

Client Alert

International Trade & Litigation Practice Group

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Business, Labor, Manufacturing, And Agriculture Representatives Provide ITC With Different Perspectives On Likely Impact Of The Trans-Pacific Partnership

During January 13-15, 2016, the U.S. International Trade Commission (“ITC”) held hearings concerning the likely impact of the Trans-Pacific Partnership Agreement (“TPP”) on the U.S. economy. Witnesses from a variety of governments, industry groups, companies, labor organizations, and academic institutions offered testimony and responded to questions from the Commissioners. The ITC will use the information gathered during the hearings (along with information from the pre-hearing submissions, post-hearing briefs, and filed statements) to prepare a report on the expected impact of the Agreement.

Background

As has been widely reported, the United States, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam concluded TPP negotiations on October 5, 2015 and released the final text of the Agreement a month later. On November 5, 2015, the Office of the United States Trade Representative (“USTR”) notified the ITC that President Obama intended to sign TPP. As required under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, USTR requested that the ITC prepare a report for the President and Congress on the Agreement, particularly considering the impact on the U.S. gross domestic product, exports and imports, employment, and industries significantly affected by the Agreement. In accordance with the request, the ITC **announced** that in late December 2015, interested parties should file pre-hearing submissions and requests to appear at the public hearing.

The Hearings

Witnesses affiliated with business, labor, agriculture, and manufacturing testified on the benefits and costs of TPP for their industries, workers, and the U.S. economy. In addition to the panels on

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business, labor, agriculture, and manufacturing (discussed below), other panels addressed services, digital trade, intellectual property, pharmaceuticals, textiles, apparel, and chemicals.

Business and Labor. On the first day of the hearings, business and labor leaders provided their views on the impact that TPP would have on the American economy and workers. John Murphy, Senior Vice President at the Chamber of Commerce of the United States, spoke in favor of TPP, particularly noting the reduction in tariff and non-tariff barriers, protection for investment and intellectual property, and improvements in the e-commerce chapter. James W. Fatheree of the U.S.-Japan Business Council, Vanessa Sciarra of the Emergency Committee for American Trade, and Alan William Wolff of the **National Foreign Trade Council** also spoke in favor of TPP. Mr. Murphy, Ms. Sciarra, and Mr. Wolff raised three areas of concern with the finalized text: exclusion of tobacco from investor-state dispute settlement (“ISDS”), limited period of data exclusivity for biologics, and carve outs to the data and server location rules.

The labor representatives all opposed TPP. Celeste Drake, a Policy Specialist for Trade and International Economics for the **AFL-CIO**, argued that the labor protections in the Agreement were insufficient. Leo W. Gerard, the International President of the United Steel Workers, opposed TPP because of the Agreement’s impact on workers, the effects of currency manipulation by Japan and Vietnam, and the lack of labor protections in Vietnam, Malaysia, and Brunei.

Agriculture. Although the witnesses on agriculture issues expressed less polarized views than had been expressed by business and labor representatives, there still was disagreement on TPP. Kevin Kester, the Policy Division Chair of the National Cattlemen’s Beef Association, spoke strongly in favor of passage of TPP, arguing that it would open up new markets for exports and help ground the trading regulations in science. Stephen M. Sothmann of the United States Hide, Skin and Leather Association; Devry Boughner Vorwerk from **Cargill**; Julian B. Heron on behalf of Blue Diamond Growers; Kimberley Houlding from the **American Olive Oil Producers Association**; Tom Earley of the **Sweetener Users Association**; and Peter Tabor from the Pet Food Institute all spoke in favor of the Agreement. Michael Brown of the **National Chicken Council**, and on behalf of USA Poultry & Egg Export Council, expressed qualified support for TPP, noting moderately improved market access for American exports to Japan, Malaysia, and Vietnam but expressing concern over Malaysia’s application of halal certification.

Thomas M. Suber, the President of the U.S. Dairy Export Council, noted his organization was still considering TPP, but raised the positive changes to sanitary and phyto-sanitary provisions and geographical indicator rules, contrasting them with Japan’s limited market access commitments, the potential of increased exports from Canada, and the threat from the elimination of U.S. tariffs on milk powders and certain cheeses. Bill Bullard, CEO of **R-CALF United Stockgrowers of America**, was strongly opposed to TPP, arguing that it would increase competition for American cattlemen.

Manufacturing. Manufacturing representatives also addressed the impact of TPP. Linda M. Dempsey of the **National Association of Manufacturers** argued in favor of TPP based on the elimination of tariffs, the reduction of non-tariff barriers, the chapters on digital trade and e-commerce, the expanded protections for intellectual property, and the availability of ISDS. Ms. Dempsey expressed concern, however, with the length of data exclusivity for biologics and the exclusion of tobacco from ISDS. The Director of Global Policy for the **Semiconductor Industry Association**, C. Devi Bengfort Keller, expressed support for TPP, emphasizing

the Agreement's increased penalties for trade secret violations, ban on encryption rules, and reduction in non-tariff barriers. Karan K. Bhatia from **General Electric**, Jay Steinmetz of Barcoding, Inc., and Anthony R. Quinn from ASTM International also spoke in support of TPP. Eric Astrachan, the Executive Director of **The Tile Council of North America**, did not take a position on the overall Agreement, but he expressed approval of the long duty phase-outs and regulatory coherence provisions while raising concerns about imports, customs fraud, and transshipment.

Next Steps

With the hearings complete, parties can submit post-hearing briefs and statements on issues raised during the hearings by January 22, 2016. All other written submissions are due February 15, 2016. The ITC anticipates transmitting its report to the President and Congress on May 18, 2016.

The heads of state of the 12 member countries, including Mr. Obama, are scheduled to meet in New Zealand to sign the final text of TPP on February 4, 2016. After the Agreement is signed, the administration will have 60 days to submit to Congress the list of changes to U.S. law required to implement TPP. At least 30 days prior to submitting the list of changes, the administration also will need to provide Congress with a draft statement of administration action ("SAA") and the final text of the Agreement. The administration is expected to work informally with members of Congress, most notably the Senate Finance and House Ways and Means Committees, to refine the text of any implementing bill.

Even if the President were to submit formal implementing legislation and draft SAA language at the administration's earliest opportunity, passage before the end of the year (and particularly before the Presidential election) is unlikely given the much abbreviated election-year calendar in the House and Senate and Presidential election year politics. Based on current schedules, the House only has 59 legislative days and the Senate 77 legislative days, before the end of the year.

Timing for a vote will depend on a political calculus by the administration and Congressional leaders as to whether and when there are sufficient votes to pass TPP. Much will turn on whether the President is able to convince a sufficient number of Congressional Democrats to support the trade bill in order to overcome those Republicans that will oppose passage. Some members of Congress that have concerns with aspects of the substance of the Agreement have stated that they will push the current administration to renegotiate these provisions. The White House has advised that renegotiating any aspects of TPP will almost certainly kill the Agreement, which was struck through a delicate balancing of concessions achieved in negotiations. Even so, it is not unprecedented for particular provisions of FTAs to be revised after agreement text is drafted but prior to implementation.

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