THOMPSON HINE

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INTERNATIONAL TRADE & CUSTOMS UPDATE

New Trade Agreements, Renewed Trade Laws Offer Import/Export Opportunities to U.S. Companies and Relief to U.S. Workers

On October 21, 2011, President Obama signed into law several pieces of legislation affecting U.S. trade, including implementing legislation for Free Trade Agreements (FTAs) with South Korea, Panama and Colombia, and renewal legislation for the Generalized System of Preferences (GSP), the Andean Trade Preference Act (ATPA) and Trade Adjustment Assistance (TAA).

THE FTAS

South Korea. Under the Korea-U.S. FTA (KORUS), almost 95 percent of trade between the United States and South Korea in consumer and industrial products will become duty-free within five years of implementation, with most remaining tariffs eliminated within 10 years. KORUS also will increase the market access of U.S. service suppliers. It will provide market access commitments that extend across virtually all major service sectors, including greater and more secure access for financial services, international delivery services and foreign legal consulting services.

KORUS is now being considered by South Korea's National Assembly, which must pass the necessary implementing legislation before the FTA can enter into force. Further, President Obama must be satisfied that South Korea has taken measures to ensure compliance with FTA provisions that take effect when the agreement enters into force. South Korea has already instituted many of these measures as part of the EU-Korea FTA, which took effect in July. The earliest date for entry into force of KORUS is January 1, 2012.

Colombia. Under the Colombia-U.S. FTA, more than 80 percent of U.S. exports of consumer and industrial products to Colombia will become duty-free immediately after implementation, with most remaining tariffs eliminated within 10 years. U.S. products that will gain duty-free treatment upon implementation include agriculture and construction equipment, aircraft and parts, auto parts, fertilizers and agricultural chemicals, information technology equipment, medical and scientific equipment, and wood products.

Panama. Under the Panama Trade Promotion Agreement, commonly referred to as the Panama FTA, more than 87 percent of U.S. exports of consumer and industrial products will become duty-free immediately after implementation, with remaining tariffs eliminated within 10 years. U.S. products that will gain duty-free treatment upon implementation include information technology equipment, agricultural and construction equipment, aircraft and parts, medical and scientific equipment, environmental products, pharmaceuticals, fertilizers and agricultural chemicals.

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The Colombia and Panama FTAs have received the necessary approvals from their respective governments and will enter into force when President Obama determines that the countries have implemented measures to ensure compliance with FTA provisions. Similar to KORUS, the earliest date for entry into force of the FTAs with Colombia and Panama is January 1, 2012.

GSP

The U.S. GSP program was created on January 1, 1976 by the Trade Act of 1974. It was designed to promote economic growth in developing countries by providing duty-free treatment for a wide range of consumer and industrial products from designated beneficiary countries and territories. The program expired on December 31, 2010. On October 21, 2011, President Obama signed legislation to reauthorize the program through July 31, 2013.

GSP will become effective on November 5, 2011, retroactive to January 1, 2011 to cover the gap in GSP coverage. Importers of GSP-eligible products may seek reimbursement for tariffs paid during this lapse. Importers will receive an automatic refund if they filed electronically, used the GSP Special Program Indicator (SPI) in the filings (i.e., “A” or “A+”) and paid duty on GSP-eligible goods. For those who did not use the GSP SPIs, a request for liquidation or reliquidation must be submitted to U.S. Customs and Border Protection (CBP), through either Post Entry Amendments, Post Summary Corrections or Protests, no later than 180 days after October 21, 2011 (i.e., April 18, 2012). The request must contain information that allows CBP to locate or reconstruct the entry. Any amounts will be paid, without interest, no later than 90 days after liquidation or reliquidation.

THE ATPA

The ATPA originally came into effect on in December 1991 and was designed to benefit Bolivia, Colombia, Ecuador and Peru in their fight against drug production and trafficking. The Andean Trade Promotion and Drug Eradication Act (ATPDEA) was enacted on August 6, 2002 and broadened the ATPA to provide duty-free treatment of certain products previously excluded. The ATPA program expired February 12, 2011. On October 21, 2011, President Obama signed renewal legislation to reauthorize the program through July 31, 2013.

Similar to the GSP program, the ATPA will become effective November 5, 2011, and is retroactive to February 13, 2011 to cover the gap in ATPA coverage. Providers of goods entered during this lapse that would have been eligible for duty-free or other preferential treatment under the ATPA/ATPDEA may seek reimbursement for tariffs paid. Because CBP did not permit the use of the ATPA/ATPDEA SPI (i.e., “J” or “J+”) during the lapse in coverage, all requests for liquidation or reliquidation must be made, through either Post Entry Amendments, Post Summary Corrections or Protests, no later than 180 days after October 21, 2011 (i.e., April 18, 2012). The requests must contain information that allows CBP to locate or reconstruct the entry. Any amounts will be paid, without interest, no later than 90 days after liquidation or reliquidation.

MERCHANDISE PROCESSING FEES (MPF)

Renewal of the GSP program and the implementation of the KORUS brought changes to the MPF charged to importers. Included in the GSP renewal legislation is an increase, effective October 1, 2011, in the MPF from 0.21 percent to 0.3464 percent of the customs value of the imported merchandise. The minimum MPF assessment of $2 for informal entries and $25 for formal entries, as well as the maximum assessment of $485, remain the same. The GSP renewal legislation would temporarily have raised the MPF until November 30, 2015, which was to be followed by a gradual decline in the fee. However, the KORUS-implementing bill was signed after the GSP renewal legislation and, therefore, overrides the GSP legislation's MPF provisions. The increase in MPF to 0.3464 percent remains in effect from October 1, 2011 until June 30, 2021.

THE TAA PROGRAM

The TAA program provides benefits to U.S. workers who have lost their jobs as a result of foreign trade. These benefits include trade readjustment allowance, training, assistance with health care premium costs, alternative trade adjustment assistance, and job search and relocation allowances. The program expired on February 12, 2011. On October 21, 2011, President Obama signed the TAA Extension Act of 2011, which extends the program through December 31, 2013. The Act changes certain group eligibility requirements and applies to all petitions filed since February 12, 2011.

FOR MORE INFORMATION

If your company is affected by any of these changes in international trade law and would like further assistance, please contact Matt Nicely or David Christy of our International Trade & Customs practice group for more information.

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