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AD/CVD AND CUSTOMS AMENDMENTS INCLUDED IN RECENT US TRADE LEGISLATION

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Three major new pieces of trade and customs legislation were enacted by Congress and signed into law by President Obama in 2015 and early 2016.

The first two pieces of legislation, the Trade Promotion Authority (TPA) and the Trade Preferences Extension Act (TPEA) (“Trade Remedies Bill”), were enacted in June 2015.

Congress passed the third of these legislative initiatives, the Trade Facilitation and Trade Enforcement Act (TFTEA) (“Customs Bill”), on February 11, 2016, and President Obama signed it into law on February 24, 2016.

These new laws include significant changes in US antidumping and countervailing duty law as well as US customs law. The Trade Remedies Bill, which is the more substantive of the first two pieces of legislation (at least for purposes of trade remedies law) will have several important impacts. It will likely make it easier for US industries to demonstrate material injury in initial injury investigations. It also expands the authority of the US Department of Commerce to disregard prices and costs submitted by respondents in antidumping cases, requires the submission by respondents of cost of production data in all antidumping cases, and provides greater discretion to Commerce to select “adverse facts available” for non-cooperating respondents and to refuse to investigate “voluntary respondents.” These US industry-friendly amendments to the trade laws may increase the chances for the imposition of antidumping and countervailing duties, and at higher rates, in US trade cases.

The recently enacted Customs Bill builds on the Trade Remedies Bill and further stiffens enforcement of US antidumping and countervailing duty laws. The Customs Bill includes numerous provisions intended to help Customs and Border Protection (CBP) more efficiently and effectively enforce US trade laws, targeting allegations of evasion of antidumping and countervailing duties and creating a new enforcement division. Notably, a

controversial provision seeking to label currency manipulation as a type of countervailable subsidy was removed from the final version of the law, which instead only calls for increased monitoring of currency manipulation.