

The Biggest International Trade Developments Of 2015

By **Alex Lawson**

Law360, New York (December 18, 2015, 2:00 PM ET) -- The international trade bar has seen a flurry of high-profile activity over the past 12 months as the U.S. Congress passed a bundle of long-awaited legislation, while the White House delivered the largest regional trade agreement in history and a landmark accord to peel back sanctions on Iran. Here, Law360 looks at the biggest trade developments of the year.

TPP's Big Moment

After more than five years of high-stakes negotiations and intense scrutiny from lawmakers and the general public, the Trans-Pacific Partnership became a reality on Oct. 5 following a marathon negotiating session in Atlanta as trade ministers from the 12 countries overcame a series of lingering sticking points ranging from drug patents to agricultural market access.

The fanfare and rancor over the completion of the talks was surpassed only by the release of the massive text a month later, fueling an already intense debate over the TPP's rules, many of which have never been contemplated before in a free trade agreement.

"This is the biggest trade deal that the U.S. has been involved in since the last successful [World Trade Organization] round nearly 20 years ago," Alston & Bird LLP trade policy adviser Eric Shimp told Law360. "That is a generational development in terms of access to new markets."

Business groups and lawmakers have been slow to develop their formal positions on the TPP as they carefully parse the details of the text ahead of next year's vote for ratification.

Beyond the inherent value of the TPP text itself, which contains rules benefiting industries ranging from e-commerce to express delivery services, backers of the agreement have said the TPP's true value will be as a counterweight to China in the Asia-Pacific region.

"Something the next administration inherits is going to be this challenge of what to do about China's growing economic power," Shimp said. "It's too easy to say TPP is a method of containing China, but I think it's a method of attempting to influence the power of any economic actor who has the potential for market dominance."

New Trade Laws on the Books

Months before the TPP was completed, the U.S. Congress forged ahead with a sweeping package of crucial trade legislation, headlined by a bill to renew the White House's authority to submit trade deals for swift approval, which cleared the way for the 12-nation accord to become a reality.

But the Trade Promotion Authority bill's impact goes well beyond the completion of the TPP, as it lays out a set of wide-ranging negotiating priorities for the next six years of U.S. trade policy, laying the foundation for the next administration to strike and ratify new agreements.

"As mundane as it might seem compared to other major legislative achievements, when you look at the percentage of the U.S. economy that is impacted by trade on either the export or import side, it's significant for any president to develop some kind of functional trade agenda," Shimp said.

The passage of the TPA bill did not come without a fair share of drama on Capitol Hill. The legislation stalled out in both chambers of Congress at differing points, forcing the White House and its trade allies to develop a complex procedural strategy for getting the bill across the finish line.

Part of that strategy involved making assurance that the TPA bill would be accompanied by two other bills aimed at renewing Trade Adjustment Assistance, a trade-driven worker aid program, as well as series of programs giving preferential tariff treatment to imports from poorer countries.

The two chambers also passed two different versions of a bill to beef up customs enforcement at the border, particularly with regard to the evasion of anti-dumping and countervailing duties. Congressional leaders recently reconciled the differences between the two bills in a bicameral conference, teeing up a final vote on the bill in the early part of next year.

EU Talks Sputtering

While TPA and TPP swallowed up a majority of the trade headlines in 2015, the Transatlantic Trade and Investment Partnership negotiations with the European Union have plodded along quietly, with some observers questioning whether the wind has gone out of the sails.

Wiley Rein LLP partner Timothy B. Brightbill said he thought the EU has drawn too many red lines for the talks to be as effective as they need to be.

"The European Union showed a lot [of] interest at the outset of the talks, but it has taken a number of issues off the table and has not been very forward-leaning in the last year or two," Brightbill told Law360.

The most significant development in the TTIP talks was the EU's release of a revamped model for arbitrating investment disputes, replacing the controversial investor-state dispute settlement method with a standing investment court that has drawn fire in Washington, D.C.

Brussels released its new model after extensive public consultations and it could drastically alter the international arbitration landscape if it ever gains traction, according to Squire Patton Boggs LLP attorney Aline Doussin.

"The European Commission could not have foreseen the level of controversy over the dispute resolution procedures, as there was always going to be a mechanism of redress built into the agreement," Doussin told Law360. "That said, the permanent international tribunal approach ... could not only prove a

successful compromise but could also mark a significant departure in international trade and pave the way for future global deals."

Iran Sanctions on the Chopping Block

In July, the U.S. and its most powerful allies entered into a historic agreement that will carefully peel back long-standing sanctions on Iran in exchange for a steady drawdown in the Middle Eastern nation's nuclear program.

While the removal of sanctions is still a long way off, Orrick Herrington & Sutcliffe LLP partner Harry L. Clark touted the agreement's potential to eventually yield a commercial windfall for companies that have long been locked out of Tehran's lucrative market.

In the near term, Clark said that the benefits of the agreement, formally known as the Joint Comprehensive Plan of Action, will be of a greater benefit to companies operating within the European Union as opposed to the U.S.

"This was a monumental development for the sanctions area," he said. "On the one hand, it has not yet resulted in any changes, on the other hand, it contemplates very important changes, particularly in Europe. Europe has committed to end most of its Iran-related sanctions."

On the U.S. side, most of the sanctions poised for removal are so-called secondary sanctions, which apply to non-U.S. companies. The Obama administration has also said it will issue licenses for foreign subsidiaries of U.S. companies.

As the Iran market is steadily pried open, a number of industries stand ready to reap the benefits, according to Clark.

"There are many significant buyers of consumer goods who would be doing business in Iran but for these sanctions," he said. "And in that realm we are talking about suppliers of everything from shampoo to toothpaste to automobiles."

Steel Industry Goes to Battle

On the trade remedy front, 2015 saw a flurry of massive petitions for anti-dumping and countervailing duties from the U.S. steel industry as the U.S. Department of Commerce and the U.S. International Trade Commission began six different consolidated investigations over the past six months.

Steel companies filing trade cases is no new phenomenon, but the sheer size of many of these recent petitions — with some targeting up to six countries at a time — underscores the desperation of the domestic producers, according to Brightbill.

"The domestic steel industry is in crisis right now," he said. "Imports now have 30 percent of the U.S. market, which is an all-time record and U.S. steels are using less than 70 percent of their capacity. Those conditions are unsustainable and that's what led to these cases, which cover a number of countries and some of the biggest offenders in the marketplace."

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