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Is there any game plan for bringing up the implementing legislation for pending free trade agreements with Colombia, Panama, and Korea and securing favorable votes for their passage in Congress?

Bilateral Agreements

Congressional Impetus to Implementing Pending FTAs

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Supporters of the pending free trade agreements with Korea, Colombia, and Panama have drawn comfort from recent statements by the Obama administration, which has been holding them up.

On the Korea-U.S. free trade agreement (KORUS), for example, the president in December declared himself satisfied with the overall agreement in light of renegotiated automotive provisions, and announced his intention to activate the legislative stage of the implementation process very soon so that a congressional vote could occur by July 1, 2011. There have been similar, though less clear and time-specific, statements of supportive intent regarding the other two FTAs.

There are reasons to doubt, however, whether a real game plan for securing favorable votes on FTA implementing bills exists today, and divisions within President Obama's party will make the next several steps politically difficult for him.

Should GOP Go First on Implementing Measures?

There is much that congressional Republicans could do to make this awkward situation even worse. They ought to be asked, and be quite prepared, to pledge privately that they will not, through gamesmanship, make the experience of securing a majority vote for the passage of FTA implementing bills miserable for the White House.

The more interesting question is: how could they help? Specifically, what can Republicans (with their new House majority) do to help bridge the gap between President Obama's pro-FTA rhetoric and real action? One answer is to advance implementing legislation whether or not the White House, as is traditional in this area, "goes first."

Specifically, House Ways and Means Committee Chairman Dave Camp (R-Mich.) and Rep. Kevin Brady (R-Texas), chairman of the trade subcommittee, could publicly announce that on May 10, 2011, they will hold a markup of bills, developed by Ways and Means staff, to implement U.S. obligations under the Korea and Panama FTAs—whether or not the administration has taken formal action by that date to start the Trade Promotion Authority clock ticking for those implementing bills. TPA provides for an up-or-down vote without amendments on a fairly tight schedule. The announcement could make clear that while administration officials will be invited to take part, the May 10 markups will go forward with or

without their participation.

Legislation developed in this fashion would not enjoy TPA protection under the rules of either congressional chamber. But it could likely pass nonetheless.

The May 10 date leaves an appropriate window for the administration to initiate legislative processes in the traditional manner. It also has symbolic importance because on that day in 2007 congressional leaders and the Bush administration announced a new trade framework calling for the inclusion of core environmental and labor standards in pending free trade agreements. The framework had been expected to clear the way for votes on implementing bills for the FTAs with Korea and Panama (among others), but the only FTA that actually moved forward under this new framework was one with Peru.

By taking this step outside the TPA structure, if things are not moving by May 10 within the TPA structure, congressional Republicans would take on themselves an onus they can bear more readily than the president. The administration would have little choice but to participate in the process—for example, by identifying any gaps it sees in the bills developed in committee. And none of this activity would preclude future processing of implementing bills within the TPA structure, if that should be necessary.

New House Rule for Colombia FTA

What about the Colombia FTA? The easiest answer is a new House rule according TPA protections to a new implementing bill identical to the one transmitted to (but never voted on by) the 110th Congress.

The House could take up and (hopefully) pass both the new rule and the implementing bill any time over the next one to two months. Admittedly, such a bill might not enjoy TPA-advantaged status in the Senate, and it would lack the added luster derived from the “non-markup” in the House Ways and Means and Senate Finance committees normally used under TPA. But the House would have done its part—and the traditionally trade-agreement-friendly Senate would likely find a way to act favorably on such a House-passed implementing bill.

As a smaller step, the House could pass just the rule described above and defer, for a short period, committee and floor action on the actual implementing bill. This would basically restore the status quo ante from before the House removed TPA protections from the Colombia FTA legislation, and would give the administration a window to plan its approach. If the administration elects to seek a vote on a different implementing bill, not covered by the above-described rule, it will of course have that choice—but it will be intentionally and visibly foregoing TPA protections that the House has made available. In any event, House leaders should announce a date certain—perhaps also May 10—by which they will bring up and pass Colombia FTA implementing legislation with or without the administration's help.

This is not precisely how the dance has been danced in the past—but it makes sense in light of today's unusual circumstances and should minimize any further damaging delay in bringing these valuable trade pacts into force.

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