

# Client Alert

International Trade &amp; Litigation Practice Group

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## USTR Receives Its Marching Orders

On June 26, King & Spalding **reported** on the 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*—that comprise the first large-scale revision to U.S. trade law since the enactment of the Uruguay Round Agreements Act in 1994. The driving force behind those bills was the renewal of Trade Promotion Authority (“TPA”) (so-called “fast track” authority), which requires an up or down vote by Congress, without amendments, to approve international trade agreements. TPA was deemed essential to complete negotiation of the Trans-Pacific Partnership (“TPP”).

While TPP is a primary element of the U.S. trade agenda, TPA sets the objectives and ground rules for the Obama Administration’s negotiation of several other bilateral and plurilateral trade agreements that currently are underway. In addition to TPP, TPA applies to the negotiation of the Trade in Services Agreement, expansion of the Information Technology Agreement, negotiation of the Environmental Goods Agreement, and negotiation of the Transatlantic Trade and Investment Partnership Agreement. TPA also will apply to new trade negotiation initiatives over the next six years when certain conditions are satisfied. In short, TPA sets USTR’s negotiation teams into motion on several fronts to conclude free trade agreements (“FTAs”) in furtherance of the U.S. trade agenda.

An overview of each agreement is provided below.

### *Trade in Services Agreement (“TiSA”)*

Fifty-one World Trade Organization (WTO) members (with the European Union representing its 28 member states)—collectively representing around 70% of global trade in services—began formal negotiations of the TiSA in April 2013. The negotiations are aimed at developing a new agreement to liberalize trade in services outside the WTO framework.

TiSA will be designed to complement and expand on existing disciplines contained in the WTO General Agreement on Trade in Services, which entered into force in 1995. The negotiations recognize that the 1995 agreement does not fully take into account how more recent developments in

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technology, business practices, and global integration have affected global trade in services.

Eleven rounds of negotiations already have been completed. Despite these many rounds, the text of the new agreement remains heavily bracketed (reflecting that significant disagreements remain), and the market access offers of several parties have yet to reflect the level of ambition sought at the initiation of these negotiations.

The next round of discussions will take place in Geneva on July 6-7.

### *Expansion of the Information Technology Agreement*

The Information Technology Agreement (“ITA”) is a plurilateral agreement from 1996 that eliminates tariffs on trade in information and communications technology (“ICT”) products. Forty-nine of the WTO’s 159 members have signed onto the ITA. Of these 49, over 20 currently are involved in the talks to expand the scope of the tariff reductions to additional products, including new technology products developed over the last 17 years.

A major hurdle to concluding these talks was thought to have been cleared late last year when the United States reached a deal with China, in which China agreed to eliminate tariffs on certain additional products (including advanced semiconductors and medical devices). Hopes of quickly concluding the ITA expansion were dashed, however, when Korea raised objections to China’s unwillingness to eliminate tariffs on monitors, organic light-emitting diodes (OLEDs), and batteries. Korea’s objections are understood to originate from the fact that flat-panel displays were left out of the deal reached between the United States and China.

The next round of negotiations tentatively is set for the week of July 13. Without some indication that South Korea or China will be flexible with respect to their current positions, however, the round likely will be postponed.

### *Environmental Goods Agreement*

The United States and 16 other WTO members are taking part in the negotiation of a plurilateral agreement to eliminate or reduce tariffs on environmental goods. The negotiations intend to build upon the 2012 Asia-Pacific Economic Cooperation (APEC) agreement to reduce tariffs on **54 environmental goods** by the end of 2015. This new initiative will seek to expand the number of covered goods while enhancing environmental protections, green growth, and sustainable development. The list of goods currently under consideration is reported to propose tariff elimination for some 650 products.

It is estimated that annual global trade in environmental goods totals over \$1 trillion. The negotiations cover approximately 86% of that trade. While tariffs in the negotiating countries already are low with respect to most environmental goods, tariffs on certain environmental goods—including solar panels, gas and wind turbines, wastewater treatment technologies, air pollution control technologies, hazardous waste treatment technologies, and environmental monitoring equipment—are as high as 35%.

The next round of talks is scheduled for July 27-31.

## *Transatlantic Trade and Investment Partnership*

The Transatlantic Trade and Investment Partnership (“TTIP”) is a proposed FTA between the United States and the European Union (EU). The United States and the EU envision TTIP as a “comprehensive” and “high-standard” FTA that seeks, among other things, to increase market access through the elimination of barriers to trade and investment in goods, services, and agriculture, and to enhance regulatory cooperation.

TTIP will create an integrated regional market accounting for 30% of global trade and approximately 50% of the world's GDP. With average U.S. and EU tariffs already quite low, trade-related rules and regulatory issues are the key areas where significant improvement of the trading relationship is possible.

TTIP negotiations were launched in February 2013. The ninth Round of negotiations took place during April 2015 in New York. On June 8, the leaders of the G7 countries committed to accelerate the TTIP negotiations in hopes of establishing the framework for a deal by the end of 2015. Given the long, complicated, and often contentious trade relationship between the two economies, a much longer time-frame should be expected for the conclusion of the TTIP. The tenth round of negotiations will take place in Brussels on July 13-17.

## *Trans-Pacific Partnership*

The TPP is a proposed regional FTA currently being negotiated among Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, the United States, Singapore, and Vietnam. The TPP economies account for 40% of global GDP. Formal negotiations began in March 2010. The goal is a “21st century agreement” that will contain “WTO-plus” provisions in key areas while also attempting to address behind-the-border trade barriers that have eluded the disciplines of existing multilateral and bilateral FTAs.

With TPA now in place, TPP negotiations will enter their final phase, during which the TPP parties are expected to make serious offers concerning the most sensitive negotiating issues and then finalize the text of the agreement. While some (including some inside USTR) believe that it may be possible to see TPP finalized in the next few weeks, others remain skeptical. Notwithstanding the assessment of Australian Trade Minister Andrew Robb that the parties were “one week of negotiation” away from reaching a conclusion, there remains a great deal of carefully coordinated work to be done before such a conclusion can be reached. Japan and the United States have yet to resolve a number of bilateral issues (including market access for U.S. rice, rules of origin for autos, tariff levels on auto parts, and special procedures for settling disputes over automobiles). The final positions of other parties on their market access offers will very much depend on the outcomes of the U.S.-Japan bilateral discussions and how those are received by the stakeholders in each of the TPP countries. Major outstanding issues remain for all parties with respect to intellectual property rights (particularly as they relate to pharmaceuticals) and market access for agricultural products .

Thus, even assuming that broad agreements can be reached on these sensitive issues in “one week of negotiation,” the details of the resolutions to these final issues will need time to be finalized and “scrubbed” by the legal teams of each TPP country. Regardless, it remains possible that TPP could be considered by the U.S. Congress by the end of 2015. A 2015 deadline could be critical to TPP, given that important election cycles will take place in the United States and several TPP partner countries in 2016.

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