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New Trade Legislation Extends Key Duty-Free Tariff Programs, Provides Opportunity for Businesses to Recoup Over $1 Billion In Duties

On June 29, President Obama signed into law **the *Trade Preferences Extension Act of 2015*** ("the Act"). This legislation extends certain U.S. trade preference programs through which the United States grants duty-free treatment to certain products from the developing world. As King & Spalding **reported on June 26**, key programs extended under the Act include the Generalized System of Preferences ("GSP"), the African Growth and Opportunity Act ("AGOA"), and preferential tariff treatment for Haitian-made apparel.

Companies that import goods from developing countries may find it useful to determine whether any inputs in their supply chains could be eligible for duty-free treatment under any of the programs. Likewise, companies that imported GSP-eligible products during the time period when the program was suspended may obtain retroactive preferential duty benefits that will be made available in the coming months, as discussed below. For example, President Obama terminated the designation of Russia as a beneficiary developing country under the GSP program, effective October 3, 2014. Following that action, Customs instructed importers that goods of Russian origin entered or withdrawn from warehouse on or after October 3, 2014, should not be entered with the benefit of GSP. This example underscores why importers who may be eligible to recover retroactive GSP benefits should closely coordinate efforts with their import and compliance functions.

Generalized System of Preferences

Introduced in 1974, GSP "is **designed** to promote economic growth in the developing world by providing preferential duty-free entry into the U.S. market for nearly 5,000 products from 122 designated beneficiary countries and territories." Products eligible for GSP include many manufactured items and chemicals, minerals and building stone, and certain agricultural products. GSP expired on July 31, 2013, but the Act extends the program through December 31, 2017. GSP will apply to goods that enter the United States 30 days after the enactment of the Act, which is July 29, 2015.

The Act, however, also makes GSP benefits retroactive so that qualified importers can request a refund of duties on goods imported after the GSP

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expired in 2013. This provision is crucial to help compensate U.S. businesses for the **$1 billion in tariffs** paid during the expiration period on goods previously receiving duty-free treatment. Importers must apply for refunds with U.S. Customs and Border Protection ("Customs"). To qualify for a refund:

- the goods in question must have been eligible for preferential treatment if the entry had been made on July 31, 2013;
- the entry must have been made after July 31, 2013 (and before July 29, 2015); and
- the applicant must provide enough information for Customs either to locate the entry, or to reconstruct the entry if it cannot be located.

These applications must be made within 180 days of the Act's implementation on June 29. Refund payments will be made without interest. Customs may issue further guidance on the application for this refund process.

The Office of the U.S. Trade Representative ("USTR") is expected to commence its next review of the GSP program in August 2015. At that time, USTR will solicit requests to (1) designate additional articles as eligible for GSP benefits, (2) withdraw, suspend or limit the application of duty-free treatment with respect to any good; (3) waive the competitive need limitations (*i.e.*, product-specific quantitative ceilings on GSP benefits) for individual beneficiary countries with respect to specific articles, or (4) otherwise modify GSP coverage.

African Growth and Opportunity Act

AGOA grants duty-free treatment to many goods imported from eligible sub-Saharan African countries. Set to expire on September 30, 2015, AGOA has now been extended for an additional 10 years. **Noting** that AGOA "has had strong bipartisan support for many years now," the President welcomed the extension of the program, "which helps open up markets in Africa to American businesses while making it easier for African businesses to sell their products in America."

An important new provision of the AGOA program will allow the President to "withdraw, suspend, or limit" preferential tariff treatment, rather than simply terminating it, if a beneficiary country no longer meets its eligibility requirements. AGOA eligibility is conditioned on the country demonstrating progress towards a more market-based economy, as well as progress in areas such as anti-corruption and human rights. The amended legislation provides the President with a more flexible tool if he determines that a more moderate approach "would be more effective in promoting compliance by the country."

Finally, the renewed AGOA program will work in conjunction with other legislation to promote economic development and deepen trade partnerships with Africa.

Preferential Tariff Treatment for Haiti

Finally, the new legislation extends the Haitian Hemispheric Opportunity through Partnership and Encouragement Act ("HOPE II"), which provides duty-free benefits to apparel exports from Haiti. According to the **White House**, HOPE II plays "a clear and direct role in supporting the creation of thousands of jobs in the textile and garment sectors, while providing important protections to workers." HOPE II has been extended through September 30, 2025.

King & Spalding will continue to monitor the extension of these trade preferences as they are implemented in the coming weeks and months. Please contact us with any questions.