



## **TRADE POLICY DEVELOPMENTS PAPER NO. 15**

### **REPORT ON UNITED STATES**

**(for the period October – December 2011)**

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## EXECUTIVE SUMMARY

1. The report highlights the developments in the three most debated legislations within the US during the review quarter. These legislations include the Trade Adjustment Act, American Jobs Act and the proposed bill to check China's devaluation of currency.
2. The review quarter has been vital for several developments in the area of unilateral trade preferences of the US including the review results and legislative developments in GSP, AGOA and Caribbean Basic Recovery Act.
3. The key positions taken by the US in the 8<sup>th</sup> Ministerial Conference of the WTO have been highlighted. Questions raised by the US on subsidy notifications by China and India, as well as its stand on government procurement agreement have been enumerated.
4. The impact of conducting bilateral trade talk with an aim to further the object of National Export Initiative with countries including India, UAE etc. have been dealt with, extensively in the report.
5. The report reiterates the recent controversies during the review quarter with respect to two of United States most controversial trade agreements, including the on-going negotiations on TPP and ACTA.
6. The review quarter has been crucial for the institution and progress of several trade remedies actions taken by the US under section 377 proceedings of US Trade Act, sunset reviews as well as proceedings concerning Anti-dumping measures. Majority of such developments have taken place against China.
7. The developments in SPS related activities as well as customs calculation method with some changes in tariff regime have also been highlighted.
8. The report highlights the key policy changes in the Intellectual Property regime of the US which can have probable impact on India. Since Indian market (Nehru Place, New-Delhi) features in the notorious market list of the US out of cycle review under section 301, it could be a matter of concern for India.
9. The US position on recent opposition to the fisheries subsidies at the WTO level, which is granted by several developing countries is another key development during the review quarter.
10. The domestic developments with respect to granting of huge loans to various sectors including agriculture, rural development and energy have been extensively covered in this report.
11. The controversies surrounding the grants under the Farm Bill and its expiration period have now become uncertain. The policy developments with respect to this issue have also been highlighted in the report.

### ISSUES TO BE FOCUSED DURING THE NEXT REPORTS

1. The probable action to be taken by the US against anti-dumping of solar cells by China which could culminate into a WTO dispute shall be tracked during the next report.
2. The impending threat to the US by the EU for filing a case against the huge bio-ethanol subsidies has also been brought to light during the review quarter. Such progress shall be closely monitored.
3. The impact and progress of the WTO Government Procurement Agreement, which the US welcomed during the current review quarter, shall be reviewed in the next quarter as well.
4. The US response for improvising on free market access for LDCs has also been a crucial development during the review quarter. However there have been many opinions and view-points on this issue. Such matters would be closely monitored in the next report.
5. Washington's threat of investigation into the renewable sector in the US which can culminate into a potential dispute also emerged during the review quarter. The progress of such investigations shall be tracked in future.
6. Several developments pertaining to the US-EU Boeing dispute as well as US-Mexico tuna dispute continued during the review quarter. While the Tuna dispute would possibly be appealed at the appellate level, the Boeing dispute also arose tremendous controversies on issues of countermeasures etc. The progress of disputes of this nature shall be monitored in the upcoming reports.
7. The developments in the area of Agriculture especially the Farm Bill shall be closely monitored.
8. The US-China relations which are amidst of several international trade controversies would continue to be highlighted in the subsequent report. China's reply to the US at the WTO level pertaining to its internet access to foreign service providers and legislative responses to the bill on China's currency policy, would specifically be looked into.
9. The progress of ACTA and TPP in the light of new signatories and continued opposition from civil society members of developing countries would be tracked in future reports as well.

## Part I- Trade & Economic Overview of the United States during the review quarter

### I.1 Economic situation in the US

According to the National Income and Products Accounts, published by Bureau of Economic Analysis on December 22, 2011, the real GDP increased at an annual rate of 1.8 percent in the third quarter of 2011 in comparison to the second quarter. The increase of 1.8 percent primarily reflected positive contributions from nonresidential fixed investment, personal consumption expenditures (PCE), exports, and federal government spending that were partly offset by negative contributions from private inventory investment and state and local government spending. Real personal consumption expenditures increased 1.7 percent in the third quarter, compared with an increase of 0.7 percent in the second.<sup>1</sup>

#### **I.1 (a) Legislative changes in the US during the review quarter**

The second trade policy monitoring report highlighted the enactment of several key legislations, including the TAA, American Jobs Act etc. in the United States. This part of the report traces the developments of these enactments over the current review period.

#### **Developments with respect to the Trade Adjustment Assistance**

On October 21, 2011, President Obama signed the Trade Adjustment Assistance (TAA) Extension Act of 2011, which changed the group eligibility requirements, and individual benefits and services available under the Trade Adjustment Assistance program, for some workers. TAA as discussed in the previous report, offers a variety of benefits and services to support workers in their search for reemployment, including: Trade Readjustment Allowances, training, assistance with healthcare premium costs, Reemployment Trade Adjustment Assistance, employment and case management services, and may also include job search and relocation allowances.

These changes to group eligibility requirements contained in the TAA Extension Act of 2011 are meant to be retroactive to February 12, 2011, and apply to all petitions filed since that time – i.e. petitions designated with numbers from TA-W-80,000 through TA-W-80,999. Any petition filed after February 12, 2011 and before October 21, 2011, that was denied was being reconsidered under the group eligibility provisions of the TAA Extension Act of 2011. The TAA Extension Act of 2011 expands the time frame for certification coverage by making the impact date earlier for certain certifications.<sup>2</sup>

#### **Developments with respect to the American Jobs Act**

In a report published by the US Small Business Administration, during the year's first quarter, small business loans backed by the U.S. Small Business Administration in FY2011 reached the highest mark in the agency's history, supporting over \$30 billion.

According to the report, SBA has been there to help the economy rebound through difficult times over the past few years. First through the Recovery Act and then through the Small Business Jobs Act and new SBA lending programs, SBA has provided small businesses with the

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<sup>1</sup> *National Income and Product Accounts, Gross Domestic Product*, 3rd quarter 2011 (third estimate) Corporate Profits, 3rd quarter 2011 (revised estimate), US DOC, Bureau of Economic Analysis, (December 22, 2011), available at: [http://www.bea.gov/newsreleases/national/gdp/2011/gdp3q11\\_3rd.htm](http://www.bea.gov/newsreleases/national/gdp/2011/gdp3q11_3rd.htm)

<sup>2</sup> Available at: [http://www.doleta.gov/tradeact/2011\\_amend\\_att1.cfm](http://www.doleta.gov/tradeact/2011_amend_att1.cfm)

tools they need so they can grow and create jobs. During the fiscal year, which ended on Sept. 30, SBA loan approvals supported \$30.5 billion (61,689 loans) in lending to small businesses and start-ups through its two largest loan programs, compared to \$22.6 billion.<sup>3</sup>

### **Developments with respect to China's currency bill**

On October 11, the US Senate passed the legislation that effectively targets China's valuation of its currency. The Senate vote on the currency legislation received bipartisan support, passing 63 to 35. The bill was already expected to pass that chamber, despite calls from Republican leadership and Chinese officials over the last couple of weeks against pursuing this move. While the bill succeeded in the Senate, whether or not the bill will make it to the floor of Congress' other chamber, the US House of Representatives, or receive presidential approval is unclear. Speaker of the House John Boehner, a Republican, has already spoken out against the legislation, labelling such a move as "dangerous."

According to the media sources, to date, the Obama Administration has mostly been reticent to voice a strong stance on the Chinese currency issue. President Barack Obama told a news conference last week that currency manipulation was one example of China's "gaming the trading system to its advantage and to the disadvantage of other countries, particularly the United States." However, he refrained from openly supporting or condemning the legislation, citing the possibility of a WTO challenge as reason to avoid passing such laws too hastily.

Critics of China's currency policy in the US have long argued that China's strict control of the yuan has led to it being undervalued, creating, in effect, an export subsidy that makes Chinese exports cheaper relative to their foreign counterparts and puts US jobs at risk. Opponents of currency legislation, however, argue that take on China will only lead to these jobs moving to the next low-cost location, such as Bangladesh or Vietnam, rather than bringing the jobs back to the US.

In the response to this legislative move in the US, the Chinese officials continue their vocal opposition to the legislation, with Vice Foreign Minister Cui Tiankai telling reporters that the bill "in no way represents the reality of the economic and trade relationship between China and the United States, and it might have an adverse impact on the development of the relations between the two countries." Cui, who heads the China delegation for the Group of 20 negotiations, cautioned that, should the bill become law, the only result would be a US-China trade war that would be damaging to both sides.<sup>4</sup>

### **I.1 (b) Export financing situation in US during the review quarter**

On Dec 20, 2011, the Export-Import Bank of the United States (Ex-Im Bank) released its 2011 Annual Report, a comprehensive analysis of Ex-Im Bank's export financing in fiscal year 2011. For the third-straight year, Ex-Im Bank set export finance records including overall financing that for the first time exceeded \$32 billion and supported \$41.3 billion in exports at more than 3,600 U.S. companies, helping to support approximately 290,000 export-related American jobs.

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<sup>3</sup> *Jobs Act Loan Incentives Led to Record SBA Loan Approval Volume, Supporting Over \$30 billion in Small Business Lending*, (October 5, 2011), United States Small Business Administration, available at: <http://www.sba.gov/about-sba-services/7367/27101>

<sup>4</sup> *Pressure on China Currency, Subsidies Builds in Washington*, China Programme, Volume 15, Number 34, (October 12, 2011) available at: <http://ictsd.org/i/news/bridgesweekly/115751/>

Small business financing rose over 70 percent from \$3.3 billion in FY 2008 to \$6 billion in FY 2011 and is up almost \$1 billion from last year. As part of its efforts to increase this portfolio, Ex-Im Bank's Global Access for Small Business initiative has held more than 20 forums across the country this year, reaching 4,000 participants.

According to the report, the Ex-Im Bank is focusing on a number of industries with high potential for U.S. export growth: agribusiness, aircraft and avionics, construction, medical technologies, mining, oil and gas, and power generation, including renewable energy. In particular, infrastructure-related financing reached \$23.0 billion, more than a 130 percent increase over FY 2008, the same growth rate as the Bank's authorizations overall. This was a direct result of the Bank's emphasis on nine developing countries with rapidly growing infrastructure needs. The transportation sector for FY 2011 volume was \$13.2 billion, up from \$5.6 billion in FY 2008. Authorizations for environmentally-beneficial exports more than tripled from \$227 million in FY 2008 to \$889 million in FY 2011; and authorizations for renewable-energy exports increased to \$721 million in FY 2011 from \$30.4 million in FY 2008. Ex-Im Bank was one of the largest financiers of solar projects to India at \$180 million.

The report pointed out that Ex-Im Bank is open for business in 175 countries. However, the Bank has identified nine key markets as the primary focus of its outreach: Brazil, Colombia, India, Indonesia, Mexico, Nigeria, South Africa, Turkey and Vietnam. The projected investment in infrastructure across these countries over the next five years is projected more than \$2 trillion. This increased demand for products and services is aimed to help small and large U.S. exporters in many sectors to maintain current employment levels and create a significant number of new jobs.

In FY 2011, the Bank showed substantial increases in several of these markets. For example, export financing for sub-Saharan Africa was nearly \$1.4 billion for the first time, supporting 8% of all U.S. exports to sub-Saharan Africa. Authorizations for exports to Colombia increased to \$3.7 billion from \$66 million, supporting 34% of overall U.S. exports. Among the Bank's nine key countries, Colombia, India, South Africa, and Turkey have shown impressive increases compared to FY 2008. Export financing for India increased to \$2.9 billion from \$1 billion, rising to first in Bank authorizations and exposure in the Asian regional exposure while it had ranked 10th in Asia regional authorizations in FY 2010.<sup>5</sup>

## **I.2 Trade & Investment Policy Overview**

### **I.2 (a) Trade Situation in United States during the review quarter**

In October 2011 the U.S. International Trade in Goods and Services report was published by the Commerce Department's U.S. Census Bureau and the U.S. Bureau of Economic Analysis. The report showed that U.S. exports of goods and services in October 2011 decreased 0.8 percent from September 2011 to \$179.2 billion. October's exports of capital goods however showed the highest on record of \$42.3 billion. The U.S. imports of goods and services on the other hand, decreased by 1.0 percent to reach \$222.6 billion, causing the U.S. trade deficit to improve by 1.6 percent to reach \$43.5 billion in October 2011. This was the lowest monthly deficit level in 2011.

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<sup>5</sup> *Ex-Im Bank Issues 2011 Annual Report, Marks Another Record-Breaking Year*, (Dec. 20, 2011), EXIM Bank of USA, at: <http://www.exim.gov/pressrelease.cfm/987F763A-0F75-2F06-4927C5457CE45F4E/>

The gains in export sectors observed over the 10 months have been in automotive vehicles, where U.S. exports of passenger cars have increased nearly 25 percent, or \$7.7 billion, in the first 10 months of 2011.

The report identifies that the overall deficit during the year 2011 has increased, entirely due to the economy's dependence on foreign oil as petroleum represents more than 58 percent of total goods and services deficit. Observing a positive trend, the Department believes that growth in exports, minus petroleum are actually outpacing imports in both dollar and percentage terms, meaning that the deficit in non-petroleum goods and services has improved through the first ten months of 2011 by more than \$6 billion.

Since rising exports are crucial for creation of American jobs as well as economic growth, the Department believes that Congress must extend and expand the payroll tax cut for better economic recovery.

Further, according to the recent report by US Bureau of Economic Analysis of January 13, November exports were \$1.5 billion less than October exports of \$179.4 billion. November imports were \$2.9 billion more than October imports of \$222.6 billion. In November, the goods deficit increased \$4.6 billion from October to \$63.2 billion, and the services surplus increased \$0.1 billion from October to \$15.4 billion. Exports of goods decreased \$1.5 billion to \$126.6 billion, and imports of goods increased \$3.1 billion to \$189.7 billion. Exports of services were virtually unchanged at \$51.3 billion, and imports of services decreased \$0.2 billion to \$35.9 billion.

The October to November increase in imports of goods reflected increases in industrial supplies and materials (\$2.7 billion); automotive vehicles, parts, and engines (\$0.8 billion); other goods (\$0.6 billion); and capital goods (\$0.1 billion). Decreases occurred in consumer goods (\$0.7 billion) and foods, feeds, and beverages (\$0.1 billion).<sup>6</sup>

## **I.2 (b) United States' updates on WTO related activities**

### **United States seeks detailed information about the Chinese policy with respect to WTO compliance**

During October, 2011, the U.S. Trade Representative Ron Kirk announced that, under World Trade Organization rules, the United States is seeking detailed information on the trade impact of Chinese policies that may block U.S. companies' websites in China, creating commercial barriers that especially hurt America's small business.

The request was submitted under paragraph 4 of Article III of the General Agreement on Trade in Services (GATS), which provides in relevant part that: "Each Member shall respond promptly to all requests by any other Member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1." Paragraph 1 of GATS Article III provides: "Each Member shall publish promptly and except in emergency

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<sup>6</sup> *U.S. International Trade in Goods and Services, November 2011, US Bureau of Economic Analysis, (January 13, 2011) at: <http://www.bea.gov/newsreleases/international/trade/2012/trad1111.htm>, See also: Statement from U.S. Commerce Secretary John Bryson on U.S. International Trade in Goods and Services in October 2011, Dec 9, 2011 press release, available at: <http://www.commerce.gov/news/press-releases/2011/12/09/statement-us-commerce-secretary-john-bryson-us-international-trade-go>*

situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.”

The United States’ WTO request relates specifically to the commercial and trade impact of the Internet disruptions. Accordingly, the United States is asking China to provide details that will allow a fuller understanding of the legal and policy rules relevant to the accessibility of commercial websites in China. The request has been the result of complaints by US companies operating in China which have expressed concerns regarding the adverse business impacts from periodic disruptions to the availability of their websites in China. For a detailed list of the all questions posed by the US before the WTO body, refer to Annex 2 of the report.<sup>7</sup>

### **US action on subsidy notification by China and India**

During October 2011, U.S. Trade Representative Ron Kirk announced that the United States has submitted information to the WTO identifying nearly 200 subsidy programs that China has failed to notify as required under WTO rules. Information was also submitted on 50 subsidy programs in India not previously notified. The obligations of WTO Members to notify their subsidies are set forth in Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Under Article 25.10 of the SCM Agreement, if a Member has not notified its subsidy programs in a timely fashion, another Member can raise the issue with the subsidizing Member. Through these actions at the WTO, the United States is seeking the prompt provision of detailed information and data from China and India regarding the operation of these subsidy programs.

According to the USTR office, every Member is obligated to submit information about all of its subsidy programs on a regular basis. This information is required so that Members may assess the nature and extent of the subsidy programs of others. The notification obligation is particularly significant for Members like China, where inadequate transparency in so many areas places a tremendous burden on other WTO Members seeking to better understand China’s trade policy measures. USTR ambassador stated that China has submitted only one subsidies notification since becoming a WTO Member in December 2001. That notification took place more than five years ago and was noticeably incomplete. In the last ten years, India has submitted only one notification, which was also noticeably incomplete.

The U.S. submission on China’s subsidy programs includes measures submitted in the context of an investigation initiated under section 302(a) of the Trade Act of 1974, as amended, on 15 October 2010, regarding Chinese policies and practices affecting trade and investment in green technologies. It also includes measures uncovered in the course of three prior WTO dispute settlement proceedings and measures uncovered in the course of countervailing duty investigations conducted by the U.S. Department of Commerce. The U.S. submission on India’s subsidy programs includes measures uncovered in the course of U.S. countervailing duty investigations.

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<sup>7</sup> *United States Seeks Detailed Information on China’s Internet Restrictions*, Press release, (October, 20, 2011), <http://www.ustr.gov/about-us/press-office/press-releases/2011/october/united-states-seeks-detailed-information-china's-i>

The USTR office therefore urged the two nations to be transparent in their subsidy programs and notifications, as China and India are among the largest exporters in the WTO.<sup>8</sup>

## **US' position at the 8<sup>th</sup> WTO ministerial conference**

In the 8<sup>th</sup> Ministerial conference, the US reiterated on the importance of initiatives such as programs offering duty-free treatment to a wide range of products from LDCs, promotion of high standards of accountability, transparency, and good governance. The United States asserted that it provides a wide range of trade-related assistance aimed at helping developing countries, including LDCs, harness the benefits of trade. Additionally, the United States regularly works with the private sector to achieve maximum impact for communities in developing countries. The Obama Administration views trade as a critical part of U.S. development policy and will continue to promote trade policies that support LDCs. In addition to raising support for the United States' long-standing commitments to LDCs, the Eighth WTO Ministerial wrapped up with Ambassador Kirk reaffirming the United States' commitment to the legal framework of the WTO as a means of lowering trade barriers and enforcing trade standards. USTR Ambassador Kirk stated that he is dedicated to the expansion of U.S. export markets and the enforcement of trade standards to support American businesses and families through forums like this WTO ministerial as well as other ongoing negotiations conducted by USTR every day.<sup>9</sup>

### **I.2 (c) Unilateral trade preferences**

#### **Developments in the GSP scheme**

##### **(i) Legislation authorising the GSP program**

On October 21, 2011, President Obama signed legislation authorizing the GSP program through July 31, 2013 and retroactively applying GSP trade benefits for eligible products that entered the United States on or after January 1, 2011. Under the US GSP program, 129 beneficiary developing countries, including 42 least-developed countries, are eligible to export up to 4,881 types of products to the United States duty-free. In 2010, the total value of imports that entered the United States duty-free under GSP was \$22.6 billion.

##### **(ii) Results of GSP Annual review**

On December 29, 2011, USTR announced the outcome of the Obama Administration's 2010 Annual Review under the Generalized System of Preferences (GSP) program. In the words of Ambassador Kirk, "the annual review of GSP helps us to ensure that the program is working as it should and that developments affecting country and product eligibility are taken into account, consistent with the GSP statute." Based on the Administration's review of product petitions accepted for the 2010 GSP Annual Review, President Obama determined that one product –

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<sup>8</sup> *United States Details China and India Subsidy Programs in Submission to WTO*, Press release, (October, 15 2011), available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/october/united-states-details-china-and-india-subsidy-prog>

<sup>9</sup> *Ambassador Ron Kirk Emphasizes the United States' Long-Standing Commitments to Least Developed Countries as the WTO Ministerial Conference Concludes in Geneva*, Press release, (December, 20 2011), available at: <http://www.ustr.gov/about-us/press-office/blog/2011/december/ambassador-ron-kirk-emphasizes-united-states%E2%80%99-long-standing>

certain non-down sleeping bags should be removed from eligibility for duty-free treatment under GSP because it is import-sensitive in the context of GSP. A petition to remove GSP duty-free treatment for two types of self-adhesive plastic tape was however denied.

The report stated that the Administration continues its task to review several country practices petitions that seek to withdraw or limit a country's GSP benefits based on that country's non-compliance with certain statutory eligibility criteria. A public hearing is proposed to be held at the USTR on January 24, 2012 to receive testimony on country practices petitions related to worker rights issues in Bangladesh, Georgia, Niger, Philippines, Sri Lanka and Uzbekistan.

**Background of the GSP Annual review-** As part of the annual GSP review, an interagency U.S. Government committee led by USTR receives and considers petitions seeking 1) to add or remove products from the list of those eligible for duty-free treatment under GSP, 2) to waive product exclusions for certain countries based on statutory requirements related to competitiveness ("competitive need limitations"), and 3) to withdraw or limit a country's eligibility for GSP trade benefits based on statutory eligibility criteria, including whether a country is taking steps to afford internationally recognized standards for worker rights, whether it provides important investor protections including enforcement of arbitral awards, and the extent to which a country adequately and effectively protects intellectual property rights. For those petitions accepted for review, the USTR-led committee holds public hearings, solicits public comments, and in the case of product petitions reviews analyses prepared by the U.S. International Trade Commission of the economic impact of product eligibility decisions on domestic industries and consumers. Any change to the lists of products or countries eligible for GSP benefits requires a presidential determination.

The 2010 GSP Annual Review was suspended during the lapse in GSP authorization in 2011. The review of product and country practices petitions accepted as part of the 2010 GSP Annual Review resumed following the reauthorization of the program in October 2011. However, petitions seeking waivers of competitive need limitations (CNLs) were dismissed, as announced in a Federal Register notice on November 1, 2011. In that notice, USTR announced that, in view of the ten-month lapse in authorization of the GSP program, it would not be taking any actions with respect to CNL-related product exclusions based on 2010 trade.<sup>10</sup>

## **Developments in the AGOA**

### **(i) Legislative developments in AGOA**

On December 15, 2011, the Senate Finance Committee Chairman and Ranking Member along with ten additional Senators, introduced a legislation to continue building trade relationships between the U.S. and sub-Saharan nations by extending the life of the African Growth and Opportunity Act (AGOA). The bill would extend the provision that allows least-developed countries in sub-Saharan Africa to use fabrics from any country to produce apparel, which then receives duty-free access to the U.S. market. The bill would also take steps to build a positive

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<sup>10</sup> *USTR Announces Outcome of Generalized System of Preferences Review*, Press release, (December, 15, 2011), Office of the USTR, available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/december/ustr-announces-outcome-generalized-system-prefere>

trade relationship with South Sudan, which split from Sudan and formed as a new nation earlier this year, by adding it to the list of countries that can qualify for AGOA benefits. Because AGOA has a track record of increasing bilateral trade between the U.S. and sub-Saharan Africa since its enactment in 2000, the senators' proposal to extend the third-country fabric provision and add South Sudan to AGOA's list of included nations would open new doors to American businesses and help create jobs here at home.

The bill would extend until September 2015 the AGOA provision allowing sub-Saharan African countries to export apparel made from fabric originally produced anywhere in the world, rather than from within those countries themselves or from the U.S. The provision is currently set to expire next fall. Because such a large proportion of apparel imported from AGOA nations is made with fabric from other countries, allowing the third-country provision to expire would seriously undermine the development goals of AGOA. The senators proposed that strong economic ties with nations in that increasingly-lucrative region can boost our exports and create American jobs.<sup>11</sup>

## **(ii) Review of AGOA benefits**

On December 29, USTR Ambassador Kirk announced President Obama's decision to designate 40 sub-Saharan African countries as eligible for AGOA benefits in 2012. During 2011's review process, the President determined that all of the countries currently eligible for trade preferences and other benefits under the African Growth and Opportunity Act would remain eligible and that no new countries would be added as AGOA beneficiaries.

The President's determination is based on the annual review conducted by the Administration to examine whether the countries named in the Act had met AGOA's eligibility criteria. Those criteria include establishing, or making continual progress towards establishing, a market-based economy, rule of law, economic policies to reduce poverty, protection of internationally recognized worker rights, and efforts to combat corruption. Countries eligible for AGOA also may not engage in activities that undermine U.S. foreign policy interests, or engage in gross violations of internationally recognized human rights.<sup>12</sup>

## **Developments in the Caribbean Basin Economic Recovery Act**

On December 31, the USTR released the Ninth Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act. According to the report, the U.S. trade preferences programs for the Central American and Caribbean region, known collectively as the Caribbean Basin Initiative (CBI), continues to generate important benefits for the beneficiary countries. Expansion of CBI benefits through enactment of the Caribbean Basin Trade Partnership Act (CBTPA) in 2000, the provisions included in the Trade Act of 2002, the HOPE Act of 2006, the HOPE II Act of 2008, and the HELP Act of 2010, represents an important affirmation of the ongoing U.S. commitment to economic development in the Caribbean Basin, by expanding duty-free access to the U.S. market for CBI goods.

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<sup>11</sup> *Baucus, Hatch Introduce Legislation to Continue Building Trade Relationships with Sub-Saharan Africa*, US Senate Committee on Finance, (December 15, 2011) at: <http://finance.senate.gov/newsroom/chairman/release/?id=dd387e80-e795-4ef0-982f-0ae132ab23b6>

<sup>12</sup> Source: *Office of the USTR*, Press release, (December, 15 2011), available at: <http://campaign.r20.constantcontact.com/render?llr=6lclzcab&v=001SbPU0nO9dPDvhIounHha8G3DI5ubho15TREV0MydoQB1v3eYSxoKkYdw->

Combined with economic reform and other actions taken by beneficiary countries to liberalize their trade regimes, the trade benefits of CBI have helped countries and certain dependent territories in the region diversify their exports and contributed to their economic growth. The detailed report provides a brief description of Caribbean Basin Initiative and its interface with the amount of trade with the US. The report provides detailed compliance information of each of the country covered under the initiative. The report also states that in furtherance of the October 12, 2011, Congress passed legislation approving the United States-Panama Trade Promotion Agreement, once the agreement enters into force Panama will cease to be designated as a CBERA and CBTPA beneficiary country.<sup>13</sup>

## **I.2 (d) Key meetings**

**Asian Pacific Economic Cooperation (APEC)** - Leaders from the 21 member economies of APEC forum gathered in the US state of Hawaii in November, 2011, resolving to boost regional trade and reduce tariffs on environmental goods and services. The ongoing disagreements between the US and China over the latter's strict valuation of its currency was severely criticized by the US. At the closing APEC press conference, president Obama remarked, "there are a range of things that [China has] done that disadvantage not just the United States but a whole host of their trading partners and countries in the region."

Though China assured of the efforts being taken by the government to improvise this situation, the US urged China to 'do more' in this direction. China, however later stated that US could not blame its structural problems, trade deficit and high unemployment rate to be a result of Chinese exchange rate.

The issue of Chinese exchange rate has also drawn the US senators to vote in favor of legislation that would target countries undervaluing their currencies.<sup>14</sup>

**G-20-** The G-20 summit of November 3-4 was held in France. The meeting focused on the euro-zone crisis and issues of food scarcity. The issue of US-China currency tussle resurfaced again as the currency issue also featured at a G-20 finance ministers and central bank governors meeting in mid-October, with reports indicating that Chinese negotiators had prevented the G-20 ministers from going beyond wording issued at their previous meeting in Washington on the need for emerging market economies' currencies to be more flexible.<sup>15</sup>

## **I.2 (e) Ongoing Bilateral trade negotiations**

**US-Rwanda-** During November, 2011 the US hosted trade talks with a Rwandan delegation. The talks were held under the U.S.-Rwanda Trade and Investment Framework Agreement (TIFA), which provides a high-level forum for advancing a cooperative partnership on bilateral trade and investment issues. The TIFA Council meeting examined the two governments' joint

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<sup>13</sup> *Kent Shigetomi & Benjamin Kostrzewa, Ninth Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act*, Office of the USTR, (October, 18 2011), available at: [http://www.ustr.gov/webfm\\_send/3214](http://www.ustr.gov/webfm_send/3214)

<sup>14</sup> *Green Growth, China Currency Take Centre Stage at APEC Meet*, Bridges Weekly Trade News Digest , Volume 15 , Number 39, (November, 16, 2011), available at: <http://ictsd.org/i/news/bridgesweekly/118602/>

<sup>15</sup> *G20 to keep focus on China currency flexibility: U.S.*, REUTERS, (October, 31 2011)

work on a number of trade-related issues, including implementation of the African Growth and Opportunity Act (AGOA), agricultural trade and cooperation, export diversification, infrastructure issues, and Rwanda's progress towards regional integration within the EAC.<sup>16</sup>

**US-Japan-** During December 2011, USTR Ambassador Kirk met with Japanese Minister of Foreign Affairs and discussed a range of multilateral, regional, and bilateral trade issues. The cooperation in the APEC, the WTO, and under the bilateral Economic Harmonization Initiative was discussed. Regarding the Trans-Pacific Partnership (TPP), Ambassador Kirk welcomed Japan's interest in entering into consultations toward participating in the TPP negotiations and updated the Japanese Minister on the domestic stakeholder and Congressional consultation process underway at USTR to consider this interest. Ambassador Kirk explained that the U.S. would also assess Japan's readiness to meet the high standards of TPP and to address issues of concern in the manufacturing, services, and agriculture sectors.

With respect to beef, the Japanese Minister indicated that the Japanese Government will reassess import restrictions through the launch of a risk assessment process. Ambassador Kirk urged that Japan further open its market to U.S. beef exports as quickly as possible based on science, international standards, and commercial viability.<sup>17</sup>

**US-Australia-** During December, 2011, United States Trade Representative Ron Kirk met with Australian Trade Minister Craig Emerson in Geneva, Switzerland, on the margins of the 8th WTO Ministerial Conference. During the meeting, Ambassador Kirk expressed appreciation to Minister Emerson for Australia's commitment to a strong WTO and its constructive approach to the Doha Round of world trade negotiations, and for Australia's leadership in fighting protectionist measures in global trade.

Ambassador Kirk and Minister Emerson also discussed next steps with regard to the Trans-Pacific Partnership. It was deliberated that the United States and other TPP partners are seeking to make as much progress as possible toward concluding the agreement in 2012.<sup>18</sup>

**US-Russia-** During December 2011, United States Trade Representative Ron Kirk met with Russian Minister of Trade and Economic Development in Geneva, Switzerland, on the margins of the 8th WTO Ministerial Conference. During the meeting, Ambassador Kirk congratulated the Russian Minister on Russia's landmark achievement in concluding negotiations on the terms of its accession to the WTO. Ambassador Kirk discussed with Minister Nabiullina the determination of President Obama and his Administration to work vigorously with the U.S. Congress to enact legislation enabling the United States to fully benefit from Russia's membership when Russia does accede to the WTO following its domestic ratification

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<sup>16</sup> *Office of USTR*, Press release, (November, 18, 2011), available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/november/deputy-us-trade-representative-marantis-hails-adv>

<sup>17</sup> U.S. Trade Representative Ron Kirk, *Japanese Minister of Foreign Affairs Koichiro Gamba Discuss Trade Issues*, Press release, (December, 25 2011), available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/december/us-trade-representative-ron-kirk-japanese-ministe>

<sup>18</sup> *Readout of Bilateral Meeting Between USTR Ron Kirk and Australian Trade Minister Craig Emerson*, USTR, December 16, available at: [http://campaign.r20.constantcontact.com/render?llr=6lcilzcab&v=001KvOA9nYSxsoh9ZZ88UodqOystKV0uGkmXLSByWY7LjROkhFWqa37z4qvYk1rwIWHfsxfzp\\_RJBKulJC4zk1FHRN3u4NIX6Mx5pNBDq7EjWxCExWdyWfecN0X5u9mVNPXbtFEXSwUdq5gvEXpfGC4CR-1eshon](http://campaign.r20.constantcontact.com/render?llr=6lcilzcab&v=001KvOA9nYSxsoh9ZZ88UodqOystKV0uGkmXLSByWY7LjROkhFWqa37z4qvYk1rwIWHfsxfzp_RJBKulJC4zk1FHRN3u4NIX6Mx5pNBDq7EjWxCExWdyWfecN0X5u9mVNPXbtFEXSwUdq5gvEXpfGC4CR-1eshon)

procedures. Additionally, Ambassador Kirk raised a number of trade issues on which the United States particularly hopes to work closely with Russia in the coming months, including in the areas of sanitary and phytosanitary measures and enforcement of intellectual property rights.<sup>19</sup>

**US-China-** November 2011 witnessed the conclusion of the 22nd session of the U.S.-China Joint Commission on Commerce and Trade (JCCT) in Chengdu, China. United States Trade Representative Ron Kirk and U.S. Secretary of Commerce John Bryson co-chaired the JCCT along with Chinese Vice Premier Wang Qishan. U.S. Secretary of Agriculture Tom Vilsack also participated in the discussions.

Ambassador Kirk, Secretary Bryson, and Secretary Vilsack announced meaningful progress on key elements of the U.S.-China trade relationship but also underscored that much more work remains to be done to open China's market to U.S. exports and investment. The following issues were conclusively deliberated upon during the meeting:

**Issues pertaining to IPR-** China agreed to make a significant systemic change in its enforcement of intellectual property rights. Through a high-level central government enforcement structure led by Vice Premier Wang Qishan, China will make permanent its 2010 Special IPR Campaign. China will continue high-level involvement that will enhance its ability to crack down on intellectual property rights infringement. In addition, China's leadership committed to increased political accountability – the performance of provincial level officials will be measured based on enforcement of intellectual property rights in their regions.

In addition, Vice Premier Wang Qishan personally committed to continue the software legalization program. Specifically, he committed to ensure that the provincial legalization efforts would be concluded by the middle of 2012 and at the local and municipal levels by the end of 2013.

The Chinese government also agreed to continue working to develop solutions to combat the sale of infringing goods on the Internet, while at the same time moving forward to develop additional protections for legitimate trademarks. All of China's commitments on intellectual property rights will enhance the protection of U.S. innovative products and promote job creation in the United States.

China also announced a new high-level central government mandate requiring provincial and local governments by December 1st 2011 to eliminate any policies that are not consistent with President Hu's commitment to sever the link between China's innovation policies and government procurement.

**Issues pertaining to electric vehicles-** China confirmed that it will not require foreign automakers to transfer technology to Chinese enterprises nor to establish Chinese brands in order to invest and sell in China's fast-growing market. China also confirmed that foreign-invested enterprises are eligible on an equal basis for electric vehicle subsidies and other incentive programs for electric vehicles.

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<sup>19</sup> *Readout of Bilateral Meeting Between USTR Ron Kirk and Russian Minister of Trade and Economic Development Elvira Nabiullina*, USTR, (December 16, 2011) available at: [http://campaign.r20.constantcontact.com/render?llr=6lcilzcab&v=001KvOA9nYSxsoh9ZZ88UodqOystKV0uGkmXLSByWY7LjROkhF--Wqa37z4qvYk1rwIWHfsxzfzp\\_RJBKulJC4zk1FHRn3u4NIX6Mx5pNBDq7EjWxCExWdyWfecN0X5u9mVNPXbtFEXSwUdq5gvEXpfGC4CR-1eshon](http://campaign.r20.constantcontact.com/render?llr=6lcilzcab&v=001KvOA9nYSxsoh9ZZ88UodqOystKV0uGkmXLSByWY7LjROkhF--Wqa37z4qvYk1rwIWHfsxzfzp_RJBKulJC4zk1FHRn3u4NIX6Mx5pNBDq7EjWxCExWdyWfecN0X5u9mVNPXbtFEXSwUdq5gvEXpfGC4CR-1eshon)

**Issues pertaining to Agriculture-** USDA and China's Ministry of Agriculture agreed to finalize the framework of a five-year strategic plan focused on food security, food safety and sustainable agriculture to build a stronger foundation for critical cooperation in agriculture. In discussions also including the General Administration of Quality Supervision, Inspection and Quarantine, progress was made on beef market access. The parties agreed to expand discussion beyond technical to the conditions that include scope of products available in the market. China also committed to make progress on removing avian influenza-related bans affecting several U.S. states, to finalize work on a longstanding market access request for U.S. pears, and to complete work on a new dairy certificate to maintain existing market access.

**Issues pertaining to Investment-** China committed to create a fair and level playing field for all companies in its strategic emerging industries, including clean energy, biotech, and new generation information technologies. According to published reports, in the next five years, China plans to invest \$1.5 trillion in its strategic emerging industries which China defines as high-end equipment manufacturing, energy-saving and environmentally friendly technologies, biotechnologies, new generation information technologies, alternative energy, advanced materials and new energy vehicles.

**Issues pertaining to Tourism-** China expanded the U.S.-China Tourism Memorandum of Understanding to three additional provinces for a total of 27 provinces. Spending by Chinese visitors is expected to grow 232 percent to \$16.6 billion by 2016, moving up from the seventh largest U.S. market in 2010 to the third in 2016.<sup>20</sup>

**US-Indonesia-** On October 14, 2011, Assistant Secretary of Commerce for Market Access and Compliance co-chaired the first official meeting of the U.S.-Indonesia Commercial Dialogue (USICD) on behalf of the International Trade Administration. During the meeting, US discussed the fact that as bilateral trade and investment expanded rapidly in the Asia-Pacific region in recent years, U.S. companies have increasingly come to view Indonesia as a strategic market. This is demonstrated as in the first nine months of 2011, U.S. goods exports to Indonesia expanded by 9 percent compared to the same period in 2010.

Indonesia is an important trading partner for the U.S. and is one of six priority "Next-Tier Markets" within the National Export Initiative, which seeks to double U.S. exports by the end of 2014. Two-way trade in goods and services between the two countries totaled over \$23.4 billion in 2010. As one of the fastest growing G-20 economies, Indonesia plays a critical role in the demand for U.S. goods and services. Therefore the meeting was a strategic move on part of the United States.<sup>21</sup>

**US-EU-** On November 28, during the US and EU trade meet, the leaders agreed to establish a joint working group to examine the bilateral trade talks and other options for promoting growth in their respective economies. The leaders affirmed to "making the US-EU trade and investment relationship - already the largest and most integrated in the world - stronger."

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<sup>20</sup> *U.S. and China Conclude 22nd Session of the Joint Commission on Commerce and Trade*, Press release, (November, 17, 2011), available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/november/us-and-china-conclude-22nd-session-joint-commissi>

<sup>21</sup> *Commerce Assistant Secretary Leads First Meeting Of U.S.-Indonesia Commercial Dialogue*, (October 14, 2011) available at: <http://trade.gov/press/press-releases/2011/commerce-assistant-secretary-leads-first-meeting-of-us-indonesia-commercial-dialogue-121411.asp>

The leaders directed the Transatlantic Economic Council (TEC) - a political body established in 2007 to advance economic integration and government co-operation between the EU and the US - to form a joint working group whose goal would be to “identify and assess options for strengthening the US-EU economic relationship, especially those that have the highest potential to support jobs and growth.” The working group has been asked to address issues that are of a common concern for both parties and suggest strategies to enhance co-operation. Barriers to trade, including tariffs and tariff-rate quotas, and ‘behind the border’ non-tariff barriers, will all be examined during the course of the group’s work.

The spectre of the WTO’s Doha round of trade talks also hovered in the background of the high-level meet, with leaders repeating the G-20’s call earlier this month for “fresh, credible approaches” toward finalising the ten-year negotiations. The US and EU have reportedly avoided pursuing bilateral free trade talks with one another in the past, in part due to not wishing to detract from the Doha process. The EU Trade Commissioner, confirmed that both sides were looking at negotiations that could cover a variety of measures, such as tariff eliminations on manufactured goods and agriculture, as well as liberalisation of the services sector.

It was also decided that the High Level Working Group on Jobs and Growth would be chaired jointly by the US Trade Representative and the European Commissioner for Trade. An interim report from the working group is scheduled for June 2012, recommendations and conclusions will be due to US and EU leaders by the end of that same year.<sup>22</sup>

**US-ASEAN-** During November 2011, President Obama and his counterparts from the Association of Southeast Asian Nations (ASEAN) announced the U.S.-ASEAN Connectivity Cooperation Initiative, to be implemented by the U.S. Trade and Development Agency (USTDA) in cooperation with the U.S.-ASEAN Business Council and its member companies. By launching this Initiative, USTDA is forming a partnership between the U.S. government and U.S. industry that will play a vital role in accelerating the region's economic integration and strengthening ties between our nations.

The Initiative would expand U.S.-ASEAN cooperation and commercial engagement in three areas: energy, transportation, and information and communications technology (ICT) connectivity across the ASEAN region. Leveraging U.S. private sector resources and expertise, USTDA and ASEAN partners intend to support activities such as reverse trade missions, feasibility studies, technical assistance and workshops that foster effective new partnerships between private sector and government entities to increase connectivity and investment in the three sectors. With a population of approximately 580 million and a combined GDP of \$1.5 trillion, ASEAN is the United States' fourth largest export market and a key market to facilitate long-term economic development that is mutually beneficial.

The Connectivity Initiative is designed to support ASEAN's goal of fostering greater connectivity to achieve an economically integrated ASEAN Community by 2015. This vision includes enhancing connectivity in Southeast Asia in three core elements: developing physical

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<sup>22</sup> ICTSD reporting; “US and EU agree to begin talks on a trans-Atlantic economic and trade pact,” MERCOPRESS, (29 November 2011); “Business leaders urge U.S., EU consider trade pact,” REUTERS, 22 November 2011; “EU expects secure trade deal with U.S. - De Gucht,” REUTERS, 29 November 2011; “U.S., EU consider trade talks to foster growth,” REUTERS, 28 November 2011; “U.S., EU mull free trade talks, sign secure trade pact,” REUTERS, 30 November 2011, see also, Bridges Weekly Trade News Digest, volume 15, Number 41, 30th November 2011.

infrastructure; streamlining institutions, mechanisms, and processes; and expanding people-to-people ties across the region.<sup>23</sup>

**US-India-** India and United States exchanged a trade mission during November, 2011 with an aim of co-operation in the area of renewable energy which could further support the National Export Initiative and create jobs in the United States by generating sustainable, long-term growth in the global economy. The same was facilitated during the GEMS (Growth in Emerging Market Sectors) conference hosted by CII in Hyderabad on November 9. The GEMS initiative embraces the notion that export-driven growth will result from small and medium-sized enterprises working with their counterparts in smaller, fast-growing cities in emerging markets.<sup>24</sup>

**US-UAE-** On October 31, 2011 the Under Secretary of Commerce for International Trade and a delegation of 14 U.S. companies proceeded to Abu Dhabi, United Arab Emirates (U.A.E.), as, the second stop in a transportation infrastructure mission. The US companies focussing on sectors including aviation, airport and port security, railroad technology, construction and related sectors explored possibilities of potential business with the UAE companies. The visit is in furtherance of President Obama's National Export Initiative which aims to double U.S. exports by the end of 2014.<sup>25</sup>

**US-Afghanistan-** On December 5, 2011, senior officials from the United States and Afghanistan met to continue their trade dialogue and evaluate progress under the United States-Afghanistan Trade and Investment Framework Agreement (TIFA). The officials discussed a wide range of investment climate issues including supporting Afghanistan's transition to a sustainable economy, market access, the U.S. Generalized System of Preferences (GSP), trade promotion efforts, intellectual property rights, sector-specific investment challenges, and the New Silk Road vision. The meetings deliberated upon the New Silk Road envisions as an international network of economic and transit connections. The New Silk Road would link and integrate Afghanistan with its neighbours and regional and global economies.<sup>26</sup>

**US-Africa-** On December 7, Ambassador Ron Kirk met with members of the Trade Advisory Committee on Africa (TACA) to discuss the ways in which the USTR plans to advance the Obama Administration's African trade policy agenda. The TACA, comprised of 19 representatives from the private sector, civil society, and academia, is tasked with providing the USTR with policy advice on issues involving trade and investment in sub-Saharan Africa. Noting the substantial achievements of the overall trade agenda over the past few months, Ambassador

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<sup>23</sup> *USTDA And U.S. Industry Cooperate To Support Connectivity And Trade In ASEAN Region*, (November 18, 2011) at: [http://www.ustda.gov/news/pressreleases/2011/SouthAsia/Indonesia/IndonesiaASEAN\\_111811.asp](http://www.ustda.gov/news/pressreleases/2011/SouthAsia/Indonesia/IndonesiaASEAN_111811.asp)

<sup>24</sup> *U.S. Companies Connect With Export Opportunities In India*, (Nov 9, 2011) Available At: <Http://Trade.Gov/Press/Press-Releases/2011/Us-Companies-Connect-With-Export-Opportunities-In-India-110911.Asp>

<sup>25</sup> *Commerce Trade Official to Abu Dhabi Community: 'Let's Work Together To Build 21st Century Infrastructure That Promotes Jobs And Growth For Both Our Peoples'*, (October 31, 2011) Available At: <Http://Trade.Gov/Press/Press-Releases/2011/Commerce-Trade-Official-To-Abu-Dhabi-Community-103111.Asp>

<sup>26</sup> *United States-Afghanistan Trade and Investment Framework Agreement (TIFA) Council Meeting*, (December 5, 2011) available at: [http://campaign.r20.constantcontact.com/render?llr=6lcilzcab&v=001KvOA9nYSxsoh9ZZ88UodqOystKV0uGkmXLSByWY7LjROkhF--Wqa37z4qvYk1rwIWHfsxzfz\\_p\\_RJBKulJC4zk1FHRn3u4NIX6Mx5pNBDq7EjWxCExWdyWfecN0X5u9mVN PXbtFEXS wUdq5gvEXpfGC4CR-1eshon](http://campaign.r20.constantcontact.com/render?llr=6lcilzcab&v=001KvOA9nYSxsoh9ZZ88UodqOystKV0uGkmXLSByWY7LjROkhF--Wqa37z4qvYk1rwIWHfsxzfz_p_RJBKulJC4zk1FHRn3u4NIX6Mx5pNBDq7EjWxCExWdyWfecN0X5u9mVN PXbtFEXS wUdq5gvEXpfGC4CR-1eshon)

Kirk told committee members that now are a good time to focus on other trade priorities, including Africa. USTR staff members stated that they want to continue building on a number of recent successes, including progress on certain African Growth and Opportunity Act (AGOA) initiatives; the eleven Trade and Investment Frameworks Agreements (TIFAs) in Africa; and the seven Bilateral Investment Treaties (BITs) with African nations, including the most recent with Rwanda. Delving into more detail on AGOA, Ambassador Kirk spoke about plans to work with Congress on the extension of AGOA's third country fabric provision, a key part of the preference program that is set to expire in September 2012. Kirk also looked ahead to the 2012 AGOA Forum, which will be hosted by the United States. After Ambassador Kirk responded to questions, Ambassador Demetrios Marantis provided members with the latest information on the new trade and investment approach with the East African Community (EAC). He concluded by updating members on consultations with Congress and opening the meeting for discussion regarding the future of the African trade agenda.<sup>27</sup>

## **I.2 (f) On-going trade agreements**

### **Status of US trade agreements with Colombia, Panama and South Korea**

On October 3, the White House submitted the three trade pacts to Congress for vote. The same has been a result of months of delay and skepticism. As discussed in the second trade monitoring report of the US, critics have long cited fears of job losses in the case of South Korea, concerns over labour rights with regards to Colombia, and worry over tax evasion in the case of Panama as reasons for not moving these trade agreements forward. The organizations still continue to impact upon the US Congress to not proceed with the bills. In the midst of all, US Chamber of Commerce assures the passage through votes in the Congress where the agreements already enjoy bipartisan support.<sup>28</sup>

### **Responses within Korea, Columbia and Panama**

During the mid-quarter, on November 22, the Korean parliament witnessed the passage of legislation approving the U.S.-Korea Free Trade Agreement (KORUS FTA). US Trade Representative Ron Kirk, praised the approval of the "win-win agreement," which could potentially go into effect on 1 January 2012. According to several sources, the Korean attitudes toward the FTA have long been mixed, with the ruling party facing substantial political opposition and outcry from small business owners.

Some of the debated issues in the US-Korea FTA include, the investor-state clause in the trade pact's chapter on foreign investments, which allows either party to bypass domestic courts and refer investor-state disputes to an international arbitration panel. Critics argue that this provision would give US investors undue right to sue the Korean government. Proponents however note that the clause has already appeared in past Korean FTAs and has yet to lead to Seoul being sued.

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<sup>27</sup> *Ambassador Kirk Discusses Policy Priorities with Trade Advisory Committee on Africa*, (December, 18 2011), available at: <http://www.ustr.gov/about-us/press-office/blog/2011/december/ambassador-kirk-discusses-policy-priorities-trade-advisory>

<sup>28</sup> *After Long Delay, US FTAs with Korea, Colombia, Panama Submitted to Congress*, *Bridges Weekly Trade News Digest*, Volume 15, Number 33, (October, 5, 2011), available at: <http://ictsd.org/i/news/bridgesweekly/114974/>

Opponents of the trade pact also argue that the FTA will solely benefit large export companies, while pushing small businesses and farmers to the wayside. The Korean agriculture and livestock industries have taken a particularly strong stance against the pact, fearing the possibility of cheaper agricultural imports from the US.<sup>29</sup>

Further, Labour rights in Colombia also have criticized against the implementation of the US-Colombia FTA. Criticisms included arguments that there was no mechanism to require implementation of labour laws and no requirements to reduce violence against trade unions, among other problems.

Panama's reputation as a safe haven for tax evasion has also drawn opposition in the case of the US-Panama deal. Despite a tax agreement, ratified in April, advocacy groups, such as the Citizens Trade Campaign, have argued that there are still many loopholes which allow US companies to set up subsidiaries and avoid US taxes.

### **Conflicting estimates of benefits from the FTAs**

Estimates from the US International Trade Commission have illustrated the potential economic impacts of these FTAs, particularly the projected increases in goods exports of approximately US\$12 billion. The ITC estimates also suggest that every US\$1 billion increase in goods exports and services exports can support more than 6000 and 4500 jobs, respectively.

However, the validity of these estimates has also been questioned. Robert Scott, an economist at the Economic Policy Institute, told Bridges that the US is "likely to see growing trade deficits that displace an additional 214,000 jobs" due to these FTAs.

Scott also pointed out that "the consequences will be equally bad, if not worse, for workers in, especially, Colombia," but Korea and Panama as well. By opening up foreign investment flows, "these agreements are designed to benefit multinational companies... [which] hurts workers in all participating countries; globalisation and the growing power of multinational firms is driving wages to the floor around the world."<sup>30</sup>

Amidst the whole debate, the progress of the final status of these FTAs shall be covered in the next review report.

**Trans Pacific Partnership-** The United States and its TPP partners including Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam concluded the tenth round of negotiations in December 2011 in Kuala Lumpur, Malaysia. Through this agreement, the United States is seeking to boost U.S. economic growth and support the creation and

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<sup>29</sup> *ICTSD reporting*; "US-South Korea Free-Trade Deal Ratified in Seoul Amid Protest," BLOOMBERG, 23 November 2011; "South Korea Approves Free Trade Pact with US," NEW YORK TIMES, (November, 22 2011); "South Korea Clears US Trade Deal," WALL STREET JOURNAL, 23 November 2011, Bridges Weekly Trade News Digest, Volume 15, Number 40, 23rd November 2011, Korean Lawmakers Ratify US FTA, available at: <http://ictsd.org/i/news/bridgesweekly/119340/>

<sup>30</sup> *ICTSD reporting*; "Trade a litmus test for US leadership, REUTERS, (October, 9, 2011); "Canada travellers to face US surcharge from US-Colombia trade pact," WALL STREET JOURNAL, 5 October 2011; "S. Korea aims to ratify US trade deal soon," WASHINGTON POST, 9 October 2011, US FTAs with Korea, Colombia, Panama Face Long-Awaited Congressional Vote, Bridges Weekly Trade News Digest, Volume 15, Number 34, 12th October 2011, available at: <http://ictsd.org/i/news/bridgesweekly/115763/>

retention of high-quality jobs by increasing American exports to a region that holds great potential for U.S. workers, manufacturers, farmers, and ranchers. TPP would make liberalization of trade stricter by inducing stronger protection of intellectual property rights, additional specific opportunities for U.S. goods, services, and investment, and the elimination of various non-tariff barriers.<sup>31</sup>

In November 2011, U.S. Trade Representative Ron Kirk also welcomed the proposals of Japan and Canada to become a part of TPP. In another development in the trans-Pacific talks, the major US farm groups back Japan's bid to join the nine-country negotiations, despite Japan's own farm industry having publicly protested the move. In the mean-while the US continues to enhance its efforts on Trade enhancing efforts on medicines (TEAM) presented to the group in September 2011. The details of the initiative have been extensively discussed in the second review report on the US.<sup>32</sup>

US is also backing provisions aimed at protecting fish and wildlife species for inclusion the proposed trans-Pacific trade deal. The details of the Washington-supported conservation initiatives were announced on 5 December.<sup>33</sup>

**Anti-Counterfeiting Trade Agreement-** During October 2011, the United States and seven other countries (Australia, Canada, Japan, Republic of Korea, Morocco, New Zealand, Singapore,) signed the ACTA at a ceremony today in Tokyo. According to the signatories this marks an important step forward in the international fight against trademark counterfeiting and copyright piracy.

The ACTA provides for: (1) enhanced international cooperation; (2) promotion of sound enforcement practices; and (3) a legal framework for IPR enforcement in the areas of criminal enforcement, enforcement at the border, civil and administrative actions, and distribution of IPR infringing material on the Internet. With respect to the legal framework, the ACTA establishes a strengthened standard that builds on the minimum standards of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). ACTA claims to mark a considerable improvement in international trade norms for effectively combating the global proliferation of commercial-scale counterfeiting and piracy in the 21st Century.<sup>34</sup>

## International Responses to ACTA

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<sup>31</sup> *Additional Strides Made at Tenth Trans-Pacific Partnership (TPP) Round*, Press release, (December, 18, 2011), available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/december/additional-strides-made-tenth-trans-pacific-partn>

<sup>32</sup> *Statement by U.S. Trade Representative Ron Kirk on Announcements from Mexico and Canada Regarding the Trans-Pacific Partnership*, Press release, (November, 15, 2011), available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/november/statement-us-trade-representative-ron-kirk-announ>

<sup>33</sup> ICTSD reporting; "*Pacific trade deal could help save species: US*," Reuters, (December, 5, 2011); "*US farmers back Japan bid to join Trans-Pacific pact*," Reuters, (December, 5, 2011), Bridges Weekly Trade News Digest, Volume 15, Number 42, 7th December 2011, US Pushes Conservation Initiatives for Proposed Trans-Pacific Pact, at: <http://ictsd.org/i/news/bridgesweekly/121000/>

<sup>34</sup> *Joint Press Statement of the Anti-Counterfeiting Trade Agreement Negotiating Parties*, (October, 18, 2011), available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/october/joint-press-statement-anti-counterfeiting-trade-ag>

At the 24-25 October meeting of the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Council, nine of the pact's eleven negotiating parties submitted the text of ACTA to the Council in a communication (IP/C/W/563), with Japan taking the lead in informing the Council on the signing of the pact in Tokyo.

The pact has however raised substantial debate since negotiations among the parties began in 2006, drawing the attention of civil society and policymakers alike. The primary focus has been over some ACTA provisions that go beyond the terms outlined in the TRIPS Agreement measures that are often referred to as "TRIPS-plus" that might impact public policy objectives in the areas of access to medicines and access to knowledge in the digital environment. Some countries fear that these TRIPS-plus provisions could potentially have implications even for non-signatories of ACTA.

At the meeting, India argued that the most favoured nation provisions of the WTO's TRIPS Agreement requires that any TRIPS-plus measure "secured by any trading partner via an [regional trade agreement] or a plurilateral agreement is ipso facto applicable to all other WTO members." India also stressed that various members were worried that ACTA's TRIPS-plus provisions could potentially "disturb the fine balance of rights and obligations provided in the TRIPS agreement and negate decisions like the Doha Declaration on Public Health."

The defense taken by United States includes the stance that "The TRIPS Agreement is a minimum standards agreement, and Article 1 of the TRIPS Agreement provides that members "may...implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement."

Japan further added that there is no conflict between provisions of ACTA and the existing obligations under TRIPS. Japan also explained that ACTA provides its members with flexibilities and options for implementations of enforcement provisions to ensure no distortion to international trade.

However at the TRIPS Council meeting, India warned that the deal's border measures might pose a "grave threat to trade in generics." Responding to such concerns, Canada added that the agreement "will not hinder the cross-border transit of legitimate generic medicines," a stance backed by the EU earlier.<sup>35</sup>

## **I.2 (g) Aid for Trade initiatives**

**US-India-** On November 4, 2011, the Ex-Im Bank approved \$103.2 million in financing for two more solar transactions in India in the final months of fiscal year 2011. On August 25, 2011, Ex-Im Bank's board of directors approved an \$84.3 million direct loan to Dahanu Solar Power Pvt. Ltd. supporting the purchase of thin-film solar panels from First Solar Inc. and other U.S. exports for the construction of a 40-MW photovoltaic (PV) solar-power plant in the state of Rajasthan, India.<sup>36</sup>

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<sup>35</sup> *TRIPS Council: Anti-Counterfeiting Trade Pact Raises Eyebrows, Intellectual Property Programme*, Volume 15, Number 37, (November, 2, 2011), available at: <http://ictsd.org/i/news/bridgesweekly/117344/>

<sup>36</sup> *Ex-Im Bank Announces \$103.2 Million in Export Financing for Solar Projects in India*, (November 4, 2011), EXIM Bank of USA at: <http://www.exim.gov/pressrelease.cfm/5DB67206-9624-6DB5-2902FFC96ADB4CC2/>

**US-Nigeria-** On October 19 2011, the Ex-Im Bank and the Nigerian Ministry of Power (MOP) signed a Memorandum of Understanding (MOU) aimed at securing up to \$1.5 billion of U.S. exports of goods and services directed at a ten-fold increase in power output in Nigeria by 2020. The Bank and the MOP intend to establish a framework to support U.S. exports to power projects in Nigeria. They expect that the projects would be structured on an Independent Power Producer basis (IPP), where the sale of power from the IPPs is supported by an adequate level of sovereign or other strong credit support.

Nigeria is one of nine countries in the world that Ex-Im Bank has identified as offering U.S. companies the greatest opportunities for sales. The other countries are South Africa, Turkey, India, Indonesia, Vietnam, Brazil, Mexico, and Colombia.<sup>37</sup>

**US-Tajikistan-** On October 5, 2011, the Ex-Im Bank announced that it is supporting its first transaction in the Central Asian nation of Tajikistan through the purchase of Boeing Next-Generation 737-900ER aircraft by Somon Air, a privately owned airline based in Dushanbe, Tajikistan. Ex-Im Bank is providing an \$80 million guarantee of the loan from the Private Export Funding Corp. (PEFCO). The financing is structured as an asset-backed finance lease secured by first-priority mortgages on the aircraft.<sup>38</sup>

**US-Thailand-** On October 12, the Board of Directors of the Overseas Private Investment Corporation (OPIC), which is the U.S. Government's development finance institution, approved \$250 million in financing to develop 51 solar power plants in Thailand. This first-of-its-kind project will accelerate the growth of the solar industry in Thailand by financing a large number of solar plants together with local banks.<sup>39</sup>

**US-Brazil-** On December 22, the U.S. Trade and Development Agency (USTDA) announced its contribution towards the modernization of Brazil's surface transportation infrastructure through a grant awarded of \$460,000 by USTDA to EcoRodovias, a Brazilian private intermodal logistics and highway concessionaire company.<sup>40</sup>

**US- Turkey-** On Dec 5, 2011, USTDA announced two activities to support Turkey's efforts to develop new sources of clean and efficient energy. USTDA signed a grant with Hema Natural Energy Resources Company to evaluate the critical aspects of a combined coal bed methane (CBM) extraction and power generation project at Hema's coalfield. The \$449,960 grant is expected to support over \$150 million in new business opportunities in Turkey, as well as create 800 to 1,000 local jobs. In further support of Turkey's clean energy goals, USTDA also

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<sup>37</sup> *U.S. Ex-Im Bank, Nigerian Ministry of Power Sign Agreement for up to \$1.5 Billion to Increase Power Output in Nigeria*, (October 19, 2011), EXIM Bank of USA at: <http://www.exim.gov/pressrelease.cfm/1CE1DB77-B747-FE74-FD4964734030533B/>

<sup>38</sup> *Ex-Im Bank Approves First Financing of U.S. Exports to Tajikistan*, (October 5, 2011), EXIM Bank of US at: <http://www.exim.gov/pressrelease.cfm/6114D8FF-BFE2-721E-14D72D92ED326C24/>

<sup>39</sup> <http://www.opic.gov/news/press-releases/2009/pr101211>

<sup>40</sup> *USTDA Grant Supports Intelligent Transportation System (Its) Infrastructure in Brazil*, (December 22, 2011) at [http://www.ustda.gov/news/pressreleases/2011/LAC/Brazil/BrazilIITS\\_122211.asp](http://www.ustda.gov/news/pressreleases/2011/LAC/Brazil/BrazilIITS_122211.asp)

announced a smart grid reverse trade mission (RTM) that will introduce 20 public and private Turkish officials to smart grid technology providers in the United States.<sup>41</sup>

**US-Colombia-** On Dec 2, 2011, the Special Administrative Unit for Civil Aeronautics of Colombia and U.S. engineering services firm T.Y. Lin signed a contract to update the master plan for the development of El Dorado International Airport in Bogota. This contract was made possible through a grant made by the U.S. Trade and Development Agency to support the expansion of Colombia's aviation sector, a key driver of Colombia's economic growth. The technical assistance contract, valued at over \$891,000, will establish criteria for the capacity and efficiency improvements needed for the modernization and expansion of El Dorado International Airport, Colombia's largest and most important airport. The Master Plan Update will also include recommendations for equipment, particularly related to terminal technology and security improvements, representing export opportunities for U.S. firms involved in the aviation sector.<sup>42</sup>

**US-Cartagena-** On Nov 23, 2011, USTDA awarded a grant to the Cartagena Water and Sewerage Company for technical assistance on the start-up of the new, comprehensive wastewater treatment system for the city of Cartagena. The \$513,000 grant will support the integration of existing wastewater subsystems; the startup of a new wastewater system; the creation of an environmental water quality baseline assessment; and the design of an ongoing water quality monitoring program, including recommendations for environmental remediation in an adjacent sea inlet. Additionally, it will also assist with designs for the expansion of the water and wastewater treatment system in the city, especially as it relates to automation and control, monitoring and equipment necessary for operations.<sup>43</sup>

**US-South Africa-** On October 27, the USTDA awarded a grant to the Air Traffic and Navigation Services Company Limited of South Africa (ATNS), South Africa's state-owned air traffic control and navigation services company. The \$758,000 grant will fund a feasibility study to evaluate the technical, financial, environmental and other critical aspects involved in a proposed airside capacity enhancement project at international airports in South Africa.<sup>44</sup>

## Part II

### Trade Policy and Practice by Measure

#### II. 1 Trade contingency

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<sup>41</sup> *Two New Projects Will Support Turkey's Clean Energy Goals*, (Dec 5, 2011) at: [http://www.ustda.gov/news/pressreleases/2011/MENAEurope/Turkey/TurkeyCBMSmartGrid\\_120511.asp](http://www.ustda.gov/news/pressreleases/2011/MENAEurope/Turkey/TurkeyCBMSmartGrid_120511.asp)

<sup>42</sup> *USTDA Supports Expansion Plans For Colombia's Largest Airport*, (Dec 2, 2011) at: [http://www.ustda.gov/news/pressreleases/2011/LAC/Colombia/ColombiaAviation\\_120211.asp](http://www.ustda.gov/news/pressreleases/2011/LAC/Colombia/ColombiaAviation_120211.asp)

<sup>43</sup> *USTDA Supports Launch of new wastewater treatment system for Cartagena*, (Nov 23, 2011) at: [http://www.ustda.gov/news/pressreleases/2011/LAC/Colombia/ColombiaWastewaterTreatment\\_112311.asp](http://www.ustda.gov/news/pressreleases/2011/LAC/Colombia/ColombiaWastewaterTreatment_112311.asp)

<sup>44</sup> *U.S. Grant Supports Air Traffic Efficiency In South Africa*, (October 27, 2011) at: [http://www.ustda.gov/news/pressreleases/2011/SubSaharanAfrica/SouthAfrica/SouthAfricaAirTrafficEfficiency\\_102711.asp](http://www.ustda.gov/news/pressreleases/2011/SubSaharanAfrica/SouthAfrica/SouthAfricaAirTrafficEfficiency_102711.asp)

## II. 1 (a) Institution of section 337 investigation

Investigation no.	Country Concerned	Matter involved	Status of proceeding
337-TA-821	Japan	The products at issue in this investigation are synchronous DDR3 dynamic random access memory (DRAM), modules containing the same.	<p>On December 21, the USITC voted to institute an investigation of certain dynamic random access memory devices. The investigation is based on a complaint filed by Nanya Technology Corporation of Taiwan on November 21, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of certain dynamic random access memory devices that infringe patents asserted by Nanya Technology. The complainant requests that the USITC issue exclusion orders and cease and desist orders</p> <p>By instituting this investigation (337-TA-821), the USITC has not yet made any decision on the merits of the case. The USITC's Chief Administrative Law Judge will assign the case to one of the USITC's six administrative law judges (ALJ), who will schedule and hold an evidentiary hearing</p>
Inv. No. 337-TA-817	Netherland	The products at issue in this investigation are devices such as telephones, switches, WAPs, routers and other devices used in local area networks, and cameras that are compliant with certain IEEE standards.	<p>On December 2, USITC voted to institute an investigation of certain communication equipment, components thereof, and products containing the same, including power over ethernet telephones, switches, wireless access points, routers and other devices used in LANs, and cameras.</p> <p>The investigation is based on a complaint filed by ChriMar Systems, Inc., d/b/a CMS Technologies of Farmington Hills, MI, on November 1, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of certain communication equipment, components thereof, and products containing the same, including power over ethernet telephones, switches, wireless access points, routers and other devices used in LANs, and cameras that infringe a patent asserted by the complainant. The complainant requests that the USITC issue an exclusion order and cease and desist order.</p>
	Korea,	The products at issue in this investigation are devices that	On December 16, USITC voted to institute an investigation of certain products containing interactive

Inv No. 337-TA-816	Taiwan	incorporate interactive program guide and parental controls technology, such as televisions and Blu-Ray players.	<p>program guide and parental controls technology.</p> <p>The investigation is based on a complaint filed by Rovi Corporation; Rovi Guides, Inc. (f/k/a Gemstar-TV Guide International Inc.); United Video Properties, Inc.; and Gemstar Development Corporation, all of Santa Clara, CA, and Index Systems, Inc., of the British Virgin Islands on November 15, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of certain products containing interactive program guide and parental controls technology that infringe patents asserted by the complainants. The complainants request that the USITC issue an exclusion order and a cease and desist order.</p> <p>On November 22, USITC voted to institute an investigation of certain wiper blades</p>
Inv No. 337-TA-816	China	The products at issue in this investigation are "beam-type" automotive wiper blades.	<p>The investigation is based on a complaint filed by Robert Bosch LLC of Farmington Hills, MI, on October 26, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of certain wiper blades that infringe patents asserted by the complainant. The complainant requests that the USITC issue an exclusion order and cease and desist order.</p>

## II. 1 (b) Conduct of sun set reviews

Investigation no.	Country Concerned	Matter involved	Status of proceeding
731-TA-702 (Third Review)	Russia	Ferrovanadium and nitrided vanadium chemicals	<p>On December 5, 2011, USITC voted to conduct a full five- year sunset review concerning the antidumping duty order on ferrovanadium and nitrided vanadium from Russia. As a result of this vote, 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.</p>
(Inv.No. 731-TA-671-673 (Third	Brazil, China, Ukraine	Silicomanganese	<p>On November 4, USITC voted to conduct full five-year sunset reviews concerning the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine. As a result of these votes, the Commission will conduct full reviews to determine whether</p>

Review).  (Inv. Nos. 701-TA-442-443 and 731-TA-1095-1097 (Review)	India, Indonesia, China	Certain lined paper school	revocation of these orders would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.  On November 4, USITC voted to conduct full five-year sunset reviews concerning the countervailing duty orders on certain lined paper school supplies from India and Indonesia and the antidumping duty orders on certain lined paper school supplies from China, India, and Indonesia. As a result of these votes, the Commission will conduct full reviews to determine whether revocation of these orders would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.
Inv. No. 731-TA-344 (Third Review)	China	Tapered roller bearings	On November 4, USITC voted to conduct a full five-year sunset review concerning the antidumping duty order on tapered roller bearings from China. As a result of this vote, 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.

## II. 1 (c) Determination & expedition of sun set reviews

Investigation no.	Country Concerned	Matter involved	Status of proceeding
731-TA-638 (Third Review)	India	Stainless wire steel rods	On December 16, USITC declared that revoking the existing antidumping duty order on stainless steel wire rod from India would be likely to lead 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 India will remain in place. The Commission's public report Stainless Steel Wire Rod from India (Inv. No. 731-TA-638 (Third Review), USITC Publication 4300, January 2012) will contain the views of the Commission and information developed during the review.
Inv. No. 731-TA-703 (Third Review)	China	Furfuryl alcohol	In December, 2011, USITC voted to expedite its five-year sunset review concerning the antidumping duty order on furfuryl alcohol from China. As a result of this vote, 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

<p>(Inv. No. 731- TA-683 (Third Review))</p>	<p>China</p>	<p>Fresh garlic</p>	<p>injury within a reasonably foreseeable time.</p> <p>On December 5, 2011, USITC voted to expedite its five-year sunset review concerning the antidumping duty order on fresh garlic from China. As a result of this vote, 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.</p>
<p>Inv. No. 701-TA-388-391 and 731-TA-817-821 (Second Review)</p>	<p>India, Indonesia, and Korea</p>	<p>Cut-to-length carbon-quality steel plate</p>	<p>On December 5, USITC determined that revoking the existing antidumping and countervailing duty orders on cut-to-length carbon-quality steel plate from India, Indonesia, and Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission also determined that revoking the existing antidumping and countervailing duty orders on cut-to-length carbon-quality steel plate from Italy would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission further determined that revoking the antidumping duty order on cut-to-length carbon-quality steel plate from Japan would not be likely to lead 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 India, Indonesia, and Korea will remain in place. As a result of the Commission's negative determinations, the existing orders on imports of these products from Italy and Japan will be revoked.</p>
<p>Inv. Nos. 701-TA-481 and 731-TA-1190 (P)</p>	<p>China</p>	<p>Crystalline silicon photovoltaic cells and modules</p>	<p>On December 2, the USITC determined that there is a reasonable indication that a U.S. industry is materially injured by reason of imports of crystalline silicon photovoltaic cells and modules from China that are allegedly subsidized and sold in the United States at less than fair value. All six Commissioners voted in the affirmative. As a result of the Commission's affirmative determination, the U.S. Department of Commerce will continue to conduct its antidumping and countervailing duty investigations on imports of these products from China, with its preliminary countervailing duty determination due on or about January 12, 2012,</p>

<p>Inv. No. 731-TA-461 (Third Review)</p>	<p>Japan</p>	<p>Gray portland cement and cement clinker</p>	<p>and its preliminary antidumping duty determination due on or about March 22, 2012.</p> <p>On November 17, USITC determined that revoking the existing antidumping duty order on gray portland cement and cement clinker from Japan would be likely to lead 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 Japan will remain in place.</p>
<p>731-TA-461 (Third Review)</p>	<p>Korea and Taiwan</p>	<p>Welded stainless steel pipe from Korea and Taiwan</p>	<p>On November 17, USITC determined that revoking the existing antidumping duty orders on welded stainless steel pipe from Korea and Taiwan would be likely to lead 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 this product from Korea and Taiwan will remain in place.</p>
<p>731-TA-540-541 (Third Review)</p>	<p>Russia and Ukraine</p>	<p>Solid urea</p>	<p>On November 15, USITC determined that revoking the existing antidumping duty orders on solid urea from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determinations, the existing antidumping duty orders on imports of this product from Russia and Ukraine will remain in place.</p>
<p>731-TA-340 E and H (Third Review)</p>	<p>China and Taiwan</p>	<p>Helical spring lock washers</p>	<p>On November 3, U.S. International Trade Commission (USITC) determined that revoking the existing antidumping duty orders on helical spring lock washers from China and Taiwan would be likely to lead 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 China and Taiwan will remain in place.</p>
<p>731-TA-</p>	<p>China</p>	<p>Pure magnesium</p>	<p>On October 19, USITC determined that revoking the existing antidumping duty order on pure magnesium from China would be likely to lead 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</p>

624-625 (Third Review)	China	Artists' canvas	<p>from China will remain in place.</p> <p>On October 12, USITC determined that revoking the existing antidumping duty order on artists' canvas from China would be likely to lead 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 in place.</p>
731-TA-696 (Third Review)	Brazil, India, Korea, Mexico, Taiwan, Thailand & Turkey	Certain pipes and tube	<p>On October 4, USITC made adequacy determinations for its five-year sunset reviews concerning the countervailing duty order on welded carbon steel pipe and tube from Turkey and the antidumping duty orders on certain pipe and tube from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey. The Commission will conduct full reviews to determine whether revocation of the countervailing duty order on welded carbon steel pipe and tube from Turkey, the antidumping duty orders on certain pipe and tube from Brazil, India, Korea, Mexico, Thailand, and Turkey, and the antidumping duty orders on circular welded pipe from Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission will conduct an expedited review to determine whether revocation of the antidumping duty order on light-wall rectangular pipe from Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.</p>
731-TA-1091 (Review)	Russia	Uranium	<p>On October 4, USITC voted to expedite its five-year sunset review concerning the suspended investigation on uranium from Russia. As a result of this vote, the Commission will conduct an expedited review to determine whether revocation of the suspended investigation would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time</p>
Inv. Nos. 701-TA-253 and 731-TA-132, 252, 271, 273, 410, 532-534, and 536 (Third			<p>On October 4, USITC made adequacy determinations for its five-year sunset reviews concerning the countervailing duty order on welded carbon steel pipe and tube from Turkey and the antidumping duty orders on certain pipe</p>

Review)  (Inv. No. 731-TA-539-C (Second Review).	Certain pipe and tubes	Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey	and tube from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey. The Commission will conduct full reviews to determine whether revocation of the countervailing duty order on welded carbon steel pipe and tube from Turkey, the antidumping duty orders on certain pipe and tube from Brazil, India, Korea, Mexico, Thailand, and Turkey, and the antidumping duty orders on circular welded pipe from Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission will conduct an expedited review to determine whether revocation of the antidumping duty order on light-wall rectangular pipe from Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.  On October 4, USITC voted to expedite its five-year sunset review concerning the antidumping duty order on stainless steel wire rod from India. As a result of this vote, 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.
(Inv. Nos. 701-TA-253 and 731-TA-132, 252, 271, 273, 410, 532-534, and 536 (Third Review)	Stainless steel wire rod	India	

## II.1 (d) Anti-dumping

### Initiation of preliminary investigation

Country Concerned	Matter involved	Status of proceeding
India, Oman, UAE and Vietnam	The merchandise covered by these investigations is welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter not more than 16 inches, regardless of wall thickness or surface	On November 15, 2011, the Department of Commerce initiated AD and CVD investigations of imports of certain steel pipe from India, Oman, UAE, and Vietnam. On December 9, USITC

	<p>finish, or industry specification. The petitions indicate subject pipe is generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although the subject product may also be referred to as mechanical tubing if it is made to standard sizes for subject standard pipe.</p> <p>Also note- There is an existing AD order on certain steel pipe from India. Therefore, the scope of the India AD investigation covers only merchandise manufactured and/or exported by Zenith Steel Pipes and Industries Ltd., and any successors-in-interest to that company, which is the only company excluded from the 1986 order known to exist.</p>	<p>determined that there is a reasonable indication that a U.S. industry is materially injured by reason of imports of circular welded carbon-quality steel pipe from India, Oman, the United Arab Emirates, and Vietnam that are allegedly subsidized and sold in the United States at less than fair value.</p> <p>As a result of the Commission's affirmative determinations, the U.S. Department of Commerce will continue to conduct its antidumping and countervailing duty investigations on imports of this product from India, Oman, the United Arab Emirates, and Vietnam, with its preliminary countervailing duty determination due on or about January 19, 2012, and its preliminary antidumping duty determination due on or about April 3, 2012.</p>
China	<p>The merchandise covered by these investigations are crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.</p>	<p>On November 8, 2011, the Department of Commerce (Commerce) initiated AD and CVD investigations of imports of solar cells from China. The U.S. International Trade Commission (ITC) is scheduled to make its preliminary injury determination on or about December 5, 2011.</p>

## Results of preliminary investigation

Country Concerned	Matter involved	Status of proceeding
China	<p>The merchandise covered by the scope of this investigation is seamless steel cylinders designed for storage or transport of compressed or liquefied gas (“high pressure steel cylinders”). High pressure steel cylinders are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (“DOT”)-approved high pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT-E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. High pressure steel cylinders covered by these investigations have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or</p>	<p>On December 8, 2011, the Department of Commerce announced its affirmative preliminary determination in the AD duty investigation of imports of high pressure steel cylinders from the People’s Republic of China. Commerce preliminarily determined that Chinese producers/exporters have sold high pressure steel cylinders at margins ranging from 5.08 to 26.23 percent. As a result of this preliminary determination, Commerce will instruct U.S. Customs and Border Protection to collect a cash deposit or bond based on these preliminary rates.</p> <p>Final determination is due in February, 2012</p>

<p>China Taiwan</p>	<p>coatings</p> <p>The merchandise covered by these investigations are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (i.e., all derivatives of 4,4'-bis [1,3,5- triazin-2-yl] amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The certain stilbenic optical brightening agents covered by these investigations include final optical brightening agent products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of final optical brightening agent products.</p>	<p>On October 28, 2011, the Department of Commerce announced its affirmative preliminary determinations in the AD investigations of imports of certain stilbenic optical brightening agents (brightening agents) from the People's Republic of China and Taiwan.</p> <p>Commerce preliminarily determined that Chinese and Taiwan producers/exporters have sold brightening agents in the United States at margins ranging from 106.22 to 141.08 percent and 12.03 percent, respectively. As a result of these preliminary determinations, Commerce will instruct U.S. Customs and Border Protection to collect a cash deposit or bond based on these preliminary rates. Commerce is currently scheduled to make its final determinations in March 2012.</p>
<p>China Mexico</p>	<p>and</p> <p>The products covered by these investigations are galvanized steel wire which is a cold-drawn carbon quality steel product in coils, of solid, circular cross section with an actual diameter of 0.5842 mm (0.0230 inch) or more, plated or coated with zinc (whether by hot-dipping or electroplating).</p>	<p>On October 28, 2011, the Department of Commerce announced its affirmative preliminary determinations in the AD investigations of imports of galvanized steel wire (galvanized wire) from the People's Republic of China and Mexico.</p> <p>Commerce preliminarily determined that Chinese and Mexican producers/exporters have sold galvanized wire in the United States at margins ranging from 76.34 to 235.00 percent, and 37.87 to 61.54 percent, respectively. As a result of these preliminary</p>

<p>UAE</p>	<p>Products covered by this investigation are certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire</p> <p>The products covered by</p>	<p>determinations, Commerce will instruct U.S. Customs and Border Protection to collect a cash deposit or bond based on these preliminary rates. Commerce is currently scheduled to make its final determinations in March 2012.</p> <p>On October 28, 2011, the Department of Commerce announced its affirmative preliminary determination in the (AD duty investigation of imports of certain steel nails (steel nails) from the United Arab Emirates (UAE). Commerce preliminarily determined that UAE producers/exporters have sold steel nails at margins ranging from 19.23 to 61.54 percent. As a result of this preliminary determination, Commerce will instruct U.S. Customs and Border Protection to collect a cash deposit or bond based on these preliminary rates. Commerce is currently scheduled to make its final determination in March 2012.</p>
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<p>Korea &amp; Mexico</p>	<p>these investigations are all bottom mount combination refrigerator-freezers and certain assemblies thereof from Korea and Mexico. For purposes of the investigations, the term “bottom mount combination refrigerator-freezers” denotes freestanding or built-in cabinets that have an integral source of refrigeration using compression technology, with all of the following characteristics:  The cabinet contains at least two interior storage compartments accessible through one or more separate external doors or drawers or a combination thereof;  An upper-most interior storage compartment(s) that is accessible through an external door or drawer is either a refrigerator compartment or convertible compartment, but is not a freezer compartment (The existence of an interior sub-compartment for ice-making in an upper-most storage compartment does not render an upper-most storage compartment a freezer compartment); and  o There is at least one freezer or convertible compartment that is mounted below an upper-most interior storage compartment(s).</p> <p>The products covered by this investigation are steel wheels with a wheel diameter of 18 to 24.5 inches. Rims and discs for</p>	<p>On October 27, 2011, the Department of Commerce announced its affirmative preliminary determinations in the AD duty investigations of imports of bottom mount combination refrigerator-freezers (bottom mount refrigerators) from the Republic of Korea (Korea) and Mexico.</p> <p>As a result of these preliminary determinations, Commerce will instruct U.S. Customs and Border Protection (CBP) to collect a cash deposit or bond based on these preliminary rates, except for Daewoo, for which the preliminary determination is negative. Commerce will also instruct CBP to begin collection of cash deposits or bonds on imports of the subject merchandise from Samsung Mexico 90 days prior to the date of publication of the preliminary determination</p> <p>Commerce is currently scheduled to make its final determinations in March 2012.</p>
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China	<p>such wheels are included, whether imported as an assembly or separately. These products are used with both tubed and tubeless tires. Steel wheels, whether or not attached to tires or axles, are included. However, if the steel wheels are imported as an assembly attached to tires or axles, the tire or axle is not covered by the scope. The scope includes steel wheels, discs, and rims of carbon and/or alloy composition and clad wheels, discs, and rims when carbon or alloy steel represents more than fifty percent of the product by weight. The scope includes wheels, rims, and discs, whether coated or uncoated, regardless of the type of coating</p>	<p>On October 27, 2011, the Department of Commerce announced its affirmative preliminary determination in the antidumping (AD) duty investigation of imports of certain steel wheels (steel wheels) from the People's Republic of China (China). Commerce preliminarily determined that Chinese producers/exporters have sold steel wheels at margins ranging from 110.58 to 193.54 percent ad valorem. Commerce preliminarily determined that Chinese producers/exporters have sold steel wheels at margins ranging from 110.58 to 193.54 percent ad valorem. As a result of this preliminary determination, Commerce will instruct U.S. Customs and Border Protection to collect a cash deposit or bond based on these preliminary rates. Commerce is currently scheduled to make its final determination in March 2012.</p>
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**Results of final investigation**

Country Concerned	Matter involved	Status of proceeding
China	<p>The merchandise covered by these investigations is multilayered wood flooring, composed of an assembly of two or more layers or plies of wood veneers in combination with a core. The core may be composed of hardwood or softwood veneer, particleboard, medium-density</p>	<p>On October 12, the Department of Commerce announced its affirmative final determinations in the AD and CVD investigations of imports of multilayered wood flooring from the People's Republic of China. Commerce determined that Chinese producers/exporters have sold multilayered wood</p>

	<p>fiberboard, high density fiberboard, stone and/or plastic composite, or strips of lumber placed edge-to-edge. Multilayered wood flooring is typically manufactured with a “tongue-and-groove” construction. These products are generally used as the floor in residential or commercial building, as well as in schools, showrooms, gymnasiums and other constructions</p>	<p>flooring in the United States at dumping margins ranging from zero to 58.84 percent. Commerce also determined that Chinese producers/exporters have received countervailable subsidies between 0.33 (de minimis) and 26.73 percent ad valorem. As a result of the final AD determination, Commerce will instruct CBP to continue to collect cash deposits or bonds equal to the weighted-average dumping margins, adjusted for export subsidies found in the final determination of the companion CVD investigation. The ITC is currently scheduled to issue its final injury determinations on or before November 22, 2011.</p>
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**II. 2 Some prominent issues under trade remedies**

**II.2 (a) US-China probable dispute over solar products**

On November 9, 2011, Following the early assessment, six ITC members unanimously decided to continue investigating the alleged subsidisation and dumping of imports of crystalline silicon photovoltaic (CSPV) cells and modules from China.

During December, 2011, United States Trade Representative Ron Kirk announced that the United States is requesting that the World Trade Organization establish a dispute settlement panel to address China’s imposition of antidumping (AD) duties and countervailing duties (CVD) on imports of chicken “broiler products” from the United States. China imposed these duties in August and September of 2010, claiming that U.S. broiler products were subsidized and sold at less than fair value (i.e., “dumped”) into the Chinese market. US claims that prior to the imposition of these duties, the United States was the largest exporter of broiler products to China. Since the imposition of duties, U.S. exports have fallen by nearly 90 percent.

Solar manufacturers have also taken up the call against China’s domestic support policies, with some of these producers reportedly banding together to prepare a US trade complaint against

China. According to Bloomberg, the case will soon be filed at the US Department of Commerce and the US International Trade Commission, and would be one of the largest targeting Beijing.<sup>45</sup>

## **II. 2 (b) EU's action against imports of US bioethanol**

On November 25, the European Commission announced that it had begun anti-dumping and countervailing duty proceedings for US bioethanol imports. The Commission's investigations informed by applicable WTO agreements follow a formal complaint that was filed by the EU bioethanol industry association, ePure, in October. According to sources in Brussels, the case has been in the works for a long time. Most analysts there believe that sufficient evidence will be found to justify the imposition of countervailing duties.

In its original complaint, ePure - also known as the European Producers Union of Renewable Energy Association - alleged that US tax credits allowed American exporters to cut their EU selling price by about 40 percent, thereby illegally dumping into the EU market. The industry association also claimed that this led to a 500 percent rise in US exports to the EU between 2008 and 2010. ePure expects that these imports will, in 2011 alone, have doubled from their 2010 levels.

ePure, whose members produce 80 percent of Europe's bioethanol, explained in their statement that the subsidisation policy has allowed the US to become the world's largest ethanol producer. The unfairly low prices that the producers can adopt as a consequence have had a direct and negative impact on the EU industry, the association argued.

The US group on the other hand argues that argued that the EU complaint was misguided, since "domestic ethanol producers are not eligible for the tax incentive referenced by the Europeans." RFA added that the "tax incentive is specifically made available to gasoline blenders, marketers and other end users. Therefore, US ethanol producers cannot nor should be the focus of any European action." Nonetheless, the US industry group responded to the EU ethanol investigation by guaranteeing co-operation between US producers and the EU, an important requirement under the WTO anti-dumping agreement. This requirement means to ensure that responding exporters i.e, US manufacturers cannot keep investigations hostage by refusing to submit relevant information for the investigations. Otherwise, the investigating authorities may have to rely on incomplete information, which could work to the disadvantage of the exporters.

Brazil, a main ethanol producer and exporter, is expected to welcome the move, sources told Bridges. Lately the South American country has lost much of its EU market-share to the powerful US industry.

According to Bridges Weekly, the European Commission's announcement comes at a time where the EU has repeatedly found itself under fire for its biofuels import policy. The EU Renewable Energy Directive, in particular the incorporated sustainability standards, are considered discriminatory and unfair by a number of biofuel-producing countries. These standards qualify which biofuels may be considered "sustainable," taking into account greenhouse gas emission savings and biodiversity conservation achievements. Only the

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<sup>45</sup> *To Protect American Jobs, United States Announces Next Step in Dispute Against China*, (December, 18, 2011), available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/december/protect-american-jobs-united-states-announces-nex>

sustainable fuels are considered renewable energy, making them eligible for certain financial support by EU member states.<sup>46</sup>

## **II. 3 Government Procurement**

At the 8th Ministerial Conference of the WTO, on December 15, 2011, USTR Ron Kirk welcomed the conclusion of the revision of the WTO Government Procurement Agreement (GPA) that will provide new opportunities for U.S. suppliers of goods and services to secure government procurement contracts in numerous additional markets in WTO Member economies. He stated that with the revision of the WTO Government Procurement Agreement, suppliers in the United States will have the opportunity to support more American jobs with broader, deeper access to government procurement work in many of our partner economies.

Currently, 42 WTO Members are covered by the GPA. Kirk also noted that the revised agreement will provide a strong foundation for other WTO Members to join the GPA providing even more market access and indicate that the United States is ready to work to actively encourage new accessions. Kirk particularly called on China to accelerate its accession to the GPA. United States urged China to cover state-owned enterprises, add more sub-central entities and services, reduce its thresholds for the size of covered contracts, and remove other broad exclusions.

United States speculates the following benefits from the revised scheme of Government Procurement under the WTO rules:

**New Opportunities with Central Government Entities-** The revised agreement would give U.S. suppliers access to more than 150 additional central government entities in European Union Member States, including Bulgaria, Finland, France, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Slovakia, Romania, and Sweden. U.S. suppliers would also gain access to a number of additional central government entities in other GPA Parties, including in Aruba, Hong Kong, Israel, Liechtenstein, Korea, and Switzerland. U.S. suppliers will also gain new market access through the reduction of thresholds, the monetary value below which contracts are not covered in several Parties, including Israel, Japan and Aruba.

**New Opportunities with Sub-Central Government Entities-** GPA Parties including Japan, Korea, and Israel have added a number of sub-central entities. Canada is providing access to its provinces for the first time under the revised GPA.

**New Opportunities with Government Enterprises-** The GPA Parties would also expand the government enterprises that they cover under the GPA. This would include new enterprises in Israel such as the Environmental Services Company and development companies, as well as new entities from Japan, Korea, Liechtenstein and Chinese Taipei.

**New Opportunities in Services Sectors-** Already-competitive U.S. services suppliers would find new opportunities with the addition of more than 50 categories of services in Aruba, Hong

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<sup>46</sup> ICTSD reporting; “*EU Opens Dumping, Anti-Subsidy Probes into U.S. Bioethanol,*” BUSINESSWEEK, (November, 29, 2011); “*EU opens investigation into U.S. bioethanol subsidies,*” REUTERS, (November, 25, 2011), Bridges Weekly Trade News Digest, volume 15 Number 41, 30th November 2011

Kong, Israel, Japan, Korea, Singapore, and Switzerland. This includes complete coverage of the telecommunications sector in several Parties.

**Phase-out of Israel's Requirements for Domestic Content-** A major achievement of the GPA negotiations has been Israel's commitment to phase out the offsets requirements for domestic content that it has maintained since 1981. Over 15 years, Israel would progressively reduce its application of these offsets to zero from the current 20%, reduce the number of entities that apply offsets, and set a threshold below which offsets will not be applied.

**Support for Modern Business Practices in Government Procurement-** The modernized text updates the GPA to incorporate current procurement practices, in particular through the use of electronic procurement in GPA member countries. It significantly clarifies GPA requirements, increases transparency of procurement practices through electronic methods, provides more flexibility for procuring entities, especially when buying commercial (off-the-shelf) goods and services, and promotes the adoption of such practices in potential future member countries. The revised GPA specifies the transitional measures for developing countries, which should facilitate the accession of developing countries to the GPA.

**U.S.-EU Bilateral Procurement Forum-** In conjunction with the conclusion of the GPA revision, the United States and the European Union also decided to establish a Bilateral Procurement Forum that would provide an opportunity to expand our procurement relationship on a bilateral basis. Under this Forum, we will take up procurement regulatory issues and international procurement issues, such as China's accession to the GPA, a key priority for both sides. In addition, the United States and the EU would explore the possible expansion of procurement commitments, primarily on a national treatment basis. The United States would only cover procurement of sub-central entities, such as states, with that entity's authorization.

**Maintaining Priorities for Small and Minority Firms-** Under the revised Government Procurement Agreement, the United States maintains all of its current exclusions and exceptions, including its exclusion of set-asides for small and minority firms.<sup>47</sup>

## **II. 4 SPS related measures**

According to a report published by Food and Drug Administration dated October 28, 2011, the FDA is warning consumers not to eat Turkish pine nuts purchased from unlabeled plastic bulk containers at Wegmans Food Markets, Inc. or any food items they may have prepared using the bulk Turkish pine nuts, such as pesto, salads, or baked goods. According to the Department, the pine nuts may be contaminated with Salmonella Enteritidis, an organism that can cause serious and sometimes fatal infections. This type of infection is most dangerous to young children, frail or elderly people, and others with weakened immune systems.

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<sup>47</sup>*Benefits for the United States from the Revised WTO Government Procurement Agreement*, (December, 8 2011), available at: <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/december/benefits-united-states-revised-wto-government-procur>

*United States Welcomes Opportunities for U.S. Suppliers under Newly Revised WTO Government Procurement Agreement*, (December, 20, 2011), available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/december/united-states-welcomes-opportunities-us-suppliers>

According to the Centers for Disease Control and Prevention (CDC) at least 43 illnesses have been reported in California, Maryland, New York, New Jersey, Pennsylvania, Virginia, and Washington. No deaths have however been reported. FDA has warned that the consumers should check their homes, including refrigerators and freezers, for Turkish pine nuts purchased from bulk bins at Wegmans stores between July 1, 2011 and October 18, 2011. Consumers should not eat these pine nuts and should throw away or return the product to Wegmans for a refund.<sup>48</sup>

## Part III

### Measures affecting exports and imports

#### III 1 Customs

(a) On Oct. 25, 2011 the U.S. Customs and Border Protection published the final rule in the Federal Register amending the agency's regulations to add provisions for the use of statistical sampling and offsetting overpayments and underpayments of duty, fees and taxes under certain conditions. It also allowed importers to use the same techniques in their internal company customs-related operations.

**About the amended system-** Statistical sampling, a method already in practice but not explicitly provided for in CBP regulations, is an important tool available to both the public and CBP auditors for examining customs entries. This method allows evaluation results of a selected reduced number of items to be applied to the entire universe of records, permitting conclusions to be drawn about the universe with a high degree of accuracy. The use of statistical sampling techniques is a practice recognized in both government and industry. When statistical sampling is properly applied, it produces greater efficiency in review processes, reducing cost, and allowing CBP and importers to best use resources to evaluate import operations.

The revisions also define procedures for offsetting (netting) overpayments against underpayments on certain customs entries when identified during CBP audits. However, CBP will consider allowing offset circumstances when discovered during the preparation of importer disclosures which meet the requirements of the prior disclosure regulations (19 USC 162.74).<sup>49</sup>

(b) On October 21, 2011, recent trade legislation, H.R. 2832, was signed into law, which changed the merchandise processing fee (MPF) rate for formal entries from 0.21% (.0021) to 0.3464% (.003464), made effective from October 1, 2011. The minimum and maximum fees, \$25 and \$485 respectively, did not change. CBP is currently in the process of modifying its automated systems to accept the new MPF rate of 0.3464%.<sup>50</sup>

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<sup>48</sup> *FDA warns consumers not to eat Wegmans' bulk Turkish pine nuts*, FDA press release, (October, 28, 2011) at: <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm277711.htm>

<sup>49</sup> *Sampling Method and 'Offsetting' Added to CBP Regulations*, (October 27, 2011), available at: [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/national/10272011\\_5.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/10272011_5.xml)

<sup>50</sup> *Merchandise Processing Fee Increase*, (October 26, 2011), available at: [http://www.cbp.gov/xp/cgov/trade/trade\\_programs/entry\\_summary/merch\\_fee\\_incr.xml](http://www.cbp.gov/xp/cgov/trade/trade_programs/entry_summary/merch_fee_incr.xml)

(c) On October 20, the U.S. Customs and Border Protection announced the establishment of two industry-specific centers: the Center of Excellence and Expertise Electronics in Los Angeles and the Center of Excellence and Expertise Pharmaceuticals in New York. The centers, which previously functioned as pilot programs, will continue efforts to increase uniformity of practices across ports of entry, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen critical agency knowledge on key industry practices. Initially, the centers will serve as a single point of processing for businesses enrolled in CBP's trusted shipper programs, the Customs-Trade Partnership Against Terrorism (C-TPAT) and the Importer Self-Assessment (ISA). The centers will also serve as a resource to the broader trade community and to CBP's U.S. government partners. Center personnel will answer questions, provide information and develop trade facilitation strategies to address uniformity and compliance concerns.

The Department believes that by redirecting work involving trusted shippers within the electronics and pharmaceutical industries to centralized, industry-specific locations, ports of entry will be able to more effectively focus resources on high-risk shipments and importers that may pose a danger to U.S. border security, harm the health and safety of consumers, or violate U.S. trade laws and intellectual property rights critical to nation's economic competitiveness. In turn, the approach to trade processing facilitated by the new centers would reduce transaction costs for the trade community, facilitate legitimate trade through risk segmentation, increase agency expertise and deliver greater transparency and uniformity of action within a given industry.<sup>51</sup>

### **III 2 Tariffs**

On October 20, USTR Ron Kirk positively commented on the announcement by the Government of Mexico that it is suspending, the last of the retaliatory tariffs it had imposed more than two years ago on an array of U.S. products such as apples, certain pork products, and personal care goods. The tariffs were imposed as a result of a cross-border trucking dispute between our two countries. On October 14, the U.S. Federal Motor Carrier Safety Administration (FMCSA) issued operating authority to a Mexican trucking company under the provisions of a memorandum of understanding between the U.S. Department of Transportation and the Mexican Secretariat of Communications and Transportation. On July 8, two days after the MOU was signed between the transportation ministries, Mexico suspended the first 50 percent of its retaliatory tariffs; they had committed to lift the remaining duties on goods exported from the United States within five business days after the first Mexican carrier received operating authority.<sup>52</sup>

### **III 3 Imports Restrictions**

On December 19, 2011, the Senate Finance Committee Chairman praised news that Japan has initiated steps to improve access for U.S. beef. Japan's conduct was a part of a review by Japan's Food Safety Commission (FSC) to reassess Japan's beef policies. Finance Committee

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<sup>51</sup> *CBP Launches Centers to Facilitate Processing of Imports*, (October 20, 2011), available at: [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/national/10202011\\_2.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/10202011_2.xml)

<sup>52</sup> *Ambassador Kirk Comments on Mexico's Elimination of Retaliatory Tariffs on U.S. Exports*, Press release, October 2011, available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/october/ambassador-kirk-comments-mexicos-elimination-retal>

Chairperson led efforts urging Japan to lift its unscientific restrictions on U.S. beef. Despite the World Organization for Animal Health's declaration that U.S. beef from cattle of all ages is safe, Japan currently limits imports of U.S. beef to beef from cattle aged twenty months or younger. The chairperson remarked:

"There's no doubt about it – American beef is 100 percent safe, top-quality and the best in the world. We've been fighting long and hard to tear down Japan's unfounded restrictions on beef because they hurt hardworking ranchers in Montana and across the U.S. We are encouraged by Japan's initial step to do so. As Japan moves forward with its review process, we will be watching closely to ensure its beef policies are based on science and consistent with international standards, so U.S. ranchers can compete on a level playing field."<sup>53</sup>

### **III 4 Environmental Policy**

(a) On December 13, USTR Ron Kirk and Environmental Protection Agency EPA Administrator Lisa Jackson met with the Trade and Environmental Policy Advisory Committee (TEPAC). With members representing a wide range of stakeholders from NGOs to the private sector and several think tanks, TEPAC is a policy advisory committee under USTR, tasked with providing advice to USTR and EPA staff on the implementation and negotiation of trade and environment policies.

The TEPAC meeting began with Ambassador Kirk and Administrator Jackson updating stakeholders on recent achievements, including the passage of three historic trade agreements with Panama, Colombia, and Korea, as well as recent progress made on the cutting-edge Trans-Pacific Partnership (TPP) negotiations. Additionally, Ambassador Kirk emphasized the recent Asia-Pacific Economic Cooperation (APEC) green growth results on Environmental Goods and Services (EGS) and illegal logging at the Honolulu leaders' meetings in November. Both Administrator Jackson and Ambassador Kirk emphasized the importance of revitalizing trade and environment collaboration through the NAFTA Free Trade Commission and the North American Council on Environmental Cooperation.

Additionally, Ambassador Kirk looked to the future on progress set to be made at the WTO Ministerial in Geneva, Switzerland. The United States reiterated its objective of looking towards the eighth ministerial; to turn the page on the Doha Round of negotiations while ensuring that environmental priorities remain a top focus.<sup>54</sup>

(b) The USTR Green Paper on Conservation and the Trans-Pacific Partnership, released in December 2011, states that the United States believes that a TPP Environment chapter can facilitate increased regional trade while supporting and enhancing existing conservation efforts

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<sup>53</sup> *Baucus Praises Japan's Initial Steps to Lift Unscientific Restrictions and Increase Access for U.S. Beef, US Senate Committee on Finance*, (Dec, 19, 2011), available at: <http://finance.senate.gov/newsroom/chairman/release/?id=d2b2a5f7-ca58-4fca-9736-fc020e588487>

<sup>54</sup> *Ambassador Ron Kirk Discusses Environmental Initiatives in U.S. Trade Policies at Advisory Committee Meeting*, (December, 18 2011), available at: <http://www.ustr.gov/about-us/press-office/blog/2011/december/ambassador-ron-kirk-discusses-environmental-initiatives-us>

associated with natural resources and protecting and conserving biodiversity in the Asia-Pacific region. The United States proposed a TPP conservation framework including:

- An obligation to maintain, in national laws, regulations or measures, prohibitions against trading across TPP borders in products harvested or exported in violation of national laws that seek to protect wildlife, forest or living marine resources. Such provisions would reflect and enhance recent trends in a number of countries to restrict trade in products that have been illegally obtained.
- Prompt reporting or information sharing related to trade among TPP parties of products within the scope of anti-trafficking obligations, including information-sharing for law enforcement purposes.
- Mechanisms for cooperation among TPP regulatory and law enforcement authorities in implementing anti-trafficking obligations, including: creation of working groups; exchanges of enforcement personnel; joint law enforcement meetings, exercises and investigations; and participation in and establishment of regional law enforcement networks.
- Enhanced partnership with non-governmental organizations, the private sector, scientific organizations and local communities to address illegal trade in wildlife and wild plant products and promote innovations that improve supply chain management.

The United States has proposed that these general commitments be supplemented with specific provisions in following three areas:

**Wildlife:** The United States believes it is critical that the TPP directly address the problem of trade in these resources through obligations that complement implementation of measures under CITES to which all TPP countries are parties including through full implementation of species-specific CITES resolutions and other appropriate measures to protect these species.

**Marine Fisheries:** The United States and other TPP countries have proposed TPP disciplines on subsidies that contribute to overcapacity and overfishing, potentially lighting the way for a WTO multilateral agreement on fisheries subsidies. With respect to IUU fishing, the United States has proposed obligations to support measures being developed or implemented through relevant regional fisheries management organizations and other arrangements in the region, such as catch documentation schemes and port State measures. Shark populations in the region are at particular risk, and the United States has proposed specific obligations in this area, such as actions to deter “shark-finning” practices.

**Timber (Illegal Logging):** The United States has proposed specific obligations for the timber sector, including enhanced coordination through information exchange between government forestry and trade officials, law enforcement cooperation, and opportunities to partner with industry and civil society groups related to implementation and enforcement of national laws. These commitments could result in strengthening government capacities and policy and institutional frameworks for forest conservation, management, production and trade, as well as increasing public participation and transparency in forest planning and decision-making.<sup>55</sup>

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<sup>55</sup> *USTR Green Paper on Conservation and the Trans-Pacific Partnership*, Press release, (December, 16, 2011), available at: <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/ustr-green-paper-conservation-and-trans-pacific-partnership>

### **III 5 Intellectual Property**

(a) On December 20, 2011, USTR released a report titled, Out-of-Cycle Review of Notorious Markets. The Notorious Markets List identifies selected markets, including ones on the Internet that are reportedly engaged in piracy and counterfeiting, according to information submitted to the USTR in response to a request for comments. According to the report, these are marketplaces that have been the subject of enforcement action or that may merit further investigation for possible intellectual property rights infringements. The scale and popularity of these markets can cause economic harm to U.S. and other IP right holders. In addition, products sold at these markets may pose possible health and safety risks to consumers.

**Legal background-** USTR has identified notorious markets in the Special 301 Report since 2006. In 2010, USTR announced that it would begin publishing the Notorious Market List as an “Out of Cycle Review” separately from the annual Special 301 Report. USTR published the first such list in February 2011. The present list is the result of a second Out-of-Cycle review of notorious markets, which followed a request for comments initiated in September 22, 2011. The Notorious Markets List does not purport to reflect findings of legal violations, nor does it reflect the United States Government’s analysis of the general climate of protection and enforcement of intellectual property rights in the countries concerned. A broader analysis of IPR protection and enforcement is presented in the annual Special 301 Report, published at the end of April each year.

On page 5 of the report, India’s famous market- **New Delhi** finds a place in the list of Notorious markets, 2011. The report specifically states: Nehru Place (New-Delhi, India) is reportedly one of the many markets in major cities throughout India that are known for dealing in large volumes of pirated software, pirated optical media containing movies and music, and counterfeit goods.<sup>56</sup>

(b) A bipartisan bill in the US House of Representatives intended to curb online copyright piracy has sparked major controversy among Internet service providers (ISPs) and civil society in recent weeks, who worry that the move could curtail innovation and turn (ISPs) into copyright “police.” The bill, detractors say, would push control too far into the hands of the content industry and the government, with potentially serious repercussions for freedom of expression and the openness of the Internet.

The Stop Online Piracy Act (SOPA) is the House counterpart to the US Senate’s pending PROTECT-IP Act, which targets “rogue” websites that are “dedicated to infringing activities.” The legislation places special emphasis on websites registered outside the US. SOPA, also known as the E-PARASITE Act (Enforcing and Protecting American Rights Against Sites Intent on Theft and Exploitation Act), was introduced in the House during October, 2011, and would allow copyright and trademark owners to obtain court orders to block foreign websites accused of hosting infringing content. Such websites could lose access to online advertising networks and payment services, such as Google AdSense and PayPal. According to the bill’s language, sites that enable or “facilitate infringement” would also be targeted.

#### **Mixed response to the bill**

The Screen Actors Guild lauded the bill, saying that “left unchecked, these rogue websites threaten the vitality of the online marketplace by stealing the work of American innovators and

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<sup>56</sup> *USTR Out-of-Cycle Review of Notorious Markets*, (December 20, 2011), USTR

undermining legitimate business.” Other supporters of the bill include the Motion Picture Association of America, the Council of Better Business Bureaus, the US Chamber of Commerce, and the Recording Industry Association of America.

However, in October 31, letter to Congress, a coalition of tech industry groups whose members include Google and Yahoo! called SOPA “an alarming step backwards in Internet policy” that would “create a new, unprecedented private right of action regime for intellectual property.” In a similar vein, digital rights group Free Press warned that the bill “lets a corporation like Sony Music or Viacom become the Internet’s judge, jury and executioner.”<sup>57</sup>

## Part IV

### Trade policy by sector

#### IV 1 Agriculture

##### **IV 1 (a) Policy developments at International level**

**US position on Fisheries-** At the 8<sup>th</sup> Ministerial Conference during December, 2011, the United States joined a number of WTO Members in a Ministerial statement expressing continued support for an ambitious outcome on fisheries subsidies in WTO negotiations. US also showed its readiness to explore additional avenues for results even in the face of continued impasse in the Doha Round of world trade talks.

The text of the Ministerial Statement presented on behalf of- Argentina, Australia, Chile, Colombia, Ecuador, New Zealand, Norway, Peru, United States could be read as:

1. Today we reiterate our commitment to agreeing ambitious, effective disciplines on fisheries subsidies. In this context we press for the prohibition of harmful subsidies to the fishing sector that contribute to overfishing and over capacity and recognize the importance of appropriate and effective special and differential treatment for developing countries. We stand ready and urge other members to join in recommending our work on fisheries subsidies, including by more fully exploring different negotiating approaches consistent with the Doha and Hong Kong Ministerial mandates.

2. The current Doha negotiating impasse should not become an excuse for doing nothing, because we are not dealing with a static problem. Subsidies continue to be a major contributing factor in the depletion of the global fish stocks. Billions of dollars a year are spent by governments on harmful fisheries subsidies, amounting to tens of billions of dollars that governments have used to underwrite the costs of fishing activity since Doha negotiations started. At the same time the percentage of global fish stocks considered by the FAO to be fully exploited, overexploited, depleted, or in recovery has increased from 75% in 2002 to 85% by 2010.

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<sup>57</sup> ICTSD reporting; “*Rogue websites’ bill runs into more opposition,*” *AFP*, 31 October 2011; “*Debate on New Copyright Enforcement Bill Heats Up,*” *PC World*, (November, 4, 2011), *Bridges Weekly Trade News Digest*, Volume 15, Number 38, 9th November 2011, available at: <http://ictsd.org/i/news/bridgesweekly/117945/>

3. The problem is not just an environmental one; it is also a question of trade, economics and development. Subsidies create serious distortions in global fish markets leading to less revenue for fishermen and serious impacts on food security and livelihoods, particularly in developing countries. Eliminating harmful subsidies that result in diminished global fish stocks could also ensure the fisheries sector continues to thrive and provide employment for all countries including in artisanal fisheries of developing countries.

4. Given this situation, we urge all WTO members to reform and eliminate harmful fisheries subsidies that contribute to overfishing and overcapacity through individual, joint, regional or multilateral initiatives. Effective disciplines on fisheries subsidies will be a win for trade, a win for the environment and a win for development.

The issue of fisheries subsidies has been contentious as countries such as Japan and other developing countries are in favor of the same. The opposing stance of these countries including the United States which firmly believes in elimination of such subsidies could take new turns of policy changes in the coming months. The progress of the same shall be highlighted in the next report.<sup>58</sup>

### **US-Cotton initiatives for LDCs**

During December 2011, United States Trade Representative Ron Kirk and Trade Ministers and WTO Ambassadors from Benin, Burkina Faso, Chad, and Mali, the “Cotton Four” or “C-4” countries held a meeting to discuss cotton issues, including new initiatives announced by the United States. U.S. proposals included efforts to help boost trade for least developed country members of the WTO, particularly African cotton-producing countries, including expansion of duty-free-quota-free treatment for upland cotton grown in LDCs, multi-year renewal of the West Africa Cotton Improvement Program (WACIP), a successful technical assistance program for West African cotton producing countries and additional help for countries seeking to make maximum use of existing U.S. trade preference programs such as the African Growth and Opportunity Act (AGOA).

The United States reiterated that it is taking important, new steps to provide duty-free, quota-free treatment for imports of Upland cotton fiber from LDCs. US plans to first launch the review process to consider adding Upland cotton fiber to the list of products eligible for duty-free treatment for LDCs through GSP. Second, Congressional action will be sought for to provide quota-free access for LDCs on all Upland cotton fiber tariff lines. US believes that these steps, combined with current historically low U.S. subsidies for domestic cotton production, would contribute measurably to the viability of export-oriented cotton production in West African countries and other LDCs

This new cotton assistance program for the C-4 countries will be introduced upon the expiration of the existing program in April 2012. The United States will provide significant resources – up to \$16 million over four years (subject to the outcome of the budget process) for the new program whose key elements will be the use of a Development Credit Authority guarantee and Public Private partnership to drive private debt to investment funds and organizations that will make debt and equity investments in small- and medium-sized enterprises operating in agricultural value chains in West Africa. The program will continue capacity-building efforts and

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<sup>58</sup> *At 8th WTO Ministerial Conference, United States Urges Continued Work on Fisheries Subsidies, Press release, (December, 20, 2011) available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/december/8th-wto-ministerial-conference-united-states-urge>*

work to improve the efficiency of the cotton sector in the C-4. The initiative would create a more scaled outcome by leveraging private sector cotton initiatives, catalyzing increased commercial investment for cash crops, particularly cotton, and strengthening extension services to increase the adoption of improved techniques and technology and expand market linkages in the cotton sector.

However, critics claimed that, as the US is a net cotton exporter, the measures would do little to address the concerns expressed by West African cotton producers. Romain Benicchio, policy advisor for Oxfam observed, “The main problem has never been US cotton market access, but US cotton subsidies and dumping”.<sup>59</sup>

#### **IV 1 (b) Policy Developments at domestic level**

(a) The issue of farm bill, an omnibus legislation, projected to cost US\$480 billion over the period of 2012 period, with funds going primarily towards the food stamp programme, has been a contentious issue in the United States. On November 23, 2011 it was revealed that the Congressional leaders quit on the effort to curb farm spending, in order to tackle the deficit problem. Under the now defunct farm bill negotiations, US\$15 billion in cuts would come from programmes subsidising or insuring particular crops and US\$8 billion from conservation and nutritional programmes.

Earlier, the bipartisan Super Committee which was tasked with shaving US\$1.2 trillion over a 10 year period out of an estimated \$40 trillion federal budget. According to several media sources, its failure to reach a compromise means US\$1.5 trillion in automatic across the board cuts - affecting politically sensitive programmes such as national defence, Social Security, and Medicare.

In recent weeks, many observers conceded the inevitability of reduced direct payments in exchange for a strengthened crop and revenue insurance programme that would make for up to 90 to 95 percent of losses on commodity crops. The process for updating the Farm Bill still remains murky, with Hoefner commenting that “nobody knows” where it might be headed. Observers in Washington suggested several possibilities - a farm bill written in 2013, with an extension of the current legislation passed to hold farmers over; a bill written and passed in 2012 through the usual process; or a bill reached through an alternative compromise on the deficit. But no consensus has been reached.

Amidst the volatile political situation in the US with respect to the farm bills, there have been scepticism of potential violations at the WTO level as well. Some have observed a complete absence of WTO rules from the Congressional negotiating process. Hoefner told Bridges that the attitude of those writing the farm legislation in recent weeks towards the WTO was “so what!” Therefore, the possibility of the US eliminating direct payments and shifting towards ‘amber’ box, or more trade-distorting support, is an area of concern for some WTO members, as the US Congress might be quietly aware.

In the absence of a final Doha Round agreement, US spending must remain under the Uruguay Round Agreement on Agriculture limits. Hebebrand has argued that the limits would not be the

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<sup>59</sup> *United States, “Cotton Four” Countries Celebrate New U.S. Cotton Initiatives, Continued Partnership at 8th WTO Ministerial Conference*, Press release, (December, 8, 2011), available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/december/readout-bilateral-meeting-between-ustr-ron-kirk--1>

“first consideration” for US lawmakers, even so, adhering to those limits would still leave lawmakers “a lot of leg room.”<sup>60</sup>

(b) On October 31, the Agriculture Secretary Tom Vilsack announced \$44.6 million payments for 156 advanced biofuel producers across the country to support the production and expansion of advanced biofuels. In his words, “This funding will help local producers increase the production and availability of renewable energy and thus help our nation begin to reduce its reliance on foreign oil. Just as importantly, USDA's support will help to further develop the nation's growing biofuels industry and generate green jobs and economic growth.”

The funding is being provided through USDA's Bioenergy Program for Advanced Biofuels program. Under this program, payments are made to eligible producers to support and ensure an expanding production of advanced biofuels. Payments are based on the amount of biofuels a recipient produces from renewable biomass, other than corn kernel starch. Eligible examples include biofuels derived from cellulose; crop residue; animal, food and yard waste material; biogas (landfill and sewage waste treatment gas); vegetable oil, and animal fat. Through this and other programs, USDA is working to support the research, investment and infrastructure necessary to build a biofuels industry that creates jobs and conserves natural resources across America.<sup>61</sup>

#### **IV 1 (c) Proposed Impact of trade agreement on agriculture**

In the US, it is estimated that the “Farm exports help support more than 1 million American jobs. This year and next, U.S. agricultural exports are on track to reach new highs, leading to a trade surplus of over \$42 billion, eight times greater than five years ago. When implemented, the three trade agreements will increase farm exports by an additional \$2.3 billion—supporting nearly 20,000 American jobs—by eliminating tariffs, removing barriers to trade and leveling the playing field for U.S. producers.”<sup>62</sup>

On October 5, 2011, the Agriculture Deputy Secretary Kathleen Merrigan announced that USDA will be investing in 55 specialty crop block grants that will fund 740 initiatives across the United States and its territories. The grants will help strengthen the market for specialty crops such as fruits, vegetables, tree nuts, dried fruits, horticulture and nursery crops, including floriculture.

The Specialty Crop Block Grant Program for fiscal year 2011 supports initiatives that:

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<sup>60</sup> *Failure of US ‘Super Committee’ Puts Farm Bill Process on Hold*, Bridges Weekly Trade News Digest, Volume 15, Number 40, (November 23, 2011), available at: <http://ictsd.org/i/news/bridgesweekly/119327/>

<sup>61</sup> *Agriculture Secretary Vilsack Announces Funding to Expand the Production and Availability of Advanced Biofuels*, (October 31, 2011) available at: [http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0466.xml&navid=NEWS\\_RELEASE&navtype=RT&parentnav=LATEST\\_RELEASES&deployment\\_action=retrievecontent](http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0466.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&deployment_action=retrievecontent)

<sup>62</sup> *Statement from Agriculture Secretary Tom Vilsack on Signing into Law of Korea, Colombia and Panama Trade Agreements and Trade Adjustment Assistance*, (October 21, 2011) available at: [http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0453.xml&navid=NEWS\\_RELEASE&navtype=RT&parentnav=LATEST\\_RELEASES&deployment\\_action=retrievecontent](http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0453.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&deployment_action=retrievecontent)

- Increase nutritional knowledge and specialty crop consumption
- Improve efficiency within the distribution system and reduce costs
- Promote the development of good agricultural, handling and manufacturing practices while encouraging audit fund cost-sharing for small farmers, packers and processors
- Support research through standard and green initiatives
- Enhance food safety
- Develop new/improved seed varieties and specialty crops
- Control pests and diseases
- Create organic and sustainable production practices
- Establish local and regional fresh food systems
- Expand food access in underserved/food desert communities

Such efforts are in furtherance to the American Jobs Act which aims to increase the American jobs through increased spending in different sectors.<sup>63</sup>

## **IV 2 Rural Development**

(a) On October 5, 2011, Agriculture Secretary Tom Vilsack announced funding for rural water projects to create jobs and improve rural water and wastewater systems in 26 states. Under this program, Town of Marion, Miss., will receive \$3.7 million to provide sewer treatment for residents of rural Lauderdale County. USDA funds will be used to install approximately 14 miles of sewer lines and three lift stations for sewer treatment at reasonable rates and terms. In Texas, Skywater Water Supply Corporation in Castro County will receive \$1 million to build a new water system. The \$66.7 million in loans and \$48.9 million in grants are provided by USDA to help rural communities build and upgrade rural water systems. The announcement was also a part of a series of rural infrastructure investments supporting the goal of the American Jobs Act, which makes critical infrastructure improvements to put people back to work immediately.<sup>64</sup>

(b) On October 3, 2011, Agriculture Secretary Tom Vilsack announced funding awards that will support rural communities, help create jobs and build regional economies in 34 states. Projects funded as part of USDA's regional initiative will focus on strategic planning activities to improve economic conditions in rural areas, particularly in underserved communities. The initiative will help communities to connect and cluster their economies geographically based on their self-identified strengths, so they are able to increase productivity and build more robust, sustainable economies. Under the Rural Economic Development Loan and Grant program, USDA provides grants to local utilities which use the funding to establish revolving loan funds. Loans are made for projects that will create or retain jobs in rural areas. For example, in Paris, Tenn., the Paris Board of Public Utilities has been selected to receive a \$740,000 loan that will be used

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<sup>63</sup> *USDA Awards Specialty Crop Grants to Strengthen Agricultural Economy*, (October 5, 2011) available at: [http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0435.xml&navid=NEWS\\_RELEASE&navtype=RT&parentnav=LATEST\\_RELEASES&deployment\\_action=retrievecontent](http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0435.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&deployment_action=retrievecontent)

<sup>64</sup> *Agriculture Secretary Vilsack Announces Funding to Create Jobs and Improve Rural Water Systems*, (October 5, 2011) at [http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0432.xml&navid=NEWS\\_RELEASE&navtype=RT&parentnav=LATEST\\_RELEASES&deployment\\_action=retrievecontent](http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0432.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&deployment_action=retrievecontent)

to assist the city of Paris, Henry County Medical Center and Bethel University with the construction of a medical imaging center, and a pedestrian foot bridge that will link the center with the main hospital. The project is expected to create 75 jobs and help 30 small local businesses.<sup>65</sup>

### **IV 3 Energy**

#### **IV 3 (a) Policy developments at domestic level**

(a) On December 5, 2011, the U.S. Navy Secretary Ray Mabus and U.S. Department of Agriculture Secretary Tom Vilsack announced that the Defense Logistics Agency (DLA) signed a contract to purchase 450,000 gallons of advanced drop-in biofuel. This is the single largest purchase of biofuel in government history. While the Navy fleet alone uses more than 1.26 billion gallons of fuel each year, this biofuel purchase is significant because it accelerates the development and demonstration of a homegrown fuel source that can reduce America's, dependence on foreign oil.

As part of his energy security goals, outlined in March 2011 in the "Blueprint for a Secure Energy Future," President Obama directed the Departments of Agriculture, Energy and Navy to work together to advance a domestic industry capable of producing "drop-in" biofuel substitutes for diesel and jet fuel. Responding to that challenge, in August 2011, the Secretaries of Agriculture, Energy and Navy announced an intention to invest up to \$510 million during the next three years in partnership with the private sector to produce advanced drop-in biofuel to power military and commercial transportation. While that investment awaits Congressional action, the announcement uses the existing authority of leveraging Defense Department procurement to support this energy security goal.<sup>66</sup>

(b) On November 30, 2011, the U.S. Department of Agriculture's (USDA) Risk Management Agency (RMA) announced a new pilot program of insurance for camelina beginning with the 2012 crop year. Camelina is an oilseed crop with the potential to create new renewable energy markets in the United States. It is projected to generate rural jobs and decrease America's dependence on foreign oil. Camelina, an oilseed, is a rotation crop for wheat that can be established on marginally productive land. Biofuel from camelina is an ideal jet fuel substitute. USDA's Agricultural Research Service (ARS) scientists have long-term studies underway to examine ways to use camelina as a bioenergy crop for producing jet fuel for the military and the aviation industry. In addition, earlier this year USDA announced two Biomass Crop Assistance Program (BCAP) project areas devoted to developing camelina as biofuel in several states, including Montana.<sup>67</sup>

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<sup>65</sup> *Secretary Vilsack Announces Investments to Support Economic Development and Job Creation in Rural America*, (October 3, 2011), at: [http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0429.xml&navid=NEWS\\_RELEASE&navtype=RT&parentnav=LATEST\\_RELEASES&deployment\\_action=retrievecontent](http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0429.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&deployment_action=retrievecontent)

<sup>66</sup> *Navy Secretary Ray Mabus and USDA Secretary Tom Vilsack Announce Largest Ever Government Purchase of Biofuel*, (December 5, 2011) at: [http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/12/0500.xml&navid=NEWS\\_RELEASE&navtype=RT&parentnav=LATEST\\_RELEASES&deployment\\_action=retrievecontent](http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/12/0500.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&deployment_action=retrievecontent)

<sup>67</sup> *USDA Announces New Insurance Pilot Program for Biofuel-Friendly Oilseed Crop with Potential to Create Jobs, Stimulate Rural Economies*, (November 30, 2011) at:

(c) On November 17, 2011, Deputy Agriculture Undersecretary for Rural Development Doug O'Brien announced that USDA is funding a series of projects to convert biomass to energy through USDA's Rural Energy for America program. (REAP). As a part of the initiative NC-CHP Owner I, LLC of Asheville, N.C., received a \$5 million loan for the installation of a combined heat and power system in Montgomery County. The system will generate steam by using a boiler system powered by wood chips and will also generate 5.25 million kWh of electricity per year. Also in Montgomery County, applicant EWP, LLC will receive a \$146,000 grant to install equipment at an existing hydroelectric plant so it can be reopened. The project has the potential to generate an estimated 2.8 million kWh per year.

The announcement concluded the 2011 biomass project funding assistance for a total of 52 projects with just over \$31 million in grant and loan note guarantees through the Rural Energy for America Program. USDA funding is contingent on the recipient meeting the conditions of the grant or loan agreement. REAP grants can finance up to 25 percent of a project's cost, up to \$500,000 for renewable energy systems and \$250,000 for energy efficiency improvements.<sup>68</sup>

### **IV 3 (b) Developments at international level**

On November 25, Beijing announced that it would be launching an investigation into Washington's support of its renewable energy sector. Beijing's probe would cover wind energy, solar, and hydro technology products. The investigation is expected to end by 25 May 2012. The investigation was sparked by a filing from businesses in the renewable energy industry in China. The Ministry of Commerce also stated that if violations of WTO laws were found, the government could potentially file a case at the WTO dispute settlement body.

In response to US investigations into Chinese solar subsidies, leaders from China's biggest solar companies of China publicly rejected the US trade complaint accusing China of dumping solar panels into the US market.<sup>69</sup>

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[http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/11/0498.xml&navid=NEWS\\_RELEASE&navtype=RT&parentnav=LATEST\\_RELEASES&edeployment\\_action=retrievecontent](http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/11/0498.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&edeployment_action=retrievecontent)

<sup>68</sup> *USDA Announces Funding to Convert Biomass to Energy*, (November 17, 2011) at [http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/11/0488.xml&navid=NEWS\\_RELEASE&navtype=RT&parentnav=LATEST\\_RELEASES&edeployment\\_action=retrievecontent](http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/11/0488.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&edeployment_action=retrievecontent)

<sup>69</sup> *Bridges Weekly Trade News Digest*, Volume 15, Number 41, (November, 31, 2011)

## Annex 1

### US-WTO Dispute resolution update

(October-December, 2011)

Source: WTO website- Dispute Settlement (Information on Disputes as per status)

#### 1. Consultations during the review quarter

None

#### 2. Panel established during the review quarter but not yet composed

Title of the dispute	Complainant	Respondent	Provisions involved	Disputed matter	Proceedings & current status
DS422  United States — Anti-Dumping Measures on Shrimp and Diamond Sawblades from China	China	United States	Anti-dumping (Article VI of GATT 1994): Art. 1, <u>5.8</u> , <u>9.2</u> , <u>9.3</u> , <u>9.4</u> , <u>11.3</u> , <u>2.1</u> , <u>2.4</u> , <u>2.4.2</u> GATT 1994: Art. <u>VI:1</u> , <u>VI:2(a)</u> , <u>VI:2(b)</u>	On 28 February 2011, China requested a consultation with the United States regarding the latter's anti-dumping measures on certain frozen warm water shrimp from China. China alleges that the USDOC's use of zeroing in the original investigation and several administrative reviews to calculate dumping margins for the subject imports is inconsistent with the United States' obligations under the above-stated provisions.  On 22 July 2011, China requested complementary consultations with the United States with regard to the zeroing practice by the USDOC in its anti-dumping measures on diamond sawblades and parts thereof from China. China alleges that the USDOC's zeroing practice has artificially created or, at a minimum, inflated dumping margins for the individually investigated respondents. China considers that the zeroing practices in the cited measures are inconsistent with the United States'	On <b>13 October 2011</b> , China requested the establishment of panel.  At its meeting on 25 October 2011, the DSB established a panel. The European Union, Honduras, Japan, Korea, Thailand and Viet Nam reserved their third party rights.

				obligations under the said provisions.	
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### 3. Panel composed during the review quarter

None

### 4. Circulation of panel report during the review quarter

Title of the dispute	Complainant	Respondent	Provisions involved	Disputed matter	Proceedings & current status
DS386  United States — Certain Country of Origin Labelling Requirements	Mexico	United States	Rules of Origin: Art. <u>2</u> Sanitary and Phytosanitary Measures (SPS): Art. <u>5</u> , <u>7</u> , <u>2</u> Technical Barriers to Trade (TBT): Art. <u>2</u> , <u>12</u> GATT 1994: Art. <u>X:3(a)</u> , <u>III</u> , <u>IX</u> , <u>X</u>	The dispute concerns: (i) the US statutory provisions and implementing regulations setting out the United States' mandatory country of origin labelling regime for beef and pork ("COOL measure"); as well as (ii) a letter issued by the US Secretary of Agriculture Vilsack on the implementation of the COOL measure ("Vilsack letter").	On 17 December 2008 Mexico requested consultations, which was further followed by another consultation on May 7, 2009. On <b>18 November 2011</b> , the panel report was circulated. The key findings of the report were:  The Panel determined that the COOL measure is a technical regulation under the TBT Agreement, and that it is inconsistent with the United States' WTO obligations. In particular, the Panel found that the COOL measure violates Article 2.1 of the TBT Agreement by according less favourable treatment to imported Mexican cattle than to like domestic products. The Panel also found that the COOL measure does not fulfil its legitimate objective of providing consumers with information on origin, and therefore violates Article 2.2 of the TBT Agreement.  As regards the Vilsack letter, the Panel found that the letter's "suggestions for voluntary action" went beyond certain obligations under the COOL measure, and that the letter therefore constitutes unreasonable administration of the COOL measure in violation of Article X:3(a) of the GATT 1994. The Panel refrained from reviewing the Vilsack letter under the TBT Agreement, as it found that this letter is not a technical regulation under that agreement.  Further, the Panel determined that Mexico has failed to demonstrate that the COOL measure violates Articles 2.4 (use of existing relevant international standards), 12.3 (take account of special needs of developing country Members) and 12.1 (general special and differential provision) of the TBT Agreement.

					In light of the above findings of violation, the Panel did not consider it necessary to rule on the claims under Article III:4 of the GATT 1994 (national treatment) or on the non-violation claims under Article XXIII:1(b) of the GATT 1994.
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**5. Panel report under appeal during the review quarter**

None

**6. Appellate body report circulated during the review quarter**

Title of the dispute	Complainant	Respondent	Provisions involved	Disputed matter	Proceedings & current status
DS403  Philippines — Taxes on Distilled Spirits	United States	Philippines	GATT 1994: Art. <u>III:2</u>	On 14 January 2010, the United States requested consultations with the Philippines with respect to the taxation of imported distilled spirits by the Philippines. The United States considers that the Philippines' taxes on distilled spirits discriminate against imported distilled spirits by taxing them at a substantially higher rate than domestic spirits. The United States cites a number of specific	<p>The establishment of Panel was made in January, 2010. In pursuance of Article 9.1 of DSU, it was decided that the complaint by the European Union (DS396), would also examine the US complaint.</p> <p>Thereafter the report of the Panel was circulated on August 15, 2011. The Panel found that because imported spirits are taxed less favourably than domestic spirits, the Philippine measure, while facially neutral, is nevertheless discriminatory and thus violates the obligations under the first and second sentences of Article III:2 of the GATT 1994.</p> <p>After its decision to appeal in September 2011, on <b>21 December 2011</b>, the Appellate Body circulated its report to the members.</p> <p>On appeal, the Appellate Body upheld the Panel's finding that each type of imported distilled spirit at issue — gin, brandy, rum, vodka, whisky, and tequila — made from non-designated raw materials, is “like” the same type of distilled spirit made from designated raw materials. As a consequence, the Appellate Body upheld the Panel's finding that the Philippines has acted inconsistently with Article III:2, first sentence, of the GATT 1994 by imposing on each type of imported distilled spirit internal taxes in excess of those applied to the same type of like domestic distilled spirit. The Appellate Body reversed the Panel's finding that all imported distilled spirits made from non-designated raw materials are, irrespective of their type, “like” all domestic distilled spirits made from designated raw materials. However, the Appellate Body upheld the Panel's</p>

				measures in its request.	findings that all imported and domestic distilled spirits at issue are “directly competitive or substitutable” within the meaning of Article III:2, second sentence, of the GATT 1994. The Appellate Body also upheld the Panel's finding that dissimilar taxation of imported distilled spirits, and of directly competitive or substitutable domestic distilled spirits, is applied “so as to afford protection” to Philippine production of distilled spirits. As a consequence, the Appellate Body upheld the Panel's finding that the Philippines has acted inconsistently with Article III:2, second sentence, of the GATT 1994 by applying dissimilar internal taxes to imported distilled spirits and to directly competitive or substitutable domestic distilled spirits, so as to afford protection to domestic production. Finally, the Appellate Body reversed the Panel's finding that the European Union's claim under Article III:2, second sentence, of the GATT 1994 was made in the alternative to its claim under the first sentence thereof, and concluded that the Panel's finding that all imported and domestic distilled spirits are “directly competitive or substitutable products” applied also to the European Union's claim. As a consequence, it concluded that the finding, that the Philippines acted inconsistently with Article III:2, second sentence, of the GATT 1994 by subjecting imported distilled spirits to dissimilar taxation, applied to both the European Union and the United States.
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#### 7. Reports adopted during review quarter for which no further action is required

Title of the dispute	Complainant	Respondent	Provisions involved	Disputed matter	Proceedings & current status
DS399  United States — Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China	China	United States	Protocol of Accession: Art. 16.6, 16.1, 16.3, 16.4 GATT 1994: Art. <u>I:1, II, XIX</u>	On 14 September 2009, China requested consultations with the United States concerning increased tariffs on certain passenger vehicle and light truck tyres (subject tyres) from China. The decision was announced on 11 September	The consultations began in September, 2009 and the panel report was circulated in December 13, 2010. The panel concluded that in imposing the transitional safeguards measure on 26 September 2009 in respect of imports of subject tyres from China, the United States did not fail to comply with its obligations under paragraph 16 of the Protocol and Articles I:1 and II:1 of the GATT 1994. The panel also found that there was no “as such” violation in respect of the US statute implementing the causation standard of paragraph 16 of the Protocol. The matter went to appeal on May 24,

				<p>2009 following an investigation pursuant to section 421 of the Trade Act of 1974 (19 U.S.C. 2451 et seq.). The USITC determined that there was market disruption as a result of rapidly increasing imports of subject tyres from China that were a significant cause of material injury to the domestic industry. Following a Presidential decision additional duties were imposed on subject tyres imports for a three year period in the amount of 35 per cent ad valorem in the first year, 30 per cent ad valorem in the second year and 25 per cent ad valorem in the third year (the tyres measure). This measure took effect on 26 September 2009.</p> <p>(For a detailed summary of contentions in this dispute, refer to the Trade Monitoring report (April-June, 2011)</p>	<p>2011 and the AB report was circulated on September 5, 2011.</p> <p>The Appellate Body upheld the Panel's finding that the USITC did not fail to properly evaluate whether imports from China met the specific threshold under Paragraph 16.4 of China's Accession Protocol of "increasing rapidly". The Appellate found that Paragraph 16.4 requires investigating authorities to assess import trends over a sufficiently recent period, and to determine whether imports are increasing significantly, either in absolute or relative terms, within a short period of time.</p> <p>With respect to the particular causation standard set out under Paragraph 16.4 of China's Accession Protocol, the Appellate Body found that the term "a significant cause" in Paragraph 16.4 of the Protocol requires that rapidly increasing imports make an "important" or "notable" contribution in bringing about material injury to the domestic industry. The Appellate Body explained that an investigating authority can make a determination as to whether subject imports are a "significant" cause of material injury only if it ensures that effects of other known causes are not improperly attributed to subject imports.</p> <p>Turning to China's specific claims of error in relation to the Panel's review of the USITC's causation analysis, the Appellate Body upheld the Panel's finding that the USITC did not err in its assessment of the conditions of competition in the overall US tyres market. The Appellate Body further upheld the Panel's finding that the USITC's reliance on overall coincidence between an upward movement in imports from China and a downward movement in injury factors supported the USITC's finding that rapidly increasing imports from China were a significant cause of material injury to the domestic industry.</p> <p>The Appellate Body also upheld the Panel's finding that China failed to establish that the USITC improperly</p>
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					<p>attributed injury caused by other factors to imports from China. The Appellate Body found that the Panel did not err in its review of the USITC's analysis of the US industry's business strategy and the reasons for certain US plant closures; did not err in concluding that the USITC properly found that imports from China had injurious effects independent of changes in demand; and did not improperly attribute to Chinese imports the effects of imports from third countries. The Appellate Body said it considered the Panel's analysis to have been sufficient particularly given that, under Paragraph 16.4 of the Protocol, rapidly increasing imports from China may be one of several causes that contribute to producing or bringing about material injury to the domestic industry.</p> <p>Finally, the Appellate Body found that the Panel did not act inconsistently with Article 11 of the DSU in its review of the USITC's causation analysis</p> <p>The report by AB was adopted on <b>September 5, 2011</b></p>
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**8. Reports adopted with amendments during the review quarter**

None

**9. Implementation notified by respondent during the review quarter**

Title of the dispute	Complainant	Respondent	Provisions involved	Disputed matter	Proceedings & current status
DS402  United States — Use of Zeroing in Anti-Dumping Measures Involving Products from Korea	Republic of Korea	United States	Anti-dumping (Article VI of GATT 1994): Art. <u>1</u> , <u>5.8</u> , <u>2.1</u> , <u>2.4</u> , <u>2.4.2</u> GATT 1994: Art. <u>VI</u>	On 24 November 2009, Korea requested consultations with the United States regarding their use of zeroing in three anti-dumping cases involving certain products from Korea, namely, stainless steel plate in coils, stainless steel sheet and strip in coils, and diamond sawblades and	On 18 January 2011, the panel report was circulated. the Panel found that the “zeroing” methodology used by the USDOC in calculating the margins of dumping in the three anti-dumping investigations at issue was inconsistent with Article 2.4.2 of the Anti-

			<p>parts thereof.</p> <p>Korea claimed that the effect of the use of zeroing by the US Department of Commerce (USDOC) in these three cases has been either to artificially create margins of dumping where none would otherwise have been found, or to inflate margins of dumping.</p> <p>In its consultation request, Korea alleged that the USDOC's use of zeroing in its final determinations, amended final determinations, and anti-dumping duty orders in the three cases in question was inconsistent with the United States' obligations under the said provisions.</p>	<p>Dumping Agreement, and therefore concluded that the United States had acted inconsistently with its obligations under this provision.</p> <p>At the DSB meeting of 25 March 2011, the United States stated that it intended to implement the DSB recommendations and rulings in a manner that respects its WTO obligations and added that it would need a reasonable time to do so. On 17 June 2011, Korea and the United States informed the DSB that they had mutually agreed on the reasonable period of time for the United States to comply with the DSB recommendations and rulings. With respect to the calculation of certain margins of dumping in the Stainless Steel Plate in Coils from Korea and Stainless Steel Sheet and Strip in Coils from Korea investigations, the reasonable period of time of 9 months, expiring on 24 November 2011 was decided. With respect to the calculation of certain margins</p>
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					<p>of dumping in the Diamond Sawblades and Parts Thereof from Korea investigation, the reasonable period of time allotted was 8 months, which expired on 24 October 2011.</p> <p>On <b>December 19, 2011</b>, the respondent (United States) notified to the DSB about the implementation of the decision.</p>
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**10. Mutually accepted solution on implementation notification**

None

**11. Withdrawal during the review quarter**

None

**Other updates on WTO disputes**

**US-EU Boeing Dispute**

On 1 December, 2011, the EU submitted a report outlining the measures taken by its member states to comply with a 2011 ruling by the WTO’s Appellate Body that had deemed the EU’s subsidies to aircraft manufacturer Airbus illegal. The compliance report is the latest move in a long-standing dispute between Washington and Brussels over airplane subsidies. The ‘twin case’ brought by the EU over the US’ subsidies to Airbus competitor Boeing is currently at the appeals stage

The five-page document lists thirty-six measures of termination and amendments of agreements relating to the EU’s Airbus subsidies. The document further states that Brussels addresses “all models of Airbus covered by the WTO ruling.” However, one EU expert commented to Reuters that this failed to include aid for the Airbus A350, as the original WTO panel had also excluded such measures from its ruling. Some trade observers have cautioned that this exclusion could open the EU to a challenge from Washington.

Washington limited its comments to a brief initial statement acknowledging receipt of the report. Meanwhile, representatives from the US aircraft industry were less guarded in their comments.

Speaking prior to the submission of the compliance document, Boeing officials stressed that the EU was obligated to show that it has already taken steps to comply with the WTO ruling.<sup>70</sup>

Later in December 2011, the U.S. Trade Representative Ron Kirk announced that the United States is requesting that the European Union enter into consultations regarding the notification it made on December 1, 2011, claiming to have fully complied with the World Trade Organization ruling that subsidization of Airbus aircraft is contrary to WTO rules. The United States said that it has reviewed carefully the limited information in that notification. It appears to show that the EU has not withdrawn the subsidies in question and has, in fact, granted new subsidies to Airbus' development and production of large civil aircraft.

The United States is also requesting authorization from the WTO Dispute Settlement Body (DSB) in Geneva to impose countermeasures annually in response to the EU's claim that it fully complied with the ruling in this case. The amount of the countermeasures would vary annually, but in a recent period would have been in the range of \$7-10 billion. This step will preserve U.S. rights, but any actual imposition of countermeasures would not occur until after further WTO proceedings.<sup>71</sup>

The Appellate Body is expected to circulate its report on the Boeing case at the beginning of next year.

### **US-Mexico Tuna Dispute**

On 11 November, at the last meeting of the WTO Dispute Settlement Body, DSB decided to extend the deadline for submitting an appeal on the latest Tuna-Dolphin (DS381) ruling issued in September. In light of the Appellate Body's substantial workload, the US and Mexico had jointly requested an extension of the normally sixty-day period, which otherwise would have expired on 15 November. In accordance with the agreed extension, an appeal will have to be submitted no later than 20 January.

The appeal is very likely as US officials are in consideration of the same. Meanwhile, animal welfare and consumer advocacy groups in Washington urged the US to look into options outside the global trade body for resolving the trade row.

WTO's September decision came under heavy fire from animal welfare groups and consumer protection advocates in the US, to the point where some are now pushing Washington to explore options outside the WTO. On November 4, six animal welfare groups warned in an open letter to US President Barack Obama and US Vice President Joe Biden stating: "[The decision] puts at risk one of the most successful environmental consumer education programs in history, which has helped to reduce dolphin deaths in tuna nets from an estimated 80,000 to 100,000," Earth Island Institute and its fellow advocacy groups are also lobbying for Obama to

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<sup>70</sup> ICTSD reporting. "EU says complies with WTO ruling in Airbus spat with US," REUTERS, 1 December 2011; "UPDATE 2-EU's Airbus compliance omits A350," REUTERS, 2 December 2011

<sup>71</sup> The United States Challenges EU Non-Compliance in WTO Airbus Ruling, Press release, December 2011, available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/december/united-states-challenges-eu-non-compliance-wto-ai>

take the dispute to the presidential level and to address the matter under the North American Free Trade Agreement (NAFTA).

Washington contends that Mexico's decision to pursue the case at the WTO violates a NAFTA clause that allows the US, as the target of a case concerning matters addressed by both WTO and NAFTA rules on the protection of human or animal life or the environment, to choose to have the dispute considered solely under NAFTA procedures. The NAFTA process has been stalled since the panel establishment in 2010.

As NAFTA continues to be blocked on the matter, however, an appeal at the WTO seems much more likely than any decision from the trilateral trade pact. This might also be in the interest of the global trade body, giving it the opportunity to address the matter of whether decisions by regional trade courts can bar a WTO member from making use of the adjudicative options provided at the WTO.<sup>72</sup>

## Annex 2

1. Websites of service suppliers based outside of China are sometimes inaccessible in China, which can prevent those companies from marketing products and supplying services to the Chinese market. The United States would like to better understand China's rules governing website blocking so that service suppliers based outside of China may adopt appropriate policies to avoid encountering this problem.

a. Who or what ministry is responsible for determining if and when a foreign website should be blocked in China?

b. What are the guidelines and criteria for blocking access to foreign websites? How often are these guidelines and criteria changed or published? Where are these guidelines published? Are they made public in advance of their implementation? Which ministries are responsible for drafting them?

c. What is the process for implementing a restriction on a website? How does the relevant entity determine whether an entire website should be blocked or only services or content deemed illegal?

d. Is the blocking implemented directly by the government, or indirectly by Internet service providers (ISPs) and/or telecommunications companies?

e. If blocking is carried out by ISPs or telecommunications companies, are these actions typically implemented through written governmental orders? If so, which governmental organs are authorized to issue such orders?

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<sup>72</sup> Disputes Roundup: Tuna Appeal at WTO Likely; Animal Welfare Groups Petition Obama Bridges Weekly Trade News Digest, Volume 15, Number 39, 16th November 2011, available at: <http://ictsd.org/i/news/bridgesweekly/118593/>

f. How can a service supplier without a physical presence in China determine if access to their website is or will be blocked in China? To whom should such a supplier direct questions if there are any misunderstandings?

g. Can an affected service supplier appeal a decision to block access to their website? If so, what is the procedure for appealing, and where is that procedure published? Can a service supplier use the court system to appeal a decision to block access to their website? If so, has any such appeal ever been successful?

h. Is the same process used to prevent access to foreign and domestic websites providing similar services in China? If the process is different, please describe the differences.

2. The United States understands that the State Council established a State Internet Information Office (SIIO) in May 2011. The United States is interested in better understanding the functions of the office and whether it is the appropriate interlocutor for foreign businesses that have questions or concerns regarding website inaccessibility.

a. What are the responsibilities and authorities of the SIIO?

b. Will the SIIO handle licensing or other approval processes for Internet service providers or make decisions regarding filtering of foreign websites? If so, please describe which of these processes the SIIO will manage.

c. Should companies contact the SIIO or some other entity when they have questions regarding China's Internet filtering laws, regulations and policies? If the SIIO is the appropriate contact, which office or individual should they contact? If not SIIO, which ministry and office should companies contact?

d. Which categories of objectionable conduct are managed by each ministry with responsibilities or authorities for managing Internet content?

3. Based on information provided by the SIIO earlier this year, the United States understands that foreign websites are sometimes inadvertently blocked when they share an IP address with a website which China has deemed harmful.

a. Can you explain how such inadvertent blockages occur?

b. Are there other ways that China can filter material deemed harmful to avoid such inadvertent website blockages?

c. Would Chinese authorities consider it reasonable to notify the owner of a web hosting service that one or more sites that the service hosts are being blocked in China, so that the web hosting service can ensure that other legitimate sites are not inadvertently blocked? Are Chinese authorities already doing this?

d. What steps should companies take when they become aware of such inadvertent blockages to resolve any issues and ensure their services are accessible in China?

4. The Measures for the Administration of Internet Information Services, issued by the State Council on September 25, 2000, describe nine categories of content which Internet information service providers may not disseminate. The Provisions on the Administration of Internet News

Information Services, issued by the State Council and Ministry of Information Industry on September 25, 2005, add two additional categories of content which may not be transmitted. Given the broad nature of these categories, the United States is seeking greater clarity on the content that falls within them.

a. Are there any laws, regulations, policies or other guidance that establish criteria to determine when content fits into these eleven categories? If so, where can a service supplier access these measures?

b. Are government requests or orders to filter specific terms online ever communicated directly to Internet information service providers? If so, how are these directives communicated? Are these requests or orders made public? Does an Internet information service provider have the right to obtain a written order prior to implementing such a directive?

c. Are the same terms subject to filtering made available to Internet information service providers inside China and outside China?

5. According to the White Paper on the Internet in China, “telecommunication business operators and Internet information service providers shall establish Internet security management systems and utilize technical measures to prevent the transmission of all types of illegal information.”

a. How is illegal information defined in this instance?

b. Is a written governmental order required for either a private corporation or a relevant authority to block the transmission of illegal information?

c. What types of technical measures are service suppliers expected to use to prevent transmission of the illegal information?

d. Do authorities in China approve specific technical measures? If so, which ministry does this?

e. Are the technical measures employed by operators to block the transmission of illegal information applied automatically to domestic and foreign traffic? If not, how are they applied?

f. Does Internet content from outside of China go through a separate monitoring process for illegal information than Internet content created inside of China? If so, how do the two processes differ?