

Client Alert

International Trade & Litigation Practice Group

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Comprehensive U.S. Trade Legislation Finally Arrives—An Overview of its Key Components

While most of the Congressional trade debate has centered around whether to renew Trade Promotion Authority (so-called “fast track” authority) and the merits of the Trans-Pacific Partnership, the full package of trade measures is contained in a trio of bills: the *Trade Act of 2015*, the *Trade Preferences Extension Act of 2015*, and the *Trade Facilitation and Trade Enforcement Act of 2015*. The first two are ready to be signed by the President. The third requires a Congressional conference to resolve differences between the versions passed by the House of Representatives and the Senate.

This client alert provides an overview of the key components of each of the three pieces of legislation.

Trade Act of 2015

The *Trade Act of 2015*, which passed Congress on Wednesday, provides Trade Promotion Authority (“TPA”) to the President. By granting TPA, Congress committed to a “fast track” procedure for Congress to approve free trade agreements (“FTAs”) with an up-or-down vote, without the opportunity for filibuster or for amendments to the final text of the FTA. The *Trade Act of 2015* sets forth a detailed list of negotiating objectives that the President is expected to follow in pursuing such agreements, as well as a mechanism for rescinding fast track procedures if the Executive Branch fails to meet its TPA obligations. The *Trade Act of 2015* also lays out several new transparency and reporting requirements that are intended to ensure better Congressional oversight during the FTA negotiation process.

The new TPA procedures will apply to the ongoing negotiation of the following agreements:

- the Trans-Pacific Partnership (“TPP”);
- the Transatlantic Trade and Investment Partnership (“TTIP”);
- the Trade in Services Agreement (“TiSA”); and
- the Environmental Goods Agreement.

The TPA procedures also would apply to any new trade initiatives.

With TPA now in place, TPP negotiations will enter their final phase, during which the 12 TPP parties are expected to make serious offers concerning the

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most sensitive negotiating issues (including on market access and intellectual property rights) and then finalize the text of the agreement. TPP could be considered by Congress by the end of the year.

Trade Preferences Extension Act of 2015

The *Trade Preferences Extension Act of 2015*, which passed Congress on Thursday, extends the operation of certain U.S. trade preference programs through which the United States extends duty free treatment to certain products that originate from many of the world's poorest economies. For example, the Generalized System of Preferences ("GSP"), which is the largest and oldest U.S. trade preference program, had expired on July 31, 2013. Similarly, the African Growth and Opportunity Act ("AGOA"), which provides duty-free treatment for nearly all goods from eligible sub-Saharan African countries, was set to expire on September 30, 2015.

Under the *Trade Preferences Extension Act of 2015*,

- GSP will be extended through 31 December 2017;
- GSP benefits will be applied retroactively to otherwise eligible articles imported on or after 31 July 2013);
- AGOA will be extended for an additional 10 years; and
- benefits available to apparel exports from Haiti through the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 ("HOPE"), the Food Conservation and Energy Act of 2008 ("HOPE II") and the Haiti Economic Lift Program of 2010 ("HELP") will be extended through September 30, 2025.

The law also will provide greater flexibility for the President to withdraw, suspend, or limit benefits under AGOA if the President determines that such action would be more effective than termination when a beneficiary country has failed to meet one or more of AGOA's eligibility criteria.

Trade Adjustment Assistance ("TAA"), which provides benefits for workers and firms that have been negatively affected by trade agreements, also was attached to the *Trade Preferences Extension Act of 2015* after a stand-alone TAA bill failed to pass in the House. The *Leveling the Playing Field Act*, a set of measures aimed at strengthening U.S. trade remedy law, was also included as part of the *Trade Preferences Extension Act of 2015*.

Trade Facilitation and Trade Enforcement Act of 2015

Different versions of the *Trade Facilitation and Trade Enforcement Act of 2015*, also referred to as the "*Customs Bill*," were passed by the House and Senate. Thus, the two versions must be reconciled by a conference committee and passed by both houses before being sent to the President. The Customs Bill is a collection of measures to streamline and facilitate the flow of legitimate trade and enhance the effectiveness of efforts to enforce the trade laws. The final text of the bill will not be known until after the conference, which likely will begin during the week of July 6. Below we discuss some of the provisions that we expect to see in the final version of the bill.

With respect to trade facilitation, the current versions of the bill contain provisions that will

- reduce paperwork burdens for low value shipments, U.S. goods returned, and bulk cargo residue contained in instruments of international traffic;
- increase the *de minimis* value (from \$200 to \$800) under which goods informally may enter free of duty;
- advance the modernization of the automated systems of U.S. Customs and Border Protection ("CBP") , including the development and implementation of the Automated Commercial Environment (for processing

imports and exports) and the movement towards a “single window” through which all U.S. government import and export requirements are fulfilled.

The bill also seeks to promote American manufacturing by establishing a new miscellaneous tariff bill (“MTB”) process to allow for the temporary suspension or reduction of duties related to goods for which there is insufficient domestic availability.

With respect to effective enforcement of trade laws, the *Trade Facilitation and Trade Enforcement Act of 2015* will

- authorize CBP to share information (including samples) with intellectual property rights holders to help CBP determine whether a good crossing the U.S. border at a port of entry violates a copyright or trademark;
- establish the National Intellectual Property Rights Coordination Center within U.S. Immigration and Customs Enforcement;
- establish the Trade Remedy Law Enforcement Division within CBP’s Office of International Trade to prevent and investigate the evasion of duties imposed under our trade remedy laws;
- establish the Interagency Trade Enforcement Center and a Chief Manufacturing Negotiator within the Office of the U.S. Trade Representative;
- authorize the investigation of evasion of antidumping and countervailing duty orders; and
- enhance targeting of high-risk shipments by strengthening internal controls over new importers and by addressing the importer requirements concerning nonresident importers;

Finally, the bill promotes international labor standards and the protection of international human rights by eliminating the “consumptive demand” exception to the prohibition on importing merchandise made by convict, forced, or indentured labor.

King & Spalding will be circulating additional client alerts with detailed explanations of the new trade laws.

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