CLIENT ALERT

Long-Stalled Trade Legislation Finally Passes Congress

Oct.17.2011

Spurred by the visit of South Korean President Lee Myung-bak, Congress has passed three long-stalled Free Trade Agreements ("FTAs") with South Korea, Panama and Colombia, which now await signature on President Obama 's desk and mark the first major trade policy initiative of his administration. Congress simultaneously passed bills that retroactively extend the Generalized System of Preferences ("GSP") and the Trade Adjustment Assistance ("TAA") programs, which the White House had made a condition of its support for the FTAs. The following is a brief overview of the key legislation enacted:

Free Trade Agreements

With the three FTAs having now passed Congress, the implementing bills now await President Obama's signature. Two additional steps are necessary before the three FTAs take effect. First, the other country needs to ratify the agreement; Panama and Colombia have already done so, while Korea has not. Second, President Obama will still have to certify, likely through the Office of the U.S. Trade Representative ("USTR"), that each trading partner has taken all necessary steps to change its laws and implement regulations to put into place its commitments under their respective FTA. Once that certification is made, President Obama must then issue an Presidential Proclamation to implement the agreement. If the certification process is completed in the next three months the bills will come into effect on January 1, 2012, but President Obama can delay issuing the Presidential Proclamation indefinitely until he is satisfied that all commitments have been addressed.

U.S.-Korea FTA

South Korea is the United States' 7th largest trading partner, with $88 billion in two-way trade, making the newly signed FTA the largest enacted by the U.S. since the passage of the North American Free Trade Agreement. The key benefits of the deal will be:

- 95% of bilateral trade in consumer and industrial products becomes duty-free within three years of the date of coming into force and most remaining tariffs will be eliminated within ten years.
- The key U.S. exports which stand to receive the greatest benefit include farm products, textile and apparels (requiring a 'yarn forward ' rule of origin), automobiles & auto parts, remanufactured goods, industrial and consumer electronic machinery and parts, power generation equipment, chemicals, medical and scientific equipment, motorcycles, and certain wood products.
- The U.S.-Korea FTA establishes a legal framework and protections for U.S. investors operating in Korea.
- The FTA also opens the Korean services markets (e.g., financial, legal, healthcare, education, research, telecommunications, express delivery). The financial services chapter of the U.S.-Korea FTA represents a "gold standard" that industry wants as a model for subsequent trade agreements.
- Finally, the FTA also establishes significant intellectual property protections.

Similar to other FTAs, goods can qualify as originating under the wholly originating, regional-value content or tariff shift methods, depending on the good.

Although U.S. ratification is nearly complete, Korea still must ratify the U.S.-Korea FTA. The votes in Congress have prompted Korea 's governing Grand National Party ("GNP") to accelerate parliamentary consideration of the agreement. The GNP has called for ratification by the end of October, and despite continued opposition from some domestic groups in Korea, officials hope to have it approved in the Foreign Affairs, Trade and Unification Committee by October 18 and approved by the National Assembly no later than October 28, 2011.

U.S.- Colombia FTA

Colombia is the 3rd largest economy in Latin & South America and the U.S.-Colombia FTA will provide significant new access to Colombia 's $166 billion services market. Currently, U.S. industrial exports face average Colombian tariffs of ranging from 7.4 to 14.6 percent. The key benefits of the Colombian FTA include:

- Over 80% of U.S. exports of consumer and industrial products will become duty free immediately and remaining tariffs will phase out over the next ten years.
- The industries which stand to benefit the most include, agriculture and construction equipment, aircraft and parts, auto parts, fertilizers and agro-chemicals, information technology equipment, medical and scientific equipment, and wood products.

Goods can qualify as originating primarily under the wholly originating or regional-value content methods, depending on the good.

Colombia has already ratified the FTA but implementation will not take effect until the Administration certifies that Colombia has successfully implemented key elements of the Labor Action Plan, which could delay implementation by three to six months beyond the timeframe for Korea and Panama.

U.S.-Panama FTA

Panama is one of the fastest growing economies in Latin America whose GDP is expected to jump with the completion of the expanded Panama Canal in 2014. The key benefits of the FTA include:

- Over 87% of U.S. exports of consumer and industrial products will become duty free immediately and remaining tariffs will phase out over the next ten years.
- Key export sectors that will benefit include: information technology equipment, agricultural and construction equipment, aircraft and parts, medical and scientific equipment, environmental products, pharmaceuticals, fertilizers, and agro-chemicals. U.S. industrial exports face currently face tariffs ranging from 7 to 81 percent.
- Agriculture also stands to benefit as today, U.S. agricultural exports face Panamanian duties ranging from 15 to 260 percent.

Panama has already ratified the U.S.-Panama FTA and so implementation could take effect quickly. Significantly, this may mean that the U.S.-Panama FTA will likely come into force before Panama 's free trade agreements with Canada and the EU go into force, which will yield a significant competitive advantage to U.S. exports of goods and services, at least temporarily.

GSP & Andean Trade Preferences Act Reauthorization

The GSP is a tool of U.S. foreign policy and economic development, authorizing preferential duty treatment on imports from more than 75 developing countries. The program had lapsed at the end of 2010, forcing importers to pay dramatically higher duties overnight.

The trade legislation signed by President Obama included a reauthorization for GSP, retroactive to January 1, 2011. As a result, importers can now make claims for duty recovery for all GSP-eligible entries they imported during the period in which GSP had been in lapse.

Also, the Andean Trade Preferences Act ("ATPA") was reauthorized. Once the U.S.-Colombia FTA enters into force, Colombian goods will cease to be eligible for ATPA or GSP. With the recent FTA implementation, ATPA now only covers goods imported from Ecuador and Bolivia. Both GSP and ATPA have been extended through July 31, 2013.

TAA Expansion

Trade Adjustment Assistance ("TAA") for workers and farmers is a federal program, initially authorized in 1962 under President Kennedy to reduce the impact of increased imports felt by certain sectors of the U.S. economy. TAA provides reemployment services and benefits to workers who have lost their jobs or suffered a reduction of hours and wages resulting from increased imports or shifts in production outside the U.S.. The TAA program aims to help program participants obtain new jobs, ensuring they retain employment and earn wages comparable to their prior employment and provides assistance while they obtain new jobs such as health care tax credits and education funding. The reauthorization of TAA passed by Congress ensures continuance of TAA through December 31, 2012 and includes many, but not all, of the expansions previously authorized in the American Recovery and Reinvestment Act ("ARRA") of 2009.

Merchandise Processing Fee

Passed without as much fanfare as the other aspects of the program, but with important immediate and day-to-day impacts on U.S. importers, the new legislation also includes a 75% increase in the Merchandise Processing Fee ("MPF"). Effective October 1, 2011, the MPF is increased from 0.21 percent to 0.3464 percent ad valorem, ostensibly to help offset the costs of the GSP and TAA reauthorizations, despite the U.S. 's obligation under the WTO to only increase its MPF "commensurate" with the costs of services rendered. Goods which qualify as originating under any of the three FTAs are not subject to the MPF.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

John B. Brew
Partner – Washington, D.C.
Phone: +1 202.624.2720
Email: jbrew@crowell.com

Daniel Cannistra
Partner – Washington, D.C.
Phone: +1 202.624.2902

Email: dcannistra@crowell.com

David (Dj) Wolff
Partner; Attorney at Law – Washington, D.C., London
Phone: +1 202.624.2548, +44.20.7413.1368
Email: djwolff@crowell.com