



## **TRADE POLICY DEVELOPMENTS PAPER NO. 27**

**TRADE POLICY MONITORING REPORT**

**OF**

**THE UNITED STATES OF AMERICA**

**APRIL 2012- JUNE 2012**

**VOLUME V**

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## **Executive Summary**

The major findings indicate that to face the harsh economic and financial market conditions which exist in the economy, the United States government put into place a wide range of monetary and fiscal policy instruments to address these issues. This report seeks to analyze the progress made through such government initiated measures in the review quarter over the economy.

The review report also mainly aims to track the developments during the review quarter of 2012 in various areas of trade policy. The purpose of tracking these trade policy developments was to ascertain if there exists any possible impact on India.

A brief highlight of the 2012 Trade Policy Agenda, a brief highlight on the ongoing US-FTA negotiations, US India strategic dialogues over Trans Pacific Partnership agreements, HTS tariff changes and non-tariff trade measures with respect to India, Sanitary and Phytosanitary report and India, and Antidumping and administrative reviews invoked against india are few key areas on which this report delves on.

The agenda of most of the policy changes made by the U.S. was to set ambitious course to support higher employment and to gain higher economic benefits between trading partners, and the report evidences the progress made though at a slower pace along with its impact on the developing nation's trading matters.

### **Agenda for the Next Report**

For the subsequent Trade Policy Monitoring Report (for the quarter period July- September 2012), the forthcoming issues in these areas shall be closely monitored.

1. The changes in the United States macroeconomic trends during the review quarter shall be monitored
2. The progress of the Trans Pacific Partnership Agreement entered into force by 9 countries, which aims at culminating into Asia-Pacific Free Trade Agreement (FTAAP), shall be closely monitored. The US-China growing ties shall be analysed during the review quarter.
3. The increasing ties between US and Africa under AGOA and the progress of initiatives along with the developments made in the US GSP scheme in the year 2012 during the review quarter shall be studied. Its probable impact on India shall also be looked into.
4. The changes in the customs procedure in US introduced in the review quarter shall be studied.
5. The impact of the new Harmonized Tariff Schedule on Indian exporters and developments therein shall be reported.
6. The impact of Executive Order 13126 potentially impacting Indian exports of textiles, stones, bricks and zari to US shall be further analysed.
7. The future of sunset reviews conducted by US shall be monitored. The progress of other administrative reviews against India initiated during the review quarter shall be studied.
8. The developments made by the USTR SPS report and its impact on India shall be monitored.
9. The developments with respect to the assistance provided by the US government to automotive and energy sector shall be studied.
10. The impact of deep cuts in farm subsidies which can have a great impact on world market prices for these products and other allied agricultural products shall be studied.
11. In the field of Intellectual Property, the developments under reviews of S. 301 report by USTR and S. 337 under US tariff Act shall be studied.

**TRADE POLICY MONITORING REPORT OF THE UNITED STATES OF AMERICA**  
**FOR THE QUARTERLY PERIOD: APRIL- JUNE 2012**

**I. INTRODUCTION**

This is the fifth Quarterly Trade Policy Monitoring Report prepared by the Centre for International Trade and Economic Laws (CITEL), Jindal Global Law School. This report will monitor and discuss the trade and macroeconomic policy developments that took place in the United States of America during the period: April-June 2012.

**II. ECONOMIC ENVIRONMENT: MACRO-ECONOMIC FUNDAMENTALS**

The real GDP of the United States increased by 1.3 percent in the present quarter, following an increase of 2% growth observed in the previous quarter. The GDP growth of the present quarter reflected the contributions from personal consumption expenditures (PCE), exports, residential and nonresidential fixed investment partly offset by negative contributions from private inventory investment and state and local government spending.<sup>1</sup>

The imports of goods and services increased by 2.8 percent and the exports of goods and services increased 5.3 percent in the present quarter compared to an increase of 3.1 percent and 4.4 percent respectively, in the previous quarter.<sup>2</sup>

Gross investment and federal government consumption expenditure decreased 0.2 percent in the present quarter. The local government consumption expenditure and real estate decreased 1 percent in the present quarter.<sup>3</sup>

In early 2012, the dollar depreciated by 2% through February 2012.<sup>4</sup> Since the weakening of the dollar raises concerns in Congress and amongst the public, that the dollar's decline is a symptom of broader economic problems, the United States has used a wide range of monetary and fiscal policy instruments to address these harsh economic conditions and stabilize financial markets. This Trade Policy Monitoring Report highlights the progress of these newly introduced legislations and measures thereby analysing their current impact on the economy.<sup>5</sup>

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<sup>1</sup> 'Gross Domestic Product: Second Quarter 2012 (third estimate); Corporate Profits: Second Quarter 2012 (revised estimate)', Bureau of Economic Analysis, US Department of Commerce, [http://www.bea.gov/newsreleases/national/gdp/2012/pdf/gdp2q12\\_3rd.pdf](http://www.bea.gov/newsreleases/national/gdp/2012/pdf/gdp2q12_3rd.pdf) (last visited 27 Sep. 2012).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Craig, 'The Depreciating Dollar: Economic Effects and Policy Response' (23 Feb. 2012), <http://www.fas.org/sgp/crs/misc/RL34582.pdf> (last visited 5 Sep. 2012).

<sup>5</sup> 'Gross Domestic Product: Second Quarter 2012 (third estimate); Corporate Profits: Second Quarter 2012 (revised estimate)', Bureau of Economic Analysis, US Department of Commerce, [http://www.bea.gov/newsreleases/national/gdp/2012/pdf/gdp2q12\\_3rd.pdf](http://www.bea.gov/newsreleases/national/gdp/2012/pdf/gdp2q12_3rd.pdf) (last visited 27 Sep. 2012).

## National Income and Economic Balances during the review period<sup>6</sup>

- Upturn in Consumer spending, reflecting pickups in spending for both services and goods which contributed towards an upturn in “financial services and insurance” and “other’ durable goods and in food and beverages for off-premises consumption”.
- Downturn in non-residential fixed investment, reflecting a slowdown in equipment and software and a larger decrease in structures, contributed by a downturn in power and communication.
- Upturn in residential investment, reflecting pickups in single-family structures, in “other” structures, and in multifamily structures.
- Downturn in inventory investment, reflecting downturns in manufacturing and in whole trade industries.
- Upturn in exports, reflecting an upturn in exports services.
- Upturn of imports, reflecting an upturn in imports of services.

*Source: Bureau of Economic Survey*

## Employment Situation<sup>7</sup>

The employment report in the quarter period, 2012 provides further evidence that the economy is continuing to heal from the worst economic downturn since the great depression, as the economy has added private sector jobs for 27 straight months, for a total of 4.3 million payroll jobs over that period. It has been noted that though the economy is growing, it is not growing fast enough.

The Bureau of Labour Statistics shows the following progress that the economy has made.

Increase in private employer payrolls by 130,000 during April and 115,000 in overall non-farm payroll employment.

Decrease in unemployment rate from 8.2% in March to 8.1% in April.

Fall in unemployment rate since August by 1.0 percentage point, from 9.1% to 8.1%, where nearly three-quarters of that drop is attributable to increased employment, which will be discussed in detail in the next quarterly report..

Increase in private employment by 697,000 jobs in 2012 with upward revision of 65,000 jobs to the past two months’ employment reports.

*Source: Council of Economic Surveys*

## FY 2013 Budget Highlights<sup>8</sup>

The Federal Budget is central to Congress’s ability to exercise its “power of the purse.” Its decisions express Congress’s priorities and reinforce Congress’s influence on federal policies. Making budgetary

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<sup>6</sup> ‘GDP and the Economy, Advance Estimates for the First Quarter of 2012’, Bureau of Economic Survey, May-2012, [http://bea.gov/scb/pdf/2012/05%20May/0512\\_gdpecon.pdf](http://bea.gov/scb/pdf/2012/05%20May/0512_gdpecon.pdf) (last visited 5 Sep. 2012).

<sup>7</sup> Alan B. Krueger, ‘Employment situation in April’, Council of Economic Advisers (4 May 2012), <http://www.whitehouse.gov/blog/2012/05/04/employment-situation-april> (last visited 5 Sep. 2012); Alan B. Krueger, ‘Employment situation in May’, Council of Economic Advisers (1 June 2012), <http://www.whitehouse.gov/blog/2012/06/01/employment-situation-may> (last visited 5 Sep. 2012).

<sup>8</sup> Mindy R. Levit, The Federal Budget: Issues for FY2013 and Beyond, Congressional Research Service Report (1 May 2012).

decisions for the federal government is a complex process and requires balancing competing goals. Recent economic turmoil has strained the federal budget as a result of declining revenues and increasing spending levels. As the economic recovery continues, the budget process will allow the President and Congress to negotiate priorities and refine spending plans.

FY 2013 budget was released on 13 February 2012.

Budget projects that the deficit will reach \$901 billion.

It focused on providing additional stimulus to create jobs and bolster the economic recovery. The budget also includes various spending and tax proposals, as well as longer term deficit reduction. It emphasizes continued investment in and reform of education and job training programs, as well as a continued push for research and development incentives and infrastructure improvements. It further includes other tax proposal changes in the estate tax parameters, limits the value of itemized deductions for married taxpayers with incomes over \$250,000 and single taxpayers with incomes over \$200,000, and eliminates various tax expenditures. Lastly, the budget includes *Cuts, Consolidations, and Savings* volume that contains proposed changes to 210 discretionary and mandatory programs.

The analysis of the Congressional budget office indicates that, of the various initiatives that the President is proposing, tax provisions would have the largest impact on Projected Deficits. The President proposes to extend certain tax provisions that are slated to expire or that have already expired. The 2010 Tax Act (officially the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111-312) extended through December 2012 encompasses many of the income tax reductions originally enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003. The President proposes to make those reductions permanent, except, in some cases, for higher-income taxpayers. In addition, the President seeks to reduce the number of taxpayers who would be subject to the alternative minimum tax by permanently setting various parameters of that tax at the amounts that were in effect in calendar year 2011 and indexing those amounts for inflation in later years. The President also proposes, starting in January 2013, to permanently restore the rates and exemption levels for estate and gift taxes that were in effect in calendar year 2009. Together, those policies would reduce tax revenues and boost outlays for refundable tax credits by a total of about \$3.5 trillion over the 2013–2022 period relative to the amounts projected in CBO’s baseline. Automatic procedures specified by last year’s Budget Control Act (Public Law 112-25) are set to go into effect in January 2013 and reduce spending in subsequent years. The President’s budget does not include those reductions, thereby boosting outlays relative to the current-law baseline by \$1.0 trillion over the next 10 years.

There are other initiatives under the budget which could reduce the projected deficits relative to CBO’s baseline. President’s proposal envisions funding for military operations in Afghanistan and for related activities (also known as overseas contingency operations, or OCO) that is less than the amounts in CBO’s baseline. As specified in law, the baseline incorporates the assumption that funding for such activities will total \$127 billion (the amount provided in 2012) each year through 2022, with increases to keep pace with inflation; the President’s budget, by comparison, includes a request for \$97 billion for OCO in 2013 and \$44 billion in each year thereafter through 2022. The cumulative difference in outlays between CBO’s baseline and the President’s proposal is \$0.8 trillion over the 2013–2022 period. The

President would also cap the rate at which certain deductions and exclusions reduce a taxpayer's income tax liability at 28 percent; that change would decrease deficits by a total of \$0.5 trillion over the next decade.<sup>9</sup>

### **Fiscal and Monetary Policy**

In view of the weaker economic outlook, subdued projected path for inflation, and significant downside risks to economic growth, the Federal Open Market Committee (FOMC) decided to ease monetary policy at its June 2012 meeting by continuing its maturity extension program (or MEP) through the end of this year. The MEP combines sales of short-term Treasury securities with an equivalent amount of purchases of longer-term Treasury securities. As a result, it decreases the supply of longer-term Treasury securities available to the public, putting upward pressure on the prices of those securities and downward pressure on their yields, without affecting the overall size of the Federal Reserve's balance sheet. By removing additional longer-term Treasury securities from the market, the Fed's asset purchases also induce private investors to acquire other longer-term assets, such as corporate bonds and mortgage backed-securities, helping to raise their prices and lower their yields and thereby making broader financial conditions more accommodative.<sup>10</sup>

## **III. TRADE AND INVESTMENT POLICY FRAMEWORK**

### **III A. A brief highlight of the 2012 Trade Policy Agenda<sup>11</sup>:**

On 1 March 2012, United States Trade Representative Ron Kirk stated that President's 2012 Trade Policy Agenda sets ambitious course to support American jobs. The agenda outlines comprehensive plans for 2012 to open markets for U.S. exports, enforce U.S. trade rights, and enable American producers to compete on a level playing field.

The Agenda includes:

Entry into force and implementation of trade agreements with Korea, Colombia, and Panama.

Conclusion of negotiations for a high-standard Trans-Pacific Partnership (TPP) regional trade agreement.

Enhanced trade enforcement efforts to investigate unfair trading practices in countries like China and hold our trading partners accountable for their commitments to comply with World Trade Organization (WTO) obligations.

Extension of permanent normal trade relations to Russia so that American producers can compete on a level playing field as Russia joins the WTO rules-based global trading system.

Continued American leadership at the WTO and in other forums towards greater international trade liberalization.

*Source: USTR*

<sup>9</sup> An Analysis of the President's 2013 Budget, CBO, (16 March 2012), <https://www.cbo.gov/publication/43103> (last visited 5 Sep. 2012).

<sup>10</sup> Statement by Ben S. Bernanke before the committee of banking, housing and urban affairs, (17 July 2012).

<sup>11</sup> President's 2012 Trade Policy Agenda, available at <http://www.ustr.gov/about-us/press-office/press-releases/2012/march/president%E2%80%99s-2012-trade-policy-agenda-sets-ambitious>

### III B. Preferential Trade Agreements and Arrangements

#### *Bilateral and regional preferences*

#### **Developments during the review quarter**

(1) A brief highlight on the on-going negotiations of FTAs during the reporting period is as follows:

**US-Korea** – After a contentious battle, the Korean National Assembly passed the agreement and it came into force on 15 March 2012.<sup>12</sup>

On 16 May 2012, the first US-Korea Trade agreement joint committee meeting was held. It was affirmed at the meeting that in general the agreement was being implemented smoothly and was already leading to economic benefits for both countries. With the effective implementation of the agreement, U.S. exports to Korea in March increased. The updates on recent trade initiatives of both countries and consultations on ways to enhance cooperation on trade issues were exchanged. In addition, they agreed on the scheduling of five committees and working groups under the agreement. It was also affirmed at the meeting that in early June, the Committee on Services and Investment, the Working Group on Small and Medium-sized Enterprises, the Committee on Trade in Goods, and the Committee on Trade Remedies will meet in Washington. The Medicines and Medical Devices Committee will meet in early July in Seoul.<sup>13</sup>

**USTR's discussion on bilateral trade with Egypt, Jordan, Morocco and Tunisia** – In April 2012, a meeting was conducted by the USTR and other U.S. government officials with the ministers and other high level representatives of Egypt, Jordan, Morocco, and Tunisia both individually and jointly for discussion over efforts to increase bilateral trade, further investments, creating jobs and improve regional integration and trade facilitation. Again affirmation was given by USTR as regards building the strongest possible partnership with each country.

Ambassador Sapiro remarked: “We believe our cooperation can help our partners deliver economically for their people through ambitious, concrete measures – both near-term and longer-term – to enhance trade and investment; support job creation and retention; and promote innovation and economic growth”. He added, “We are committed to deepening our ties, based on our shared vision of achieving prosperity for our peoples.”<sup>14</sup>

**US' talks with Mexico and Canada** – In April 2012, the Trade Representative of United States, Ron Kirk while chairing the meeting of the North American Free Trade Agreement (NAFTA) Free Trade Commission (FTC), met the Secretary of the Economy of Mexico, Bruno Ferrari, and the Trade Minister

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<sup>12</sup> U.S.-South Korea Relations, (15 May 2012), <http://fpc.state.gov/documents/organization/191602.pdf> (last visited 5 Sep. 2012).

<sup>13</sup> ‘U.S. Trade Representative Kirk Concludes First Meeting of the U.S.-Korea Free Trade Agreement Joint Committee’ (16 May 2012), <http://www.ustr.gov/about-us/press-office/press-releases/2012/may/us-trade-representative-kirk-concludes-first-meeting-u> (last visited 5 Sep. 2012).

<sup>14</sup> Deputy U.S. Trade Representative Sapiro Discusses Bilateral Trade, Economic Growth with Egypt, Jordan, Morocco, and Tunisia, <http://www.ustr.gov/about-us/press-office/press-releases/2012/april/deputy-us-trade-representative-sapiro-discusses-bila> (last visited 9 Sep. 2012).

of Canada, Edward Fast, and conversed on the means to enhance competitiveness among the three countries, expand exports, and spur growth among small and medium-sized businesses in the countries.<sup>15</sup>

**US - South Africa Trade Agreement** – This agreement will help increase commercial and investment opportunities by identifying and working towards the removal of impediments relating to trade flow. It was agreed that the Government of US and the Government of South Africa will work together on a number of trade and investment-related issues including tariffs, business and regulatory environment, implementation under AGOA (African Growth and opportunity cost), export diversification, energy, trade facilities, and enhancing the participation of small and medium sized enterprises in trade and investment.<sup>16</sup>

**US- Georgia Trade Agreement** – The meeting between United States and Georgia took place on 20 April 2012. Discussions about the range of options for increasing bilateral trade and investment, including the possibility of a free trade agreement, an updated investment agreement and other measures that could facilitate trade and investment were negotiated. Both the countries explored opportunities for private sector groups to provide inputs on concrete steps to increase trade and investment between them.<sup>17</sup>

**US- Colombia Trade Promotion Agreement** – It was agreed in a meeting which was held on 15 May 2012 that, this agreement will expand US goods –exports by more than \$1.1 billion and will give duty free access to goods and services - from manufacturing to agriculture sectors. It will help in increasing additional jobs, so that there will be an increase in GDP by \$2.5 billion. Both the countries will continue to work together on the Action Plan related to labour rights. They will be focusing on long-term commitments to improve labour practice and deter violence against labour leaders. This agreement will provide new access to Colombia's \$180 billion services market, supporting increased opportunities for U.S. service providers.<sup>18</sup>

**US- Model BIT** – In February 2009, the model BIT of 2004 was reviewed and it was ensured that it was consistent with public interest and Administration's overall economic agenda. The U.S has more than 40 BITS in force with countries around the world, and the investment chapters of U.S free trade agreement (FTAs) contain substantially similar rules and protections.

The BIT Model of 2012 helps in achieving several goals of the Obama Administration ensuring US of benefits from foreign markets, mechanism for enforcing international obligation of economic partner and creating stronger labor and environmental protection. It will also support strategic international commitment to a robust economic agenda. It ensures that American firms' can rely on strong legal protections as well as promoting good governance, rule of law and transparency around the world, when it competes 95 percent of the world's consumers who live outside the US.

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<sup>15</sup> Press Release, 'U.S. Trade Representative Ron Kirk Concludes Meeting of the North American Free Trade Agreement Free Trade Commission', <http://www.ustr.gov/about-us/press-office/press-releases/2012/april/us-trade-representative-ron-kirk-concludes-meeting-n> (last visited 22 Aug. 2012).

<sup>16</sup> Press Release, 'U.S. Trade Representative Ron Kirk and South Africa Trade Minister Rob Davies Sign Agreement to Enhance Trade and Investment', <http://www.ustr.gov/about-us/press-office/press-releases/2012/june/ustr-south-africa-sign-trade-agreement> (last visited 23 Aug. 2012).

<sup>17</sup> Press Release, 'U.S. and Georgia Convene High-Level Dialogue to Discuss Strengthening Bilateral Trade and Investment Relations', <http://www.ustr.gov/about-us/press-office/press-releases/2012/may/us-georgia-dialogue-trade-investment> (last visited 23 Aug. 2012).

<sup>18</sup> Press Release, 'U.S. Trade Representative Ron Kirk Statement on Entry into Force of the U.S.-Colombia Trade Agreement', <http://www.ustr.gov/about-us/press-office/press-releases/2012/may/us-trade-representative-ron-kirk-statement-entry-force> (last visited 23 August 2012).

There are few changes in 2012 model from the predecessor 2004 model, where it enhances transparency and public participation, sharpens the disciplines that address preferential treatment to state-owned enterprises including distortion created by certain indigenous innovation policies, and strengthens safeguards relating to labour and the environment.<sup>19</sup>

**US-Panama-** Though the US government has signed the FTA with Panama in 2011, the Agreement has not yet been implemented by the review quarter of 2012.<sup>20</sup>

In April, 2012, U.S. Trade Representative Ron Kirk chaired the meeting of the NAFTA Free Trade Commission (FTC). The meeting focused on ways to enhance competitiveness, expand exports and spur growth among small- and medium-sized businesses in the three countries.<sup>21</sup> Further developments will be discussed in the next quarterly report.

As a part of the Trade Policy agenda, the following strategic talks and trade co-operation efforts of the US are also to be noted:

**Trans-Pacific Partnership Agreement-** The agreement concluded its twelfth round of negotiations during the review quarter. The twelfth round took place at Dallas, Texas in May 2012.

During the negotiations held in May (the review quarter), the TPP countries involved in negotiations, closed discussions on small- and medium-sized enterprises, a new feature in a U.S. free trade agreement intended to support the integration into global trade of small- and medium-sized enterprises, which accounts for two-thirds of job creation in the United States. The discussions also focused on ensuring that the commitments encourage growth, development, and innovation; and address issues that businesses and workers were facing in the 21st century. From goods, services, investment, telecommunications, and e-commerce to customs, intellectual property, labor, environment, and competition, the groups remained committed to ambitious outcomes, while finding the flexibility necessary to develop solutions. In addition, the nine countries made valuable exchanges on the U.S. proposal on State-owned enterprises, a new and challenging issue intended to lay out rules to ensure that these enterprises compete fairly with private companies. Finally, the countries made productive exchanges on new issues related to trade and the environment, the digital economy, and the development of supply chains in the region along with its continued work on developing ambitious tariff packages that would provide access to each other's industrial goods, agricultural, and textiles markets.<sup>22</sup>

After the review quarter, the 14th round of negotiations took place on 6-15 September 2012 in Leesburg, Virginia. Progress was made on chapters, including market access, customs, rules of origin, technical barriers to trade, sanitary and phytosanitary standards cross border services, telecommunications,

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<sup>19</sup> Press Release, 'United States Concludes Review of Model Bilateral Investment Treaty', <http://www.ustr.gov/about-us/press-office/press-releases/2012/april/united-states-concludes-review-model-bilateral-inves> (last visited 24 August 2012).

<sup>20</sup> See Free Trade Agreements, <http://www.ustr.gov/trade-agreements/free-trade-agreements> (last visited 24 August 2012).

<sup>21</sup> 'U.S. Trade Representative Ron Kirk Concludes Meeting of the North American Free Trade Agreement Free Trade Commission', <http://www.ustr.gov/about-us/press-office/press-releases/2012/april/us-trade-representative-ron-kirk-concludes-meeting-n> (last visited 24 August 2012).

<sup>22</sup> TPP talks advance in Texas, (16 May 2012), <http://www.ustr.gov/about-us/press-office/press-releases/2012/may/trans-pacific-partnership-tpa-talks-advance-texas> (last visited 24 August 2012).

government procurement, and others. It was announced that the 15th round of TPP negotiations will be held in Auckland, New Zealand on 3-12 December 2012.<sup>23</sup>

***US- China, strategic and economic dialogue:*** On 4 May 2012, the two countries reaffirmed the importance of implementing the consensus reached by President Barack Obama and President Hu Jintao in January 2011 on building a U.S.-China cooperative partnership based on mutual respect and mutual benefit, the outcomes from the visit of Vice President Xi Jinping to the United States in February 2012, as well as the outcomes reached in previous Strategic and Economic Dialogues. The two countries announced further concrete measures to enhance macroeconomic cooperation, promote open trade and investment, enhance international rules and global economic governance, and foster financial market stability and reform.<sup>24</sup>

***APEC meeting-*** On 4 June 2012, the United States Trade Representative Ron Kirk shared U.S. assessments and goals for Asia-Pacific trade (with regard to Regional Economic Integration, Next Generation Trade and Investment Issues and Liberalizing Trade in Environmental Goods), as meetings of the Asia-Pacific Economic Cooperation (APEC) forum's Ministers Responsible for Trade continued in Kazan, Russia.<sup>25</sup>

#### ***Other Economic initiatives:***

***US-India Strategic Dialogue-*** It was reported on 13 June 2012 that USTDA announced two grant agreements with the Power Grid Corporation of India Limited to support the implementation of energy-related projects in the country – the first agreement, in an amount of \$585,375, to assist Power Grid in assessing the implementation of high temperature superconductor cable systems within India's power transmission grid and the second grant, for \$450,000, to be a smart grid project designed to help Power Grid control electric power on the grid in real time, to reduce transmission losses and accommodate renewable energy generation. The technical assistance was sought to be carried out by Quanta Technology, LLC (Releigh, NC) and Space-Time Insight (Fremont, CA). In addition to the grants being announced on 13 June 2012, USTDA had developed two public-private partnerships focused on leveraging private sector business resources in both countries to promote commercial project development – the U.S.-India Energy Cooperation Program (ECP), which supports clean energy and energy efficiency projects, and the U.S.-India Aviation Cooperation Program (ACP), which supports aviation infrastructure modernization.<sup>26</sup>

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<sup>23</sup> 'Progress Continues in Trans-Pacific Partnership Talks', (15 Sep. 2012), <http://www.ustr.gov/node/7751> (last visited 24 August 2012).

<sup>24</sup> Joint U.S.-China Economic Track Fact Sheet- Fourth Meeting of the U.S. China Strategic and Economic Dialogue (S&ED), Available at <http://www.treasury.gov/press-center/press-releases/Pages/tg1567.aspx> (last visited 24 August 2012).

<sup>25</sup> 'U.S. Trade Representative Ron Kirk Lays Out Priorities at APEC Meeting of Ministers Responsible for Trade', (6 Apr. 2012), <http://www.ustr.gov/about-us/press-office/press-releases/2012/june/kirk-priorities-apec-ministers-meeting> (last visited 24 August 2012).

<sup>26</sup> 'USTDA director participates in US-India strategic dialogue', (13 June 2012), [http://www.usda.gov/news/pressreleases/2012/SouthAsia/India/USIndiaStrategicDialogue\\_061312.asp](http://www.usda.gov/news/pressreleases/2012/SouthAsia/India/USIndiaStrategicDialogue_061312.asp) (last visited 5 Sep. 2012).

### **III C. Unilateral preferences**

#### **Developments during the review quarter**

After the GSP scheme of USA was authorized by President Obama through 31 July 2013 and retroactively applying GSP trade benefits for eligible products that entered the United States on or after 1 January 2011 based on the administration's review of various issues and petitions related to eligibility of products under the GSP program, President Obama made several determinations on 29 June 2012 affecting product coverage under GSP. The President determined that seven cotton fiber products should be added to the list of those eligible for duty-free treatment under the program when imported from least developed country (LDC) beneficiaries. The addition of these products implements one element of the LDC trade initiatives that USTR announced at the December 2011 World Trade Organization Ministerial. The President also: 1) redesignated one product as eligible for duty-free treatment under the GSP program; 2) granted waivers of competitive need limitations (CNLs) for over 100 products from 12 countries, including India; and 3) determined that eleven products from six countries should no longer be eligible for duty-free treatment under the GSP program because the relevant country is sufficiently competitive and exceeded CNLs for the product. The changes to GSP eligibility for these products will become effective on 1 July 2012. As part of the review, the Administration also considered petitions to withdraw or suspend certain countries' eligibility for GSP benefits based on statutory criteria, including whether a country is taking steps to afford internationally recognized standards for worker rights and the extent to which a country adequately and effectively protects intellectual property rights (IPR).<sup>27</sup>

### **IV. INVESTMENT AGREEMENTS AND ARRANGEMENTS**

#### **IV A. Investment Regulation**

While there were no developments during the reporting period with respect to investment policy or investment measures related to national security, some of the emergency measures which can have possible trade impacts were noticed. As per the TARP Transaction Report in 2012, Treasury continued to hold investments of a cumulative amount.

#### **IV B. Investment promotion measures**

None have specifically been reported during the period. There have been measures/schemes with respect to different FTAs being negotiated, which have been highlighted above.

#### **IV C. Aid-For-Trade**

##### **Developments during the review quarter**

In June 2012, United States Trade Representative Ron Kirk welcomed news of an agreement in Congress to advance legislation making critical updates and improvements to the African Growth and Opportunity Act (AGOA), America's trade preference program for sub-Saharan Africa, and the Central America –

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<sup>27</sup> 'USTR Announces Outcome of Generalized System of Preferences Review', (29 June 2012), <http://www.ustr.gov/about-us/press-office/press-releases/2012/july/ustr-announces-outcome-gsp-review> (last visited 5 Sep. 2012).

Dominican Republic – United States Free Trade Agreement (CAFTA-DR).<sup>28</sup> It was reported that urgent changes were needed to AGOA and CAFTA-DR, that supported trade and investment for more than forty-five of America’s developing country partners in Africa and the Western Hemisphere – offering duty-free treatment to their products, promoting regional integration, high standards of accountability, transparency, good governance, and the trade and economic opportunities that contributes to sustainable growth and development. Those countries could also provide some of the best markets for American businesses to sell their goods and services.<sup>29</sup>

## **V. TRADE POLICIES AND PRACTICES BY MEASURE**

### **V A. Measures Directly Affecting Imports**

#### **Customs procedures**

On 24 April 2012, the U.S. Customs and Border Protection published an interim amendment allowing CBP, subject to limitations, to disclose to an intellectual property rights holder, information appearing on merchandise or its retail packaging that may comprise information otherwise protected by the Trade Secrets Act, for the purpose of assisting CBP in determining whether the merchandise bears a counterfeit mark. Such information will be provided to the right holder in the form of photographs or a sample of the goods and/or their retail packaging as presented to CBP for examination and alphanumeric codes appearing on the goods. The information will include, but not be limited to, serial numbers, universal product codes, and stock keeping unit numbers appearing on the imported merchandise and its retail packaging, whether in alphanumeric or other formats. These changes provide a pre-seizure procedure for disclosing information about imported merchandise suspected of bearing a counterfeit mark for the limited purpose of obtaining the right holder’s assistance in determining whether the mark is counterfeit or not. This amendment also establishes a procedure to protect importers by requiring that before any information or sample is sent to the right holder, the importer will be provided notice, and an opportunity to show that the suspect merchandise is authentic.<sup>30</sup>

On 11 June 2012, U.S. Customs and Border Protection announced the delivery of the first phase of Cargo Release, known as Simplified Entry, in the Automated Commercial Environment. This provides importers with the chance to file a streamlined set of data earlier in the filing process providing more information earlier in the process and reduces the time needed for cargo to be released into the stream of commerce. Simplified Entry enhances cargo security, reduces cycle times, improves productivity, helps eliminate redundant data transmissions and potentially reduces costs.<sup>31</sup>

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<sup>28</sup> ‘U.S. Trade Representative Kirk Applauds Congress’s Agreement To Advance Urgent AGOA, CAFTA-DR Changes’, (21 June 2012), <http://www.ustr.gov/about-us/press-office/press-releases/2012/june/kirk-applauds-agreement-to-advance-agoa-caftadr> (last visited 27 Aug. 2012).

<sup>29</sup> ‘Fact Sheet: Urgent Need to Extend AGOA’s Third-Country Fabric Provision and Implement CAFTA-DR Textile and Apparel Provisions’, <http://www.ustr.gov/about-us/press-office/fact-sheets/2012/may/TCH> (last visited 27 Aug. 2012).

<sup>30</sup> ‘U.S. Customs and Border Protection Announces IPR Interim Final Rule ’ (24 April 2012), [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/national/04242012.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/04242012.xml) (last visited 27 Aug. 2012).

<sup>31</sup> ‘CBP Announces Simplified Entry Pilot to Enhance Cargo Security’ (11 June 2012), [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/national/06112012.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/06112012.xml) (last visited 27 Aug. 2012).

## Customs valuation

In May 2012, the CBP announced a policy change that will permit importers to rely on transfer pricing policy to determine customs value. It requires importers to take steps to identify potential duty savings in the form of potential downward post-importation adjustments to the customs value, to apply to participate in CBP's reconciliation program in order to revise customs value to account for post-importation adjustments and to review their current customs valuation methodology to ensure that they are in compliance with CBP requirements, in order to benefit from policy change.<sup>32</sup>

## Rules of origin

Customs procedures and rules of origin for the US FTAs remain the same during the review quarter.

## Tariffs

### *MFN and other trading partners*

### Developments during the review quarter

- (1) In 2012, the US government introduced a new Harmonized Tariff Schedule, 2012.<sup>33</sup> This schedule introduced new tariff changes with respect to different countries. This schedule contains changes made as a result of the Committee for Statistical Annotation of Tariff Schedule, the 484(F) Committee; and annual stage rate reductions.<sup>34</sup>

### Non-tariff border measures (Use of Social clauses)

On 3 April 2012, the U.S. Department of Labor's Bureau of International Labor Affairs published a revised list of products that federal contractors must certify under Executive Order 13126, that they are not produced with forced or indentured child labor.<sup>35</sup> The list appeared in the April 3 edition of the Federal Register. The products with respect to India have been highlighted as follows:

Product	Countries
Bricks	Burma, China, <b>India</b> , Nepal, Pakistan
Cottonseed (hybrid)	<b>India</b>
Embroidered Textiles (zari)	<b>India</b> , Nepal
Garments	Argentina, <b>India</b> , Thailand
Rice	Burma, <b>India</b> , Mali
Stones	<b>India</b> , Nepal <sup>36</sup>

<sup>32</sup> 'CBP Announces Policy Change That Will Permit Importers to Rely on Transfer Pricing to Determine Customs Value' (June 2012), <http://www.whitecase.com/alerts-06252012/> (last visited 27 Aug. 2012).

<sup>33</sup> See HTSA Archive, USITC, <http://www.usitc.gov/tata/hts/archive/index.htm> (last visited 27 Aug. 2012).

<sup>34</sup> Harmonized Tariff Schedule of the United States (2012), <http://www.usitc.gov/publications/docs/tata/hts/bychapter/1200chgs.pdf> (last visited 27 Aug. 2012).

<sup>35</sup> See United States Department of Labor, [www.dol.gov](http://www.dol.gov) (last visited 27 Aug. 2012).

<sup>36</sup> 'Executive Order 13126', <http://www.dol.gov/ILAB/regs/eo13126/main.htm> (last visited 27 Aug. 2012).

## V B. Trade Contingency measures

### Anti-dumping

Anti-dumping initiated during review quarter:

Investigation details	Matter Involved	Countries concerned	Status of proceedings
701-TA-489 and 731-TA-1201 (P)	Investigation on imports of drawn stainless steel sinks from China	China	<p>On 13 April 2012, the United States International Trade Commission (USITC) determined that there is a reasonable indication that a U.S. industry is materially injured by reason of imports of drawn stainless steel sinks from China that are allegedly subsidized and sold in the United States at less than fair value.</p> <p>All six Commissioners voted in the affirmative. As a result of the Commission's affirmative determinations, the U.S. Department of Commerce will continue to conduct its investigations on imports of these products, with its preliminary countervailing duty determination due on or about 25 May 2012, and its preliminary antidumping duty determination due on or about 8 August 2012.<sup>37</sup></p>
731-TA-1185 (Final)	Investigation on imports of certain steel nails from the United Arab Emirates (UAE)	UAE	<p>On 19 April 2012 the USITC determined that a U.S. industry is materially injured by reason of imports of certain steel nails from the United Arab Emirates that the U.S. Department of Commerce (Commerce) has determined are sold in the United States at less than fair value. All six Commissioners voted in the affirmative.</p> <p>As a result of the USITC's affirmative determinations, Commerce will issue antidumping duty orders on imports of these products from the United Arab Emirates.<sup>38</sup></p>
731-TA-1186-1187 (Final)	Investigation on imports of certain stilbenic optical brightening agents from China and	China and Taiwan	<p>On 19 April 2012 the USITC determined that a U.S. industry is materially injured by reason of imports of certain stilbenic optical brightening agents from China and Taiwan that the U.S. Department of Commerce (Commerce) has determined are sold in the United States at less than fair value. All six Commissioners voted in the affirmative. As a result of the USITC's affirmative determinations, Commerce will issue antidumping duty</p>

<sup>37</sup> News Release 12-038, 'USITC Votes To Continue Cases On Drawn Stainless Steel Sinks From China', [http://www.usitc.gov/press\\_room/news\\_release/2012/er0413kk1.htm](http://www.usitc.gov/press_room/news_release/2012/er0413kk1.htm) (last visited 3 Sep. 2012).

<sup>38</sup> News release 12-043, 'Certain Steel Nails From The United Arab Emirates Injure U.S. Industry, says USITC', [http://www.usitc.gov/press\\_room/news\\_release/2012/er0419kk1.htm](http://www.usitc.gov/press_room/news_release/2012/er0419kk1.htm) (last visited 3 Sep. 2012).

	Taiwan		orders on imports of these products from China and Taiwan. <sup>39</sup>
701-TA-480 and 731-TA-1188 (Final)	Investigation on imports of high pressure steel cylinders from China	China	On 30 May 2012 the USITC determined that a U.S. industry is materially injured by reason of imports of high pressure steel cylinders from China that the U.S. Department of Commerce (Commerce) has determined are subsidized and sold in the United States at less than fair value. All six Commissioners voted in the affirmative. As a result of the USITC's affirmative determinations, Commerce will issue antidumping and countervailing duty orders on imports of these products from China. <sup>40</sup>

### Issue of double counting – imposition of antidumping and CVD duties on products from NMEs

Details	Matter Involved	Status of Proceedings
Gpx International Tire Corporation vs. United States AFL CIO CLC LLC, 19 December 2011	Issue of on double counting – imposition of antidumping and CVD duties on products from NMEs at the same time	<p>This case involves an alleged “domestic subsidy,” where the subsidy benefits both domestic and exported goods, as opposed to an “export subsidy,” which benefits only exports.</p> <p>Since, in the case of goods exported from market economy countries (non-NME countries), both antidumping and countervailing duties may be imposed, the question involved in this case was whether both duties may be imposed on goods from NME countries.</p> <p>The U.S. Court of International Trade (Trade Court) in 2010 ordered the U.S. Department of Commerce (Commerce) to not to impose countervailing duties on goods from China, a non-market economy (“NME”) country. The Trade Court held that ‘permitting the imposition of such duties was “unreasonable” because of the high likelihood of “double counting” against goods from NME countries, when both countervailing duties and antidumping duties are assessed.</p> <p>With the United States and the U.S. manufacturers favouring the imposition of countervailing duties, the U.S. Court of Appeals for the federal circuit affirmed the trade court’s decision but on a different ground. It found that ‘when amending and reenacting countervailing duty law in 1988 and 1994, Congress legislatively ratified earlier consistent administrative and judicial interpretations that government</p>

<sup>39</sup> News Release 12-044, ‘Certain Stilbenic Optical Brightening Agents From China And Taiwan Injure U.S. Industry, says USITC’, [http://www.usitc.gov/press\\_room/news\\_release/2012/er0419kk2.htm](http://www.usitc.gov/press_room/news_release/2012/er0419kk2.htm) (last visited 3 Sep. 2012).

<sup>40</sup> News Release 12-058, ‘High Pressure Steel Cylinders From China Injure U.S. Industry, says USITC’, [http://www.usitc.gov/press\\_room/news\\_release/2012/er0530kk1.htm](http://www.usitc.gov/press_room/news_release/2012/er0530kk1.htm) (last visited 3 Sep. 2012).

		<p>payments cannot be characterized as “subsidies” in a non-market economy context, and thus that countervailing duty law does not apply to NME countries’.<sup>41</sup></p> <p>It was reported in April 2012 that in response to the above said U.S. Court of Appeals decision, President Obama signed into law H.R. 4105 on 13 March 2012, which provides authority for the Commerce Department to apply the CVD law on imports of merchandise from NMEs such as China and Vietnam. It also clarified that U.S. producers being injured by unfair subsidies were authorized to seek relief by initiating a CVD proceedings against NMEs by Commerce.<sup>42</sup></p>
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### Sunset Reviews

Investigation No.	Matter involved	Countries concerned	Status of proceedings
701-TA-350 and 731-TA-616 and 618 (Third Review)	Review concerning antidumping duty orders on corrosion-resistant carbon steel flat products from Germany and Korea	Germany and Korea	On 9 April 2012, the U.S. International Trade Commission (USITC or Commission) voted to conduct full five- year ("sunset") review. The Commission will conduct full reviews to determine whether revocation of these orders would be likely leading to continuation or recurrence of material injury within a reasonably foreseeable time. All six Commissioners concluded that both the domestic group response and the respondent group responses were adequate and voted for full reviews. <sup>43</sup>
731-TA-683 (Third Review)	Review concerning antidumping duty order on fresh garlic from China	China	On 12 April 2012 the Commission determined that revoking the existing antidumping duty would be likely leading to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determination, the existing order on imports of this product from China will remain

<sup>41</sup> *GPX International Tire Corporation v. United States AFL CIO CLC LLC*, <http://caselaw.findlaw.com/us-federal-circuit/1589233.html> (last visited 3 Sep. 2012).

<sup>42</sup> Lee Smith, ‘Congress Passes Legislation To Overturn The Federal Circuit’s GPX Decision’, <http://www.kslaw.com/library/newsletters/TradeManufacturingAlert/2012/April/article2.html> (last visited 3 Sep. 2012).

<sup>43</sup> News Release 12-034, ‘USITC Will Conduct Full Five-Year (Sunset) Reviews Concerning Corrosion-Resistant Carbon Steel Flat Products From Germany And Korea’, [http://www.usitc.gov/press\\_room/news\\_release/2012/er0409kk1.htm](http://www.usitc.gov/press_room/news_release/2012/er0409kk1.htm) (last visited 3 Sep. 2012).

			<p>in place. All six Commissioners voted in the affirmative.</p> <p>This action comes under the five-year (sunset) review process required by the Uruguay Round Agreements Act.<sup>44</sup></p>
731-TA-739 (Third Review)	Review concerning the antidumping duty order on clad steel plate from Japan	Japan	<p>On 7 May 2012 the Commission voted to conduct a full five-year ("sunset") review. The Commission will conduct a full review to determine whether revocation of this order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. All six Commissioners concluded that both the domestic group response and the respondent group response were adequate and voted for a full review.<sup>45</sup></p>
731-TA-895 (Second Review)	Review concerning the antidumping duty order on pure magnesium (granular) from China	China	<p>On 7 May 2012 the Commission voted to expedite its review. The Commission will conduct an expedited review to determine whether revocation of this order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. It was concluded that the domestic group response for this review was adequate and the respondent group response was inadequate and voted for an expedited review.<sup>46</sup></p>
731-TA-860 (Second Review)	Review on revoking the existing antidumping duty order on tin- and chromium-coated steel sheet from Japan	Japan	<p>On 15 May 2012, the Commission determined that revoking the existing antidumping duty order would be likely leading to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determination, the existing order on imports of these products from Japan will remain in place. All six Commissioners voted in the affirmative.<sup>47</sup></p>
731-TA-891 (Second Review)	Review on evoking the existing antidumping duty order on	China	<p>On 15 May 2012 the Commission determined that revoking the existing antidumping duty order would be likely leading to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determination, the existing</p>

<sup>44</sup> News Release 12-037, 'USITC Makes Determination In Five-Year (Sunset) Review Concerning Fresh Garlic From China', [http://www.usitc.gov/press\\_room/news\\_release/2012/er0412kk1.htm](http://www.usitc.gov/press_room/news_release/2012/er0412kk1.htm) (last visited 3 Sep. 2012).

<sup>45</sup> News Release 12-050, 'USITC Will Conduct Full Five-Year (Sunset) Review Concerning Clad Steel Plate From Japan', [http://www.usitc.gov/press\\_room/news\\_release/2012/er0507kk1.htm](http://www.usitc.gov/press_room/news_release/2012/er0507kk1.htm) (last visited 3 Sep. 2012).

<sup>46</sup> News Release 12-051, 'USITC Will Expedite Five-Year (Sunset) Review Concerning Pure Magnesium (Granular) From China', [http://www.usitc.gov/press\\_room/news\\_release/2012/er0507kk2.htm](http://www.usitc.gov/press_room/news_release/2012/er0507kk2.htm) (last visited 3 Sep. 2012).

<sup>47</sup> News Release 12-052, 'USITC Makes Determination In Five-Year (Sunset) Review Concerning Tin- And Chromium-Coated Steel Sheet From Japan', [http://www.usitc.gov/press\\_room/news\\_release/2012/er0515kk1.htm](http://www.usitc.gov/press_room/news_release/2012/er0515kk1.htm) (last visited 3 Sep. 2012).

	foundry coke from China		order on imports of this product from China will remain in place. All six Commissioners voted in the affirmative. <sup>48</sup>
731-TA-1103 (Review)	Review concerning the antidumping duty order on activated carbon from China	China	On 4 June 2012 the Commission voted to conduct a full five- year review. The Commission will conduct a full review to determine whether revocation of this order would be likely leading to continuation or recurrence of material injury within a reasonably foreseeable time. All six Commissioners concluded that both the domestic group response and the respondent group response were adequate and voted for a full review. <sup>49</sup>
701-TA-253 and 731-TA-132, 252, 271, 273, 532-534, and 536 (Third Review)	Review on revoking antidumping duties on certain circular welding pipe and tube from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey	Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey	On 14 June 2012, the Commission determined that revoking the existing antidumping duty orders would be likely leading to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determinations, the existing orders on imports of these products from these countries will remain in place. All six Commissioners voted in the affirmative. <sup>50</sup>
731-TA-865-867 (Second Review)	Review on revoking the existing antidumping duty orders on stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines	Italy, Malaysia and Philippines	On 20 June 2012, the Commission determined that revoking the existing antidumping duty orders would be likely leading to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determinations, the existing orders on imports of these products from these countries will remain in place. All six Commissioners voted in the affirmative. <sup>51</sup>

<sup>48</sup> News Release 12-053, 'USITC Makes Determination In Five-Year (Sunset) Review Concerning Foundry Coke From China', [http://www.usitc.gov/press\\_room/news\\_release/2012/er0515kk2.htm](http://www.usitc.gov/press_room/news_release/2012/er0515kk2.htm) (last visited 3 Sep. 2012).

<sup>49</sup> News Release 12-064, 'USITC Will Conduct Full Five-Year (Sunset) Review Concerning Activated Carbon From China', [http://www.usitc.gov/press\\_room/news\\_release/2012/er0604kk3.htm](http://www.usitc.gov/press_room/news_release/2012/er0604kk3.htm) (last visited 3 Sep. 2012).

<sup>50</sup> News Release 12-068, 'Reviews Concerning Certain Pipe And Tube From Brazil, India, Korea, Mexico, Taiwan, Thailand, And Turkey', [http://www.usitc.gov/press\\_room/news\\_release/2012/er0614kk1.htm](http://www.usitc.gov/press_room/news_release/2012/er0614kk1.htm) (last visited 3 Sep. 2012).

<sup>51</sup> News Release 12-069, 'Reviews Concerning Stainless Steel Butt-Weld Pipe Fittings', [http://www.usitc.gov/press\\_room/news\\_release/2012/er0620kk1.htm](http://www.usitc.gov/press_room/news_release/2012/er0620kk1.htm) (last visited 3 Sep. 2012).

## Administrative Reviews against India

Investigation details	Matter involved	Status of proceedings
[A-351-838, A-533-840, A-549-822]	Certain Frozen Warm water Shrimp from Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews and Request for Revocation of Order in Part	On 2 April 2012, the Department of Commerce (Department) received timely requests to conduct administrative reviews of the antidumping duty orders on certain frozen warm water shrimp (shrimp) from Brazil, India, and Thailand. The anniversary month of these orders is February. In accordance with 19 CFR 351.221, the administrative reviews were initiated. The Department received a request to revoke one antidumping duty order in part. <sup>52</sup>
[A-533-820]	Certain Hot-Rolled Carbon Steel Flat Products From India: Rescission of Antidumping Duty Administrative Review	<p>Effective date: 30 April 2012.</p> <p>On 1, 7, 14, and 15 of February 2012, JSW, Tata, Essar, and Ispat, respectively, submitted letters informing the Department that they did not make shipments of subject merchandise to the United States during the period of review.</p> <p>On 7 March 2012 and 29 March 2012 respectively, Nucor Corporation and U.S. Steel Corporation timely withdrew their respective requests for review of Essar, Ispat, JSW and Tata. Rescission of Review: Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the petitioners withdrew their respective requests for review of Essar, Ispat JSW, and Tata within 90 days of the date of publication of the notice of initiation. Moreover, no other interested party requested an administrative review of these respondents. Therefore, in accordance with 19 CFR 351.213(d) (1) and consistent with practice, the review was rescinded.<sup>53</sup></p>

<sup>52</sup> See generally <http://www.gpo.gov/fdsys/pkg/FR-2012-04-02/pdf/2012-7874.pdf> (last visited 3 Sep. 2012).

<sup>53</sup> See generally <http://www.gpo.gov/fdsys/pkg/FR-2012-04-30/pdf/2012-10351.pdf> (last visited 3 Sep. 2012).

## Termination Measures<sup>54</sup>

Nature of termination	Source
Termination on 20 April 2012 the anti-dumping duties on imports of orange juice (HS 2009.11; 2009.12) from Brazil (imposed on 9 March 2006).	Permanent Delegation of the United States to the WTO (9 May 2012)

## Issue of zeroing in the US

On 14 February 2012, the U.S. Department of Commerce (DOC) announced a policy change to generally end the practice of “zeroing” in antidumping cases. This policy change covered future administrative reviews of existing antidumping orders, including new shipper reviews, expedited antidumping reviews and sunset reviews. Since this change in practice will apply to all imports, it may facilitate settlement of similar pending World Trade Organization (“WTO”) cases, except those seeking antidumping duty refunds on past zeroing. However, on the other side, United States is not likely to stop trying to negotiate legalization of zeroing.

The DOC had earlier ended zeroing in antidumping investigations and may also continue to use zeroing in targeted dumping analyses, which have not yet been the subject of a WTO panel ruling.<sup>55</sup>

On 6 February 2012, United States Trade Representative Ron Kirk announced that the long standing disputes over “zeroing” that existed between the European Union (EU) and Japan would come to an end through the signed agreements between them.

## Countervailing Duties

On 23 June 2012, the ITC completed its AD and CVD investigations (preliminary determination) in the matter of drawn stainless steel sinks from China.<sup>56</sup>

## Other initiations<sup>57</sup>

### *Double remedies dispute between US and China*

On 11 May 2012, China and the United States notified the DSB of Agreed Procedures under Articles 21 and 22 of the DSU.<sup>58</sup> Further developments will be discussed in the next quarterly report.

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<sup>54</sup> ‘Reports On G20 Trade And Investment Measures: G-20 Report’, (31 May 2012).

<sup>55</sup> Sungjoon Cho, ‘No More Zeroing?: The United States Changes its Antidumping Policy to Comply with the WTO’, <http://www.asil.org/pdfs/insights/insight120309.pdf> (last visited 3 Sep. 2012).

<sup>56</sup> ‘AD CVD

Investigations’, [http://www.usitc.gov/trade\\_remedy/731\\_ad\\_701\\_cvd/investigations/completed/index.htm](http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/completed/index.htm) (last visited 3 Sep. 2012).

<sup>57</sup> Reports On G20 Trade And Investment Measures G-20 Report, 31 May 2012.

<sup>58</sup> *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, DS 379, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds379\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds379_e.htm) (last visited 3 Sep. 2012).

## V C. Quantitative restrictions, controls, and licensing

### Developments during review quarter

- (1) On 4 April 2012, Secretary of State, Hillary Clinton pledged to ease US sanctions on travel, investment and other activities involving Myanmar.<sup>59</sup> On 11 July 2012, the Office of Foreign Assets Control (OFAC) authorised new investment in and exportation of financial services to Myanmar, easing sanctions that have been in place for over 15 years. The authorisations came in the wake of Hillary Clinton's 4 April 2012 pledge. It also followed the European Union's temporary suspension of its sanctions and Canada's decision to lift restrictions on trade and investment in Myanmar. In addition, the statutory framework for the US sanctions remain in place, thereby permitting the US government to re-impose sanctions, if reforms in Myanmar do not proceed as hoped.<sup>60</sup>
- (2) On 11 July 2012, OFAC authorized new investment in and the exportation of financial services to Burma, thereby easing sanctions that have been in place for over 15 years. The authorizations came in the wake of Secretary of State Hillary Clinton's 4 April 2012 pledge to ease U.S. sanctions on travel, investment and other activities involving Burma. It also followed the European Union's temporary suspension of its sanctions and Canada's decision to lift restrictions on trade and investment in Burma. The statutory framework for the U.S. sanctions would remain in place, thereby permitting the U.S. Government to re-impose sanctions, should reforms in Burma not proceed as hoped.<sup>61</sup>

## V D. Technical regulations and standards

### Developments during the review quarter

- (1) On 29 June 2012, the CPSC approved a new federal mandatory safety standard to improve the safety of play yards and to prevent injuries and deaths to children. These mandatory standards will enter into effect six months after publication of the standards in the Federal Register. Mandatory requirements for play yards include: A stability test to prevent the play yard from tipping over, latch and lock mechanisms to keep the play yard from folding on a child when it is being used, entrapment tests for attachments so a child's head does not get trapped while a bassinet or other accessory is attached, floor strength tests to ensure structural integrity and to prevent children from getting trapped by the play yard floor, minimum side height requirements to prevent children from getting out of the play yard on their own and a test to prevent play yards whose top rails fold downward from using a hinge that creates a V- or diamond shape when folded to prevent head or neck entrapments.<sup>62</sup>

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<sup>59</sup> 'Recognizing and Supporting Burma's Democratic Reforms', [http://www.state.gov/secretary/rm/2012/04/187439.htm?utm\\_source=Sidley%20Austin%20LLP&utm\\_content=ILO%20newsletter%2025651&utm\\_medium=pdf&utm\\_campaign=ILO%20Newsletters](http://www.state.gov/secretary/rm/2012/04/187439.htm?utm_source=Sidley%20Austin%20LLP&utm_content=ILO%20newsletter%2025651&utm_medium=pdf&utm_campaign=ILO%20Newsletters) (last visited 3 Sep. 2012).

<sup>60</sup> 'US government eases sanctions against Myanmar', [http://www.sidley.com/files/Publication/7f72bf89-1818-4c0d-af84-c98c9f8d083a/Presentation/PublicationAttachment/d806d28f-c607-4df3-9058-ccb820128cf4/US\\_government\\_eases\\_sanctions\\_against\\_Myanmar.pdf](http://www.sidley.com/files/Publication/7f72bf89-1818-4c0d-af84-c98c9f8d083a/Presentation/PublicationAttachment/d806d28f-c607-4df3-9058-ccb820128cf4/US_government_eases_sanctions_against_Myanmar.pdf) (last visited 3 Sep. 2012).

<sup>61</sup> 'U.S. Government Eases Sanctions Against Burma Sanctions Update', <http://www.sidley.com/US-Government-Eases-Sanctions-Against-Burma-07-12-2012/> (last visited 3 Sep. 2012).

<sup>62</sup> 'CPSC Approves New Federal Safety Standard for Play Yards', <http://www.cpsc.gov/cpscpub/prerel/prhtml12/12214.html> (last visited 3 Sep. 2012).

## V E. Sanitary and Phytosanitary Measures

### Developments during the review quarter

(1) After the review quarter in July, 2012, it was reported that according to the Sanitary and Phytosanitary export database, 'new types of plants and plant products cannot be imported into USA before the phytosanitary requirements are decided on by the USA plant health authorities and afterwards included in US import legislation. This would be required for every type of fruit or vegetable, and for many plants for planting. The procedure may take several years. In particular, EU applications to export have been pending for plants in growing media (some more than 20 years) and for fruits and vegetables (some more than 10 years). Due to long pending applications, EU exporters of plants and plant products have practically stopped developing in the US market, while US exporters benefit from a transparent and significantly less restrictive plant quarantine legislation within EU'.

*Barrier Status of the Action-* Ongoing

Action Taken- The barrier has been raised by EU in the WTO SPS Committee as a specific trade concern. The status remains "unsolved". To facilitate progress on applications by Member States, EU participates in regular meetings with the US plant health authorities.<sup>63</sup>

### USTR Report on India:

The Report on Sanitary and Phytosanitary Measures (SPS Report) was published by the Office of USTR on 2 April 2012.

The focal point of this report is that it identifies and describes significant unwarranted SPS-related trade barriers currently facing U.S. exporters, along with U.S. Government initiatives to eliminate or reduce the impact of these barriers.

#### SPS and India

According to a report, United States alleged certain Indian rules as being trade restrictive.

The SPS Report raises concerns with respect to:

- Certification that any milk destined has been treated to ensure the destruction of paratuberculosis, which is linked to Crohn's Disease.
- Importers to make an attestation that the imported pork does not contain any residues of pesticides, drugs, mycotoxins, or other chemicals above the MRLs prescribed in international standards.
- Banning imports of U.S. poultry, swine, and related products due to the detection of LPAI in the United States which US alleges to be in violation of OIE guidelines
- Maintaining restrictive standards for certain plant quarantine pests, such as for weed seeds and ergot.

<sup>63</sup> 'Slow procedures on applications to allow import of new types of plant products', (18 July 2012), [http://madb.europa.eu/madb\\_barriers/sps\\_barriers\\_details.htm?barrier\\_id=105334&version=10](http://madb.europa.eu/madb_barriers/sps_barriers_details.htm?barrier_id=105334&version=10) (last visited 3 Sep. 2012).

*WTO dispute settlement:*

### *India – Restrictions on Certain U.S. Agricultural Products*

On 6 March 2012, the United States requested consultations with India under the dispute settlement provisions of the WTO regarding India's import prohibitions on certain U.S. agricultural exports. The United States and India held consultations on 16-17 April 2012 without resolution of the matter. India's import prohibitions are purportedly for the purpose of preventing the entry of avian influenza. The United States is concerned that India has not provided a valid, scientifically-based justification for the import prohibitions.<sup>64</sup>

## **VI. MEASURES DIRECTLY AFFECTING EXPORTS**

### **VI A. Border Restrictions**

On 17 May 2012, the Department of Commerce, U.S. put importers and purchasers on notice about the consequences of importing illegally subsidized and dumped products from China. It announced the imposition of antidumping tariffs of more than 31% on solar panels imports from China, by siding with companies including Solar World AG (SWV) in the U.S. that said the items were sold below the cost of production.

The fees announced, added to duties as high as 4.73 percent imposed earlier for getting unfair subsidies from China's government.<sup>65</sup>

### **VI B. Export taxes and fees**

The United States does not apply taxes on exports: the Constitution's Export Clause bars Congress from imposing any tax on exports.<sup>66</sup>

### **VI C. Export Restrictions and Controls**

#### **Developments during the review quarter**

In April 2012, U.S. and Chinese officials had gone through a list of 141 U.S. items and technology that China claims, it is unable to import due to U.S. export control policies, and officials in the Commerce Department's Bureau of Industry and Security (BIS) would travel to China within May 2012 in order to continue that conversation, sources said. This bilateral engagement is largely a technical exercise under which U.S. officials can clarify which items on the list, which China originally submitted to the U.S. in January 2011, are subject to which level of control. For instance, the U.S. has already identified 46 items on the list that likely do not even require a license for export to China in the first place, and the U.S. is

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<sup>64</sup> 'U.S. and Georgia Convene High-Level Dialogue to Discuss Strengthening Bilateral Trade and Investment Relations', <http://www.ustr.gov/about-us/press-office/press-releases/2012/may/us-georgia-dialogue-trade-investment> (last visited 3 Sep. 2012).

<sup>65</sup> 'U.S. Slaps High Tariffs on Chinese Solar Panels', [http://www.nytimes.com/2012/05/18/business/energy-environment/us-slaps-tariffs-on-chinese-solar-panels.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/05/18/business/energy-environment/us-slaps-tariffs-on-chinese-solar-panels.html?pagewanted=all&_r=0), see also <http://www.bloomberg.com/news/2012-05-17/u-s-imposes-anti-dumping-duties-for-chinese-solar-imports.html> (last visited 3 Sep. 2012).

<sup>66</sup> The Export Clause states: "No Tax or Duty shall be laid on Articles exported from any State". Article I, Section 9, The United States Constitution, *See United States v. International Business Machines Corp.*, 517 U. S. 843 (1996).

communicating this to China, according to U.S. ambassador to China Gary Locke. Locke made this assertion at a speech on 19 March in Shanghai. While the U.S. has already determined that 46 of the 141 items on the list probably do not require a license for export to China, China has failed to provide more detail on the remaining items, such as specific technical parameters, to allow the U.S. to determine if they are the types of items that can be exported without a license, with a license but only for civil end use, or not exported at all because they are military goods, the official said. BIS officials traveling to China in the coming weeks will gather more information in this regard, the official said.<sup>67</sup>

## **VII. MEASURES AFFECTING PRODUCTION AND TRADE**

### **VII A. Taxation regime in US**

#### *Policy reforms*

The recent changes introduced by the Federal budget of FY 2013 with respect to the tax regime have been discussed in the earlier section of the report.

### **VII B. Subsidies and Other Government Assistance**

#### **Other changes reported during the review quarter**

(1) The US Congress in February 2012 set to start hearings concerning the US Farm Bill, the omnibus legislation on US agricultural policy. The hearings began two days after US President Barack Obama announced a federal budget proposal for the 2013 fiscal year that would cut farm subsidies by over US\$30 billion over the next decade. Under the proposed 2013 budget, the President has made clear that he would like to see greater cuts over the same ten-year period, in the order of US\$32 billion in spending. The budget puts US\$5 billion of politically unpalatable direct payments on the chopping block and trims crop insurance programmes by US\$7.6 billion. Farm Bill activity is traditionally the domain of Congressional agriculture committees, and similar proposals from the administration were largely ignored in last year's 'Super Committee' negotiations on federal spending.<sup>68</sup>

(2) On 19 April 2012, the United States and Brazil examined whether a memorandum of understanding (MOU) they signed as part of an interim settlement in their World Trade Organization dispute on U.S. agricultural subsidies would continue to be valid, if the U.S. Congress passed an extension of the current farm bill this year. Both sides agreed that, the interim settlement would terminate once Congress enacts its next comprehensive farm bill. They also sought to examine whether or not a short-term extension of the existing farm bill would mean that the MOU would lapse under its own terms. Further, Brazil and the U.S. took the initial view that a short-term extension would not actually constitute "successor legislation," because farm programs would be essentially the same under the extension. Under this interpretation, the interim settlement could continue even if Congress passes an extension.<sup>69</sup>

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<sup>67</sup> See *World Trade Online*, <http://insidetrade.com/201204112395629/WTO-Daily-News/Daily-News/commerce-engages-china-on-wish-list-of-items-subject-to-export-controls/menu-id-948.html> (last visited 3 Sep. 2012).

<sup>68</sup> 'Obama Proposes Billions in Subsidy Cuts as Farm Bill Process Kicks Off', <http://ictsd.org/i/news/bridgesweekly/125544/> (last visited 3 Sep. 2012).

<sup>69</sup> See *World Trade Online*, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-04/20/2012/brazil-us-examine-if-cotton-mou-would-hold-if-farm-bill-is-extended/menu-id-710.html> (last visited 3 Sep. 2012).

In July 2012, the United States and Brazil agreed that the terms of an interim settlement in a bilateral trade dispute over U.S. agricultural subsidies would remain in place in the event that Congress passes a short-term extension of the existing farm bill before the end of September, when the current legislation is set to expire.<sup>70</sup>

## **VII C. Regulatory reform**

### **Bank Policy**

On 1 June 2012, the board of directors of the Export-Import Bank of the United States (Ex-Im Bank) authorized \$6.8 billion in export financing on 30 and 31 May 2012 increasing its current portfolio to \$99.3 billion. These transactions were approved after President Obama signed the Export-Import Bank Reauthorization Act into law. This legislation immediately increased the Bank's portfolio cap from \$100 to \$120 billion, and ultimately to \$140 billion. It also extends Ex-Im's authority through 2014, thus providing much-needed certainty to U.S. exporters and their workers.<sup>71</sup>

On 24 May 2012, Ex-Im Chief spoke about the three financial programs to keep the U.S. competitive in the world markets: direct loans, guarantees, and insurance. There are various products within these programs, such as Working Capital Guarantees and Export Credit Insurance, which primarily benefit small businesses. By utilizing these various products, Ex-Im Bank levels the playing field for U.S. exporters and workers so U.S. jobs are not lost to foreign competitors.<sup>72</sup>

### **Immigration Policy**

On 15 June 2012, it was reported that the president of U.S issued a politically charged executive order to halt deportations for many young illegal immigrants, who support the DREAM Act, using his presidential authority to enact the policy immediately. Obama's new immigration plan closely resembles the DREAM Act, which was blocked in 2010 by Republican lawmakers and would in its fullest form provide permanent residency to law-abiding immigrants who graduate from high school or serve in the U.S. military. But many Latinos have criticized the President for not taking enough action under the DREAM Act, as many youths eligible to remain in the country under the measure have continued to be forced out. Finally, Obama has answered their calls to exercise his authority. Under his executive order, young people who would be eligible under the DREAM Act to remain in the U.S. can now receive work permits and protection from deportation for two years, with the possibility of renewal.<sup>73</sup>

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<sup>70</sup> See World Trade Online, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-07/27/2012/brazil-us-agree-that-cotton-settlement-will-hold-if-farm-bill-is-extended/menu-id-710.html> (last visited 3 Sep. 2012).

<sup>71</sup> 'Ex-Im Bank Approves \$6.8 Billion in Export Financing in Two Days', <http://www.exim.gov/newsandevents/releases/2012/ex-im-bank-approves-6-8-billion-in-export-financing-in-two-days.cfm> (last visited 3 Sep. 2012).

<sup>72</sup> Information from EXIM Bank, <http://www.exim.gov/newsandevents/events/speechesandtestimony/before-house-financial-services-committee-on-international-monetary-policy-trade.cfm> (last visited 3 Sep. 2012).

<sup>73</sup> 'Obama's New Immigration Policy Explained: 7 Key Facts', <http://www.thedailybeast.com/articles/2012/06/15/obama-s-new-immigration-policy-explained-7-key-facts.html>, Also see <http://www.nytimes.com/2012/06/16/us/us-to-stop-deporting-some-illegal-immigrants.html?pagewanted=all> (last visited 3 Sep. 2012).

## VII D. Trade Related Intellectual Property Rights

### Developments during the review quarter

- (1) **301 Review-** In April 2012, the Office of the United States Trade Representative (USTR) released its annual “Special 301” Report on the adequacy and effectiveness of U.S. trading partners’ protection and enforcement of intellectual property rights (IPR). United States Trade Representative, Ron Kirk said that “this year’s Special 301 Report is more significant than ever in light of recent U.S. Government data showing that IP intensive industries support as many as 40 million American jobs and up to 60 percent of U.S. exports. When trading partners don’t protect IPR, they threaten those critical jobs and exports.”<sup>74</sup>

This report is an annual review of the global state of IPR protection and enforcement. It reviewed 77 trading partners for this year and placed 40 countries on the Priority Watch List, Watch List, or the monitoring list. According to the report, trading partners on the Priority Watch List present the most significant concerns regarding insufficient IPR protection or enforcement, or otherwise limited market access for persons relying on IPR protection. Thirteen countries including India are on the Priority Watch List and are subjected to intense bilateral engagements during the coming year.<sup>75</sup>

- (2) **337 Review-** Review of S. 337 conducted as per US Tariff Act 1930, provides a list of infringement in IP that can affect trade relationships. The investigation (Investigation No. 337-TA-766) against India that was pending in April 2011 is now completed.<sup>76</sup>

## VII E. Competition Policy

### Developments during the review quarter

(1) On 11 June 2012 it has been reported that Foreign Trade commission (FTC) is making an ongoing effort to promote competition in the health care sector which benefits U.S. consumers by keeping prices low and quality and choice of products and services high.<sup>77</sup>

(2) The FTC seeks to prevent anticompetitive mergers and conduct that might undermine competition in health care markets. It is combatting anticompetitive conduct by health care providers that may raise costs or reduce options for patients. On the policy front, the Commission commented on the competitive implications of state proposals that may impose burdens on health care providers without generating

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<sup>74</sup> ‘USTR Releases Annual Special 301 Report on Intellectual Property Rights’, <http://www.ustr.gov/about-us/press-office/press-releases/2012/april/ustr-releases-annual-special-301-report-intellectual> (last visited 3 Sep. 2012).

<sup>75</sup> USTR, [http://www.ustr.gov/sites/default/files/2012%20Special%20301%20Report\\_0.pdf](http://www.ustr.gov/sites/default/files/2012%20Special%20301%20Report_0.pdf), see also <http://www.ustr.gov/about-us/press-office/press-releases/2012/april/ustr-releases-annual-special-301-report-intellectual> (last visited 3 Sep. 2012).

<sup>76</sup> ‘OUII 337 Investigative History’, <http://info.usitc.gov/ouii/public/337inv.nsf/34ee115c5a9962e28525656a00601452/cf869473da7a97ae8525785600774fd5?OpenDocument&Highlight=0,India> (last visited 3 Sep. 2012).

<sup>77</sup> ‘FTC Puts Conditions on Johnson & Johnson's Proposed Acquisition of Synthes, Inc.’, <http://www.ftc.gov/opa/2012/06/jjsynthes.shtm> (last visited 3 Sep. 2012).

offsetting benefits to patients in terms of access or cost. In addition, the FTC worked with few other agencies to develop a Joint Statement of Antitrust Enforcement Policy for Accountable Care Organizations. The Statement makes clear that the antitrust laws are not a barrier to bona fide collaboration, while at the same time ensuring that any benefits from increased collaboration will not be lost to anticompetitive conduct.<sup>78</sup>

## **VIII. TRADE POLICY BY SECTOR**

### **VIII A. Agriculture**

#### **Developments during the review quarter**

In June 2012, the Senate approved a sweeping new farm bill that would cost nearly \$1 trillion over the next 10 years financing dozens of price support and crop insurance programs for farmers and food assistance for low-income families. The Senate's bipartisan efforts to enact a farm bill were greatly appreciated. With authorization for farm- and food-related programs set to expire this year, it was noted that it is critical for the Congress to pass a legislation that would provide certainty for rural America and included needed reforms and savings. The new farm bill had sought to promote rural development, preserve a farm safety net, maintain strong nutrition programs, enhance conservation, honor World Trade Organization commitments, and advance agricultural research. In August 2012, President Obama called on Congress to do its part to provide relief and certainty to rural America by moving to pass the stalled farm bill. In an attempt to address the ongoing drought, the House passed a narrow relief bill that would provide assistance to livestock farmers who were dealing with parched forage lands and the prospect of high feed costs.<sup>79</sup>

### **VIII B. Transport Sector**

#### **Developments during review quarter**

(1) The President Obama's FY 2013 Budget request for U. S. Department of Transportation proposes a total of \$74 billion for the Department of Transportation, a 2 % increase above FY 2012. This year his budget emphasizes three priority areas: investing in America's future (transportation reauthorization proposal to improve the Nation's highways, transit, and rail infrastructure and to ensure that these systems are safe), modernizing transportation system through modernization and technology and pressing forward on safety. This budget also includes a bold six-year \$476 billion surface transportation reauthorization proposal to increase the Nation's economic activity, to create new jobs, and to enhance international competitiveness.<sup>80</sup>

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<sup>78</sup> The FTC Highlights in 2012, <http://www.ftc.gov/os/highlights/2012/topics/healthCompetition.shtml> (last visited 15 Sep. 2012).

<sup>79</sup> See World Trade Online, [http://insidetrade.com//index.php?option=com\\_iwpfile&file=jun2012/wto2012\\_1237.pdf](http://insidetrade.com//index.php?option=com_iwpfile&file=jun2012/wto2012_1237.pdf), see also <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-08/10/2012/obama-weighs-in-on-farm-bill-calls-for-congress-to-act-immediately/menu-id-710.html> and <http://www.nytimes.com/2012/06/22/us/politics/senate-passes-farm-bill-but-tougher-road-seen-in-house.html?ref=farmbillus> (last visited 3 Sep. 2012).

<sup>80</sup> 'Budget Highlights Fiscal Year 2013', [http://www.dot.gov/sites/dot.dev/files/docs/dot\\_budget\\_highlights\\_fy\\_2013\\_5MB.pdf](http://www.dot.gov/sites/dot.dev/files/docs/dot_budget_highlights_fy_2013_5MB.pdf) (last visited 3 Sep. 2012).

## VIII C. Telecommunication Sector

### Developments during the review quarter

NTIA: Putting the Administration's Privacy Blueprint into Practice:

The Obama Administration in February 2012 unveiled a "Consumer Privacy Bill of Rights" as part of a comprehensive blueprint to improve consumers' privacy protections and to ensure that Internet remains as an engine for innovation and economic growth.<sup>81</sup> Few weeks after the Obama's administration released its blueprint, Commerce's National Telecommunications and Information Administration (NTIA) sought to move forward to put the plan into practice.

On 11 April 2012, NTIA Administrator Lawrence E. Strickling told that their administration supports enacting the blueprint's "Consumer Privacy Bill of Rights" into law and can make progress without waiting for Congress to Act. He also said the agency will promptly begin convening stakeholders to develop enforceable codes of conduct that specify how the broad principles in the Consumer Privacy Bill of Rights apply in specific business contexts.<sup>82</sup>

## IX. WTO DISPUTE SETTLEMENT UPDATE

### *Dispute against India's measure as regards Importation of Certain Agricultural Products*

US requested consultations with India as regards prohibition on the importation of various agricultural products from the US due to avian influenza concerns. US claimed that the measures are inconsistent with respect to the SPS Agreement and the GATT 1994. US also stated that the measures appear to nullify or impair the benefits accruing to the US directly or indirectly under the cited agreements. Columbia joined the consultations. In May 2012, the DSB deferred the establishment of a panel subsequent to the request made by the US earlier in the month.<sup>83</sup>

### *Dispute against China on Anti-dumping and Countervailing Duty Measures on Broiler Products*

US had requested for consultations with China on its measures imposing anti-dumping and countervailing duties on broiler products from the US. US claimed that such measures are inconsistent with various provisions of the Anti-dumping Agreement specifically related to the process of the anti-dumping investigation as well as the anti-dumping duty determination at issue including improper dumping and injury determination, improper reliance on the facts available, failure to provide access to relevant information, insufficient explanation on the basis for the determinations, absence of proper analysis of the effects of imports under investigation and absence of objective determination of causality. It added that the measures are inconsistent with the SCM Agreement related to the process of subsidy investigation as well as countervailing duty determination at issue including an improper reliance on the facts available, insufficient explanation on the basis for determinations and imposition of countervailing duties in excess of the subsidy found to exist. According to the US, the said measures at issue are also

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<sup>81</sup> 'White House Unveils New Comprehensive Privacy Blueprint', <http://www.ntia.doc.gov/blog/2012/white-house-unveils-new-comprehensive-privacy-blueprint> (last visited 3 Sep. 2012).

<sup>82</sup> 'NTIA: Putting the Administration's Privacy Blueprint into Practice' (12 Apr. 2012), <http://www.commerce.gov/blog/2012/04/12/ntia-putting-administration%E2%80%99s-privacy-blueprint-practice> (last visited 3 Sep. 2012).

<sup>83</sup> WTO Dispute DS430, '*India- Measures Concerning the Importation of Certain Agricultural Products from the United States*', [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds430\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds430_e.htm) (last visited 9 September 2012).

against GATT 1994, with respect to the alleged violations of the Anti-Dumping Agreement and the SCM Agreement.. On 24 May 2012, the panel was composed by the Director-General on the request by the US.<sup>84</sup>

*Dispute against the Countervailing and Anti-dumping Duties on Grain Oriented Flat-rolled Electrical Steel*

US requested consultations with China as to the measures imposing countervailing duties and anti-dumping duties on grain oriented flat-rolled electrical steel (GOES) from the US. The subsidies that China conferred a benefit are the 'Buy America' provisions of the American Recovery and Reinvestment Act of 2009 as well as the State Government procurement laws. The US alleged that such measures are against the SCM Agreement, the Anti-Dumping Agreement and the GATT 1994. On 15 June 2012, the panel report was circulated to the members.

Panel's conclusions:

- a. China's countervailing duty investigations into 11 programmes without sufficient evidence as alleged by the US is true and is against the SCM Agreement.
- b. The applicants for initiation sought also obtained confidential treatment in relation to number of categories from the MOFCOM. The panel upheld the claims of US that China acted inconsistently under the SCM and ADA Agreement as the purported summaries did not provide any reasonable understanding of the substance of the information submitted in confidence.
- c. US claimed that China did not disclose the data and calculations it used, to derive the dumping margins for two respondent companies which was inconsistent with the ADA. The panel rejected US's claim, as there is no obligation to include the confidential data and calculations underlying dumping margin.
- d. US claimed that MOFCOM did not adequately explain in either the preliminary or final determinations as to why the exclusion of foreign producers from the competitive bidding process under the US Government procurement statutes led to the conclusion that the resulting prices were not market prices for the purposes of the benefit determination. US claimed that this was inconsistent with the SCM Agreement. The Panel rejected the US's claim and held that China was not required to give reasoning for the adequacy of an investigation. MOFCOM provided in its public notice the findings and conclusions on matters of law that it considered material and also referred to the material facts that it was relying upon to reach the conclusion.
- e. The panel upheld the claim of the US that China had acted inconsistently under the ADA, as it improperly resorted to facts available in calculating the dumping and subsidy rates for exporters that were unknown to it.
- f. The Panel also upheld the US's claims against China as to non-disclosure of the essential facts or not providing sufficient detail in the final determination to findings and conclusions.

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<sup>84</sup> WTO Dispute DS427, '*China- Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*', [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds427\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds427_e.htm) (last visited 9 September 2012).

- g. The panel upheld the US's claim that the MOFCOM's finding regarding the dumped and subsidized imports had significant price effects which failed to reflect an objective examination of the evidence and was not based on positive evidence.
- h. The panel also upheld that China did not disclose the essential facts supporting its price effect analysis and did not offer an adequate explanation for its findings on price effect.
- i. The US claimed MOFCOM's causation analysis to be inconsistent with the ADA and the SCM Agreement, on the basis that MOFCOM erroneously concluded that rapid increase in the capacity of the domestic GOES industry during the period of investigation and could not have been a cause of injury to the domestic industry. It added that MOFCOM's analysis was inconsistent with the ADA and the SCM Agreement since it did not comply with the "objective examination" and "positive evidence" requirements embodied in those provisions.
- j. The panel upheld the claims of US that the China acted inconsistently under the ADA and the SCM Agreement as it failed to disclose the essential facts supporting its analysis and did not provide an adequate explanation for its causation findings.<sup>85</sup>

*Dispute against China on the exportation of raw materials*

The US requested consultations with China as regards the export restraints that China has over various forms of raw materials. The US cited 32 measures through which China allegedly imposed restraints on the exports in question and noted that there appears to be additional unpublished restrictive measures. The US claimed that such measures are against the GATT 1994, as well as the Accession Protocol of China. Such measures appear to nullify or impair the benefits accruing to the US directly or indirectly under the cited agreements. The EU, Canada, Mexico, Turkey joined the consultations as third party members. The Appellate Body upheld the Panel's recommendation that China shall bring its export duty and quota measures into conformity with its WTO obligations such that the series of measures should not operate to bring about a WTO-inconsistent result. On 24 May 2012, China and the US notified the DSB that they have agreed as to the reasonable time period for China to implement the DSB recommendations and rulings which shall be ten months and nine days. The reasonable time is expected to expire by 31 December 2012.<sup>86</sup>

*Dispute against Philippines over taxes on Distilled Spirits*

The US requested consultations with Philippines regarding the taxation on imported distilled spirits by Philippines. The US alleged that such measures discriminate against imported distilled spirits by taxing them at a substantially higher rate than domestic spirits. It is alleged to be against GATT. The Appellate Body held that Philippines had acted inconsistently under the GATT by imposing such measures. EU then joined in as a third party to the dispute. On 20 April 2012, Philippines and the US informed the DSB that they have agreed on a reasonable period under which the recommendations of the Appellate Body as accepted by the DSB, will be implemented by Philippines. Reasonable period shall be thirteen months and sixteen days. The reasonable period is expected to end on 8 March 2013.<sup>87</sup>

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<sup>85</sup> WTO Dispute DS414, 'China- Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States', [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds414\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds414_e.htm) (visited 9 September 2012).

<sup>86</sup> WTO Dispute DS394, 'China – Measures Related to the Exportation of Various Raw Materials', [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds394\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds394_e.htm) (visited 9 September 2012).

<sup>87</sup> WTO Dispute DS403, 'Philippines – Taxes on Distilled Spirits', [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds403\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds403_e.htm) (visited 9 September 2012).

### *Dispute against China on measures relating to the Electronic Payment Services*

The US requested consultations with China regarding certain restrictions and requirements maintained by China pertaining to electronic payment services for payment card transactions and the suppliers of those services. US alleged that China permits only a Chinese entity which is ‘China UnionPay’ to supply electronic payment services for payment card transactions denominated and paid in Renminbi in China. Whereas the service suppliers of other members can only supply these services for payment card transactions paid in foreign currency. China also requires all the payment card processing devices to be compatible with the entity’s system and that payment cards must bear that company’s logo. Chinese entity guarantees access to all merchants in China that accept payment cards whereas the service suppliers of other members must negotiate for its access to merchants, which is against GATS – claimed the US. Australia, the EU, Guatemala, Japan and Korea reserved their rights as third parties to the dispute. The report of the Panel was submitted on 16 July 2012.<sup>88</sup>

### **Complaints against the US**

#### *India’s complaint against measures on certain Hot-Rolled Carbon Steel Flat Products*

On 12 April 2012, India requested consultations with the US as to the imposition of countervailing duties on certain hot rolled carbon steel flat products from India. India alleged that such countervailing duties levied on those products through various instruments as well as provisions of the US Tariff Act and Code of Federal Regulations on custom duties are inconsistent with GATT and the SCM Agreement. On 7 May 2012, Canada requested to join the consultations as a third party.<sup>89</sup>

#### *China’s complaint against the Countervailing Duty Measures on certain products*

On 25 May 2012, China requested consultations with the US with respect to the imposition of countervailing duty measures by the US on certain products imported from China. China challenged various aspects of certain identified countervailing duty investigations, including their opening, conduct and the preliminary and final determinations that led to the imposition of countervailing duties, including the ‘rebuttable presumption’ established and applied by the US Department of Commerce that the majority of government ownership is sufficient to treat an enterprise as a ‘public body’. China claimed that such measures are against GATT, SCM Agreement and the Protocol Accession of China.<sup>90</sup>

#### *China’s complaint against the US over the measures on Shrimp and Diamond Saw blades*

China requested consultations with the US as to the anti-dumping measures on certain frozen warm water shrimp from China. China alleged that the USDOC use of ‘zeroing’ in the original investigation and several administrative reviews to calculate dumping margins for the subject imports was inconsistent with the US’s obligations under the GATT and the ADA. China asserted that the USDOC’s reliance on the sunset review as regards the dumping margins calculated in the original investigation and administrative review is inconsistent with the US’s obligations under the ADA. Japan joined the consultations. China also requested complementary consultations with the US as to US’s zeroing practice which has artificially created or at minimum inflated dumping margins for the individually investigated respondents. China

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<sup>88</sup> WTO Dispute DS413, ‘China – Certain Measures Affecting Electronic Payment Services’, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds413\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds413_e.htm) (9 September 2012).

<sup>89</sup> WTO Dispute DS436, ‘United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India’, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds436\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds436_e.htm) (visited 9 September 2012).

<sup>90</sup> WTO Dispute DS437, ‘United States – Countervailing Duty Measures on Certain Products from China’, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds437\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds437_e.htm) (last visited 9 September 2012).

asserted that such zeroing practice was against the US's obligations under the GATT and the Anti-Dumping Agreement. The EU, Honduras, Japan, Korea, Thailand and Vietnam reserved their third party rights. On 8 June 2012, the panel report was circulated to the members. The panel upheld China's claim concerning the USDOC's use of zeroing in the calculation of dumping margins for individually-examined exporters/producers. The panel said that the practice of 'zeroing' methodology used by the USDOC in calculating the margins of dumping in the anti-dumping investigations at issue was inconsistent with the ADA and therefore concluded that the US has acted inconsistently with its obligations under this provision. The panel rejected China's claim concerning the separate rate but noted that the calculation of the separate rate on the basis of individual margins calculated with zeroing necessarily incorporated the WTO-inconsistent zeroing methodology.<sup>91</sup>

*Korea dispute against measures on corrosion-resistant carbon steel flat products*

Korea requested consultations with the US as regards anti-dumping measures imposed on a number of corrosion-resistant carbon steel flat products from Korea. Specifically, this request relates to several US laws, regulations, administrative proceedings and practices past as well as ongoing related use of 'zeroing' methodology in anti-dumping determinations concerning the products at issue. Korea asserted that these measures are against GATT, ADA and the WTO Agreement. Japan and Mexico joined the consultations as third parties. On 12 June 2012, prior to the composition of the panel, Korea requested that such proceedings by the panel must be suspended until further notification.<sup>92</sup>

*Canada, Mexico<sup>93</sup> complaint against COOL requirements*

Canada requested consultations with the US regarding certain mandatory Country Of Origin Labeling (COOL) provisions in the Agricultural Marketing Act of 1946 as amended by the 2008 Farm Bill and as implemented through Interim Final Rules of 28 July 2008, which includes the obligation to inform consumers at the retail level of the country of origin in respect of covered commodities including beef and pork. The eligibility for a designation of a covered commodity as exclusively having US origin can be derived from an animal that was exclusively born, raised and slaughtered in the US. Canada alleged that such mandatory treatment of COOL is inconsistent under the GATT, the TBT Agreement and the Agreement on Rules of Origin. On 29 June 2012, the Appellate Body report was circulated to the members containing the following conclusions:

1. US's COOL measure is inconsistent, as concurrent with the panel's finding and violates the TBT Agreement by according less favorable treatment to imported Canadian cattle and hogs compared to like domestic cattle and hogs.
2. Such measure has a detrimental impact on imported livestock because its recordkeeping and verification requirements creates an incentive for processors to use exclusively domestic livestock and a disincentive against using like imported livestock.<sup>94</sup>

*Ongoing US-Mexico dispute on "dolphin label standards":*

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<sup>91</sup> WTO Dispute DS422, 'United States- Anti-Dumping Measures on Shrimp and Diamond from China', [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds422\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds422_e.htm) (last visited 9 September 2012).

<sup>92</sup> WTO Dispute DS420, 'United States – Anti-dumping measures on corrosion-resistant carbon steel flat products from Korea', [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds420\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds420_e.htm) (last visited 10 September 2012).

<sup>93</sup> WTO Dispute DS386, 'United States – Certain Country of Origin Labelling Requirements', [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds386\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds386_e.htm) (last visited 10 September 2012).

<sup>94</sup> WTO Dispute DS384, 'United States- Certain Country of Origin Labelling (COOL) Requirements', [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds384\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds384_e.htm) (visited 10 September 2012).

In the US-Mexico dispute, Mexico claimed that the US industry had used the dolphin safe logo as a technical (non-tariff) barrier to trade to discriminate against Mexican tuna imports, given Mexico’s fishing practices were in compliance with IATTC guidelines concerning dolphin by-catch.<sup>95</sup> Subsequent to the claims made by Mexico, the WTO panel in 2011 ruled that the US’ “dolphin safe” labelling practice for tuna products was illegal.

On an appeal made by U.S. against the panel, the WTO’s highest court on 16 May 2012, ruled that the US “dolphin-safe” label violated the WTO law, marking another step in a decade-old dispute between the US and Mexico, resulting in a notable landmark finding, “that a non-binding label can be a prohibited technical regulation - a point that could have ramifications for consumer labels addressing anything from organic food to fair trade.”<sup>96</sup>

**Other consultations involving US which will be covered in the next quarterly report:**

Consulting nations	Date	Description of Dispute
Argentina	30 August 2012	Argentina to request consultations with the United States concerning certain measures affecting the importation of animals, meat and other animal products from Argentina. <sup>97</sup>
China	17 September 2012	China to request consultations with United States concerning certain anti dumping measures. <sup>98</sup>

<sup>95</sup> El Economista 2001, ‘WTO Court Rules Against US Dolphin Safe Label Requirements’, ATUNA, (May 24, 2011), <http://www.atuna.com> (last visited 3 Sep. 2012).

<sup>96</sup> WTO Appellate Body Rules Against US in “Dolphin-Safe” Label Case, <http://ictsd.org/i/news/biores/133744/> (last visited 3 Sep. 2012).

<sup>97</sup> *United States — Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina*, DS 447, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds447\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds447_e.htm) (last visited 3 Sep. 2012).

<sup>98</sup> *United States — Countervailing and Anti-dumping Measures on Certain Products from China*, DS 449, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds449\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds449_e.htm) (last visited 3 Sep. 2012).