



**TRADE POLICY DEVELOPMENTS PAPER NO. 75**

**TRADE POLICY MONITORING REPORT**

**OF**

**US**

**(April 2014 – June 2014)**

**VOLUME XIII**

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## **ABBREVIATIONS**

|       |                                      |
|-------|--------------------------------------|
| WTO   | World Trade Organization             |
| US    | The United States of America         |
| EU    | The European Union                   |
| USDOC | United States Department of Commerce |
| ITC   | International Trade Commission       |
| BEA   | Bureau of Economic Analysis          |
| \$    | US Dollar                            |
| CPI   | Consumer Price Index                 |
| GDP   | Gross Domestic Product               |
| GDI   | Gross Domestic Index                 |
| SPS   | Sanitary and PhytoSanitary Measures  |
| TBT   | Technical Barriers to Trade          |

## EXECUTIVE SUMMARY

### Economy

- The real GDP of US has increased in this quarter by 4.2% following the decline in the previous quarter to 2.1%.
- US consumer price, increased at a faster pace in the first quarter than in the previous quarter. The CPI increased 0.3% in June 2014 on a seasonally adjustable basis.

### International Trade

- At the end of the quarter, in June 2014, the total exports of \$195.9 billion and import of \$237.4 billion resulted in a goods and services deficit of \$41.5 billion, down from \$44.2 billion in March 2014.

### Trade & Investment Update

- A new legislation on patents has been introduced: H.R. 4763 – known as the *Trade Protection Not Troll Protection Act*, to create several administrative and legal problems for Patent Assertion Entities, often derided as patent trolls. One such issue would require complainants bringing cases under Section 337 of the 1930 Tariff Act to show they, or the firms to which they license a patent, actually manufacture or are planning to manufacture products relating to the disputed patent in the US. The chief objective behind these changes is to prevent PAEs from using an ITC exclusion order as a weapon to threaten other companies who make products incorporating a contested patent.
- District court of Columbia heard oral arguments in *Ralls Corp v. CFIUS et al.* This case constitutes the first ever challenge to the review process by the CFIUS within the US Federal Government that reviews investments by foreign persons in the US on national security grounds.
- Senate Finance Committee Chairman Ron Wyden announced his intention to develop new Trade Promotion Authority (TPA) renewal legislation to replace the stalled Baucus-Camp Bill. He distinguished his approach as being ‘smart-track’ from the convention ‘fast track’ approach. Such a proposal will hold the US trade negotiators more accountable to Congress and its constituents which will result in US FTAs to respond to a broader set of public interests.
- The Committee on Customs Valuation discussed a proposal by Uruguay to update a 30-year old decision which has allowed members to value, for custom purposes, software and data on the basis of the cost of the carrier media such as magnetic tapes, CDs and DVDs in which they are transported from one country to the other.
- On 25 June 2014, at a meeting of the WTO committee overseeing GPA, Canada highlighted its objections to “Buy American” requirements included in several pieces of legislation enacted or pending in the US. Among the measures highlighted by Canada is a *Water Infrastructure Law* passed by Congress in May 2014 and signed into law by President Obama on 11 June 2014. The *Water Resources Reform and Development Act* (WRRDA) of 2014 imposes “Buy America” requirements on a federal fund that provides subsidized loans to communities for wastewater infrastructure projects, as well as a separate pilot program for water infrastructure projects.

## **WTO Related Issues**

- The US showed willingness to pay Brazil an additional financial compensation to settle the dispute over subsidies given to American cotton farmers and agricultural exporters. Both the sides are divided as regards the amount of compensation. The US faces challenge to appease Brazil's demand while avoiding a backlash from the Congress on the same.
- The anti-secrecy group Wikileaks on 19 June 2014 released the draft text for a financial services annex to the Trade in Services Agreement (TISA), which is being negotiated among 23 members of the WTO. The draft financial services annex, which is dated 14 April 2014, is a compilation of proposals, including from the US, Panama, Japan and Switzerland.
- The USTR provided focus areas before the US aims to file a dispute in the WTO.

## **Trade agreements and arrangements**

- The US and Taiwan held negotiations on TIFA this quarter. The US secured key commitments from Taiwan to ease restrictions on cross-border data transfer in the financial sector and to address the outstanding issues on pharmaceuticals. However, it failed to make progress on Taiwan's continuing ban on pork raised with ractopamine which has blocked US' exports. It should be noted that TIFA talks begun after Taiwan lifted its ban on ractopamine in the US beef.
- On 7 May 2014, the US President notified Congress that he intends to withdraw the designation of Russia as a beneficiary developing country under the Generalized System of Preferences (GSP) program.

## **Trade Policy by Sector**

- The Bureau of Industry and Security (BIS) provided for license-free exports of certain low-density oil called a condensate – by ruling that minimally processing it to ensure stability and safe transport transforms it into a petroleum product, which does not require an export license under the US law. Under this classification decision, condensates when left unprocessed are still considered to be crude oil and subject to export restrictions. The decision only affects condensates, which under the US law are considered crude oil based on how they are produced.
- USTR is seeking analysis from the US ITC on the economic impact of eliminating tariffs on a roaster of so –called “green goods” that includes nuclear reactors, vacuum cleaners and an expansive range of other products. USTR said that the products for which the USDOC has asked for data comprise “all environmental goods” proposed for trade liberalization during past WTO and Asia Pacific Economic Cooperation (APEC) forum meetings.
- On 14 April 2014, the Department of Energy (DOE) issued an order granting blanket authorization to export liquefied natural gas (LNG) from the Kenai LNG facility to countries with which the US has not entered into a FTA. A blanket authorization refers to the ability to export on a short-term or sport market basis for a period of up to two years. As a result, the Kenai LNG facility, located near Kenai, Alaska, may export as much as 40 billion cubic feet of natural gas extracted from fields in the Cook Inlet region of South central Alaska until 13 April 2016.

## **TTIP & TPP**

- 5<sup>th</sup> round of negotiations were held from 19-23 May 2014 whereby the parties advanced their stance on various issues and started to deliberate on the draft texts in most areas under negotiations. Specific topics of concern: Market Access, Regulatory Compliance and Rules. The report provides information on the issues discussed this quarter relevant to the 6<sup>th</sup> round of TTIP negotiations to be held in July. Such issues include: Services, Investment Regulation, Government Procurement and Buy American products; Standards, Intellectual Property Rights (GMOs) and IT (data privacy), and Energy.
- During the quarter, TPP Chief Ministerial Meetings were held in Vietnam and Singapore. On 2 June 2013, the US released its summary of objectives with regards to TPP negotiations. Various issues discussed this quarter include: Japan's Agriculture Market Access commitments, American Auto Industry's demand for tough currency rules, Rep. Earl's proposal to protect Titanium market and Human Rights and Labor issues in TPP.

## **AGENDA FOR THE NEXT REPORT**

- Update on the export sanctions imposed by the US and the EU on energy related technologies and the consequent compliance challenges for the US companies.
- Update on the US' position on India's anti-dumping duties on US solar products in the background of the India-US solar war in the WTO.
- Update on the US and China appeals on fact available in WTO CVD dispute.
- Update on Korea's challenge in OCTG case at the respect of steel industry.
- Update on the US' proposal to make Trade Facilitation Agreement a plurilateral agreement.
- Update on the appellate body ruling in the *Ralls Corp.* case whereby the Chinese company wins.
- Update on the Appellate Body on China-Rare Earths.
- Update on US-China-Taiwan solar fight.

## I. INTRODUCTION

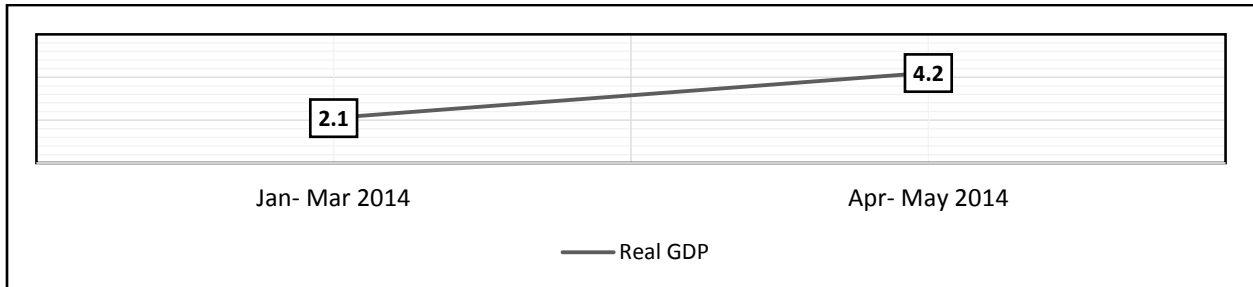
This is the thirteenth quarterly trade policy report prepared by the Center for International Trade and Economic Laws (CITEL), Jindal Global Law School. It will monitor the trade and macroeconomic policy developments in the United States of America during the period of April-June 2014.

## II. ECONOMIC ENVIRONMENT

### *Real gross domestic product*

The *real gross domestic product* (GDP) increased in the first quarter by 4.2% following the decline in the previous quarter to 2.1%. This expansion is only modest, on balance, over the first half of the year.<sup>1</sup> It reflects positive contributions from personal consumption expenditures (PCE), private investment, exports, nonresidential fixed investment, state and local government spending, and residential fixed investment that were partly offset by an acceleration in imports. It also reflects an upturn in the exports and in private inventory investment.

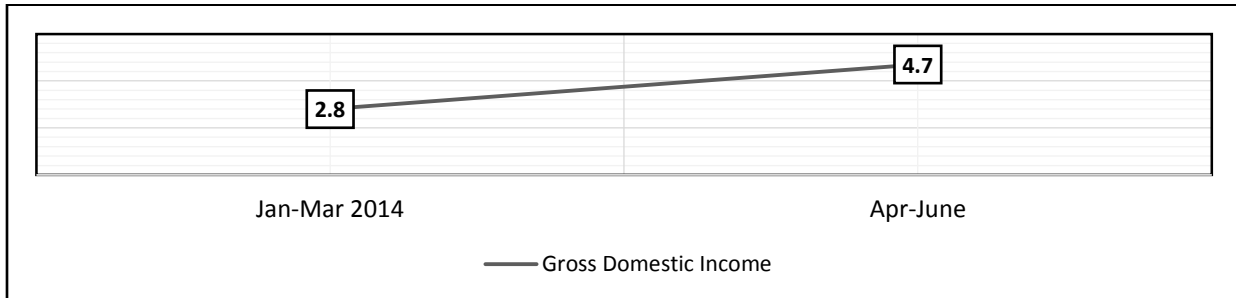
**Table II.1. Real GDP**



**Source:** *Bureau of Economic Analysis*

*Real gross domestic income* (GDI), which measures the output of the economy as the costs incurred and the income earned in the production of GDP, increased 4.7%, in the first quarter, in contrast to a decrease of 2.8% in the first quarter.<sup>2</sup>

**Table II.2. GDI**



**Source:** *Bureau of Economic Analysis*

*Total nonfarm payroll employment* increased strongly in June 2014, and the average monthly gain for the first quarter was the largest since the fourth quarter of 2012.<sup>3</sup> The employment rate declined to 6.1% in June 2014, the labor force participation rate was unchanged, and the employment-to-population ratio increased. The rate

<sup>1</sup> Bureau of Economic Analysis, *National Income and Product Accounts: Gross Domestic Product: Second Quarter 2014 (Third Estimate)*, 26 September 2014, [http://www.bea.gov/newsreleases/national/gdp/2014/gdp2q14\\_3rd.htm](http://www.bea.gov/newsreleases/national/gdp/2014/gdp2q14_3rd.htm) (last visited on 3 Oct. 2014).

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*



of long-duration unemployment moved down, and the share of workers employed part time for economic reasons edged up both measures remained elevated by historical standards. Initial claims for unemployment insurance declined. The rate of job openings rose further in May 2014, but the rate of hiring was unchanged and remained at a modest level.

*Industrial production* increased in the first quarter, as higher output from manufacturers and mines more than offset a decline in the output of electric and natural gas utilities.<sup>4</sup> Capacity utilization also moved higher in the first quarter. Automakers' production schedules indicated that light motor vehicle assemblies would increase in the first quarter, and readings on new orders from national and regional manufacturing surveys were consistent with moderate gains in factory output in the near term.

*Real personal consumption expenditures* (PCE) rose more quickly in the first quarter than in the fourth, partly reflecting higher purchases of light motor vehicles.<sup>5</sup> PCE increased 2.5% in the first quarter, compared with an increase of 1.2% in the fourth quarter. Durable goods increased 14.3%, compared with an increase of 3.2%. Non-durable goods increased 1.9% in the first quarter, it was unchanged in the fourth quarter. Services increased by 0.8%, compared with an increase of 1.3%. Key factors that tend to influence household spending remained positive in recent months. In particular, gains in equity values and home prices boosted household net worth, and real disposable personal income continued to rise in the first quarter. Consumer sentiment in the Thomson Reuters/University of Michigan Surveys of Consumers edged down in early July but was only slightly below its average over the first half of the year.

*Real expenditures* for residential investment turned up in the first quarter after declining for two consecutive quarters.<sup>6</sup> Starts of new-single family houses declined in June 2014, but they rose in the quarter as a whole, and the level of permit issuance was consistent with increases in starts in subsequent months. In the multifamily sector, starts and permits also increased, on the net, in the first quarter. Existing home sales moved up during the first quarter, but remained below year-earlier levels, while new home sales declined. Home prices continued to rise through May 2014, though the rate of increase was less rapid than earlier in the year.

*Real private expenditures* for business equipment and intellectual property products increased in the first quarter.<sup>7</sup> Nominal new orders for nondefense capital goods were little changed, on net, in May 2014 and June 2014; however, the level of orders was above that for shipments, pointing to increases in shipments in subsequent months. Other forward looking indicators, such as national and regional surveys of business conditions, also generally suggested moderate increases in business equipment spending in the near term. Real business expenditures for nonresidential construction also increased in the first quarter. Meanwhile, business inventories generally appeared well aligned with sales, apart from the energy sector, where inventories remained below year-earlier levels.

*Real federal government purchases* decreased over the first half of the year, reflecting ongoing fiscal consolidation and continued declines in defense spending. In contrast, real state and local government purchases increased in the first quarter, as payrolls expanded at a faster pace than in the first quarter and outlays for construction moved higher.<sup>8</sup>

#### *Consumer Prices*

US consumer prices, as measured by the PCE prices index, increased at a faster pace in the first quarter than in the fourth and were about 1 ½ % higher than a year earlier.<sup>9</sup> Consumer energy price inflation rose in the

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<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid.*

first quarter, but retail gasoline prices, measured on a seasonally adjusted basis, subsequently moved lower through the fourth week of July 2014.

Consumer food price inflation also increased in the first quarter, reflecting the effects of drought and disease on crop and livestock production; however, spot prices for crops moved down in recent weeks, and futures prices pointed to lower prices for livestock in the year ahead.<sup>10</sup> The PCE price index for items excluding food and energy also rose more quickly in the first quarter than in the first and was 1 ½ % higher than a year earlier. Near-term inflation expectations from the Michigan survey were little changed, on net, in June and early July 2014, while longer-term expectations declined. Measures of labor compensation indicated that gains in nominal wages and employee benefits remained modest.

*The US international trade deficit* narrowed in May 2014 as imports fell and exports rose. The rise in exports was concentrated in petroleum products and automotive parts. The fall in imports was led by declines in oil and consumer goods.<sup>11</sup> For the first quarter overall, net exports exerted a moderate drag on the change in US real GDP, compared with a more substantial negative contribution in the first quarter. Real imports of goods and services increased 11%, compared with an increase of 2.2%. Real exports of goods and services increased 10.1% in the first quarter, in contrast to a decrease of 9.2% in the fourth quarter.

The net receipts of income from the rest of the world increased by \$7.8 billion in the first quarter, in contrast to a decrease of \$27.4 billion in the fourth quarter, receipts increased by \$4.2 billion, and payments decreased by \$3.5 billion.<sup>12</sup>

#### **International trade in goods and services - April 2014**

In April 2014, the total exports of \$193.3 billion and imports of \$240.6 billion resulted in a goods and services deficit of \$47.2 billion, up from \$44.2 billion in March 2014, revised. April 2014 exports were \$0.3 billion less than March 2014 exports of \$193.7 billion.<sup>13</sup> April imports were \$2.7 billion more than March imports of \$237.8 billion. In April 2014, the goods deficit increased \$3.3 billion from March to \$65.8 billion, and the service surplus increased \$0.2 billion from March 2014 to \$18.6 billion. Exports of goods decreased \$0.6 billion to \$135.1 billion and imports of goods increased \$2.7 billion to \$200.9 billion. Exports of services increased \$0.3 billion to \$58.2 billion, and imports of services increased \$0.1 billion to \$39.7 billion. The goods and services deficit increased \$6.8 billion from April 2013 to April 2014. Exports were up \$5.6 billion, or 3%, and imports were up \$12.4 billion, or 5.4%.

#### ***Goods***

The March to April 2014 decrease in exports of goods reflected decreases in capital goods (\$0.3 billion); foods, feeds, and beverages (\$0.3 billion); automotive vehicles, parts, and engines (\$0.2 billion); and consumer goods (\$0.1 billion).<sup>14</sup> Increases occurred in industrial supplies and materials (\$0.2 billion) and other goods (\$0.1 billion). The April 2013 to April 2014 increase in exports of goods reflected increases in capital goods (\$1.6 billion); foods, feeds and beverages (\$1.5 billion); other goods (\$0.6 billion); and industrial supplies and materials (\$0.3 billion). A decrease occurred in consumer goods (\$0.4 billion). Automotive vehicles, parts, and engines were virtually unchanged. The April 2013 to April 2014 increase in imports of goods reflected increases in consumer goods (\$3.2 billion); capital goods (\$3.2 billion); automotive vehicles, parts, and engines (\$1.9 billion); foods, feeds and beverages (\$1.2 billion); industrial supplies and materials (0.9 billion); and other goods (\$0.3 billion).

#### ***Services***

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<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

Exports of services increased \$0.3 billion from March to April 2014. The increase was mostly accounted for by increases in financial services (\$0.1 billion) and in transport (0.1 billion), which includes passenger fares.<sup>15</sup> Changes in the other categories of services exports were relatively small. Imports of services increased \$0.1 billion from March to April 2014. The increase reflected increases of less than \$0.1 billion in several categories of services. The April 2013 to 2014 increase in exports of services was \$1.8 billion to 3.2%. The largest increases were in travel (for all purposes including education) (\$0.7 billion), in maintenance and repair services (\$0.4 billion), and in transport (\$0.3 billion). The April 2013 to 2014 increase in imports of services was \$1.6 billion to 4.2%. The largest increases were in other business services (\$0.8 billion), in travel (for all purposes included education) (\$0.4 billion), and in transport (\$0.4 billion).

For the three months ending in April 2014, exports, of goods and services averaged \$191.7 billion, while imports of goods and services averaged \$236.4 billion, resulting in an average trade deficit of \$44.7 billion.<sup>16</sup> For the three months ending in March 2014, the average trade deficit was \$42.3 billion, reflecting average exports of \$191.3 billion and average imports of \$233.6 billion. Exports of goods were revised \$0.6 billion, and imports of goods were revised up \$2.4 billion. Exports of services were revised down \$0.9 billion, and imports of services were revised up \$1.2 billion.

### **International Trade in Goods and Services - May 2014**

Total May 2014 exports of \$195.5 billion and imports of \$239.8 billion resulted in a goods and services deficit of \$44.4 billion, down from \$47 billion in April 2014. May 2014 exports were \$2 billion more than April 2014 exports of \$193.5 billion. May 2014 imports were \$0.7 billion less than April 2014 imports of \$240.5 billion.<sup>17</sup>

Total May 2014 exports of \$195.5 billion and imports of \$239.8 billion resulted in a goods and services deficit of \$44.4 billion, down from \$47 billion in April 2014, revised. May exports were \$2 billion more than April exports of \$193.5 billion. May 2014 imports were \$0.7 billion less than April 2014 imports of \$240.5 billion.

In May 2014, the goods deficit decreased \$2.4 billion from April 2014 to \$63.3 billion, and the services surplus increased \$0.3 billion from April to \$18.9 billion. Exports of goods increased \$1.6 billion to \$136.7 billion, and import of goods decreased \$0.7 billion to \$200 billion. Exports of services increased \$0.3 billion to \$58.8 billion, and imports of services were virtually unchanged at \$39.9 billion.

The goods and services deficit decreased \$0.4 billion from May 2013 to May 2014. Exports were up \$8.3 billion, or 4.4%, and imports were up by \$7.8 billion, or 3.4%.

### ***Goods (Census Basis)***

The April to May 2014 increase in exports of goods reflected increases in automotive vehicles, parts, and engines (\$0.8 billion); other goods (\$0.5 billion); consumer goods (\$0.4 billion); industrial supplies and materials (\$0.2 billion); and foods, feeds and beverages (\$0.1 billion).<sup>18</sup> A decrease occurred in capital goods (\$0.2 billion).<sup>19</sup>

The April to May 2014 decrease in imports of goods reflected decreases in industrial supplies and materials (\$1.7 billion); other goods (\$0.7 billion); consumer goods (\$0.5 billion); and foods, feeds, and beverages (\$0.2 billion). Increases occurred in automotive vehicles, parts, and engines (\$1.3 billion) and capital goods (\$1 billion).

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<sup>15</sup> *ibid.*

<sup>16</sup> *ibid.*

<sup>17</sup> Economics & Statistics Administration, *US International Trade in Goods and Services, May 2014*, <http://www.esa.doc.gov/economic-indicators/2014/07/us-international-trade-goods-and-services-may-2014>.

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

The May 2013 to May 2014 increase in exports of goods reflected increases in foods, feeds, and beverages (\$1.7 billion); industrial supplies and materials (\$1.4 billion); consumer goods (\$1.1 billion); other goods (\$0.8 billion); capital goods (\$0.8 billion); and automotive vehicles, parts, and engines (\$0.5 billion).

### **Services**

Exports of services increased \$0.3 billion from April to May 2014. The increase was mostly accounted for by increases in travel (for all purposes including education) (\$0.2 billion) and in transport (\$0.1 billion), which includes freight and port services and passenger fares.<sup>20</sup> Changes in the other categories of services exports were relatively small. Imports of services were virtually unchanged from April to May 2014. Changes in all categories of services imports were small and mostly offsetting. The May 2013 to 2014 increase in exports of services was \$1.9 billion or 3.3%. The largest increases were in travel (for all purposes including education) (\$1 billion), in maintenance and repair services (\$0.4 billion), and in transport (\$0.3 billion).

The May 2013 to May 2014 increase in imports of services was \$1.5 billion or 3.9%. The largest increases were in other business services (\$0.7 billion), in travel (for all purposes including education) (\$0.6 billion), and in transport (\$0.4 billion).

### **Goods and Services Moving Average**

For the three months ending in May 2014, exports of goods and service averaged \$194.2 billion, while imports of goods and services averaged \$239.4 billion, resulting in an average trade deficit of \$45.2 billion.<sup>21</sup> For the three months ending in April, the average trade deficit was \$44.6 billion, reflecting average exports of \$191.8 billion and average imports of \$236.4 billion.

### **International Trade in goods and services - June 2014**

Total June 2014 exports of \$195.9 billion and import of \$237.4 billion resulted in a goods and services deficit of \$41.5 billion, down from \$44.7 billion in May 2014, revised. June 2014 exports were \$0.3 billion more than May 2014 exports of \$195.6 billion.<sup>22</sup> June 2014 imports were \$2.9 billion less than May 2014 imports of \$240.3 billion. In June 2014, the goods deficit decreased \$3.0 billion from May 2014 to \$60.3 billion, and the services surplus increased \$0.1 billion from May 2014 to \$18.7 billion. Exports of goods increased \$0.1 billion to \$136.9 billion, and imports of goods decreased \$2.9 billion to \$197.2 billion. Exports of services increased \$0.1 billion to \$59 billion, and imports of services were virtually unchanged at \$40.2 billion. The goods and services deficit increased \$5 billion from June 2013 to June 2014. Exports were up \$5.5 billion, or 2.9%, and imports were up \$10.5 billion, or 4.6%.

The May to June 2014 decrease in exports of goods reflected decreases in other goods (\$0.5 billion) and foods, feeds, and beverages (\$0.3 billion). Increases occurred in consumer goods (\$0.4 billion); automotive vehicles, parts and engines (\$0.2 billion); and industrial supplies and materials (\$0.1 billion). Capital goods were virtually unchanged. The May to June 2014 decrease in imports of goods reflected decreases in consumer goods (\$1.3 billion); automotive vehicles, parts, and engines (\$1.1 billion); industrial supplies and materials (\$0.1 billion). Capital goods and other goods were virtually unchanged. The June 2013-2014 increase in imports of goods reflected increases in capital goods (\$3.4 billion); consumer goods (\$2.1 billion); automotive vehicles, parts, and engines (\$1.9 billion); foods, feeds and beverages (\$1.2 billion); other goods (\$0.1 billion); and industrial supplies and materials (\$0.1 billion).

### **Services**

Exports of services increased \$0.1 billion from May to June 2014. An increase in travel (for all purposes including education) (\$0.2 billion) was partly offset by a decrease in transport (\$0.1 billion), which includes

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<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.*

<sup>22</sup> *ibid.*

freight and port services and passenger fares.<sup>23</sup> Changes in the other categories of services exports were relatively small and mostly offsetting. Imports of services were virtually unchanged from May to June 2014. An increase in charges for the use of intellectual property (\$0.1 billion), which included payments for the rights to broadcast the portion of the 2014 soccer World Cup that occurred in June 2014, was mostly offset by a decrease in transport (\$0.1 billion). Changes in the other categories of services imports were relatively small and mostly offsetting. The June 2013 to 2014 increase in exports of services was \$2.0 billion or 3.5%. The largest increases were in travel (for all purposes including education) (\$1.1 billion), in transport (\$0.4 billion), and in maintenance and repair services (\$0.4 billion). The June 2013 to 2014 increase in imports of services was \$1.6 billion or 4.3%. The largest increases were in travel (for all purposes including education) (\$0.7 billion) and in other business services (\$0.6 billion).

For the three months ending in June 2014, exports of goods and services averaged \$195.0 billion, while imports of goods and services averaged \$239.4 billion, while imports of goods and services averaged \$239.4 billion, resulting in an average trade deficit of \$44.4 billion. For the three months ending in May 2014, the average trade deficit was \$45.3 billion, reflecting average exports of \$194.3 billion and average imports of \$239.5 billion.

Advanced technology products exports were \$28.4 billion in June 2014 and imports were \$35.8 billion, resulting in a deficit of \$7.5 billion. June 2014 exports were \$0.8 billion more than the \$27.6 billion in May 2014, while June imports were \$0.6 billion more than the \$35.2 billion in May.

## **II.B. Monetary Policies**

### ***II.B.1. Foreign Exchange Operations***

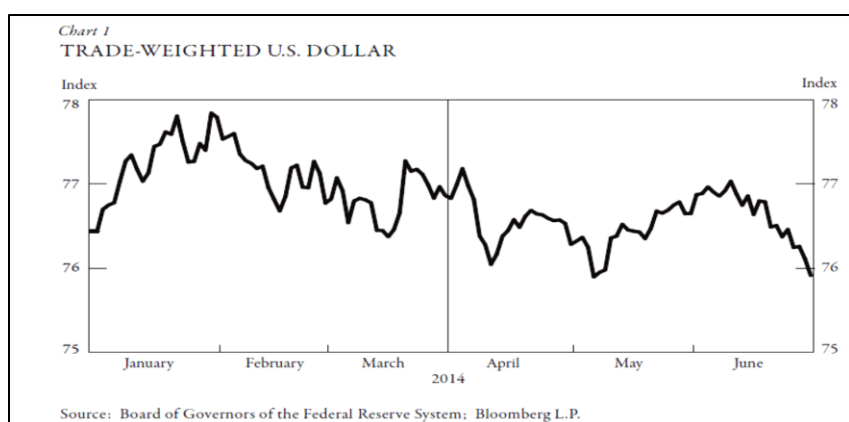
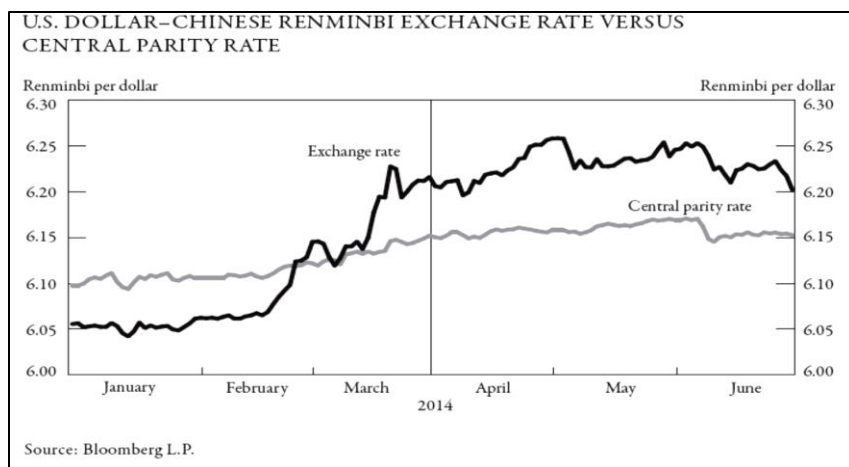
The US \$'s nominal trade-weighted exchange value decreased 1.2% as measured by the Federal Reserve Board's major currencies. Against individual currencies, the dollar's performance was mixed. The US \$ appreciated 0.6% against the euro in anticipation of further European Central Bank (ECB) policy accommodation, which was realized at the 5 June 2014 Governing Council meeting. The US \$ depreciated 1.8% against the Japanese yen, as expectations for further monetary easing by the Bank of Japan (BoJ) were pushed back. The US monetary authorities did not intervene in the foreign exchange markets during the quarter.

During the second quarter, the trade weighted US dollar depreciated 1.2%, consistent with the decline in longer-term US Treasury yields – a continuation of a trend seen since the beginning of the year. A number of factors may be responsible for the decline in yields, including expectations for both lower growth and policy rates in the long-term, a decline in inflation risk premiums, and reduced interest rate uncertainty. Releases of lower-than-expected first quarter GDP estimates reinforced these factors, and although market participants has partially discounted the data's impact on growth expectations due to temporary weather effects, Treasury yields and the trade-weighted US dollar index declined notably following the data releases.

The Chinese RMB appreciated 0.2% against the US dollar during the second quarter, while the central parity rate set by the People's Bank of China was largely unchanged over the same period. This followed the sharp 2.6% depreciation of the RMB against the dollar during the first quarter, which was largely viewed by market participants as an effort by Chinese authorities to introduce greater two-way risk in the exchange rate and stem capital inflows. Similarly, measures of short-dated implied volatility in the currency pair declined in the second quarter after increasing sharply following the introduction of greater two-way risk in the first quarter.

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<sup>23</sup> *ibid.*



The US monetary authorities did not undertake any intervention operations during the quarter. As of 30 June 2014, the value of the US Treasury’s Exchange Stabilization Fund foreign-currency-denominated assets totaled \$24.08 billion, comprised of euro and yen holdings. The Federal Reserve System Open Market Account holdings of foreign-currency-denominated assets totaled \$24.11 billion, also comprised of euro and yen holdings.

### ***Liquidity Swap Arrangements with Foreign Central Banks***

As of 30 June 2014, the European Central Bank has \$124 million outstanding under the US dollar liquidity swaps, all in the 84 day tenor transaction. The BoC, BoE, BoJ and SNB did not have any outstanding swaps at the end of the quarter. The final 84 day operation was held at the end of April 2014. In addition, the ECB, BoE, BoJ, and SNB announced on 17 June 2014 that they would continue to offer one-week US dollar liquidity providing operations after 31 July 2013 further notice.

### ***II.B.2. Foreign Exchange Reserve Holdings***

The US monetary authorities invest their foreign currency reserves in a variety of instruments that yield market rates of return and have a high degree of liquidity and credit quality. To the greatest practicable, the investments are split evenly between the System Open Market Account and the Exchange Stabilization Fund. A significant portion of the US monetary authorities’ foreign exchange reserves is typically invested on an outright basis in German, French, and Japanese government securities. A smaller portion of the reserves is typically invested in euro-denominated repurchase agreements, under which the US monetary authorities may

accept sovereign debt backed by the full faith and credit of the following governments: Belgium, France, Germany, Italy, the Netherlands, and Spain. Foreign currency reserves are also invested at the Bank for International Settlements and in facilities at other official institutions. As of 30 June 2014, direct holdings of foreign government securities totaled \$22.01 billion. In addition, foreign government securities held under repurchase agreements totaled \$1.40 billion, a decrease from \$5.22 billion at the end of the first quarter, while cash held in euro-denominated deposits at official institutions totaled \$18.69 billion, an increase from \$14.94 billion. The shift in the portfolio occurred amid very low or negative rates across money market instruments in the second quarter following the ECB's 5 June 2014 decision to reduce the main refinancing and deposit rates to 0.15% and -0.10%, respectively.

### ***II.B.3. Financial situation during the quarter***

Financial conditions eased on balance, between the June and July 2014 FOMC meetings, although geopolitical risks weighed on investor sentiment at times.<sup>24</sup> On net, yields on longer-term Treasury securities fell, equity price rose, and the foreign exchange value of the dollar was little changed. Market participants characterized the Federal Reserve's monetary policy communications over the intermeeting period as suggesting a slightly more accommodative policy stance than had been expected. The anticipated path of the *federal funds rate* shifted down modestly following the June 2014 FOMC statement and the Chair's press conference. Policy expectations also edged down on the release of the minutes of the June 2014 FOMC meeting. Market participants took note of the discussion of monetary policy normalization in the minutes and particularly, the discussion of the likely spread between the ON RRP rate and the IOER rate.

Results from the Desk's July Survey of Primary Dealers, conducted shortly before the July FOMC meeting, indicated that market participants' expectations for the timing of the first increase in the federal funds rate and the subsequent policy path were largely unchanged from those reported in the survey taken just before the June 2014 meeting. The median dealer continued to see the third quarter of 2015 as the most likely time for the lift-off of the federal funds rate from the effective lower bound, although, relative to the June survey, the distribution of the model expected time of lift-off became more concentrated around the third quarter of 2015.

On balance, 10- and 30- year nominal Treasury yields both declined about 20 basis points over the intermeeting period. Concerns about tensions in Ukraine and the Middle East and the release of the June 2014 minutes appeared to contribute to the declines in *longer-term Treasury yields*. The decline in yields at the long-end of the curve likely also reflected a continuation of a pattern that began last year, which some market participants attributed to a reduction in investors' expectations for longer-run economic growth and declines in terms premiums. Measures of longer-horizon inflation compensation based on Treasury Inflation-Protected Securities were about unchanged.

Conditions in unsecured short-term dollar funding markets remained stable over the intermeeting period. The Federal Reserve continued its ON RRP exercise and TDF testing. As a result of somewhat higher market rates on repurchase agreements, ON RRP take-up, on average, was a little lower than in the prior intermeeting period although participations in the ON RRP exercise increased to a record high at quarter-end on 30 June 2014. Moreover, the ON RRP exercise appeared to have continued to help firm the floor under money market interest rates. In TDF testing from mid-May to early July 2014, gradual increases in offer rates and in the maximum individual award amounts generally resulted in higher participation.

The S&P 500 index rose about 1 ½ % over the intermeeting period, as earnings reports from a range of companies appeared to indicate that profits in the first quarter had increased modestly relative to the fourth quarter. The VIX, an index of option-implied volatility for one-month returns on the S&P 500 index, remained at low levels over the intermeeting period.

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<sup>24</sup> Federal Reserve, *Minutes of the Federal Open Market Committee July 29-30, 2014*, <http://www.federalreserve.gov/monetarypolicy/files/fomcminutes20140730.pdf> (last visited on 3 Oct. 2014).

Credit flows to nonfinancial corporations remained strong in the first quarter. Gross issuance of investment and speculative grade bonds were low. Commercial and industrial loans on banks' balance sheets continued to increase at a robust pace, consistent with reports in the July Senior Loan Officer Opinion Survey on Bank Lending practices (SLOOS) of easier lending standards and terms as well as stronger loan demand from firms of all sizes. Issuance of leveraged loans by institutional investors also remained solid.

Credit conditions in markets for commercial real estate (CRE) improved further in the first quarter. According to the July SLOOS, banks continued to ease their standards and report stronger demand for CRE loans during the first quarter on balance. CRE loans on banks' books continued to expand moderately and issuance of commercial mortgage-backed securities remained solid.

Credit conditions in residential mortgage markets generally remained tight over the intermeeting period. Mortgage interest rates held steady around 4%, and origination volumes continued to be low. According to the July SLOOS, underwriting standards on prime home-purchase loans appeared to have eased further at banks during the first quarter but, on net, standards on all types of residential real estate loans reportedly remained tighter than the midpoints of the respondent banks' longer-term ranges.

In contrast to mortgage lending, consumer credit continued to expand robustly in May 2014, largely on the strength of auto and student loans, though credit card debt picked up somewhat as well. Banks responding to the July SLOOS indicated that demand for auto loans strengthened further in the first quarter. In addition, demand for credit card loans increased, and a few large banks reported having eased lending policies for such loans.

Benchmark yields on long-term sovereign bonds in the advanced foreign economies continued the downward trend that began at the start of the year, with rising tensions in the Middle East and Ukraine during the intermeeting period likely adding some to the downward pressure. Concerns about one of the Portugal's largest banks and about litigation risks facing European banks weighed on European financial markets, prompting yield spreads on peripheral sovereign bonds in the euro area to widen and equity price indexes for European banks to decline.

Interesting data releases on euro area industrial production came in below market expectations, also weighing on headline equity markets in the region. Mixed news from emerging markets in the region. Mixed news from emerging market economies, including better-than expected GDP growth in China and concerns about Argentina's scheduled debt payments, generally had modest market effects. Changes in emerging market equity indexes were mixed over the period, and emerging market bond yields generally declined. The broad trade-weighted dollar was little changed, on net, over the intermeeting period.

The staff's periodic report on potential risks to financial stability concluded that relatively strong capital positions of US banks, subdued use of maturity transformation and leverage within the broader financial sector, and relatively low levels of leverage for the aggregate nonfinancial stability. However, the staff report also highlighted that low and declining risk premiums, low levels of market volatility and a lessening of underwriting standards in a number of markets raised somewhat the risk of an eventual correction in asset valuations.

#### ***II.B.4. FOMC Minutes update***

In the meeting from 29-30 April 2014, the manager of the System Open Market Account (SOMA) reported on developments in domestic and foreign markets as well as the System open market operations during the period since the Committee met on 18-19 March 2014.<sup>25</sup>

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<sup>25</sup> The Federal Reserve, *Minutes of the Federal Open Market Committee April 29-30, 2014*, <http://www.federalreserve.gov/monetarypolicy/files/fomcminutes20140430.pdf> (last visited on 20 Sept. 2014).



- The FOMC unanimously ratified the Open Market Desk's domestic transactions over the intermeeting period. As there were no intervention opens in foreign currencies for the System's account over the intermeeting period.
- The FOMC unanimously agreed to renew the reciprocal currency arrangements with the Bank of Canada and the Bank of Mexico; these arrangements are associated with the Federal Reserve's participation in the North American Framework Agreement of 1994. In addition, by unanimous vote, the Committee agreed to renew the dollar and foreign currency liquidity swap arrangements with the Bank of Canada, the Bank of England, the Bank of Japan, the European Central Bank and the Swiss National Bank. Such votes to renew the Federal Reserve's participation in these arrangements were taken at this meeting because provisions in the arrangements specify that the Federal Reserve provide six months' prior notice of an intention to terminate its participation.
- The Committee agreed that, beginning in May 2014, it would add to its holdings of agency mortgage-backed securities at a pace of \$20 billion per month rather than \$25 billion per month, and would add to its holdings of longer-term Treasury securities at a pace of \$25 billion per month rather than \$30 billion per month. Members again judged that, if the economy continued to develop as anticipated, the Committee will measure steps at future meetings. However, members understood that the pace of asset purchases was not on a preset course and would remain contingent on the Committee's outlook for the labor market and inflation as well as its assessment of the likely efficacy and costs of purchases. The Committee agreed that no changes to its target range for the federal funds rate or its forward guidance were warranted at this meeting aside from removing a short paragraph that was added when the forward guidance was updated at the March meeting and which noted that the change in the Committee's guidance did not signal a change in the Committee's policy intentions; members deemed this language no longer necessary.
- At the conclusion of the discussion, the Committee voted to authorize and direct the Federal Reserve Bank of New York, until it was instructed otherwise, to execute transactions in the SOMA in accordance with the following domestic policy directive:
- In a joint meeting of FOMC and the Board of Governors in June, the deputy manager of the System Open Market Account (SOMA) reported on developments in domestic and foreign financial markets. The SOMA manager reported on the System open market operations during the period since the Committee met on 29-30 April 2014, outlined the testing of the Term Deposit Facility, described the results from the fixed over-night reverse repurchase agreement (ON RRP) operational exercise, and provided some possible options for adjusting the list of counterparties eligible to participate in ON RRP operations. The manager also noted the effects of recent foreign central bank policy actions on the yields on the international portion of the SOMA portfolio and discussed ongoing staff work on improving data collections regarding bank funding markets. By a unanimous vote, the Committee ratified the Open Market Desk's domestic transactions over the intermeeting period. There were no intervention operations in foreign currencies for the System's account over the intermeeting period.
- The participants continued their discussion of issues associated with the eventual normalization of the stance and conduct of monetary policy. The Committee's consideration of this topic was undertaken as part of prudent planning and did not imply that normalization would necessarily begin sometime soon. A staff presentation included some possible strategies for implementing and communicating monetary policy during a period when the Federal Reserve will have a very large balance sheet. In addition, the presentation outlined desiring features of a potential ON RRP facility and discussed options for the Committee's policy of rolling over maturing Treasury securities at auction and reinvesting principal payments on all agency debt and agency mortgage-backed securities (MBS) in agency MBS. Most participants agreed that adjustments in the rate of interest on excess reserves (IOER) should play a central role during the normalization process. It was generally agreed that an ON RRP facility with an interest rate set below the IOER rate could play a useful supporting role by helping to firm the floor under money market interest rates. One participant thought that the ON RRP rate would be the more effective policy tool during normalization in light of the wider

variety of counterparties eligible to participate in ON RRP operations. The appropriate size of the spread between the IOER and ON RRP rates was discussed with many participants judging that a relatively wide spread – perhaps near or above the current level of 20 basis points – would support trading in the federal funds market and provide adequate control over market interest rates. Several participants noted that the spread might be adjusting during the normalization process. A couple of participants suggested that adequate control of short-term rates might be accomplished with a very wide spread or even without an ON RRP facility. A few participants commented that the Committee should also be prepared to use its other policy tools, including term deposits and term reverse repurchase agreements, if necessary.

Most participants thought that the federal funds rate should continue to play a role in the Committee’s operating framework and communications during normalization, with many of them indicating a preference for continuing to announce a target range. However, a few participants thought that, given the degree of uncertainty about the effects of the Committee’s tools on market rates, it might be preferable to focus on an administered rate in communicating the stance of policy during the normalization period. In addition, participants examined possibilities for changing the calculation of the effective federal funds rate in order to obtain a more robust measure of over-night bank funding rates and to apply lessons from international efforts to develop improved standards for benchmark interest rates.

While generally agreeing that an ON RRP facility could play an important role in the policy normalization process, participants discussed several potential unintended consequences of using such a facility and design features that could help to mitigate these consequences. Most participants expressed concerns that in times of financial stress, the facility’s counterparties could shift investments toward the facility and away from financial and nonfinancial corporations, possibly causing disruptions in funding that could magnify the stress.

In addition a number of participants noted that a relatively large ON RRP facility has the potential to expand the Federal Reserve’s role in financial intermediation and reshape the financial industry in ways that were difficult to anticipate. Participants discussed design features that could address these concerns, including constraints on usage either in the aggregate or by counterparty and a relatively wide spread between the ON RRP rate and the IOER rate that would help limit the facility’ size. Several participants emphasized that, although the ON RRP rate would be useful in controlling short-term interest rates during normalization, they did not anticipate that such a facility would be a permanent part of the Committee’s longer-run operating framework. Finally, a number of participants expressed concern about conducting monetary policy operations with nontraditional counterparties.

### ***II.B.5. Treasury takes sharper tone on Chinese Currency Action in Latest Report***

The US Treasury Department criticized China for taking actions that have resulted in an unprecedented drop in value of the RMB against the dollar, but declined to mention ‘currency manipulation’ in its semiannual report to Congress on exchange rates.<sup>26</sup> Even though RMB appreciated over 2013 – and China has recently taken steps to allow it to float more freely – Beijing over the past several months has also taken actions to cause currency to depreciate rapidly from 17 Feb to 20 March 2014, the RMB weakened 2.6% against the dollar.

The RMB has seen periods of depreciation before such as mid-2012 when the RMB fell 1.5% against the dollar over a three-month period. However, the place and the size of the recent decline was unprecedented. China continued large scale purchases of foreign exchange in the first quarter of 2014, despite having accumulated \$3.8 trillion in reserves, which are excessive by any measure. This suggests continued actions to impede market determination.

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<sup>26</sup> Inside US Trade, *Treasury Takes Sharper Tone On Chinese Currency Action In Latest Report*, 17 April 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-04/18/2014/treasury-takes-sharper-tone-on-chinese-currency-action-in-latest-report/menu-id-710.html> (last visited 22 Sept. 2014).

Joseph Gagon, a senior fellow at the Peterson Institute for International Economics, said Treasury was critical of China's currency practices, and attributed it to the data showing a massive surplus in foreign exchange reserves. He described *China's actions as being designed to mimic the volatility of a free-floating currency, and expected the value of it to appreciate in the future*. By doing so, the Chinese government is accumulating the market to the volatility; a sort of stress testing.

Treasury was also critical on South Korea's actions in the market and urged Seoul to limit its currency interventions to exceptional circumstances. Both China and Korea were urged by Treasury to undertake measures to blur the transparency around their actions in the currency market. On Japan, the Treasury noted that Tokyo took significant monetary policy steps in 2013, leading the yen to depreciate by 25% between October 2012 and February 2014.

But the department did not criticize this step as intervention, and noted that Japanese officials have clearly ruled out purchases of foreign assets as a monetary policy tool and have made fewer public comments about the excessively strong yen. At the same time, Treasury report emphasizes that it is "imperative" that Japan's economic policies work primarily through an increase in domestic demand, and that monetary policy cannot substitute for structural reforms needed to raise trends growth and domestic demand. It notes that Japan's participation in the TPP could lead to internal reforms in Japan such as deregulation in agriculture and medical services that support growth.

Japan in light of the fact that the US Federal Reserve has taken similar policy steps under quantitative easing. American Iron and Steel Institute (AISI) President Thomas Gibson said the Obama administration is indirectly helping China flood both the global market and the North American market with steel imports by not taking actions against the same. He called for currency manipulation to be addressed through legislation in Congress and in TPP.

### **III. DEVELOPMENT IN TRADE AND INVESTMENT POLICY**

#### **III.A. Institutional and Policy Framework**

##### ***III.A.1. First judicial challenge to the Committee on Foreign Investment in the US***

On 5 May 2014, the US Court of Appeals for the District Court of Columbia heard oral arguments in *Ralls Corp v. CFIUS et al.*<sup>27</sup> This case constitutes first ever challenge to the review process by the CFIUS<sup>28</sup> within the US Federal Government that reviews investments by foreign persons in the US on national security grounds. In March 2012, *Ralls Corp.*, a Delaware corporation owned by two Chinese nationals associated with the mega-construction and heavy machinery company, Sany Group, entered into a \$6 million deal to acquire four wind farm project companies in Oregon.

Prior to inking the deal, Ralls did not file a voluntary notice of the transaction with CFIUS. In June 2012, CFIUS independently learned about the said transactions and notified Ralls that in the absence of notice, the Department of Defense, a member of CFIUS, would initiate the review process. On 25 July and 2

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<sup>27</sup> *White & Case General Trade Report – JETRO*, May 2014, at 6.

<sup>28</sup> Pursuant to the Exon-Florio Amendment to the 1950 Defense Production Act, the President, acting through CFIUS, an inter-agency committee in the federal government chaired by the US Department of the Treasury, can suspend, block or otherwise modify investments and acquisitions by foreign persons that result in foreign control of US entities engaged in inter-state commerce in the United States, if such control threatens US national security. This authority may be carried out by conditions or changes prior to the deal's closing or through unwinding or divestment of a transaction that has already been concluded. CFIUS can review transactions upon the filing of a voluntary notice by the parties to a proposed transaction or initiate a review on its own. Upon the filing of a notice with CFIUS, it reviews the transaction over a 30-day period followed by, if need be, a 45-day investigation. At the conclusion, CFIUS may either clear the transaction or refer it to the President, who has 15 days to determine what action to take.

August 2012, CFIUS issued orders halting the acquisition, requiring Ralls to cease all construction and remove all items from the relevant properties and prohibiting Ralls from accessing the properties or selling them until CFIUS was notified and approved of the buyer.

On 28 September 2012, the President issued a rare and broader order under S. 721 of the Defence Production Act ordering Ralls to divest all interests acquired in the transaction on national security grounds. The US Department of the Treasury noted on the said order that the wind farm sites are all within or in the vicinity of restricted airspace at Naval Weapons Systems Training Facility Boardman in Oregon.

After facing a dismissal against reviewing the Presidential action and no constitutional grounds to protect its rights, the Ralls went for an appeal to the DC Circuit. It challenged the district court's ruling whether the court can review a Presidential decision under the CFIUS regime and whether Ralls was accorded due process. Ralls provided that an investor should be able to review the unclassified evidence used by the President in reaching his decision. It cited the risk of transactions being blocked based on factual errors without the investor having the chance to correct the record or implement mitigation measures. The government stated that Ralls "took a gamble" by not filing with CFIUS, knowing the risk that the President might block the transaction, and that it was not entitled to access materials used as part of the President's deliberative process on a national security matter.

Notably, the government suggested that the DC Circuit could remand the case to the District Court to determine whether unclassified information – subject to Presidential communications privilege – could be made available to Ralls to shed some light on the decision making process. Although a degree of transparency in the CFIUS process may emerge from the Ralls litigation, the District Court's decision and the statutory regime reflect the deference accorded to the President and CFIUS.

Rall's experience also shows that the onus is on foreign investors to carefully consider the risks of not seeking CFIUS review prior to closing. While filing a notice is voluntary, in many cases prudence demands that investors do so to obtain clearance and safe harbor from further review and to avoid the risk of a costly divestment process after closing. Moreover, given the absence of clear and objective criteria in the CFIUS legal regime for determining national security concerns, it would alert the foreign investors to take a broad view of what the US government might deem to be of national security concern.

### ***III.A.2. House and Ways Committee to the Committee on Budget on 'Trade' and 'Tax***

***Trade:*** The House Ways and Means wrote a letter to the Committee on the Budget, clarifying the support for TPA bill. It stated that the Committee seeks to increase economic opportunities for American workers and businesses through the expansion of trade opportunities, adherence to trade agreements and rules by the trading partners and by the US, and the elimination of foreign trade barriers to goods and services by opening new markets and by enforcing US rights.

Further, the Committee intends to consider H.R. 3830, bipartisan and bicameral legislation to empower Congress with respect to trade negotiations by establishing detailed negotiating objectives and rigorous mechanisms for consultation with Congress while preserving for Congress the final determination as to whether to implement a trade agreement. The Committee will continue its oversight over the TPP and TTIP negotiations, the Trade in Services Agreement and bilateral investment treaty negotiations. In addition, the Committee will continue its oversight responsibilities with respect to the WTO, including US goals, dispute settlement, implementation of Trade Facilitation Agreement, expansion of the Information Technology Agreement and WTO accessions.

The Committee intends to continue work begun in the 112<sup>th</sup> Congress to pass the Miscellaneous Tariff Bill, a package of noncontroversial bills to eliminate or reduce duties on products not made in the US, in accordance with bipartisan transparency guidelines. In addition, the Committee will continue work it began in the 112<sup>th</sup> Congress to consider legislation concerning the budget and activities of agencies within its jurisdiction, particularly authorization of Customs and Border Protection, together with improvements to

streamline and facilitate legitimate and compliant trade at the border, automate CBP processes, and improve enforcement.

The Committee will continue its oversight of emerging markets, in particular systemic problems in US-China trade relations, challenges and opportunities presented by India, and the myriad forms of forced localization barriers worldwide. The Committee expects to address the expiration of key aspects of US preference programs and will continue its oversight over the operation of these programs and will continue its oversight over the operation of these programs and the Trade Adjustment Assistance programs.

**Tax:** The Committee recognizes that a complex, burdensome, anti-growth tax code remains a significant obstacle to economic recovery and job creation. Accordingly, it anticipates continuing its extensive efforts to simplify and reform the tax code for individuals, families and employers, to spur the robust job creation and economic growth necessary to reduce the Nation's persistently high unemployment rate and increase wages for hard-working Americans. In so doing, the Committee will solicit feedback on the comprehensive reform discussion draft released by the Committee.

In addition, the Committee will build on its record from the past three years, which has featured (1) more than thirty hearings devoted to tax reform at the Full Committee, the Select Revenue Measures Subcommittee, and the Oversight Subcommittee- including three joint hearings with the Senate Finance Committee- (2) the creation of eleven bipartisan Tax Reform Working Groups and the release, on 6 May 2013, of a formal report on present law and suggestions for reform submitted to the Working Groups, and (3) the formal release on 26 February 2014, of a comprehensive discussion draft of the "Tax Reform Act of 2014". In addition to its ongoing pursuit of a simpler, fairer, flatter tax code and a healthier economy through tax reform, the Committee will continue to review other tax matters and will closely scrutinize the revenue recommendations contained in the President's Fiscal Year 2015 Budget.<sup>29</sup>

### ***III.A.3. Sen. Wyden's Smart track approach to FTAs as against the fast track***

Senate Finance Committee Chairman Ron Wyden announced his intention to develop new Trade Promotion Authority (TPA) renewal legislation to replace the stalled Baucus-Camp Bill.<sup>30</sup> He distinguished his approach as being 'smart-track' from the convention 'fast track' approach. Such a proposal will hold the US trade negotiators more accountable to Congress and its constituents which will result in US FTAs to respond to a broader set of public interests. As regards the drafting and introduction of the bill, Sen. Wyden provided that "substance is going to drive the timeline". He distinguished the bill from the Baucus-Camp fast track bill (also known as the "Trade Promotion Authority") on two accounts:

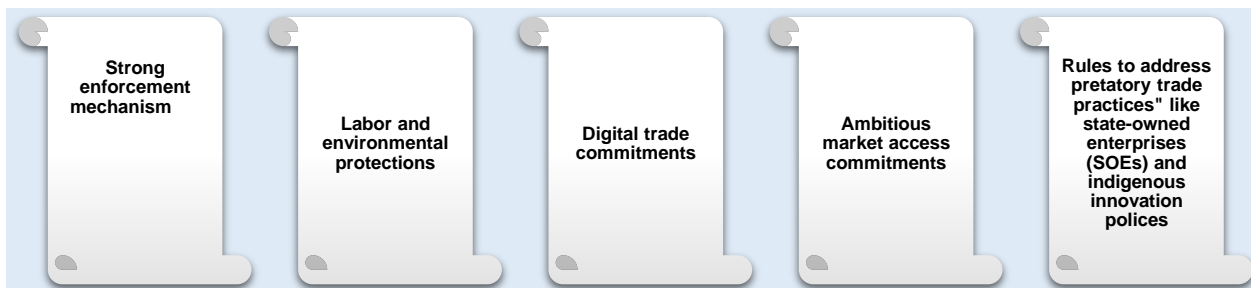
- 1) *Accountability and transparency:* The bill will provide the members of Congress as well as their staff with appropriate security clearance, access to FTA negotiating texts. It will create a more direct channel for congressional input into US FTA negotiations.
- 2) *Safeguard Mechanism:* The bill will allow the Congress to revoke privileged procedures (such as the up or down ratification vote) without the possibility for amendment for trade agreements which fall short of congressional goals. There is also a consideration to provide more flexibility to Congress to revoke the TPA during the FTA negotiating process, should USITR contradict its mandate.

According to the Senator any US FTA must include five core areas:

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<sup>29</sup> Letter by Chairman Dave Camp of the Committee on Ways and Means to Chairman Paul Ryan, Chairman of the Committee on the Budget, 25 March 2014 [http://insidetrade.com/iwpfile.html?file=may2014%2Fwto2014\\_1372a.pdf](http://insidetrade.com/iwpfile.html?file=may2014%2Fwto2014_1372a.pdf)

<sup>30</sup> *White & Case General Trade Report – JETRO*, April 2014, at 28.



However, a House Ways and Means member cautioned that developing a new TPA bill could undermine existing efforts to renew TPA. He provided that on 10 April 2014 during the Washington International Trade Association meet that significant bipartisan, bicameral work went into the Baucus-Camp Bill and that Congress needs to act on TPA soon to facilitate the conclusion of the TPP negotiations. He provided that Congress cannot afford to undergo another round of politicking and such would destabilize Congress' already 'delicate' trade consensus.

It is suggested that regardless of a new bill or amendments to the old bill, Congress is likely to welcome 'the smart track approach' by Sen. Wyden. The concept of TPA poses problems from a public relations perspective than a policy perspective. The Baucus Camp Bill of TPA 2014 already strengthens Congress' oversight by adding consultation and reporting requirements. However, the bill raises some concerns particularly the up-or-down ratification vote which reduces the possibility for a meaningful review. It is provided that giving the Congress an increased oversight may increase support for the bill, although it remains unclear whether this will be sufficient to secure the renewal of TPA before the 2014 midterm elections.

#### ***III.A.4. Draft proposal to reform Ex-Im Bank***

There were two draft proposals provided to reauthorize Ex-Im bank in the quarter.<sup>31</sup> One introduced by Rep. Denny Heck (D-WA), with the support of almost the entire Democratic caucus, would extend the Export-Import Bank's charter by seven years and gradually increase the bank's financing limit by 25% up to \$175 billion. The following day on 25 June 2014, Rep. John Campbell (R-CA) released a draft bill that would authorize the bank for three years and lower the financing limit to \$95 billion. The charter of Ex-Im Bank is set to expire on 30 September 2014 without congressional action to continue. It should be noted that Financial Services Chairman Jon Hensarling is opposed to the bank and gave no indication of his support to Campbell bill. Industry supporters gave the following criticisms against the Campbell bill:

1. Lowering of the bank's financing limit to \$95 billion from \$140 billion;
2. Imposing caps on bank's portfolio;
3. Prohibit the bank to finance SOE which has a sovereign wealth fund of assets totaling \$100 billion or more and ex-im financing is more than 30% of the transaction;
4. Language which may effect small scale businesses and lending for certain exports.

The proposal addresses concerns of Delta Airlines and Air Lines Pilot Association who testified at the hearing for bank reauthorization. Delta Airlines has been asserting against financing companies like Air India which affected their business. It provided that the bank does not disclose which airlines are getting ex-im financing to purchase airlines. The bill, therefore proposes:

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<sup>31</sup> Inside US Trade, *Campbell Floats Ex-Im Proposal, But Supporters Find Reforms Problematic*, 26 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/27/2014/campbell-floats-ex-im-proposal-but-supporters-find-reforms-problematic/menu-id-710.html> (last visited 15 Sept. 2014). See also Inside US Trade, *Ex-Im Business Supporters Shift Strategy To Focus On Benefits For SMEs*, 26 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/27/2014/ex-im-business-supporters-shift-strategy-to-focus-on-benefits-for-smes/menu-id-710.html> (last visited 16 Sept. 2014).

1. To require the treasury department to negotiate with the EU to reduce trade distorting export subsidies of wide body aircraft.
2. Require Treasury to lower the bank's overall financing cap if it finds that amount of financing offered by foreign credit agencies has also dropped.
3. Treasury secretary would be able to waive the provision on a transaction by transaction basis if there is a competing export credit agency that would harm a US company.

### ***III.A.5. Senate CJS Bill Drops China Reference in IT Procurement Restriction***

The Senate Appropriations Committee approved a bill to renew the funding requirements for the departments of Justice, Commerce and other agencies.<sup>32</sup> It aims to review the supply chain risks for government procurement of information technology systems. The Obama Administration is concerned with changing the language which directly states the Chinese companies as a plausible cyber threat in the wake of recent indictment of 5 Chinese officials against an act of espionage. S. 515 of the bill limits the review to high impact technology products in line with the provision enacted earlier this year. The House version of the bill in contrast includes additional language from the bill which was enacted earlier this year, requiring the risk assessment to take into account any risks associated with such system being products, manufactured or assembled by any entities which may include entities from China.

### ***III.A.6. ITC downplays the impact of EU-Africa trade and cooperation on the US***

The ITC report of 25 April 2014 provided the potential impact of the *EU-South Africa Trade, Development and Cooperation Agreement* (TDCA) is to put the US at a disadvantage vis-a-vis the EU in the South African market. However, any tariff disadvantage is likely small.<sup>33</sup> It also noted that more than half of South Africa's tariff lines have zero duties under its most favored nation tariffs, while many MFN tariffs of over 20% do not have duty-free treatment under the EU-South Africa agreement. It provided that 75% of the US exports to South Africa were duty free in 2012, while another 10% were not disadvantaged compared to EU exports.

The *National Trade Estimate Report* by the USTR raised complaints about the tariff differential between the US exports and EU exports to South Africa. It pointed to a 4.5% unweighted average of tariffs for the EU products covered under its agreement with South Africa versus an average 19.5% general tariff rate for the US in South Africa.

It also provided that the trends of South Africa importers substituting the EU supply chains for the US supply chains. The USTR complaints about the EU-South Africa trade deal have led USTR officials to publicly question whether it would be better to strike a reciprocal agreement with South Africa, rather than continuing unilateral preferences.

In 2013, the South African Trade Ministry provided that a free trade agreement like the TPP is not something that South Africa and other African countries can contemplate at this time. In addition, the US officials have noted that South Africa is a major beneficiary of the African Growth and Opportunity Act (AGOA), a point also made by the ITC. For example, transportation equipment made up 44% of the value of non-crude petroleum exports under AGOA in 2013, which were almost entirely motor vehicles imported from South Africa. In examining potential diversification of AGOA exports, the ITC lists numerous factors affecting their competitiveness, ranging from lack of infrastructure to inability to meet foreign requirements to supply-side constraints.

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<sup>32</sup> Inside US Trade, *Senate CJS Bill Drops China Reference In IT Procurement Restriction*, 12 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/13/2014/senate-cjs-bill-drops-china-reference-in-it-procurement-restriction/menu-id-710.html> (last visited 19 Sept. 2014).

<sup>33</sup> Inside US Trade, *AGOA Report Downplays Effects Of EU-South Africa Trade Agreement*, 1 May 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/02/2014/agoa-report-downplays-effects-of-eu-south-africa-trade-agreement/menu-id-710.html> (last visited 22 Sept. 2014).

Steve Lande (President, Manchester Trade) pointed out that it would disrupt regional supply chains to wait for the negotiation for an African FTA until 2020, when the African Union is attempting to have a common external tariff. At that time, Africa would be better prepared to negotiate a tariffs-only agreement, similar to the EU-South Africa agreement. In order to have the “goals-plated” type of agreement that the US prefers negotiating, like TPP, he provided that it would serve the US interests to wait until 2023, when African countries aim to have a common market.

But an AGOA expert provided that the US could help mitigate the effects on the supply chain in an FTA negotiation by allowing, for example, sourcing from AGOA and former AGOA beneficiaries in the rules of origin. In the context of reviewing potential AGOA reforms ahead of its expiration on 30 Sept. 2015, USTR Michael Froman asked the ITC to prepare this report as well as three confidential reports examining the effectiveness of AGOA and ways it could be changed.

An AGOA expert said that the administration now appears to be looking for a venue at which to unveil its recommendations for how to move forward with AGOA, sometime before the US-Africa Leaders’ Summit and the AGOA Forum, which will take place in August 2014 in Washington. Ideally, this expert said, a draft bill could be released at the time of the forum as a deliverable but added that legislative action in the near term was very unlikely. The chances of anything happening this year are slim to none in terms of legislation actually passing.

### ***III.A.7. House Appropriations Committee releases bill on funding key agencies***

Four trade-related agencies would see funding increase under a proposed Appropriations Bill released by the House Appropriations Committee.<sup>34</sup> It aims to fund the USTR, the Commerce Department’s International Trade Administration (ITA) and Bureau of Industry and Security (BIS) as well as the US International Trade Commission for fiscal year 2015, which begins 1 Oct and ends 30 Sept. 2015.

USTR would receive \$53.5 million, which is a 1.7% increase compared to the funding the agency received under the FY2014 appropriations passed in January. However, it is 4.7% less than the amount the Obama administration had requested. Meanwhile, the ITA would get \$463 million, which does not include the additional \$10 million it expects to receive in fees. The congressional allocation is a 0.5% increase compared to FY2014 levels, but it falls short of the \$497.2 million the Obama administration sought. However, the FY2015 appropriations bill keeps the same amount of funding set aside for anti-dumping and countervailing duty enforcement and compliance activities relating to China at \$16.4 million.

BIS, which plays a role in administering export licenses, would see a 2% increase in funding under the FY2015 bill, with their overall funding rising from \$101.4 million to \$103.5 million. The Obama administration had sought \$110 million. The ITC would also see an increase in funds, with its allocation rising by 1.8% to \$84.5 million. The Appropriations Bill, which funds agencies related to commerce, justice and science (CJS), adheres to the spending levels set by the *Bipartisan Budget Act*, was the result of a deal reached by the leaders of the House and Senate budget committees.

## **III.B. Participation in the WTO**

### ***III.B.1. WTO Procurement Agreement comes into force on 6 April 2014***

The WTO Procurement Agreement comes into force on 6 April 2014, effectively two years from the date on which the Protocol amending the Agreement was adopted in March 2012.<sup>35</sup> The US was one of the ten members to accept the protocol for amendment. GPA is a plurilateral treaty which commits members to certain core disciplines regarding transparency, competition and good governance in the public procurement sector. It covers the procurement of goods, services and capital infrastructure by public authorities. The

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<sup>34</sup> Inside US Trade, *Approps Bill Would Boost Trade Agency Funding, But Short Of Obama Plan*, 1 May 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/02/2014/approps-bill-would-boost-trade-agency-funding-but-short-of-obama-plan/menu-id-710.html> (last visited 22 Sept. 2014).

<sup>35</sup> *International Trade Compliance Update*, Baker & McKenzie April 2014, at 4.



Agreement will open the government procurement markets to international competition and to help eradicate corruption in this sector.

### ***III.B.2. USTR requests comments on a dispute with China***

On 8 April 2014, the USTR published a request for comments on the recently established WTO dispute settlement panel concerning *US-Certain Methodologies and their Application in Anti-Dumping Proceedings Involving China*.<sup>36</sup> The comments are due on 2 May 2014. USTR has so far received one confidential comment from an undisclosed source. On 13 February 2014, China requested the WTO Dispute Settlement Body (DSB) to establish a dispute settlement panel to rule on the WTO-consistency of certain aspects of the US' anti-dumping calculation methodology, including the use of "zeroing" by the USDOC in AD investigations involving "targeted dumping". This is a second WTO dispute involving a challenge to the US' "targeted dumping" methodology.

### ***III.B.3. Update on the Doha Round of Trade Negotiations***

#### ***1. Remarks by Ambassador Michael Froman***

The Ambassador stated that the highest priority of the WTO members must be to implement the Bali package.<sup>37</sup> He said given the deadlines are fast approaching, the progress on other WTO priorities depend on the implementation of Trade Facilitation Agreement in time. In the IMF/World Bank meetings held in Washington, Ambassador met Raj Shah, the head of USAID and other donors to identify the opportunities to provide and coordinate assistance to developing countries to help them implement their category C obligations. The Doha Development agenda is defined by varied ambition levels where 'balance' is the key. The ambition level, it must run parallel in agriculture, NAMA and services.

On Agriculture, the US is both an agriculture exporting and importing economy, and with no problem with agriculture setting the pace of the negotiations as long as the pace is matched by other core market access pillars. The ambassador further provided that the discussion on agriculture should address all of the relevant issues. There are threshold questions that will determine whether we are serious about addressing agriculture in this institution – whether we can avoid a tired debate focused more on scoring political points than by making meaningful progress. For example, tariff barriers have significant distortive effective on global agricultural trade.

While talking about Doha as a development round, lowering tariffs was stated to be even more vital given the ever-increasing importance of South-South trade. Market access barriers as well as export competition issues including state trading enterprises must be a central part of our discussion as the WTO Members work to develop a post-Bali work place. Ignoring these significant market distortions, quite simply, would not be a credible exercise. Of course, certain domestic subsidies can also distort markets where there is no credible negotiation.

He provided that the WTO Members should not ignore the fact that the nature of who subsidizes has transformed dramatically in the 13 years since the Doha Round was established. The largest emerging economies now subsidize their farmers at levels as higher than the US and Europe. Moreover, developed country subsidies have been decreasing, while emerging country subsidies have risen dramatically.

In a global commodities market, it makes no economic difference which country or countries are subsidizing. And fortunately, the problem-solving in this area is made infinitely more complicated by the fact that key players are years behind in complying with their obligations to notify the Membership of their subsidy programs.

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<sup>36</sup> *White & Case General Trade Report – JETRO*, April 2014, at 31.

<sup>37</sup> USTR, *Remarks by Ambassador Michael Froman at the WTO Mini-Ministerial Meeting*, 7 May 2014, <http://www.ustr.gov/about-us/press-office/press-releases/2014/May/Remarks-Ambassador-Froman-at-WTO-Mini-Ministerial-Meeting> (last visited on 15 Sept. 2014).

He stated that *flying blind is not a good way to begin a serious negotiation*. At the mini-Ministerial in Davos earlier this year, the ambassadors called for updated information and analysis. In the area of agriculture, the US is still waiting. The US is committed to work constructively with fellow WTO Members to determine the path forward post-Bali. In the area of domestic subsidies, a discussion that ignores emerging economies is not politically or economically serious, and it cannot be the basis for the kind of progress the US would want to see in areas like NAMA and services.

On keys areas of agriculture, NAMA and services, he noted<sup>38</sup>:

- In each of these negotiating group, it is essential that the work in these areas is well-informed by the latest data on trends in trade and barriers to trade. This data must include an accurate picture of agricultural subsidies as they exist today. Agricultural subsidies may be a 20<sup>th</sup> century issue, but to address this issue in the 21<sup>st</sup> century, the WTO Members must understand who is subsidizing today and how. In a global commodities market, no other approach can be effective. We can't make progress if we're still looking to the past- sometimes decades in the past – to provide the factual basis for our negotiations. This starts with required and in many cases overdue notifications. Members who clamor for progressing Doha but fail to meet these basic obligation will have little credibility.
- Any impulse to return to previous ways of working, with a rigid focus on the same negotiating texts which failed in the past, will doom our efforts now. This shouldn't mean that we can't draw on ideas which may have been circulating at earlier stages of the Doha negotiations. But nor should it mean that we can't draw on new ideas.
- In addition, as in Bali, the US also needs to continue with a process and a way of working that allows all Members' contributions to be explored, particularly those who benefit the most from their participation in the global economy.
- He stated that balance will be the key to finding a successful path forward. Any deal must be balanced among agriculture, NAMA and services. It must be balanced within individual pillars, and with regard to individual issues. As many have reiterated, this remains a round of negotiation with development at its core.

## ***2. Debate over trade facilitation threatened by post-Bali talks***

Key WTO members and the Director General delivered a strong caution against the efforts by African countries to delay the implementation of the Trade Facilitation Agreement (TFA) would prohibit any chances of concluding the Doha round.<sup>39</sup> The African Group and Least-Developed Country circulated an idea in Geneva that the TFA not enter finally into force until the conclusion of the Doha round 'single undertaking'. The African stance on trade facilitation is also complicating the renewal of the African Growth and Opportunity Act, the unilateral US trade preference program for Africa.

On 25 June 2014, at the TNC meeting, the LDCs and the African, Caribbean and Pacific countries (ACP) group reiterated the importance of the single undertaking. At the TNC, China and Mexico stated that the WTO members should aim to conclude the Doha round by the next ministerial meeting in 2015, while the US indicated support for that goal. A major obstacle to crafting a work program is an impasse between the US on one side, and China and India on the other, to the extent the two emerging economies should cut their agriculture subsidies.

The US wants China to reduce those subsidies to a greater extent than it was required to do under a Doha round draft agriculture text from 2008, under which China was eligible for special treatment as a

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<sup>38</sup> USTR, *Statement by Ambassador Michael Punke at the World Trade Organization Trade Negotiations Committee*, 7 April 2014, <http://www.ustr.gov/about-us/press-office/press-releases/2014/April/Statement-by-Ambassador-Michael-Punke-at-WTO-Trade-Negotiations-Committee> (last visited 15 Sept. 2014).

<sup>39</sup> Inside US Trade, *Debate Over Trade Facilitation Implementation Seeps Into Post-Bali Talks*, 26 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/27/2014/debate-over-trade-facilitation-implementation-seeps-into-post-bali-talks/menu-id-710.html> (last visited 15 Sept. 2014).

“recently acceded member” of the WTO. China acceded to the WTO in 2001. Under the 2008 Doha agriculture modalities text, developing countries were required to reduce their level of trade-distorting subsidies from 10% of total domestic production to 6.5%, while certain recently acceded members were to reduce their level to 8.5%. China made clear in the current work program discussions that it will not accept more than the 8.5% cut applicable under the 2008 text.

#### ***III.B.4. Russia to challenge US Sanctions at WTO***

On 20 June 2014, Russian PM provided that Russia will initiate a request consultations with the US at the WTO over US sanctions on Russian companies – the first step in the dispute settlement process - though Geneva sources said Russia has not yet filed a formal request at the WTO.<sup>40</sup> However, a Russian official involved in WTO activities later indicated that Russia has not ultimately decided whether to pursue a WTO case. As it is considering different options of protection and the WTO dispute settlement is certainly on the list.

Russian PM indicated that such a challenge of US sanctions at the WTO would be in line with a paper Moscow circulated on 17 April 2014 in Geneva outlining a legal argument for why the sanctions violated US obligations under the GATS. The paper argues three executive orders issued by President Obama in March – one of which froze the assets of several Russian individuals and companies and effectively US firms from doing business with them – are not in conformity with Articles II, VI and XI of the GATS and breach the specific commitments of the US in its services schedule.

The PM stated that such sanctions violate the rules of the WTO, including the most-favored nation treatment in trade because they demonstrate discrimination to the suppliers of services from other countries. They violate the direct prohibition of the second article of the GATS, and obligations of the WTO in the trade of specific financial services if we are talking about the restrictions which were introduced towards a number of Russian banks.

He also implied that the WTO may be biased in favor of the US, noting that the dispute is not going to be easy because the US has a dominant and practical authority in the WTO. He suggested that it will be an opportunity to assess the integrity of the WTO dispute settlement process. However, the trade law experts provided that the paper was released in April that Russia would be unlikely to prevail if its claims were litigated at the WTO.

This is because the US could successfully shield the measures under the powerful national security purposes. The Russian official signaled that the US using the national security exception as a defense of its sanctions would not be positive for the WTO system. As Russia strongly believes that moving forward on the Doha round jointly is much better for the world trade than opening Pandora’s box with a national security exception challenge. Overall the PM stressed the importance of settling disputes through legal means than by force or through sanctions.

#### ***III.B.5. Information Technology Agreement breakthrough blocked by China***

On 26 June 2014, China blocked the aspiration of the US, the EU, Japan and other participants in the ITA expansion talks.<sup>41</sup> As the representative of China reiterated that other members need to compromise as it has done as much as possible on the durations of tariff phase-outs and product coverage in an expanded ITA. The US and the EU tech industry representatives expected China to indicate its willingness to compromise at today’s ITA committee meeting after they had previously laid out how they were willing to compromise in the negotiations.

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<sup>40</sup> Inside US Trade, *Russian PM Says Moscow To Challenge U.S. Sanctions At WTO*, 26 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/27/2014/russian-pm-says-moscow-to-challenge-us-sanctions-at-wto/menu-id-710.html> (last visited 14 Sept. 2014).

<sup>41</sup> Inside US Trade, *Hopes For ITA Breakthrough Fall Flat As China Tells Others To Compromise*, 26 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/27/2014/hopes-for-ita-breakthrough-fall-flat-as-china-tells-others-to-compromise/menu-id-710.html> (last visited 15 Sept. 2014).

The next meeting of the ITA Committee has been scheduled for 31 October 2014. The sources from Geneva indicated that the time appears to be running out for the ITA conclusion which could have been announced by 10-11 Nov 2014 Asia Pacific Economic Cooperation (APEC) summit, being held in Beijing. The source noted – even if talks were able to restart in July – that would only leave a month before the August – September summer break in Geneva and another month to clear the text of any declaration with capitals.

The continued stalemate is almost sure to come as a disappointment to technology industry representatives in the US and EU who has anticipated that China would send high-level officials from Washington, Brussels and Tokyo were all in attendance at this week’s meeting and held bilateral discussions on the sidelines of the committee gathering. The US delegation said that the ITA expansion effort remains a top priority and expressed regret that there has not been a breakthrough since the suspension of the talks last November.

The EU said there are only a few difficulties remaining and argued the multilateral negotiations cannot afford another failure. Japan, meanwhile, said the suspension of negotiations since November last year was worrying and unacceptable to the global tech industry. Other countries also called for an urgent restart of the talks. Separately, Japan expressed at the meeting a ‘deep concern’ about India’s decision in January to put a 10% tariff on digital cameras which can take both still and video pictures, when they have previously entered duty free. Taiwan joined Japan in prodding India to drop the tariff. India’s representative provided that the government was looking into the matter, but that there was a lack of clarity on the exact nature of the cameras subject to the tariff.

### ***III.B.6. Canada’s objections to the new ‘Buy America’ provisions at GPA meet***

On 25 June 2014, at a meeting of the WTO committee overseeing GPA, Canada highlighted its objections to “Buy American” requirements included in several pieces of legislation enacted or pending in the US. Among the measures highlighted by Canada is a *Water Infrastructure Law* passed by Congress in May 2014 and signed into law by President Obama on 11 June 2014.<sup>42</sup> The *Water Resources Reform and Development Act* (WRRDA) of 2014 imposes “Buy America” requirements on a federal fund that provides subsidized loans to communities for wastewater infrastructure projects, as well as a separate pilot program for water infrastructure projects.

Specifically, it states projects funded through these programs must use iron and steel products made in the US, with limited exceptions. However, it also states that this requirement shall be applied in a manner consistent with US international agreements. That language in the past has been interpreted as requiring *Buy American* provisions to be applied in a way that is consistent with US GPA obligations. But in this case, this language does not provide any protection to foreign companies because most of the projects funded by WRRDA are carried out at the level of the municipal governments not covered under the GPA.

The WRRDA and the other US initiatives were discussed at the GPA committee meeting under an agenda item requested by Canada regarding recent developments in domestic legislation. The EU, Japan and Hong Kong said at the meeting that they shared Canada’s worries about the proliferation of Buy American requirements. But the US stated that it could not respond substantively to Canada’s claims, noting that it only received indications Canada intended to raise this issue the day before the meeting.

Instead, the US pledged to report back to Washington on the concerns raised by Canada. In its intervention, Canada highlighted Article XXII: 6 of the revised GPA, which states that each party “shall seek to avoid introducing or continuing discriminatory measures that distort open procurement”. Canada pressed the US to explain what steps it took to comply with this provision in relation to the new *Buy American* requirements. The US responded that it takes seriously its obligations under Article XXII: 6 of the revised

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<sup>42</sup> Inside US Trade, *Canada Raises Objective To New ‘Buy American’ Provisions At GPA Meeting*, 26 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/27/2014/canada-raises-objections-to-new-buy-american-provisions-at-gpa-meeting/menu-id-710.html> (last visited 15 Sept. 2014).

GPA. Article XXII: 6 was not included in the original 1994 GPA, but was added in the revised agreement, which went into force in April.

During the negotiations for the revised GPA, some parties such as Canada and the EU had sought a stronger formulation of this provision that would have obligated signatories to avoid introducing new discriminatory measures on procurement which would have amounted to a standstill. In addition to the WRRDA, Canada faulted two other categories of US initiatives with *Buy American* requirements. One was a draft proposal by the Obama administration for an urban transportation bill known as the *Grow America Act*. That bill would increase the domestic content provisions for so-called “rolling stock” – buses and urban rail cars – from the current level of 60% to 100%.

The third category is state-level legislation that imposes *Buy American* restrictions. Canada said there have been seven such state initiatives brought to its attention since November 2013, and specifically mentioned three of them. One is a \$1 billion *Capital Investment Bill* passed by the Minnesota state legislature, while the other two are pending legislative initiatives in New York and Massachusetts.

Also at 25 June 2014 meeting, GPA parties discussed pending accessions to the agreement, including those of China, New Zealand and Montenegro. Geneva sources said that they had low expectations for any movement on China’s GPA accession, noting the Chinese delegation will consist of technical-level officials. Those expectations were borne out, as the portion of the meeting on China consisted of Beijing reiterating its commitment to table an improved accession offer before the end of this year, with other GPA parties emphasizing the level of coverage in the new offer must be commensurate with that offered by other signatories.

The meeting also yielded progress in the access negotiations of New Zealand and Montenegro, both of which came to the table with proposed improvements. Sources said that all GPA parties indicated at the meeting that they are ready to accept Montenegro’s offer, and all but the EU said they are ready to accept New Zealand’s.

New Zealand tabled with proposed improvements to its offer in those two areas. One Geneva source said New Zealand is now proposing the addition of three or four SOEs. One sub-central entities, New Zealand laid out a compromise approach under which it would cover procurement by local governments in transportation and construction projects which receive central government funding. The EU said it would need to study New Zealand’s approach in further detail adding that it still wanted broader coverage of local and regional entities.

### ***III.B.7. US willing to pay Brazil to settle Cotton case, but concerned over amount***

The US showed willingness to pay Brazil an additional financial compensation to settle the dispute over subsidies given to American cotton farmers and agricultural exporters.<sup>43</sup> Both the sides are divided as regards the amount of compensation. The US faces challenge to appease Brazil’s demand while avoiding a backlash from the Congress on the same. According to agricultural experts, the US could claim the broad charter of the Commodity Credit Cooperation (CCC) as the legal basis for making these payments. Leaked documents provide that Brazil demands \$400 million in compensation as the negotiations came to aggressive stand on 21 June 2014: a deadline given by Brazil to request a compliance proceeding at the WTO unless there is a deal.

However, no requests was made after the deadline passed. Another document – dated 14 May 2014 and marked Secret is titled, “The WTO cotton dispute: Basis for a possible accord”: lays down two key factors for a settlement that have long been part of the dispute: compensation to Brazilian cotton growers to offset the alleged impact of US farm subsidies and adjustments to the US agricultural export credit program known as GSM 102. On the first factor, the document says that Brazil in no case should accept an amount of

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<sup>43</sup> Inside US Trade, *U.S. Willing To Pay Brazil To Settle Cotton Case, But Haggles Over Amount*, 19 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/20/2014/us-willing-to-pay-brazil-to-settle-cotton-case-but-haggles-over-amount/menu-id-710.html> (last visited on 20 Sept. 2014).

compensation less than \$400 million. As this is the amount that the Brazilian cotton industry – represented by the group ABRAPA is willing to accept.

Exactly how this value was calculated is not fully explained. However, an argument was rationalized based on what is a private sector estimate of the harm that the 2014 farm bill's cotton program will cause to Brazilian producers—calculated as \$324 million per year, or \$1.6 billion over the five year span of the bill. It also notes that the US failed to deliver all payments to a development fund for Brazilian cotton growers under an interim settlement struck in 2010 that terminated in February, and said the amount owed was \$59.6 million. That figure plus the value of the projected \$324 million annual impact add up to \$383.6 million. The \$400 million figure is far more than ABRAPA said it would seek in order to settle the dispute as part of a May 2013 accord the US cotton producers that eventually unraveled.

Then, ABRAPA said it wanted the monthly interim settlement payments of roughly \$12.27 million to the Brazilian cotton fund to continue for 18 months after striking a final resolution for a total of about \$220 million. US cotton producers dispute the notion that the new cotton program in the 2014 farm bill, known as STAX, would have a more distortive effect on world cotton trade than pre-existing programs. But Brazil argues that STAX, despite including some changes demanded by Brasilia, could potentially deliver huge payments to US farmers even when prices are relatively high and continue to insulate them from market signals when prices are low.

While not explicit, the document seems to indicate that this \$100 million would be directed to the existing Brazil cotton fund. As an additional parameter for a final resolution of the cotton dispute, it calls for the US to agree to more flexible terms under which the cotton fund, managed by the Brazil Cotton Institute. Under a now-expired memorandum of understanding that formed part of the basis of the interim settlement, the institute is only allowed to use the US provided money for technical assistance and capacity building activities related to cotton production in Brazil – such as training on post control. Research purposes are specifically excluded.

The 2014 farm bill included provisions stating that, upon resolution of the cotton dispute, Brazil could use the funds for research purposes, provided that the research is conducted in collaboration with research agencies of the USDOA or with a college, university or research foundation located in the US. Brazilian cotton producers, meanwhile, have been seeking to use the fund to directly finance their plantings and operations – uses that are not allowed under the terms of the MOU. The leaked document's portion on GSM 102 appears to lay down a detailed proposal for the fee structure of the program, based on a bank's risk category and a loan's maximum repayment term or loan tenor. GSM 102 guarantees loans, typically made by US-based financial institutions, extended to foreign banks who are financing purchases of US agricultural commodities.

The documents includes two tables with different sets of proposed parameters for the fee structure, depending on the extent to which the US is willing to put in place more stringent tenor limits. It appears to indicate that Brazil will accept lower fee if the US agrees to limit that term to 12 months, as opposed to 18 months. Under the new farm bill, the maximum tenor was reduced to 24 months, down from 36 months previously. Brazil, according to the document, is proposing that the US increase the fees above their current level to bring them in the line with a framework establish by the OECD. The US, meanwhile, wants to bring fees down from current levels, the document appears to indicate. GSM 102 fees have been continually ratched up in order comply with the terms of the 2010 interim settlement.

A final request being advanced by Brazil, according to the document, is that the US agree to cover a list of about 20 new products under the Generalized System of Preferences (GSP), which grants preferential tariff levels to certain goods from Brazil and other participating countries. But the document indicates that this is not a make-or-break issue for the government, especially since GSP has expired and there is no indication of when Congress might renew it.

The document also indicates that Brasilia is aware that the possibility always exists that it could be graduated from GSP. Two other documents relating to the cotton dispute, dated 13 May and 6 May 2014,

contain much of the same information. The 13 May 2014 document is shorter summary and is titled “talking points” on the basis for a possible settlement of the WTO dispute, while the 6 May 2014 file appears to be a briefing document on the state-of-play of the dispute for a senior government official.

### ***III.B.8. Ambassadors of Ukraine, Moldova and Georgia urges renewal of GSP while Russia and Bangladesh gets a mixed response by the US***

The ambassadors of Ukraine, Moldova and Georgia have urged the leaders of the House Ways and Means and Senate Finance committees to renew the US Generalized System of Preferences (GSP) as a way of strengthening their economic and security relationship with the US as well as preserving the countries’ economic stability.<sup>44</sup> In a joint 22 May 2014 letter, they spell out how much the 31 July 2014 expiration of the program has impacted their respective economies, with imports from Georgia dropping by more than 70% thus far in 2014.

Imports of Moldovan wines to the US have dropped by almost 28% since GSP expired due to the re-imposed tariff, depriving the industry and rural communities of a life line. The economic uncertainty prevailing in Ukraine in the wake of “unprecedented aggression” from Russia has been compounded by the lapse of GSP and the resulting drop in exports. They stated that: *We urge you to make GSP renewal a priority given the current security situations in our countries, the three ambassadors. Most importantly, the GSP program is essential to assisting our countries to withstand the current political developments in our regions. It is extremely important that the GSP program be reauthorized soon, as it will allow our businesses and workers to reestablish stable demand for their products and continue to expand into new products. For Ukraine, the GSP renewal could be significant part of the US effort to provide assistance to Ukraine since the expiration has endangered Ukraine’s exports worth \$50 million in 2013, according to the letter.*

Georgian exports to the US that have benefited from GSP were fruit juices, mineral water and flavored waters. Without GSP, the bilateral economic relationship, as measured in US imports from Georgia, has been decimated. The letter noted that the countries’ two presidents pledged in January 2012 to continue to strengthening the bilateral trade relationship and that since then, the Obama administration has largely relied on the GSP to do that. USTR Michael Froman in 1 May 2014 testimony before the Finance Committee, urged Congress to reauthorize the GSP program expeditiously as a way of helping Ukraine, but did not mention Moldova and Georgia.

The Obama administration announced earlier this month that it intends to graduate Russia from GSP, thereby addressing one of the three hurdles to GSP reauthorization. The other two issues are finding the offsets for revenue lost from eliminating duties on GSP imports, and the question of whether the US importers of Russian goods should be retroactively refunded the duties they paid while GSP was expired. Republican House Ways and Means members have taken the position that it is not politically viable to retroactively refund duties to US importers of Russian goods.

For Moldova, economic diversification of its markets is a priority after Russia banned its wines and spirits last year, and Moldovan wine has become a major export to the US under GSP. Without US companies being able to import Moldovan wine duty-free for the last nine months, it has become already clear that Moldova cannot maintain its newly established and vital import share. The longer GSP is not renewed, the more difficult it will be to reestablish our US market niche.

As part of its strategy to seek economic diversification, Moldova will sign an association agreement with the EU on 27 June 2014, which it is doing in pursuit of its long-term objective to join the EU. It notes that in March of this year, the US and Moldova launched a Strategic Dialogue which has an important economic dimension. Extension of GSP and the signing of a bilateral Trade and Investment Framework Agreement

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<sup>44</sup> Inside US Trade, *Ukrainian, Moldovan, Georgian Ambassadors Press Congress For GSP Renewal*, 29 May 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/30/2014/ukrainian-moldovan-georgian-ambassadors-press-congress-for-gsp-renewal/menu-id-710.html> (last visited 21 Sept. 2014).

(TIFA) are vehicles that provide the opportunity to support Moldovans during these difficult times. The letter was signed by Georgian Ambassador and Ukrainian Ambassador. The letter was sent with the assistance of a law firm that works for the Alliance of GSP countries. It was sent to Ways and Means Chairman Dave Camp and Ranking Member Sander Levin as well as Senate Finance Chairman Ron Wyden (D-OR) and Ranking Member Orrin Hatch (R-UT). The letter was also sent to Froman, Commerce Secretary and Treasury Secretary.

Ahead of the one-year anniversary of a factory collapse in Bangladesh that killed roughly 1,100 workers, the Obama administration this week gave Bangladesh a mixed review for its efforts to strengthen worker rights and safety as laid out in a labor action plan that will help inform a US determination in mid-June whether to reinstate the country under the Generalized System of Preferences. According to the Obama administration, Bangladesh has made progress in such areas as hiring more building inspectors and increasing union registrations. But it indicated the country has fallen short on labor law reforms related to freedom of association and collective bargaining.

### ***III.B.9. Leaked TISA Text Shows Clash on Data Transfer, Regulatory Transparency***

The anti-secrecy group Wikileaks on 19 June 2014 released the draft text for a financial services annex to the Trade in Services Agreement (TISA), which is being negotiated among 23 members of the WTO.<sup>45</sup> The draft financial services annex, which is dated 14 April 2014, is a compilation of proposals, including from the US, Panama, Japan and Switzerland. A USTR spokesman declines to comment on the legitimacy or content of the leaked document. The memorandum provides a preliminary analysis of the leaked financial services chapter of the TISA dated 14 April 2014. It provides that the US and EU pushed financial services liberalization in the WTO and are the most active financial services negotiators at the WTO. The third most active participant is the renowned tax haven of Panama. The analysis of the above text can be found: <https://wikileaks.org/tisa-financial/analysis.html>

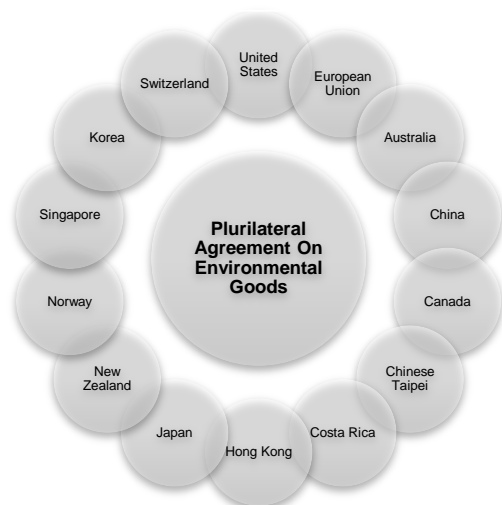


### ***III.B.10. ‘Critical Mass’ & ‘Scope’ poses challenges for Nascent Green Goods Talks***

<sup>45</sup> Inside US Trade, *Leaked TISA Text Shows Clash On Data Transfer, Regulatory Transparency*, 19 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/20/2014/leaked-tisa-text-shows-clash-on-data-transfer-regulatory-transparency/menu-id-710.html> (last visited 17 Sept. 2014).



The 14 members negotiating a plurilateral agreement to eliminate tariffs on environmental goods account nearly 90% of the world trade in the environmental goods covered by the initiative so far.<sup>46</sup> The negotiations



shall build on a list of 54 environmental goods put together by the APEC countries – the Asia- Pacific Economic Cooperation Forum – in 2012 to reduce import tariffs to 5% or less by the end of 2015. Such include wind turbines, air quality monitors and solar panels. The members are stated to likely run into two major issues that could serve as stumbling blocks once the first round of talks begin next month: the scope of the initiative, and whether they can build a ‘critical mass’.

#### *Scope*

As regards the scope, the EU has asked that the negotiations should address not only tariffs but also services market access and non-tariff barriers. Such contradicts US’ assertion that environmental services should be discussed within TISA, it is much easier to discuss tariffs first and non-tariff barriers

could be discussed later.

#### *Critical mass*

As regards critical mass, the big challenge is whether actually represent the major parties in the trade of environmental goods (esp. India and Brazil). It is said that the 14 members represent 86% of the world trade (nearly 90%) in environmental goods. Achieving critical mass is important as tariff cuts made by the participants will be extended to all WTO Members on MFN basis. Without such a critical mass, the WTO members who export the list of 54 environmental goods will take a fair ride on the participating member’s obligations under the agreement. National Electrical Manufacturers Association along with Megawatt Storage Farms stated that India and Brazil are key players in the trade of the said products and should be proposed to participate in the same. As even a small tariff cut can add a lot to the cost of the product.

#### **III.B.11. US’ consideration prior launching a WTO Dispute**

The USTR provided focus areas before the US aims to file a dispute in the WTO.<sup>47</sup> Such areas which are considered includes:

- a) Market Share (USTR cites Indonesia, Argentina and India, in addition to China which have initiated actions against the US.)
- b) Importance of the issue and its consequent impact on other markets.
- c) Prioritizing systemic wins which send an appropriate signal to other countries as regards US’ policy stance.

#### **III.B.12. WTO Compliance Panel on Boeing Subsidies Delays Ruling Until Mid-2015**

A WTO panel examining whether the US has complied with a 2012 AB ruling that faulted US subsidies to Boeing said this week it does not expect to deliver its report until mid-2015, instead of 2014 as it had earlier

<sup>46</sup> Inside US Trade, NTBs, ‘Critical Mass’ Pose Challenges For Nascent Green Goods Talks, 19 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/20/2014/ntbs-critical-mass-pose-challenges-for-nascent-green-goods-talks/menu-id-710.html> (last visited 17 Sept. 2014).

<sup>47</sup> Inside US Trade, USTR Official Cites Market Size Among Criteria For Selecting WTO Cases, 5 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/06/2014/ustr-official-cites-market-size-among-criteria-for-selecting-wto-cases/menu-id-710.html> (last visited on 20 Sept. 2014).

predicted.<sup>48</sup> A compliance panel in a separate, but related case brought by the US against EU member state subsidies to Airbus has not yet backed away from its plan to issue a ruling by the end of 2014. The Airbus compliance panel has already postponed its decision twice. Both the US and the EU are arguing before separate panels established under Art. 21.5 of the Dispute Settlement Understanding that the other has failed to implement adverse WTO rulings against them by withdrawn the faulted subsidies or removing their adverse effects. Both panels were requested in 2012.

### ***III.B.13. US Adopts Two-Pronged Defense in WTO Clove Case in Indonesia***

The US argued against Indonesia's efforts to impose retaliation in the WTO dispute that faulted a US ban on non-menthol cigarettes. It stated that it has complied with the AB ruling by providing a legitimate regulatory reason through the US FDA for differentiating between non-menthol flavored cigarettes (banned) and the menthol cigarettes (non-banned).<sup>49</sup> Thereby, responding to the AB's finding that the US has failed to show such a legitimate regulatory distinction. Further, it stated that even if the US is found to have not complied with the ruling, Indonesia cannot be entitled to retaliate because the country's exports have not been nullified or impaired by the ban on clove cigarettes.

Given that the clove cigarettes manufactured by Djarum on Indonesian brand have been repurposed by marketer Kretek International into clove cigars. Djarum accounted for 97% of clove cigarettes export to the US before the ban and accounts for more than 99% of clove cigars exported to the US after the ban. Article 22.4 of the DSU states that the amount of retaliation a WTO member is entitled to shall be equivalent to the level of nullification or improvement.

Since the Indonesian industry has repackaged close cigarettes into clove cigars which unlike their counterparts are not banned, therefore the Indonesian exports have not suffered loss as a result of the ban. Indonesia does not doubt the data but states that the facts are irrelevant to the calculation of nullification or improvement. It stated that the ability of a single Indonesian manufacturer to sell in the US does not indicate the absence of nullification or impairment.

### ***III.B.14. Mexico challenges US' compliance with Tuna Labeling Ruling***

Mexico argued that the amendment to the *1991 Dolphin Protection Consumer Information Act* does not actually remedy the nullification and impairment to the Mexican industry.<sup>50</sup> As it claims to that this is discriminatory because it is a lower requirement than a certification from an independent observer. It still prohibits the setting of nets on dolphin. It stated that the amendment will not suffice as there is a need for a different legislation which can address the remedy in an effective manner.

Such should change the culture for how tuna can qualify for the dolphin safe label. Under the original US regulation, tuna caught inside the ETP could only obtain the *US-Dolphin Safe Label* by an independent observer's certification that no dolphin was killed a seriously injured while catching the tuna, and that no dolphin were intentionally encircled by a net in the process.

At the same time, tuna which was caught outside the ETP was eligible for the label only if a ship captain certified that he has not encircled the Dolphin through a net. The Mexican government also said in 10 April 2014 press release that its submission includes "strong technical and scientific evidence demonstrating that

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<sup>48</sup> Inside US Trade, *WTO Compliance Panel On Boeing Subsidies Delays Ruling Until Mid-2015*, 29 May 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/30/2014/wto-compliance-panel-on-boeing-subsidies-delays-ruling-until-mid-2015/menu-id-710.html> (last visited 21 Sept. 2014).

<sup>49</sup> Inside US Trade, *US Adopts Two-Pronged Defense In WTO Clove Case With Indonesia*, 17 April 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-04/18/2014/us-adopts-two-pronged-defense-in-wto-clove-case-with-indonesia/menu-id-710.html> (last visited 22 Sept. 2014).

<sup>50</sup> Inside US Trade, *Mexico Advances Challenge of US Compliance With Tuna Labeling Ruling*, 10 April 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-04/11/2014/mexico-advances-challenge-of-us-compliance-with-tuna-labeling-ruling/menu-id-710.html> (last visited 22 Sept. 2014).

the US has not complied with its WTO obligations and fishing practices that country promotes generate mortality or injury to the dolphins.

### ***III.B.15. WTO Committee on Customs Valuation looks to update decision on valuation of software***

The Committee on Customs Valuation on 12 May 2014, discussed a proposal by Uruguay to update a 30-year old decision which has allowed members to value, for custom purposes, software and data on the basis of the cost of the carrier media such as magnetic tapes, CDs and DVDs in which they are transported from one country to the other.<sup>51</sup> Uruguay proposed updating the 1984 Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment”, which allowed members, for customs purposes, to value software according to the cost of its carrier media. It provided that under the current decision, customs may value software in a CD-ROM at \$5, while the same software imported using a USB key could be valued at \$1000. It said the decision must be extended to USB keys or flash drives because of their growing popularity as carrier media for software. Argentina and Mexico supported Uruguay’s proposal. The US, Canada, the EU, Japan and the Philippines provided that they are open to the proposal and are reviewing the issue. China said it has no objective to the proposal but noted that the Decision excludes songs and movies from this kind of valuation. It also asked for data on the trade volume involved. The chair requested the WTO Secretariat to prepare a study on the trade volumes involved, as requested by China.

### ***III.B.16. Revised WTO Government Procurement Agreement comes into force on 6 April 2014***

On 11 March 2014, the WTO announced that the revised WTO Agreement on Government Procurement (GPA) shall come into force on 6 April 2014, effectively two years from the date on which the Protocol amending the Agreement was adopted in March 2012.<sup>52</sup> The threshold of acceptances for the revised Agreement to come into force was two-thirds of the parties. Israel’s acceptance of the Protocol on 7 March met the requirement. The US is one of the ten Members to accept the Protocol to amend the Agreement. It should be recalled that the GPA is a plurilateral treaty which commits members to certain core disciplines regarding transparency, competition and good governance in the public procurement sector. It covers the procurement of goods, services and capital infrastructure by public authorities. The aim of the Agreement is to open the government procurement markets to international competition and to help eradicate corruption in this sector.

## **III.C. Preferential and other arrangements**

### ***III.C.1. US holds aid packages for El Salvador over Seed procurement program***

The US held back an already- approved \$277 million aid package for El Salvador in part to pressurize the Salvadoran government to modify a corn and bean seed procurement policy that aims to provide support for small-scale, low-income farmers in the Central American country and bolster domestic food security.<sup>53</sup> The US has flagged the procurement policy, which was modified in 2012 and again early this year, as potentially violating provisions of the procurement chapter of the Dominican Republic –Central American Free Trade Agreement (CAFTA-DR). But it has stopped short of declaring that the policy is inconsistent with the trade deal.

The \$277 million aid package has been offered by the Millennium Challenge Corporation (MCC), a US government aid agency, in the form of a compact that would be matched with \$88.2 million in funding from El Salvador. The money is to be used primarily to enhance El Salvador’s productivity in internationally traded goods by improving its investment climate, domestic education and local infrastructure.

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<sup>51</sup> B&M, *WTO Committee on Customs Valuation looks to update decision on valuation of software*, International Trade Compliance Update June 2014.

<sup>52</sup> B&M, *Revised WTO Government Procurement Agreement to come into force on 6 April 2014*, International Trade update April 2014.

<sup>53</sup> Inside US Trade, *US Holds Back Aid Package For El Salvador Over Seed Procurement Program*, 26 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/27/2014/us-holds-back-aid-package-for-el-salvador-over-seed-procurement-program/menu-id-710.html> (last visited 14 Sept. 2014).

Despite the compact being approved by MCC's board on 12 September 2013, MCC officials have since said it will not give the final sign-off to the compact until the procurement policy is changed. The procurement issue is one of five issues identified under a "Priority Action Plan" that El Salvador developed with the MCC, which also includes US demands for changes to a Salvadoran money-laundering law.

### ***III.C.2. US-Taiwan Trade and Investment Framework Agreement (TIFA)***

The US and Taiwan held negotiations on TIFA this quarter. The US secured key commitments from Taiwan to ease restrictions on cross-border data transfer in the financial sector and to address the outstanding issues on pharmaceuticals.<sup>54</sup> However, it failed to make progress on Taiwan's continuing ban on pork raised with ractopamine which has blocked US' exports. It should be noted that TIFA talks begun after Taiwan lifted its ban on ractopamine in the US beef. Taiwan has a large domestic pork industry but has almost no beef production.

The negotiations also addressed two of Taiwan's priorities with a US commitment to start a process for allowing imports of Taiwanese guava and orchids in potting the soil. Pharmaceutical industry source said that the development could be positive if the task force is comprised of officials from varied ministries as efforts in the sector are often frustrated by various agencies. The parties also discussed issues relating to effective patent enforcement, data protection and classification of patented drugs in Taiwan Health System. An issue with respect to Taiwan's pharmaceutical sector was that it does not recognize new indicators for using a drug reimbursement scheme or its data exclusivity coverage.

According to Pharmaceutical Research and Manufacturers of America (PhAMA) Taiwanese law gives drugs five years of data exclusivity but this does not cover new indications. The US recognized Taiwan's amendment to its Mergers and Acquisition law as well. It stated that further engagements on IPR issues as well as commitment to build on recent positive steps to clarify investment criteria through investment working group implemented last year as part of the restart of the TIFA will be discussed.

### ***III.C.3. Update on Trans-Atlantic Trade and Investment Partnership Agreement (TTIP)<sup>55</sup>***

The transatlantic trade and investment partnership (TTIP) is a free trade agreement being negotiated between the EU and the US. The agreement has three main elements:

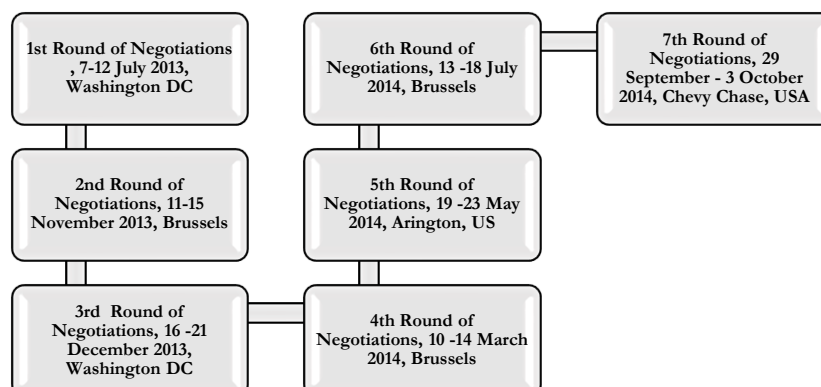
- i) Market access: removing customs duties on goods and restrictions on services, gaining better access to public markets, and making it easier to invest.
- Improved regulatory coherence and cooperation by dismantling unnecessary regulatory barriers such as bureaucratic duplication of effort.
- Improved cooperation when it comes to setting international standards.

Given €2 billion trade flows daily between the US and EU, it is stated to be one of the most ambitious trade arrangement between two economies.

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<sup>54</sup> Inside US Trade, *US Secures Pledges on Data Transfers, Pharmaceuticals From Taiwan*, 17 April 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-04/18/2014/us-secures-pledges-on-data-transfers-pharmaceuticals-from-taiwan/menu-id-710.html> (last visited 21 Sept 2014).

<sup>55</sup> For reference to all the updates please refer: Inside US Trade, *Transatlantic Trade and Investment Partnership*, [http://insidetrade.com/index.php?option=com\\_customproperties&view=show&tagId=260&Itemid=1041](http://insidetrade.com/index.php?option=com_customproperties&view=show&tagId=260&Itemid=1041) (last visited 20 Sept. 2014).



### ***5<sup>th</sup> Round of Negotiations, 19-23 May 2014, Arlington, US***

From 19-23 May 2014, the US and EU trade representatives met in Arlington for the 5<sup>th</sup> negotiating round of the TTIP. According to the USTR Michael Froman, the Parties have advanced from discussing a conceptual framework to defining specific ideas which reflects the fact that negotiators have started to deliberate draft texts in most areas under negotiation. Notably, the US and the EU negotiators agreed that ‘they are where they should be after 11 months’.

Areas contemplated during the 5<sup>th</sup> round are summarized as follows:

**Market Access:** The talks covered tariff commitments, trade in services, investment and government procurement. With respect to tariffs, the EU chief negotiator Bercero noted that discussions were of a technical nature to clarify some elements of the US’ and EU’s respective offers, while US Chief Negotiator Mullaney shared that both Parties are moving towards second tariff offers, albeit with not specific timeframe. The EU is also reportedly taking an offensive approach to secure market access commitments at the US state level, specifically those related to government procurement with the aim of provisions beyond the WTO Government Agreement (GPA). In terms of rules of origin, reports indicate that US negotiators have offered for a potential separate chapter on textiles, which would provide specific treatment for covered products. However, as a rule of thumb, the EU does not negotiate free trade agreements (FTAs) with a specific chapter on textiles, unlike the US that has a textile chapter or annex in recent FTAs to which it is a party (e.g. bilateral FTAs with Korea, Colombia and Panama).

**Regulatory Compatibility:** Negotiators discussed a range of sectors, including medical devices, pharmaceuticals, cosmetics, information communication technologies, automobiles, pesticides, and chemicals. The EC published on 14 May 2014 its negotiating positions with respect to regulatory compatibility in five sectors, including for motor vehicles. In the case of motor vehicles, the EU’s chief negotiator noted that both negotiators and regulators focused on comparing the US’s and EU’s respective technical regulations on safety, while identifying and discussing the type of data needed to find compatible levels of safety and means to compile such data. More broadly, the EU’s chief negotiator stressed that TTIP negotiators will address regulatory compatibility on a sector-specific basis, due to fundamental differences in each sector.

**Rules:** Parties have advanced discussion based on draft legal texts in the areas of technical barriers to trade (TBT), competition, state-to-state dispute settlement, and small and medium enterprises (SMEs). The talks reportedly also involved non-text based discussions on sustainable development, labor, and environment. Notably, the discussion on energy and raw materials, a key offensive area for the EU, focused on determining whether to have a separate energy chapter that addresses specific issues and identifying the extent to which other parts of the Agreement already reflect commitments that affect the energy trade.

Progress made by TTIP parties during the 5<sup>th</sup> round is more comprehensive than expected, particularly in light of the 25 May 2014 European Parliament elections, which engendered fear that they would compromise the EU’s ability to establish a clear negotiating position. Nevertheless, the outcomes of the 5<sup>th</sup> round suggest that the Parties have exercised the maximum negotiating space possible in advance of greater

political instruction. In this respect, it has become increasingly clear that concluding the TTIP will face political obstacles on both sides of the Atlantic: a US Congress in gridlock over trade and TPA, and a generally pro-trade but fragmented European Parliament.

The US and EU have consolidated texts on seven areas including Technical Barrier to Trade, Competition and State-To-State Dispute Settlement. Text on those areas, in addition to trade in goods and certain aspects of trade facilitation, have already been consolidated meaning that the positions of both sides are reflected in a single document. Negotiations are taking place on rules of origin and Small and Medium Sized Enterprises (SMEs). The EU chief Negotiator provided on 23 May 2014 that both sides have begun with a common text on SMEs.

### ***6th Round of Negotiations, 13 -18 July 2014, Brussels***

#### ***Issues raised during the quarter***

- ***Services***

The EC planned to table its offer for market access in services under TTIP before the next round of negotiations to be held in Brussels in mid-July. However, it provided the financial services will not be included in the same. The key elements of the EU offer is based on a positive list of affirmative commitments for specific sectors which are reflected in the 'Leaked EU Services Draft'. According to the *Inside US Trade*, informed sources have provided that the final offer will contain some changes from the leaked text and the commission is deliberating how to schedule certain services.

Consistent with TISA, the EU will apply negative list approach to national treatment obligations which is reflected in the draft leaked version of its TTIP offer. The EU will apply positive list approach to schedule market access in services which differs from the US offer on services and investment market access tabled in the 5<sup>th</sup> Round of TTIP Negotiations. The US scheduled its TTIP services offer under the negative list approach alike to its deal in KORUS as it presumes that sectors are open to foreign firms unless they are specifically exempted. The leaked document provides that the US and EU would exchange offers in services and investment between the 5<sup>th</sup> and 6<sup>th</sup> TTIP negotiating rounds. It provides the offers by the EU on services 'mirror' those submitted by the EU in TISA negotiations in November 2013 both in terms of format and substance with two main exceptions:

- 1) The draft TTIP offer does not contain any commitments on financial services. Such reflects that there should be close parallelism in the negotiations on market access and regulatory aspects of financial services. Given the firm US opposition to include regulatory cooperation on financial services in TTIP, it is considered appropriate not to include any commitments on financial services in TTIP in the EU's market access offer at this stage. However, the situation may change in future if the US show willingness to engage 'solidly' on regulatory cooperation in financial services in TTIP.
- 2) For market access mode 1 and 2 the draft offer contains a mere reference to EU's TISA offer. This is along the lines of the usual US approach e.g. in the US-Korea FTA where a mere reference to US commitments in GATS is made.

There has been an adaption for the reservation on broadcasting transmission that better reflects the EU interests and current regulation in this area. The offer covers establishment in non-services using the TISA approach. In terms of substance, the offer is based on the EU-Korea FTA. The explanatory note lays out a very careful approach which allows for further change.

It provides that in the context of forthcoming discussions with the US on respective services and investment offers, the issue of transparency of State level measures on the US side will be discussed. In a consultations of the TPC SI in May 2013, Member States were asked to provide examples of market access or national treatment restrictions in the US at State level. Such would be extremely important information for the forthcoming discussions with the US on the respective offers. The Commission stated to be grateful to receive the same by 30 June 2014.

The explanatory note further explains that *given the unprecedented depth in market access and regulatory matters in TTIP, the EU has decided to undertake a thorough examination of the interface between measures relevant to the functioning of the internal market and the EU's present and future international obligations*. It further stated that the EU *maintains the right to submit to a review (e.g. an authorization and/or notification procedure) the direct or indirect acquisition and/or control of a company or firm or the establishment of a new company or firm in their respective territories on national security grounds, under existing or future legislation, will be preserved through exceptions in the TTIP text*.

- **Investment Regulation**

Advocates of strong international investment protection rules in the US are questioning EU's interest in changing the prevailing model of investment treaties. As they provide that a weak TTIP could invite weak investment agreements in future. However, according to the EU its aim is to clarify the obligations that government must uphold with a closed list of factors which could violate fair and equitable treatment. The list includes: 1) fundamental breach of due process, manifest arbitrariness, targeted discrimination on manifestly wrongful grounds and abusive treatment of investors. According to the EU, its agreement with Canada which has yet to be concluded as setting the basis for negotiations with the US. The EU will close its 3 month period for comments on Investment and ISDS in TTIP on 6 July 2014 and will release the input so received.

As regards, ISDS, given the international unpopularity of such provisions in BITs provided the question over neutrality of arbitrators and the extraordinary costs on tax payers due to the legal fees (roughly \$8 million a case), the consideration to include such a provision has been seen in a new light. The EU is aiming to establish an appellate mechanism for ISDS arbitrator rulings. The US has been in agreement with the EU over the same given that most of the US' deal already cover such an establishment but on a future date given an unresolvable conflict.

- **Government Procurement and the 'Buy American' laws**

A low-profile meeting was held between the USTR and EU Trade Commission to deliberate on the EU's demands for greater access to the US public procurement market and the US' demand to ensure export opportunities for its farm products in Europe. The meeting was held on 18 June 2014 weeks ahead of the next round of TTIP negotiations. The EU considers that there is a lack of engagement on government procurement by the US at federal as well as sub-federal level. The US negotiators have signaled that they will not be able to negotiate the demands for waiving the 'Buy American' provisions at the federal level as well. Given the coming elections, the US indicated to address the demands at the end of TTIP talks. The EU however is hopeful to gain new market access opportunities at the State-level procurement in addition to the rules that go beyond the plurilateral agreement on Government Procurement.

The US on the other hand demanded negotiations on the scope of market access commitments and the degree to which the EU will remove non-tariff measures that effectively restrict US agri-food imports.

- **Intellectual Property Rights and Information Technology (Geographical Indications and data protection)**

House Means and Ways chairman Dave Camp on 19 June 2014, accused the EU of using the guise of National Security Agency (NSA) Surveillance to object against a strong protection for cross-border data flows. He urged that TTIP must include strong rules allowing free flow of data across borders. On IPR, the US argued against the EU's proposal to reserve certain food names for the EU producers based on their geographic origin but showed willingness to help protect their brand value by bilateral talks. The US argued that the EU's demand to provide GI protection to generic names like 'feta cheese' is incompatible with the US' trademark system and would unfairly limit market access for the US' producers. Almost all of the 28 Agriculture Ministers of the EU raised the GI concerns. However, the US' trademark system which only protects an identity or a brand which carries commercial value and not mere generic value.

The US' claims that the EU efforts to protect cheese and other food names as geographical indications (GIs) amount to a wholesale threat to US food labels. The Ambassador on 9 June 2014 in a letter to the

Congress provided that such is due to the fact that a bulk of US industrial meat and cheese production is sold under terms that are not protected as GIs in the EU such as cheddar, mozzarella or bologna. Further, many of the cheese names used in the US like, ‘American Cheese’ or ‘Monetary Jack’ are not used in the EU.

- **Standards (Genetically Modified Organisms and Regulatory Cooperation)**

The US’ Soybean Industry questioned the statements by senior European Commission officers providing that the EU’s law on Genetically Modified Organisms (GMOs) is not on the table for negotiations. The industry seniors while testifying to the Senate Finance Committee stated that the EU’s biotech laws which discriminates against the US’ products should be addressed in the TTIP. The industry wants the EU to establish “commercially meaningful” thresholds for accidental commingling to unauthorized GMOs in otherwise approved commodity shipments.

As the EU law maintains ‘zero’ tolerance for unauthorized GMOs but the Commission has set a de facto minimum threshold for the presence of unproved GMOs in shipments of feed and has promised since long to set a similar threshold for food. The industry also provided that the EU’ mandatory traceability and labeling requirements must be modified or replaced with non-discriminatory rules. The industry referred to a Polish law banning the GMOs in animal feed imports, providing the lack of scientific basis while restrictive to trade and against the EU’s WTO obligations.

The US’ poultry industry provided that the EU’s food safety rules refuses to approve the substances used in the US poultry processing to reduce contamination. Such substances include hyper-chlorinated water. National Chicken Council provided that various attempts to get the EU to approve alternative substances besides the hyper-chlorinated water also used for pathogen reduction has failed despite the substances receiving positive reviews from the European Food Safety Authority (EFSA) as the Member States would not approve their use. NCC provided that such exports have been out of the EU’s market for past 18 years and there is still a lack of indication under the TTIP to remedy the situation. The USDOA submitted an application for the approval of peroxyacetic acid (PAA) as a pathogen reduction treatment for poultry meat and in March 2014 it received positive review from the EFSA, however it is uncertain whether the EU Member States will approve of the same.

However, the US wants the EU to synchronize the approval of bioengineered crops and to drop its ban on beef raised with growth hormones. After the US’ WTO action against the EU’s ban on beef, there was a MoU between the parties. However, the US provides that the MoU did not solve the problem for future. The US also provided concerns regarding the slow approval process of GMOs in the EU. After EFSA certifies a product as ‘safe’ it takes 48 months or more by the EC and the Member States to implement the same. In comparison, the US takes 18 months at the most. In the US’ view, the regulatory and approval processes should be synchronized and harmonized.

On 16 June 2014, the US’ Agriculture Secretary met with the EU Member States 28 Agriculture Ministers to raise further issues on: 1) biotechnology; 2) cloning; 3) regulatory simplification and 4) pathogen reduction treatments. The latter are substances typically used to remove bacteria from raw meat and poultry to reduce the risk of food borne illnesses. In the EU, GMOs are allowed but the Member States are given right to ban or not allow certain GMOs.

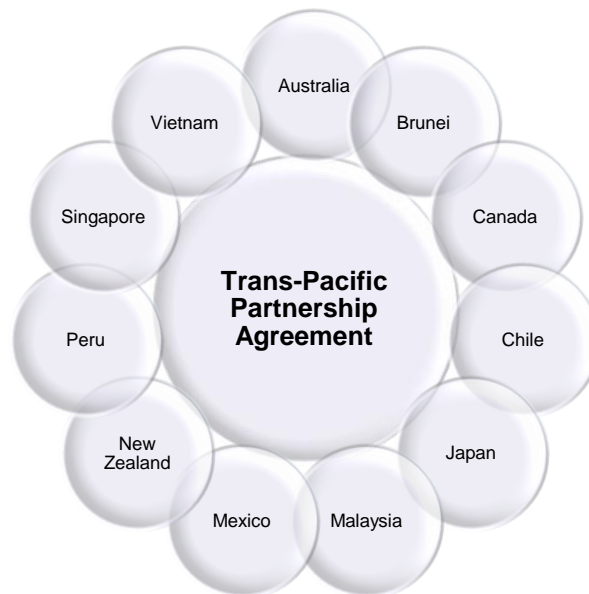
- **Energy**

The EU is pushing for strong energy chapter in the TTIP which will broadly abolish restrictions on trade and investment in energy and raw materials bilaterally and set guidelines for government regulators. In addition, the EU is seeking rules which are more relevant to global than just bilateral energy trade, such as freedom of transit applied to pipelines, though those are not necessarily meant as binding negotiations. The energy issue was on agenda during the 5<sup>th</sup> Round of TTIP negotiations. However, during the May press conference, the parties provided that they have not decided whether energy will have a separate chapter and whether the rules of trade in goods will be applied on the same. USTR claimed that nothing in the US laws will change with respect to the oil and gas trade due to TTIP. Sources according to the *Inside US Trade* have informed that the



EU is pursuing energy and raw materials trade and investment in TTIP including the efforts to reduce restrictions on energy export.

**III.C.5.**  
***Trans-Pacific***



***Update on  
Partnership***

***Negotiations***<sup>56</sup>

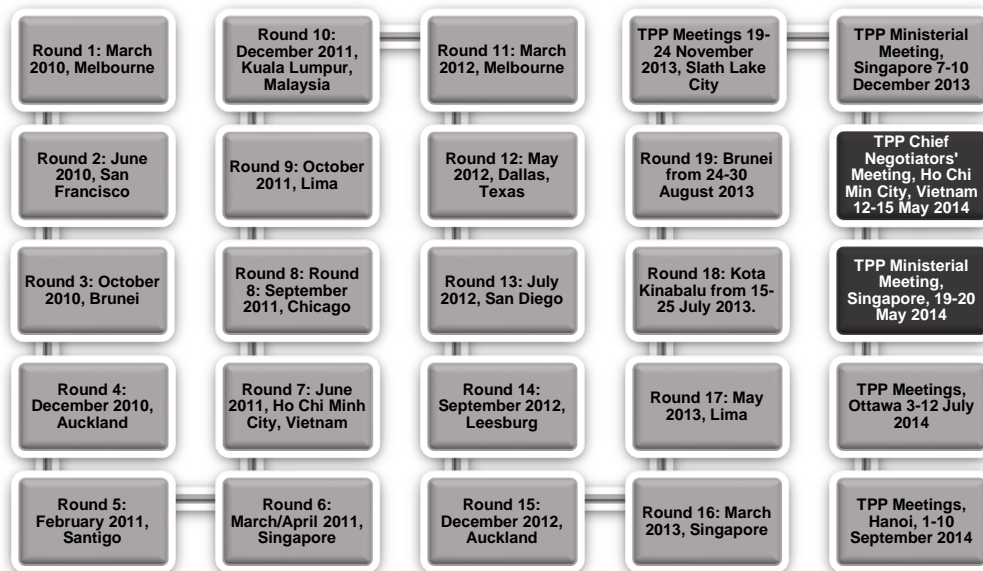
The Trans-Pacific Partnership (TPP) is a 21<sup>st</sup> century trade agreement that the US is negotiating with 12 other countries throughout the Asia-Pacific region.

**Countries in the TPP and Round of TPP Negotiations**

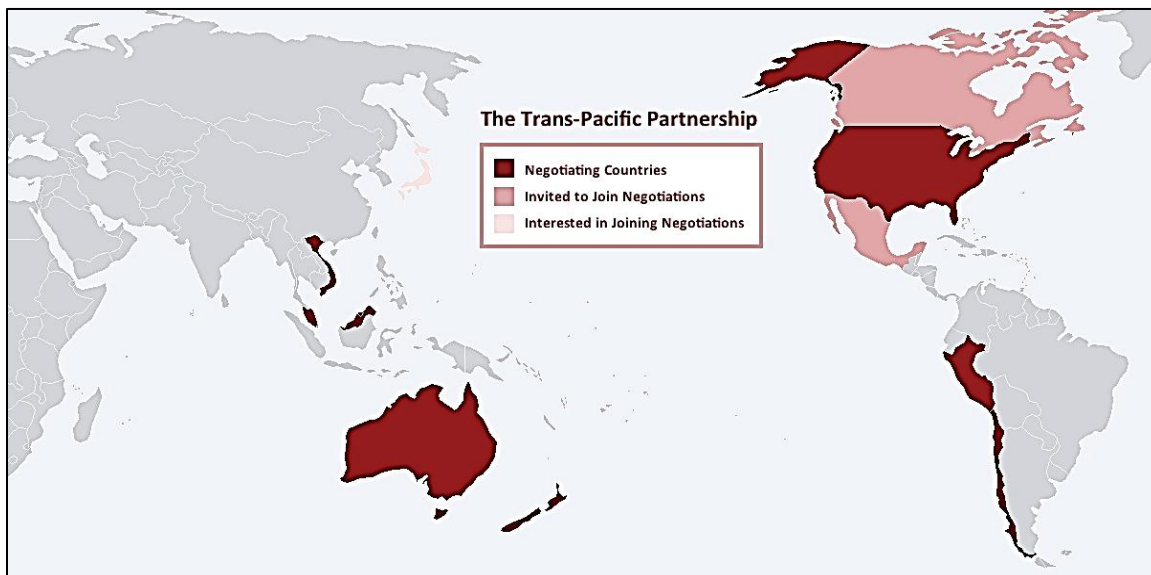
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<sup>56</sup> For all the recent and quarterly updates, please see: Inside US Trade, *Trans-Pacific Partnership*, [http://insidetrade.com/index.php?option=com\\_customproperties&view=show&tagId=159&Itemid=973](http://insidetrade.com/index.php?option=com_customproperties&view=show&tagId=159&Itemid=973) (last visited 20 Sept. 2014).

### Rounds TTP Meetings



Map outlining the countries in TPP Negotiations



Source: <http://tppinfo.org/>

On 2 June 2014, the USTR released a revised document entitled ‘Trans-Pacific Partnership: Summary of US objectives’ describing the Administration’s goals and priorities for TPP for each chapter of the TPP negotiations. The document provides main elements to the following as main chapters of TPP:

|   |   |  |
|---|---|--|
| Trade in Goods  | Textiles  | Services   |
| Investment  | Labor   | Environment  |
| E-Commerce and Telecommunicationa                     | Competition Policy and State-Owned Entities     | Small and Medium-Sized Enterprises   |
| Intellectual Property Rights                          | Technical Barriers to Trade                     | Sanitary and Phytosanitary Measures  |
| Transparency, Anticorruption and Regulatory Coherence | Customs, Trade Facilitation and Rules of Origin | Government Procurement   |
| Development and Trade Capacity Building               | Dispute Settlement                              | US-Japan Bilateral Negotiations on Motor Vehicle Trade and Non-Tariff Measures |

### TPP Ministerial Meeting, Singapore, 19-20 May 2014

The TPP countries held Ministerial meeting from 19-20 May 2014 in Singapore, TPP Ministers held four days of plenary and bilateral meetings. Ministers engaged in productive discussions and were able to identify a path forward for resolving remaining issues towards the goal of concluding a comprehensive and balanced agreement as soon as possible.

#### TPP issues raised during the quarter

- ***Japan's tariff concessions in Agricultural/Farm sector***

It was informed by the Australian Minister for Trade and Investment that the US has dropped its demand that Japan eliminate all tariffs on beef and pork under a final TPP. However, it is negotiating with Japan to grant more market access for five sensitive agriculture products in TPP than it did in a bilateral economic partnership agreement (EPA) with Australia. However, Japan has clarified that it may not necessarily extend the concessions it makes to the US in the area of agricultural market access to all other TPP countries. It was provided that without the tariff concessions in agricultural farm sector (pork, beef, dairy, rice and wheat) TPP deal could be a non-starter in the Congress.

- ***American Auto Industry seeks strong currency rules in TPP against Japan and China***

The President of the American Automotive Policy Council (AAPC) on 17 June 2014 clearly signaled that instead of a domestic regulation on currency manipulation, a strong rule in TPP on the same will be appropriate. As such will step up the pressure on the USDOC to investigate undervalued currencies as export subsidies in countervailing duty cases. However, there was no specific opposition to a domestic legislation (pending legislation: *Currency Exchange Rate Oversight Reform Act, 2013*) on the same. Industry sources provided that such lack of a direct support to domestic legislation may be due to that fact that General Motors has a dominant business presence in China. They provided that trade agreements provides a good framework to discuss currency manipulation which is a direct market intervention that economies like Japan, China and South Korea have in past used to gain competitiveness. It should however be noted that AAPC may not cover Japan as the IMF disciplines cover only *direct intervention in the currency markets aimed at affecting the value of another country's currency*. Such disciplines do not cover quantitative easing used by Japan as well as by the US to stimulate inflation thereby driving down the value of their respective currencies.

- ***Rep. Earl seeks Titanium market protection in TPP to USTR***

Rep. Earl Blumentauer (D-OR) sought US' Titanium market protection in the TPP negotiations through a strong rule of origin and by avoiding an early tariff phase-out. Rep. proposed a rule of origin which will require more than the final stage of processing to titanium in TPP countries for it to originate in that specific place. A failure to do so could open imports from Russia, China and Kazakhstan, where producers are closely associated with their governments, to TPP countries minimal processing. The rule of origin requested by the Rep. would give duty preference to titanium sponge, scrap, or at a minimum phasing it out over a long period

of time. He provided that the aim is to ensure strong protection for the current tariff system and if there is an elimination, the phase-out period should be as long as possible. He said that the degree of tariff reduction and the timeline for doing so would have an impact on exports from Japan whose titanium market is greatly oversaturated. It was provided that US' national security interests lies in strong titanium industry. Such is used to produce aero-engines and structures, naval vessels, armor, satellites, artillery and components for tanks.

- ***Human Rights, Labor issues in the TPP***

In addition to Vietnam, the USTR is also pursuing a labor action against Brunei and Malaysia on their compliance with strong language regarding labor standards in the TPP. Labor standards and human rights have received a strong demand from Democrats in the Congress as more than a three quarters of House Democratic caucus urged the President to withhold TPP benefits to Mexico, Vietnam, Brunei and Malaysia in the absence of labor standards and human rights implementation.

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

##### **IV.A. Measures affecting imports**

###### ***IV.A.1. Customs procedures and rules of origin***

###### ***a) Tariffs***

- ***USTR Request For ITC Green Goods Study References Broad Product List***

USTR is seeking analysis from the US ITC on the economic impact of eliminating tariffs on a roaster of so – called “green goods” that includes nuclear reactors, vacuum cleaners and an expansive range of other products.<sup>57</sup> A USTR said that the products for which the USDOC has asked for data comprise “all environmental goods” proposed for trade liberalization during past WTO and Asia Pacific Economic Cooperation (APEC) forum meetings.

It also includes “products we anticipate other WTO members may propose in the course of the forthcoming environmental goods negotiations”. The full product list is attached to his 2 April 2014 request and is 34 pages long. The list also covers wind turbines, electric cars, palm oil, and other goods. In 2012, APEC members endorsed a list of 54 goods for which they wanted to reduce tariffs. The green goods plurilateral initiative launched in January 2014 at the WTO this year by the US and 13 other WTO members aim to build on that commitment.

In his 2 April 2014, the USDOC asks for two reports relating to the negotiations to be delivered on 4 August 2014 and October 2014 respectively as classified documents that will be made public after 10 years. The letter says that the investigations should be based on 2013 trade data. In the first report, the USDOC is seeking “advice as to the probable economic effect of providing duty-free treatment for imports of environmental goods from all US trading partners”. The report would examine the economic impact of these tariff cuts on the US industries that make similar products and consumers. Because the environmental goods initiative is to be an open plurilateral, any duty reductions will be automatically extended to all WTO members on a most favored nation basis. The second report, the USDOC will examine the estimated value of US imports and exports of these products, likely key US export markets and, applied and bound tariff rates in key markets.

In their joint January statement, the 14 WTO members signaled they are “committed to exploring a broad range of additional products. However, negotiations on expanding the scope of the talks have begun as the other 13 countries are waiting for the US to conclude its 90 day consultation period.

###### ***b) Anti-dumping and countervailing actions***

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<sup>57</sup> Inside US Trade, *USTR Request for ITC ‘Green Goods’ Study References Broad Product List*, 10 April 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-04/11/2014/ustr-request-for-itc-green-goods-study-references-broad-product-list/menu-id-710.html> (last visited 22 Sept. 2014).

### ***1) SolarWorld defends trade remedy cases against China***

The President of the SolarWorld Americas pushed back against congressional efforts to get the White House engaged in persuading the US solar producers to settle their trade cases with China as part of a deal that would also take into account the views of polysilicon producers and solar installers as other elements of the US solar industry.<sup>58</sup> In a 24 June 2014 letter to members of the House, Mukesh Dulani delivered the message that the company's trade remedy cases against Chinese producers are justified because China continues to engage in unfair competition.

He pointed to the aggressive pricing practices by Chinese firms and massive government subsidies, but also to the US government allegations that Chinese officials hacked into Solar World's computer system to obtain a commercial advantage. The hacking charges – leveled in May by the US Department of Justice – allege that the incursions took place at the time the USDOC was conducting anti-dumping and countervailing duty investigations on Chinese solar cells and panels initiated in 2011.

Dulani emphasizes that the US producers can effectively compete with China on the basis of production costs if the terms of the competition are fair. He said that the National Renewable Energy Laboratory – part of the US Department of Energy (DOE) has found that Chinese producers of cells and modules possess no inherent cost of production advantage over US firms. He also questioned the notion that Chinese solar modules are environmentally friendly by as the DOE's Argonne Laboratory has determined that solar modules made in China and shipped to Europe have twice the harmful carbon footprint as solar modules made in the European Union. This letter was in response to 28 May 2014 letter by 23 House members to President Obama urging him to broker a unified position among elements of the solar industry that remove existing trade restrictions.

The letter was initiated by Reps Scott Peters (D-CA) and David Price (D-NC) as such a unified industry position is a Chinese precondition for negotiating a settlement of the solar dispute. The House letter was preceded by an April letter from seven senators to Vice President Joe Biden carrying the same message. Such a unified position would entail bringing together producers of solar energy products, solar panel installers and producers of polysilicon – a key input in making solar cells – who have borne the brunt of Chinese retaliation. But some of these groups have interests which are diametrically opposite.

Companies that produce polysilicon and solar installers have taken that the trade remedy cases brought by the US producers are driving up prices to the detriment of the solar supply chain and the growth of the solar industry in the US. The SolarWorld source highlighted the need for effective enforcement provisions by pointing to developments in the EU where solar panel manufacturers charged earlier this month that Chinese companies are violating the terms of a price undertaking negotiated in mid-2013 by the EC and China to settle a trade remedy case.

Such an undertaking, which is to expire in 2015, set a minimum import price – initially at 0.56 euros – along with a voluntary volume restriction equal to 70% of the EU solar market. Shipments made outside of either of those parameters are subjects to AD duties at an average 48%. Dulani's letter tries to strike a conciliatory tone by emphasizing that SolarWorld shares the interest of House members in a vibrant US solar manufacturing industry and the promise of the US energy independence through renewable energy.

The SolarWorld president in his letter reiterated complaints that Chinese producers shifted elements of their production to third countries even before the 2011 Commerce investigation was completed, a move that effectively led many of the products to fall outside of the scope of the trade remedy orders SolarWorld eventually won. This led SolarWorld to file a second set of AD and CVD petitions at the end of 2013 on solar panels from China made with third-country cells that incorporate Chinese inputs.

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<sup>58</sup> Inside US Trade, *SolarWorld Defends Reliance On Trade Cases In Letter To Congress*, 26 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/27/2014/solarworld-defends-reliance-on-trade-cases-in-letter-to-congress/menu-id-710.html> (last visited 15 Sept. 2014).

Commerce made a preliminary decision in the CVD case on 3 June 2013 that assessed duties that were higher than the preliminary and final CVD duties in the 2011 case. The final CVD duties in the cells and panel case were in the range of 14-15%, while the preliminary duties in the second case ranged from 18-31%. At the time, the Commerce announced it had not decided whether to accept the scope proposed by petitioners, but also did not reject it. As a result, the scope de facto prevails for the time being. SolarWorld also filed an AD petition against solar cells from Taiwan, for which preliminary findings are due on 24 July. Within 15 days of that decision, the respondents in the case can propose a suspension agreement as allowed for under US law.

### **2) *Roughly One-Third of House Members Pressure Pritzker on Korean OCTG***

150 house member called on Commerce Secretary to assess to the legally possible dumping margins on oil country tubular goods (OCTGs) from South Korea, one month after 57 senators made the same demand in the same case.<sup>59</sup> This brings to 207 the total number of members of Congress who have weighed in before the final margins will be set on 11 July 2014. The 13 June 2014, House letter, which was led by Congressional Steel Caucus and Vice Chairman calls on the department to fully consider the domestic industry's allegations and take action against any unfair dumping to the fullest extent of the law.

Both the House and the Senate letters are nearly identical; they make the same demands, use the same data points to reinforce their argument and even use some of the same language. The Senate letter was sent on 15 May 2014 and was signed by Majority Leader. Korea is one of the 9 countries being investigated Commerce for dumping OCTGs in the US market, but Commerce gave it a negative preliminary determination.

Specifically, the US steel industry has taken issue with how Commerce addressed affiliation issues between the Korean companies being investigated, and issues related to the profit information Commerce used to calculate the normal or fair value of Korean OCTG. Separately, the industry has also taken issue with the negative preliminary determination Commerce issued in the countervailing duty investigation of Turkish OCTG products.

### **3) *US-India Solar Trade War***

On 22 May 2014, India announced that it plans to impose antidumping duties on solar products from the US companies ranging from 11 cents per watt on imports from First Solar to 48 cents per watt for all other US producers.<sup>60</sup> The announcement also said that DGAD plans to impose higher duties from China, Malaysia and Taiwan ranging from 59 cents per watt to 81 cents per watt. The duties cover solar cells, regardless of whether they have been assembled into panels. In its 156-page finding, DGAD concluded that the Indian solar industry has suffered material injury due to dumping of solar products. Its findings are final, but formally they are considered recommendations to the Ministry of Finance, which will decide in three months whether to impose these duties.

He said the ministry has the authority to reject the DGAD recommendations, but it typically does not. Given the early elections, there is no real set time frame as to the final decisions by the finance ministry. The announcement of the final finding came one day before the US succeeded in getting a dispute settlement

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<sup>59</sup> Inside US Trade, *Roughly One-Third Of House Members Pressure Pritzker On Korean OCTG*, 19 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/20/2014/roughly-one-third-of-house-members-pressure-pritzker-on-korean-octg/menu-id-710.html> (last visited 19 Sept. 2014).

<sup>60</sup> Inside US Trade, *US, India Solar Fight Escalates As India Floats AD Duties On US Solar Products*, 29 May 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/30/2014/us-india-solar-fight-escalates-as-india-floats-ad-duties-on-us-solar-products/menu-id-710.html> (last visited 21 Sept. 2014). Inside US Trade, *India Rejects U.S. Panel Request In Solar Dispute, Probes State Programs*, 1 May 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/02/2014/india-rejects-us-panel-request-in-solar-dispute-probes-state-programs/menu-id-710.html> (last visited 21 Sept. 2014).

panel established in the WTO the local content requirements in India's national solar program known as the Jawaharlal Nehru Solar Mission (JNNSM).

An industry source provided that the duties could cause the price of solar electricity to rise in India, which will have an effect on the JNNSM. He said the projects in the JNNSM would invariably use US solar products, but he does not know if the threat of duties has impacted a company's decision to use foreign-made solar products over domestic-made ones. On 23 May 2014, the US said that its panel request is not targeting the JNNSM program for its solar power generation, but because its local content requirements violate the national treatment obligations of the GATT.

In its summary of the Indian solar industry's injury submission, DGAD said the imports of the solar products from the US, China, Taiwan and Malaysia accounted for about 87% of the market. Steven Krum, director of corporate communications for First Solar, expressed disappointment over the Indian government's preliminary findings in a statement sent to *Inside US Trade*, saying their assessment was inconsistent without own assessment of facts made as per WTO guidelines. They disagreed to have dumped imports into the Indian market and are assessing the legal options. FirstSolar remains committed to continuing to serve our customers to deliver the most effective solutions but the preliminary decision by the Indian authorities, if upheld, would make serving the Indian market very difficult and will impose a high cost on Indian developers and consumers.

The US is challenging the local content requirements in both phases of India's Jawaharlal Nehru National Solar Mission (JNNSM), an initiative designed to boost the country's solar power sector. The US made its first panel request on the Indian solar program at the 25 April 2014 meeting of the WTO Dispute Settlement Body. India rejected that request at the meeting to gain a mutually agreed solution was still possible and therefore was not in a position to agree to the panel's establishment. Under WTO rules, India can reject the first panel request but not a second one.

The US can wait for the next DSB meeting in May 2014 to make its second request or it can call for a special meeting to take place before then. At the DSB meeting, the US repeated the points it made in its panel request – that India's local content requirements in both Phase I and Phase II of the JNNSM violates the national treatment obligations of Article III: 4 of the GATT. The US is also charging that India is violating Article 2.1 of the TRIPs which prohibits countries from applying investment measures that are inconsistent with its national treatment obligations. The US is not alleging a violation of the SCMA, which it has previously done in its first request for consultations. Solar power developers participating in the JNNSM are required to purchase domestic-made solar cells and modules to enter into power purchase agreements with Indian poor companies, according to the US panel request. If they meet the local content requirement, these developers can also receive additional benefits and advantages, the U.S. charges.

The US and India held consultations over the first and second phases of the JNNSM on 20 March 2013, and 20 March 2014, respectively. However, those consultations did not resolve the dispute. The US panel request came two days after environmental groups including Greenpeace and the Sierra Club urged US Trade Representative Michael Froman to drop the WTO challenge. The groups argued that the need to stop global climate change should outweigh commercial considerations for US solar firms (*Inside U.S. Trade*, April 25). The US responded to the questions in a seven-page reply that was circulated to all members on 24 April 2014. In each case, the U.S. provided a detailed explanation of the programs, but did not directly address India's allegations that the programs in question were inconsistent with the ASCM.

### ***Box I. Highlights from the National Trade Estimate Report***

#### **National Trade Estimate Report**

On 1 April 2014, the USTR released the 29th National Trade Estimate Report on Foreign Trade Barriers ("2014 NTE"). Pursuant to the Omnibus Trade and Competitiveness Act of 1988, the annual NTE provides a country-by-country inventory of the most important foreign barriers affecting the following: 1) US exports of goods and services; (ii) foreign direct investment by US persons; and (iii) protection of intellectual property rights (IPR). The stated goal of the NTE is

to facilitate negotiations aimed at reducing or eliminating the identified trade barriers and enhance efforts to enforce the US trade laws. While much of the 2014 NTE is similar to the 2013 NTE, the resolution of some trade barriers and the emergence of others, as described within each country report, reflects the Obama Administration's successes with respect to its 2012 and 2013 trade policy objectives.

USTR does not provide a strict definition of "trade barriers", but notes that it includes government laws, regulations, policies, or practices that protect domestic goods and services from foreign competition, artificially stimulate exports of particular domestic goods and services, or fail to provide adequate and effective protection for intellectual property rights. The trade barriers identified in the 2014 NTE fall into the following nine categories: (i) import policies; (ii) government procurement; (iii) exports subsidies; (iv) barriers to services trade; (v) lack of IPR protection; (vi) investment barriers; (vii) anticompetitive practices with trade effects tolerated by foreign governments; (viii) trade restrictions affecting electronic commerce (e-commerce); and (ix) other barriers, including corruption.

Although the report is based on information provided by USTR, the Department of Commerce (DOC); and other relevant US government agencies, the information is supplemented by input provided by (i) US embassies abroad; (ii) independent persons or entities, in response to a Federal Register request for information; and (iii) private sector trade advisory committees.

The 2014 NTE examines trade barriers in the largest export markets for the US, including 58 nations, as well as the EU, Taiwan, Hong Kong, and the Arab League. In addition, USTR has added Iraq and Uzbekistan to the 2014 NTE, reflecting their importance for US exports. USTR also removed Bolivia from the 2014 NTE due to little trade-related activity over the past year, and aligned the section on China more closely with other USTR reports on US-China trade issues.

**Brazil** The 2014 NTE asserts that federal and state taxes and charges applied to imports effectively double the actual cost of imported products in Brazil. USTR also expresses concerns regarding Brazil's administration of non-automatic import licensing, as US exporters have raised issues regarding additional monitoring, enhanced inspection, and delayed release times for certain goods. Brazil's government procurement regime and increased use of local content requirements for state-controlled oil company Petrobras also reflects a preference for domestic businesses and products.

**China** The US and China have committed to negotiating a bilateral investment treaty (BIT) that will include provisions on non-discrimination and transparency, as well as provide national treatment at all phases of investment, including market access (i.e., the pre-establishment" phase of investment), and employ a "negative list" approach in identifying exceptions. Nevertheless, the 2014 NTE observes that China's trade barriers remain numerous and widespread.

**European Union** USTR observes that "chronic barriers" in the EU have prevented successful market access by US businesses. The 2014 NTE highlights many of the same barriers as in previous reports. USTR states that it aims to address these barriers and arrive at a long-term solution through the TTIP. Although four TTIP negotiating rounds have taken place to date, the agreement remains at a preliminary stage due to the complex differences between US and EU trade and regulatory policies.

**India** USTR observes that recent patent-related actions in India have heightened IPR concerns. India's Supreme Court appeared to confirm that India's Patent Law creates a special, additional criteria for patentability for certain technologies, such as pharmaceuticals. As a result, India may deny patents to such technologies unless they exhibit "therapeutic efficacy" in addition to the internationally recognized criteria for patentability (novelty, inventive step,



|                    |  |
|--------------------|--|
|                    | and industrial application).   |
| <b>Iraq</b>        | US companies exporting to Iraq face lengthy and burdensome delays and must expend funds and labor to obtain Certificates of Origin (COOs) for their products, which includes clearances from multiple sources of authority. The lack of clear and definitive implementing regulations for the National Investment Law and its amendment also remains a source of delay and confusion in the approval of investment projects.   |
| <b>Japan</b>       | USTR takes issue with Japanese import barriers on beef, rice, wheat, and pork. USTR aims to address these concerns through the TPP negotiations.   |
| <b>Korea</b>       | In addition to concerns regarding Korea's implementation of its commitments contained in the United States- Korea Free Trade Agreement (KORUS), USTR notes some preliminary concerns with respect to Korea's industrial subsidy policy. Recent statements by Korean policymakers suggest that privatization of the Korean Development Bank (KDB), which provides policy-directed lending to favored industries, is being reevaluated, and draft legislation introduced by the majority party late in 2013 could reverse privatization plans with respect to wide range of state-owned enterprises. |
| <b>Russia</b>      | The US has suspended trade and investment engagements with Russia pending resolution of Russia's role in the Ukraine crisis.   |
| <b>Switzerland</b> | Although Switzerland is a signatory to the WTO Agreement on Government Procurement (GPA), USTR notes that the ability of regional cantons to implement GPA commitments independently of the federal government may result in disparities.  |
| <b>Ukraine</b>     | The 2014 NTE draws attention to the high-profile issue of corporate raiding activities. This refers to incidences where "raiders" frequently purchase a small stake in a company, and then take advantage of deficient legislation, corrupt courts, and a weak regulatory system to gain control of the company to the detriment of rightful shareholders.   |

**c) Sanitary and phytosanitary measures**

**1) Resuming the beef shipments from Ireland and Netherlands**

USDA will conduct the necessary audits to allow Ireland and the Netherlands to resume shipments of beef to the US within the next two months.<sup>61</sup> If there are no problems with those audits, that very shortly thereafter those two countries will have access to our markets. The audits aim to ensure a country's food safety inspection system is equivalent to that of the US, a requirement for shipping meat to the US.

The step follows the publication in December of a long-awaited rule relaxing beef import guidelines relating to "mad cow" disease, or bovine spongiform encephalopathy (BSE). That paved the way for the EU countries to resume beef shipments to the US after being blocked from the market following a BSE outbreak in the 1990s. The US provided that it would invite other European countries to do the same thing that the Netherlands and Ireland have done.

The audits assess six factors: government oversight, statutory authority and food safety regulations; sanitation; hazard analysis and critical points, or HACCP; chemical residue control programs; and micro-

<sup>61</sup> Inside US Trade, *USDA To Carry Out Ireland, Netherlands Beef Audits In Next Two Months*, 19 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/20/2014/usda-to-carry-out-ireland-netherlands-beef-audits-in-next-two-months/menu-id-710.html> (last visited 18 Sept. 2014).

biological testing programs. Each must be considered equivalent or above the US standards in order for imports from that country to be permitted. The publication of the BSE rule was viewed as part of a “confidence-building” process taking place in parallel to the TTIP negotiations, which both sides arousing to demonstrate they can resolve long-standing and difficult food safety issues.

### **2) *US’ largest producer of pork certifies against growth enhancing drugs to gain entry to Russia***

The largest US producer of pork has certified two of its plants under a new US government program that provides proof that hogs were not fed growth-enhancing veterinary drugs paving the way for the resumption of US pork exports to Russia even as trade ties have been strained between Washington and Moscow.<sup>62</sup> Smithfield Farm successfully enrolled two of its pork processing facilities in the new US Department of Agriculture “Never Fed Beta-Agonist” program, which have thus been deemed eligible to ship pork to Russia.

In addition to those plants, four cold-storage facilities that store meat from those establishments have also been approved for export. The Never Fed Beta-Agonist program was developed through negotiations between USDA and Russian authorities after Russia shut its border to US pork and beef products because they were continually found to be in violation of the country’s ban on ractopamine, which is classified as a beta-agonist and aids in the production of lean meat.

Smithfield is the first producer to take advantage of the new scheme. The simultaneous sanctions by the US against Russian bank and officials as well as the US officials by Russia has not affected US agricultural exports. The US and Mexico have taken new steps to resolve a longstanding fight over barriers facing potato exports to each other’s markets by issuing new rules that lift restrictions and spell out how potato growers on either side of the border can export to the other market.

### **3) *US-Mexico rule on cleaning procedures and packaging for potato export***

The Mexican Secretariat of Agriculture (SAGARPA) published a final rule in the Diario Oficial on 19 March 2014 that detailed the sanitary and phytosanitary (SPS) steps foreign potato growers have to undergo when exporting, including rules on cleaning procedures and packaging.<sup>63</sup> A US potato industry source characterized the requirements as standard and unproblematic. It will take effect from 19 May 2014. The US animal and Plant Health Inspection Service (APHIS) published a final rule that will allow importation of fresh potatoes from Mexico. Similar to the SAGARPA rule, Mexican potato growers will also have to ensure their potatoes meet SPS requirements before they can enter the US market.

The APHIS rule will take effect on 25 April 2014. APHIS provided that Mexican exporters will still have to work with Mexican authorities to ensure they are able to meet certain criteria before their potatoes can be shipped to the US. These shipments also require an import permit from our agency and are subject to inspections at the border. The steps were the result of a parallel rulemaking process undertaken by the US and Mexican governments. USDA welcomes Mexico’s 19 March 2014 publication of regulations regarding global imports of potatoes which represents the successful culmination of discussions between the two countries and marks a significant step forward for science-based regulations.

The National Potato Council (NPC) also praised the publication of the rules in a statement and said it expects shipments between the two countries to begin before June. The Potato fight between the US and Mexico has lasted for more than a decade. Mexico first closed its market in 2000 to the US potatoes over pest-related concerns, but in 2003, the countries reached an agreement that would have opened the Mexican market to US potatoes. However, US potato exports to Mexico were eventually confined to a zone between

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<sup>62</sup> Inside US Trade, *U.S. Pork Exports To Russia Set To Resume, Even As Trade Ties Strain*, 3 April 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-04/04/2014/us-pork-exports-to-russia-set-to-resume-even-as-trade-ties-strain/menu-id-710.html> (last visited 22 Sept. 2014).

<sup>63</sup> Inside US Trade, *U.S., Mexico Finally Hash Out Decade-Long Fight Over Potato Shipments*, 3 April 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-04/04/2014/us-mexico-finally-hash-out-decade-long-fight-over-potato-shipments/menu-id-710.html> (last visited 22 Sept. 2014).

the US –Mexico border and a line 26 kilometers to the south. USTR cited it as a trade barrier in its 2013 report on foreign SPS measures. It noted that Mexico refused to move forward with further implementation of the 2003 agreement, citing pest detections in shipments over the intervening years.

Over the same period, APHIS, and the US potato producers have taken steps to address Mexico's concerns, which have led to drops in pest interceptions. It was unclear whether there was a special impetus that led to the resolution of the fight at this particular juncture. When Mexico was in the process of joining the TPP negotiations, the NPC raised the same issues but ultimately expressed support for Mexico to join the talks. During the summer of 2012, two separate congressional letters were sent to them USTR Ron Kirk urging him to press Mexico to uphold their existing treaty obligations with the US and develop a policy governing the importation of US fresh potatoes that is based on science.

#### **2014 TBT Report**

##### **Tackling diversity of TBTs through Multiple Approaches**

On 1 April 2014, the USTR released its 5th report on TBT. Progress made on the removal of TBTs and the emergence of new TBTs is evident through a comparison of the 2014 TBT Report and the 2013 TBT Report. These changes reflect the recent achievements as well as the 2014 priorities of the Obama Administration with respect to TBTs. While some trends listed in the 2014 TBT Report were also listed as trends in the 2013 TBT Report, the 2014 TBT Report further expands and elaborates upon such areas as (i) domestic testing and certification requirements; (ii) domestically developed product and safety standards for telecommunication equipment and electric products; and (iii) domestic standards and requirements in China, the EU, and Korea, among others. Apart from bilateral consultations and cooperation through international fora such as the WTO and Asia Pacific Economic Cooperation (APEC), the Obama Administration hopes that the TPP and TTIP will become useful pathways to harmonize international standards and procedures and to remove technical barriers to trade between the US and its trading partners.

The Obama Administration in 2010, USTR's annual TBT Report addresses significant foreign trade barriers faced by US exporters in the following forms:

- Product standards
- Technical regulations and testing
- Certification; and
- Other procedures involved in determining whether products conform to established standards and technical regulations.

According to USTR these standards-related measures become technical barriers to trade (TBTs) if they are non-transparent, outdated, overly burdensome, or discriminatory. The aim of the TBT Report is to describe and advance the US government's efforts to identify and eliminate these barriers.

The 2014 TBT Report includes the following components:

- An introduction to standards-related measures;
- Overview of trade commitments with respect to standards related measures;
- A description of the US statutory and administrative framework for implementing standards related commitments;
- A general description of standards;

- A general description of conformity assessment procedures;
- A description of the US processes used by the US government engages on standards-related measures through international, regional and bilateral for a; and
- An identification and description of TBTs on a country-by-country basis.

Although the 2014 TBT Report largely remains unchanged compared to the 2013 TBT Report, significant changes took place in USTR's country reports in section (viii). The 2014 TBT Report identifies a list of major TBT trends that emerged in 2013 across various US trading partner markets as follows:

**Domestic Testing and Certification Requirements:** Economies such as Argentina, Brazil, China, India, Indonesia, Korea, and Taiwan require lengthy domestic testing or certification procedures that do not always correspond with international standards and procedures.

**Domestically developed Product and Safety Standards for Telecommunication Equipment and Electric Products:** China, the EU, Indonesia, Korea, and Mexico have been adopting and implementing standards for the domestic market that differ from international ones. Compliance with these domestic requirements imposes an undue cost to trade;

**Standards and Requirements for Trucks:** The US continues to express concern over standards and requirements that Colombia and the EU impose on imported trucks;

**Alcoholic Beverages Labeling:** The EU, Russia, and Turkey require special labeling and licensing requirements due to intellectual property rights (IPR), and the application of different standards, among others; and

**Mandatory Labeling of Genetically Engineered (GE) Foods and Nutritional Labeling and Advertising:** The US expresses concern over GE labeling requirements in Peru and Turkey for genetically modified organisms (GMOs) when GMOs are present in a product, and the potentially negative effect that the labeling might have on consumer preferences. Economies such as Ecuador, the EU, Russia, and Taiwan are either considering, or have implemented, mandatory regulations on nutritional labeling and advertising for food products that might be unnecessarily burdensome and require too much information concerning the ingredients used.

As for India, the 2014 TBT Report addresses new concerns such as:

India's requirement that all pre-packaged commodities are prohibited, unless they are in a standard quantity and carry all prescribed declarations, especially concerning mandatory container sizes and wholesale food labeling.

The Indian Department of Electronics and Information Technology's (DEITY) September 2012 Order that mandates compulsory registration for 15 categories of imported electronic and IT goods with laboratories affiliated or certified by the Bureau of Indian Standards.

The proposed amendment to the hazardous waste setting of rules for managing electronic waste, which will apply to producers, dealers, refurbishes and consumers. The 2014 TBT Report addresses policies transfer of technology and source codes, as well as burdensome testing and certification requirements for telecommunications equipment.

The annual publication of the TBT Report signifies other a metric for measuring the Obama Administration's success at eliminating unwarranted standards-related measures during the previous year as well as agenda for furthering such efforts within the next year. In this regards, the 2014 TBT Report highlights several of the Administration's accomplishments from the previous years. For example, this includes US involvement in APEC in 2013 involving the promotion of good regulatory practices helping to identify and resolve trade concerns before proposed measures are finalized. This also included work to prevent governments from creating new standards-related barriers in several merging industries, such as energy efficiency, information and communication technologies, commercial green building standards, and development of codes and modeling. Moreover, continuous work to negotiate a TBT chapter in the TPP, and push for inclusion of a TBT chapter in the TIPP presents an opportunity to reduce and eliminate burdensome standards related measures and to expand market opportunities for US goods and services exports.

## **IV.B. Measures affecting exports**

### ***IV.B.1. Classification***

#### ***i) BIS provides for license-free exports to certain low-density oil***

The Bureau of Industry and Security (BIS) provides for license-free exports of certain low-density oil called a condensate – by ruling that minimally processing it to ensure stability and safe transport transforms it into a petroleum product, which does not require an export license under the US law.<sup>64</sup> Under this classification decision, condensates when left unprocessed are still considered to be crude oil and subject to export restrictions. The decision only affects condensates, which under the US law are considered crude oil based on how they are produced. Condensates are a byproduct of hydraulic fracturing and are a gas underground which condenses to a liquid under atmospheric temperature and pressure.

BIS's classification decision allows Pioneer Natural Resources and Enterprises Products to export condensates that have been processed through a distillation tower, which is the simplest type of refining unit. Condensates are processed through distillation towers to be stabilized for transportation or storage. Both Pioneer and Enterprise produce large amounts of condensates from south Texas Eagle Ford shale formation, but the BIS decision will allow other companies to export such processed condensates.

According to CRS, altering the definition of “crude” to exclude condensates could alleviate a glut of light oil in south Texas and North Dakota caused by increased hydraulic fracturing in those areas. Kevin Book, a senior associate in the energy and national security program at the Center for Strategic and International Studies, said condensate is “virtually always processed” and “all condensate could be exported as a result” of the BIS determination. The debate over the 40 year old crude oil ban has been in the forefront in light of increased US production of light crude oil, and limited US capacity for refining it.

The EU has made clear that it is interested in gaining access to the US oil in the context of the TTIP negotiations. BIS, which is part of the Commerce Department, made clear that its classification decisions were not a change of US policy regarding the crude oil ban. There has been no change in policy on crude oil exports. “Consistent with the regulatory definition, crude oil that has been processed through a distillation tower which results in the crude becoming a petroleum product is no longer defined as crude oil.” Petroleum product can be exported without a license, except in very limited circumstances.

Deborah Gordon, a senior associate in the climate and energy program at the Carnegie Endowment for International Peace, said this BIS decision could be the administration “testing the waters” for future changes to crude export policy. In an interview with *Inside US Trade*, she added “this doesn’t really tell us exactly what the president or Congress would do for crude”. Members of Congress have staked out positions on either side of the debate on the crude oil ban. Commerce’s decision to allow companies to process condensate and export the resulting products is a reasonable first step that reflects the new reality of our energy landscape.

Sen. Ed Markey (D-MA), chairman of the Foreign Relations subcommittee that handles international energy issues, is on the other side of the debate and criticized the BIS ruling in a 25 June 2014 statement. We should keep our resources here at home for American families and businesses, not send this oil abroad even as we import oil from dangerous regions of the world. Congress out this oil export ban in place. It should be Congress that decides when and how to change it, not through a private ruling by the Commerce Department without public debate.

### ***IV.B.2. Export assistance***

#### ***i) New Phase of NEI Breaks Little New Ground Compared To 2010 Initiation***

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<sup>64</sup> Inside US Trade, *BIS Opens Door To Certain Oil Exports With New Classification*, 26 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/27/2014/bis-opens-door-to-certain-oil-exports-with-new-classification/menu-id-710.html> (last visited 16 Sept. 2014).

The Obama administration provided a plan to establish the National Export Initiative (NEI) into what it characterized as a new phase encompassing five basic objectives, but the initiative appears to break little new ground when compared with previous and existing administration export promotion efforts.<sup>65</sup> The initiative, dubbed NEI “NEXT”, was announced by Commerce Secretary in a 13 May 2014 speech.

She provided that its objectives include: helping businesses find overseas customers; increasing the efficiency of shipments; helping firms finance orders; helping communities integrate trade and investment into growth plans and opening up markets around the world for the US firms while ensuring a level playing field. DOC released a 19-page strategic framework about NEI NEXT, but it mainly lays out intangible goals, chiefly oriented toward sharing information with businesses about export opportunities. It provided three ways in which it is putting these strategies into action: customizing export promotion efforts, spearheading efforts to create a single window for customs documentation before the end of 2016, and delivering more export financing tools to local banks.

#### *ii) Uncertainty around US energy boom complicates crude oil debate*

One of the factors complicating the discussion on lifting the US crude oil export ban is the uncertainty over the duration of the energy boom – a result of hydraulic fracturing in mostly North Dakota and Texas – which the Energy Information Administration (EIA) has estimated could end in 2019 or in 2040.<sup>66</sup> That difference depends on different EIA assumptions including geographic location, specific tight oil quality characteristics, refinery configurations, oil transportation infrastructure and price discounts in different regions according to a Congressional Research Service (CRS) study.

It is titled “US Crude Oil Export Policy: Background and Considerations” and was issued on 26 March 2014. In addition, there is the unanswered question of how exports would affect the US crude oil prices and gas prices in the US. Some opponents of lifting the ban say doing so will drive up US gas prices because the price of domestic crude will rise.

Other sources of both sides of the debate have also said that gas prices are determined by the global market and will change if the ban is lifted. According to CRS, Domestic crude price will gravitate toward the global crude price – which is higher than the domestic crude price and that global prices are likely to adjust to added supply. Another factor is the overarching question of whether it makes sense to export crude oil at the same time when the US is importing 40% of its crude oil.

### **IV.C. Other measures affecting production and trade**

#### *IV.C.1. Trade sanctions and boycott*

##### *i) Treasury publishes list of countries participating in a boycott*

On 5 June 2014, the Department of the Treasury publishes in the Federal Register, in accordance with section 999(a) (3) of the Internal Revenue Code of 1986, a current list of countries which require or may require participation in or cooperation with an international boycott within the meaning of section 999(b) (3) of the Internal Revenue Code of 1986.<sup>67</sup> On the basis of the best information currently available in, or cooperation with, an international boycott; Iraq, Kuwait, require participation in, or cooperation with, an international boycott: Iraq, Kuwait, Lebanon, Libya, Saudi Arabia, Syria, UAE and Yemen.

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<sup>65</sup> Inside US Trade, *New Phase Of NEI Breaks Little New Ground Compared To 2010 Initiation*, 5 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/06/2014/new-phase-of-nei-breaks-little-new-ground-compared-to-2010-initiation/menu-id-710.html> (last visited on 21 Sept. 2014).

<sup>66</sup> Inside US Trade, *Uncertainty Around US Energy Boom Complicates Crude Oil Debate*, 8 May 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/09/2014/uncertainty-around-us-energy-boom-complicates-crude-oil-debate/menu-id-710.html> (last visited 21 Sept. 2014).

<sup>67</sup> Baker & McKenzie, *Treasury publishes list of countries participating in a boycott*, *International Trade Compliance Update July 2014*.

**ii) *President extends national emergency with respect to Somalia***

On 9 April 2014, the Federal Register published Notice of 7 April 2014- Continuation of the National Emergency with Respect to Somalia.<sup>68</sup> The Notice continues for an additional year the national emergency originally declared in Executive Order 13536 of 12 April 2010, and subsequently extended, because the situation with respect to Somalia continues to pose an unusual and extraordinary threat to the national security and foreign policy of the US.

**iii) *President issues Executive Order with respect to South Sudan***

On 3 April 2014, the President Obama signed an Executive Order 13664- Blocking Property of Certain Persons with Respect to South Sudan (published in the Federal Register on 7 April 2014).<sup>69</sup> The EO declares a national emergency to deal with the situation in and in relation to South Sudan, which has been marked by activities that threaten the peace, security, or stability of South Sudan and the surrounding region, including widespread violence and atrocities, human rights abuses, recruitment and use of child soldiers, attacks on peace-keepers and obstruction of humanitarian operations. The EO freezes all assets that are in the US, that hereafter come within the US, or that are or hereafter come within the possession or control of any US person (including any foreign branch) of persons.

**iv) *Obama ends the immunities to development fund for Iraq***

On 27 May 2014, President Obama issued an Executive Order 13668 Ending Immunities Granted to the Development Fund for Iraq and Certain Other Iraqi Property and Interests in Property Pursuant to Executive Order 13303 as amended.<sup>70</sup> The President determined that the situation which gave rise to the actions taken in EO 13303 of 22 May 2003, to protect the Development Fund for Iraq and certain other property in which the Government of Iraq has an interest has been significantly altered. Recognizing the changed circumstances in Iraq, including the Government of Iraq's progress in resolving and managing the risk associated with outstanding debts and claims arising from actions of the previous regime, the EO terminates the prohibitions contained in section 1 of EO 13303 of 22 May 2003, as amended by the EO 13364 of 29 November 2004, on any attachment, judgment, decree, lien, execution, garnishment, or other judicial process with respect to the Development Fund for Iraq and Iraqi petroleum, petroleum products, and interests therein, and the accounts, assets, investments and other property owned by, belonging to, or held by, in the name of, on behalf of, or otherwise for, the Central Bank of Iraq. This action is not intended otherwise to affect the national emergency declared in EO 13303 of 22 May 2003, as expanded in scope by EO 13315 of 28 August 2003, which shall remain in place. This action is also not intended to affect immunities enjoyed by the Government of Iraq and its property under otherwise applicable law.<sup>71</sup>

**v) *GSP benefits withdrawn from Russia***

On 7 May 2014, the US President notified Congress that he intends to withdraw the designation of Russia as a beneficiary developing country under the Generalized System of Preferences (GSP) program.<sup>72</sup> He provided that such is an appropriate action so as to withdraw Russia's designation as a beneficiary developing country under the GSP program because Russia is sufficiently advanced in economic development and improved in trade competitiveness that continued preferential treatment under the GSP is not warranted. Such withdrawal of Russia's designation is consistent with section 502(f)(2) of the 1974 Act.<sup>73</sup>

**vi) *GSP benefits granted to sub-Saharan Africa***

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<sup>68</sup> *ibid.*

<sup>69</sup> *ibid.*

<sup>70</sup> *ibid.*

<sup>71</sup> B&M, *President ends immunities granted to the Development Fund for Iraq*, International Trade Compliance Update June 2014.

<sup>72</sup> *ibid.*

<sup>73</sup> B&M, *President notifies Congress that he is withdrawing GSP benefits from Russia because it is too developed*, International Trade Compliance Update June 2014.

On 27 May 2014, the US Customs and Border Protection (CBP) published in the Federal Register a document adopting as a final rule the interim amendments to the CBP regulations which were published in the Federal Register on 23 October 2012 as CBP Dec. 13-17, to implement the preferential tariff treatment and other customs related provisions of the US-Panama Trade Promotion Agreement. The final rule will be effective 20 June 2014.<sup>74</sup>

#### ***IV.C.2. Trade related intellectual property rights***

##### ***i) Delay in the registration of ‘Havarti’ as a Geographical Indication***

The Consortium of Common Food Names (CCFN), an international industry group led by US dairy producers, has criticized a pending application to register Havarti as a geographical indication (GI) in the EU by insisting a 2007 standard for the cheese developed by the Codex Alimentarius is evidence the term should be considered a common name. CCFN Executive Director Jamie Castaneda in a press release on 23 June 2014 stated that *if the EU ultimately resists this GI, it would be one of the most egregious examples of Europe’s GI policy gone wrong.*<sup>75</sup>

The name ‘havarti’ is not only widely used in many European and non-European countries but there is also an international product standard for Havarti that is recognized globally by Europe and others. At issue is an application by Danish producers to protect as a GI the term Havarti, which is named for the farm in Denmark where it was first made. CCFN formally submitted a statement of opposition to the EC, which aims to promote consultations between CCFN and the Danish body that lodged the GI application request.

They must take place within two months of CCFN’s submission, if the commission finds the submission admissible. The consultation period will last a maximum of three months, unless the commission decides to extend it by another three months, according to EU law. Specifically, CCFN argues that GI protection for Havarti would undermine a food safety standard set by the Codex Alimentarius for the production of Havarti, which it insisted was partially due to the fact that this cheese is produced and marketed in many countries. In the view of the CCFN, this means Havarti constitutes a common name.

##### ***ii) Trade Protection Not Troll Protection Act***

A new legislation on patents has been introduced: H.R. 4763 – known as the *Trade Protection Not Troll Protection Act*, aims to create several administrative and legal problems for Patent Assertion Entities, often derided as patent trolls.<sup>76</sup> One such issue would require complainants bringing cases under Section 337 of the 1930 Tariff Act to show they, or the firms to which they license a patent, actually manufacture or are planning to manufacture products relating to the disputed patent in the US. The chief objective behind these changes is to prevent PAEs from using an ITC exclusion order as a weapon to threaten other companies who make products incorporating a contested patent.

Critics have said this allows PAEs to demand exorbitant licensing fees for the patents they own, in what is known as patent hold up. But the bill faces significant challenges to passage. The legislation was essentially carved off of a larger patent reform package that failed to garner momentum in the Senate, known as the Innovation Act.

Senate Judiciary Committee Chairman Patrick Leahy (D-VA) provided that PAEs are typically companies that amass patents and then generate revenue by licensing them and through patent infringement litigation. They are distinguished by a lack of manufacturing or research operations and this are sometimes also called non-practicing entities (NPEs).

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<sup>74</sup> *ibid.*

<sup>75</sup> Inside US Trade, *Delay in the registration of Havarti as a Geographical Indication*, 24 June 2014.

<sup>76</sup> Inside US Trade, *House Bill Would Throw Up New Hurdles To ‘Patent Troll’ Cases At ITC*, 19 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/20/2014/house-bill-would-throw-up-new-hurdles-to-patent-troll-cases-at-itc/menu-id-710.html> (last visited 17 Sept. 2014).



In patent law parlance, “practicing” a patent most often means manufacturing a product using that patent. Firms that do conduct manufacturing and research sometimes do to assert patents they do not practice, but still own for one reason or another. However, they are generally not considered to be PAEs or trolls. The House legislation is supported by Apple, Broadcom, Ford, Google, HP, Intel, Avaya and Cisco according to a joint press release from Cardenas and Farenthold. The aide points to the support of these companies – some of whom have been targets of Section 337 cases – as a reason to believe the bill move forward.

Under H.R. 4763, the ITC’s process of evaluating Section 337 cases would be changed in four major ways, each of which are aimed at knocking the legs out from cases brought by PAEs. First the bill would institute a new 45-day period from the date the case is filed for the ITC to determine whether the complainant can show enough domestic economic activity known as the domestic industry test 100 in order to demonstrate it has standing to bring a case. Currently, the ITC evaluates whether a complainant meets the domestic industry test during the course of its normal judicial proceedings. The proposed legislation would narrow the licensing qualification by requiring complainants to show their licensing activity leads to the manufacturing of a product covered by the patent.

This would exclude entities whose business models are built around the buying and selling of licenses, unless the licensee is manufacturing a product. Third, the bill would change the timing of when the ITC makes what is known as its “public interest” determination in a Section 337 case. Before the ITC can issue an exclusion order to ban a product from the U.S. market, it is required to address whether such an order would negatively impact public health and welfare, competitive economic conditions, domestic production of similar articles, and U.S. consumers, according to the ITC. If one of these conditions is met, the ITC can refuse to issue an exclusion order even if it rules in favor of the complainant.

This determination is usually made at the end of a case, but the proposed bill would direct the ITC to make a public interest ruling earlier and terminate cases based on the ruling, according to a fact sheet released by the bill’s co-sponsors. The fact sheet said one of the key factors in the ITC’s determination would be if other licensees could meet the market demand for articles protected by a potential exclusion order. Lastly, the bill would also require the ITC to apply a four-part “equity” test before issuing an exclusion order.

In this test, the ITC would have to determine whether the complainant suffered irreparable injury; whether other potential solutions to a case, such as monetary rewards, are insufficient; and whether an exclusion and/or cease-and-desist order is warranted; and whether such an order would harm the public interest. The last two considerations overlap with what the ITC already does in its proceedings, but the first two do not.

### ***iii) US indicts five Chinese officers theft a strong political warning***

The US indictment of five officers of the Chinese military for allegedly committing economic espionage with respect to trade remedy cases and stealing US trade secrets is largely aimed at sending a strong political signal that the US is committed to fighting such crimes, according to criminal law experts not working on the dispute.<sup>77</sup> The case is unlikely to lead to a trial in the US because it is unlikely that China would send the indicted individuals to participate and the US law does not allow an indicted person to be tried in absentia in a criminal case, according to these experts.

The indictment covers activities from 2006 to 2014. In response to the indictment, the Chinese government rejected the charges as purely ungrounded and absurd and canceled a bilateral cyber security dialogue. Another source supporting the indictment said that it sends a very strong message to China that the US will act if China fails to develop disciplines to govern cyber security. It is also a wake-up call for US law firms and companies to better protect their information. According to the source, the true impact

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<sup>77</sup> Inside US Trade, *U.S. Indictment On Chinese Cyber Theft Largely A Strong Political Warning*, 22 May 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/23/2014/us-indictment-on-chinese-cyber-theft-largely-a-strong-political-warning/menu-id-710.html> (last visited 21 Sept. 2014).

of the 19 May 2014 announcement can only be assessed at a later date when next steps will be more apparent.

For example, the source pointed to one potential option in the future which might be to impose sanctions against the Chinese firms that have benefited from this theft of trade secrets or economic espionage. But he emphasized that such a step is not under discussion at this point. The indictment does not name the Chinese state-owned enterprises (SOEs) that could have benefited from the hacking but Westinghouse has partnered with State Nuclear Power Technology Corporation on nuclear projects in China. Other SOEs that could have benefitted are Baosteel Group, which is the only enterprise in China that produces oil country tubular goods; and Aluminum Corporation of China, which jointly announced with Alcoa in 2009 that the two were aiming to expand their commercial relationship by identifying strategic ventures that will benefit from the companies complementary strengths.

China reverted with suspension of the activities of a bilateral cyber working group formed last year following a California summit between President Obama and Chinese President Xi Jinping.<sup>78</sup> The officials were charged with 31 counts, including hacking computers of US entities during trade remedy cases in the steel and solar sectors to obtain price and strategy information, according to a summary of the charges. The trade remedy cases include those on oil country tubular goods, seamless standard line pipe and solar cells.

The indictment is based on fabricated facts. The move jeopardizes China-US cooperation and mutual trust. China urges the US side to immediately correct its mistake and withdraw the indictment. Chinese embassy's spokesman accused the US of conducting cyber theft against China. It is a fact known to all that China is a victim of severe US cyber theft, wiretapping and surveillance activities.

Large amounts to publicly disclosed information show that relevant US institutions have been conducting cyber intrusion, wiretapping and surveillance activities against Chinese government departments institutions, companies, universities and individuals. We once again strongly urge the US side to make a clear explanation of what it has done and immediately stop such kind of activities. This is an apparent reference to revelations on an extensive surveillance program being conducted by the National Security Agency (NSA), detailed in leaks from former NSA contractor Edward Snowden.

#### 2014 Special 301 Report

The Special 301 Subcommittee of the TPSC reviewed 82 trading partners in this year's Special 301 process. USTR has listed 37 trading partners as follows:

Priority Watch List: Algeria; Argentina; Chile; China; India; Indonesia; Pakistan; Russia; Thailand; and Venezuela; and

Watch List: Barbados; Belarus; Bolivia; Brazil; Bulgaria; Canada; Colombia; Costa Rica; Dominican Republic; Ecuador; Egypt; Finland; Greece; Guatemala; Jamaica; Kuwait; Lebanon; Mexico; Paraguay; Peru; Romania; Tajikistan; Trinidad and Tobago; Turkey; Turkmenistan; Uzbekistan; and Vietnam.

#### Best IPR Practices by Trading Partners

- Work with the US to develop action plans to advance the protection and enforcement of IPR. (Bulgaria and Pakistan have done so)
- Transparency and meaningful stakeholder participation in the development of laws, regulations, procedures and other measures as well as meaningful engagement between governments and

<sup>78</sup> Inside US Trade, *China Fires Back Against U.S. Charges Of State-Sponsored Cyber Theft*, 22 May 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/23/2014/china-fires-back-against-us-charges-of-state-sponsored-cyber-theft/menu-id-710.html> (last visited 21 Sept. 2014).

stakeholders.

- Cooperation among different government agencies.
- Support participation in innovative mechanisms that enable government and private sector rights holders to voluntarily donate or license IPR on mutually agreed terms and conditions.
- Active participation of government officials in capacity building efforts and in training.

#### **Trade secrets and forced technology transfer**

The Special 301 Report reflects an emphasis on the need to protect and enforce trade secrets. Companies in a wide variety of industry sectors like information and communication technologies, services, biopharmaceuticals, manufacturing, and environmental technologies rely on the ability to protect and enforce their trade secrets and rights in other proprietary information. Trade secret theft, including industrial and economic espionage imposes significant costs on US companies and threatens the security of the United States. The US is particularly concerned with the gaps in trade secret protection and enforcement and the apparent growth of trade secret theft, particularly in China as reported by the Office of the National Counterintelligence Executive (ONCIX). It appears difficult to obtain effective remedies under the Chinese law. The US urges its trading partners to ensure that they have robust systems for protecting and enforcing trade secrets, including the availability of deterrent criminal penalties for trade secret theft.

Important of IPR in driving university research in the green technology sector. Certain national policies and practices advanced domestically and in multilateral for a may have the unintended effect of undermining national and global efforts to address serious environmental challenges. As India's National Manufacturing Policy promotes the compulsory licensing of patented technologies as a means of effectuating technology transfer with respect to green technologies. India has pressed to multilateralize this approach to green technologies through its proposals in the negotiations under the United Nations Framework Convention on Climate Change (UNFCCC). Such actions will discourage than promote the investment in and dissemination of green technologies, including those technologies that contribute to climate change adaptation and mitigation.

#### ***Counterfeiting***

The manufacture and distribution of pharmaceutical products bearing counterfeit trademarks is a growing problem which has important consequences for consumer health and safety. Such trademark counterfeiting is one dimension of the larger problem of substandard medicines. The US notes its particular concern with the proliferation of counterfeit pharmaceuticals manufactured, sold and distributed in trading partners such as Brazil, China, Indonesia, Lebanon, Peru, Russia, and especially in India, the largest source of counterfeit pharmaceuticals shipped to the US. Reports indicate that anywhere from 10-40% drugs sold in India markets are counterfeit and represents a serious threat to patient health and safety. The US Government, through the US Agency for International Development and other agencies, supports programs in Sub-Saharan Africa and elsewhere that assist trading partners in protecting the public against counterfeit medicines introduced into their markets.

#### ***Piracy***

India has one of the highest rates of piracy of audiovisual works in the world, and in 2012, the motion picture industry experienced losses estimated at \$1.1 billion, an increase of 15.79% from 2008.

#### ***India – Priority list***

Serious difficulties in attaining constructive engagement on issues of concern to US and other stakeholders have contributed to India's challenging environment for IPR protection and enforcement. The US urged India to strengthen civil IPR enforcement by increasing judicial efficiency and reducing court backlogs through electronic case management, fast-track procedures, specialized judges and similar reform measures. The US seeks changes to the

amended Copyright Act to resolve questions regarding the scope of exclusive rights under the Indian law. It is particularly concerned with the online piracy in India given India's largest internet user base (3rd in the world). In pharmaceutical sector and increasingly in other sectors, such as the agro-chemicals and green-technology sectors, some innovators face serious challenges in securing and enforcing patents in India. India still relies on its Common-law oriented Contracts Law to protect trade secrets. It is not effective in assessing situations where no contractual relationship was present. The US is concerned with the delays associated with cancellation and opposition proceedings at the administrative level of the Trademark Registry which are exacerbated by delays in India's judicial process with a reported backlog of 160,000 cases.

## V. TRADE POLICIES BY SECTOR

### V.A. Energy

#### *V.A.1. EIA seeks lifting of ban on investments in light crude oil*

Energy Information Administration (EIA) provided that the US light crude oil market will reach a saturation point if significant investments are not made in the country's refining infrastructure for light crude oil or if the current crude oil ban is not lifted.<sup>79</sup> It provided that the US markets are inherently limited for continued growth of light oil production from hydraulic fracturing which EIA predicts to rise through 2015. It does not provide when demand will overtake supply but provides three options:

- a) Investing in transforming refineries to handle more of light crude oil instead of heavy crude
- b) Building new refineries to process condensates a by-product of crude production into exportable products.
- c) Increasing crude oil exports by lifting or modifying the existing ban.

On 30 May 2014, the press release provided that lifting of the export ban will increase domestic production and inject much needed investment in the US' economy. Adding to the pressure for crude oil policy is an application by Continental Resource Inc., the largest oil leaseholder and producer in North Dakota to export crude oil. The license is to get the light crude oil to foreign refineries that are configured to handle it. BIS considers licenses to export crude oil includes seven exceptions including exports from Alaska's Cook Inlet, to Canada and exports consistent with finding made by the President under an applicable statute. It is stated that lifting the ban will give the oil companies the incentive to increase products up to 500,000 barrels.

#### *V.A.2. DOE grants blanket authorization to export liquefied natural gas*

On 14 April 2014, the Department of Energy (DOE) issued an order granting blanket authorization to export liquefied natural gas (LNG) from the Kenai LNG facility to countries with which the US has not entered into a FTA.<sup>80</sup> A blanket authorization refers to the ability to export on a short-term or sport market basis for a period of up to two years. As a result, the Kenai LNG facility, located near Kenai, Alaska, may export as much as 40 billion cubic feet of natural gas extracted from fields in the Cook Inlet region of South central Alaska until 13 April 2016.

Notably, since its first authorization in 1967, the facility has supplied LNG mainly to Japan, specifically the Tokyo Electric Power Company and Tokyo Gas Company Limited. The prior export license for the

<sup>79</sup> Inside US Trade, *EIA, Analysts Say Market Saturation For Light Crude Could Lead To Exports*, 19 June 2014, <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/20/2014/eia-analysts-say-market-saturation-for-light-crude-could-lead-to-exports/menu-id-710.html> (last visited on 20 Sept. 2014).

<sup>80</sup> Inside US Trade, *DOE Approves LNG Export License To Non-FTA Countries For Alaskan Terminal*, 15 April 2014, <http://insidetrade.com/201404152467612/WTO-Documents/Text-Document/doe-approves-lng-export-license-to-non-fta-countries-for-alaskan-terminal/menu-id-174.html> (last visited on 4 Oct. 2014).

Kenai facility expired on 31 March 2013 and exports consequently ceased. Previously, DOE had renewed export licenses for the Kenai LNG facility several times since its inception in 1967, resulting in no interruptions to export flows. This time round ConocoPhillips, the operator and owner of the facility, decided not to seek an extensions because of “uncertainties regarding the near-term adequacy of natural gas supplies in the Cook Inlet region for regional needs.

ConocoPhillips later determined that circumstances has changed and on 11 December 2013 submitted its request to the DOE for a new two-year blanker authorization. Section 3 of the Natural Gas Act requires DOE approval for all exports of LNG, including exports to countries that have an FTA with the US. However, exports to non-FTA countries are subject to a discretionary “public interest” test, and DOE may refuse to grant permission to export if its finds that the exports “will not be consistent with the public interest”.

## VI. ANNEXES

### VI.A. Quarterly Trade Remedies Measures Update<sup>81</sup>

**Administrative Reviews**  
*Active investigations: Commission import-injury investigations pending a Commission determination*

➔ *Preliminary phase determinations*

| INVESTIGATION                                     | COUNTRY  | PRODUCT  | STATUS OF PROCEEDINGS | IMPORTANT DATES  |
|---|--|--|-----------------------|--|
| 701-TA-514 and 731-TA-1250 (Preliminary)          | China  | Certain Domestic Dry Containers                            |                       | Determination due on 9 June 2014 and views to Commerce on 16 June 2014.      |
| 701-TA-522 and 731-TA-1258 (Preliminary)          | China  | Certain Passenger Vehicle and Light Truck Tires from China | Pending determination | Determination due on 15 August 2014 and views to Commerce on 22 August 2014. |
| 701-TA-515-521 and 731-TA-1251-1257 (Preliminary) | India, Korea, Malaysia, Oman, Taiwan, Turkey and Vietnam | Certain Steel Nails  | Pending determination | Determination due on 14 July 2014 and views to Commerce on 21 July 2014.     |
| 701-TA-513 and 731-TA-1249 (Preliminary)          | Mexico   | Sugar  | Pending determination | Determination on 12 April 2014 and views to Commerce on 19 April 2014.       |

*Final phase determination*

| INVESTIGATION | COUNTRY | PRODUCT | STATUS OF PROCEEDINGS | IMPORTANT DATES |
|---------------|---------|---------|-----------------------|-----------------|
|---------------|---------|---------|-----------------------|-----------------|

<sup>81</sup> Update from International Trade Commission Official Website.

|  |  |                                   |                       |   |
|--|--|-----------------------------------|-----------------------|---|
| <b>701-TA-499-500 and 731-TA-1215-1223 (Final)</b> | India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine and Vietnam | Certain Oil Country Tubular Goods | Pending decisions     | Start of investigation: 25 February 2014<br><br>End of investigation: 25 August 2014.       |
| <b>701 TA-501 and 731-TA-1226 (Final)</b>          | China and Japan  | Chlorinated Isocyanurates         | Pending determination | Start of investigations: 24 April 2014<br><br>End of investigations: 21 October 2014        |
| <b>731-TA-1224-1225 (Final)</b>                    | Russia and Venezuela   | Ferrosilicon                      | Pending determination | Start of investigation: 11 March 2014<br><br>End of investigations: 9 September 2014        |
| <b>701-TA-505 and 731-1231-1237 (Final)</b>        | China, Czech Republic, Germany, Japan, Korea, Poland and Russia                        | Grain-oriented electrical steel   | Pending determination | Start of investigation: 12 May 2014<br><br>End of investigations: 9 September 2014          |
| <b>731-TA-1229-1230 (Final)</b>                    | China and Indonesia  | Monsodium                         |                       | Start of the investigation: 8 April 2014<br><br>End of investigations: 4 November 2014      |
| <b>701-TA-506-508 and 731-TA-1238-1243</b>         | China, Germany, Japan, Korea, Sweden and Taiwan  | Non-oriented electrical steel     |                       | Start of the investigation: 22 April 2014<br><br>End of the investigation: 18 November 2014 |
| <b>731-TA-1207-1209 (Final)</b>                    | China, Mexico and Thailand   | Prestressed Concrete Steel        |                       | Start of the investigation: 12 December 2013<br><br>End of the investigation: 12            |

|  |                                |                                      |  |   |
|--|--------------------------------|--------------------------------------|--|---|
|  |                                |                                      |  | June 2014   |
| <b>701-TA-502 and 731-TA-1227-1228 (Final)</b> | Mexico and Turkey              | Steel Concrete Reinforcing Bar       |  | Start of the investigation: 24 April 2014<br><br>End of the investigation: 23 October 2014  |
| <b>701-TA-498 and 731-TA-1213-1214 (Final)</b> | India and Thailand             | Steel Threaded Rod                   |  | Start of the investigation: 31 December 2013<br><br>End of the investigation: 1 April 2013 (Thailand) and 18 August 2014 (India). |
| <b>701-TA-509 and 731-TA-1244 (Final)</b>      | China                          | Tetrafluoroethane                    |  | Start of the investigation: 29 April 2014<br><br>End of the investigation: 24 November 2014                                       |
| <b>731-TA-1210-1212 (Final)</b>                | Malaysia, Thailand and Vietnam | Welded Stainless Steel Pressure Pipe |  | Start of the investigation: 7 January 2014<br><br>End of the investigation: 7 July 2014   |

### *Changed circumstances investigation*

None

### **SUNSET REVIEWS**

#### *Initial reviews*

| <b>INVESTIGATION</b>                       | <b>COUNTRY</b> | <b>PRODUCT</b>                                 | <b>STATUS OF PROCEEDINGS</b>                     | <b>IMPORTANT DATES</b>  |
|--|----------------|--|--|---|
| <b>701-TA-455 and 731-TA-1149 (Review)</b> | China          | Circular Welded Carbon Quality Steel Line Pipe | Initial review (expedited) pending determination | Start of investigation: 2 December 2013<br><br>End of investigation: 2 April 2014 |

|  |   |   |  |  |
|--|---|---|--|--|
| <b>731-TA-1124-1125 (Review)</b>           | Australia and China                         | Electrolytic manganese dioxide from Australia and China | Initial Review (full) pending determination      | Start of investigation: 3 September 2013<br><br>End of investigation: 15 December 2014     |
| <b>701-TA-451 and 731-TA-1126-1127</b>     | China and Germany                           | Lightweight thermal paper                               | Initial review (Full) pending determination      | Start of investigation 1 October 2013<br><br>End of investigations: 16 January 2015        |
| <b>731-TA-1131, 1132 and 1134 (Review)</b> | Brazil, China, and the United Arab Emirates | Polyethylene Terephthalate Film                         | Initial review (Full) pending determination      | Start of the investigation: 1 October 2013<br><br>End of the investigation: 8 January 2015 |
| <b>731-TA-1143 (Review)</b>                | China                                       | Small Diameter Graphite Electrodes                      | Initial review (Expedited)                       | Start of investigation: 2 January 2014<br><br>End of the Investigation: 2 June 2014        |
| <b>731-TA-1145 (Review)</b>                | China                                       | Steel Threaded Rod                                      | Initial review (Expedited) pending determination | Start of investigation: 3 March 2014<br><br>End of the investigation: 4 August 2014        |
| <b>701-TA-454 and 731-TA-1144</b>          | Welded Stainless Steel Pressure Pipe        | China   | Initial review (expedited) pending determination | Start of investigation: 3 February 2014<br><br>End of the investigation: 7 June 2014       |

### *Second reviews*

| INVESTIGATION | COUNTRY | PRODUCT | STATUS OF PROCEEDINGS | IMPORTANT DATES |
|---------------|---------|---------|-----------------------|-----------------|
|---------------|---------|---------|-----------------------|-----------------|



|   |   |  |   |  |
|---|---|--|---|--|
| <b>731-TA-1020</b>  | China   | Barium Carbonate                                       | Sunset review (Full)<br>pending determination | Start of investigation: 3<br>February 2014<br><br>End of the investigation: 2<br>February 2015 |
| <b>731-TA-986-987 (Second Review)</b>                                   | China and South Africa  | Ferrovandium   | Sunset review (Full)<br>pending determination | Start of investigation: 1<br>November 2013<br><br>End of the investigation: 28<br>January 2015 |
| <b>731-TA-1021 (Second Review)</b>                                      | China   | Malleable Iron Pipe<br>Fittings                        | Second Review<br>(Expedited)                  | Start of investigations: 3 March<br>2014<br><br>Determination: 8 April 2014                    |
|   |   |  |   |  |
| <b>701-TA-415 and 731-TA-933 and 934 (Second Review)</b>                | India and Taiwan  | Polyethylene<br>Terephthalate Film,<br>Sheet and Strip | Second Review (Full)                          | Start of investigation: 1 April<br>2013<br><br>Determination: 11 July 2014                     |
| <b>731-TA-991 (Second Review)</b>                                       | Russia  | Silicon Metal  | Second Review (Full)                          | Start of investigation: 3 June<br>2013<br><br>End of Investigation: 11 June<br>2014            |
| <b>701-TA-417 and 731-TA-953, 957-959, 961, and 962 (Second Review)</b> | Brazil, Indonesia,<br>Mexico, Moldova,<br>Trinidad and Tobago,<br>and Ukraine | Carbon and Certain<br>Alloy Steel Wire Rod             | Second Review (Full)                          | Start of investigation: 3 June<br>2013<br><br>End of Investigation: 16 June<br>2014            |

## COMPLETED

### *Preliminary phase investigations*

NONE for the Quarter

### *Final phase investigation*

| INVESTIGATIONS             | COUNTRY | PRODUCT  | STATUS OF PROCEEDINGS | IMPORTANT DATES  |
|----------------------------|---------|--|-----------------------|--|
| <b>731-TA-1206 (Final)</b> | Japan   | Diffusion-Annealed,<br>Nickel-Plated Flat-Rolled<br>Steel Products | Final Phase           | Start of investigation: 19<br>November 2013<br><br>End of the investigation 21 |

|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  |  | April 2014<br><br>Date of determination: 3 February 2014<br><br>End date: 10 February 2014 |
|--|--|--|--|--|

### *Five-Year Review (Sunset) Investigations*

| Investigations | Country | Product            | Status of proceedings  | Important dates |
|----------------|---------|--------------------|--|-----------------|
| 731-TA-752     | China   | Crawfish Tail Meat | Start of the investigation:<br>11 January 2013<br><br>End of the investigation:<br>28 April 2014 |                 |

### *Safeguard Investigations*

→NONE for the years after 2003.

### **VI.B. Quarterly Technical Barriers to Trade Notifications**

| NOTIFICATION            | PRODUCT   | MEASURE  | AGENCY  | OBJECTIVE   |
|-------------------------|---|--|---|---|
| <b>G/TBT//N/SA/908</b>  | Appliance labelling<br>Environmental protection (ICS 13.020), Ventilators, Fans, Air-conditioners (ICS 23.120), Refrigerating technology (ICS 27.200), Lamps and related equipment (ICS 29.140) | As part of its regulatory review of the Energy Labeling Rule, the Federal Trade Commission proposes to expand coverage of the Lighting Facts label, change the current label categories for refrigerators, revise the ceiling fan label design, and require room air conditioner labels on packaging instead of the units themselves.  | Federal Trade Commission (FTC) [925]  | Prevention of deceptive practices and consumer protection |
| <b>G/TBT//N/USA/907</b> | Dehumidifiers, Environmental protection (ICS 13.020), Domestic electrical appliances in general (ICS 97.030)  | The US Dept. of Energy (DOE) proposes to revise its test procedures for dehumidifiers, by adding clarifications for equipment setup during the testing and correcting the calculations of active mode energy use and an efficiency metric, integrated energy factor (IEF). The proposed amendments would also create a new appendix which would require certain active mode testing at a lower ambient temperature, add a measure of | Office of Energy Efficiency and Renewable Energy (OEERE) Department of Energy (DOE) | Protection of the environment                             |

|                        |  |   |                                    |   |
|------------------------|--|---|------------------------------------|---|
|                        |  | fan-only mode energy consumption in the IEF metric, and include testing methodology and measures of performance for whole-home de humidifiers. Finally, DOE proposes to add clarifying definitions of covered products, amend the certification requirements, add certification instructions for the capacity measurement, and make certain editorial corrections.  |                                    |   |
| <b>G/TBT/N/USA/906</b> | Frame child carriers-Equipment for children (ICS 97.190)   | The Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires the US Consumer Product Safety Commission or CPSC to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a safety standard for frame child carriers in response to the direction under section 104(b) of the CPSIA. In addition, the Commission is proposing an amendment of the list of Notice Requirements (NOR) issued by the Commission. | Consumer Product Safety Commission | Prevention of deceptive practices and consumer protection |
| <b>G/TBT/N/USA/905</b> | Cellulosic biofuel. Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weights 70% or more of petroleum oils or of oils obtained from bituminous minerals, these | The Environmental Protection Agency (EPA) is proposing to revise the 2013 cellulosic biofuel standard published on 15 August 2013. This action follows from EPA having granted two petitioners' requests for reconsideration of 2013 cellulosic biofuel standard. EPA granted reconsideration because one of  | Environmental Protection Agency    | Protection of the environment                             |

|                               |   |  |   |  |
|-------------------------------|---|--|---|--|
|                               | <p>oils being the basic constituents of the preparations; waste oils. (HS 2710); Environmental protection (ICS 13.020), Fuels (ICS 75.160).</p> | <p>the two companies that EPA expected to produce cellulosic biofuel in 2013 announced soon after EPA signed its final rule that it intended to produce substantially lower volumes of cellulosic biofuel in 2013 than it had earlier reported to EPA. Since the cellulosic biofuel standard was based on EPA's projection of cellulosic biofuel production in 2013, EPA deemed this new information to be of central relevance to the rule, warranting reconsideration. On reconsideration, EPA is directed to base the standard on the lower of "projected" production of cellulosic fuel in 2013 or the cellulosic biofuel production in 2013. This action only affects the 2013 cellulosic biofuel standard; all other RFS standards remain unchanged. EPA is proposing a revised cellulosic biofuel standard of 0.0005% for 2013. In the Rules and REGULATIONS SECTION OF THIS fEDeral ReGISTER, we are making this same amendment as a direct final rule. If we receive no adverse comment, the direct final rule will go into effect and we will not take further action on this e proposed rule.</p> |   |  |
| <p><b>G/TBT/N/USA/902</b></p> | <p>Veterinary biological products. Veterinary medicine (ICS 11.220)</p>   | <p>We are proposing to amend the Virus-Serum-Toxin Act regulations to provide for the use of a simpler labeling format that would better communicate product performance to the user. We intend to replace the current label format, which reflects any of four different levels of effectiveness, with a single, uniform label format. We are also proposing to require biologics licensees to provide a standardized summary, with confidential business information</p>   | <p>Animal and Plant Health Inspection Service (APHIS), Department of Agriculture (USDA)</p> | <p>Protection of animal or plant life or health; Prevention of deceptive practices and consumer protection</p> |

|                        |  |   |  |  |
|------------------------|--|---|--|--|
|                        |  | removed, of the efficacy and safety data submitted to the Animal and Plant Health Inspection Service in support of the issuance of a full product license or conditional license. A simpler label format along with publicly available safety and efficacy data will help biologics producers to more clearly communicate product performance to their customers.   |  |  |
| <b>G/TBT/N/USA/903</b> | Residential clothes washers, Laundry appliances (ICS 97.060); Household or laundry-type washing machines, including machines which both wash and dry. (HS 8450)  | The US Dept. of Energy (DOE) proposes to revise its test procedures for residential clothes washers established under the Energy Policy and Conservation Act. The proposed amendments would codify test procedure guidance that DOE has issued in response to frequently asked questions, clarify additional provisions within the test procedures, provide improved organization of each section, and correct formatting errors in DOE's clothes washer test procedures.   | Office of Energy Efficiency and Renewable Energy (OEERE) Dept. of Energy (DOE) | Protection of the environment  |
| <b>G/TBT/N/USA/904</b> | Tobacco products. Tobacco, tobacco products and related equipment (ICS 65.160). Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes. (HS 2402), Other manufactured tobacco and manufactured tobacco substitutes; "homogenized" or "reconstituted" tobacco; tobacco; tobacco extracts and essences. (HS 2403) | The Food and Drug Administration (FDA) is proposing to deem products meeting tobacco product, to be subject to the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act). The Tobacco Control Act provides FDA authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and any other tobacco products that the Agency by regulation deems to be subject to the law. Option 1 of the proposed rule would extend the Agency's "tobacco product" authorities in the FD&C Act to all other categories of products, except | Food and Drug Administration (FDA), Health and Human Services (HHS)            | Protection of Human Health or Safety; Prevention of deceptive practices and consumer protection. |

|                        |  |   |  |   |
|------------------------|--|---|--|---|
|                        |  | <p>accessories of a proposed deemed tobacco product, that meet the statutory definition of “tobacco product” in the FD&amp;C Act. Option 2 of the proposed rule would extend the Agency’s “tobacco product” authorities to all other categories of products, except premium cigars and the accessories of a proposed deemed tobacco product, that meet the statutory definition of “tobacco product” in the FD&amp;C Act. FDA also is proposing to prohibit the sale of “covered tobacco products” to individuals under the age of 18 and to require the display of health warnings on cigarette tobacco, roll-your own tobacco, and covered tobacco product packages and in advertisements. FDA is taking this action to address the public health concerns associated with the use of tobacco products.</p> |  |   |
| <b>G/TBT/N/USA/901</b> | Automotive Fuel Ratings, Certification and Posting   | <p>The Commission proposes amendments to its Rule for Automotive Fuel Ratings, Certification and Posting that would adopt and revise rating, certification, and labelling requirements for ethanolgasoline blends and would allow an alternative octane rating method. The proposed amendments further the Rule’s goal of helping purchasers identify the correct fuel their vehicles.</p>  | Federal Trade Commission               | Prevention of deceptive practices and consumer protection                                       |
| <b>G/TBT/N/USA/893</b> | Food products, labelling. Processes in the food industry (ICS 67.020), Food products in general (ICS 67.040) | <p>The Food and Drug Administration (FDA) is proposing to amend its labeling regulations for conventional foods and dietary supplements to provide updated nutrition information on the label to assist consumers in maintaining healthy dietary practices. The updated information is consistent with</p>  | The Food and Drug Administration (FDA) | Protection of Human health or Safety, Prevention of deceptive practices and consumer protection |

|                               |   |  |  |  |
|-------------------------------|---|--|--|--|
|                               |   | <p>current data on the associations between nutrients and chronic diseases or health-related conditions, reflects current public health conditions in the US, and corresponds to new information on consumer behavior and consumption patterns. We are proposing to update the list of nutrients that are required or permitted to be declared; provide updated Daily Reference Values and Reference Daily Intake values that are based on current dietary recommendations from consensus reports; amend requirements for foods represented or purported to be specifically for children under the age of 4 years and pregnant and lactating women and establish nutrient reference values specifically for these population subgroups; and revise the format and appearance of the Nutrition Facts label.</p> |  |  |
| <p><b>G/TBT/N/USA/894</b></p> | <p>Food products, labeling, serving sizes. Processes in the food industry (ICS 67.020), Food products in general (ICS 67.040)</p> | <p>The Food and Drug Administration (FDA) is proposing to amend the definition of single-serving container; require dual-column labeling for certain containers; update and modify several reference amounts customarily consumed; add several food products and food product categories to the reference amounts customarily consumed per eating occasion for the general food supply; amend the label serving size for breadth mints; and make technical amendments to various aspects of the serving size regulations. These actions are being taken in part, in response to recommendations of the 2003 FDA Obesity Working Group and FDA's recognition that portion sizes have changed since the</p>  | <p>Food and Drug Administration (FDA), Health and Human Services (HHS)</p> | <p>Protection of Human health or Safety, Prevention of deceptive practices and consumer protection</p> |

|  |  |  |  |  |
|--|--|--|--|--|
|  |  | original serving size regulations were published in 1993. This proposal also discusses six citizen petitions. The intended effect of this rulemaking is to provide consumers with more accurate and up-to-date information on serving sizes. |  |  |
|--|--|--|--|--|

*Source:* World Trade Organization Documents Online

## VI.C. WTO Disputes

| Dispute   | Update   |
|---|--|
| <b>US as a complainant</b>  |  |
| <b>Indonesia- Importation of Horticultural Products, Animals and Animal Product</b> | On 8 May 2014, the US requested consultations with Indonesia concerning certain measures it imposes on the importation of horticultural products, animals and animal products. The US claims that the measures are inconsistent with GATT 1994, Agreement on Agriculture, Import Licensing Agreement and the Agreement on Pre-shipment Inspection. On 16 May 2014, New Zealand requested to join the consultations. On 22 May 2014, Thailand requested to join the consultations. On 23 May 2014, Canada, the EU and Chinese Taipei requested to join the consultations. Subsequently, Indonesia informed the DSB that it had accepted the requests of Australia, Canada, the EU, Chinese Taipei and Thailand to join the consultations. <sup>82</sup>   |
| <b>India- Certain Measures Relating to Solar Cells and Solar Modules</b>            | The US had requested consultations with India regarding certain measures of India relating to domestic content requirements under the Jawaharlal Nehru National Solar Mission for solar cells and solar modules. Such measures appear to be inconsistent with GATT 1994, TRIMs Agreement and the SCM Agreement. The US also claims that the measures appear to nullify or impair the benefits accruing to the US directly or indirectly under the cited agreements. On 14 April 2014, the US requested the establishment of a panel. At its meeting on 25 April 2014, the DSB deferred the establishment of a panel. On 23 May 2014, the DSB established a panel. Brazil, Canada, China, the EU, Japan, Korea, Malaysia, Norway, Russia and Turkey reserved their third party rights. Subsequently, Ecuador, Saudi Arabia, and Chinese Taipei reserved their third party rights. <sup>83</sup> |
| <b>Argentina- Measures Affecting the Importation of Goods</b>                       | The US requested consultations with Argentina concerning certain measures imposed by Argentina on the importation of goods. The US challenges: (i) the requirement to present for approval of a non-automatic import licence; (ii) non-automatic licences required in the form of Certificados de Importacion (CIs) for the importation of certain goods; (iii) requirements imposed on importers to undertake certain trade-restrictive commitments; and (iv) the alleged systematic delay in granting import approval or refusal to grant such approval, or the grant of import approval subject to importers undertaking to comply with certain allegedly trade-restrictive commitments. The US claims that the challenged  |

<sup>82</sup> WTO, *Indonesia – Importation of Horticultural Products, Animals and Animal Products*, DS478, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds478\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds478_e.htm) (last visited 5 Aug. 2014).

<sup>83</sup> WTO, *India- Certain Measures Relating to Solar Cells and Solar Modules*, DS456, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds456\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm) (last visited 5 Aug. 2014).



|   |  |
|---|--|
|   | <p>measures appear to be inconsistent with GATT 1994; the TRIMs Agreement, the Agreement on Import Licensing Procedures and the Safeguards Agreement. The Panel estimated that it will be able to issue the final report to the parties by the end of June 2014, in accordance with the revised timetable adopted after consultations with the parties. The report as on 5 August 2014 was not notified to be provided to the parties.<sup>84</sup></p>  |
| <p><b>China- Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States</b></p> | <p>The US had requested consultations with China as regards the imposition of anti-dumping and countervailing duties on certain automobiles from the US. The US alleged that the measures were inconsistent with ADA, SCMA and GATT 1994. On 23 May 2014, the Panel report was circulated to Members. The Panel held that:</p> <p>The MOFCOM erred in its determination of the residual anti-dumping and countervailing duty rates for unknown exporters of the subject product. The Panel thus concluded that these residual duty rates did not conform to the requirements of Art. 6.8 ad Annex II of the ADA, and Art. 12.7 SCMA. The Panel also found a number of inconsistencies relating to MOFCOM's price effects and causation determinations, contrary to the requirements of Art. 3.1, 3.2 and 3.5 of the ADA and Arts. 15.1, 15.2 and 15.5 of the SCMA.</p> <p>The Panel rejected the US' claim that MOFCOM's definition of the domestic industry in the investigations at issue was inconsistent with Art. 4.1 ADA and Art. 16.1 SCMA.</p> <p>As regards China's procedural obligations, the Panel found that MOFCOM erred in failing to provide interested parties with adequate non-confidential summaries of certain confidential information in the petition, contrary to the requirements of Art. 6.5.1. of the ADA and Article 12.4.1 of the SCMA. The Panel also found that MOFCOM failed to disclose to US respondents the essential facts which formed the basis of its decision to impose definitive ADD as required under Art. 6.9 of the ADA.</p> <p>The Panel rejected the US' claims that MOFCOM's public notices failed to disclose the essential facts and findings and conclusions reached on all issues of facts and findings and conclusions on all issues of fact and law considered material by MOFCOM in relation to the determination of the residual duty rates. Accordingly, the Panel provided that the US failed to establish that China acted inconsistently with Art. 6.9, 12.2, 12.2.2 of the ADA, and Art. 12.8, 22.3 and 22.5 of the SCMA. As a consequence of these violations, the Panel also found that China acted inconsistently with the general obligation set forth in Article 1 of the ADA and Art. 10 of the SCMA to conduct investigations consistently with the provisions of these Agreements. The Panel recommended that the DSB requests China to bring its relevant measures into conformity with its obligations under the ADA and SCMA. At its meeting on 18 June 2014, the DSB adopted the panel report.<sup>85</sup></p> |
| <p><b>China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum</b></p>         | <p>The US had requested consultations with China with respect to China's restrictions on the export of various forms of rare earths, tungsten and molybdenum. The request refers to materials falling under but not limited to 212 eight digit Chinese Customs Commodity Codes and over 30 measures. The request also refers to a number of Chinese published as well as unpublished measures that, operating separately or collectively, allegedly impose and administer export restrictions. These restrictions include export duties, export quotas, minimum export price requirements, export licensing requirements and additional requirements and procedures in connection with the administration of the quantitative restrictions. The US claimed that such measures were inconsistent with GATT 1994 and the Chinese</p>   |

<sup>84</sup> WTO, *Argentina-Measures Affecting the Importation of Goods*, DS444, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds444\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds444_e.htm) (last visited on 5 Aug. 2014).

<sup>85</sup> WTO, *China – Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States*, DS440, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds440\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds440_e.htm) (last visited 5 Aug. 2014).

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|  | <p>protocol of Accession as well as China's obligation under paragraph 1.2 of Part I of the Protocol of Accession. On 26 March 2014, the Panel Report was circulated to Members. On 8 April 2014, the US notified the DSB of its decision to appeal the AB certain issues of law covered in the panel report and certain legal interpretations developed by the panel. On 17 April 2014, China notified the DSB of its decision to appeal to the AB certain issues of law and covered in the panel report and certain legal interpretation developed by the panel. On 17 June 2014, the Chair of the AB informed the DSB that it would not be possible for the AB to circulate its report within the 90 day time frame. Having consolidated the appellate proceedings in this dispute with those in DS432 and DS433, the AB intended to communicate the expected date of circulation of the reports in all three disputes upon expiry of the 60 day period specified in Article 17.5 of the DSU for DS432 and DS433. Such 60-day period expired on 24 June 2014.<sup>86</sup></p>  |
| <p><b>China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States</b></p> | <p>The claim concerns China's measures imposing anti-dumping and countervailing duties on broiler products from the US. China had informed the DSB that it intended to implement the DSB recommendations and rulings in a manner which respects its WTO obligations and that they would need reasonable period of time to do so. The reasonable period of time for China to implement the DSB recommendations and ruling shall be 9 months, 14 days from the date of adoption of the panel report. Accordingly, the reasonable period of time expires on 9 July 2014.<sup>87</sup></p>   |
| <p><b>US as a respondent</b></p>   |  |
| <p><b>United States – Anti-dumping and Countervailing Measures on large residential washers from Korea</b></p> | <p>The dispute concerns with the US' measures concerning anti-dumping and countervailing measures relating to large residential washers from Korea. On 10 June Korea requested the DG to compose the panel and on 20 June 2014, the DG composed the panel.<sup>88</sup></p>  |
| <p><b>United States- Countervailing and Anti-dumping Measures on Certain Products from China</b></p>           | <p>The dispute concerns US' measures which concerns:</p> <p>Measures which explicitly allows for the application of countervailing measures to NME;</p> <p>CVD determinations or actions made or performed by the US authorities between 20 Nov 2006 and 13 March 2012 in respect of Chinese products;</p> <p>Anti-dumping measures associated with the concerned countervailing duty measures as well as the combined effect of these anti-dumping measures and the parallel countervailing duty measures and</p> <p>The US' failure to provide the USDOC with legal authority to identify and avoid the double remedies in respect of investigations or reviews initiated on or between 20 November 2006 and 13 March 2012.</p> <p>On 8 April 2014, China notified the DSB of its decision to appeal to the AB certain issues of law covered in the panel report and certain legal interpretations developed by the panel. On 17 April 2014, the US notified the DSB of its decision to appeal to the AB certain issue of law covered in the panel report and certain interpretations developed by the panel On 6 June 2014, the Chair of the AB informed the DSB that due to the time required for completion and translation of the report, it has not been able</p> |

<sup>86</sup> WTO, *China- Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*, DS431, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds431\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds431_e.htm) (last visited 5 Aug. 2014).

<sup>87</sup> WTO, *China- Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*, DS427, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds427\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds427_e.htm) (last visited 5 Aug. 2014).

<sup>88</sup> WTO, *United States – Anti-Dumping and Countervailing Measures on large residential washers from Korea*, DS464, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds464\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds464_e.htm) (last visited 5 Aug. 2014).

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|   | to circulate the report by the end of the 60 day period. It is estimated that the AB would be circulated no later than 7 July 2014. <b>89</b>  |
| <b>US as a third party</b>  |  |
| <b>Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the EU</b>   | On 8 April 2014, the EU requested consultations with Russia concerning certain measures adopted by Russia affecting the importation of live pigs and their genetic material, pork, pork products and certain other commodities from the EU, purportedly because of concerns related to cases of African Swine Fever. The EU claims that the measures are inconsistent with the SPS Agreement and the GATT 1994. <b>90</b>  |
| <b>European Union – Anti-Dumping Measures on Biodiesel from Argentina</b>   | The dispute concerns with the EU's AD measure regarding provisional and definitive anti-dumping measures imposed on biodiesel originating in, inter alia, Argentina, as well as the Investigation underlying the measures and a provision in the Council Regulation (EC) 1225/2009 of November 2009, which refers to the adjustment or establishment of costs associated with the production and sale of products under investigation in the determination of dumping margins. On 25 April 2014, the DSB established a panel. Australia, China, Malaysia, Norway, Russia, Saudi Arabia, Turkey and the US reserved their third-party rights. Subsequently, Colombia, Indonesia and Mexico reserved their third party rights. On 13 June 2014, Argentina requested the Director General to compose the panel. On 23 June 2014, the Director General composed the panel. <b>91</b> |
| <b>Ukraine-Definitive Safeguard Measures on Certain Passenger Cars</b>  | The dispute concerns with Ukraine's safeguard measures on imports of certain passenger cars and the investigation that led to the imposition of those measures. On 10 June 2014, Japan requested the Director-General to compose the panel. On 20 June 2014, the Director-General composed the panel. <b>92</b>  |
| <b>Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging</b> | The dispute concerns certain laws and regulations by Australia which impose restrictions on trademarks, geographical indications, and other plain packaging requirements on tobacco products and packaging. On 23 April 2014, Australia requested the Director-General to compose the panel. On 5 May 2014, the Director-General composed the panel. <b>93</b>   |
| <b>Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging</b> | The dispute concerns Australian laws and regulations which allegedly impose trademark restrictions and other plain packaging requirements on tobacco products. On 4 April 2014, Cuba requested the establishment of a panel. At its meeting on 25 April 2014, the DSB established a panel. Argentine, Brazil, Canada, Chile, China, the Dominican Republic, the EU, Guatemala, Honduras, India, Japan, Korea, Malaysia, Mexico, New Zealand, Nicaragua, Norway, the Philippines, Russia, Singapore, Chinese Taipei, Thailand, Turkey, Ukraine, the US, Uruguay and Zimbabwe reserved their third party rights. Subsequently, Indonesia, Nigeria, Saudi Arabia, South Africa and Peru reserved their third party  |

<sup>89</sup> WTO, *United States – Countervailing and Anti-dumping Measures on Certain Products from China*, DS449, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds449\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds449_e.htm) (last visited 5 Aug. 2014).

<sup>90</sup> WTO, *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union*, DS475, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds475\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds475_e.htm) (last visited 5 Aug. 2014).

<sup>91</sup> WTO, *European Union- Anti-Dumping Measures on Biodiesel from Argentina*, DS473, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds473\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds473_e.htm) (last visited on 5 Aug. 2014).

<sup>92</sup> WTO, *Ukraine – Definitive Safeguard Measures on Certain Passenger Cars*, DS468, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds468\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds468_e.htm) (last visited 5 Aug. 2014).

<sup>93</sup> WTO, *Australia- Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, DS467, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds467\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds467_e.htm) (last visited on 5 Aug. 2014).

rights. On 25 April 2014, Australia requested the Director-General to compose the panel. On 5 May 2014, the Director-General composed the panel.<sup>94</sup>

**Source:** World Trade Organization

## **VI.D Sanitary and Phytosanitary Measure**

*Please refer to the next page.*

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<sup>94</sup> WTO, *Australian- Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, DS458/DS441/DS435/DS434, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds458\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds458_e.htm);  
[http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds435\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds435_e.htm);  
[http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds441\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds441_e.htm);  
[http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds434\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds434_e.htm) (last visited 5 Aug. 2014).

| NOTIFICATION     | PRODUCT           | DESCRIPTION  | AGENCY   | OBJECTIVE                  | REGIONS OR COUNTRIES LIKELY TO BE AFFECTED, TO THE EXTENT RELEVANT OR PRACTICABLE | RELEVANT INTERNATIONAL STANDARD | DATE OF ADOPTION   |
|------------------|-------------------|--|--|----------------------------|---|---------------------------------|--|
| G/SPS/N/USA/2680 | Atlantic Salmon   | The following tolerances have been established for imported food containing residues of unapproved new animal drugs: Drug: teflubenzuron. Species: Atlantic salmon. Tissue: muscle with adhering skin. Import Tolerance: 0.5 ppm. Year Established: 2014   | US Food and Drug Administration (FDA)              | Food safety, animal health | All trading partners  | None                            | Proposed date of adoption 23 May 2014. Not applicable to establishment of an import tolerance but as a trade facilitating measure. |
| G/SPS/N/USA/2677 | Multiple products | This regulation establishes, amends, and removes tolerances for residues of flutriafol in or on multiple commodities   | US Environmental Protection Agency                 | Food safety                | All trading partners  | None                            | Proposed date of entry into force: 6 June 2014 as a trade facilitating measure   |
| G/SPS/N/USA/2678 | Citrus, oil       | This regulation amends a tolerance for residues of spirodiclofen in or on citrus, oil  | US Environmental Agency                            | Food safety                | All trading partners  | None                            | Proposed date of entry into force: 11 June 2014 as a trade facilitating measure  |
| G/SPS/N/USA/2679 | Rice, grain       | This regulation establishes tolerances for residues of tricyclazole in or on imported rice   | US Environmental Protection Agency                 | Food safety                | All trading partners  | None                            | Proposed date of entry into force: 11 June 2014 as a trade facilitating measure  |
| G/SPS/N/USA/2675 | Fresh figs        | The Animal and Plant Health Inspection Service (APHIS) is advising the public that we have prepared a past list and risk management document regarding the risks associated with the importation into the continental US of fresh figs from Mexico. Based on these documents, we have concluded that the application of one or more designated phytosanitary | Animal and Plant Health Inspection Service (APHIS) | Plant protection           | Mexico  | None                            | Proposed date of entry into force: Not applicable.<br><br>Trade facilitating   |

|                         |                   |   |  |               |                         |      |   |
|-------------------------|-------------------|---|--|---------------|-------------------------|------|---|
|                         |                   | measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh figs from Mexico. We are making the documents available to the public review and comment.   |  |               |                         |      | measure   |
| <b>G/SPS/N/USA/2676</b> | Equine            | The Animal and Plant Health Inspection Service is advising the public that we have determined that Saudi Arabia is free of African horse sickness (AHS). After reviewing the documentation submitted by Saudi Arabia in support of its request and considering other factors, the Administrator of the Animal and Plant Health Inspection Service has determined that AHS is not present in Saudi Arabia. We are making that determination, as well as an evaluation we have prepared in connection with this action, available for review and comment. | Animal and Plant Health Inspection Service (APHIS) | Animal health | Kingdom of Saudi Arabia | None | Proposed date of entry into force: Not applicable<br><br>Trade Facilitating measure |
| <b>G/SPS/N/USA/2673</b> | Sugarcane, cane   | EPA issued a final rule in the Federal Register of 16 August 2013, concerning the establishment of a tolerance for imazapic in or on sugarcane, cane. This document is being issued to correct the codified section by including a footnote under the table issued to correct the codified section by including a footnote under the table in paragraph (a)(1) to denote that there are no US registrations for the commodity sugarcane, cane.  | US Environmental Protection Agency                 | Food safety   | All trading partners    | None | Proposed date of entry into force: 4 June 2014<br><br>Trade Facilitating Measure    |
| <b>G/SPS/N/USA/2674</b> | Multiple products | EPA announces the receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations of residues of pesticide chemicals in or on various commodities.  | US Environmental Protection Agency                 | Food safety   | All trading partners    | None | Proposed date of entry into force: Not applicable<br><br>Trade facilitating measure |

|                         |                            |  |  |               |                      |                               |  |
|-------------------------|----------------------------|--|--|---------------|----------------------|-------------------------------|--|
| <b>G/SPS/N/USA/2671</b> | Multiple products          | EPA is revoking, modifying, and establishment specific tolerances for the fungicide mancozeb and revising the definition for total residue of dithiocarbamates permitted in or on the same raw agricultural commodity. These actions are in follow-up to the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). In addition, EPA is removing expired tolerances for mancozeb and maneb. EPA is taking no further tolerance actions herein on metiram and thiram because proposed changes have since been completed for metiram and the Agency expects to propose tolerance actions for thiram in a future notice in the Federal Register. | US Environmental Protection Agency                 | Food safety   | All trading partners | Codex Alimentarius Commission | Proposed date of entry into force: 14 May 2014                                   |
| <b>G/SPS/N/USA/2672</b> | Multiple products          | This regulation establishes tolerances for residues of cyflumetofen in or on multiple commodities.   | US Environmental Protection Agency                 | Food safety   | All trading partners | None                          | Proposed date of entry into force: 21 May 2014<br><br>Trade facilitating measure |
| <b>G/SPS/N/USA/2670</b> | Animal and animal products | The Animal and Plant Health Inspection Service is making available for public comment a draft framework for implementing and maintaining a foreign animal disease zoning arrangement between the US and Canada. The draft framework provides an operational plan for the two countries to recognize each other's decisions to control a highly contagious foreign animal disease outbreak through zoning. The draft framework also establishes a structure for maintaining the arrangement over time and strategies for engaging governmental and non-government stakeholders in any actions taken under   | Animal and Plant Health Inspection Service (APHIS) | Animal health | Canada               | None                          | Proposed date of entry into force: Not applicable                                |

|                         |   |   |  |                  |                      |  |   |
|-------------------------|---|---|--|------------------|----------------------|--|---|
|                         |   | the arrangement, including planning and preparedness. This zoning arrangement will facilitate continued trade between disease-free areas of the US and Canada while safeguarding animal health in both countries.   |  |                  |                      |  |   |
| <b>G/SPS/N/USA/2668</b> | Grass, hay  | This regulation establishes a tolerance for residues of fenoxaprop-ethyl (FE), in or on grass hay   | US Environmental Protection Agency                 | Food safety      | All trading partners | None   | Proposed date of entry into force: 7 May 2014<br><br>Trade facilitating measure     |
| <b>G/SPS/N/USA/2669</b> | Orange \1;<br>Orange, oil \1<br><br>\1 There are no US registrations. | This regulation establishes tolerances for residues of tebuconazole in or on orange and orange oil  | US Environmental Protection Agency                 | Food safety      | All trading partners | None   | Proposed date of entry into force: 7 May 2014<br><br>Trade facilitating measure     |
| <b>G/SPS/N/USA/2664</b> | Unshu oranges   | The Animal and Plant Health Inspection Service (APHIS) is proposing to amend the regulations concerning the importation of citrus fruit to remove certain restrictions on the importation of Unshu oranges from Japan that are no longer necessary. Specifically, we propose to remove requirements for the fruit to be grown in specified canker-free export areas with buffer zones and for joint inspection in the groves and packing houses by the Government of the Republic of Japan and the Animal and Plant Health Inspection Service. We would also clarify that surface sterilization of the fruit must be conducted in accordance with our regulations. Finally, we would require that each shipment be accompanied by a phytosanitary certificate containing an additional declaration stating that the fruit was given the | Animal and Plant Health Inspection Service (APHIS) | Plant protection | All trading partners | International Plant Protection Convention (e.g. ISPM number) | Proposed date of entry into force: Not applicable<br><br>Trade facilitating measure |



|                         |                   |  |  |             |                      |      |   |
|-------------------------|-------------------|--|--|-------------|----------------------|------|---|
|                         |                   | <p>required surfaces sterilization. These proposed changes would make the regulations concerning the importation of Unshu oranges from Japan consistent with our domestic regulations concerning the interstate movement of citrus fruit from areas quarantined because of citrus canker.</p> <p>Federal Register, Vol. 79, No. 69, Thursday, 19 April 2014, pg. 19840-19844</p> |  |             |                      |      |   |
| <b>G/SPS/N/USA/2665</b> | Multiple products | This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulation for residues of pesticide chemicals in or on various commodities.  | US Environmental Protection Agency                               | Food safety | All trading partners | None | <p>Proposed date of entry into force: 23 April 2014</p> <p>Trade facilitating measure</p> |
| <b>g/sps/n/usa/2666</b> | Multiple products | This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.   | US Environmental Protection Agency                               | Food safety | All trading partners | None | Proposed date of entry into force: 23 April 2014  |
| <b>G/SPS/N/USA/2667</b> | Multiple products | This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.   | US Environmental Protection Agency                               | Food safety | All trading partners | None | <p>Proposed date of entry into force: 23 April 2014</p> <p>Trade facilitating measure</p> |
| <b>G/SPS/N/USA/2663</b> | Meat and poultry  | The Food Safety and Inspection Service (FSIS) is announcing the availability of guidance on allergens and other ingredients of public health concern that provides recommendations for identifying hazards   | US Department of Agriculture, Food Safety and Inspection Service | Food safety | All trading partners | None | Proposed date of entry into force: Not applicable   |

|                         |                                  |   |  |             |                      |  |   |
|-------------------------|----------------------------------|---|--|-------------|----------------------|--|---|
|                         |                                  | when conducting a hazard analysis and critical control point (HACCP) plans or Sanitation standard operating procedures (SOPs) or other prerequisite programs with respect to these substances. The emphasis of the guidelines is on meat and poultry products. The guidelines represent the best practice recommendations of FSIS, based on scientific and practical considerations. By following these guidelines, establishments are likely to ensure that product labels declare all ingredients, as required in the regulations, and that the product does not contain undeclared allergens or other undeclared ingredients.  |  |             |                      |  |   |
| <b>G/SPS/N/USA/2659</b> | Wheat, grain;<br>Milk; Milk, fat | This regulation establishes tolerances for residues of fluoxastrobin in or on wheat, grain; and revises tolerances for milk; and milk, fat.   | US Environmental Protection Agency                 | Food safety | All trading partners | None   | Proposed date of entry into force: 11 April 2014<br><br>Trade facilitating measure  |
| <b>G/SPS/N/USA/2660</b> | Mangoes                          | The APHIS is proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh mangoes from Jamaica into the continental US/ As a condition of entry, the mangoes would have to be produced in accordance with a systems approach employing a combination of mitigation measures for certain fruit flies, soft scale insects, and diseases and would have to be inspected prior to exportation from Jamaica and found free of these pests and diseases. The mangoes would have to be imported in commercial consignments only and would have to be treated to mitigate the risk of fruit flies. The mangoes would also have to be accompanied by a phytosanitary certificate. This action would allow the importation of | Animal and Plant Health Inspection Service (APHIS) | Jamaica     | Plant protection     | International Plant Protection Convention (e.g. ISPM number) | Proposed date of entry into force: Not applicable<br><br>Trade facilitating measure |

|                         |                                       |  |  |                  |                      |  |  |
|-------------------------|---------------------------------------|--|--|------------------|----------------------|--|--|
|                         |                                       | <p>mangoes from Jamaica while continuing to protect against the introduction of plant pests into the US.</p> <p>Federal REGISTER, Vol. 79, No. 72, Tuesday, 15 April 2014, pg. 21153-21156</p>   |  |                  |                      |  |  |
| <b>G/SPS/N/USA/2661</b> | Plants and plant products; honey bees | <p>The APHIS is consolidating the regulations concerning the issuance of permits for the importation and interstate movement of a wide variety of regulated plants, plant products, and other articles. We are also making corresponding changes to the regulations concerning permits for the importation and interstate movement of noxious weeds and the importation of honeybees and other beekeeping articles. The regulations will also include new provisions for the denial of a permit and the revocation of a permit once issued. These changes will make our permit procedures more transparent and easier to use, allow us to evaluate a permit application more quickly and thoroughly, and help us to hold permittees accountable for complying with permit conditions.</p> <p>Federal Register, Vol. 79, No. 69, Thursday, 10 April 2014, pages 19805-19812</p> | Animal and Plant Health Inspection Service (APHIS) | Plant protection | All trading partners | International Plant Protection Convention (e.g. ISPM number) | <p>Proposed date of entry into force: Not applicable</p> <p>Trade facilitating measure</p> |
| <b>G/SPS/N/USA/2662</b> | Plants                                | <p>The Animal and Plant Health Inspection Service (APHIS) is proposing to amend the list of designated pest-free areas for mango seed weevil and mango pulp weevil within the Philippines. We are also advising the public that we have determined that it is necessary to amend the Plant Protection and Quarantine Treatment Manual to establish a specific approved dose of irradiation as an authorized</p>  | Animal and Plant Health Inspection Service         | Philippines      | Plant protection     | International Plant Protection Convention (e.g. ISPM number) | <p>Proposed date of entry into force: Not applicable</p> <p>Trade facilitating measure</p> |

|                         |                                       |  |                                    |               |                      |      |   |
|-------------------------|---------------------------------------|--|------------------------------------|---------------|----------------------|------|---|
|                         |                                       | <p>treatment for mango pulp weevil. These actions are necessary because surveys have determined that additional areas within the Philippines are free of mango seed weevil and mango pulp weevil. Additionally, we have determined that the mango pulp weevil can be neutralized with a lower dose of irradiation than the current generic dose for most plant pests of the class Insecta.</p> <p>Federal Register, Vol. 79, No. 69, Thursday, 10 April 2014, pages 19838-19840.</p> |                                    |               |                      |      |   |
| <b>G/SPS/N/USA/2658</b> | Animal feeds                          | The Food and Drug Administration (FDA) is amending its animal drug regulations to reflect the withdrawal of approval of 19 new animal drug applications (NADAs) for certain Type A medicated articles and Type B medicated feeds. This action is being taken at the sponsors' request because these products are no longer manufactured or marketed.   | US Food and Drug Administration    | Food safety   | All trading partners | None | Proposed date of entry into force: 21 April 2014                          |
| <b>G/SPS/N/USA/2656</b> | Food in which TBHQ is allowed for use | The Food and Drug Administration is announcing that we have filed a petition, submitted by Eastman Chemical Company, proposing that the food additive regulations be amended to remove the upper bound of the melting point range in the regulation for the antioxidant TBHQ (tertiary butylhydroquinone) and add a purity acceptance criterion. The food additive petition was filed on 11 March 2014.  | US Food and Drug Administration    | Food safety   | All trading partners | None | Proposed date of entry into force: To be determined                       |
| <b>G/SPS/N/USA/2657</b> | Soybean, meal; Soybean, seed          | This regulation establishes tolerances for residues of imazapyr in or on soybean, meal at 4.5 ppm; and soybean, seed at 4.0 ppm.   | US Environmental Protection Agency | Food security | All trading partners | None | Proposed date of entry into force: 9 April 2014<br><br>Trade facilitating |

|                         |   |  |                                    |             |                      |      |   |
|-------------------------|---|--|------------------------------------|-------------|----------------------|------|---|
|                         |   |  |                                    |             |                      |      | measure   |
| <b>G/SPS/N/USA/2651</b> | Multiple products                           | This regulation establishes tolerances for residues of clomazone in or on multiple commodities. This regulation also removes an existing tolerance on "cabbage" that is superseded by this action. | US Environmental Protection Agency | Food safety | All trading partners | None | Proposed date of entry into force: 2 April 2014<br><br>Trade Facilitating Measure |
| <b>G/SPS/N/USA/2652</b> | Eggplant, pepper, tomato, and tomato, paste | This regulation establishes tolerances for residues of metaflumizone in or eggplant, pepper, tomato, and tomato paste.   | US Environmental Protection Agency | Food safety | All trading partners | None | Proposed date of entry into force: 4 April 2014<br><br>Trade facilitating measure |
| <b>G/SPS/N/USA/2633</b> | Grape and raisin                            | This regulation establishes tolerances for residues of proquinazid in or on grape and raisin.  | US Environmental Protection Agency | Food safety | All trading partners | None | Proposed date of entry into force: 6 April 2014<br><br>Trade facilitating measure |
| <b>G/SPS/N/USA/2654</b> | Banana                                      | This regulation establishes time-limited tolerances for residues of thiram in or on banana.  | US Environmental Protection Agency | Food safety | All trading partners | None | Proposed date of entry into force: 4 April 2014                                   |
| <b>G/SPS/N/USA/2655</b> | Soybean seed                                | This regulation establishes a tolerance for residues of imazapic in or on soybean seed.  | US Environmental Protection Agency | Food safety | All trading partners | None | 4 April 2014  |
| <b>G/SPS/N/USA/2650</b> | Multiple products                           | This regulation establishes tolerances for residues of orfchlofenuron in or on multiple commodities.   | US Environmental Protection Agency | Food safety | All trading partners | None | Proposed date of entry into force: 2 April 2014<br><br>Trade facilitating         |

|                         |   |   |  |                  |                      |  |   |
|-------------------------|---|---|--|------------------|----------------------|--|---|
|                         |   |   |  |                  |                      |  | measure   |
| <b>G/SPS/N/USA/2649</b> | Rapeseed subgroup 20A   | This regulation establishes a tolerance for residues of propiconazole in or on the rapeseed crop subgroup 20A.  | US Environmental Protection Agency       | FOOD SAFETY      | All trading partners | None   | Proposed date of entry into force: 2 April 2014<br><br>Trade Facilitating Measure   |
| <b>G/SPS/N/USA/2648</b> | Corn, field, forage; Corn, field, stover; Corn, pop, stover; Corn, sweet, forage; Corn, sweet, stover | This regulation amends tolerances for residues of S-metalachlor in or on corn, field, forage; corn field, stover; corn, pop, stover; corn, sweet, forage; and corn, sweet, stover.  | US Environmental Protection Agency       | Food safety      | All trading partners | None   | Proposed date of entry into force: 28 March 2014<br><br>Trade facilitating measure  |
| <b>G/SPS/N/USA/2647</b> | Plant products  | The Animal and Plant Health Service is advising the public that we have determined that it is necessary to immediately add to the Plant Protection and Quarantine Treatment Manual treatment schedules for various plant commodities. We have prepared four treatment evaluation documents that describe the new treatment schedules and explain why we have determined that they are effective at neutralizing certain target pests. We are making these treatment evaluation documents available to the public for review and comment. We have added five and removed one treatment schedule, and revised on treatment schedule.<br><br>Federal Register, Vol. 79, No. 60, Friday, 28 March 2014, pg. 17496-17497 | Animal and Plant Health Services (APHIS) | Plant protection | All trading partners | International Plant Protection Convention (e.g. ISPM number) | Proposed date of entry into force: Not applicable<br><br>Trade facilitating measure |

## **VI.D. Sanitary and Phytosanitary Measures**





