

Pandemic Crunch Weighs On Nation's Trade Negotiators

By **Alex Lawson**

Law360 (March 27, 2020, 7:21 PM EDT) -- As the novel coronavirus roils the global economy, the small federal agency tasked with carrying out federal trade policy will find itself at the center of the storm, and former officials say the turmoil spurred by the outbreak will put U.S. trade negotiators on shaky footing.

The Office of the U.S. Trade Representative, headed by Robert Lighthizer, has been a dynamic force during the Trump administration, carrying out an aggressive tariff campaign against China and Europe, while also looking to knock down restrictions overseas through small-scale trade accords.

For the moment, much of the U.S. trade policy's focus is on the extent to which President Donald Trump will tighten or loosen restrictions on foreign drugs and medical equipment. The USTR plays a key role in that process, having already exempted Chinese masks, gloves and other safety items from duties while fielding comments for more waivers.

But the work of negotiating friendly trade terms with other nations will not be easy in the era of social distancing, according to Crowell & Moring LLP partner Robert Holleyman, who served as Deputy U.S. Trade Representative in the Obama administration.

"Negotiations don't get hammered out by phone or videoconference, they get hammered out by people being face to face. This will inevitably slow down the process of doing that," said Holleyman.

The USTR did not respond to multiple requests for comment on its protocols during the coronavirus outbreak, but veterans of the agency agreed that the isolation underway across the nation will force the agency to get creative in its work.

The agency is no stranger to unusual work arrangements, having made do with skeleton teams and travel restrictions during a number of government shutdowns and budget skirmishes over the past decade.

Akin Gump Strauss Hauer & Feld LLP partner Clete Willems, who served in the USTR general counsel's office from 2009 to 2017, also said the staff are particularly adept at teleconferencing, as top officials are regularly scattered around the globe on travel.

"The combination of having gone through this a couple times with a couple different shutdowns, plus just the nature of the beast and the fact that people are used to traveling and being away from each other makes it easier for them I think than most agencies," Willems said.

Also somewhat easing the blow is the fact that, compared with the last two years, the coronavirus pandemic arrived at a relatively quiet time for the USTR. The office completed negotiations for an early-phase trade accord with China and struck a compromise with Democratic lawmakers to pass the U.S.-Mexico-Canada Agreement last year, clearing two huge policy priorities off its plate.

As of now, the USTR is laying the groundwork to launch new negotiations with Kenya and the United Kingdom, as well as second-phase deliberations with China and Japan.

"In terms of closing a deal, it's pretty much impossible in my opinion to close a deal via teleconferencing, but in terms of tabling initial tranches of text, walking through the text, they certainly can continue to make progress on that," Willems said.

The timeline for a return to normalcy is unclear, and the longer this goes on, the tougher it will be for negotiators to make meaningful progress on new deals.

As a practical matter, if the pandemic does not abate, any unrelated negotiations will naturally be pushed to the back burners as governments prioritize public health, according to Holleyman.

"Simply the fact that governments are preoccupied with dealing with the health of their own people means that even the traditional trade negotiators aren't going to be able to tackle tough issues around health or IP or access to markets," he said.

Former USTR general counsel Warren Maruyama, now a partner at Hogan Lovells US LLP, predicted that new negotiations would be delayed until the disruptions stemming from the virus subside.

Perhaps the most pressing issue on the USTR's plate is the implementation of the USMCA. While the negotiations for that accord technically wrapped up in 2018, the administration spent much of last year haggling with Democrats to shore up the deal's labor, environmental and drug pricing provisions.

All three governments have ratified the deal, but now they must work to align their internal rules and regulations before it can take effect. That process will focus mostly on the overhauled automotive rules of origin and the USMCA's bolstered labor chapter. The work is heavily technical and will benefit from in-person consultations.

"USMCA implementation is going to be disrupted by COVID-19," Maruyama said. "The governments need to draft laws and regulations and change a bunch of others in order to comply ... Making those changes is going to be difficult with everyone working remotely."

Lawmakers have often praised the USTR as a "nimble" agency that maintains an efficient structure in a

high-stakes and often chaotic area of policy. As pressure on the federal workforce tightens during the outbreak, that model will be put to the test.

"In all of my experience in government, it's about the closest thing to a tight-knit family that you can imagine," Holleyman said. "Because they are the smallest, most powerful agency in government in terms of their reach, the nature of how they operate is hugely important."

--Editing by Kelly Duncan and Emily Kokoll.