

Thursday, October 15, 2015

Froman Says TPP Cannot Be Renegotiated; Announces Enforcement Plan

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U.S. Trade Representative Michael Froman on Thursday (Oct. 15) said that the Trans-Pacific Partnership (TPP) deal reached last week cannot be renegotiated because it would upset the careful balance worked out between all 12 countries, and that the current agreement is the one the administration will ultimately send to Congress for approval.

Speaking in an Oct. 15 conference call on the TPP organized by the Council on Foreign Relations (CFR), Froman said the TPP is different than previous U.S. free trade agreements, which tended to be negotiated on a bilateral basis and are therefore easier to reopen.

Froman was deeply involved in the renegotiation of the U.S.-Korea FTA in 2010 as the White House deputy national security adviser for international economic affairs. The U.S. unilaterally changed the terms of the North American Free Trade Agreement regarding sugar and trucks when there were not enough votes to pass it, notwithstanding earlier claims by administration officials that there could be no changes.

“It's infinitely more complex when you've got 11 other trading partners at the table so this isn't one of those agreements, where you can reopen an issue or renegotiate a provision,” Froman said. “This is one where every issue is tied to every other issue, and every country's outcome is balanced against every other country's outcome. So that's the agreement that we'll be putting forward under [Trade Promotion Authority (TPA)] for a vote by Congress.”

His comments come after Senate Finance Committee Chairman Orrin Hatch (R-UT) last week in a Senate floor speech [repeatedly raised the possibility](#) that the TPP deal as announced on Oct. 5 may have to be changed to satisfy Congress. Hatch questioned whether the current TPP deal meets the negotiating objectives laid out in the TPA law in a number of areas.

During the CFR call, Froman also announced that USTR is working with other federal agencies and Congress to develop “a full plan for the monitoring and enforcement of TPP.” He said this would entail working with the Labor Department to monitor TPP parties' compliance with the labor provisions of the deal, as well as with U.S. embassy personnel in TPP countries to help monitor implementation and identify enforcement issues as they arise.

He also cited two provisions in the pending customs reauthorization bill that would help the executive branch in the implementation and enforcement of the TPP, and called on Congress to hold a bicameral conference on the customs bill and pass it.

The two provisions he referred to are codifying in U.S. law the Interagency Trade Enforcement Center that President Obama created in 2012 by executive order, and creating an enforcement trust fund that would be set up with an initial amount of \$15 million collected from trade remedy orders. Both of these provisions are contained in the customs bill the Senate passed on May 14, but not in the House version approved on June 12.

“So we are very supportive of and encouraging Congress to move forward with their conference and get the customs bill passed as well,” he said.

Congressional staff for the two trade committees has been working on reconciling the different versions of the bills, and two issues have emerged as key obstacles. One is whether private stakeholders can sue Custom and Border Protection (CBP) for its decisions in investigations on the evasion of trade remedy duties under the so-called ENFORCE provision. The second one is whether the customs bill should include provisions to change the process for compiling miscellaneous tariff bills, which suspend existing tariffs for certain imports.

On the judicial review of CBP decisions, the staff are moving toward a compromise that takes into account the CBP's stance objecting to lawsuits as well as the demands of the domestic industry that the agency can be held accountable, sources said.

But there is not yet an agreement among the staff to what extent the compromise will incorporate a CBP proposal that it not be required to follow the ENFORCE process if a duty-evasion investigation would undermine a civil or criminal investigation already in place. If CBP opted not to do so, it would not be subject to a lawsuit, according to the CBP proposal.

ENFORCE sets a deadline for CBP to investigate and decide on duty evasion complaints and to collect duties in case of an affirmative finding.

In the CFR call, Froman declined to lay out a timeframe for congressional consideration of TPP, saying instead that the administration would work with the congressional leadership and the heads of the committees of jurisdiction to determine the precise timetable. Some congressional aides have suggested Congress may not consider the deal until the lame-duck session of Congress after the November 2016 presidential election, and one aide said it cannot be ruled out that the congressional vote could slip to 2017.

Froman said the administration is focused right now on “working to finalize the details of the text” and making the case for the benefits of the deal. The administration is also briefing stakeholders, Congress and the public about how key issues in the negotiations were resolved “so that there's a full understanding and we can have a full and open debate about the agreement, whatever the timetable is ultimately for approval,” he added.

That view is not shared by some stakeholders, who say they can only achieve that kind of understanding if they have the chance to read the text, which they want released as soon as possible.

Froman said he is comfortable with the “depth and breadth of support” from U.S. stakeholders for the TPP agreement, when asked whether he was disappointed by the cautious position taken by many

companies and associations, who want to see the text before taking a position.

He said he understands that stakeholders want to see the text in “black and white” before taking a position, and said USTR is eager to make the text public as soon as possible.

In a related development, officials from TPP countries are [meeting in Tokyo this week](#) to draft some remaining portions of the text and continue the legal scrub of chapters already completed.

Froman said USTR had worked hard to address a range of stakeholder positions during the course of the negotiations, even when different sectors were in conflict. As an example, he noted the conflicting positions of the U.S. textile industry and apparel importers and retailers, saying USTR worked closely with both sides to come up with an outcome that “we think both will be comfortable with and both will be supportive of.”

The National Council of Textile Organizations [last week said](#) it believes its objectives for the TPP had been met. In contrast, some apparel importers and retailers have said they do not consider meaningful a mechanism the U.S. negotiated with Vietnam to allow cotton pants made with non-regional yarn to be shipped to the U.S. market duty free.

Froman said the administration will be working to build support for TPP in Congress by laying out the economic as well as strategic benefits of the deal for members, and signaled that he believes some lawmakers who voted against the Trade Promotion Authority (TPA) bill in June are still gettable votes for TPP.

“I think there's a lot of interest in this in Congress, a lot of enthusiasm [from] people who voted for TPA who did so because they wanted to see actual trade agreements get done, and people who may not have voted for TPA but who've kept an open mind on TPP,” he said. “And we're going to be reaching out to all of them, to make the case, and to try and earn their support.”

He emphasized that the strategic arguments for the deal in particular are resonating with some members of Congress. In particular, he cited the argument that the TPP gives the U.S. a leadership role in shaping global trade rules so that they reflect U.S. values and interests, instead of a world where the rules are written by other players with lower standards, an apparent reference to China.

It is much more “to the advantage of American workers, farmers, ranchers, [and] firms of all sizes if we're living in a world where TPP defines the rules of the road, than if we're sitting on the sidelines and those rules of the road are set by somebody else,” Froman said. “And I think that will become very clear through this debate to members of Congress and, as a result, I'm confident we'll ultimately have their support.”