



## **TRADE POLICY DEVELOPMENTS PAPER NO. 33**

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## Executive Summary

1. On July 18, 2012, the Senate Finance Committee unanimously approved a Bill (S. 3406) to grant Russia Permanent Normal Trade Relations (PNTR) by removing Russia from coverage of the 1974 so-called Jackson-Vanik amendment to the Trade Act of 1974.
2. On July 12, 2012, the Office of the United States Trade Representative (USTR) published in the Federal Register a notice announcing the results of the 2011 Annual Generalized System of Preferences (GSP) Review.
3. On July 30, 2012, USTR published in the Federal Register a notice of procedures for submission of petitions from the public to modify the list of products that are eligible for duty free treatment under the Generalized System of Preferences(GSP) program and to modify the GSP status of certain GSP beneficiary developing countries because of country practices. USTR is also prepared to receive petitions requesting waivers of competitive need limitations (CNLs).
4. The TPP discussions held in San Diego, USA has suggested certain key proposals in the field of IPR. For the first time in any U.S. trade agreement, the United States is proposing a new provision, consistent with the internationally-recognized ‘3-step test’, that will obligate Parties to seek to achieve an appropriate balance in their copyright systems in providing copyright exceptions and limitations for purposes such as criticism, comment, news reporting, teaching, scholarship, and research. The balance sought by the U.S. TPP proposal recognizes and promotes respect for the important interests of individuals, businesses, and institutions who rely on appropriate exceptions and limitations in the TPP region.
5. Department of Commerce (Commerce) published in the Federal Register a proposed rule and request for comments relating to a proposal to modify its regulations which define “factual information” and establish time limits for the submission of factual information in antidumping (AD) and countervailing duty (CVD) proceedings. The modifications to the time limits in which such information may be submitted or placed on the record, if adopted, will enable Commerce to determine what type of information is being submitted and whether it is timely filed, and to provide sufficient opportunity for Commerce to review submissions of factual information.

## Agenda for Next Report

1. Update on Transpacific Partnership (TPP) Negotiations
2. Coverage of the how the Obama Administration and US Congress will deal with “financial cliff” in Dec. 2012 end, when the terms of the Budget Control Act of 2011 are scheduled to go into effect.
3. Developments in the ongoing GSP review and how certain products of export interest to India could be affected
4. Reform in the AD/CVD regulations, specifically with respect to the time-limits for submission of factual information.
5. Analysis of CRS reports, and other significant report released by the USTR.

# TRADE POLICY REPORT OF THE UNITED STATES

## (JULY-SEPTEMBER, 2012)

### Economic Environment

#### Trade and Economic developments

##### *Financial sector*

During July, 2012, the sum total of all net foreign acquisitions of long-term securities, short-term U.S. securities, and banking flows was a monthly net TIC inflow of \$73.7 billion. Of this, net foreign private inflows were \$59.0 billion, and net foreign official inflows were \$14.7 billion.

Foreign residents increased their holdings of long-term U.S. securities in July as net purchases were \$60.2 billion. Net purchases by private foreign investors were \$37.7 billion, and net purchases by foreign official institutions were \$22.5 billion. At the same time, U.S. residents decreased their holdings of long-term foreign securities, with net sales of \$6.8 billion.

Foreign residents decreased their holdings of U.S. Treasury bills by \$12.5 billion. Foreign resident holdings of all dollar-denominated short-term U.S. securities and other custody liabilities decreased by \$8.0 billion.<sup>1</sup>

##### *Volume of Trade*

During July 2012, the U.S. Census Bureau and the U.S. Bureau of Economic Analysis, through the Department of Commerce, announced that the total July exports of \$183.3 billion and imports of \$225.3 billion resulted in a goods and services deficit of \$42.0 billion, up from \$41.9 billion in June, revised. July exports were \$1.9 billion less than June exports of \$185.2 billion. July imports were \$1.8 billion less than June imports of \$227.1 billion.

In July, the goods deficit decreased \$0.2 billion from June to \$57.3 billion, and the services surplus decreased \$0.3 billion from June to \$15.3 billion. Exports of goods decreased \$1.9 billion to \$130.8 billion, and imports of goods decreased \$2.1 billion to \$188.1 billion. Exports of services were virtually unchanged at \$52.5 billion, and imports of services increased \$0.3 billion to \$37.2 billion. The June to July decrease in exports of goods reflected decreases in industrial supplies and materials (\$2.4 billion); automotive vehicles, parts, and engines (\$0.6 billion); other goods (\$0.6 billion); and consumer goods (\$0.4 billion). Increases occurred in foods, feeds, and beverages (\$1.8 billion) and capital goods (\$0.1 billion). Exports of services were virtually unchanged from June to July. Increases in royalties and license fees (\$0.1 billion), travel (\$0.1 billion), and other private services (\$0.1 billion), which includes items such as business, professional, and technical services, insurance services, and financial services, were mostly offset by decreases in several categories. The largest decrease was in other transportation (\$0.1 billion), which includes freight and port services.<sup>2</sup>

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<sup>1</sup> Treasury International Capital Data For July, September 18, 2012 At: [Http://www.treasury.gov/press-center/press-releases/Pages/Tg1713.aspx](http://www.treasury.gov/press-center/press-releases/Pages/Tg1713.aspx)

<sup>2</sup> U.S. International Trade In Goods And Services, U.S. Census Bureau, U.S. Bureau Of Economic Analysis, News, July 2012, At:

In this regard, the US Commerce Secretary remarked:

*“Today’s data shows that U.S. exports in July posted one of the highest levels on record, despite challenging global economic conditions. While there’s still more work to do, we remain on track toward exceeding last year’s export total of \$2.1 trillion, meaning we continue making historic progress toward achieving President Obama’s National Export Initiative goal of doubling our exports by the end of 2014,” said Acting U.S. Commerce Secretary Rebecca Blank. “Travel and tourism continues to be a bright spot in U.S. exports, as today’s data shows that we are on pace for another record year. Higher exports mean more jobs: the significant increase in exports since 2009 has helped America create 4.6 million private sector jobs over the past 30 months, and, in 2011, jobs supported by exports increased by 1.2 million since 2009. However, we are still fighting back from the worst economic crisis since the Great Depression. Now that Congress is back in session they should act immediately to pass remaining provisions of the American Jobs Act, which independent economists have said would create up to one million jobs.”<sup>5</sup>*

According to data released by the Bureau of Economic Analysis (BEA) of the U.S. Commerce Department, the United States exported \$181.3 billion in goods and services in August 2012, which showed an increment from the statistics of July 2012.<sup>4</sup>

## I. Trade and Investment Policy Framework

### Legislations and key policy developments in the US

#### *Published reports*

(i) On July 27, 2012, CRS published a detailed report on the executive budget process in the US. It is vital to note that the U.S. Constitution vests Congress with the power to raise revenue and borrow money. Those funds may only be drawn from the Treasury in consequence of appropriations made by law. The Constitution, however, is largely silent with respect to the President’s role in the budget process.

Instead, the current executive budget process is largely the result of statutes enacted by Congress. The executive budget process consists of three main phases: development of the President’s budget proposal, submission and justification of the President’s budget proposal, and execution of enacted appropriations and other budgetary legislation. The purpose of this report is to provide an introduction to many elements of the executive budget process, highlighting the roles of the President, the Office of Management and Budget (OMB), and executive agencies.

The Budget and Accounting Act of 1921 established the modern executive budget process. It created a legal framework for a federal budget proposal to be developed by the President and submitted to Congress prior to the start of each fiscal year. In practice, development of the President’s budget proposal begins approximately 18 months prior to the start of the fiscal year to which it applies. Executive agencies submit their requests and justification materials to OMB for examination and review. After final decisions have been made by the President, the budget proposal

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[Http://Content.Govdelivery.Com/Attachments/USES/AEI/2012/09/11/File\\_Attachments/161241/US%20international%20trade%20and%20goods%20and%20services%20B%2528July%202012%2529.Pdf](http://Content.Govdelivery.Com/Attachments/USES/AEI/2012/09/11/File_Attachments/161241/US%20international%20trade%20and%20goods%20and%20services%20B%2528July%202012%2529.Pdf)

<sup>3</sup>Statement From Acting U.S. Commerce Secretary Rebecca Blank On International Trade In Goods And Services In July 2012, US Department Of Commerce, September 11, 2012 At: [Http://Www.Commerce.Gov/News/Press-Releases/2012/09/11/Statement-Acting-Us-Commerce-Secretary-Rebecca-Blank-International-Tr](http://www.Commerce.Gov/News/Press-Releases/2012/09/11/Statement-Acting-Us-Commerce-Secretary-Rebecca-Blank-International-Tr)

<sup>4</sup> U.S. Exports In August Reach \$181.3 Billion, October 11, 2012 At: [Http://Www.Exim.Gov/Newsandevents/Releases/2012/U-S-Exports-In-August-Rreach-181-3-Billion.Cfm](http://www.Exim.Gov/Newsandevents/Releases/2012/U-S-Exports-In-August-Rreach-181-3-Billion.Cfm)

is compiled by OMB. Under current law, the President must submit the budget proposal to Congress no later than the first Monday in February.

Once the President has submitted the budget, OMB and agency officials explain and justify the request to Congress. Early in the congressional budget process, often in the week following the submission of the President's budget, the OMB director and other cabinet officials typically provide testimony regarding the President's broad budgetary objectives before congressional committees. In addition, agencies typically submit written justifications of their budget requests to Congress and agency officials often will testify before the committees of jurisdiction.

The President's budget, though not legally binding, provides Congress with recommended spending levels for programs, projects, and activities that are funded through appropriations and other budgetary legislation. Funds provided in appropriations and other budgetary legislation are not immediately available for obligation or expenditure. With certain exceptions, the Antideficiency Act requires that funds be apportioned (or divided), often by fiscal quarter, prior to obligation or expenditure. Agencies then allocate those funds to programs, projects, and activities. Congress has recognized the need to permit agencies some flexibility during budget execution, and it has provided agencies with limited authority to make spending adjustments. For example, Congress may provide agencies with limited authority to reallocate funds from one appropriations account to another (i.e., transfers), or from one purpose to another within an appropriations account (i.e., reprogramming). Under the Impoundment Control Act (ICA) of 1974, the President may withhold appropriated funds temporarily (referred to as deferrals) or propose to Congress permanent cancellations of budget authority (referred to as rescissions). Finally, certain executive budgetary procedures are triggered under limited, less common circumstances. For example, OMB and agencies have established procedures for implementing a shutdown of certain government operations in the event that their full-year or interim appropriations are not enacted by the start of the fiscal year. OMB and agencies may also be subject to additional procedures in the event of a statutorily prescribed sequestration.<sup>5</sup>

(ii) On July 13, 2012, CRS published a report on the theme of the legal status of the trade agreements in the US and the march of law thereon. Since this issue is of vital importance for various trade agreement signatories of the US, the report finds a brief mention in this quarterly review.

The report explains that the question whether trade agreements could constitutionally be entered into as congressional executive agreements rather than treaties emerged during consideration of Uruguay Round implementing legislation. The question originally was posed because of the perceived effect of the agreements on states. The issue also arose in a judicial challenge to the NAFTA, in which it was alleged that the failure to use the treaty process rendered the agreement and its implementing legislation unconstitutional. In *Made in the USA Foundation v. United States*, an Alabama federal district court held in July 1999 that "*the President had the authority to negotiate and conclude NAFTA pursuant to his executive authority and pursuant to the authority granted to him by Congress in accordance with the terms of the Omnibus Trade and Competitiveness Act of 1988 ... and section 151 of the Trade Act of 1974 ... and as further approved by the [NAFTA] Implementation Act.*" In the court's view, the Foreign Commerce Clause, combined with the Necessary and Proper Clause and the President's

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<sup>5</sup> Michelle D. Christensen, For Detailed Study Please Refer To The Report- The Executive Budget Process: An Overview, Congressional Research Services, July 27, 2012 At: [Http://fpc.state.gov/Documents/Organization/196031.Pdf](http://fpc.state.gov/Documents/Organization/196031.Pdf)

Article II foreign relations power, provided a constitutionally sufficient basis for the agreement. The court preliminarily held that institutional, but not individual plaintiffs had standing to sue, and that the political question doctrine did not bar it from ruling on the merits.

On appeal, the U.S. Court of Appeals for the Eleventh Circuit, while agreeing that appellants had standing, held that the issue of whether an international commercial agreement such as the NAFTA is a treaty that must be approved by two-thirds of the Senate was a non-justiciable political question. The court dismissed the appeal and remanded to the district court with instructions to vacate. The Supreme Court denied certiorari in the case.

Under the political question doctrine, a court will decline to rule on the merits if it finds that the underlying matter is committed to the discretion and expertise of the legislative and executive branches. In the case at hand, the Eleventh Circuit applied a tripartite inquiry that it said was suggested by Justice Lewis Powell in *Goldwater v. Carter*<sup>6</sup>, a distillation of criteria for determining justiciability originally identified in *Baker v. Carr*.<sup>7</sup>

The three questions posed by the court were: “(i) Does the issue involve resolution of questions committed by the text of the Constitution to a coordinate branch of government? (ii) Would resolution of the question demand that a court move beyond judicial expertise? (iii) Do prudential considerations counsel against judicial intervention?”

Regarding the first question, the court stated that “with respect to commercial agreements, we find that the Constitution’s clear assignment of authority to the political branches of the Government over our nation’s foreign affairs counsels against an intrusive role for this court in overseeing the actions of the President and Congress in this matter,” pointing to the “vast” express constitutional grants of power conferred upon the political branches in foreign affairs and commerce, and the Supreme Court’s long-standing recognition of the power of the political branches to conclude “agreements that do not constitute treaties in the constitutional sense.”

Regarding the second question, the court concluded that a ruling on the merits would require it to consider areas beyond its expertise, noting, *inter alia*, that the Treaty Clause did not set forth circumstances under which Clause procedures must be followed when approving international commercial agreements, and that having to determine the “significance” of an international agreement as the key factor in determining whether it should be a treaty or not would “unavoidably thrust [the court] into making policy judgments of the sort unsuited for the judicial branch.”

Addressing the third question, the court cited, *inter alia*, the need for the nation to speak with uniformity in the area of foreign affairs and commerce, and the fact that a judicial order declaring the NAFTA invalid “could have a profoundly negative effect on this nation’s economy and its ability to deal with other foreign powers,” noting that such an order “would not only affect the validity of NAFTA, but would potentially undermine every other major international commercial agreement made over the past half-century.”<sup>8</sup>

Thus the report remains crucial for understanding the legal basis and march of law in the recognition of various trade agreements signed by the Congress and its implications within the country.

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<sup>6</sup>444 U.S. 996 (1979)

<sup>7</sup>369 U.S. 186 (1962)

<sup>8</sup> Jeanne J. Grimmer, Why Certain Trade Agreements Are Approved As Congressional-Executive Agreements Rather Than As Treaties, July 13, 2012 At: [Http://Fpc.State.Gov/Documents/Organization/195395.Pdf](http://fpc.state.gov/Documents/Organization/195395.Pdf)



The other key legislations and policy changes of the review quarter included:

(i) On July 18, 2012, United States Trade Representative Ron Kirk welcomed the passage of key legislation by the Senate Finance Committee that makes crucial improvements and amendments to the African Growth and Opportunity Act (AGOA), America's trade preference program for sub-Saharan Africa, and the Central America - Dominican Republic - United States Free Trade Agreement (CAFTA-DR).

Ambassador Kirk remarked:

*“It is critical for workers and businesses in the U.S. and Africa that we extend this key provision before it is due to expire in September. Just last week, I visited a textile factory in Ghana that will likely have to close its doors and lay off nearly 500 employees if Third-Country Fabric expires - and that is just one example.”*“I applaud Senate Finance for taking this significant step in passing the Third-Country Fabric provision of the African Growth and Opportunity Act. We look forward to continuing to work with Congress to renew Third-Country Fabric and implement technical changes to CAFTA-DR as soon as possible.”<sup>9</sup>

The law extends until September 2015 the AGOA provision allowing duty-free access to the U.S. market for apparel produced in sub-Saharan African countries made from third-country fabric, or fabric originally produced anywhere in the world, rather than from AGOA beneficiary countries or from the United States. The provision was previously set to expire this fall. Because almost 95 percent of apparel imported from AGOA nations is made with third-country fabric, allowing the provision to expire would seriously undermine AGOA's development goals. The law also adds the Republic of South Sudan to the list of sub-Saharan nations eligible to qualify for duty-free access to the U.S. market for certain products, including apparel, footwear and textiles. That duty-free market access stimulates economic growth, boosts positive business activities and encourages integration among sub-Saharan economies.

The law also makes technical corrections and modifications to the rules of origin for certain textile and apparel products under CAFTA-DR which expands trade and creates jobs in the United States and the CAFTA-DR countries. These changes were agreed to by Trade Ministers during the February 2011 CAFTA-DR Free Trade Commission meetings. The United States is the last country to have approved the changes this bill codified, and the law ensures that all the CAFTA-DR countries can benefit from these changes.

The law also includes a one-year renewal of import sanctions against Burma and a three-year reauthorization of the annual fast-track process that allows Congress to renew import sanctions against Burma. While there have been encouraging developments in Burma, additional political and economic reforms are required to meet the goals set forth in existing Burma sanctions legislation. The law leaves intact the Administration's authority to waive or terminate the import sanctions.<sup>10</sup>

(ii) On July 30, 2012 the United States Trade Representative Ron Kirk attended an Export Promotion Cabinet and Trade Promotion Coordinating Committee (TPCC) Principals Meeting at the U.S. Department of Commerce. The meeting provided an opportunity for Cabinet officials to

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<sup>9</sup>U.S. Trade Representative Kirk Applauds Senate Finance Action To Renew AGOA'S Third-Country Fabric Provision, Amend CAFTA-DR, USTR Press Release, July 18, 2012

<sup>10</sup> Baucus' Bill Supporting Jobs, Strengthening Trade Ties With Sub-Saharan Africa And Central America Signed Into Law, August 13, 2012 At: <http://www.Finance.Senate.Gov/Newsroom/Chairman/Release/?Id=12b8bd48-35c2-4b3e-8854-B320e7745847>

discuss opportunities and options for increasing exports and the Obama Administration's overall trade agenda.

A major topic of discussion at the meeting was the Administration's new strategy toward Sub-Saharan Africa, which is part of the President's Presidential Policy Directive (PPD) released on June 14 during the African Growth and Opportunity Act Forum in DC. President Obama announced this new strategy of engagement with the region, stating that, "*it is in the interest of the United States to improve the region's trade competitiveness, encourage the diversification of exports beyond natural resources, and ensure that the benefits from growth are broad-based.*"

The strategy sets forth four strategic objectives: (1) strengthen democratic institutions; (2) spur economic growth, trade and investment; (3) advance peace and security; and (4) promote opportunity and development.

One of the most important aspects of this strategy is to increase bilateral trade and investment by facilitating the interaction between America's private sector and Africa. Many small- and medium-sized businesses are unaware of the vast opportunities in Africa. Some of the steps taken by the Administration to render these opportunities more accessible include focusing on improving infrastructure in Sub-Saharan Africa to decrease transportation costs; increasing economic governance and transparency to lessen dependence on aid; and establishing institutional reforms to create an enabling trade environment. To further home in on this point, the theme of this year's AGOA forum was "Enhancing Africa's Infrastructure for trade."<sup>11</sup>

### **Jackson- Vanik Amendment**

On July 18, 2012, the Senate Finance Committee unanimously approved a Bill (S. 3406) to grant Russia Permanent Normal Trade Relations (PNTR) by removing Russia from coverage of the 1974 so-called Jackson-Vanik amendment to the Trade Act of 1974. Under WTO rules, Congress must pass legislation establishing PNTR by the time Russia joins the WTO for US businesses to receive the full economic benefits of Russia's accession. These include: additional market access for US service providers; improved intellectual property enforcement; higher quotas for US beef, poultry and pork producers; decreased domestic agriculture subsidies; consistent science-based sanitary and phytosanitary (SPS) measures; and new dispute settlement tools to enforce WTO rules. The bill would also extend PNTR to Moldova. It now goes to the full Senate. The Ways and Means Committee in the House of Representatives has also given the repeal of JacksonVanik for Russia and Moldova bi-partisan support (see H.R. 6156) and reported it out of Committee on July 31, 2012, sending it to the full House of Representatives.

### **Advancing Negotiations in Services**

(i) On July 23, 2012, the United States Trade Representative Ron Kirk commented on a joint statement released by a group of World Trade Organization (WTO) Members<sup>12</sup> discussing an international services agreement in Geneva. The Members announced that they intended to enter

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<sup>11</sup>Ambassador Kirk Coordinates With Cabinet Officials To Implement New Strategy For Sub-Saharan Africa, USTR Press Release, July 30, 2012

<sup>12</sup> This group included: Australia, Canada, Colombia, Costa Rica, European Union, Hong Kong China, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Peru, Republic of Korea, Switzerland, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Turkey, United States of America

into a new phase of talks toward a services agreement that they ultimately hope can provide the foundation for multilateral consensus on services liberalization.

Advancing Negotiations on Trade in Services, it was deliberated that a significant number of Members have made great advances in opening up their markets, both autonomously as well as through more than 100 services trade agreements notified to the WTO. It was proposed that it is time to clearly define the contours of an ambitious agreement on trade in services to allow members to undertake any necessary consultations or procedures prior to any negotiations. Such an agreement would aim to capture a substantial part of the liberalization achieved in other negotiations on trade in services. The outcomes of the agreement could then be brought into the multilateral system.

It was discussed that any such agreement should:

- Be comprehensive in scope, including substantial sectoral coverage with no a priori exclusion of any sector or mode of supply;
- Through negotiation, include market access commitments that correspond as closely as possible to actual practice and provide opportunities for improved market access; and
- Contain new and enhanced rules developed through negotiations.<sup>13</sup>

(ii) On July 23, 2012, the U.S. Trade Representative Ron Kirk welcomed the news that Russia had taken its final step toward membership in the World Trade Organization by notifying the WTO that it has accepted the terms for its membership in the WTO. He remarked that “*Congress should continue to work on legislation regarding Jackson-Vanik and Permanent Normal Trade Relations for Russia so American businesses, workers and creators have access to the same benefits from Russia’s membership that their foreign competitors have.*”<sup>14</sup>

It is being recognized that without the WTO Agreement in place, many of these job-supporting benefits would be unavailable to U.S. exporters, manufacturers, creators, and workers. At the same time, competitors from other WTO Member countries will soon begin to enjoy these benefits, which creates the potential for our exporters to be put at a disadvantage. That is why the Administration is working closely with Congress to secure legislation terminating the application to Russia of the Jackson-Vanik amendment, which currently precludes permanent normal trade relations (PNTR) with Russia. When adopted, legislation authorizing PNTR with Russia will provide American businesses, workers, and families an equal opportunity to access the full benefits of Russia's WTO Membership.<sup>15</sup>

(iii) On September 18, 2012, U.S. Trade Representative Ron Kirk announced that the United States will contribute \$150,000 for technical assistance to support developing countries’ participation in the

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<sup>13</sup> WTO Members Announce New Phase In Services Talks -- United States Among Robust, Diverse Group Exploring Negotiations In Geneva, USTR Press Release, July 5, 2012, At: [Http://Www.Ustr.Gov/About-Us/Press-Office/Press-Releases/2012/July/Wto-Members-Announce-New-Phase-In-Services-Talks](http://www.ustr.gov/about-us/press-office/press-releases/2012/july/wto-members-announce-new-phase-in-services-talks)

<sup>14</sup>U.S. Trade Representative Kirk Welcomes Russia's Acceptance of WTO Terms, USTR Press Release, , July 23, 2012, At: [Http://Www.Ustr.Gov/About-Us/Press-Office/Press-Releases/2012/July/U.S.-Trade-Representative-Kirk-Welcomes-Russias-Acceptanc-Of-Wto-Terms](http://www.ustr.gov/about-us/press-office/press-releases/2012/july/u.s.-trade-representative-kirk-welcomes-russias-acceptanc-of-wto-terms)

<sup>15</sup>Weekly Trade Spotlight: What U.S. Businesses And Workers Stand To Gain From Russia Joining The World Trade Organization, USTR Press Release, July 30, 2012

World Trade Organization (WTO) Trade Facilitation negotiations. Specifically, the funds are being provided in response to some developing countries' request to update the assessment of their technical assistance and implementation needs with respect to various trade facilitation and customs reforms that are currently being negotiated. Needs assessments were conducted in the area of trade facilitation in 2007-2010, and in response to the request of some Members, the WTO will be updating those assessments to reflect changes since the initial assessments.

The U.S. contribution, which was approved by Congress, will be part of a technical assistance fund that will be used to help developing nations identify the reforms they would need to make under a trade facilitation agreement and the technical assistance needed to implement those reforms. The United States was one of the WTO Members that assisted in the initial needs assessments in 2007-2010.<sup>16</sup>

## **Unilateral Trade Preferences**

On June 29, 2012, United States Trade Representative Ron Kirk announced the outcome of the Obama Administration's 2011 Annual Review under the Generalized System of Preferences (GSP) program. GSP is a 36-year-old trade preference program under which the United States provides duty-free treatment to many imports from developing countries.

Based on the Administration's review of various issues and petitions related to eligibility of products under the GSP program, President Obama made several determinations affecting product coverage under GSP. He determined that seven cotton fiber products should be added to the list of those eligible for duty-free treatment under the program when imported from least developed country (LDC) beneficiaries. The addition of these products implements one element of the LDC trade initiatives that USTR announced at the December 2011 World Trade Organization Ministerial.

The President also: 1) redesignated one product as eligible for duty-free treatment under the GSP program; 2) granted waivers of competitive need limitations (CNLs) for over 100 products from 12 countries, including both petitioned and de minimis waivers; and 3) determined that eleven products from six countries should no longer be eligible for duty-free treatment under the GSP program because the relevant country is sufficiently competitive and exceeded CNLs for the product. The changes to GSP eligibility for these products became effective from July 1, 2012.

As part of this year's review, the Administration also considered petitions to withdraw or suspend certain countries' eligibility for GSP benefits based on statutory criteria, including whether a country is taking steps to afford internationally recognized standards for worker rights and the extent to which a country adequately and effectively protects intellectual property rights (IPR). In the course of the 2011 review, USTR has accepted for formal review four new country practice petitions: on Fiji and Iraq regarding worker rights, and Indonesia and Ukraine regarding IPR. Next steps in the review of these petitions will be announced in a forthcoming notice in the Federal Register.

As announced in a separate release, as part of this year's review, USTR has decided to close the GSP country practice review of worker rights in Sri Lanka without any change to Sri Lanka's GSP trade benefits. Ambassador Kirk said, "The closure of the GSP country practice review of Sri Lanka was

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<sup>16</sup> United States Contributes Funds To Support Developing Countries' Participation In WTO Trade Facilitation Negotiations, USTR Press Release, September 18, 2012, At: <http://www.ustr.gov/about-us/press-office/press-releases/2012/September/US-Contributes-Funds-WTO-Trade-Facilitation>

based on the Sri Lankan government's noteworthy efforts over the past few years to address the worker rights issues outlined in the GSP petition. This welcome outcome to the review demonstrates that GSP remains an effective tool for engaging GSP beneficiary countries on worker rights.”<sup>17</sup>

Several other country practice petitions accepted in previous years remain under review: Lebanon, Russia, and Uzbekistan regarding IPR protection, and Bangladesh, Georgia, Niger, the Philippines, and Uzbekistan- regarding worker rights.<sup>18</sup>

## **Bilateral and Multi-lateral Trade negotiations and Trade talks**

### **(i) TPP**

#### July round

During July 2-10, 2012, the 13th Round of the Trans-Pacific Partnership negotiations were held in San-Diego, California. This week's talks made further substantial progress across the chapters, reflecting significant preparatory work done by each of the TPP countries since the previous negotiating round in Dallas in May. Negotiating groups made particularly significant progress in a number of chapters, including customs, cross-border services, telecommunications, government procurement, competition policy, and cooperation and capacity building. In addition, the negotiating groups moved their work ahead substantially on other issues, including rules of origin, investment, financial services, temporary entry, and other issues. Notably, the United States tabled a new proposal in the intellectual property rights group having to do with copyright limitations and exceptions. Negotiators will now take the progress made in the various chapters back to their capitals for review.

The nine countries continued intensive discussions on the ambitious tariff packages they are seeking to conclude that will provide access to each other's industrial goods, agriculture, and textiles markets. They also advanced their discussions of how to promote regional supply chains to further augment the benefits of the agreement. In addition, they discussed specific commitments on liberalization of their markets for services, an area where the United States and other TPP countries see potential new opportunities from the agreement.

Further, Trade and investment opportunities in the sectors of innovative computer and electronic products, transportation equipment, machinery, and chemicals, as well as trade in services where California has a comparative advantage, were discussed as per meeting's agenda. The TPP negotiations are being closely observed by the business communities within the US. For instance, companies like Casa Herrera, a family-run food production manufacturing company in Southern California, see the negotiations as creating opportunities that allow them to add more jobs.<sup>19</sup>

Moreover, this negotiating round featured numerous opportunities for nearly 300 people who had registered to meet with U.S. and other TPP negotiators. On July 2, the first day of the negotiating round, a Direct Stakeholder Engagement Forum was held at the negotiating venue, which enabled

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<sup>17</sup>USTR Closes GSP Worker Rights Review Of Sri Lanka: Preference Program Helps Promote Progress On Labor USTR press release, June 29, 2012

<sup>18</sup> USTR Announces Outcome Of Generalized System Of Preferences Review, USTR Press Release, June 29, 2012, At: [Http://www.ustr.gov/about-us/press-office/press-releases/2012/july/ustr-announces-outcome-gsp-review](http://www.ustr.gov/about-us/press-office/press-releases/2012/july/ustr-announces-outcome-gsp-review)

<sup>19</sup>Weekly Trade Spotlight: California To Host The 13th Round Of Trans-Pacific Partnership Negotiations, USTR Press Release, July 2012

representatives of industry, non-governmental organizations, academia, and the general public to meet directly with negotiators to discuss specific TPP issues. Some stakeholders also chose to make formal presentations to negotiators. On July 3, the Chief Negotiators from all nine TPP countries held a briefing with stakeholders, and the U.S. Chief Negotiator also participated in a roundtable discussion hosted at the University of California, San Diego. On July 6, negotiators from all nine TPP countries participated in an event hosted by the AFL-CIO and other groups, which featured remarks from Congressman Bob Filner, San Diego Port Commissioner Scott Peters, and Lorena Gonzalez, Secretary-Treasurer/CEO of the San Diego and Imperial Counties Labor Council of the AFL-CIO. There were also numerous additional meetings between negotiators and interested parties throughout the negotiating round.

During this round, USTR also notified Congress of its intent to enter into TPP negotiations with Mexico and Canada on July 9 and 10, respectively. This notification triggers a 90-day period during which the Obama Administration will consult with Congress on objectives related to these new entrants to the TPP negotiations. Mexico and Canada will join the TPP negotiations once current TPP members successfully conclude their domestic procedures.

### *September round*

During September 5-15, 2012, Trans-Pacific Partnership negotiators continued to make progress at the 14th round of negotiations, which took place in Leesburg, Virginia. The teams were pleased with progress made on a wide range of chapters, including market access, customs, rules of origin, technical barriers to trade, sanitary and phytosanitary standards, cross border services, telecommunications, government procurement, and others. TPP member delegations also continued to move forward in constructing the tariff and other specific market-opening commitments that each country is making on industrial goods, agriculture, textiles, services and investment, and government procurement. Along with this progress, the nine countries also reported a continued focus on other important issues from intellectual property rights to labor and environment and other topics that address core issues faced by manufacturers, service providers, farmers, ranchers, and workers in the 21st century.

It is further reiterated (as in previous reports) that through the TPP, the Obama Administration is seeking to conclude a state-of-the-art trade and investment agreement with some of the most dynamic economies in the Asia Pacific, boosting U.S. exports and supporting the creation and retention of U.S. jobs, while advancing core U.S. values such as labor rights and environmental protection.

The Leesburg negotiating round was structured by the United States to continue to provide stakeholders who accepted the invitation to be on-site during the talks with input and information regarding the round.

The 15th round of TPP negotiations are due in Auckland, New Zealand during December 3-12, 2012.

### **Additional Note on TPP: CRS Report on TPP**

The CRS report on TPP highlights that the Congress has already taken a strong interest in the TPP negotiations even before a substantive agreement has been reached. Hearings have been held, and

some Members have expressed views on the negotiations. As the negotiations proceed, a number of issues important to Congress are emerging.

### Negotiating a Comprehensive, High-Standard Agreement

An issue for U.S. policymakers in general, and Congress in particular, is whether the United States will be able to achieve its objective of creating a comprehensive, high-standard agreement that encompasses a broad spectrum of trade and trade-related issues. As the largest FTA negotiated by the United States, it brings together a large and expanding group of countries representing various levels of development. Likewise, with 26 chapters under negotiations, it is the most comprehensive agreement in terms of breadth and depth of commitment undertaken by the United States. At the same time, the United States and the other TPP partners are aiming for a high-standard agreement to provide a structure for trade within the Asia-Pacific region in the 21st century. Members of Congress have already presented differing views on which countries should be included in a TPP, and on what constitutes “high-standards” in such areas as worker rights, intellectual property rights, protection for pharmaceuticals, and investor rights. Likewise, outside the United States, the course of the negotiations have revealed differences on the meaning of “high-standard” among the negotiating partners. This emerging debate may presage a vigorous debate within Congress on the TPP as the process proceeds and Members weigh in with their views.

### **The Role of Trade Promotion Authority (TPA) and Congressional Trade Negotiating Objectives**

Congressional approval for trade agreements has been a matter of critical importance right from the days of the ITO, GATT’s predecessor. Any trade agreement that the United States reaches with TPP partners would have to be approved by Congress through the passage of implementing legislation, presumably under TPA procedures. The latest TPA expired on July 1, 2007, although the Obama Administration has proceeded to negotiate the proposed TPP as if TPA were in effect. It has consulted with Congress and followed TPA’s procedural steps. For example, U.S. Trade Representative Ron Kirk formally notified Congress of the Administration’s intention to enter into negotiations with the TPP countries on December 14, 2009, 90 days prior to beginning the negotiations, as stipulated under the expired TPA. Nevertheless, some observers, including Members of Congress, have asserted that TPP partners will not engage in serious negotiations on sensitive issues without the assurance that U.S. commitments are credible and cannot be amended by Congress.

In addition, even though the Administration has been consulting Members and congressional staff, Congress, as a whole, formally has yet to weigh in on the form of negotiating objectives embedded in TPA authorizing statutes. In the past, these objectives have included reducing barriers to various types of trade (e.g., goods, services, agriculture, electronic commerce); protecting foreign investment and intellectual property rights; encouraging transparency, fair regulatory practices, and anti-corruption; ensuring that countries protect environment and worker rights; providing for an effective dispute settlement process; and protecting the U.S. right to enforce its trade remedy laws. However, over the years, Congress has revised and expanded the negotiating objectives as policy issues have evolved and the global trading system has become more complex. In any renewal of TPP, Congress may wish to establish new negotiating objectives to reflect 21st Century trade policy including issues currently under negotiation such as state-owned enterprises, regulatory coherence, digital technology, and trade in green technologies, among other areas. At the same time, the objectives would likely have to be flexible enough to allow the Administration to negotiate a “living

agreement” that can change and be kept current with an evolving international trading system. It is unclear at this time if and when the Administration and Congress will take up the issue of TPA renewal.

### **TPP and Institutional Issues**

The institutional structure of a future TPP agreement will be of particular interest to the US Congress. It may wish to consider the manner in which the agreement can be expanded, or upon the terms to which it is willing to agree to expand new members. As well as attracting new members, new content may be negotiated, or existing content renegotiated. In the manner of accession of new members, Congress may consider whether it would approve each new member, or whether U.S. approval would be handled in a manner similar to WTO accessions. In terms of content, Congress may also wish to consider whether the TPP, if concluded, would have a Secretariat or other body that could serve as a venue for continuing negotiations.

### **TPP and Relationship with the Multilateral System**

A successfully concluded TPP agreement may shape the future course of multilateral trade liberalization. After ten years of negotiations, the Doha Round of multilateral trade negotiations is considered, by many, to be moribund. Although its negotiating mandate is considered to be out-of-date by many, with several new issues such as food security, data flows, state-owned enterprises, and currency manipulation not considered at all, the appetite for new discussions is small. Hence, TPP may offer an opportunity for a group of countries dedicated to concluding a comprehensive, high-standards FTA to break new ground on issues thus far not negotiated at the multilateral level.

Past FTAs, such as NAFTA, incorporated new trade policy ideas, such as dispute settlement and intellectual property rights, that were concurrently being negotiated in the Uruguay Round. NAFTA was approved first, and the approval of NAFTA among Canada, Mexico and the United States helped push the Uruguay Round to conclusion. Today, the approval of a comprehensive, high-standard TPP agreement could signal to recalcitrant members of the WTO that trade liberalization can proceed without them and might spur action at the multilateral level. However, the world trading system is much different than it was in the early 1990s when NAFTA signatories (United States and Canada) made up half of the so-called “Quad-countries” (United States, Canada, the European Union, and Japan) that decided the Uruguay Round. Developing countries, such as Brazil, India, and China, that now exercise their interests in the WTO, may be more assertive in pursuing their own interests. Yet, as an alternative venue promoting trade liberalization at the time when the WTO is not seen to be doing so, it may attract additional countries to the negotiations.

### **The Potential Impact of the TPP on U.S. Trade Policy**

The U.S. pursuit of the TPP and the possible outcome of the negotiations raises other questions regarding its possible impact on the status and shape of current and future U.S. trade policy. For example, should the TPP preclude the United States from considering negotiating bilateral FTAs or other regional FTAs, such as an FTA with the EU? On the one hand, the USTR has limited resources and diverting those resources to other negotiations might jeopardize the ability of the United States to negotiate the TPP. On the other hand, placing all of the U.S. trade policy “eggs” in the one TPP “basket” could undermine the ability of U.S. trade policymakers to protect U.S. economic interests elsewhere, such as in Europe and China, as those trade partners continue to pursue their own FTAs.



Similarly, the TPP raises the issue of the United States and the future of the WTO as a major force for trade liberalization. Some may argue, for example, that the United States has signaled the death knell of future rounds of multilateral agreements in favor of regional pacts. Others might assert that the TPP could serve as a building bloc for a more viable multilateral trade system that responds to trade challenges of the 21st century. Some may even say that the TPP may become the predominant force for trade liberalization going forward, that is, if it can agreed to by the current parties.

Another issue for possible consideration is: What would be the impact on U.S. trade policy if the TPP negotiations are not completed successfully or are delayed indefinitely? Some could argue that such an outcome would indicate that it is not feasible to negotiate a comprehensive set of rules with a diverse group of countries and that the United States would have to tailor its ambitions. In addition, some might assert that such an outcome would signify a temporary, if not permanent setback to the notion of a Free Trade Area of the Asia-Pacific (FTAAP). Still others may conclude that such result could force the United States to retreat from negotiating trade agreements altogether.

### *(ii) US-Ghana*

During July 2012, the US Ambassador Kirk visited Ghana's Ministry of Trade and Industry to discuss both countries' mutual interest in considering the possibility of a U.S.-Ghana bilateral investment treaty (BIT), which would fit well into Ghana's strategy of attracting private investment and diversifying its economy. It would also represent a major milestone in the US bilateral economic relationship. A BIT with the United States would send a powerful signal to American and other foreign investors that Ghana is committed to adopting and maintaining a favorable investment climate.

Following meetings with Ghanaian government officials, Ambassador Kirk visited USAID's West Africa Trade hub in Accra. The Trade Hub focuses on economic development and job creation by providing technical assistance and training to export-ready West African companies which has helped to significantly increase their competitiveness. Since 2007, the Trade Hub has facilitated over 100 million dollars in exports from the region and trained more than 7,000 people in business skills.<sup>20</sup>

Ambassador Kirk's visit to Ghana underscores the growing trade and investment opportunities in one of Africa's fastest-growing countries, and demonstrates the Obama Administration's commitment to working with African countries to build positive, mutually beneficial economic partnerships. Ghana was chosen as one of four countries in President Obama's Partnerships for Growth (PFG) initiative, which is designed to promote broad-based economic growth through trade and investment.

In addition to meeting with officials from the Ghanaian government, Ambassador Kirk spoke at an event in Accra hosted by the American Chamber of Commerce in Ghana, which was attended by local American and Ghanaian business leaders and Ghanaian government officials. In his remarks, Ambassador Kirk spoke about the new Presidential Policy Directive, noted progress made under AGOA, and discussed how increased U.S.-Ghana trade supported jobs in both countries.<sup>21</sup>

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<sup>20</sup>Ambassador Kirk Travels To Ghana, Meets With Officials To Promote Trade, USTR Press Release, July 2012

<sup>21</sup> U.S. Trade Representative Ron Kirk Concludes Three Day Visit To Ghana Focused On Promoting Jobs And Economic Growth On Both Sides Of The Atlantic, USTR Press Release, July 13, 2012, At:

### *(iii) US-Indonesia*

On July 17, 2012, the United States concluded a two-day meeting with Indonesia under the bilateral Trade and Investment Framework Agreement (TIFA) to discuss ways to further build bilateral trade and investment ties and address priority issues. The two sides agreed to intensify their engagement under the TIFA and will reactivate working groups that can focus on ways to resolve issues between them. U.S. Government officials conveyed concerns about several recent trade and investment measures that could restrict access to the Indonesian market for livestock, horticulture, and other products. They also discussed Indonesia's intellectual property regime and agreed to launch a program of expanded engagement under the TIFA working group on intellectual property rights.<sup>22</sup>

### *(iv) US-Srilanka*

On July 18, 2012, the United States and Sri Lanka held the first meeting of the recently formed Labor Affairs Committee under the U.S.-Sri Lanka Trade and Investment Framework Agreement (TIFA). The establishment of the new committee was one of the outcomes of the recently closed Generalized System of Preferences (GSP) worker rights review. The two governments discussed opportunities to continue their cooperation on labor issues, including efforts to ensure that workers are able to exercise their right to form and participate in unions of their choosing.

Following the meeting, Assistant USTR Delaney noted that, *"The meeting provided an opportunity to build on the progress that led to the recent closure of the GSP worker rights review and to begin efforts to tackle longer term challenges. Our discussions were based on a common recognition that ensuring the protection of international labor rights is good for both workers and for economic development."*<sup>23</sup>

### *(v) US-Ukraine*

On July 31, 2012, United States Trade Representative Ron Kirk and Ukrainian First Deputy Prime Minister Valeriy Khoroshkovsky released the joint statement outlining the results of the fourth meeting of the U.S.-Ukraine Trade and Investment Council (TIC) in Washington, D.C.

A wide range of issues were reviewed, including intellectual property rights, the investment climate, bilateral trade irritants, taxation, agriculture, customs, aviation, and space. The 2010 IPR Action Plan for protection and enforcement of intellectual property rights was deliberated for better progress on this front. The United States supported Ukraine's commitment to redouble efforts, especially those identified in the Action Plan, to implement protections that benefit both Ukrainian and American inventors and creators. The United States also hailed Ukraine's planned increase in intellectual property inspectors, as called for in the 2010 IPR Action Plan, as well as its adoption of a new Customs Code intended to improve customs valuation procedures.

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<http://www.ustr.gov/about-us/press-office/press-releases/2012/july/ustr-kirk-concludes-three-day-visit-to-ghana>

<sup>22</sup> U.S. Concludes Meeting With Indonesia Under Trade And Investment Framework Agreement, USTR Press Release, July 17, 2012, At: <http://www.ustr.gov/about-us/press-office/press-releases/2012/july/us-concludes-meeting-with-indonesia-under-tifa>

<sup>23</sup> U.S. And Sri Lanka Launch New Mechanism For Discussion Of Labor Issues, USTR Press Release, July 18, 2012, At: <http://www.ustr.gov/about-us/press-office/press-releases/2012/july/us-sri-lanka-new-mechanism-labor>

In order to enhance the trade and investment relationship, a Trade Experts Group was established to facilitate discussion of trade, investment, and commercial issues at a working level. Through regular meetings, the Trade Experts Group will make it easier to achieve more rapid resolution of trade, investment, and commercial issues between the Parties.

Taking note of Ukraine's increase in payments of VAT arrears to U.S. companies since 2011, the United States welcomed the Ukrainian government's commitment to pay outstanding, and future, VAT refunds in a more timely and easier manner, according to the recent legislation.

Discussions were also made on regulatory, scientific and technical cooperation in agriculture and ways to promote the expansion of trade relations in agriculture and food industry. Additionally, the two countries also discussed civil aviation, including Ukraine's ratification of the Cape Town Convention, which will increase Ukraine's ability to finance the purchase of aircraft and related equipment.<sup>24</sup>

### *(vi) APEC*

United States and Asia-Pacific Economic Cooperation (APEC) Ministerial Meeting took place during September 2012 that would help promote economic and job growth for American workers and businesses. Specifically, APEC Ministers reached a groundbreaking agreement on a list of environmental goods on which tariffs will be cut to 5 percent or less by 2015 - marking the first time that trade negotiations have produced a list of environmental goods for tariff cuts.

The APEC List of Environmental Goods includes a wide range of core products in the sector, including renewable and clean energy technologies, wastewater treatment equipment, air pollution control technologies, and environmental monitoring and assessment equipment. Tariffs on some of these products in the region are currently as high as 35 percent.

In addition to environmental goods, APEC ministers agreed to a comprehensive approach to improve supply chain performance in the region, helping business to move their goods faster, easier, and cheaper. They also committed to begin work toward prevention of local content requirements in the region, further promote market-driven non-discriminatory innovation policy, and increase transparency and due process in APEC economies.

APEC economies also strongly endorsed the ongoing work of negotiations to expand the product coverage and membership of the WTO Information Technology Agreement (ITA). Ministers noted that a successful expansion of the ITA would provide a much-needed boost to the global economy and contribute to APEC's core mission to open markets and facilitate regional trade.<sup>25</sup>

### *(vii) US-Vietnam*

On September 3, 2012, United States Trade Representative Ron Kirk concluded successful meetings with Vietnamese President and other senior Vietnamese officials, discussing the United States'

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<sup>24</sup> Joint Statement On The United States-Ukraine Trade And Investment Relationship, USTR Press Release, July 31, 2012, At: [Http://Www.Ustr.Gov/About-Us/Press-Office/Press-Releases/2012/July/Joint-Statement-On-U.S.-Ukraine-Trade-Investment-Relationship](http://www.ustr.gov/about-us/press-office/press-releases/2012/july/joint-statement-on-u.s.-ukraine-trade-investment-relationship)

<sup>25</sup> USTR Announces Groundbreaking Trade And Investment Results At Conclusion Of 2012 APEC Ministerial Meeting, USTR Press Release, September 9, 2012, At: [Http://Www.Ustr.Gov/About-Us/Press-Office/Press-Releases/2012/September/Ustr-Announces-Groundbreaking-Results-Apec-Ministerial](http://www.ustr.gov/about-us/press-office/press-releases/2012/September/ustr-announces-groundbreaking-results-apec-ministerial)

bilateral trade and investment relationship with Vietnam and issues related to the Trans-Pacific Partnership as well as objectives in the Asia-Pacific Economic Cooperation (APEC) forum. Ambassador Kirk also communicated the United States' commitment to achieving key objectives at this week's meeting of APEC ministers and leaders in Vladivostok, Russia, most notably an agreed list of environmental goods and services targeted for tariff cuts in the region.<sup>26</sup>

### *(viii) US-Cambodia*

On August 31, 2012, United States Trade Representative Ron Kirk announced that the United States and Cambodia have agreed to begin exploratory discussions on a potential bilateral investment treaty (BIT). Experts in the United States and Cambodia would now discuss the respective investment policies and investment agreements to determine key similarities and differences, with an eye to sharing approaches and opening further discussions based on the U.S. model text for bilateral investment treaties.

It is vital to note that the United States has more than 40 BITs in force with countries around the world.<sup>27</sup>

### *(ix) US-Gulf countries*

On September 27, 2012, United States Trade Representative Ron Kirk announced that the United States and the Gulf Cooperation Council (GCC) signed a Framework Agreement for Trade, Economic, Investment and Technical Cooperation. The Agreement will establish a Joint Committee to discuss areas where both the GCC and the United States share mutual interests, including considering opportunities for enhancing economic, commercial, investment and technical cooperation, fostering their economic relations and increasing the volume of trade and investment between them.

The GCC region collectively was the sixth largest supplier of imports to the United States in 2011 with U.S. goods imports from the region totaling nearly \$62 billion. Leading U.S. imports from the GCC include oil, aluminum, fertilizers, and organic chemicals. U.S. foreign direct investment (FDI) in GCC countries was \$23.5 billion in 2010.

The United States currently has bilateral trade agreements with all six of the individual member states that make up the GCC. This Framework Agreement will supplement and build upon, not replace the engagement with individual member states on bilateral issues.<sup>28</sup>

### *(x) US-Thailand*

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<sup>26</sup> U.S. Trade Representative Kirk Concludes Successful Visit To Vietnam, Trans-Pacific Partnership, Bilateral Issues On Agenda, USTR Press Release, September 3, 2012 At: <http://www.ustr.gov/about-us/press-office/press-releases/2012/September/Kirk-Concludes-Successful-Visit-To-Vietnam>

<sup>27</sup> United States, Cambodia To Explore Possibility Of Investment Treaty, USTR Press Release, August 31, 2012, At: <http://www.ustr.gov/about-us/press-office/press-releases/2012/August/Us-Cambodia-Explore-Investment-Treaty>

<sup>28</sup> United States Trade Representative Ron Kirk Announces Agreement With Gulf Cooperation Council To Strengthen Economic Ties, Expand Trade And Investment Relationship, USTR Press Release, September 27, 2012 At: <http://www.ustr.gov/about-us/press-office/press-releases/2012/September/Ustr-Kirk-Announces-Agreement-Gcc>

During July 2012, Assistant USTR for Southeast Asia and the Pacific and her counterpart Commerce Department Director General reached an agreement to resume regular meetings under the TIFA to address bilateral trade issues, to coordinate on issues in the Asia-Pacific Economic Cooperation (APEC) and Association of Southeast Asian Nations (ASEAN) forums, and to develop specific initiatives that would further build their bilateral relationship. In addition, they discussed regional trade initiatives and pathways to Asia-Pacific trade integration, including the Trans-Pacific Partnership.<sup>29</sup>

### CSR reports on Trade Agreements and their policy issues

The current quarter's report, highlights the policy and legal analysis of the US agencies on two of their crucial on-going trade agreements- ACTA and TPP. The views remain crucial as they represent the true opinion and issues raised with respect to these agreements both within and outside the United States. The various excerpts and issues raised under these agreements have been summarized as below:

#### **Anti-Counterfeiting Trade Agreement**

The on-going ACTA negotiations have spurred recent debates among various stakeholder groups within and among the various countries- on both process and substance. Certain stakeholders have voiced concerns about the negotiation's scope, transparency, and inclusiveness. Members of the U.S. business community, such as the entertainment, pharmaceutical, luxury goods, and high technology industries, largely have been supportive of the ACTA. They assert that stronger international IPR protection and enforcement through the ACTA are critical for their competitiveness. Other business groups, including Internet service providers, have expressed concerns about the digital enforcement provisions of the proposed agreement. In addition, various civil society groups, such as public health and consumer rights advocates, have voiced concerns about the implications of the ACTA for trade in legitimate goods, consumer privacy, and free flow of information. With the existence of the WTO TRIPS Agreement and other international agreements on IPR, some question the rationale behind creating a new agreement to combat counterfeiting and piracy. The following section discusses in greater detail some of these key points of debate.

#### **Scope of the Proposed ACTA**

As titled, the ACTA would suggest a focus exclusively on combating counterfeit goods. While definitions of "counterfeiting" vary, the term tends to refer to trademark infringement of physical goods. For example, in the WTO TRIPS Agreement, the term "counterfeiting" is used in conjunction with trademark infringement. As a result, when the agreement was proposed initially, many observers believed that it would focus primarily on combating trade of fake medicines, toys, auto parts, computer parts, and the like. However, as ACTA negotiations progressed, the scope of IPR in the agreement broadened from beyond traditional notions of "counterfeiting," to also include piracy. While definitions of "piracy" vary, the term generally refers to infringement of copyrights.

According to press reports, ACTA negotiating parties differed on the range of intellectual property that should be covered in the various provisions of the agreement. For example, the European Union reportedly advocated for the inclusion of patents in the civil enforcement section. The EU argued that exclusion of patents from civil remedies would limit the extent to which certain

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<sup>29</sup>Update From Thailand: U.S. And Thailand Agree To Resume Formal Dialogue Under Bilateral Trade And Investment Framework Agreement, USTR Press Release, July 2012

industries, such as the automotive, machinery, pharmaceutical, and agro-chemical industries, may be able to take advantage of the ACTA. The United States opposed the inclusion of patents in the civil enforcement section; some have speculated that the opposition was due to a concern that the inclusion would contradict U.S. patent law. The final ACTA text includes a footnote to the civil enforcement section which states, "A Party may exclude patents and protection of undisclosed information from the scope of this Section." Given this exemption, it remains to be seen which countries exclude patents from the scope of their civil enforcement. The United States has said that its implementation of the ACTA would exclude patents.

As another example, the EU and the United States also took differing positions regarding the inclusion of trademarks in the digital enforcement section of the ACTA. The EU supported the inclusion of trademarks, along with copyrights, in the scope of the digital enforcement section, expressing concern about the volume of Internet sales of goods infringing on European trademarks. In contrast, the United States opposed the inclusion of trademarks in this section; some have speculated that the opposition was due to a concern that the inclusion would contradict U.S. law. For instance, some U.S. stakeholders argued that inclusion of trademarks in this section would go beyond the U.S. Digital Millennium Copyright Act (DMCA), which focuses only on copyright piracy. The digital enforcement section of the final ACTA text largely excludes trademark counterfeiting, focusing primarily instead on infringement of copyright or related rights over digital networks. However, it does include a provision stating that a Party may provide its competent authorities with the authority to order an online service provider to disclose information to a right holder sufficient to identify a subscriber whose account was allegedly used for trademark or copyright infringement and where such information is being sought to protect or enforce those IPR.

### **Transparency of and Stakeholder Input in Negotiation**

The ACTA negotiation has spurred debates about the transparency of the negotiation process. Among some groups, there is a perception that the ACTA negotiation lacked sufficient public transparency and meaningful public input. Some critics assert that the negotiating governments engaged in close consultation with right holders, including representatives of the entertainment, software, apparel, and pharmaceutical industries, but did not engage in extensive consultations with consumer and public interest groups. Some observers have commented that the level of secrecy in the ACTA negotiations was unprecedented, compared to other international trade negotiations. They point out that draft texts for other international trade treaties, such as the WTO TRIPS Agreement, were released during their respective negotiation. Some Members of Congress and a range of stakeholders have called on USTR to enhance the transparency of the ACTA negotiations. For instance, in a letter addressed to USTR, Senators Bernard Sanders and Sherrod Brown called on USTR to allow the public to review and comment on substantive proposals for the proposed ACTA.

During the early negotiating rounds, USTR refrained from publicly circulating draft text of the ACTA, citing security reasons. U.S. Trade Representative Kirk has defended the ACTA negotiation process, maintaining: As is customary during negotiations among representatives of sovereign states, the negotiators agreed that they would not disclose proposals or negotiating texts to the public at large, particularly at earlier stages of the negotiation. This is done to allow participants to exchange views in confidence, facilitating the negotiation and compromise that are necessary to reach agreement on complex issues.

USTR reportedly shared a draft of the digital enforcement chapter with cleared advisors in the USTR formal trade advisory system and selected industry and public interest groups, who were required to sign non-disclosure agreements in order to view the negotiating text. Moreover, the ACTA negotiation process became more transparent as the negotiation advanced. USTR publicly released a summary of key elements under discussion in November 2009, following the 6th round of negotiations; a draft text in April 2010, following the 8th round of negotiations; a consolidated text in October 2010, following the 11th and final round of negotiations; a finalized text on November 15, 2010, subject to legal verification; and a final text in May 2011. As additional examples of increasing transparency, USTR pointed to a number of steps it took in 2009, including establishing a dedicated ACTA web page on the USTR website; releasing a public summary of issues under negotiation; and releasing public agendas on the ACTA web page prior to each negotiating round.

USTR also contends that it consulted sufficiently with Congress and outside stakeholders. It has stated that the ACTA is the “product of close collaboration between the Administration and Congress as well as intensive consultations with U.S. industry and nongovernmental organizations.” In terms of congressional consultation, USTR has pointed to ACTA-related meetings and conference calls it has held with congressional staff and Members to provide updates on ACTA developments and to solicit views to ensure that the ACTA reflects congressional perspectives. In terms of consulting with other stakeholders, USTR noted it solicited advice from a broad range of experts, including representatives of right holders, Internet intermediaries, and non-government organizations. Additionally, it issued a Federal Registrar notice in February 2008 requesting public comments on the ACTA and subsequently invited stakeholders to a public meeting that it would hold, in conjunction with the Department of Commerce, to discuss the ACTA.

### **Range of Participants of ACTA**

The range of participants included in the ACTA negotiation has been subject to controversy. One element of debate was the absence of developing country participation. Some groups are critical that the ACTA was negotiated as a plurilateral agreement primarily among largely advanced industrialized countries. Some developing country advocates express concern that the ACTA negotiation did not sufficiently take into account the interests, views, and needs of developing countries. For instance, during WTO TRIPS Council meetings, China and India have stated that the ACTA, among other things, could weaken the balance of rights, obligations, and flexibilities that have been negotiated in WTO agreements; create barriers to trade; constrain flexibilities in the TRIPS Agreement, such as for public health and trade in generic medicines; limit government’s freedom to allocate resources for IPR by compelling them to focus on enforcement; and lead to the incorporation of ACTA standards in future regional and other agreements. Other developing countries not party to the ACTA negotiation also have espoused similar views. The selection of certain countries as participants in the ACTA has been another element of debate.

Some observers have questioned why countries designated in the USTR’s Special 301 report for having inadequate IPR protection and environment are involved in the ACTA. The 2012 Special 301 Report included Canada on the Priority Watch List, and Mexico and certain European Union members (Finland and Romania) on the Watch List.<sup>61</sup> According to the USTR, participation in the ACTA may help countries identified in the Special 301 report to attain their goals of enhancing IPR enforcement. At the same, some observers also have questioned the effectiveness of an agreement that does not include countries like China and Russia (both designated in the Special 301 Report), which are considered to be major sources of counterfeiting and piracy. ACTA negotiation parties have discussed expanding the ACTA to include other interested countries in the future. The final

text of the agreement includes accession terms, stating that after the May 1, 2011-May 1, 2013, signatory period for parties to the ACTA negotiation, any member of the WTO may apply to accede to the agreement. The ACTA Committee, which oversees the agreement and accession of new members, is to decide upon the terms of accession for each applicant. USTR has expressed hope that other countries will join the ACTA over time, “reflecting the growing international consensus on the need for strong IPR enforcement.” However, some critics speculate that developing countries would be invited to join the ACTA at a point when the agreement has largely been “locked-in” and when significant changes could not be introduced. Some groups voice concern that developing countries will feel pressured to adhere to the ACTA in order to obtain trade benefits from ACTA participants.

### **Impact on Legitimate Trade and Consumer Activity**

The ACTA negotiation has generated debate about the potential impact of increasing IPR protection and enforcement standards on legitimate trade and consumer activities. This speaks to a long-standing broader debate about the perceived trade-off between the protection of IPR and the facilitation of trade. IPR-based industries have voiced strong support for the ACTA, contending that its enhanced standards will contribute to greater economic growth and employment. Other stakeholders, including some consumer rights, public health, and civil liberty groups, contend that ACTA provisions may interfere with trade in legitimate goods and consumer activity. Negotiating parties maintain that the ACTA respects the WTO Doha Declaration on Public Health, is not intended to interfere with citizens’ fundamental rights or undermine civil liberties, and contains safeguards to protect against creating barriers to legitimate trade.

Following the 9th round of negotiation, USTR released a statement saying: ACTA will not interfere with a signatory’s ability to respect fundamental rights and liberties. ACTA will be consistent with the WTO Agreement on TRIPS Agreement and the Declaration on TRIPS and Public Health. Participants reiterated that ACTA will not hinder the cross-border transit of legitimate generic medicines, and reaffirmed that patents will not be covered in the Section on Border Measures. ACTA will not oblige border authorities to search travelers’ baggage or their personal electronic devices for infringing materials.

One flashpoint in the debate has been the ACTA’s potential impact on consumer privacy and the free flow of information. For example, some critics charge that digital enforcement provisions of the ACTA would require Internet Service Providers (ISPs) to terminate customers’ Internet accounts after repeated allegations of copyright infringement, a provision akin to a “three-strikes” law introduced by the French government. Such provisions reportedly have been controversial in the European Union, where some members of Parliament consider Internet access to be a fundamental human right that should only be terminated by judges. While many IPR-based industries argue that increasing ISP involvement in IPR enforcement is critical to combating online piracy, critics contend that requiring ISPs to filter communication places undue burdens on ISPs. Some civil liberties groups have expressed concern about what they perceive as a low threshold for terminating consumers’ Internet access; they assert that proof of online piracy, not allegations, should be the requirement for termination of Internet accounts.

In recent months, the debate about ISP obligations related to IPR infringement has been heightened by legislation introduced in the 112th Congress, i.e. the Prevent Real Online Threats to Economic Creativity and Theft of Intellectual Property Act (PROTECT IP Act, S. 968) and the Stop Online Piracy Act (SOPA, H.R. 3261) to address online piracy, which include some provisions similar to the



ACTA. Following opposition by civil society groups and several Internet-based companies, congressional consideration of these bills has been postponed.

In addition, some commentators have been concerned with the extent to which U.S. “fair use” practices would be maintained under an agreement. There has been speculation about potential ACTA provisions on providing remedies against circumvention of technological protection measures (TPM) used by right owners to prevent the use of their copyrighted works in unwanted ways. Such provisions may have implications for the free flow of information. The final ACTA text does not include provisions similar to a “three-strikes” rule, or similar “notice-and-takedown” rules. Rather, the final text requires ACTA participants to give their competent authorities the ability to order ISPs to disclose expeditiously to right holder sufficient information to identify a subscriber whose account was allegedly used for infringement. The ACTA does contain provisions on TPM. However, the ACTA text broadly states that the digital enforcement procedures “shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and consistent with that Party’s law, preserves fundamental principals such as freedom of express, fair process, and privacy.”

Another flashpoint has been concerns that the ACTA could undermine trade in legitimate goods. One prominent aspect of this debate are border enforcement provisions in the ACTA under which governments may give customs officials ex-officio authority to seize and detain goods suspected of infringing IPR. Some countries that are participants to the ACTA negotiation currently do not empower their customs officials with such ex-officio authority. Others grant this authority in limited cases. In the United States, the U.S. Customs and Border Protection (CBP) is authorized to make determinations that goods violate copyrights and trademarks and seize such goods. However, the CBP is not authorized to make determinations of patent violations. In the case of patents, CBP enforces exclusion and cease-and-desist orders issued by the U.S. International Trade Commission (ITC) against patent-infringing goods.

Many business groups assert that granting customs officials ex-officio authority is critical to preventing the flow of counterfeit and pirated goods across borders. This would ensure that customs officials can engage in more proactive efforts to combat trademark counterfeiting and copyright piracy, without having to wait for a formal complaint from a private party or rightholder. Some critics, such as public interest and civil liberties groups, assert that such measures would impose unnecessary or burdensome delays on the movement of goods across borders, raise the costs of trade, and result in undue impediments of personal travel.

The ACTA negotiation included discussion of whether or not to include patents in the border enforcement section, which led to concerns that the ACTA could undermine legitimate trade in generic medicines and public health. As patent inclusion was debated, some public health advocates expressed concern that empowering customs authorities to make determinations about patent violations could lead to the prevention or delay of exports and imports of legitimate generic drugs. For instance, some groups contended that the ACTA may “interfere with legitimate parallel trade in goods, including the resale of brand-name pharmaceutical products.” They point to recent seizures in Europe of legitimate generic medicines in-transit based on industry concerns of counterfeiting.

In the end, the border enforcement section of the ACTA’s final text specifically states in a footnote that patents and the protection of undisclosed information are excluded from the scope of that section. Thus, the border enforcement section applies to other forms of IPR, such as trademarks and copyrights. The applicability of trademarks to the border enforcement section has continued to

raise concerns among some public health advocates about access to medicines, such as generic medicines.

### **Negotiation of ACTA as Stand-Alone Agreement**

The ACTA was negotiated as a stand-alone agreement outside of the WTO, WIPO, and other multilateral institutions involved in international IPR protection and enforcement. This approach to the ACTA has generated debate. On the one hand, advocates suggest that negotiating the ACTA outside of existing multilateral frameworks allowed the United States and other like-minded countries to advance global IPR protection more efficiently and with greater flexibility. The advancement of trade negotiations in multilateral venues has stalled in recent years. For example, the WTO Doha Round of multilateral trade negotiation is at a standstill over country differences on agricultural, industrial tariffs, and services. Meanwhile, WIPO members have not been able to reach an agreement on potential new elements for discussion on the WIPO global patent agenda. ACTA negotiating parties also assert that the ACTA is an innovative agreement that would not have fit under current multilateral frameworks. A fact sheet released by the USTR stated: “We feel that having an agreement independent of a particular organization is an appropriate way to pursue this project among interested countries. We fully support the important work of the G8, WTO, and WIPO, all of which touch on IPR enforcement.” On the other hand, some critics charge that the decision by ACTA participants to hold these negotiations outside of existing multilateral frameworks was intended to bypass the concerns of developing countries or other stakeholders representing various public interests.

Some observers question the status of the ACTA in the long term: Would the ACTA continue to exist as a stand-alone agreement, or would the WTO or other international bodies incorporate the ACTA? Negotiating parties have expressed hope that the WTO may incorporate ACTA standards in the future. For example, Japanese trade officials have stated, “We very much want to make ACTA a model for forming international rules within the WTO framework.” Some speculate that if the ACTA become a part of the WTO, signing on to the ACTA could become a requirement for WTO accession.

### **Effectiveness of a New Agreement on IPR**

In light of the numerous existing international trade agreements and economic forums that address global protection and enforcement of IPR, there are some questions about the “value added” of creating a new IPR agreement. Supporters point out that the ACTA builds on the WTO TRIPS Agreement to establish enhanced standards of IPR protection and enforcement. They also maintain that the ACTA is intended to fill in the gaps between current legal frameworks and enforcement practices and emerging IPR infringement concerns, particularly in the case of IPR infringement in the digital environment. In addition, they argue that establishing a contingency of a sizeable group of countries that support stronger efforts to combat counterfeiting and piracy could send a clear, powerful signal to the rest of the world about the importance of global IPR protection and apply pressure on countries where counterfeiting and piracy continue to be serious problems. A larger group of countries also may dispel the perception that the global advancement of IPR efforts is primarily a unilateral U.S. initiative. Since the advent of the TRIPS Agreement, the United States often has been perceived as a key champion of IPR.

Critics view the ACTA as potentially duplicative, arguing that the proposed elements of the ACTA suggest significant overlap with the WIPO Internet treaties and the WTO TRIPS Agreement. Some

observers note that some countries have not fulfilled their obligations under these international frameworks completely. From this perspective, they question the effectiveness of pursuing new trade agreements and potentially directing greater financial or staff resources when mechanisms currently exist to address the issues, but are not being utilized effectively. Still others question how much “teeth” an executive government-to-government agreement on IPR protection and enforcement can have if it does not increase legal protections. Some counter that, for many countries, IPR laws “on the books” are adequate, but shortcomings arise in enforcement of those laws. The ACTA, they argue, can play a critical role in addressing these gaps. Others point out that while the ACTA may not result in a statutory change in U.S. law, it could have a significant impact on the global protection of intellectual property by resulting in the need for other countries to change or enforce their laws. For instance, adhering to ACTA provisions may result in Canada’s enforcement of IPR in the digital environment, a long-standing issue between the United States and Canada.

### **Congressional Outlook on ACTA**

It is being deliberated that the 112th Congress may examine its role in the ACTA approval process beyond oversight. Congress may choose to examine whether implementation of the ACTA without congressional approval could raise constitutional issues, given that U.S. approval of international agreements concerning foreign commerce and intellectual property rights falls under the Article 1, Section 8 powers of Congress in the U.S. Constitution.<sup>78</sup> The ACTA may raise a range of questions for Congress:

- What is the role of Congress in the ACTA approval process? Will congressional activity regarding the ACTA extend beyond oversight? How would the ACTA affect congressional action in areas covered by the agreement?
- How does protection and enforcement of IPR rank among other national priorities? Within the realm of combating counterfeiting and piracy, there also are questions about what forms of IPR infringements should be given priority in addressing. Rationales cited for the ACTA include the commercial losses sustained by legitimate businesses from IPR infringement, as well as health and safety concerns associated with counterfeit and pirated products. Among these numerous concerns, what forms of infringement should be given priority if resources are limited?
- What implications does the proposed ACTA have for the allocation of federal funds? Would implementation of the ACTA require the appropriation of federal funds, even though changes in federal laws are not necessarily required?
- What implications does the proposed ACTA have for the future of U.S. trade policy?
- Does the ACTA set a precedent for conducting future efforts on IPR protection and enforcement primarily or increasingly outside of multilateral frameworks?
- How might provisions in the ACTA coincide or conflict with negotiating objectives set by Congress in any future trade promotion authority given to the President?
- Would accession to the ACTA be a requirement for signatories to future U.S. regional and bilateral FTAs?
- And would a country’s fulfillment of ACTA commitments affect US TR determinations for its Special 301 watch lists?
- Given the European Parliament’s rejection of the ACTA, what are the prospects for the ACTA entering into force?

## Aid for Trade

(i) On July 18, 2012, the Export-Import Bank of the United States authorized a pair of loans totaling \$57.3 million to Solar Field Energy Two Private Ltd. and Mahindra Surya Prakash Private Ltd., respectively, to finance the export of American solar panels and ancillary services to India.<sup>30</sup>

(ii) On September 26, 2012, U.S. Trade and Development Agency granted funds to Oando Gas & Power Limited, Nigeria. The new infrastructure would include the construction of numerous refueling stations across the state as well as vehicle maintenance and repair facilities. The study will also provide an analysis of policy and regulatory issues surrounding development.<sup>31</sup>

(iii) On September 6, 2012, the U.S. Trade and Development Agency awarded a grant to the Romanian Ministry of Health (MOH) for the deployment and implementation of health telecommunications solutions for ten Romanian hospitals. The \$422,786 grant will support the development of a feasibility study on possible improvements in health care delivery in rural Romania.<sup>32</sup>

(iv) On August 6, 2012, the U.S. Trade and Development Agency awarded a \$626,000 grant to Kazakhstan gas transmission and distribution company, JSC KazTransGas (KTG), to provide a feasibility study to increase gas production and processing in the country. The grant was signed at the U.S. Embassy in Astana by U.S. Deputy Chief of Mission Elisabeth Millard on behalf of USTDA, and by KTG Deputy General Director Anatoly Tegisbayev on behalf of JSC KazTransGas.<sup>33</sup>

(v) On August 1, 2012, the U.S. Trade and Development Agency awarded a \$514,548 grant to the Under secretariat of Telecommunications (Subtel) of the Government of Chile to provide technical assistance for the planning of a National Emergency Network (NEN). The USTDA grant will support technical assistance for the planning of a network, which will provide a unified platform for coordination among Chile's various emergency response agencies. The NEN will be a highly robust and redundant nationwide networking facility that would enable the systems of various public-safety organizations to interoperate. The NEN will provide a common communications facility that would ensure uninterrupted and undegraded operation under a wide range of emergency and disaster scenarios.<sup>34</sup>

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<sup>30</sup> Ex-Im Approves \$57.3 Million In Financing For Renewable-Energy Exports To India, July 18, 2012, At: [Http://Www.Exim.Gov/Newsandevents/Releases/2012/Ex-Im-Approves-57-3-Million-In-Financing-For-Renewable-Energy-Exports-To-India.Cfm](http://www.Exim.Gov/Newsandevents/Releases/2012/Ex-Im-Approves-57-3-Million-In-Financing-For-Renewable-Energy-Exports-To-India.Cfm)

<sup>31</sup> USTDA Grant Supports Clean Energy Distribution In Nigeria, September 26, 2012 At: [Http://Www.Ustda.Gov/News/Pressreleases/2012/Subsaharanafrica/Nigeria/Nigeriacleanenergy\\_092612.Asp](http://www.Ustda.Gov/News/Pressreleases/2012/Subsaharanafrica/Nigeria/Nigeriacleanenergy_092612.Asp)

<sup>32</sup> USTDA Supports Health Telecommunications In Romania, September 6, 2012 At: [Http://Www.Ustda.Gov/News/Pressreleases/2012/Menaeurope/Romania/Romaniahealthtelecomm\\_090612.Asp](http://www.Ustda.Gov/News/Pressreleases/2012/Menaeurope/Romania/Romaniahealthtelecomm_090612.Asp)

<sup>33</sup> USTDA Promotes Integrated Gas Production And Processing In Kazakhstan, September 16, 2012 At: [Http://Www.Ustda.Gov/News/Pressreleases/2012/Eastasiaeurasia/Kazakhstan/Kazakhstanintegratedgasproduction\\_081612.Asp](http://www.Ustda.Gov/News/Pressreleases/2012/Eastasiaeurasia/Kazakhstan/Kazakhstanintegratedgasproduction_081612.Asp)

<sup>34</sup> USTDA provides technical assistance for a national network in Chile, August 1, 2012 at: [Http://Www.Ustda.Gov/News/Pressreleases/2012/LAC/Chile/Chilenationalemergencybackbonenetwork\\_080112.Asp](http://www.Ustda.Gov/News/Pressreleases/2012/LAC/Chile/Chilenationalemergencybackbonenetwork_080112.Asp)

(vi) On August 10, 2012, the Overseas Private Investment Corporation's Enterprise Development Network (EDN) and the State Department's Global Entrepreneurship Program (GEP) announced a formal partnership that will deepen and expand their cooperation in the development of sustainable private sector growth in developing nations. The partnership will provide GEP programs access to EDN's internet-based platform, allowing GEP Partners to promote programs and initiatives that support business development and growth in emerging markets. GEP Partners, including U.S. embassies and consulates, will also have the ability to access information to help develop new programs and businesses, to identify potential partners to assist in their missions, and to track the success of their programs. EDN is a strategic alliance among public and private sector organizations established by OPIC. Through a growing network of organizations around the world, EDN is designed to bring together the vast resources essential to attract debt and equity capital and political risk insurance for enterprises pursuing business opportunities in developing countries.<sup>35</sup>

(vii) On August 21, 2012, it was announced that Pakistan will obtain its first grid-connected independent power project using agricultural waste-burning technology under a loan from the Overseas Private Investment Corporation. Using locally-procured biomass, the project will help Pakistan address its shortage of power, reduce its greenhouse gas emissions and reliance on fossil fuel, and ultimately serve as a replicable biomass model for the rest of the country.

The project involves construction of a 12-megawatt power plant in Sindh Province 54 miles east of Hyderabad and 154 miles northeast of Karachi. The plant's design allows for the use of a variety of agricultural waste products such as bagasse, rice husks, cane trash, and cotton stalk, all of which are in abundant supply locally. Electricity generated by the plant will be sold to the country's grid through Pakistan's National Transmission and Dispatch Company. More than 50 new local jobs will be created by the project, as well as seasonal employment for approximately 300 unskilled laborers who will help in biomass collection.<sup>36</sup>

(viii) On September 10, 2012, the Overseas Private Investment Corporation, the U.S. Government's development finance institution, and Abraaj Capital, a leading private equity group investing in growth markets worldwide, signed a \$150 million commitment to further enable the growth of entrepreneurial small and medium-sized enterprises (SMEs) in the Middle East and North Africa. The fund, called the Riyadh Enterprise Development Growth Capital Fund (RED), will invest in SMEs in the MENA region, including Egypt.<sup>37</sup>

(ix) On September 13, 2012, the Board of Directors of the Overseas Private Investment Corporation approved \$360 million in financing for three investment funds targeting consumer populations in Africa, Indonesia and Russia. The funds have a combined target capitalization of \$1.2 billion.<sup>38</sup>

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<sup>35</sup> OPIC's Enterprise Development Network & State Department's Global Entrepreneurship Program Partner To Promote Growth In Developing Countries, August 10, 2012 At: <http://www.opic.gov/press-releases/2012/opic-s-enterprise-development-network-state-departments-global-entrepreneurship>

<sup>36</sup> OPIC Loan Supports First Renewable Energy Biomass Plant To Supply Pakistani Grid, August 21, 2012.

<sup>37</sup> OPIC And Abraaj Capital Sign Commitment To Regional Small And Medium Enterprise Fund During Egypt Trip, September 10, 2012 At: <http://www.opic.gov/press-releases/2012/opic-and-abraaj-capital-sign-commitment-regional-small-and-medium-enterprise-fund>

<sup>38</sup> OPIC Board Approves \$360 Million For Investment Funds Targeting Consumer Populations In Africa, Indonesia & Russia, September 13, 2012 At: <http://www.opic.gov/press-releases/2012/opic-board-approves-360-million-investment-funds-targeting-consumer-populations>

(x) On September 14, 2012, The Board of Directors of the Overseas Private Investment Corporation, approved \$119.5 million in political risk insurance to help modernize Ghana's agricultural sector, bringing much-needed food security to the country and supporting its effort to become a regional food exporter. The project involves the installation of modern silos, grain mills, cold storage and livestock breeding facilities, and computers and other technical equipment to assist in statistical research and agricultural monitoring throughout Ghana.<sup>39</sup>

(xi) On September 17, 2012, the Board of Directors of the Overseas Private Investment Corporation, approved \$270 million in financing for construction of an approximately 240-megawatt electrical power plant in Jordan that will provide reliable energy for the country during peak usage periods.<sup>40</sup>

(xii) On September 25, 2012, the Board of Directors of the Overseas Private Investment Corporation, approved \$135 million in financing for two investment funds that will support small and medium-sized enterprises (SMEs) and industrial logistics parks in India. The Board approved \$35 million for the BanyanTree Growth Capital II fund, designed to invest in SMEs, particularly in sectors overlooked by investors. The fund's strategy is to bring quality management and environmental, social and governance best practices to targeted SMEs, enabling them to grow into sustainable businesses. The fund has a target capitalization of \$175 million.<sup>41</sup>

## II. TRADE POLICY AND PRACTICE BY MEASURE

### Trade Remedies

On August 21, 2012, the International Trade Administration's Import Administration unveiled the second phase of its electronic document filing system for antidumping and countervailing duty proceedings. The AD/CVD Centralized Electronic Service System (IA ACCESS) gives interested parties and the general public online access to all public versions of documents submitted to the proceeding record since IA ACCESS was initially launched in August 2011.

On July 10, 2012, the Import Administration, International Trade Administration,

IA began a three-phase roll-out of the IA ACCESS system in August 2011. Release 1 required parties to electronically submit public and proprietary documents for the record of AD/CVD proceedings. Release 2 makes appropriate documents available online to the public. Scheduled for 2013, Release 3 will make proprietary documents available to authorized external parties.<sup>42</sup>

Department of Commerce (Commerce) published in the Federal Register a proposed rule and request for comments relating to a proposal to modify its regulations which define "factual information" and establish time limits for the submission of factual information in antidumping

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<sup>39</sup> OPIC Board Approves \$119.5 Million In Insurance To Improve Efficiency In Ghana's Agricultural Sector, September 14, 2012 At: <http://www.opic.gov/press-releases/2012/opic-board-approves-1195-million-insurance-improve-efficiency-ghanas-agricultura>

<sup>40</sup> OPIC Board Approves \$270 Million For Electricity Project In Jordan, September 17, 2012 At: <http://www.opic.gov/press-releases/2012/opic-board-approves-270-million-electricity-project-jordan>

<sup>41</sup> OPIC Board Approves \$250 Million For Renewable Energy/SME Lending In Turkey, September 26, 2012 At: <http://www.opic.gov/press-releases/2012/opic-board-approves-250-million-renewable-energy-sme-lending-turkey>

<sup>42</sup> International Trade Administration Improves Access To Trade Remedy Proceedings Documents, August 21, 2012 At: <http://trade.gov/press/press-releases/2012/international-trade-administration-improves-access-to-trade-remedy-proceedings-documents-082112.asp>

(AD) and countervailing duty (CVD) proceedings. Commerce states that the modifications to the definition of factual information, if adopted, will more clearly describe the types of information that can be submitted by a person or placed on the record by Commerce in a segment of a proceeding. The modifications to the time limits in which such information may be submitted or placed on the record, if adopted, will enable Commerce to determine what type of information is being submitted and whether it is timely filed, and to provide sufficient opportunity for Commerce to review submissions of factual information.

The trade remedies actions initiated by the US during the review quarter, have been highlighted below:

## **Anti-dumping**

(Preliminary findings)

Matter Involved	Countries concerned	Status of proceedings
Large residential washers and certain subassemblies	Korea, Mexico	<p>On July 30, 2012, the Department of Commerce announced its affirmative preliminary determinations and postponement of final determinations in the antidumping duty investigations of imports of large residential washers from Mexico and the Republic of Korea.</p> <p>Commerce is currently scheduled to make its final determination in December 2012.</p>
Large liquid dielectric power transformers having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete	Korea	<p>On July 3, 2012, the Department of Commerce announced its affirmative final determination in the antidumping duty investigation of imports of large power transformers from the Republic of Korea.</p>
Steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as	Vietnam	<p>On July 27, 2012, the Department of Commerce announced its affirmative preliminary determinations in the antidumping duty investigations of imports of steel wire garment hangers from Taiwan and the Socialist Republic of Vietnam.</p>

saddles or tubes		
Utility scale wind towers which are the steel towers that support the nacelle (an enclosure for an engine) and rotor blades for use in wind turbines that have electrical power generation capacities in excess of 100 kilowatts.	China and Vietnam	<p>On July 27, 2012, the Department of Commerce announced its affirmative preliminary determinations in the antidumping duty investigations of imports of utility scale wind towers from the People's Republic of China (China) and the Socialist Republic of Vietnam (Vietnam).</p> <p>Commerce is currently scheduled to make its final determination for China and Vietnam in December 2012.</p>

(Sun-set reviews)

Investigation details	Matter Involved	Countries concerned	Status of proceedings
731-TA-344 (Third Review)	Tapered Roller Bearings	China	On July 31, 2012, USITC determined that revoking the existing antidumping duty order on tapered roller bearings from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determination, the existing order on imports of this product from China will remain in place.
Inv. Nos. 731-TA-1202-1203 (P)	Imports of xanthan gum	Austria and China	On July 19, 2012, USITC determined that there is a reasonable indication that a U.S. industry is materially injured by reason of imports of xanthan gum from Austria and China that are allegedly sold in the United States at less than fair value. As a result of the Commission's affirmative determinations, the U.S. Department of Commerce will continue to conduct its investigations on imports of these products, with its preliminary antidumping duty determination due on or about November 12, 2012.
731-TA-678-679 and 681-682 (Third Review)	Stainless steel bar	Brazil, India, Japan, and Spain	The U.S. International Trade Commission determined that revoking the existing antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determination, the existing order on imports of this product from these countries will remain in place.
731-TA-921 (Second)	Folding gift boxes	China	The U.S. International Trade Commission voted to expedite its five-year sunset review concerning the antidumping duty order on folding gift boxes from China. As a result of this



Review			vote, the Commission will conduct an expedited review to determine whether revocation of this order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.
731-TA-709 (Third Review)	Certain seamless carbon and alloy steel standard, line, and pressure pipe	Germany	The U.S. International Trade Commission has voted to expedite its five-year sunset review concerning the antidumping duty order on certain seamless carbon and alloy steel standard, line, and pressure pipe from Germany. As a result of this vote, the Commission will conduct an expedited review to determine whether revocation of this order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.
701-TA-442-443 and 731-TA-1095-1097 (Review)	lined paper school supplies	India and China	On August 2, 2012, the U.S. International Trade Commission determined that revoking the existing countervailing duty order on certain lined paper school supplies from India and the existing antidumping duty orders on these products from China and India would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The USITC further determined that revoking the existing countervailing duty order and the existing antidumping duty order on these products from Indonesia would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determinations, the existing orders on imports of these products from China and India will remain in place. As a result of the Commission's negative determinations, the existing orders on imports of these products from Indonesia will be terminated. With respect to China, all six Commissioners voted in the affirmative. With respect to India and Indonesia, it was voted in the negative.
731-TA-1104 (Review)	Certain polyester staple fiber	China	During August 2012, the U.S. International Trade Commission has voted to expedite its five-year sunset review concerning the antidumping duty order on certain polyester staple fiber from China. As a result of this vote, the Commission will conduct an expedited review to determine whether revocation of this order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.
731-TA-702 (Third Review)	Ferrovandium and nitrated vanadium	Russia	During August, 2012, the U.S. International Trade Commission determined that revoking the existing antidumping order on ferrovandium and nitrated vanadium from Russia would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable

			time. As a result of the Commission's negative determination, the existing order on imports of these products from Russia will be terminated.
731-TA-1189 (Final)	large power transformers	Korea	During August, 2012, the United States International Trade Commission determined that a U.S. industry is materially injured by reason of imports of large power transformers from Korea that the U.S. Department of Commerce (Commerce) has determined are sold in the United States at less than fair value. As a result of the USITC's affirmative determination, Commerce will issue an antidumping duty order on imports of this product from Korea.
731-TA-709 (Third Review)	Certain seamless carbon and alloy steel standard, line, and pressure pipe	Germany	On August 21, 2012, the U.S. International Trade Commission, determined that revoking the existing antidumping duty order on certain seamless carbon and alloy steel standard, line, and pressure pipe from Germany would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determination, the existing order on imports of this product from Germany will remain in place.
731-TA-1104 (Review)	polyester staple fiber	China	On September 19, the U.S. International Trade Commission determined that revoking the existing antidumping duty order on polyester staple fiber from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determination, the existing order on imports of this product from China will remain in place.
731-TA-895 (Second Review)	pure magnesium (granular)	China	On September 12, 2012, the U.S. International Trade Commission determined that revoking the existing antidumping duty order on pure magnesium (granular) from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of the Commission's affirmative determination, the existing order on imports of this product from China will remain in place.
731-TA-894 (Second Review)	ammonium nitrate	Ukraine	On September 4, the U.S. International Trade Commission voted to conduct a full five-year sunset review concerning the antidumping duty order on ammonium nitrate from Ukraine. As a result of this vote, the Commission will conduct a full review to determine whether revocation of this order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

Section 337 reviews

Investigati on details	Matter Involved	Status of proceedings
Inv. No. 337-TA- 852	Certain video analytics software, components	<p>On July 26, 2012, USITC voted to institute an investigation of certain video analytics software, components thereof, and products containing same. The products at issue in this investigation are systems containing hardware and/or software for analyzing information from a video source to detect, classify, and track objects and generate outputs.</p> <p>The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of certain video analytics software, components thereof, and products containing same that infringe patents asserted by ObjectVideo, Inc. The complainant requests that the USITC issue an exclusion order and cease and desist orders.</p> <p>By instituting this investigation (337-TA-852), the USITC has not yet made any decision on the merits of the case. The USITC will make a final determination in the investigation at the earliest practicable time. Within 45 days after institution of the investigation, the USITC will set a target date for completing the investigation. USITC remedial orders in section 337 cases are effective when issued and become final 60 days after issuance unless disapproved for policy reasons by the U.S. Trade Representative within that 60-day period.</p>
337-TA- 853	certain wireless consumer electronics devices and components	<p>On August 21, 2012, the U.S. International Trade Commission voted to institute an investigation of certain wireless consumer electronics devices and components thereof. The products at issue in this investigation are consumer electronic devices with wireless capabilities, such as electronic tablets, smartphones, e-readers, mobile hotspots, broadband wireless modems, and handheld game consoles.</p> <p>The investigation is based on a complaint filed by Technology Properties Limited LLC and Phoenix Digital Solutions LLC of Cupertino, CA, and Patriot Scientific Corporation of Carlsbad, CA, on July 24, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of certain wireless consumer electronics devices and components thereof that infringe a patent asserted by the complainants. The complainants request that the USITC issue an exclusion order and cease and desist orders</p>
337-TA- 856	certain Apple iPhones, iPods, iPads,	<p>On September 18, the U.S. International Trade Commission voted to institute an investigation of certain wireless communication devices, portable music and data processing devices, computers, and components thereof. The products at issue in this investigation are certain Apple</p>

	<p>and Apple personal computers.</p>	<p>iPhones, iPods, iPads, and Apple personal computers.</p> <p>The investigation is based on a complaint filed by Motorola Mobility LLC of Libertyville, IL, Motorola Mobility Ireland of Bermuda, and Motorola Mobility International Limited of Bermuda, on August 17, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of certain wireless communication devices, portable music and data processing devices, computers, and components thereof that infringe patents asserted by the complainants. The complainants request that the USITC issue an exclusion order and a cease and desist order.</p> <p>The USITC has identified Apple Inc. of Cupertino, CA, as the respondent in this investigation.</p> <p>By instituting this investigation (337-TA-856), the USITC has not yet made any decision on the merits of the case. The USITC's Chief Administrative Law Judge will assign the case to one of the USITC's six administrative law judges (ALJ), who will schedule and hold an evidentiary hearing. The ALJ will make an initial determination as to whether there is a violation of section 337; that initial determination is subject to review by the Commission</p>
<p>337-TA-855</p>	<p>rare earth magnets, such as motors, audio speakers, headphones, cordless tools, computer hard drives, and golf ball markers.</p>	<p>On September 18, the U.S. International Trade Commission voted to institute an investigation of certain sintered rare earth magnets, methods of making same, and products containing same.</p> <p>The investigation is based on a complaint filed by Hitachi Metals, Ltd., of Japan, and Hitachi Metals North Carolina, Ltd., of China Grove, NC, on August 17, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of certain sintered rare earth magnets, methods of making same, and products containing same that infringe patents asserted by the complainants. The complainants request that the USITC issue an exclusion order and cease and desist orders</p>
<p>337-TA-854</p>		<p>On September 18, the U.S. International Trade Commission voted to institute an investigation of certain two-way global satellite communication devices, system and components thereof. The products at issue in this investigation are two-way satellite devices and systems that may be used to provide routine communications, tracking, emergency, and alerting functions for individuals anywhere in the world.</p> <p>The investigation is based on a complaint filed by BriarTek IP, Inc., of Alexandria, VA, on August 17, 2012 and supplemented on September 6, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States and sale of certain two-way global satellite communication devices, system, and components</p>

		<p>thereof that infringe a patent asserted by BriarTek IP. The complainant requests that the USITC issue an exclusion order and cease and desist orders.</p> <p>The USITC has identified the following as respondents in this investigation:</p> <p>DeLorme Publishing Company, Inc. of Yarmouth, ME; DeLormeInReach LLC of Yarmouth, ME; and Yellowbrick Tracking Ltd. of the United Kingdom.</p> <p>By instituting this investigation (337-TA-854), the USITC has not yet made any decision on the merits of the case. The USITC's Chief Administrative Law Judge will assign the case to one of the USITC's six administrative law judges (ALJ), who will schedule and hold an evidentiary hearing. The ALJ will make an initial determination as to whether there is a violation of section 337; that initial determination is subject to review by the Commission.</p> <p>The USITC will make a final determination in the investigation at the earliest practicable time. Within 45 days after institution of the investigation, the USITC will set a target date for completing the investigation. USITC remedial orders in section 337 cases are effective when issued and become final 60 days after issuance unless disapproved for policy reasons by the U.S. Trade Representative within that 60-day period.</p>
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### Countervailing Duty

Matter involved	Countries Concerned	Status of proceedings
stainless steel sinks	China	On July 31, 2012, the Department of Commerce (Commerce) announced its affirmative preliminary determination in the countervailing duty (CVD) investigation of imports of drawn stainless steel sinks from the People's Republic of China (China). Commerce is currently scheduled to make its final determination on October 15, 2012.

### **SPS measures**

During September 2012, the FDA warned its consumers against eating mangoes from Agricola Daniella, a mango supplier with multiple plantations and a single packing house located in Sinaloa, Mexico.

Testing by the FDA found Salmonella in mangoes from this producer. The FDA thereafter placed Agricola Daniella on Import Alert. This means that Agricola Daniella mangoes will be denied admission into the United States unless the importer shows they are not contaminated with Salmonella, such as by using private laboratories to test the mangoes.

The Centers for Disease Control and Prevention reported an outbreak of Salmonella Braenderup which has infected 105 people in 16 states. The California Department of Public Health traced several illnesses of the outbreak strain of Salmonella Braenderup through the supply chain to Agricola Daniella.<sup>43</sup>

### **TBT measures**

On July 9, 2012, the U.S. Food and Drug Administration approved a risk evaluation and mitigation strategy (REMS) for extended-release (ER) and long-acting (LA) opioids, highly potent drugs approved for moderate to severe, persistent pain that requires treatment for an extended period. The REMS is part of a federal initiative to address the prescription drug abuse, misuse, and overdose epidemic. The REMS introduces new safety measures designed to reduce risks and improve the safe use of ER/LA opioids, while ensuring access to needed medications for patients in pain.

The new ER/LA opioid REMS would affect more than 20 companies that manufacture these opioid analgesics. Under the new REMS, companies will be required to make education programs available to prescribers based on an FDA Blueprint. It is expected that companies will meet this obligation by providing educational grants to continuing education (CE) providers, who will develop and deliver the training. The REMS also will require companies to make available FDA-approved patient education materials on the safe use of these drugs. The companies will be required to perform periodic assessments of the implementation of the REMS and the success of the program in meeting its goals. The FDA will review these assessments and may require additional elements to achieve the goals of the program.<sup>44</sup>

### **III. MEASURES AFFECTING EXPORT/IMPORT**

#### **Tariffs**

On Sep 11, 2012, United States Trade Representative Ron Kirk announced the country-specific in-quota allocations under the tariff-rate quotas on imported raw cane sugar, refined and specialty sugar and sugar-containing products for Fiscal Year (FY) 2013 (Oct. 1, 2012 through Sept. 30, 2013).

Previously, on September 7, 2012, the Secretary of Agriculture announced sugar program provisions for FY 2013. The in-quota quantity for the tariff-rate quota on raw cane sugar for FY 2013 is 1,117,195 metric tons raw value (MTRV), which is the minimum amount to which the United States is committed under the World Trade Organization.

The Office of the United States Trade Representative is allocating the raw cane sugar TRQ of 1,117,195 MTRV to the following countries in the quantities specified below:

Country FY 2013- Raw Cane Sugar Allocations (MTRV)

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<sup>43</sup>FDA Warns Consumers Against Eating Mangoes From Agricola Daniella Of Mexico, September 14, 2012, At:<http://www.fda.gov/newsevents/newsroom/pressannouncements/ucm319464.htm>

<sup>44</sup>FDA Introduces New Safety Measures For Extended-Release And Long-Acting Opioid Medications, July 9, 2012 At:<http://www.fda.gov/newsevents/newsroom/pressannouncements/ucm310870.htm>

1. Argentina- 46,154
2. Australia- 89,087
3. Barbados- 7,513
4. Belize- 11,807
5. Bolivia- 8,587
6. Brazil- 155,634
7. Colombia- 25,760
8. Congo- 7,258
9. Costa Rica- 16,100
10. Cote d'Ivoire- 7,258
11. Dominican Republic- 188,908
12. Ecuador- 11,807
13. El Salvador- 27,907
14. Fiji- 9,660
15. Gabon- 7,258
16. Guatemala- 51,520
17. Guyana- 12,880
18. Haiti- 7,258
19. Honduras- 10,733
20. India- 8,587
21. Jamaica- 11,807
22. Madagascar- 7,258
23. Malawi- 10,733
24. Mauritius- 12,880
25. Mozambique- 13,953
26. Nicaragua- 22,540
27. Panama- 31,127
28. Papua New Guinea- 7,258
29. Paraguay- 7,258
30. Peru- 44,007
31. Philippines- 144,901
32. South Africa- 24,687
33. St. Kitts & Nevis- 7,258
34. Swaziland- 17,174
35. Thailand- 15,027
36. Trinidad & Tobago- 7,513
37. Uruguay- 7,258
38. Zimbabwe- 12,880

These allocations are based on each country's historical shipments to the United States. The allocations of the raw cane sugar TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin, and certificates for quota eligibility must accompany imports from any country to which an allocation is provided.

Imports of all specialty sugar will be administered on a first-come, first-served basis in five tranches. USDA has announced that the total quantity of specialty sugar will be the 1,656 MTRV consistent with our WTO commitment plus an additional 95,254 MTRV. The first tranche of 1,656 MTRV will open on October 12, 2012. All types of specialty sugars are eligible for entry under this tranche. The

second tranche of 35,245 MTRV will open on October 26, 2012. The third, fourth, and fifth tranches of 20,003 MTRV each will open on January 11, 2013; April 11, 2013; and July 11, 2013, respectively. The second, third, fourth, and fifth tranches will be reserved for organic sugar and other specialty sugars not currently produced commercially in the United States or reasonably available from domestic sources.

With respect to the in-quota quantity of 64,709 metric tons (MT) for the TRQ for imports of certain sugar-containing products maintained under Additional U.S. Note 8 to Chapter 17 to the Harmonized Tariff Schedule of the United States, USTR is allocating 59,250 MT to Canada. The remainder is available for other countries on a first-come, first-served basis.

Raw cane sugar, refined and specialty sugar and sugar-containing products for FY2013 TRQs may enter the United States as of October 1, 2012.<sup>45</sup>

### **Export Promotion**

On September 24, 2012, Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands and the District of Columbia received \$30 million total from the U.S. Small Business Administration in a second round of funding to support efforts to increase exporting by small businesses.

The State Trade and Export Promotion (STEP) initiative, launched last year under the Small Business Jobs Act, is aimed at achieving two goals: 1) increase the number of small businesses that want to export and 2) increase the value of exports for those small businesses that currently export.

The Small Business Jobs Act provided \$60 million for the STEP Program for use over a two-year period. STEP services are locally designed to meet the specific international trade development needs of state and local small business communities; therefore, they vary from state to state. In general, services include support for participation in foreign trade missions, foreign market sales trips, subscription to services provided by the Department of Commerce, website translation fees, design of international marketing media, trade show exhibitions, and participation in training workshops.<sup>46</sup>

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

### **Intellectual Property Rights**

(i) The round of TPP held in San Diego, USA has been crucial for key developments in the area of IPR in the TPP agreement. For the first time in any U.S. trade agreement, the United States is proposing a new provision, consistent with the internationally-recognized '3-step test', that will obligate Parties to seek to achieve an appropriate balance in their copyright systems in providing copyright exceptions and limitations for purposes such as criticism, comment, news reporting, teaching, scholarship, and research. The balance sought by the U.S. TPP proposal recognizes and promotes respect for the important interests of individuals, businesses, and institutions who rely on appropriate exceptions and limitations in the TPP region. This proposal has benefited from the input of a wide range of stakeholders, and we look forward to discussing it further and sharing more information as the TPP negotiations progress.

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<sup>45</sup> United States Trade Representative Ron Kirk Announces FY 2013 Tariff-Rate Quota Allocations For Raw Cane Sugar, Refined And Specialty Sugar And Sugar-Containing Products, Sep 11, 2012, USTR Press Release At: [Http://www.Ustr.Gov/Node/7747](http://www.ustr.gov/node/7747)

<sup>46</sup>State Trade Export Promotion Program To Begin Second STEP Round, September 24, 2012 At: [Http://www.Sba.Gov/About-Sba-Services/7367/313251](http://www.sba.gov/about-sba-services/7367/313251)



(ii) On September 24, 2012, United States Trade Representative Ron Kirk announced that Israel is being removed from the Special 301 Priority Watch List. Special 301 is a provision of U.S. trade law under which the Office of the U.S. Trade Representative identifies countries that deny adequate and effective protection for intellectual property rights with the objective of improving protection of IPR.

Israel's removal from the list is based on steps it has taken under a Memorandum of Understanding between the United States and Israel signed in 2010. Under the MOU, both governments agreed that Israel would introduce three laws to the Knesset to improve the country's pharmaceutical patent regime. Israel has now introduced these laws, so the United States is moving Israel from the Priority Watch List to the Watch List. As called for in the MOU, the United States will remove Israel from the Special 301 Watch List once the three laws are enacted.

Under the Special 301 provisions, countries that have the most onerous or egregious acts, policies, or practices, which have the greatest adverse impact on relevant U.S. products must be designated as "Priority Foreign Countries." In addition to this category of countries, USTR has created a "Priority Watch List" and a "Watch List to help monitor IPR and market access conditions in other countries." Placement of a trading partner on the Priority Watch List or the Watch List indicates that particular problems exist in that country with respect to IPR protection, or enforcement, or market access for persons relying on IPR. The change of a trading partner's status from Priority Watch List to Watch List signifies that the partner has made progress towards resolving problems that exist with respect these issues.<sup>47</sup>

## Taxation

On September 14, 2012, the U.S. Department of the Treasury announced that it has signed a bilateral agreement with the United Kingdom to implement the information reporting and withholding tax provisions commonly known as the Foreign Account Tax Compliance Act (FATCA). Enacted by Congress in 2010, these provisions target non-compliance by U.S. taxpayers using foreign accounts. The bilateral agreement signed is based on the model published in July of this year and developed in consultation with France, Germany, Italy, Spain, and the United Kingdom and marks an important step in establishing a common approach to combatting tax evasion based on the automatic exchange of information.

"Today's announcement marks a significant step forward in our efforts to work collaboratively to combat offshore tax evasion," said Treasury Assistant Secretary for Tax Policy Mark Mazur. "We are pleased that the United Kingdom, one of our closest allies, is the first jurisdiction to sign a bilateral agreement with us and we look forward to quickly concluding agreements based on this model with other jurisdictions."

The Treasury Department is in communication with several other governments who have expressed interest in concluding a similar bilateral agreement to implement FATCA and expects to sign

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<sup>47</sup> United States Trade Representative Ron Kirk Announces Removal Of Israel From Intellectual Property Rights Priority Watch List, September 24, 2012, USTR Press Release At: <http://www.ustr.gov/about-us/press-office/press-releases/2012/September/ustr-announces-removal-israel-ipr-priority-watch-list>

additional bilateral agreements in the near future. The Treasury Department and the IRS also are continuing to work towards finalizing the regulations implementing FATCA in the near term.<sup>48</sup>

## V. TRADE POLICY BY SECTOR

### Agriculture

(i) During July, 2012, as part of the President Obama Administration's commitment to deploying every available source of American energy and reducing our reliance on imported oil, U.S. Secretary of the Navy Ray Mabus, Secretary of Agriculture Tom Vilsack and Secretary of Energy Steven Chu announced new funding available to pursue new innovations in biofuels technologies, increase production of U.S. biofuels, and strengthen American energy security. The U.S. Department of Agriculture (USDA), Navy and Department of Energy announced \$30 million in federal funding to match private investments in commercial-scale advanced drop-in biofuels. The Energy Department also announced a total of \$32 million in new investments for earlier stage research that will continue to drive technological breakthroughs and additional cost reductions in the industry.

In his 'Blueprint for a Secure Energy Future' released in March 2011, President Obama had set a goal of reducing oil imports by one-third by 2025 and laid out an all-of-the-above energy plan to achieve that goal by developing domestic oil and gas energy resources, increasing energy efficiency, and speeding development of biofuels and other alternatives. As part of that effort, the Blueprint directed the Navy, USDA and DOE to collaborate to support commercialization of 'drop-in' biofuel substitutes for diesel and jet fuel. Competitively-priced drop-in biofuels would help improve America's energy security, meeting the fuel needs of U.S. armed forces, as well as the commercial aviation and shipping sectors. The announcement of an available \$30 million in funding builds on that commitment, helping to speed the development of biofuels for military and commercial transportation that will reduce the need for foreign oil and strengthen rural America.

Made possible through the Defense Production Act (DPA), this funding opportunity enhances national security by supporting the creation and commercial viability of a defense-critical domestic biofuels industry to advance alternatives to petroleum.<sup>49</sup>

(ii) On July 5, 2012, Agriculture Secretary Tom Vilsack welcomed the Codex Alimentarius Commission's adoption of standards for the veterinary drug ractopamine. He stated that establishment of international standards for veterinary drugs like ractopamine are important since many countries rely on science-based food standards to ensure that the food they are importing is safe. U.S. agricultural exporters benefit and consumers worldwide benefit when countries adopt

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<sup>48</sup> Treasury, United Kingdom Sign Bilateral Agreement To Improve Tax Compliance, Combat Offshore Tax Evasion And Implement FATCA, September 14, 2012 At: <http://www.treasury.gov/press-center/press-releases/Pages/Tg1711.aspx>

<sup>49</sup>Obama Administration Announces New Investments To Advance Biofuels Industry And Enhance America's Energy Security, July 2, 2012 At: [http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/07/0217.Xml&Navid=NEWS\\_RELEASE&Navtype=RT&Parentnav=LATEST\\_RELEASES&Edeployment\\_Action=Retrievecontent](http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/07/0217.Xml&Navid=NEWS_RELEASE&Navtype=RT&Parentnav=LATEST_RELEASES&Edeployment_Action=Retrievecontent)

international standards. To quote:“Currently, American producers face trade restrictions due to unjustified bans on the use of ractopamine, which has been approved by the U.S. Food and Drug Administration and used safely in the United States for 12 years as well as 25 other countries. These standards provide clear guidance to countries about safe use of ractopamine, which promotes lean meat production”.<sup>50</sup>

(iii) On July 12, 2012, Agriculture Secretary Tom Vilsack formally recognized the House Agriculture Committee's approval of the Food Farm and Jobs Bill. He stated that the bill reforms the safety net for producers in times of need, promotes the bio-based economy, conserves our natural resources, strengthens rural communities, promotes job growth in rural America, and supports food assistance to low-income families. However, the bill produced by the House Agriculture Committee contains deep cuts in SNAP, including a provision that will deny much-needed food assistance to 3 million Americans, mostly low-income working families with children as well as seniors. He stated that as the legislative process moves forward, the Administration will continue to seek policy solutions and savings across the Farm Bill that are consistent with the President's Budget.<sup>51</sup>

(iv) On July 27, 2012, Agriculture Secretary Tom Vilsack announced payments for 125 advanced Biofuel producers across the country to support the production and expansion of advanced biofuels from a wide variety of non-food sources, including waste products. The funding is being provided through USDA's Bioenergy Program for Advanced Biofuels, which was established in the 2008 Farm Bill. Under this program, payments are made to eligible producers based on the amount of biofuels a recipient produces from renewable biomass, other than corn kernel starch. Examples of eligible feedstocks include but are not limited to: crop residue; animal, food and yard waste material; vegetable oil; and animal fat. Through this and other programs, USDA is working to support the research, investment and infrastructure necessary to build a biofuels industry that creates jobs and broadens the range of feedstocks used to produce renewable fuel.<sup>52</sup>

## Energy Security

(i) As part of the Obama Administration's all-of-the-above strategy to enhance U.S. energy security, reduce America's reliance on imported oil and leverage our domestic energy supply, while also supporting rural economies, the U.S. Departments of Agriculture and Energy today announced a \$41 million investment in 13 projects that will drive more efficient biofuels production and feedstock improvements.

Through the joint Biomass Research and Development Initiative (BRDI), USDA and the Energy Department are working to develop economically and environmentally sustainable sources of

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<sup>50</sup> Statement From Agriculture Secretary Vilsack On The Codex Alimentarius Commission's Adoption Of Standards For The Veterinary Drug Ractopamine, July 6, 2012 At: [http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/07/0222.Xml&Navid=NEWS\\_RELEASE&Navtype=RT&Parentnav=LATEST\\_RELEASES&Edeployment\\_Action=Retrievecontent](http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/07/0222.Xml&Navid=NEWS_RELEASE&Navtype=RT&Parentnav=LATEST_RELEASES&Edeployment_Action=Retrievecontent)

<sup>51</sup> Statement From Agriculture Secretary Vilsack On The House Agriculture Committee's Approval Of The Food Farm And Jobs Bill, July 12, 2012 At: [http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/07/0232.Xml&Navid=NEWS\\_RELEASE&Navtype=RT&Parentnav=LATEST\\_RELEASES&Edeployment\\_Action=Retrievecontent](http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/07/0232.Xml&Navid=NEWS_RELEASE&Navtype=RT&Parentnav=LATEST_RELEASES&Edeployment_Action=Retrievecontent)

<sup>52</sup> Agriculture Secretary Vilsack Announces Support For Producers To Grow Renewable Feedstocks For Advanced Biofuels, July 27, 2012 At: [http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/07/0254.Xml&Navid=NEWS\\_RELEASE&Navtype=RT&Parentnav=LATEST\\_RELEASES&Edeployment\\_Action=Retrievecontent](http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/07/0254.Xml&Navid=NEWS_RELEASE&Navtype=RT&Parentnav=LATEST_RELEASES&Edeployment_Action=Retrievecontent)

renewable biomass and increase the availability of renewable fuels and biobased products. The five projects announced would help to diversify the nation's energy portfolio and replace the need for gasoline and diesel in vehicles.

The Energy Department and USDA also announced \$10 million for eight research projects aimed at applying biomass genomics to improve promising biofuel feedstocks and drive more efficient, cost-effective energy production. These projects will use genetic mapping to advance sustainable biofuels production by analyzing and seeking to maximize genetic traits like feedstock durability, how tolerant feedstocks are to various environmental stresses, and the potential for feedstocks to be used in energy production.<sup>53</sup>

(ii) On August 22, 2012, Agriculture Secretary Tom Vilsack announced a loan guarantee to Chemtex International, Inc., (Chemtex), to construct a 20 million gallon per year cellulosic ethanol refinery in Sampson County in eastern North Carolina. The project, a first-of-its-kind commercial facility in the mid Atlantic region, will help reduce the nation's dependence on foreign oil, increase farm income, and create jobs in the region. Once operational, the facility is expected to convert 600,000 tons of energy grasses per year into an estimated 20 million gallons of cellulosic ethanol (advanced biofuel) using a proprietary enzymatic hydrolysis process. The plant will produce biofuel for eastern transportation markets using non-food biomass feedstocks. USDA, through its Rural Development Biorefinery Assistance Program (Section 9003 of the 2008 Farm Bill), approved a \$99 million, 80 percent loan guarantee to finance the project. The loan guarantee approval is subject to conditions that Chemtex must meet prior to closing of the loan.

The Biorefinery Assistance Program (Section 9003 of the 2008 Farm Bill), administered by Rural Development's Rural Business and Cooperative Service, is designed to financially assist with the commercial deployment of production technologies to produce advanced biofuels, and thereby increase the energy independence of the United States; promote resource conservation, public health, and the environment; diversify markets for agricultural and forestry products and agriculture waste material; create jobs and enhance the economic development of the rural economy.<sup>54</sup>

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<sup>53</sup>Agriculture And Energy Departments Announce New Investments To Drive Innovations In Biofuels And Biobased Products, July 25, 2012 At: [Http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/07/0251.Xml&Navid=NEWS\\_RELEASE&Navtype=RT&Parentnav=LATEST\\_RELEASES&Edeployment\\_Action=Retrievecontent](http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/07/0251.Xml&Navid=NEWS_RELEASE&Navtype=RT&Parentnav=LATEST_RELEASES&Edeployment_Action=Retrievecontent)

<sup>54</sup>USDA Guarantees Loan To Support Development Of Advanced Biofuels Production From Energy Grasses, August 22, 2012, At: [Http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/08/0280.Xml&Navid=NEWS\\_RELEASE&Navtype=RT&Parentnav=LATEST\\_RELEASES&Edeployment\\_Action=Retrievecontent](http://www.usda.gov/Wps/Portal/Usda/Usdahome?Contentid=2012/08/0280.Xml&Navid=NEWS_RELEASE&Navtype=RT&Parentnav=LATEST_RELEASES&Edeployment_Action=Retrievecontent)

WTO DISPUTE SETTLEMENT UPDATES

Consultations

Consulting Nations	Date	Violations Alleged	Agreements Covered
United States	September 17, 2012	<p>On 17 September 2012, the United States requested consultations with China concerning certain measures providing subsidies in the form of grants, loans, forgone government revenue, the provision of goods and services, and other incentives contingent upon export performance to automobile and automobile-parts enterprises in China.</p> <p>On 28 September 2012, the European Union requested to join the consultations. Subsequently, China informed the DSB that it had accepted the request of the European Union to join the consultations.</p>	<p>GATT 1994: Art. XVI:1; Subsidies and Countervailing Measures: Art. 25.1, 25.2, 25.3, 25.4 Protocol of Accession: Part I, para. 1.2.</p>
Argentina	September 3, 2012	<p>On 3 September 2012, Argentina requested consultations with the United States concerning certain measures affecting the importation of fresh lemons from the Northwest region of Argentina.</p> <p>The specific measures challenged by Argentina:</p> <p>(i) a series of US measures allegedly maintained for the past 11 years, which Argentina argues constitute an import prohibition on citrus fruits affecting fresh lemons originating in the Northwest region of Argentina;</p> <p>(ii) the United States' failure to grant approval for the importation of fresh lemons from the Northwest region of Argentina; and</p> <p>(iii) alleged undue delays in the approval procedures for the importation of fresh lemons from the Northwest region of Argentina.</p>	<p>Argentina claims that the challenged measures appear to be inconsistent with:</p> <p>Articles I:1, III:4, X:1, X:3 and XI:1 of the GATT 1994;</p> <p>Articles 1.1, 2.2, 2.3, 3.1, 3.3, 5.1, 5.2, 5.4, 5.6 and 7, Annex B, 8, Annex C and Article 10.1 of the SPS Agreement;</p> <p>Article XVI:4 of the WTO Agreement.</p>
United States	August 21, 2012	<p>On 21 August 2012, the United States requested consultations with Argentina concerning certain measures imposed by Argentina on the importation of goods.</p> <p>The United States challenges: (i) the requirement</p>	<p>The United States claims that the challenged measures appear to be inconsistent</p>

		<p>to present for approval of a non-automatic import licence: Declaración Jurada Anticipada de Importación (DJAI); (ii) non-automatic licences required in the form of Certificados de Importación (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.</p> <p>On 24 August 2012, Mexico requested to join the consultations. On 29 August 2012, Turkey requested to join the consultations. On 30 August 2012, the European Union and Guatemala requested to join the consultations. On 31 August 2012, Australia, Canada and Japan requested to join the consultations. Subsequently, Argentina informed the DSB that it had accepted the requests of Australia, Canada, the European Union, Guatemala, Japan, Mexico and Turkey to join the consultations. On 6 December 2012, the United States requested the establishment of a panel. At its meeting on 17 December 2012, the DSB deferred the establishment of a panel.</p>	<p>with:</p> <p>Articles III:4, X:1, X:2, X:3(a) and XI:1 of the GATT 1994;</p> <p>Article 2 of the TRIMs Agreement;</p> <p>Articles 1.2, 1.3, 1.4, 3.2, 3.3, 3.4, 3.5, 5.1, 5.2, 5.3 and 5.4 of the Agreement on Import Licensing Procedures; and</p> <p>Article 11 of the Safeguards Agreement.</p>
Argentina	August 30, 2012	<p>On 30 August 2012, Argentina requested consultations with the United States concerning certain measures affecting the importation of animals, meat and other animal products from Argentina.</p> <p>The specific measures challenged by Argentina are:</p> <p>(i) the import prohibition of fresh (chilled or frozen) beef from Argentina embodied in the interim and final rule of the Animal and Plant Health Inspection Service (APHIS), which amend the regulations of the Code of Federal Regulations (CFR);</p> <p>(ii) the failure to recognize certain areas of Argentina's territory as free of foot-and-mouth</p>	<p>Argentina claims that the challenged measures appear to be inconsistent with:</p> <p>Articles I:1, III:4 and XI:1 of the GATT 1994;</p> <p>Articles 1.1, 2.2, 2.3, 3.1, 3.3, 5.1, 5.2, 5.4, 5.6, 6.1, 6.2, 8 and Annex C.1, and Article 10.1 of the SPS</p>

		<p>disease embodied in the APHIS Policy Regarding Importation of Animals and Animal Products; and</p> <p>(iii) alleged undue delays in recognizing the animal health status of a region or in granting approval to export animals or animal products from that region with both types of delay occurring under procedures embodied in the US Code of Federal Regulations (CFR); and additional conditions on importation allegedly imposed by Section 737 of the Omnibus Act 2009.</p> <p>On 6 December 2012, Argentina requested the establishment of a panel. At its meeting on 17 December 2012, the DSB deferred the establishment of a panel.</p>	<p>Agreement; and</p> <p>Article XVI:4 of the WTO Agreement.</p>
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**Panel established (not yet composed)**

<b>Consulting Nations</b>	<b>Date</b>	<b>Violations Alleged</b>	<b>Agreements Covered</b>
China	September 17, 2012	<p>On 17 September 2012, China requested consultations with the United States concerning the following measures:</p> <p>a new piece of legislation (Public Law 112-99) that explicitly allows for the application of countervailing measures to non-market economy countries;</p> <p>(ii) countervailing duty determinations or actions made or performed by US authorities between 20 November 2006 and 13 March 2012 in respect of Chinese products;</p> <p>(iii) 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>(iv) the United States' failure to provide the US Department of Commerce (USDOC) with legal authority to identify and avoid the double remedies in respect of investigations or reviews</p>	<p>China considers that these measures are inconsistent with:</p> <p>Articles 10, 15, 19, 21 and 32 of the SCM Agreement;</p> <p>Articles VI, X:1, X:2 and X:3 of the GATT 1994; and</p> <p>Articles 9 and 11 of the Anti-Dumping Agreement.</p>

		<p>initiated on or between 20 November 2006 and 13 March 2012.</p> <p>At its meeting on 17 December 2012, the DSB established a panel. Australia, Canada, the European Union, Japan, Turkey and Viet Nam reserved their third party rights.</p>	
United States	July 5, 2012	<p>On 5 July 2012, the United States requested consultations with China with regard to Notice No. 20 [2011] and Notice No. 84 [2011] of the Ministry of Commerce of the People's Republic of China ("MOFCOM") imposing anti-dumping and countervailing duties on certain automobiles from the United States, including any and all annexes.</p> <p>On 17 September 2012, the United States requested the establishment of a panel. At its meeting on 28 September 2012, the DSB deferred the establishment of a panel.</p> <p>At its meeting on 23 October 2012, the DSB established a panel. Colombia, the European Union, India, Japan, Korea, Oman, Saudi Arabia and Turkey reserved their third party rights.</p>	<p>The United States alleges that these measures appear to be inconsistent with:</p> <p>Articles 1, 3.1, 3.2, 3.4, 3.5, 4.1, 5.3, 5.4, 6.2, 6.5.1, 6.8 (including Annex II, paragraph 1), 6.9, 12.2, and 12.2.2 of the Anti-Dumping Agreement;</p> <p>Articles 10, 11.3, 11.4, 12.4.1, 12.7, 12.8, 15.1, 15.2, 15.4, 15.5, 16.1 22.3, and 22.5 of the SCM Agreement; and</p> <p>Article VI of the GATT 1994.</p>

## Other updates

(i) On June 29, 2012, United States Trade Representative Ron Kirk issued the following statement in response to the World Trade Organization Appellate Body's ruling today in the country of origin labeling (COOL) dispute between the United States and Canada and Mexico:

*"We are pleased with today's ruling, which affirmed the United States' right to adopt labeling requirements that provide information to American consumers about the meat they buy," said Ambassador Kirk. "The Appellate*



*Body's ruling confirms that families can still receive information on the origin of their meat and other food products when they shop for groceries. The Obama Administration remains committed to ensuring that information on the origin of all food products covered by COOL is available to American families so they can make informed purchasing decisions.*

*"We are also pleased that the Appellate Body overturned the initial finding that COOL is more trade restrictive than necessary to provide consumers with valuable information on the food they buy," Ambassador Kirk added. "In doing so, the Appellate Body agreed with the United States and declined to accept any of the alternatives that Canada and Mexico claimed we should have used instead."*<sup>55</sup>

This statement comes in the light of the fact that, the Appellate Body continued to find fault with certain aspects of COOL's design. Due to COOL's recordkeeping and verification requirements, it upheld the Panel's finding that COOL provides less favorable treatment to Canadian and Mexican cattle and hogs than American livestock.

(ii) On July 16, 2012, United States Trade Representative Ron Kirk announced that the United States has prevailed in a World Trade Organization dispute regarding China's pervasive discrimination against U.S. suppliers of electronic payment services.

*"This decision will help U.S. companies and increase American jobs as a more efficient credit and debit payment system in China enables consumers to buy more goods, including quality, made-in-America products," said Ambassador Kirk. "The WTO panel agrees that China's pervasive and discriminatory measures deny a level playing field to American service providers, which are world leaders in this sector. The panel also found that China has entrenched the market dominance of its own company, China Union Pay (CUP), and distorted competition in China to the detriment of U.S. providers. Open financial services markets are critical, and China should honor its WTO commitments and eliminate this discrimination."*

Electronic payment services (EPS) are vital to facilitating commerce in any modern economy and are familiar to any consumer. EPS are what make possible payments using credit, debit, prepaid, and other payment cards. EPS enable, facilitate and manage the flow of information and the transfer of funds from cardholders' banks to merchants' banks. Most of the world's top providers of electronic payment services for credit and debit card transactions are headquartered in the United States. By industry estimates, the U.S. stands to gain 6,000 jobs related to EPS.

Each year well over one \$1 trillion worth of electronic payment card transactions are processed in China. China's regulator of EPS, the People's Bank of China, issued a series of measures – dating back to 2001 – that discriminate against foreign suppliers of EPS at every stage of a payment card transaction. China's measures impose requirements on institutions in China that issue payment cards, on all point-of-sale terminal and payment card processing equipment in China, and on the

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<sup>55</sup>Appellate Body Affirms American Consumers' Rights To Information About Groceries, USTR Press Release, June 29, 2012, At: <http://www.ustr.gov/about-us/press-office/blog/2012/june/appellate-body-affirms-consumers-rights-to-grocery-information>

institutions in China that have the relationship with the EPS supplier and handle payment card transactions for Chinese merchants.<sup>56</sup>

(iii) During the review quarter, US took steps to comply by the US-EU aircraft dispute. The United States has withdrawn the subsidy or removed the adverse effects with respect to each of the subsidies found to be inconsistent with Article 5(c) of the SCM Agreement: payments and access to facilities, equipment, and employees provided under NASA procurement contracts, payment and access to facilities provided pursuant to DoD assistance instruments, the FSC/ETI measures, B&O tax rate reductions, and IRB subsidies. The United States notes that this holds true with regard to all of the Boeing aircraft covered by the DSB recommendations and rulings, namely the Boeing 737 and 787, as well as the Airbus aircraft with respect to which the adverse effects existed, namely, the A320, A330, and Original A350.<sup>57</sup>

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<sup>56</sup> United States Wins Electronic Payment Services Dispute With China, USTR Press Release, July 16, 2012, At: [Http://Www.Ustr.Gov/About-Us/Press-Office/Press-Releases/2012/July/Us-Wins-Services-Dispute-With-China](http://www.ustr.gov/about-us/press-office/press-releases/2012/july/us-wins-services-dispute-with-china)

<sup>57</sup>Available at: [Http://Www.Ustr.Gov/Webfm\\_Send/3546](http://www.ustr.gov/webfm_send/3546)