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## new customs law and intellectual property rights

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*MSK Client Alert*

March 15, 2016

On February 24, 2016, President Obama signed into law the Trade Facilitation and Trade Enforcement Act of 2015, PL 114-125 (TFTEA), which includes an assortment of trade facilitation and trade enforcement provisions, including a number of provisions focused on intellectual property rights (IPR). Section III of the new law provides a number of enhancements to U.S. enforcement of intellectual property rights (IPR) at the border. In addition, included among a variety of new trade enforcement provisions in Section VI, the new law provides additional resources to assist the Office of the United States Trade Representative (USTR) improve IPR protection and enforcement in foreign markets. These IPR provisions were primarily championed by Senator Orrin Hatch of Utah, Chairman of the Senate Finance Committee, who spoke on the Senate floor and in other public settings leading up to Senate consideration of the law on their importance for his support.

The first substantive provision in Section III, Section 302, requires CBP to share with rights holders unredacted images of merchandise suspected of infringing trademark or copyright laws, if CBP determines that sharing such images will assist it in making an infringement determination. The provision also provides CBP with the authority (but does not require it) to share with rights holders unredacted samples of suspected infringing merchandise. This provision explicitly supersedes section 818(g) of the 2012 National Defense Authorization Act (NDAA), which allowed for sharing of unredacted images in cases of merchandise suspected of bearing a counterfeit trademark. While the NDAA provision was strictly permissive, the new information sharing provision includes stronger language that requires CBP to share unredacted images with rights holders whenever such sharing will help CBP to make an infringement determination. The new provision also expands the scope of violations for which CBP is authorized to share unredacted images and samples to include violations of copyright laws, including the DMCA prohibitions against importation of unlawful circumvention devices.

### attorneys

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### practice areas

corporate & business transactions  
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