E of the bill, would:

- Temporarily suspend the statutory limitation on the use of the Exchange Stabilization Fund (Section 131 of the Emergency Economic Stabilization Act of 2008) for guarantee programs for the United States money market mutual fund industry.
- Sunset date: Terminate authority to establish any new MMMF guarantee program upon the conclusion of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Outbreak declared by the President on March 13, 2020.

Senate Majority Leader Mitch McConnell (R-KY) designated Senate Banking Committee Chairman Mike Crapo (R-ID) and Senator Pat Toomey (R-PA) as the Republican leaders on the financial services provisions.

Senate Banking Committee Ranking Member Sherrod Brown (D-OH) issued a press release and wrote an article detailing his list of "pro-worker demands amid the coronavirus pandemic and calls for taxpayer money to be used to help curb economic hardship." Brown's article asserted that any assistance to companies under the Phase 3 package should be conditioned on the following prohibitions:

- Companies are prohibited from making any stock buybacks.
- Companies are prohibited from outsourcing or offshoring any additional jobs, including to U.S.-based contractor companies.
- No financial assistance may be spent to fund anti-union campaigns.
- Companies are prohibited from paying stock compensation or offering golden parachutes to any company officers.
- No financial assistance may be spent to fund any efforts to defeat or weaken pro-worker laws being considered in any level of government country-wide.
- No company receiving financial assistance may layoff or furlough any non-managerial employees until the company has first eliminated all outside consulting expenses and reduced executive compensation.

Brown also proposed imposing executive compensation limits on companies receiving federal assistance. He called for the restrictions to remain in place for the longer of ten years or the duration of the term of the assistance.

House Financial Services Committee Chairwoman Maxine Waters (D-CA) released a proposed legislative response to the coronavirus outbreak. Under Waters' proposal:

> The Federal Reserve would be directed through a money-financed fiscal program, to fund automatic stabilizers in the form of at least $2,000 for every adult and an additional $1000 for every child for each month of the crisis.

The sweeping proposal includes a wide range of provisions, including suspension of all consumer and small business credit payments for the duration of the crisis and a ban on all evictions, foreclosures and repossessions for the duration of the crisis. The proposal would also impose disclosure requirements and executive compensation restrictions on large corporations which accept government assistance. The proposal would create a reinsurance program for pandemics similar to the Terrorism Risk Insurance Act, among other provisions.

Senator Bob Menendez (D-NJ) has said that he intends to introduce legislation Friday to amend the Federal Reserve Act to allow the Federal Reserve to purchase municipal bonds under "unusual and exigent circumstances," such as the current coronavirus outbreak. Menendez stated:

> States and localities are on the front lines in the fight against COVID-19 and need assistance from the federal government to be able to finance the increasing costs of the response to this health emergency. The Municipal Bonds Emergency Relief Act would do that by allowing the Federal Reserve to provide support to state and local governments for this crisis and similar future emergencies.

Regulators Take Actions to Provide Stability During the Coronavirus Outbreak

Key Points:

- *The Federal Reserve established and later expanded a Money Market Mutual Fund Liquidity Facility.*
- *The Federal Reserve also established a Primary Dealer Credit Facility and a Commercial Paper Funding Facility.*

This week, the federal financial regulators took a range of actions in response to the economic turmoil created by the coronavirus outbreak. On Wednesday, the Federal Reserve announced the establishment of a Money Market Mutual Fund

Liquidity Facility (MMLF). Through the MMLF, the Federal Reserve Bank of Boston "will make loans available to eligible financial institutions secured by high-quality assets purchased by the financial institution from money market mutual funds." The Federal Reserve, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) issued an interim final rule which "modifies the agencies' capital rules so that financial institutions receive credit for the low risk of their MMLF activities, reflecting the fact that institutions would be taking no credit or market risk in association with such activities." The interim final rule is effective immediately.

The Federal Reserve subsequently announced an expansion of the MMLF to " to make loans available to eligible financial institutions secured by certain high-quality assets purchased from single state and other tax-exempt municipal money market mutual funds." The Federal Reserve, the OCC, and the FDIC also issued a joint statement encouraging banks to make use of the Federal Reserve discount window.

Other key Federal Reserve actions included:

- Establishing a Primary Dealer Credit Facility (PDCF) to support the credit needs of households and businesses;
- Establishing a Commercial Paper Funding Facility (CPFF) to support the flow of credit to households and small businesses.
- Taking coordinated action with other central banks to "enhance the provision of liquidity via the standing U.S. dollar liquidity swap line arrangements."

On March 16, the Securities and Exchange Commission (SEC) issued a staff no-action letter, delaying the implementation deadlines for the Consolidated Audit Trail (CAT).

The Commodity Futures Trading Commission (CFTC) issued several staff letters intended to provide relief to market participants:

- Relief for Futures Commission Merchants and Introducing Brokers. [CFTC Letter No. 20-03]
- Relief for Swap Dealers. [CFTC Letter No. 20-06]
- Relief for Retail Foreign Exchange Dealers. [CFTC Letter No. 20-05]
- Relief for Floor Brokers. [CFTC Letter No. 20-04]
- Relief for Members of Designated Contract Markets and Swap Execution Facilities. [CFTC Letter No. 20-02]
- Relief for Swap Execution Facilities. [CFTC Letters No. 20-07 and 20-08]
- Relief for Designated Contract Markets. [CFTC Letter No. 20-09]

Upcoming Hearings and Events

March 24

Energy and Environmental Markets Advisory Committee: The Commodity Futures Trading Commission (CFTC) will hold a meeting of its Energy and Environmental Markets Advisory Committee. The meeting will include panels on: (1) the proposed position limits for spot months, single month, and all-months-combined and (2) the proposed bona fide hedge exemptions from such position limits and related procedures. The Advisory Committee will also receive an update on recent developments within the energy derivatives marketplace.

March 31

CFTC Open Meeting: The CFTC will hold an open meeting to consider proposed amendments to bankruptcy rules (Part 190).

For more information about financial services issues you may email Joel Oswald or Alex Barcham.

ENERGY & ENVIRONMENT

Administration Looks to Purchase Oil for the Strategic Petroleum Reserve

Key Points:

- *The Trump Administration is moving quickly to purchase oil for the Strategic Petroleum Reserve (SPR).*
- *The move follows the demand shock triggered by the coronavirus pandemic and the crude oil price war between Russia and Saudi Arabia.*

On March 13, Secretary of Energy Dan Brouillette issued a memo to Assistant Secretary for Fossil Energy, Steven Winberg, directing him "to immediately initiate the process of purchasing American-made crude oil for storage in the Strategic Petroleum Reserve as expeditiously as possible." The Department is preparing a formal solicitation for the purchase of oil for the SPR, which will set forth the parameters for acquisition, including quantity and quality specifications. These actions followed President Trump's declaration last Friday that "we're going to fill it right up to the top."

The SPR has not acquired crude oil in several years, having been filled to its then-capacity of 727 million barrels on December 27, 2009. Instead, the Department of Energy in recent years has been conducting a series of sales of crude oil mandated by Congress for general revenue purposes and to fund modernization of the SPR.

On Thursday, the Department issued a solicitation for an initial purchase of 30 million barrels of crude oil. As described in a press release, the Department "will purchase up to 30 million barrels of sweet and sour crude oil with a focus on small to midsize U.S. oil producers." The solicitation is limited to U.S. entities that employ fewer than 5000 people.

The Department announced its intent to ultimately purchase 77 million barrels through a series of solicitations. Secretary Brouillette said that the Administration would seek $3 billion in appropriations to fund the SPR purchases.

House Energy and Commerce Committee Ranking Member Frank Pallone (D-NJ) sharply criticized the action. He issued a statement arguing that the planned purchase "is a thinly-veiled attempt by the Trump Administration to use the coronavirus outbreak as justification for protecting the profits of its oil industry allies…"

Agency Activities

Federal energy agencies continued their work this week, including taking administrative and regulatory actions to respond to the pandemic.

The Federal Energy Regulatory Commission (FERC):

- Announced "a number of steps to protect the health and safety of its employees and the public, and to help mitigate or slow the transmission of the coronavirus within the community…", including:
  - Cancelling its monthly open meeting that would have been held on March 19;
  - Voting "notationally on all matters that were to have been considered at the March Commission meeting";

- Encouraging FERC staff to telework "until further notice; and"
- Closing the "FERC headquarters building in Washington, D.C…to all outside visitors, unless cleared for entry by the Office of Executive Director."

- Announced a series of additional operational changes, including: extensions of certain filing deadlines; a temporary halt to audit site visits; a shift in technical conferences to a virtual format; and postponement of Administrative Law Judge (ALJ) hearings.
- Appointed "Caroline Wozniak as the Commission's point of contact for all industry inquiries related to impacts of their COVID-19 preparations and responses on their FERC-jurisdictional activities."
- Announced, along with the North American Electric Reliability Corporation (NERC), guidance "to ensure that operators of the bulk electric system can focus their resources on keeping people safe and the lights on during this unprecedented public health emergency."

The Pipeline and Hazardous Materials Safety Administration (PHMSA) issued "Guidance to State Partners Regarding COVID-19".

Upcoming Hearings and Events

June 25

Reliability: The Federal Energy Regulatory Commission (FERC) will hold a technical conference on "Reliability of the Bulk Power System". The conference "will focus on reliability-related issues for the bulk power system, including: (1) the changing resource mix; (2) inverter-based resources and inverter-connected distributed energy resources; and (3) cybersecurity."

For more information about energy and environment issues you may email or call Frank Vlossak at 202-659-8201. Updates on energy and environment issues are also available on twitter.

HEALTH

Trump Administration and Several States Move Aggressively on Coronavirus Mitigation

Key Points:

- *The Trump Administration announced its "15 Days to Slow the Spread" initiative.*
- *Several states have announced aggressive actions, particularly "shelter-in-place" orders, urging people to engage in social distancing and cease non-essential activities.*

On March 16, the Trump Administration announced its 15 Days to Slow the Spread guidelines. The guidelines direct Americans to follow the directions of state and local authorities, while encouraging the sick, elderly, and people with underlying health conditions to remain at home during the outbreak. The guidelines highlight "healthcare services and pharmaceutical and food supply" infrastructure as critical sectors that have a responsibility to maintain normal work schedules.

Several states and localities, most notably California and the state of New York, issued orders this week for non-essential businesses and employees to stay at home for the coming weeks. California Governor Gavin Newsome announced on Thursday a statewide shelter-in-place directive, which requires people to stay at home unless engaging in essential activities. The order states that activities must continue to support the supply chains for food, prescriptions, and health care services. The statewide directive follows a series of shelter-in-place orders in Northern California counties, all of which included broad exemptions for people working or obtaining services at hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other health care facilities, health care suppliers, home health care service providers, mental health providers, or any related or ancillary health care services. A copy of San Francisco's order can be found here. New York Governor Andrew Cuomo also announced today that he would issue an executive order mandating that all of New York's workforce, excluding essential services, stay home. Governor Cuomo clarified that this mandate will not amount to a shelter-in-place order. Counties in Colorado and Illinois have also issued shelter-in-place orders, while elected officials in several other states have suggested they could institute similar measures.

CMS Issues Guidance on Expanded Telehealth Payments

Key Points:

- *On March 17, the Trump Administration announced it would expand telehealth coverage and reimbursement as part of the federal government's ongoing response to the coronavirus outbreak.*
- *The Centers for Medicare and Medicaid Services (CMS) issued new policies which would allow practitioners of telehealth to receive reimbursement for telehealth visits furnished to patients in any health care facility or their home.*
- *CMS encouraged state Medicaid programs and private insurers to make similar changes to telehealth payments.*

On March 17, CMS issued a press release, fact sheet, and frequently asked questions sheet explaining the changes to Medicare payments for telehealth. CMS, using authorities under the Coronavirus Preparedness and Response Supplemental Appropriations Act (H.R. 6074) and Section 1135 of the Social Security Act, will temporarily increase payments to providers while covering a broader range of telehealth services. The change is aimed at reducing the strain on emergency rooms and physicians' offices to prevent a flood of new patients at these locations from further spreading the virus.

The new policy makes changes to payment eligibility for practitioners of telehealth visits. These visits entail the use of interactive audio and video services to facilitate real-time communication between providers and patients at a remote site. Medicare considers telehealth visits as equivalent to in-person visits and reimburses them at commensurate rates under the Physician Fee Schedule, but under previous rules patients were required to travel to an originating site (a physician's office or other qualifying health care facility) to conduct the visit. However, starting from March 6 and extending for the duration of the COVID-19 Public Health Emergency, Medicare will cover telehealth visits furnished to beneficiaries in any health care facility or in their place of residence. Payments for such visits will not be contingent on the diagnosis of a patient and are not limited to services related to COVID-19 infections. Visits are encouraged for a wide range of services including mental health counseling, common office visits, and preventative health screenings. CMS' guidance differentiated these changes for telehealth visits from virtual check-ins and e-visits.

The following providers are eligible for payments under the expanded rules: physicians, nurse practitioners, physician assistants, nurse midwives, certified nurse anesthetists, clinical psychologists, clinical social workers, registered dietitians, and nutrition professionals. Qualified providers are encouraged to inform patients of services that are available via telehealth.

In addition to expanding qualified visits, HHS announced several enforcement changes related to telehealth services. The HHS Office of Inspector General (OIG) issued a policy statement which clarified that it will not take enforcement actions under the Federal anti-kickback statute or the beneficiary inducements civil monetary penalty statute against providers who make changes to beneficiaries' cost-sharing for the duration of the COVID-19 Public Health Emergency.

The HHS Office for Civil Rights (OCR) published a notification of enforcement discretion that detailed the office's intention not to enforce Health Insurance Portability and Accountability Act of 1996 (HIPAA) restrictions on which forms of technology can be used, and in what manner, for furnishing telehealth services. Specifically, covered providers will not face penalties under HIPAA if they administer "good faith provision of telehealth" by using non-public facing audio or video communication products. OCR identified Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, and Skype as applications that would fall under this good faith exception.

HHS also announced it will not conduct audits related to existing Section 1135 requirements for patients to have an established prior relationship with a provider in order for that provider to submit a claim for a telehealth visit.

Biden and Sanders Offer Contrasting Visions on Health Care

Key Points:

- *Former Vice President Joe Biden (D-DE) has proposed a plan that includes a public option, changes to the individual insurance marketplace, and benchmark rates for prescription drug launch prices.*
- *Senator Bernie Sanders (I-VT) has continuously promoted his Medicare for All plan which would abolish private insurance and institute a single-payer system.*

On Tuesday, Joe Biden moved closer attaining the Democratic nomination for president by winning convincingly in the Arizona, Florida, and Illinois primaries. Despite Biden's clear frontrunner status, the primary campaign has revealed a sharp juxtaposition between the health care plans preferred by the party's more moderate and progressive wings, a schism that is likely to play out regardless of who secures the nomination. Below is a comparison of the plans offered by the two remaining candidates.

Senator Sanders has concentrated his campaign platform on his Medicare for All proposal, which would eliminate all private insurance and automatically enroll all Americans in a single-payer public health plan. Sanders has touted the plan by saying it would eliminate insurance networks, premiums, deductibles, co-payments, and surprise medical bills. The proposal would also expand existing Medicare coverage to include a dental, hearing, and vision benefit, while also expanding benefits offered for long-term care, mental health and substance use, reproductive and maternity care, and prescription drug coverage. The plan would be financed by various tax hikes, most notably an increase to the payroll tax which would impact middle class Americans.

Medicare for All would limit out-of-pocket expenses for prescription drugs to $200 annually. It also proposes to reduce overall prescription drug costs by benchmarking prices to the median of those offered in Canada, the United Kingdom, France, Germany, and Japan.

Sanders has faced significant pushback on Medicare for All, with critics typically pointing to the large projected price tag (with various estimates pegging the cost at over $30 trillion), the impact of lower reimbursement rates on provider levels, the prospect of the government rationing care, and the unlikely odds of passage as their reasons for opposition. Sanders has expressed confidence that the plan would significantly reduce health care expenditures by alleviating the administrative burden that is imposed on providers in the current system.

Biden's plan would maintain private health insurance and attempt to achieve universal coverage by making changes to the individual insurance markets and introducing a public option. The most substantial change would be the public option, which unlike the option initially proposed in the Affordable Care Act (ACA) would be available to anyone (including those in private plans). This proposal would put Medicare, which traditionally offers lower payment rates to providers and hospitals, in direct competition with insurance companies.

In the individual marketplace, Biden's plan would base subsidies on "Gold plans" as opposed to "Silver plans" in an effort to reduce deductibles and co-payments. The plan would also change the model for awarding subsidies from a threshold at 400 percent of the federal poverty level to a cap on premiums at 8.5 percent of an individual's income level. The plan would introduce a premium free insurance option to low income individuals in states that have not passed Medicaid expansion.

Biden's plan also calls for changes to the prescription drug markets, particularly by allowing Medicare to directly negotiate prices. He also proposes limiting launch prices for new drugs without existing competition to a benchmark rate calculated by averaging prices negotiated by other industrialized countries.

Biden proposes to finance his plan by raising the capital gains tax rate on individuals earning over $1 million from 20 percent to 39.6 percent, and also restoring the top income tax rate to its pre-Tax Cuts and Jobs Act level. Critics of the plan have expressed skepticism that it would achieve universal coverage and contend it would do little to curtail rising health care costs.

For more information about healthcare issues you may email or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201. Thomas McGrath contributed to this section.

TRADE

President Rejects Calls for Tariff Relief, Despite Pressure from U.S. Businesses

Key Points:

- *A coalition of 160 American business groups sent a letter to President Trump requesting the suspension of Section 301 and Section 232 tariffs on Chinese goods.*
- *On Wednesday, at a press conference, President Trump rejected the idea of any suspension of tariffs.*

On Wednesday, President Trump rejected a request from Americans for Free Trade, a coalition of 160 American business groups, requesting the temporary suspension of section 301 and 232 tariffs on Chinese goods to help companies weather the losses caused by COVID-19. Americans for Free Trade stated that suspending Section 301 and Section 232 tariffs "would provide tax relief to millions of American farmers, manufacturers, families, and consumers without having to wait on action from Congress." President Trump responded to the request stating that China, and not U.S. companies, were most likely behind the letter.

The Business Roundtable, a group of CEOs who employ more than 15 million people, also advised President Trump to implement tariff relief, among other actions, to ensure "a stronger and more rapid recovery." A group of 23 trade associations sent a letter to National Economic Council Director Larry Kudlow last week requesting the "immediate elimination" of Section 301 tariffs as well as refunds of duties imposed on Chinese imports to offset the impact of coronavirus.

USTR, Labor Department Move Forward with June 1 USMCA Entry-Into-Force

Key Point:

- *Efforts to ensure labor and enforcement commitments required by the USMCA are picking up speed in hopes to achieve a June 1 entry-into-force date.*

Efforts to ensure labor and enforcement commitments required by the USMCA are picking up speed in hopes to achieve a June 1 entry-into-force date. USTR announced this week it was pushing ahead with the establishment of dispute settlement rosters, a key part of a mechanism that will serve as the deal's primary enforcement provision, as well as panels dedicated to a rapid response mechanism, which provide facility-based enforcement of the agreement's labor obligations within stringent timelines.

The certifications and obligations prior to entry-in-force are significant. For example, according to the U.S. implementing bill, there are hires and officers that have to be detailed by the U.S. Department of Labor to Mexico. There is also a 12-member independent labor-expert board, that must be composed of 12 members appointed by both Congress and DOL, all of which takes time to happen and has not yet been completed. Progress on all of these steps is underway but not completed.

Senate Finance Committee leaders Grassley (R-IA) and Wyden (D-OR) urged the Administration to show some flexibility and re-evaluate its June 1 entry-into-force goal. Other private sector commentators have echoed their skepticism of meeting a June 1 date, especially with the COVID-19 crisis.

Finally, a coalition of U.S. auto groups this week called on the Administration to ensure an "adequate adjustment period," and requested that "uniform automotive rules of origin (ROO) regulations occur after an adequate adjustment period is provided."

USTR Announces Plans for Trade Talks with Kenya

Key Points:

- *On Tuesday, the Trump administration announced plans to negotiate a comprehensive trade deal with Kenya.*
- *Negotiations will focus on both tariff and non-tariff barriers to trade.*

On Tuesday, USTR Lighthizer announced that the Trump Administration plans to negotiate a comprehensive trade deal with Kenya. Under Trade Promotion Authority (TPA) rules, USTR must notify Congress 90 days before the U.S. enters into free trade agreement negotiations. USTR also is required to publish negotiating objectives at least 30 days before talks begin. The 90-day window puts the start of talks no earlier than mid-June.

USTR Lighthizer stated that they will look to "address both tariff and non-tariff barriers and to achieve fairer, more balanced trade" and "will seek provisions that ensure effective implementation and enforcement." Top U.S. goods exports to Kenya last year were aircraft, plastics, machinery and cereals, while top imports included apparel, fruit and nuts, titanium products and coffee.

On Friday, USTR published a "Request for Comments on Negotiating Objectives for a

United States-Republic of Kenya Trade Agreement." April 15, 2020 is the deadline for the submission of written comments and for written notification of intent to testify. On April 28, 2020 the Trade Policy Staff Committee (TPSC) will hold a public hearing beginning at 9:30 am, in Rooms 1 and 2, 1724 F Street NW.

For more information about trade issues you may email or call Christopher Hatcher at 202-659-8201. Ryan Sigmon contributed to this section.

This Week in Congress was written by Alex Barcham.