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Market Access **ALERT**

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## New Trade Enforcement Legislation Introduced at Start of New Congress

On January 14, 2009 House Committee on Ways & Means Chairman Charles Rangel (D-NY) and Trade Subcommittee Chairman Sander Levin (D-MI) introduced a bill to reform US international trade policy. The Trade Enforcement Act of 2009 (the Act), HR 496, has four main objectives: (1) strengthening trade remedy laws; (2) opening markets to US exports by eliminating foreign trade barriers; (3) protecting US borders from imports violating US health and safety laws and regulations; and (4) enforcing intellectual property rights at US borders.

Nearly identical bills were introduced in both the Senate and House in the 110th Congress. Squire Sanders of counsel David M. Spooner (at the time, Assistant Secretary for Import Administration at the US Department of Commerce), testified in hearings before the House Subcommittee on Trade on matters related to these bills. Although previous versions failed to reach the floor of the House or Senate, the prospects for the Trade Enforcement Act may be more promising under the Obama administration and 111th Congress. For further information regarding the Act, please contact [Mr. Spooner](#) or your principal Squire Sanders lawyer.

### Reforms to Trade Remedy Laws

The Act amends US antidumping and countervailing duty law to:

- Codify the application of countervailing duties (CVD) to nonmarket economy (NME) countries, such as China;
- Permit the Department of Commerce to use alternative methods of identifying and calculating countervailable subsidies in CVD proceedings against China;
- Provide Congress with a role in determining when a

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country's NME status should be revoked;

- Request that Commerce reverse its decision to implement the World Trade Organization (WTO) Appellate Body decision mandating that the United States abandon "zeroing" in investigations; and
- Permit the International Trade Commission (ITC) to evaluate material injury from dumped imports without regard to whether they will be replaced by imports from other countries or whether any benefit to domestic industry will occur (overturning *Bratsk Aluminum Smelter v. United States*).

The Act also limits the discretion of the president in denying relief under the China Safeguard Provision, which permits temporary relief when products imported from China cause or threaten market disruption to US-based producers.

### **Reduction of Foreign Barriers to US Exports**

The Act strengthens the United States Trade Representative's (USTR) annual obligation under current law to identify "priority foreign country practices" – those practices that if eliminated would have the most potential to increase US exports. If consultations prove unsuccessful, the USTR must initiate an investigation to determine whether the practice is actionable under Section 301. Section 301 actions permit the imposition of retaliatory measures, subject to exceptions, for foreign country practices that violate US rights under a trade agreement.

The legislation specifically implements an annual obligation for the USTR to identify countries that impose unfair technical barriers to trade and unfair sanitary and phytosanitary measures on US agricultural exports. The consultation and investigation provisions also apply subsequent to the USTR's reviews of such barriers.

The Act creates the Office of the Congressional Trade Enforcer, which is authorized to investigate violations of foreign country obligations under the Uruguay Round Agreements or any bilateral or regional free trade agreement to which that country is a party with the United States. The Congressional Trade Enforcer will also possess the power to recommend that the USTR initiate dispute resolution proceedings against countries for such violations.

### **Ensuring Imports Comply With US Health and Safety Laws**

The Trade Enforcement Act establishes a government-wide, uniform data system to uniquely identify all goods imported into the United States in order to ensure that cargo imported into the United States complies with US health and safety laws and regulations. It also creates a voluntary import safety program that will qualify eligible entities for expedited movement through the border

inspection process.

Moreover, the Act provides sanctions for those entities in repeated noncompliance with US health and safety laws.

### **Enforcement of Intellectual Property Rights at US Borders**

The proposed legislation creates the position of Director of Intellectual Property Rights (IPR) Enforcement within the Department of Treasury as well as an advisory committee to advise on IPR enforcement issues. Moreover, the bill enlists Customs and Border Protection (CBP) with the responsibility of preparing a plan for a "Watch List" database for parties posing a risk of importing or exporting pirated or counterfeit goods and to provide for additional scrutiny at the border for such parties. The Act also limits CBP's ability to mitigate fines and expands the prohibitions on exportation or importation of pirated or counterfeit goods including trebling the fines when these goods are intended for sale or public distribution.

The bill has been referred to the House Committees on Ways and Means, Rules and Homeland Security.

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