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SEPTEMBER 2006

Japan External Trade Organization
WTO and Regional Trade Agreements Monthly Report

IN THIS ISSUE

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice.

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Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Summary of Reports

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Russia's Accession to the WTO and U.S. Policy

We provide the current status of U.S. policy toward Russia's accession to the World Trade Organization (WTO).

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Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

- Senators Baucus, Smith Urge Administration to Push for Vietnam PNTR Vote
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Free Trade Agreements

CAF X Conferees: United States Must Renew ATPDEA; No Timeframe For Passage of Peruvian and Colombian FTAs

On September 7-8, 2006, the Corporación Andina de Fomento (CAF),[1] the Organization of American States (OAS), and the Inter-American Dialogue hosted the CAF X Annual Conference on Trade and Investment in the Americas. The conference addressed U.S.-Latin America relations, current investment trends in Latin America, prospects of renewal of the Andean Trade Promotion and Drug Eradication Act (ATPDEA) and passage of the U.S.-Peru and U.S.-Colombia Free Trade Agreements (FTAs). Speakers included, among others, U.S. Assistant Secretary of State for Western Hemisphere Affairs at the Department of State Thomas Shannon, U.S. Treasury Department Deputy Assistant Secretary for Eurasia and Latin America Nancy Lee, Rep. Jim Kolbe (R-AZ), and Jose Manuel Insulza, Secretary General of the OAS.

We review hexre the key points raised by U.S. and Andean trade representatives from separate presentations made on September 7, 2006.

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[1] The CAF is a multilateral financial institution that promotes regional integration and sustainable development through a variety of financial instruments (*e.g.*, short, medium-term loans, guarantees, equity investments, treasury products, and technical cooperation) in benefit of its shareholder countries: Bolivia, Colombia, Ecuador, Peru, Venezuela, Argentina, Brazil, Chile, Costa Rica, Spain, Jamaica, Mexico, Panama, Paraguay, Dominican Republic, Trinidad & Tobago, and Uruguay.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Free Trade Agreements Highlights

We want to alert you to the following Free Trade Agreements developments:

- U.S.-Malaysia FTA Third Round Postponed Until October: Can USTR Complete Asia FTAs n Time?
- Senate Approves Oman FTA Leaving President Free To Sign Agreement Into Law
- United States Signs TIFA with Mauritius
- Congress Approves U.S.-Uruguay BIT, Will Enter Into Force Shortly
- U.S. and Kuwait to Discuss “Longer-Term” FTA

Multilateral

Managing the Challenges of WTO Participation: 45 Case Studies

This report examines the World Trade Organization’s (WTO) Dispute Settlement mechanisms, treaties, and objectives. The report summarizes the WTO’s “Managing the Challenges of WTO Participation: 45 Case Studies,” which explores forty-five case studies from WTO Member economies. The case studies illustrate how governments, businesses and civil society participate at the WTO.

The compilation documents disparate experiences among economies in addressing the challenges of WTO participation and demonstrates that the organization of Member governments and their private-sector stakeholders strongly influences a Member’s success or failure. The contributors, mainly from developing countries, give examples of participation with lessons for other WTO Members and show that when the system is accessed and employed effectively, it can “serve the interests of poor and rich countries alike.” However, as several of the case studies demonstrate, a failure to communicate among interested parties at home often contributes to negative outcomes on the international front. The paper concludes that “above all, these case studies demonstrate that the WTO creates a framework within which sovereign decision-making can unleash important opportunities or undermine the potential benefits flowing from a rules-based international environment that promotes open trade.”

Doha Update: G-20 Meeting Produces Nothing as Players Indicate Flexibility, Desire to Complete the Round

On September 9–10, 2006, trade ministers and senior officials from the Group of 20 (G-20) developing countries met in Rio de Janeiro, Brazil, to discuss resumption of the stalled World Trade Organization (WTO) Doha Round. During the second day of meetings, WTO Director General Pascal Lamy and trade

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

officials from the United States, the EU and Japan also met with the G-20 to establish a timeframe for concluding the negotiations but were unable to produce a clear schedule for the resumption of formal talks. We review here the results of the G-20 meeting, WTO Members' positions on the Doha Round, and next steps.

Multilateral Highlights

We want to alert you to the Multilateral developments:

- China Blocks Panel Request on Auto Tariffs, U.S. Also Blocks Thai Request on Shrimp
- EU Requests New Consultations with United States on Zeroing Methodology
- Cairns Group Meeting Establishes Work Program; WTO DG Lamy: Mid-November to Mid-March is "Crucial Window" for Doha Round
- U.S. Releases List of Problem Areas During WTO China Transitional Review; Complaints Focus on Books, Coke and Fertilizer
- United States Faces Two More Potential WTO Panels: Shrimp and Cotton
- U.S., EU and Canada Request WTO Dispute Settlement Panel in China Auto Parts Case
- Mexico Takes First Step in Initiating WTO Compliance Panel on Latest U.S. OCTG Ruling
- U.S. Blocks Brazil's Request for Cotton Dispute Panel

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Reports in Detail

United States

Russia's Accession to the WTO and U.S. Policy

We provide below the current status of U.S. policy toward Russia's accession to the World Trade Organization (WTO).

I. Background: Accession to the WTO

Accession to the WTO involves negotiations between the acceding country and current WTO members at both the bilateral and multilateral level. The process begins with multilateral negotiations and the establishment of a "working party," comprised of any interested current WTO Members. The acceding country must provide information to the group about its trade and economic policies that are relevant to the WTO. Once the working party has established the basic terms of WTO membership, bilateral negotiations between individual member states and the acceding government begin. The bilateral agreements reached provide either specific commitments or provisions based on the needs and interests of the negotiating Member, in addition to the basic terms of the multilateral agreement. Once all member states have concluded bilateral agreements, the most ambitious terms of each agreement are folded into the multilateral agreement and applied equally to all member states under the non-discrimination principle. This process can take years: China's accession took fifteen years, and Russia's accession process is at thirteen years (and counting).

The U.S. Congress can, however, affect a country's WTO accession in two ways. First, Section 1106 of the Omnibus Trade and Competitiveness Act of 1988 requires the President, when considering the WTO accession of countries like Russia, to negotiate an agreement addressing the operations of the country's state trading enterprises (STEs) when such companies might adversely affect U.S. economic interests. In this agreement, the acceding country commits that its STEs will act according to "commercial considerations" and will not discriminate against U.S. firms. However, if the President fails to complete the agreement, the United States will withhold the application of the WTO Agreement to the acceding country until Congress passes a law granting such treatment.

Second, the United States must grant Permanent Normal Trade Relations to an acceding country that lack PNTR status. PNTR would grant the acceding country the same rights and access to U.S. markets the United States already gives to current WTO member states. Countries like Russia lack PNTR

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

because the "Jackson-Vanik" provisions of U.S. law (19 U.S.C. § 2431) mandates that former Soviet nations be given only conditional access to the U.S. market, to be renewed by Congress annually. Most recently, Vietnam has sought WTO membership. The United States and Vietnam concluded a bilateral treaty on May 31, 2006, and both the Senate and the House introduced bills extending PNTR on June 13. On July 12, the Senate Finance Committee began hearings on granting PNTR status to Vietnam.

II. Analysis of Current Issues in the United States-Russia Dialogue

A. Latest Negotiations and Positions

Despite intensive high-level negotiations in the days leading up to the July 15-17 G-8 Summit, Russia and the United States did not reach an agreement on Russia's accession to the WTO. Prior to the summit, both U.S. and Russian officials asserted an interest in concluding the bilateral agreement between the two nations. Speaking with journalists on July 10, 2006, President Bush expressed optimism that the countries would reach a deal by the start of the summit, stating, "I do believe it's in our country's interest to have Russia as a member of the WTO." He continued, "So hopefully we can get it done. I'm optimistic about it." Optimism faded by the early hours of July 15 when talks broke off over a continued impasse on imports of American pork and beef. President Bush asserted on July 15, however, that news reports had inflated expectations.

United States Trade Representative (USTR) Susan Schwab flew to Moscow for talks on July 12 and 13, indicating a deal might be forthcoming, but officials from her office stated the United States would only reach an agreement if "the terms are right"; spokesman Sean Spicer said, "We are doing everything we can to move this forward, but we do not have a deal." Russian news sources reported on July 13, however, that an agreement had been reached and was slated for signature on July 14. In separate remarks by both Russian Finance Minister Alexei Kudrin and Minister of Economic Development and Trade, German Gref, Russian news sources reported that the United States had relinquished demands that foreign banks be allowed to open branches in Russia, and that Russia take a tougher stance on intellectual property violations. Kudrin expressed his "hope that a protocol will be signed before the G8, tomorrow or the day after." In exchange, Russia agreed to liberalize its insurance market and reduce agricultural subsidies. A Russian trade negotiator, however, told Reuters, "The experts have worked out a compromise formula, but it is now up to the political leaders. [In that respect] nothing has changed."

Russian President Vladimir Putin stated on July 4, 2006, that Russia would not uphold its voluntary agreement to abide by global trade rules if it failed to reach an accord with the United States. Observers described Putin's statement as part of a strategy to put pressure on the United States to reach an

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

agreement before the July summit. Analysts further suggested a connection between Russia's accession to the WTO and its expected announcement of plans to begin developing the Shtokman gas field and to select oil companies as partners for this project during or after the summit. Following the collapse of talks, Russia's state-owned oil company Gazprom said it would delay announcing its partners. Officials from both countries deny a connection between the Shtokman deal and the failure to reach an accession agreement. Two American companies are being considered as partners in the gas field venture: ConocoPhilips and Chevron.

B. Remaining Obstacles

In the days leading up to the summit, access to Russian markets for agricultural products and IPR protections were the remaining obstacles to Russia's accession, according to President Bush in his July 11 statements to reporters. USTR Schwab said on July 15 that "incredible progress" had been made in obtaining commitments from Russia on IPR enforcement, but that Russian bans on U.S. pork and beef imports remained sticking points. U.S. exports of pork and beef alone are worth billions of dollars annually. Additional issues, however, have hindered U.S.-Russian agreement over the course of negotiations, particularly, the liberalization of the Russian financial sector and access to energy markets. Political concerns unrelated to trade, such as human rights concerns, have also served as obstacles to a final agreement.

Agricultural Market Access

Congress has indicated barriers to U.S. agricultural products are a major concern. In their July 11 letter, Senate Democrats cited "Russia's non-transparent and non-science based sanitary and phytosanitary (SPS) measures have had a 'major negative' effect on U.S. farmers and ranchers." The current impasse over imports of U.S. pork and beef stems from Russia's refusal to increase imports prior to a review of the U.S. food inspection process, scheduled for completion in October. The long-running dispute over imports of frozen chicken legs continues to plague negotiations, as well. Russian authorities banned the chicken imports citing health concerns in 1998, imposed quotas on poultry, and effectively banned poultry in April 2006 by requiring import licenses. Moreover, Russia's imposition of a sanitary certification requirement on furniture and Styrofoam cups, normally reserved only for agricultural goods, has elicited concern in the United States. Finally, U.S. businesses cite Russia limits on imports of and tripling of tariffs on agricultural equipment, such as combine harvesters, as further evidence of unfair trade practices.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Intellectual Property Rights (IPR)

Russia's lax IPR enforcement has also sparked hostility from U.S. business groups and Members of Congress. In its "2006 Special 301 Report," the Office of USTR placed Russia on the "Priority Watch List" for its "rampant counterfeiting and piracy problems" for software, music, movies, and pharmaceutical and chemical data. The IPR groups assert the United States should seek to win further concessions and commitments before concluding the bilateral agreement. The groups say informal Russian promises are insufficient; they seek strong government action to address runaway copyright infringement. Moreover, they seek a repeal of an amendment to the Russian Civil Code that essentially reverses all gains that the Russian government has instituted to embolden IPR protection. A letter to President Bush from the Senate Committee on Finance and the House Ways and Means Committee stated that the Civil Code change specifically "annul[s] all of its existing IPR law and replace[s] them with revisions known as amendments…. Such a move would make IPR violations subject to civil rather than criminal penalties." Commentators have argued the change in the civil code was part of the strategy to advance bilateral talks with the United States and predicted Russia will repeal the civil code claiming it had addressed IPR demands.

Financial Services

Restrictions on the financial services sector have also blocked the bilateral agreement. Russia currently does not allow foreign banks or insurance companies to operate branches independently in Russia; instead, both must establish independent subsidiary companies in Russia that are subject to local laws and regulations, giving Russia substantial control over their activities. However, on July 13, Kudrin asserted that the United States had conceded this issue, stating that "We agreed that foreign insurance companies would be allowed to open branches, but we insisted that foreign banks will not open branches in Russia." Insurance branching will only be permitted, however, only nine years after Russia joins the WTO. Russia also committed to increasing its cap on foreign equity ownership in the financial services sector to fifty percent.

Energy Access

Access to the energy sector has also raised concern with U.S. officials. In May 2006, former U.S. Ambassador to Russia Alexander Vershbow said, "Decisions continue to lag on construction of an oil pipeline to the Barents Sea and on expansion of the Caspian Pipeline." Moreover, "The Khodorkovsky case, the cancellation of the Sakhalin-3 tender won more than a decade ago by Exxon-Mobil and

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Chevron, and the transfer of once-private assets to government hands have been particularly troubling, as have potential restrictions on foreign investment in the draft subsoil law."

Non-trade Issues

Politically sensitive issues between the two countries have also contributed to the contentiousness of Russia's WTO accession negotiations, although both sides deny that political issues have entered into the discussion. On July 12, 2006, Putin repeated his March assertion that U.S. opposition to Russia's accession stemmed from political motives. A Russian official on July 15 said Russia had been subject to more stringent conditions than other acceding nations, adding that the Russian commitments had little link to standard WTO accession procedure. Vice President Dick Cheney in May 2006, stated, "in Russia today, opponents of reform are seeking to reverse the gains of the past decade," including an infringement of individual freedoms. In response to Mr. Cheney's concerns, shared by members of Congress, Putin said, "I think these are political motives, when our partners always taught about the need to constrain Russia, and this is the leftover of the Cold War." In February 2005, Senators John McCain (R-AZ) and Joe Lieberman (D-CT) called for Russia's suspension from the G-8 for its restrictions on democracy and political freedom.

In addition to concerns over human rights and eroding democracy, tension between Russia and the United States also stems from disagreements on Iran. Although Russia publicly asserts close cooperation with the United States on Iran's nuclear programs, many observers suggest that Russia, in concert with China, will block any harsh international response (through the UN Security Council) to Iran's continued refusal to dismantle is uranium enrichment programs. The United States has also criticized Russia for its sales of conventional arms to Iran and Russia's political support of authoritarian governments in former Soviet states. Senator McCain suggested that President Bush boycott the weekend's summit altogether to protest of Putin's policies.

III. Congressional Roadblocks: PNTR or Section 1106

President Bush on July 15 said at the conclusion of the bilateral accession talks that "We're tough negotiators and the reason why is because we want the agreement that we reach to be accepted by our United States Congress." President Bush's comments related to Congressional "passage" of the bilateral agreement itself are somewhat misleading, as Congress does not "pass" a bilateral WTO accession agreement. As noted above, Congress can still affect a country's WTO accession under Section 1106 or its grant of PNTR.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

A. PNTR

As mentioned above, even if the United States and Russia had reached an agreement at the G-8 Summit, Congress would have to pass legislation granting PNTR status to Russia in order for each country to gain non-discriminatory, WTO-bound access to the other's market. However, because the U.S. market is rather open to imports from non-WTO Members, including Russia, PNTR is far more important for U.S. exporters than the acceding country because the U.S. must give an acceding country unconditional, non-discriminatory access to its market in order to receive the same treatment from the acceding country. U.S. refusal to grant PNTR would deny Russia such access. Thus, without PNTR, U.S. exporters cannot benefit from the increased access to Russia's market that WTO accession facilitates. Nevertheless, PNTR is a rhetorical symbol of an acceding country's "admission" into the global trading community, and countries do not like to accede to the WTO without PNTR, regardless of the fact that the Congressional PNTR vote cannot hinder a country's accession to the WTO.

Senate democrats, in a letter released July 12, 2006, urged President Bush not to rush into a deal with Russia merely because of "the happenstance timing of external events or state visits." The senators said, "Numerous actions by Russia have created significant doubts about whether the government of Russia has the political will to comply with its obligations." They noted outstanding issues included IPR enforcement problems, barriers in the financial services sector, lack of transparency in agricultural measures directed at imports, and other tariff and regulatory barriers to trade. Further, the letter made clear that they would not support legislation granting Russia PNTR status if the problem areas outlined were not addressed in bilateral negotiations. A significant concern is the loss in bargaining leverage that would come from an incomplete agreement.

The July 12 letter follows an April 2006 Congressional resolution calling for improved IPR violation enforcement efforts prior to signing a bilateral agreement in response to lessons learned during China's accession. Senators Joseph Biden (D-DE) and Gordon Smith (R-OR) co-sponsored Senate Resolution 87 (S. Res. 87) which listed specific conditions for Russia's accession and asserted that "the United States should not complete any agreement… until the Russian Federation takes concrete steps to address widespread intellectual property resolutions." Speaking about the resolution Senator Smith said, "With Russia, I won't be burned twice. It is in the world's interest that Russia comes into the world market marketplace [sic], but if rules of the international marketplace [are] not observed, then it's [sic] entry, as far as this senator is concerned, will be obstructed." In a May 11 letter, Senators Charles Grassley (R-Iowa) and Max Baucus (D-Mont.) and Representatives Bill Thomas (R-California) and Charles Rangel (D-N.Y.), reiterated the need for a tougher position on Russia's allegedly lax IPR policies.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

One of the major concerns in Congress is repeating mistakes made in the discussions surrounding China's accession. Representatives Bob Goodlatte (R-VA) and Adam Schiff (D-CA), House co-sponsors of H.R. 380, indicated to former USTR Portman in April that PNTR would receive a negative vote without improvements in the quality of the bilateral agreement. Representative Schiff said representatives are concerned that Russia is "another China in the making." After voting for PNTR with China, many in Congress expected improvements in China's IPR enforcement that failed to materialize. In the context of Russia, many members fear the United States will lose a key bargaining chip by allowing Russia's access to the WTO to move forward. As Representative Goodlatte said, "there are 'a lot of reservations in Congress.'"

Observers expect passing PNTR legislation will be difficult because trade issues alone will not govern the vote. Many members of Congress object to Russia's human rights record and its backsliding democracy. On 28 June, Senator Grassley indicated the impossibility of a bilateral accession agreement before the summit, citing differences too great to be resolved in the short timeframe. He said, "There's also the political issue [in addition to trade concerns] of what the president sees in Putin's heart. He sees a good heart," referring to a statement Bush made after a meeting with Putin in 2001. Senator Grassley continued, "I look into that heart, and I see the old Soviet regime." Observers suggest that the vote in Congress, although it has no legal right in making the bilateral agreement or even granting Russia access to the WTO, will effectively be a vote on "the quality of the Russian accession deal."

Business groups have demanded the Administration obtain strong commitments on an array of trade issues. In an April 13, 2006, letter to the President, organizations generally in favor of Russia's accession pushed for no set deadlines for negotiations and further commitments on intellectual property, financial services, and other issues to secure business and Congressional support for PNTR. In their letter, signed by the U.S.-Russia Business Council, the U.S. Chamber of Commerce, the National Foreign Trade Council, the National Association of Manufacturers, the Emergency Committee for American Trade, and the Coalition of Service Industries and the Business Roundtable, the groups pointed to changes in Russia's Civil Code that would reverse the advances made in Russian enforcement of IPR violations.

In a letter dated July 6, a diverse group of sixteen business associations, including the Motion Picture Association of America (MPAA), the Coalition of Service Industries, the American Insurance Association, and the National Association of Manufacturers, demanded the Bush Administration ensure a "strong and commercially meaningful bilateral package… ensuring that Russia's WTO accession advances the rule of law and reflects a preparedness to operate with the dictates and discipline of international rules." IPR groups, including MPAA, the Entertainment Software Association, the Recording Industry Association of

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

America (RIAA), and the Business Software Alliance (BSA) seek concrete commitments from the Russian government to crack down on illegal file sharing websites, particularly allofmp3.com, and raid plants that make pirated software, movies, and music.

As a result of rampant pirating, the intellectual property industry and law enforcement officials in the United States estimate losses of as much as $250 billion annually. The USTR's "Special 301" report identifies Russia and China as the major source of counterfeit goods. Dan Glickman, President of the MPAA, reflecting on the lessons of China, said, "We let China [into the WTO] and China has not fully complied with the WTO requirements…. The time to get action is now, rather than after they get in." Neal Turkewitz, President of the RIAA, predicted in May 2006 that Russia had no chance of acceding to the WTO without concessions on IPR. Further, Eric Schwartz of the International Intellectual Property Alliance (IIPA), stated that his organization seeks concrete action rather than "mere commitments" to endorse PNTR legislation. His group and other IPR groups have been concerned that the Bush Administration would agree to Russia's accession to the WTO for political reasons.

B. Section 1106

Section 1106 of the Omnibus and Trade Competitiveness Act of 1988 ("Section 1106")[2], requires the President to determine, with respect to a "major foreign country" seeking admission to the WTO, whether the country's state trading enterprises[3] adversely affect the U.S. economy. Under Section 1106, the President must base his decision on two economic determinations before Russia accedes to the WTO: (i) whether Russia's STEs account for a significant share of either Russia's exports or its domestic production of goods that compete with imports,[4] and (ii) whether Russia's STEs unduly burden and restrict, or adversely affect, the foreign trade of the U.S. or the U.S economy.[5] If the President determines that Russia's STEs meet these requirements, then he must reserve the right of the United States to withhold application of the WTO Agreement between Russia and the United States until: (i) Russia undertakes commitments governing the business activities of its STEs, or (ii) the U.S. Congress

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2 *See* 19 U.S.C. § 2905.

3 Section 1106 uses the term "state trading enterprise" but this term is broader than the same term as used in GATT Article XVII. "State trading enterprise" as used in Section 1106 would include all state-owned enterprises that have been listed in the acceding country's Working Party Report.

4 See 19 U.S.C. § 2905(a).

5 See *id*.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

passes a law extending the application of the WTO Agreement to Russia.[6] The President has delegated his authority to make the Section 1106 determinations to the USTR.

Section 1106 sets out specific commitments that Russia must undertake before the President is authorized to extend the application of the WTO Agreement to Russia. Section 1106 requires that Russia make the following three commitments, although not necessarily in a formal "STE Agreement": (i) Russia's STEs must make non-governmental purchases in accordance with "commercial considerations, including price, quality, availability, marketability, and transportation; (ii) Russia's STEs must make international sales in accordance with commercial considerations; and (iii) Russia's STEs must afford U.S. businesses adequate opportunity to compete for sales to and purchases from the state trading enterprises.[7]

Although not mandated by U.S. law, the United States usually makes a Section 1106 determination regarding countries acceding to the WTO after it completes a bilateral accession agreement with the acceding country. Indeed, in the most recent case of Saudi Arabia, the President determined that Saudi Arabia did not warrant an affirmative Section 1106 finding, despite its STEs accounting for a "significant share of the exports of Saudi Arabia and the goods that compete with imports into Saudi Arabia," based, in part, upon the express commitments that the Kingdom made in its bilateral accession agreement with the United States and the Report of the Working Party on the Kingdom of Saudi Arabia's Accession to the WTO.[8] The President publishes the final Section 1106 determination in the Federal Register as an "Administrative Order." He does not publish any preliminary notices related to Section 1106 procedures and intermediate determinations.

From a practical and strategic standpoint, this timing makes sense: USTR can limit Congressional involvement in a WTO accession if it receives appropriate STE "commitments" in the bilateral accession agreement, thus making a Section 1106 determination a formality. USTR can also use the threat of a Congressional Section 1106 vote (Congress is typically less free-trade oriented than the executive branch) to receive greater bilateral commitments from the acceding country.

The only Section 1106 determination in which the President found that a country's state trading enterprises adversely affected U.S. economic interests was during that for China during its WTO

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6 *See* 19 U.S.C. § 2905(b).

7 *See* 19 U.S.C. § 2905(b).

8 *See* http://www.whitehouse.gov/news/releases/2005/11/20051110-19.html.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

accession. The President determined, however, that the commitments China assumed as part of its accession satisfied Section 1106. Therefore in light of the substantive provisions of the WTO's Working Party Report on China's accession, the United States determined it did not need to enter into a separate agreement with China to satisfy the requirements of Section 1106.[9] Thus, a separate "STE Agreement" is not always necessary to satisfy Section 1106's requirements; other commitments as part of a country's accession or of other bilateral/multilateral agreements can suffice.

Under Section 161 of the Trade Act of 1974, the USTR must also keep Congress informed of all matters affecting trade policy of the United States, including the negotiation status of potential trade agreements.[10] It is possible that members of Congress could consider an agreement based on Section 1106 to be a "trade agreement." Thus, although Section 1106 does not require Congressional approval of an agreement between the United States and Russia pertaining to Russia's STEs, the USTR arguably must inform Congress under Section 162 of the status of negotiations between the two countries. Neither Section 1106 nor Section 162 of the Trade Act of 1974 requires Congress to conduct hearings on the bilateral agreement, but it is that possible members of Congress would seek additional information about the agreement or would choose to debate its merits.

If the President determines that Russia's STEs adversely affect the U.S. economy and if Russia does not make sufficient commitments regarding its STEs, the President must reserve application of the WTO Agreement to Russia unless the U.S. Congress enacts a law doing so.[11] If the President proposes such legislation, Section 1106 requires the U.S. Congress to provide expedited consideration to the proposal.

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9 China, in its Working Party Report section on "State-Owned and State-Invested Enterprises," accepted certain GATT Article XVII disciplines for such enterprises:

> The representative of China… confirmed that China would ensure that all state-owned and state-invested enterprises would make purchases and sales based solely on commercial considerations, e.g., price, quality, marketability and availability, and that the enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, the Government of China would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, including on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement. The Working Party took note of these commitments. [WT/MIN(01)3, 10 November 2001, para. 46]

10 *See* 19 U.S.C. § 2211(b).

11 *See* 19 U.S.C. § 2905(c).

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

The expedited consideration provisions include: (i) the majority leader of the House of Representatives and the Senate must introduce the bill on the next day on which each House is in session; (ii) the House and Senate must vote on the bill within 60 session days after the bill is introduced; and (iii) legislators are prohibited from proposing amendments to the bill.

C. Analysis of Bush's Comments on "Passage" of the Bilateral Agreement

President Bush's comments have not addressed Section 1106 or PNTR, but they perhaps indicate that USTR has not negotiated an agreement with Russia related to its STEs. USTR has also provided no indication of whether the parties have reached an agreement. If no Section 1106 agreement exists, then the prospects of Congressional "passage" can directly influence the terms of the bilateral accession agreement and impede Russia's accession to the WTO. Although more in the context of PNTR, Congress has made strict IPR, financial services and agricultural market access demands which, if unmet, could lead it to oppose extension of the WTO Agreement to Russia.

On the other hand, if the United States has negotiated a Section 1106 agreement with Russia, then President Bush's statements relate to PNTR alone and are more of an excuse for the United States' refusal to give up on its bilateral demands than a real reason for its recalcitrance, which many observers attribute to geopolitical, rather than economic, concerns over Iran and North Korea. Bush's comments under this scenario would also fail to provide Russia with a real reason to make further commitments, as Russia can, at least in theory, still accede to the WTO without PNTR. Perhaps this explains why Russia continues to rebuff U.S. demands.

IV. Outlook

Officials from both governments predict that a bilateral deal could be reached by October 2006. Although President Bush expressed optimism on a pre-summit timeframe, Bush Administration officials had said they would not agree to a deal before the G-8 unless it was "commercially sound."

Russian officials aimed for the end of 2006 for complete accession to the WTO; to meet this deadline, Russia must complete bilateral negotiations with the United States by fall 2006. Andrew Somers, head of the American Chamber of Commerce in Moscow, indicated on July 10 that elections in both countries could derail talks and further delay the bilateral accession agreement. He said, "We think it's a historic opportunity which should not be missed." Observers note, however, that an early-2007 timeframe is more likely.

Moreover, once the United States completes the bilateral accession deal with Russia, it must then address both the 1106 issue (as the President will almost assuredly deem Russia a "major foreign

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

country") and PNTR. Historically, it has taken approximately two-to-five months after the United completes a bilateral accession agreement for the President to make a Section 1106 determination related to the acceding country. In the case of Saudi Arabia, for example, the President made his 1106 determination in November 2005, several months after the September 2005 bilateral WTO agreement between the United States and Saudi Arabia. China, on the other hand, took longer: the President made his 1106 determination in November 2001, five months after the United States and China reached a June 2001 bilateral accession agreement. With all the contentious issues surrounding Russia, it is likely that the President will make his 1106 determination following a similar timeframe to that of the China determination, if not longer. PNTR will also add to Russia's accession schedule. Congress' grant of PNTR can take anywhere from days to months. In the case of Ukraine, Congress approved PNTR just two days after the United States and Ukraine signed their March 6, 2006 bilateral accession agreement. In other cases, that timeframe is longer. Vietnam is still waiting for Congress to approve its PNTR status months after signing a bilateral WTO agreement with the United States on May 31, 2006. Again, Congress' PNTR grant to Russia will likely take longer because of the size of Russia's economy and because of the many contentious issues with Russia that Congressional Members will likely raise before the PNTR vote.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

United States Highlights

Sens. Schumer and Graham Drop Vote on China Tariff Bill, Promise New One in 2007

On September 28, 2006, Sens. Charles Schumer (D-NY) and Lindsey Graham (R-SC) once again withdrew their request for a Senate vote on legislation (S. 295) that would raise tariffs on imports from China unless China revalues its currency. Both Senators stated that the vote was unnecessary because they had accomplished their goal of "focusing attention on the link between trade and China's currency policies." Schumer stated that "the bottom line is that this bill was designed as a wake-up call and it has been a rousing success. " He added that "before this bill, nobody cared about China currency... .[N]ow it is front and center." Both Senators also stated that they will work with Senate Finance Committee Chair Sen. Charles E. Grassley (R-IA) and Ranking Member Max Baucus (D-MT) to draft a new bill on China currency that will be consistent with World Trade Organization (WTO) rules and Administration policy. Grassley stated that the new legislation will send a strong signal to China concerning their currency policy and the "joint product has to be WTO-compliant [and] applicable as public policy for a long time."

The Senators also noted that most trade experts had agreed that S. 295 would have violated WTO rules by increasing import tariffs unilaterally. It also would have contravened Bush Administration policy that foreign currency matters are the exclusive domain of the U.S. Treasury Department: S. 295 states that "the Secretary of the Treasury, *in consultation with the United States Trade Representative*" will begin negotiations with the China to ensure that it adopts a process that leads to a substantial upward currency revaluation within 180 days after the date of enactment of the proposed legislation. These facts, combined with a meeting with U.S. Treasury Secretary Paulson following his recent China visit, spurred the Senators to drop their plan for a vote. According to Treasury sources, Paulson was strongly opposed to the S. 295 and asked for more time to see if further discussions with China would produce results. Both Senators believe that Paulson is "optimistic he can get something done and we believe in him." Graham also noted that he had conferred with President Bush on September 28 and is convinced that the Administration is committed to a strategy that will require China to reform its currency manipulation practices. According to Graham, "President Bush made clear . . . that he would like to give Secretary Paulson time to negotiate with the Chinese [and] that he shares my goal of making China compete on a level playing field."

The Senators' decision to withdraw their request for a vote on S. 295 marks the fourth time in the last 14 months that they have threatened a vote on the measure, only to withdraw their requests shortly

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

thereafter. Schumer and Graham originally moved the bill to the Senate floor in April 2005 but agreed to hold the bill from further consideration until July 2005, when the Senate leadership promised them an up-or-down vote. Since that time, S. 295 has become, by the Senators' own admission, a publicity tool for the Senators to call attention the China currency issue. With the end of the 109th Congressional session, however, the Senators will need to find a new vehicle to achieve their goals. It remains to be seen whether the new joint China legislation will serve the same purpose during the 110th session or rather be a real, substantive tool to effectuate a change in Chinese currency policy.

Congress Passes Sudan Sanctions Bill

On September 25, 2006, the House approved by unanimous consent legislation (H.R. 3127) meant to sanction Sudanese individuals involved in the genocide in Darfur. The Darfur Peace and Accountability Act of 2006 would also: (i) prohibit non-humanitarian aid to nations that violate the United Nations (UN) Security Council imposed military and arms embargo on Sudan; (ii) urge suspension of Sudan's UN membership; and (iii) call for President Bush to block certain Sudanese cargo ships or oil tankers from entering U.S. ports unless the Sudanese government meets a series of commitments specified in the bill. Senators approved the bill by unanimous consent on September 21 but voted to omit a provision contained in the bill's House version that would allow states to order U.S. companies to divest their holdings in Sudan-related investments (Section 11). Instead, the Senate voted to approve H.R. 3127 amended with language similar to September 11 legislation introduced by Senate Foreign Relations Committee chair Sen. Richard G. Lugar (R-IN) that omitted Section 11 of the House-passed sanctions bill. The Lugar legislation allows the President to block the assets of and deny visas to individuals believed to be involved in acts of genocide or other war crimes in Darfur. William Reinsch, president of the National Foreign Trade Council (NFTC), has noted that U.S. companies opposed Section 11 but approved of the rest of the legislation. The September 25 House vote under suspension of House rules approved the bill as amended by the Senate (i.e., without Section 11). The legislation will next go to the President for his signature, which is expected.

Rep. Thomas Introduces Trade Bill on AGOA, GSP Extension

On September 21, 2006, House Ways and Means Committee Chairman Bill Thomas (R-CA) introduced legislation (H.R. 6142) that would extend the Generalized System of Preferences (GSP) by two years and would establish a new approach to the textile and apparel provisions of the African Growth and Opportunity Act (AGOA). Sources have noted that the bill is likely to be controversial with U.S. textile producers. The proposed legislation would also alter GSP's eligibility requirements for competitive needs

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

limitations (CNL) waivers – a move that would curb benefits of competitive producers – and would also provide Haiti with more duty-free access for apparel made from fabric originating from third countries.

The bill would extend until September 2008 the current provision allowing duty-free access for AGOA apparel made with fabric from anywhere in the world up to a limit amounting to 3.5 percent of all U.S. apparel imports. The legislation also proposed applying a new rule of origin for eligible apparel that would require 50-percent African content, which would grow incrementally to 60 percent through the year 2015, when the current AGOA program expires. Among other features, the bill would afford certain textiles duty-free entry from lesser-developed AGOA beneficiaries and would provide a U.S. tax credit for U.S. corporations investing in sub-Saharan Africa.

The legislation would also extend new benefits to Haiti with a new rule of origin and a new third-country fabric provision. The rule of origin provision would mandate that qualifying products have 50-percent value added in Haiti to gain duty-free access to the United States in the first three years of implementation. This threshold would increase to 55 percent in year four and to 60 percent the following year. The bill would also establish duty-free access for apparel amounting to 50 million square meter equivalents (SMEs) for two years, which would be scaled back to 33.5 SMEs in the third year.

On the GSP side, beyond extending the program, set to expire on December 31, 2006, for two years, the bill would tighten rules for CNL waivers and eliminate the possibility of obtaining such waivers for countries with annual per capita income of more than $3,400. According to the Office of the United States Trade Representative (USTR), CNLs are measures meant to ensure that competitive products do not get duty-free access under GSP. Any product that meets one of two conditions will be automatically disqualified from the program: (i) the product exceeds a statutory dollar amount ceiling on imports, or (ii) the product accounts for more than 50 percent of the appraised value of total imports of that article into the United States.[12][1] The 2006 statutory dollar amount ceiling is $125 million. The bill would also prevent countries from getting waivers for products if a country has exported more than $1.5 billion of that product in the previous year.

Unlike similar legislation proposed by Congressional Democrats, Thomas' bill would not extend or renew the Andean Trade Preferences and Drug Eradication Act (ATPDEA) which is set to expire December 31, 2006. On September 15, 2006, Senate Finance Committee Ranking Member Sen. Max Baucus (D-MT) and House Ways and Means Committee Ranking Member Charles Rangel (D-NY) proposed legislation

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

that would extend GSP and ATPDEA for two years in addition to extending for one year AGOA's "third country fabric" provisions which expire on October 1, 2007 (S. 3904 and H.R. 6067).

Senate Finance Committee Considers and Approves Deputy USTR Nominee Veroneau

On September 21, 2006, the Senate Finance Committee held a hearing to consider the nomination of John Veroneau to be Deputy United States Trade Representative (USTR). Committee Chair Sen. Charles Grassley (R-IA), and Ranking Committee Member Sen. Max Baucus (D-MT) oversaw the hearing which included testimony from Veroneau as well as a question-and-answer period with Committee members. Grassley stated that "President Bush has made an outstanding selection in nominating John Veroneau to be Deputy United States Trade Representative," and that "Veroneau is well-known to the committee, having served previously as both General Counsel and Assistant USTR for Congressional Affairs in the Office of the United States Trade Representative." He called on the Committee to process "his nomination quickly."

Baucus stated that "Veroneau's skills and experience will be put to good use during this difficult period in trade policy [because] the Doha Round negotiations are at an impasse, [and] WTO members differ on how the system should operate." He added that "populism is on the increase, particularly in South America," and that "to break the deadlock, America will have to provide leadership." Baucus also stated that "providing leadership abroad will be difficult if we don't first address concerns about trade here at home" and stated that "many have serious concerns about the way that this Administration has used Trade Promotion Authority, [and] that authority expires in less than a year; I, for one, do not see a smooth path to renewal."

Veroneau testified that he "believes strongly that open markets best serve America's long-term interests but recognize[s] that even the best policies are for naught if they lack political support." He opined that "it is incumbent upon those of us who endorse global trade to ensure and to demonstrate that – over time – open markets serve the interests of all Americans." He added that "those of us who benefit most directly and immediately from a global economy must redress those who – in the short term – may be adversely affected [and] we must support policies that encourage job creation and help workers in acquiring new skills." Veroneau also stated that "the challenge of the next few years will be to continue to secure the benefits of a global economy while building political support for institutions and policies that make global integration possible," and that he shares the view with the Chairman of the Federal Reserve Bank Ben Bernanke "that further global economic integration should not be taken for granted."

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

During the hearing, Committee members also discussed whether Russia in its bilateral WTO accession talks with the United States has made any progress toward meeting U.S. demands. In May 2006, Grassley and three other lawmakers sent a letter to the President opposing Russia's WTO membership until it demonstrates that it is willing to abide by WTO rules on intellectual property rights (IPR) and agriculture. Veroneau opined that “Russia needs to do much more in terms of protecting intellectual property and keeping its market open to U.S. agricultural products before the United States will be able to sign off on an agreement clearing the way for Russia to join the World Trade Organization.” He added that “they've made some efforts [and] they've made some progress, but frankly I think there is much more that they need to do.” Veroneau also stated that "hopefully" President Bush's decision in July not to close a bilateral accession agreement with Russia had sent a "strong message" to the Russian government. The United States and Russia met in July in an attempt to complete a bilateral agreement as part of Russia’s WTO accession but failed to reach an accord and pledged to continue negotiations in the fall.

Following the hearing, Grassley stated that the Bush Administration is engaged in discussions with Congressional leaders to seek a possible vote on the extension of Permanent Normal Trade Relations (PNTR) to Vietnam prior to Congress’ adjournment for the Fall mid-term elections. The Bush Administration has expressed a desire to extend PNTR to Vietnam before President Bush arrives at the November 17-19 Asia Pacific Economic Cooperation (APEC) CEO and leaders meeting in Hanoi. Although House Majority Leader John Boehner (R-OH) has indicated that the House will likely consider its version of the Vietnam PNTR bill the week of November 13 during Congresses’ post-election “lame duck” session, the Senate version of the bill (S.3495) remains stalled due to holds that Sens. Elizabeth Dole (R-NC) and Lindsay Graham (R-SC) placed upon it. Grassley has expressed an unwillingness to address the Vietnam bill or the holds until the White House submits implementing legislation for the U.S.-Peru Free Trade Agreement (FTA). Grassley stated that he is “not anxious to get Vietnam up without Peru being up” and added that he had clearly conveyed this to the Bush Administration.

On September 27, 2006, the Senate Finance Committee unanimously approved President Bush's nomination of John Veroneau to be a Deputy USTR. Veroneau’s nomination will next move to the Senate floor for a full vote, and if the Senate confirms the nomination, Veroneau will fill the position that Ambassador Susan Schwab vacated upon becoming USTR. Veroneau served as a USTR general counsel from 2003 to 2005 and if confirmed, would join Deputy USTRs Peter Allgeier and Karan Bhatia.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Sen. Chambliss Calls for Removal of India, Brazil From GSP Program

In a September 19, 2006 letter to United States Trade Representative (USTR) Susan Schwab Chairman of the Senate Agriculture Committee Sen. Saxby Chambliss (R-GA) encouraged USTR to "review the current criteria for Generalized System of Preferences (GSP) program participation and consider revising them to differentiate and exclude advanced developing countries such as Brazil and India." Chambliss opines that although the GSP program runs counter to the World Trade Organization's (WTO) multilateral system of tariff reductions and the Doha Round, the program "is an important tool in U.S. policy" because it provides preferences to "those countries that need the most help."

Chambliss stated, however, that the GSP program "should be a mechanism that is temporary in nature and differentiates between the least developed economies and advanced developing countries." Chambliss added that GSP "should not reward governments who threaten litigation against the United States, work against [U.S.] negotiators in the WTO towards a more open liberalized trade environment and disregard the intellectual property rights of U.S. companies." He opined that "entrenchment of trading blocs protected by preferential access to developed countries is one of the central causes of the collapse of WTO negotiations" and thus requested that USTR review GSP program criteria and remove India and Brazil from the program.

Chambliss is not the first to single out India and Brazil for removal from the GSP program. On May 16, 2006, Senate Finance Committee Chairman Sen. Charles Grassley (R-IA) indicated that he might seek to remove Brazil and India from the list of countries eligible to receive preferential tariff treatment under GSP because Brazil and India were among those "most responsible" for holding up the WTO Doha Round negotiations. According to Grassley, Brazil and India, leaders of the Group of 20 (G-20) developing countries in the WTO, currently derive the most benefits from GSP. Grassley added that both countries are also "the most responsible for holding up the WTO negotiations" and opined that "maybe they and other GSP beneficiaries feel they don't need a WTO agreement since the status quo serves their interests."

Under the GSP program, beneficiary developing countries' qualifying imports receive duty-free access to the U.S. market. Created under the authority of the 1974 Trade Act, the GSP program allows 144 designated beneficiary countries and territories to export 5000 products duty-free to the United States. Chambliss and Grassley's statements may be more rhetoric than reality and more of an attempt to pressure developing countries, led by Brazil and India, into taking a more aggressive stance at the WTO. The GSP program enjoys broad support from Congress and U.S. businesses due to the duty-free imports'

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

beneficial impact on the U.S. economy, and its benefits to the world's poorest countries are a bright spot for U.S. international relations. The Senators' stance, however, does indicate that Congress is starting to closely scrutinize the program, especially with its December 31, 2006 expiry fast approaching. In that regard, Senate Finance Committee Ranking Member Sen. Max Baucus (D-MT) and House Ways and Means Committee Ranking Member Rep. Charles Rangel (D-NY) on September 15 jointly introduced legislation to extend the GSP program for two years (S. 3904 and H.R. 6076). House Ways and Means Committee Chair Bill Thomas (R-CA) on September 21 also introduced legislation on GSP that would, in addition to extending the program for two years, tighten rules for waiving competitive needs limitations (CNLs) for countries with annual per capita incomes greater than $3,400 (H.R. 6142). If passed, the bills' provision would effectively disqualify Brazil from qualifying for CNL waivers. Although Congress could also act unilaterally to remove Brazil and India through this legislation, the packed Congressional schedule will make it more likely that Congress will simply renew the program for two years and let USTR do the "heavy lifting" of altering the program's criteria and possibly removing India and Brazil.

Treasury Secretary Paulson Makes First China Visit, Discusses Exchange Rate Flexibility

During his first official visit to China, U.S. Treasury Secretary Henry Paulson stated on September 20, 2006 that China's economy has grown too massive for continued government micromanagement, and that China can only develop into a long-term stable global power with greater reform and flexibility. He added that he is a "huge proponent of and believer in the Chinese economy" but noted that no one can "assume it's going to keep going like this and pass all the other economies in the world." The primary reason for Paulson's China trip is to meet with Chinese President Hu Jintao and to discuss: (i) a more flexible exchange rate for the Chinese yuan; (ii) protection of intellectual property rights (IPR); and (iii) more open markets for U.S. goods and financial services. Paulson warned, however, that he will likely not have dramatic results to announce upon his departure, stating that he never "indicated to anybody that [he] was going to make [his] first trip to China as Treasury Secretary and come home with a long-term solution."

Paulson also jointly announced with Vice-Premier Wu Yi that the United States and China have established a new formal strategic dialogue – labeled the Strategic Economic Dialogue – under which the two sides will meet twice a year, once in each country, for top-level discussions about a wide range of bilateral trade issues. Response to the creation of the formal dialogue has been positive. U.S. Commerce Secretary Carlos Gutierrez stated that the dialogue "is a welcome addition to productive discussions already under way, including the U.S.-China Joint Commission on Commerce and Trade, the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

U.S.- China Joint Economic Commission, and the U.S.-China Joint Commission on Science and Technology." The Financial Services Forum's Chief Executive Officer Donald Evans stated that the new economic dialogue "is an important milestone in the U.S.-China economic relationship" and that "this important step forward recognizes the growing economic links between the U.S. and China and will provide a high-level forum that will draw our two countries closer and help to address long-standing bilateral issues such as increased market access for U.S. financial services firms; the need to further ease branching restrictions and caps on foreign investment and ownership; the importance of financial and regulatory transparency; the need for China to continue to meet their WTO obligations; concerns about intellectual property protection and, the importance of further steps toward currency reform." Myron Brilliant, vice president for Asian affairs at the U.S. Chamber of Commerce, indicated that the U.S. business community is "very supportive" of the new initiative because it will expand the current U.S.-China dialogue into areas beyond trade and investment. Brilliant opined that Paulson is "the right man" to lead the new initiative for the United States "given his background and expertise with respect to U.S.-China relations."

Paulson did not discuss specific negotiations but stated that a more flexible exchange rate is a top priority. In July 2005, China's central bank ended the yuan's peg to the dollar and allowed the currency to float within a narrow trading band, tied to a basket of other currencies. On September 20, the yuan appreciated to its highest level since July 2005. Paulson also stated that China needs sound capital markets and a better financial system before it can maintain a currency that floats on the free market.

Paulson also addressed the "Schumer-Graham" legislation. Senators Charles Schumer (D-NY) and Lindsey Graham (R-SC) requested that the Senate vote on their proposed legislation (S. 295) that would impose a 27.5 percent tariff on imports of Chinese goods unless China significantly revalues its currency within the next two years. The Senators have tabled a vote on the legislation several times but have scheduled the vote for the week of September 25, the last week of Congressional work before Congress adjourns for the Fall midterm elections. On the legislation, Paulson stated that he would never be one to favor protectionist actions, thus indicating his opposition to the bill. Paulson has indicated in the past that "protectionist policies do not work, and the collateral damage from these policies is high," adding that "by closing off competition and blocking the forces of change, protectionism reduces the losses of the present by sacrificing the opportunities of the future."

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

House Leaders: Congressional Trade Votes Unlikely to Occur before November

Leaders from the House of Representatives have stated that they plan on scheduling a November 13 vote on Vietnam's Permanent Normal Trade Relations (PNTR) status. House Majority Leader Rep. John Boehner (R-OH) has opined that "the week of November 13 would be a likely time" to consider the PNTR bill. Vietnam has targeted mid-October for its World Trade Organization (WTO) accession and would like to have the WTO approve its accession during the October 10-11 General Council meeting so it can join the WTO before it hosts the Asia Pacific Economic Cooperation (APEC) CEO summit in Hanoi on November 17-19. Some sources indicate, however, that Vietnam might not be ready to accede by the October General Council meeting.

Meanwhile, the Senate has not yet indicated when it will consider Vietnam's PNTR status, though it seems likely that it will also consider the bill during Congress' lame-duck session following Fall mid-term elections. The Senate bill has not moved forward because Senators Elizabeth Dole (R-NC) and Lindsey Graham (R-SC) have placed holds on the legislation (S.3495). Dole and Graham oppose the bill because of concerns that it would result in an influx of allegedly subsidized Vietnamese textile and apparel imports that would cause large number of U.S. job losses, concentrated in the textile sector. Sources opine that Senate passage of the Vietnam PNTR legislation should prove more difficult than House passage, particularly given that the legislation "does not enjoy the protection of trade negotiating authority and is subject to amendment." Sources also indicate that although the Vietnam bill enjoys broad bipartisan support within the House, looming elections have prevented a timely decision on the legislation because of "skittishness on the part of House leadership about voting on trade legislation right before the election."

House Members have also displayed a similar hesitance to consider the U.S.-Peru Free Trade Agreement (FTA), which also is likely to be put to a House floor vote during the week of November 13. Sources indicate that a number of House Democrats might consider approving the Peru agreement only during a lame-duck session when politics and the elections would be less of a factor. Congressional approval of the agreement, however, could depend on the outcome of the November elections. If Democrats regain control of the House, Democratic lawmakers could oppose the agreement in a lame-duck session for fear of breaking ranks with the incoming Democratic House leadership, which has been overtly hostile to trade agreements negotiated by the Bush Administration.

Given a full agenda in the remaining two weeks before Congress adjourns for Fall mid-term elections, Congressional consideration of the U.S.-Columbia FTA is unlikely before early 2007. A House committee

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

markup, however, remains a remote possibility. On September 7, Rep. Jim Kolbe (R-AZ) stated that approval of both the Colombia and Peru FTAs "doesn't look likely" in 2006 but added that he hoped Congress would approve the agreements in early 2007. The United States and Colombia finalized the FTA's text on July 8, 2006, and President Bush notified Congress of his intent to sign the agreement on August 24. The Administration has yet to submit to Congress the agreement's final implementing legislation.

USTR Publishes GSP, CNL Comments as Part of GSP Review

The Office of the United States Trade Representative (USTR) has published on its website, www.ustr.gov, comments received pursuant to its August 8, 2006 request for comments on the Eligibility of Certain Generalized System of Preferences (GSP) Beneficiaries and Existing Competitive Need Limitation (CNL) Waivers.

Legislation authorizing the GSP program expires on December 31, 2006. The Bush Administration initiated a review of the GSP program in October 2005, and on August 7, 2006, USTR Susan Schwab announced that the Bush Administration would begin the second phase of its review. Comments from interested parties were due to USTR on September 5, 2006. At the initiation of the second phase review, USTR requested public input to determine whether, consistent with statutory criteria, the eligibility of thirteen major beneficiaries of the GSP program (Argentina, Brazil, Croatia, India, Indonesia, Kazakhstan, Philippines, Romania, Russia, South Africa, Thailand, Turkey, and Venezuela) should be limited, suspended, or withdrawn.

The Administration is also conducting a review of the 83 existing Competitive Needs Limitation (CNL) waivers and has requested comments on whether the U.S. government should terminate any of the waivers. CNL waivers have been granted to specific GSP beneficiary countries and allow particular products to be imported duty-free into the United States without being subject to statutory market share and annual import caps. Nineteen GSP beneficiaries have CNL waivers: Argentina, Bosnia-Herzegovina, Brazil, Colombia, Croatia, India, Indonesia, Ivory Coast, Kazakhstan, Macedonia, Peru, the Philippines, Romania, Russia, South Africa, Thailand, Turkey, Venezuela, and Zimbabwe.

Sens. Dole, Graham Call on USTR to Review Textile Portion of U.S.-Vietnam Bilateral WTO Agreement

In a September 18 letter to United States Trade Representative (USTR) Susan Schwab, Senators Elizabeth Dole (R-NC) and Lindsey Graham (R.-SC) called on USTR to review the textile provisions in the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

U.S.-Vietnam bilateral agreement on Vietnam's accession to the World Trade Organization (WTO) and to "take steps" to protect U.S. textile companies from Vietnamese textile imports. The Senators have placed a hold on legislation granting Vietnam Permanent Normal Trade Relations (PNTR) (S. 3495) based on their textile concerns. In the letter, the Senators told USTR Schwab that the U.S.-Vietnam bilateral agreement will likely cause large-scale job losses, particularly in the textile industry in their states of North and South Carolina unless the government takes specific steps "to ensure that the U.S. textile industry can be defended against a communist country that heavily subsidizes its textile and apparel sector." The Senators also write that "it would be unreasonable to ask U.S. workers to compete with products manufactured under a state-run economy without at least providing an adequate mechanism for the industry to defend itself."

The U.S. textile industry supports the Senators' actions and has also criticized the U.S.-Vietnam agreement. The letter states that "the massive and disruptive growth [of Vietnam's textile exports] was clearly aided by Vietnam's ability to artificially lower prices through its state sponsored system," and that "even though Vietnam agreed as part of the WTO negotiations to eliminate its WTO illegal subsidies, it did not agree to privatize its state-run apparel sector, and will still have to undergo a transition period away from a non-market economy that will take several years." The Senators have asked Schwab to closely review all of the possible solutions to this problem and pledged to work closely with her on the issue.

The United States and Vietnam signed a bilateral agreement on the terms of Vietnam's accession to the World Trade Organization (WTO) on May 31. Within the agreement is a commitment by Vietnam to eliminate any WTO-incompatible subsidies to its domestic apparel industry. The agreement also includes a safeguard that allows the United States to re-impose import quotas on textile and apparel from Vietnam if it continues to use such subsidies. Sens. Dole and Graham, however, believe these provisions to be insufficient. Representatives from Sen. Dole's office stated that she placed "a hold on the Vietnam trade agreement because she is very concerned about the potential negative impact this agreement could have on North Carolina textile jobs" and because "the Vietnam trade agreement does not provide necessary tools to ensure that the Vietnamese government is a fair player in textile trade." Sources also stated that Sen. Dole "wants to see a number of trade remedies in place to force the Vietnamese government to abide by fair trading practices, empower the domestic textile industry, and prevent dramatic surges in Vietnamese textile and apparel imports," including an extension of quotas, expanding the application of antidumping and countervailing duty laws to Vietnam, and requiring that USTR "investigate and combat

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

the subsidization of Vietnam's textile and apparel industry." As a non-market economy, Vietnam is not subject to U.S. countervailing duty actions.

Vietnam hopes to accede to the WTO in October or November of 2006. If Congress has not passed the PNTR legislation by that time, the United States will have to invoke the WTO's "non-application" clause. Under the "non-application" clause, Vietnam would not be obligated under WTO rules to extend the full range of benefits to the United States under its WTO accession until the United States granted Vietnam PNTR. Vietnam would still be obligated under its 2001 bilateral trade agreement (BTA) with the United States to extend to the United States at least most favored nation (MFN) status for trade in goods. Vietnam would not, however, be obligated to extend to the United States any benefits deriving from its WTO accession that are not explicitly indicated in the BTA. Such benefits could include MFN treatment for services, removal of non-tariff barriers (NTBs) or other market access measures.

Congressional sources have indicated that Congress will approve the agreement in early November before the President attends the November 17-19 Asia Pacific Economic Cooperation (APEC) CEO Summit and Leaders Meetings in Hanoi. Should Sens. Dole and Graham not lift their hold on the PNTR legislation, President Bush would have to arrive in Hanoi empty-handed, and the United States would be forced to invoke the non-application clause. However, it appears unlikely that Sens. Dole and Graham would defy the Administration and force it into such a position. Instead, they will most likely lift their hold on the legislation after receiving assurances (and political cover) from USTR to appease their constituents who oppose PNTR.

Administration Outlines Views on CFIUS Reform

In September 14, 2006 letters to Chairman of the House Financial Services Committee Rep. Michael Oxley (R-OH), the Committee's Ranking Member Rep. Barney Frank (D-MA), Chairman of the Senate Committee on Baking, Housing and Urban Affairs Sen. Richard Shelby (R-AL), and the Committee's Ranking Member Sen. Paul Sarbanes (D-MD), Treasury Secretary Henry Paulson presented the Bush Administration's views on legislation (H.R. 5337 and S. 3549) meant to reform the Committee on Foreign Investment in the United States (CFIUS). CFIUS is an interagency panel that reviews foreign acquisitions of U.S. companies and their national security implications. Paulson sent the letters because Congress is examining both pieces of legislation in conference.

In the letters, Paulson acknowledges that the CFIUS process must be enhanced "in order to ensure protection in a post 9/11 environment and continue to welcome foreign investment as a source of economic growth and employment." The letter also states that the Administration supports the "intent of

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

H.R. 5337 and S. 3459 to address national security imperatives" and also supports "enactment of a bill that will improve and strengthen" the CFIUS. However, the letter notes that the Bush Administration views foreign investment in the United States as beneficial, and that any reforms to the CFIUS process should balance protecting national security with ensuring a strong U.S. economy and maintaining "an open investment environment" in the United States. In light of these needs, Paulson posits that "the President should retain substantial flexibility to determine CFIUS membership and administrative procedures, and to make adjustments when national security so requires." The letter states that the Administration "looks forward to working with Congress to advance the goal of CFIUS reform, consistent with these principles." The letter also addresses several aspects of the CFIUS legislation:

- **Notification.** The letter states that "CFIUS should be required promptly to notify Congress of transactions but only after all deliberative action is concluded," and that such an approach "would respect Presidential decision-making authority and ensure a transaction's national security implications are fully analyzed before information is submitted to Congress."
- **CFIUS Chair Signature Requirement.** Paulson states that the Administration agrees with Congress that the CFIUS Chairperson should sign CFIUS decisions and any related reports to Congress at the end of a second-stage 45-day investigation, delegable to the Deputy Secretary of Treasury. However, the Administration disagrees with Congressional sentiment that the same procedure should be applied after a first-stage 30-day investigation. Rather, the Administration feels that "the signature requirement [after a first stage investigation] should be delegable to officials appointed by the President and confirmed by the Senate."
- **Presidential Decision-making Authority.** The letter states that the Administration supports having the President make the final decision when the CFIUS recommends that that a transaction be blocked or when the CFIUS fails to make a decision following a second-stage investigation: "requiring Presidential action in a broader set of cases would undermine the President's ability to determine how best to exercise Executive Branch decision-making authority."
- **Second-stage Investigations.** The Administration believes that the CFIUS should conduct a second-stage investigation only if it has identified national security concerns "that have not been mitigated in the first-stage investigation" and only if CFIUS has not answered national security questions by the end of the first investigation
- **Voluntary Filings**. The Administration stated that all CFIUS filings should remain voluntary.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

- **Duration of Investigation Periods.** Paulson's letter stated that CFIUS should retain the current 30 and 45-day investigation periods because they provide sufficient time for investigations.
- **Procedural Requirements.** The Administration believes that new procedural requirements, such as roll-call voting, in the CFIUS process might make it less effective.
- **Authority of CFIUS.** The Administration finally posited that "providing CFIUS with additional statutory authority to collect evidence and require the attendance and testimony of witnesses and the production of documents would make the CFIUS process more adversarial and less effective."

H.R. 5337 ("The National Security Foreign Investment Reform and Strengthened Transparency Act of 2006") and S. 3549 ("The Foreign Investment and National Security Act of 2006") would reform current CFIUS procedures to ensure closer coordination with Congress on CFIUS investigations and decisions. On July 26, 2006, the House passed H.R. 5337 by a margin of 424-0, and the Senate unanimously passed S. 3549. The bills are not identical, however. For example, the Senate bill would require notifications of acquisitions by foreign government controlled entities of "critical infrastructure" and would mandate investigations of such transactions. In contrast, the House bill would not mandate notifications but would add "critical infrastructure" as a factor to be considered by CFIUS in its review. The Senate bill would also require notification of selected members of Congress while CFIUS conducts reviews and investigations and would require the notification of governors in states with critical infrastructure assets that are being acquired. The House bill includes more limited congressional notification provisions, and notification would not take place until after an investigation has been completed. The House bill also does not require notification of state officials. The Senate bill urges longer processing times by allowing any CFIUS agency to request a 30-day extension of the initial review period, which could still be followed by a 45-day investigation. The House bill, on the other hand, would permit extension of the 45-day investigation period, but only if two-thirds of the CFIUS members involved in the review request the additional investigation by roll call vote.

Because of the differences between the two bills the House and Senate established a Congressional conference to draft a compromise legislation, which both chambers must again approve. The Senate bill has seen a larger share of opponents than the House bill. Rep. Oxley, for example, has stated that the United States "simply must not drive off those who want to make the wise investment in our great economy" and added that the Senate "should understand that no bill would be a preferable alternative to a bad bill." Given the tight Congressional schedule leading up to the Fall midterm elections, it is unclear whether some of the more stringent Senate provisions will end up in the final bill.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Sen. Baucus, Rep. Rangel Propose GSP, ATPA Extension on Heels of Identical Rangel Bill

On September 15, 2006, Senator Max Baucus (D-MT), Ranking Democrat on the Senate Finance Committee, introduced the Emergency Trade Program Extension Act of 2006, a bill that extends for two years the Generalized System of Preferences (GSP) and the Andean Trade Preferences and Drug Eradication Act (ATPDEA), both set to expire at the end of December. Baucus' bill (S. 3904) is identical to legislation (H.R. 6076) that House Ways and Means Committee Member Rep. Charles Rangel (D-NY) introduced on the same day. Rangel had offered earlier legislation (H.R. 5070) to extend GSP by one year. The bills also extend for one year the "third country fabric" provisions of the Africa Growth and Opportunity Act (AGOA), which expire on October 1, 2007.

Under the GSP program, beneficiary developing countries' imports receive duty-free access to the U.S. market. The ATPDEA provides preferential access to the United States for products from Bolivia, Peru, Ecuador, and Colombia. AGOA provides beneficiary countries in sub-Saharan Africa with liberal access to the U.S. market, reinforces African reform efforts and provides improved access to U.S. credit and technical expertise. Baucus stated that "there has been a lot of criticism of these programs recently, much of it valid" but added that he believes that "Congress should consider the future of these important programs before they simply expire [and] examine carefully the effect these programs have on U.S. workers and businesses, on America's image around the world, and on our trade priorities in the Doha Round and elsewhere." He added that "it may well be that major changes are needed for all these programs, but we should not force workers and businesses who rely upon these programs to endure the real disruption that an expiration would cause while we figure out what to do."

With only months remaining before the GSP program and the ATPDEA expire in December and with a limited Congressional schedule due to the Fall midterm elections, beneficiary governments had become very concerned about the dearth of legislation addressing these issues. Although these governments, their exporting industries, the Bush Administration and the U.S. businesses that rely on program-based imports sought extensions beyond two years, the groups will almost assuredly welcome the introduction of Baucus' and Rangel's legislation because it indicates that Congress will focus on GSP and ATPDEA renewal before the programs expire. It seems unlikely, however, that Congress will vote on these bills before midterm election season begins in October, opting instead to consider the bills during its "lame-duck session." Assuming Congress can find the time in the coming months to consider this legislation, passage should be relatively uncontroversial.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

The GSP renewal legislation was somewhat expected, as it is a relatively uncontroversial program with broad Congressional support. On the other hand, most observers opined that Congress would allow the ATPDEA to expire at the end of 2006. That Congressional consideration of the Peruvian and Colombian agreements in 2006 is in doubt perhaps led to the inclusion of ATPDEA renewal in the GSP legislation. Without ATPDEA renewal and passage of their respective FTAs, beneficiary countries Peru and Colombia would lose their preferential access to the U.S. market.

Financial Services Committee Members Demand Russian Financial Commitments as Part of Accession Agreement

In September 13, 2006 letter to Treasury Secretary Henry Paulson, Jr. and United States Trade Representative (USTR) Susan Schwab, House Financial Services Committee Chairman Rep. Michael Oxley (R-OH), Ranking Member Rep. Barney Frank (D-MA), Domestic and International Monetary Policy Subcommittee Chairman Rep. Deborah Pryce (R-OH), and Ranking Member Rep. Carolyn Maloney (D-NY) expressed their concerns about Russia's financial services commitments as part of the bilateral World Trade Organization (WTO) accession talks between the United States and Russia. In the letter, the Committee members also expressed their "commitment to working with Treasury Secretary Paulson and Trade Representative Schwab to ensure a meaningful agreement is reached."

The letter states that Paulson and Schwab should ensure that Russia completely phase out the foreign equity ownership caps on both insurance and banking by a certain date. The Committee members contend that Russia's proposal of a 50 percent cap is unacceptable, and that it is "bad commercial policy, bad trade policy and a very bad precedent" because it would "unavoidably create problems of definition, measurement, national treatment and transparency." The Committee members also stated that any agreement with Russia should provide 100 percent ownership and juridical form, and that Russia should not be allowed to accede to the WTO without commitments on branching for banks and insurance companies. Specifically, the Committee members demand that "Russia agree to permit branching within two years for U.S. banks, life and non-life insurance companies, and insurance intermediaries." The letter also notes that any agreement with Russia must first go through a "Congressional approval" stage, and that "Russia's failure to make appropriate commitments in these areas could jeopardize that approval."

Under current Russian banking rules, a U.S. financial company wishing to establish operations in Russia must secure a host country charter and establish a separately incorporated Russian entity with a separate board of directors. U.S. companies are also unable to operate on the basis of their global capital and instead may use only the capital that they possess in Russia. Russia also limits the amount of overall

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

foreign ownership of the Russian banking system to 25 percent. Russia has offered to raise the cap on a discretionary basis to 50 percent as part of the bilateral accession negotiations, but U.S. financial services providers view the offer as too weak, seeking instead the complete elimination of foreign investment caps.

Should U.S. negotiators conclude a bilateral agreement that fails to address the concerns of Congress and the U.S. financial services industry, the agreement will likely face intense Congressional criticism. This criticism will likely translate into a contentious battle in Congress over granting Russia Permanent Normal Trade Relations (PNTR) – a step that the United States must take before it can benefit from the increased access to the Russian market that Russia's WTO accession will provide. WTO "most favored nation" (MFN) rules require than all Members provide each other with unconditional, non-discriminatory access to their markets. PNTR would provide Russia with such access to the U.S. market.

This criticism could also affect any consideration of the bilateral agreement under Section 1106 of United States trade law. Section 1106 of the Omnibus and Trade Competitiveness Act of 1988 requires the President to determine, with respect to a "major foreign country" seeking admission to the WTO, whether the country's state trading enterprises (STEs) adversely affect the U.S. economy. If the President determines that Russia's STEs adversely affect the U.S. economy, then he must reserve the right of the United States to withhold application of the WTO Agreement between Russia and the United States until: (i) Russia undertakes commitments governing the business activities of its STEs, or (ii) the U.S. Congress passes a law extending the application of the WTO Agreement to Russia. A Presidential determination of "adverse effects" under Section 1106 is rare, and in no instance has the President sought Congressional involvement where he has found "adverse effects." For example, prior to China's WTO accession, the President issued a Section 1106 determination that found that China's STEs adversely affected the U.S. economy. However, because China's obligations under the WTO Agreement and the WTO accession protocol met the requirements of Section 1106, the President did not withhold China's application of the WTO Agreement and the matter did not require a Congressional vote to extend the application. Although Section 1106 determinations are rare, if Russia does not address Congress' financial services demands in the bilateral, the agreement could encounter problems if, in the slight chance, it were put to a Congressional vote under Section 1106, particularly if concerns regarding Russia's protections of intellectual property rights also remain unanswered.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Mexico Targets U.S. Dairy Products In Response To U.S. Failure to Repeal Byrd Amendment

On September 13, 2006, the Mexican Ministry of Economy published in the *Diario Oficial* a decree increasing to 110 percent the duties on U.S. imports of preparations made from milk products with milk solid content in excess of 50 percent by weight. The measure, which will remain in place for 48 calendar days (September 14-October 31), resulted from Mexico's contention that the United States' has failed to comply with a 2003 World Trade Organization (WTO) ruling that the Continued Dumping and Subsidy Offset Act of 2000 (the "Byrd Amendment") is inconsistent with WTO rules. The sanctioned products are classified under tariff heading 1901.90.05 of Mexico's Harmonized Tariff Schedule (HTS). On August 18, 2006, the Ministry imposed retaliatory tariffs worth US$20.9 million on 10 U.S. exports, as sanctioned by a 2005 WTO compliance panel ruling that the United States' has not complied with the earlier WTO decision. The Mexican duties remained in effect for one year and ranged from nine to 30 percent on products such as chewing gum, wine and dairy blends used for baby formula. During 2005-2006, Mexico collected most – but not all – of the US$20.9 million that the compliance panel authorized. Mexico's decision to target one single product for a short period of time is an attempt to collect the amount outstanding from the US20.9 million. However, if at the end of the 48-day period, there is still amount outstanding from the US$20.9 million, the Ministry may continue to apply the duties for an extended period until the full collection is accomplished.

The CDSOA mandates the distribution of antidumping and countervailing duties to the U.S. companies that petitioned for trade relief. In March 2005, the World Trade Organization (WTO) allowed seven WTO Members, including the EU, Canada, Mexico and Japan, to impose retaliatory duties on U.S. imports based on the United States' failure to comply with a January 16, 2003 WTO Appellate Body (AB) decision that the law was inconsistent with certain provisions under the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement"), the General Agreement on Tariffs and Trade 1994 (the "GATT 1994"), and the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement"). Upon repeal of the Byrd Amendment, antidumping and countervailing duties (AD/CVD) would go to the general fund of the Treasury.

On February 8, 2006, President George W. Bush signed into law the Deficit Reduction Act of 2005 (S. 1932) that contains language repealing the Continued Dumping and Subsidy Offset Act (CDSOA or the "Byrd Amendment") but not until October 1, 2007. The budget bill allows the U.S. government to disburse CDSOA payments related to any subject goods that enter the United States before October 1, 2007. Thus, domestic companies will continue to receive Byrd disbursements for any subject good entering the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

United States through October 1, 2007 and beyond, due to the United States retroactive system of assessing final liability for duties. Because the Byrd measure will, therefore, be on the books until October 2007, WTO rules allow authorized Members to continue to retaliate against U.S. imports until that time (*i.e.,* until the measure is officially void). In Mexico's case, it appears that this could be the last retaliatory measure that Mexico will take against the United States, given U.S. willingness to comply with the WTO ruling and the repeal of the CDSOA.

DOC Begins Accepting Applications from Chinese Entities Eligible to Receive High-Tech U.S. Exports Without License

On September 12, 2006, Deputy Assistant Secretary of Commerce for Export Administration Matthew Borman stated that the U.S. Department of Commerce (DOC) is accepting applications from firms in China to receive certain U.S. high-technology exports without a license. Borman added that DOC will publish an initial list of validated end-users (VEUs) in China early in 2007 when it issues its next version of a rule aimed at regulating high-tech exports to China.

DOC published that rule on July 6, in the Federal Register. The proposed rule would loosen controls on certain high-technology exports and tighten restrictions on some defense-related exports to China. Under the proposed rule, a total of 47 categories of high-technology products, including machine tools, computers, telecommunications test equipment and navigational equipment, will be subject to new export controls. The rule would also establish an "authorization" for VEUs to facilitate legitimate exports to certain civilian destinations in China; this would eliminate the need for U.S. companies to obtain individual export licenses. VEUs would have to meet several criteria including "a demonstrated record of engaging only in civil end-use activities and not contributing to the proliferation of weapons of mass destruction or otherwise engaged in activity contrary to U.S. national security or foreign policy interests." DOC and other government agencies such as the State Department will have to approve the list of VEUs.

Under the proposed rule, exporters will also be required to obtain an end-user certificate issued by China's Ministry of Commerce for all items that require an export license to China and that exceed a total value of $5000. The new end-user certificate will replace the current end-user certificate which applies only to items controlled for national security purposes. The rule would also eliminate the current requirement that exporters submit the end-user certificate to DOC's Bureau of Industry and Security (BIS) with their license application but would require that exporters retain end-user certificates for five years. An end-user certificate would continue to be required for all computer exports.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Borman also stated that DOC, in cooperation with other government agencies, will begin formulating a list of VEUs even before the final rule is published. DOC is seeking public comments on the rule between now and November 3, 2006, but Borman stated that following the expiration of the formal comment period for the rule, DOC will take "some number of weeks" to examine the comments before proposing a new version of the rule or the final rule.

Many U.S. business groups oppose the new rule. In August, sixteen U.S. business groups called on Commerce Secretary Carlos Gutierrez to join with Secretary of State Condoleezza Rice and Defense Secretary Donald Rumsfeld "in suspending work on the current regulation while our China policy is thoroughly reviewed to ensure that export controls are consistent with long-term U.S. objectives." The groups opined that the proposed rule would "seriously hinder" U.S. competitiveness without advancing national security interests, and that “U.S. competitiveness will be negatively impacted by excessively broad, unilateral export controls." Despite strong protest from these influential business groups, the proposed rule will likely be published in early 2007 due to early support from the Bush Administration.

Senators Baucus, Smith Urge Administration to Push for Vietnam PNTR Vote

In a September 8 letter to President Bush, ranking Senate Finance Committee member Sen. Max Baucus (D-MT) and Sen. Gordon Smith (R-OR) expressed their support for passage of legislation granting Permanent Normal Trade Relations (PNTR) to Vietnam. Sources opine that the two Senators sent the letter to President Bush after hearing news that the Administration did not lobby Congress on the Senate measure (S. 3495) during the August congressional recess. Both Senators are sponsors of S. 3495, which the Senate Finance Committee approved of unanimously on July 31.

The bill has not moved forward, however, because Senators Elizabeth Dole (R-NC) and Lindsey Graham (R-SC) have placed holds on the legislation, and because the House has not yet held hearings on the legislation. Several leading House members have indicated that the House will likely consider the measure following the mid-term November elections. House Majority Leader Rep. John Boehner (R-OH) has opined that “the week of November 13 would be a likely time” to consider the PNTR bill.

As Vietnamese government officials prepare for the November 18-19 Asia Pacific Economic Cooperation (APEC) Leaders' Summit they have urged the U.S. government to approve PNTR before the President Bush arrives at the conference. Vietnam has targeted mid-October for its World Trade Organization (WTO) accession and would like to have the WTO approve its accession during the October 10-11 General Council meeting so it can join the WTO before the APEC summit. In their letter to the President,

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Senators Baucus and Smith also urged a similar timeframe and stated that they "believe that it is imperative for U.S. prestige in Asia that Congress, with your administration's active support, move to consider and pass this widely-supported legislation before you join APEC's twenty other leaders in Hanoi this November."

Given recent statements by Congressional leadership and Republicans' problems with the looming mid-term elections, it is increasingly unlikely that Congress will approve Vietnam PNTR before the October meeting of the WTO's General Council. This scenario appears probable even though House and Senate passage of PNTR can take as little as one day, as it did with Ukraine in March of 2006. However, a source has indicated that Vietnam will not be ready to accede to the WTO by the General Council's October meeting. Because Congress will likely consider and approve Vietnam's PNTR status during the November "lame-duck" session, any delay in Vietnam's accession would likely allow the United States to avoid problems resulting from its failure to grant PNTR before Vietnam accedes. An early November PNTR approval would also allow President Bush to attend the APEC Summit with PNTR in hand.

United States and Canada Sign Lumber Agreement, and Canadian Parliament Is Expected to Implement Necessary Legislation to Trigger U.S. Obligation to Revoke the Antidumping and Countervailing Duty Orders

On September 12, 2006, United States Trade Representative (USTR) Susan Schwab and Canadian Minister for International Trade David Emerson signed the U.S.-Canada Softwood Lumber Agreement in Ottawa. Both officials also used the opportunity to discuss bilateral trade issues. USTR Schwab stated that "with the signing and implementation of this landmark agreement, [the United States] hopes to bring to close this long standing dispute with our largest trading partner." She added that "the Agreement is another achievement for the President's broad trade agenda."

Finalized by both countries on July 1, 2006, the agreement constitutes a seven-year, renewable pact between the United States and Canada under which the United States will revoke the existing countervailing duty (CVD) and antidumping (AD) orders on softwood lumber and will stop collecting cash deposits provided certain conditions specified in the agreement are met. The agreement requires the United States to return approximately $4 billion of the nearly $5 billion in deposits that have been collected from Canadian exporters since the 2002 imposition of AD/CVDs on Canadian lumber imports. Half of the remaining $1 billion would go to members of the Coalition of Fair Lumber Imports – the domestic industry group which originally petitioned for trade relief – with the remainder to "meritorious initiatives in the North American lumber market and the United States as identified by the U.S.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

government in consultation with Canada." The agreement also imposes an export measure, a third-country trigger and a surge mechanism.

Although officials from the United States and Canada signed the agreement, the Canadian Parliament must pass legislation to implement certain provisions. The agreement does not require U.S. Congressional action. Canadian officials believe that the requisite level of support exists for Parliament to pass the legislation when it returns to session next week. The expected effective date for the agreement to enter into force is October 1, 2006.

Senators Introduce Agriculture Disaster Assistance Bill, Propose $6 Billion in Relief Measures

On September 6, 2006, Senators Kent Conrad (D-ND) and Tim Johnson (D-SD) introduced the "Emergency Agricultural Disaster Assistance Act of 2006" that would provide $6 billion in emergency agricultural disaster assistance to U.S. producers that suffered weather-related crop and livestock loss in 2005 and 2006. Johnson stated that "there are huge swatches of [South Dakota] that could face depopulation because of a drought that is one of the worst since the Dust Bowl, [and] the Administration offered up a plan that offers too little too late." Johnson was referring to a new $50 million disaster package that the Bush Administration had introduced earlier in the week. Johnson added that the proposed legislation "would offer real relief to producers in desperate need" and noted that "to pass it, the President would just have to say he wouldn't veto it [so that] we could make sure that drought was treated like any other disaster and bring the necessary help home."

The bill includes language similar to that of an earlier Conrad-sponsored bill (S. 2438) that would have provided $3.5 billion for agricultural producers harmed during 2005. The new legislation would offer support to ranchers and farmers impacted by frost, flood and disease during the 2005 growing season, with emergency legislation to aid producers suffering from the 2006 drought in the Great Plains. Sources note that because the number of Congressional working days are limited, due to the upcoming mid-term election season, both Senators will "consider all legislative maneuvers to move the bill…anything under the sun."

The bill's co-sponsors include Senators Norm Coleman (R-MN), Byron Dorgan (D-ND), Ben Nelson (D-NE), Jim Talent (R-MO), Tim Johnson (D-SD), Ken Salazar (D-CO), Max Baucus (D-MT), Maria Cantwell (D-WA), Richard Durbin (D-IL), Barack Obama (D-IL), and Mark Dayton (D-MI).

If Congress passes the legislation, several U.S. trading partners would likely cry foul. as they could perceive the emergency assistance as another government subsidy to U.S. farmers. U.S. farm subsidies

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

remain a contentious international trade issue and have contributed to the stalled the World Trade Organization (WTO) Doha Round of talks. However, analysts point out that the bill will face several hurdles in its journey through Congress, chief among them the number of limited working days left before election season kicks off. Senators Conrad and Johnson may attempt “everything under the sun” to pass the legislation, but Congress’ already-full plate and its focus on other looming issues could push the legislation, and the possible international reaction to it, aside, at least for the time being.

U.S. Agriculture Secretary Urges Changes in Farm Bill

On August 31, 2006, U.S. Secretary of Agriculture Mike Johanns stated that the Bush Administration is seeking to reform U.S. agriculture programs through a new farm bill in 2007 and will oppose a simple extension of the current 2002 farm bill. He added that the United States should reform its agriculture subsidy programs regardless of the recent collapse of the World Trade Organization (WTO) Doha Round negotiations and noted that the Bush Administration will likely prepare its agriculture proposals by January 2007. It is unknown whether these proposals will come in the form of broad guidelines or more specific program proposals. Either way, Johanns stated that he opposes any extension of the 2002 farm bill, including the one-year extension that several groups, including the American Farm Bureau Federation have advocated to “avoid making unilateral changes to U.S. subsidy programs outside the context of the Doha talks.” He also stated that “good farm policy needs to be equitable, it needs to be predictable, and it needs to be beyond challenge,” likely meaning challenge at the WTO.

Johanns stated that the need for reform of U.S. farm programs is “just as strong even without an agreement in the Doha Round,” and that current U.S. agriculture subsidies would not fit under the limits set forth in the United States’ October 2005 Doha Round proposal. He also stated that Brazil's successful challenge to U.S. cotton programs at the WTO should demonstrate to U.S. policymakers that other U.S. agricultural subsidy programs are vulnerable to challenge at the WTO. Johanns added that the United States will defend its farm subsidies in any legal disputes at the WTO but must “recognize vulnerabilities."

Johanns also acknowledged that certain U.S. farmers benefit disproportionately from the current farm bill and thus support its extension. Johanns noted that five crops (soybeans, rice, wheat, cotton and corn) that account for only 21 percent of U.S. agriculture revenues receive almost 93 percent of U.S. farm subsidies. He added that specialty crops that create similar revenues receive nothing.

With its upcoming expiration in 2007, the 2002 farm bill has become a major U.S. trade policy focus, particularly with those farm state Congressmen and Senators up for re-election in the Fall. Recently, Senate Agriculture Committee Chairman Saxby Chambliss (R-GA) stated that the U.S. sugar program

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

must undergo changes in next year's farm bill but added that he would like to maintain the farm bill's current structure because it "provides no net cost to the federal government." Meanwhile, other supporters of the farm bill have advocated a simple extension, if only until a Doha accord is reached. On the other hand, Johanns suggested that Brazil's successful WTO challenge of the U.S. "step two" cotton program could embolden other WTO Members to threaten WTO complaints against other U.S. commodity programs, such as those for rice. Thus, a U.S. farm bill that does not address these concerns could be ripe for WTO challenge, possibly resulting in billions of dollars in retaliatory sanctions against U.S. exports. The whole of Congress will shift its attention to the farm bill following the mid-term elections. At that time, farm state and pro-subsidy congressional Members will face off against congressional free traders and the Bush Administration. The outcome of this battle is unclear and will depend on the post-election composition of the U.S. Congress, the outcome of Brazil's compliance panel request at the WTO which could result in over $1.037 billion in retaliatory tariffs, and any other WTO challenges to U.S. farm subsidy programs.

Senate Finance Committee Posts Comments on Miscellaneous Tariff Measures

On August 31, 2006, Senate Finance Committee Chairman Charles Grassley (R-IA) and Ranking Member Max Baucus (D-MT) announced that the Senate Finance Committee has posted comments submitted by interested parties on the miscellaneous tariff measures introduced in the Senate during the 109th Congress. On July 11, 2006, the Finance Committee requested that interested parties submit written comments on the tariff measures' possible inclusion in a Senate Miscellaneous Tariff Bill (MTB).

Congress traditionally passes MTBs at the end of each two-year session to request duty-free status for certain imports and corrections to the United States Harmonized Tariff System (USHTS) and to introduce measures that increase the competitiveness of U.S. products and companies. MTBs combine into a single bill individual trade and tariff provisions that have been introduced during the session and that meet certain guidelines: (i) they should not cover products produced by a domestic manufacturer (i.e., the bills must be non-controversial); and (ii) they should not result in more than $500,000 in lost revenue per year. Because these provisions are historically non-controversial, MTBs tend to pass quickly and with little opposition. However, because the 2004 MTB contained a number of controversial provisions, the bill stalled for nearly four years until it was passed in November 2004, with almost eighteen months between its March 2003 introduction and final passage. Although the House version for the 109th Congress does not appear to contain any such controversial measures and easily passed the House on March 15, 2006 by a margin of 412-2, the Senate has yet to pass its own version of the bill. The Senate could pass the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

legislation before the end of the year, but if the Senate's version contains any controversial tariff measures, its passage could take longer. Even assuming that the Senate considers and passes its MTB this year (not a foregone conclusion considering the tight mid-term election schedule), the House and Senate will have to convene a conference committee to address their respective bills' differences and create a single MTB, which each chamber must again pass before the President can sign it into law. A completed MTB in 2006 is, therefore, far from certain.

U.S.-China Talks on Auto Parts, WTO Participation Go Nowhere

An August 29 meeting between United States Trade Representative (USTR) Susan Schwab and China's Minister of Commerce Bo Xilai has failed to advance a bilateral dispute over high Chinese auto parts tariffs. The United States, Canada and the EU have each requested formal World Trade Organization (WTO) consultations with China over the auto parts issue – the first step towards initiating a formal WTO dispute settlement case (DS340). During their August 29 meeting, U.S. and Chinese officials reiterated their respective positions, but sources indicated that the parties made no forward movement toward a resolution. In July, China had announced it would postpone implementation of the current auto tariffs until 2008. The United States complained that China's regulations would still be "on the books," but the EU viewed the postponement as an opening for additional negotiations. However, the EU-China consultations fell through on August 24 in a fashion similar to that of the failed U.S.-China talks.

According to the EU and U.S. requests for consultations, China's taxes on imported auto parts are WTO-inconsistent because they discourage Chinese automobile manufacturers from using imported auto parts. China in April 2005 implemented regulations that impose a tax on imported auto parts equal to the tariff on complete automobiles if the final assembled vehicle fails to meet certain local content requirements. According to the complainants, these new rules discriminate against imported auto parts in favor of Chinese-manufactured parts in violation of China's National Treatment obligations under the 1994 General Agreement on Tariffs and Trade (GATT). The U.S. and EU complaints also allege that China's policies violate the WTO Agreements on Trade-Related Investment Measures (TRIMS) and Subsidies and Countervailing Measures (ASCM), as well as specific commitments that China made as part of its WTO accession. (During China's accession, it committed to eliminate all local content requirements and to lower and bind its tariffs on auto parts. The newly-imposed regulations appear to contradict these obligations.)

During the August 29 talks, Schwab and Bo also discussed intellectual property protection, with Bo laying out some of the enforcement measures that China has taken and reiterating to Schwab the important step

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

of requiring licensed software to be preloaded onto all computers sold in China. Both officials discussed subsidies and market access issues as well. At the meeting, Schwab emphasized that the United States wants to resolve disputes with China before they require WTO litigation, but she did not rule out future WTO cases. She stated that "when good faith dialogue does not yield positive results, we cannot stand by and allow commitments to go unobserved [and] will use the dispute settlement mechanisms available to us." She added that a WTO challenge can provide "helpful leverage" to government agencies that try to convince their fellow agencies to abide by WTO rules. Schwab also noted that China has "an enormous interest" that trading nations abide by WTO rules because it is "both the most frequent initiator and most frequent subject of antidumping investigations." Schwab and Bo also managed to discuss how to invigorate the stalled Doha Round negotiations. Bo responded to Schwab's call for China to be more engaged in the negotiations by assuring her that China would be "right behind" the United States if the United States took a leadership role in the negotiations.

The auto parts conflict will likely result in the establishment of a WTO panel to resolve the dispute. The United States and the EU requested consultations with China on March 30; Canada followed with its own request on April 13. On May 12, 2006, the United States, the EU and Canada completed two days of consultations with China, but the parties indicated that nothing emerged from the meeting, and that China was unlikely to "placate the complainants and ward off a dispute panel review of its auto tariff policy." During the summer of 2006, U.S. officials hinted that because of China's recalcitrance, the United States would request that the WTO's Dispute Settlement Body (DSB) establish a panel to resolve the auto parts issue. The United States failed, however, to make such a request at the DSB's September 1 meeting, but it might do so at the next DSB meeting on September 28. The EU has not indicated when or whether it would request a panel, but the parties' August 24 failure to resolve their dispute indicates that the EU might also make a panel request at the DSB's next meeting.

Colombia to Open Market to U.S. Beef; Switzerland to Ban to Hormone-Treated U.S. Beef

With the signing of a series of letters related to the U.S.-Colombia Free Trade Agreement (FTA), Colombia agreed to open by October 31 its market to imports of U.S. beef of any age that meet World Animal Health Organization (OIE) standards. Sen. Max Baucus (D-MT) lauded Colombia's decision and stated that the Colombian government had done "the right thing" by agreeing to "accept the full range of Montana and U.S. beef products… regardless of age." Colombia has maintained a ban on all U.S. beef imports since the discovery of a U.S. cow afflicted with bovine spongiform encephalopathy (BSE) in December 2003.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Approximately 20 countries continue to prohibit imports of U.S. beef, and many of the 73 open markets have imposed import restrictions on bone-in beef and/or beef over thirty months of age. South Korea, formerly the second largest export market for U.S. beef, remains closed, and Japan, formerly the largest export market, only allows boneless beef under 20 months of age. The U.S. Department of Agriculture (USDA) recently stated that it would file a submission with the OIE in September for a decision on the United States' BSE risk status. Under the OIE's Terrestrial Code of 2006, OIE Member Countries may submit applications for classification into one of three categories based on BSE risk: (i) negligible; (ii) controlled risk; and (iii) undetermined. USDA Undersecretary for Farm and Foreign Agriculture Services J.B. Penn noted that "it makes no difference whether [the United States is] in the negligible category or… the controlled risk category" because the United States would be able to trade in the full range of beef products in either category.

That President Bush notified the U.S. Congress of his intent to sign the U.S.-Colombia FTA only days prior to Colombia's announcement regarding the resumption of U.S. beef importation should come as no surprise. Significant disagreements over meat inspection delayed implementation of the Dominican Republic – Central American FTA (DR-CAFTA), and the United States has since refused to complete and sign an FTA unless the parties resolve beef importation and meat inspection issues. During its July 27, 2006 "mock markup" of the U.S.-Peru Free Trade Promotion Agreement (PTPA), for example, the Senate Finance Committee approved an amendment to the agreement's draft legislation that would require Peru to open its market to U.S. beef without age restrictions and require Peru's full compliance regarding sanitary and phytosanitary (SPS) requirements and technical barriers to trade (TBT). Sen. Baucus has also stated that as part of the ongoing U.S.-Korea (KORUS) FTA negotiations, Korea must agree to "fully open its market to our beef exports."

Separately, Switzerland confirmed on August 28 that it will ban imports of U.S. and Canadian beef that has been treated with growth-promoting hormones. The ban will bring Switzerland's sanitary and phytosanitary (SPS) rules in conformity with European Union (EU) rules as per a bilateral agreement between the two parties and will remove SPS border controls between Switzerland and the EU. Not a member of the EU, Switzerland currently allows imports of hormone treated beef that contain no residual traces of hormones and are labeled as hormone-treated. The ban will require U.S. and Canadian beef exporters to certify that their products do not contain growth-promoting hormones. A spokesman for the Swiss Federal Veterinary Office stated that the ban would likely take effect before April 2007 but could not confirm an exact date. In response to the Swiss announcement, USTR emphasized its position that "U.S. beef is safe, according to both U.S. regulators and the WTO dispute settlement process" and stated that it

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

would "consider all appropriate responses" to any effort to arbitrarily restrict U.S. access to foreign markets.

Under the Council Directive Prohibiting the Use in Livestock Farming of Certain Substances Having a Hormonal Action, the EU has since 1985 banned imports of meat and meat products treated with growth-promoting hormones, citing an increased health risk associated with consumption of these products. On April 25, 1996 the United States and Canada requested the formation of a World Trade Organization (WTO) dispute settlement panel to challenge the EU ban (DS26). The Appellate Body (AB) on January 16, 1998 upheld most of an August 18, 1997 Panel ruling in favor of the complainants that subsequently allowed the United States and Canada to impose $128 million in combined retaliatory measures. The EU issued a new directive (2003/74/EC) in October 2003 that it claimed negated the legal basis for the complainants' continued retaliatory measures. Because the directive maintained a ban on meat and meat products containing the hormone oestradiol 17 and maintained bans on meat and meat products containing other hormones on a provisional basis pending additional scientific investigations, the United States and Canada rejected the new directive as unscientific and continued to impose the retaliatory measures. On January 13, 2005, the EU requested a panel to contest the U.S. and Canadian actions (DS320). The Panel indicated that it expects to issue its final report on the matter in October 2006.

Because Switzerland's new ban of hormone-fed beef mimics that of the EU, the outcome of the Panel decision might determine whether the United States and Canada pursue a WTO action against Switzerland. Should the Panel find that the EU remains non-compliant with the 1998 AB ruling, the United States and Canada would appear for have a strong case against the Swiss measures.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Free Trade Agreements

CAF X Conferees: United States Must Renew ATPDEA; No Timeframe For Passage of Peruvian and Colombian FTAs

Summary

On September 7-8, 2006, the Corporación Andina de Fomento (CAF),[13] the Organization of American States (OAS), and the Inter-American Dialogue hosted the CAF X Annual Conference on Trade and Investment in the Americas. The conference addressed U.S.-Latin America relations, current investment trends in Latin America, prospects of renewal of the Andean Trade Promotion and Drug Eradication Act (ATPDEA) and passage of the U.S.-Peru and U.S.-Colombia Free Trade Agreements (FTAs). Speakers included, among others, U.S. Assistant Secretary of State for Western Hemisphere Affairs at the Department of State Thomas Shannon, U.S. Treasury Department Deputy Assistant Secretary for Eurasia and Latin America Nancy Lee, Rep. Jim Kolbe (R-AZ), and Jose Manuel Insulza, Secretary General of the OAS. We review here the key points raised by U.S. and Andean trade representatives from separate presentations made on September 7, 2006.

Analysis

I. United States Must Renew ATPDEA; No Timeframe for Passage of Peruvian and Colombian FTAs

On ATPDEA renewal, most speakers agreed that the Bush Administration should pressure the U.S. Congress to renew the ATPDEA before it expires on December 31, 2006. Speakers also called on the U.S. Congress to approve the Peruvian and Colombian FTAs. We summarize below the speakers' views:

- **Enrique Garcia, President of CAF,** stated that 2006 has been a "dramatic year" for the Andean Community of Nations (CAN) after Venezuela's departure and Chile's rejoining the bloc. Garcia praised the positive economic outlook for Latin America in 2006 but stressed that the region continues to show weaknesses at the microeconomic level, notably in terms of efficiency and

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[13] The CAF is a multilateral financial institution that promotes regional integration and sustainable development through a variety of financial instruments (*e.g.*, short, medium-term loans, guarantees, equity investments, treasury products, and technical cooperation) in benefit of its shareholder countries: Bolivia, Colombia, Ecuador, Peru, Venezuela, Argentina, Brazil, Chile, Costa Rica, Spain, Jamaica, Mexico, Panama, Paraguay, Dominican Republic, Trinidad & Tobago, and Uruguay.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

competitiveness. Garcia stressed the need to strengthen U.S.-Latin America relations and to support democracy throughout the region.

- **Jose Manuel Insulza, Secretary General of the OAS,** opined that 2006 has been the most democratic year in the history of Latin America. Insulza praised the region's positive economic prospects and particularly the Andean countries' economic performance in 2006. He argued that because the growth experienced by the Andean countries, notably Bolivia, Peru, and Ecuador, occurred in the context of the ATPDEA, it is imperative that the United States renew the trade preferences before the end of the year. Insulza acknowledged that "although some of these countries are experiencing political difficulties, the right thing to do is to show solidarity to these countries while continue to combat drug trade." Insulza also called on the U.S. Congress to approve the U.S.-Peru and the U.S.-Colombia FTAs so that these countries can further benefit from preferential access to the U.S. market. On democracy, Insulza stated that the issue at stake was not democracy itself, but how democratic regimes throughout Latin America can effectively address the problems of the region's population.

- **Rep. Jim Kolbe (R-AZ), Chairman of the Subcommittee on Foreign Operations, Export Financing, and Related Programs,** was optimistic about ATPDEA extension and stressed that renewal was crucial "to show U.S. affirmation in the region with the Andean region." He stated that ATPDEA was crucial to support long-term U.S. investment to the Andean countries and to help them become more competitive. Kolbe stressed the need to move forward with bilateral FTAs in light of the World Trade Organization (WTO) Doha Round's virtual collapse and the stalled Free Trade Area of the Americas (FTAA), which "is practically dead." Kolbe expressed concern over the possible effects of political instability upon certain countries in the Andean region. On Venezuela, he stated that its economic model was not sustainable and "is troubling" for other countries in the region. On Ecuador, Kolbe noted that Ecuador's decision to revoke a contract held by U.S.-based Occidental Petroleum and to strip the company of its Ecuador-based assets scared foreign investors. Kolbe also expressed concern regarding the post-electoral crisis affecting Mexico, qualifying it as a "real assault on Mexican democracy."

- **Rep. Xavier Becerra (D-CA),** opined that the United States must change its pre-conceived perceptions of Latin American democracies. Becerra criticized U.S. trade and investment policies in the region, which he qualified as "broken." Becerra stated that the approval of recent FTAs by small margins (*e.g.*, the Dominican Republic Central American Free Trade Agreement (DR-CAFTA) and Oman), show that trade continues to be a divisive issue in the U.S. Congress; thus approval of the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Peruvian and Colombian trade agreements will not be an easy task. Becerra called on the U.S. Congress to invest more in the region and to "work as partners" with Latin America.

II. U.S.-Latin American Relations "On Track"

On U.S.-Latin American relations, most speakers agreed that although Latin America is not a priority for the Bush Administration, the region continues to be a key trade and investment destination for U.S. companies. We summarize below the speakers' views:

- **U.S. Assistant Secretary of State for Western Hemisphere Affairs at the Department of State Thomas Shannon**, stated that the ATPDEA was a very important program for the Administration, but that both ATPDEA extension and approval of the Peruvian and Colombian FTAs "was up to Congress." Shannon stated that several factors may affect the FTAs' approval and ATPDEA extension, such as the Fall mid-term elections and the sensitivity of trade issues in Congress. On the possible resumption of FTA talks with Ecuador, Shannon expressed "great hopes" to put the negotiations back on track but made no concrete predictions. On U.S. policy towards Latin America, Shannon stated that U.S. policy towards Latin America has three pillars: (i) consolidating democratic institutions; (ii) protecting democratic states; and (iii) fostering economic and investment opportunities in the region. Shannon opined that he prefers to see "opportunities" rather than "problems" in U.S.-Latin American relations. At the end of the day, however, Shannon stressed that "to be successful and achieve development, you must have a democratic state that delivers the goods to the people."
- **U.S. Treasury Department Deputy Assistant Secretary for Eurasia and Latin America Nancy Lee** stated that "there is an unfilled economic potential that could bring benefits to the Latin American people." Lee opined that U.S. investment and trade ties with Latin America were strong, but key policy challenges remain, such as addressing poverty, increasing investment rates and market openness, and improving education and infrastructure. Lee also reiterated the United States' commitment to U.S.-Latin America bilateral FTAs and the completion of the Doha Round.
- **Professor Fernando Cepeda Ulloa at Los Andes University in Colombia** and **Robert Rusell, Academic Director of Instituto del Servicio Exterior de la Nacion in Argentina**, expressed mixed views about U.S.-Latin America relations. Cepeda opined that the United States and Latin America have a more mature relationship where both sides understand that it is not possible to have a common agenda for sensitive issues, such as hemispheric trade or the contentious situation in Venezuela. Rusell stated that Latin America has never been a priority for the United States but "that does not mean that [the United States] does not have a clear policy towards the region." On the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

contrary, Rusell stated that the United States is very much involved in Latin America through its initiatives, but whether these are "deemed as good or bad" is a separate issue." Rusell agreed with Cepeda that the economic priorities of Latin American countries no longer converge, and that the idea of a unified Latin America is no longer valid.

III. Economic Outlook for Latin America Looks Positive

Most speakers agreed that for the first time in several decades, Latin America is performing well at the macroeconomic level, but countries must address social disparities, improve education, and achieve long-term political stability. We summarize below the speakers' views:

- **Anoop Singh, Director, Western Hemisphere Division at the International Monetary Fund (IMF),** stated that Latin America has failed to achieve higher growth levels due to three factors: (i) minimal conversion of the economies in Latin America; (ii) failure to sustain periods of growth; and (iii) macroeconomic volatility. Singh stated that Latin America needs to foster a combination of increased savings and investment to achieve sustainable growth and higher levels of productivity. Anoop also praised the low levels of inflation and fiscal austerity in the region.
- **Joaquim Ferreira Levy**, **Vice President for Finance and Administration, Inter-American Development Bank (IDB),** stated that Latin American countries have done well to reduce their foreign debt and to implement the "recipes" of fiscal austerity recommended by the IMF. Levy opined, however, that Latin America must grow faster, and to achieve that, countries must address issues that hinder growth, such as the lack of transparency, the rule of law, and accountability.
- **Michael Reid, Americas Editor, The Economist,** highlighted that the most immediate challenge for Latin America is to maintain economic and political stability. Reid stated that economic distortions in the 1980s, the return to democracy, and overvalued exchange rates made it difficult for Latin America to achieve sustainable economic stability. At present, there is a good level of stability, but the challenge for Latin America is to maintain it regardless of who wins the elections because "investors want to look beyond the next presidential election." Reid noted that only a few countries (e.g., Chile, Brazil, Costa Rica) have been able to achieve this stability successfully Reid recommended that Latin American countries should invest more in education, human capital and infrastructure. In addition, countries must strive to achieve continuity when changing administrations.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Outlook

Most speakers called on the United States to extend the trade preferences under ATPDEA beyond 2006 and to approve the U.S.-Colombia and U.S.-Peru FTAs. U.S. lawmakers and Administration officials at the CAF conference were positive about ATPDEA extension and approval of the Peruvian and Colombian FTAs but were extremely cautious to give a specific timeframe for Congressional consideration.

The Peruvian and Colombian agreements are likely to face intense opposition in Congress due mainly to partisan differences and election-year politics. Meanwhile, Bolivia and Ecuador are pressuring the Bush Administration to extend the ATPDEA's trade preferences beyond 2006, given the slim prospects for Ecuador to resume FTA negotiations with the United States after the government seized U.S. Occidental Petroleum's assets in May 2006. The chances for a U.S.-Bolivia FTA also appear weak in the near term.

The timeframe for consideration of the Andean FTAs and ATPDEA extension remains unclear. On September 7, 2006, House Ways and Means Chairman Bill Thomas (R-CA) hinted that Congress is unlikely to vote on ATPDEA renewal or Peru before the mid-term elections because there are other pending issues. Thomas stated "I think we can have some trade votes, but there are others that don't need to be voted on. Peru is an ongoing process but there are some structures that are in place that are due to expire. So you many want to address expiring stuff in the limited time frame you have rather than continue to move on ongoing, developing trade issues. We'll sharpen that up over the next few days." On ATPDEA for Ecuador and Bolivia, Thomas was clear, "not in this period" between now and the election. "You've got to prioritize what you're doing."

Chairman Thomas' comments show that the U.S. political calendar will factor into both ATPDEA renewal and the FTAs with Peru and Colombia, as the mid-term November elections will make it difficult for some Members of Congress to support free trade legislation. The House Ways and Means and Senate Finance Committees will likely schedule hearings to analyze the U.S.-Colombia FTA agreement, but it appears unlikely that Congress will vote on final implementing legislation before the end of the regular 2006 Congressional session. Separate legislation implementing the Peru FTA is already on the Congressional agenda, but the Fall mid-term elections will significantly shorten the post-Summer session. It does appear likely however, the Congress will vote on the Peruvian agreement before the end of 2006, if only during a "lame duck" session of Congress after the November elections. Congressional consideration of the Colombian agreement during the "lame duck" session is unlikely due to the agreement's recent completion. However, should Republicans lose their majority in either chamber, the Bush Administration may seek to push through contentious partisan legislation like the FTAs before

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Republicans cede control in 2007. Regarding ATPDEA extension for Ecuador and Bolivia, it appears that consideration of a possible extension of the program will not be a priority for Congress, particularly in light of tension arising from Ecuador's gas nationalization plans affecting U.S. Occidental Petroleum, and Bolivia's anti-free trade sentiment[14] and close relationship with Venezuelan President Hugo Chavez. However, if Congress considers neither Andean FTA before the end of the year, it might pass a short ATPDEA extension as a "good faith" symbol to those countries that their preferential market access will not lapse.

[14] On September 5, Bolivia moved forward with its plans to nationalize its hydrocarbons industry. The Bolivian government began negotiations with foreign oil companies, notably Brazil, France, Spain, which are required to sign new contracts with the government by November 1, 2006 or exit Bolivia.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Free Trade Agreements Highlights

U.S.-Malaysia FTA Third Round Postponed Until October: Can USTR Complete Asia FTAs In Time?

On September 21, 2006, the Office of the United States Trade Representative (USTR) announced that the third round of U.S.-Malaysia Free Trade Agreement (FTA) negotiations scheduled for this week in Malaysia has been postponed until the week of October 30 per Malaysia's request. Malaysia notified USTR during the week of September 4 of the postponement request because the lead Malaysian FTA negotiator has been promoted to a different position in the government, and his replacement will need additional time to prepare for his position. Former lead FTA negotiator Tan Sri Mohd Sidek Hassan was promoted to Chief Secretary to the Malaysian cabinet. In his new role, Sidek Hassan will no longer be involved in the FTA negotiations. Malaysia's new lead negotiator is Datuk Abdul Rahman Mamat who has had no direct involvement in the FTA negotiations.

Sources have speculated that Malaysia's political will for such a bilateral agreement is beginning to wane. One U.S. source opined that Malaysia seems less keen on completing an FTA than it was in March during the first round of negotiations, adding that there are "increasing" chances the negotiations will either collapse or be postponed for an extended period of time. Other sources point to growing opposition in Malaysia to the FTA that has led to the alleged decline in political will, especially with former Prime Minister (PM) of Malaysia Mahathir Mohamad fanning the flames of opposition. According to sources, another reason for the FTA's diminished chances are that the Malaysian government feels less competitive pressure to complete the agreement now that problems with the U.S.-Korea FTA negotiations have made completion of that agreement before the July 2007 expiry of Presidential Trade Promotion Authority less likely. Malaysian officials were quick to deny these rumors, however, and stated that the opposition of the former PM was not having any substantive impact on the FTA negotiations. The officials added that Malaysia still seeks to conclude a deal as soon as possible.

President Bush and Malaysian Prime Minister Abdullah Badawi also met on September 18 and agreed that advancing the U.S.-Malaysia FTA was "one of the most important priorities" for both countries. However, the postponement of the third round and heightened rumors that Malaysia's interest in an FTA is sliding jeopardizes the parties' original negotiating timeframe. U.S. negotiators planned to complete FTA negotiations with Asian trading partners – Malaysia, South Korea and Thailand – by the end of the year in order to allow sufficient time for the Administration to sign and present the completed agreements to Congress, and for Congress to consider the FTAs. FTA negotiations with Thailand are on hold

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

indefinitely due to the political situation there. Malaysia's current negotiating round has been postponed, and the United States and South Korea are moving very slowly on their negotiations. As such, it seems uncertain that U.S. negotiators' will be able to meet their original, ambitious goal. Whether they can complete any of the agreements before the end of the year remains to be seen.

Senate Approves Oman FTA Leaving President Free To Sign Agreement Into Law

On September 19, 2006, the Senate approved legislation (H.R. 5684) – by a margin of 62 to 32 – to implement the U.S. Free Trade Agreement (FTA) with Oman. With this vote, President Bush can sign the legislation into law, which will enable the bilateral agreement to enter into force. United States Trade Representative (USTR) Susan Schwab stated that she was "delighted the Senate has cleared this important free trade agreement for the president's signature," and that "the Oman FTA advances the president's vision for economic integration and development in the Middle East and participation in the peaceful community of trading nations." President Bush stated that he looks forward to signing the bill into law and opined that the agreement will "help Oman's leaders develop long-term opportunities for their people, and advance our shared goal of building a Middle East Free Trade Area." President Bush added that "by strengthening our relations with a strategic friend and ally in the Middle East, this important agreement will also help protect America's national security interests."

The Senate approved its version of the Oman FTA implementing bill (S. 3569) in late June 2006 by a margin of 60-34, but because the legislation is a revenue-related measure, Congressional rules mandate that the bill must originate in the House of Representatives. Thus, the Senate was required to vote again on the House version of the bill (H.R. 5684), which the House approved on July 20, 2006 by a voting margin of 221-205.

The U.S.-Oman FTA will eliminate duties on all consumer and industrial goods as well as duties on 87 percent of agricultural tariff lines upon entry into force. All remaining farm tariffs will be phased out over 10 years. The agreement will also free up trade in services and provide for improved protection of intellectual property rights (IPR) and effective enforcement of labor and environmental laws. According to USTR, the U.S.-Oman FTA will expand export opportunities for U.S. machinery, automobiles, optic and medical instruments and electrical machinery, and agricultural products.

The Oman FTA is the fifth agreement between the United States and a Middle Eastern country, following agreements with Israel, Jordan, Morocco, and Bahrain. The Oman FTA is also another component of

President Bush's United States- Middle East Free Trade Area (USMEFTA) initiative, which he hopes the United States will complete by 2013.

Unsurprisingly, reaction to Senate approval of the FTA was mixed along mostly party lines. Senate Finance Committee Chair Sen. Charles Grassley (R-IA) stated that the U.S.-Oman FTA will benefit U.S. farmers, workers, and businesses and will lead to economic growth and enhance the predictability of the rule of law in Oman. Senator Max Baucus (D-MT), ranking Democrat on the Finance Committee, stated although he also supports the agreement, the Bush Administration disregarded the constitutional authority of Congress to regulate international trade by rejecting a forced-labor amendment to the implementing legislation that the Finance Committee approved unanimously on June 28. The amendment was designed to deny trade benefits to imports of products made with forced labor; the Bush Administration justified its decision to ignore the Finance Committee's recommendations by stating that the amendment was not necessary or appropriate to implement the U.S.-Oman free trade pact under the terms of Trade Promotion Authority (TPA). The Administration's decision drew the ire of many Congressional Democrats, possibly making the House and Senate votes for the Oman FTA far closer that they otherwise would have been. The decision might also affect Democrats' consideration of TPA renewal or extension in 2007.

United States Signs TIFA with Mauritius

On September 18, 2006, the United States and Mauritius signed a Trade and Investment Framework Agreement (TIFA) to promote bilateral trade and investment between the two countries. Deputy United States Trade Representative (USTR) Karan Bhatia signed the agreement on behalf of the United States and stated that the government of Mauritius has "an impressive track record with respect to democracy, economic growth, openness to foreign direct investment, economic diversification, and the expansion of trade." Bhatia also stated that the TIFA "will provide an opportunity for the United States and Mauritius to work together to expand trade and work more closely on a broad range of trade-related issues," including advancing the stalled World Trade Organization (WTO) negotiations and renewing the African Growth and Opportunity Act (AGOA).

Under the TIFA, both countries will form a United States-Mauritius Trade and Investment Council which will address issues such as trade promotion and development, export diversification, trade capacity building, intellectual property protection, labor, investment, and the environment. According to USTR, total trade in 2005 between the United States and Mauritius was valued at $252.7 million. USTR also noted that Mauritius is a major beneficiary of AGOA, with exports to the U.S. under AGOA and the Generalized System of Preferences (GSP) valued at $152.6 million in 2005. GSP and AGOA are set to

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

expire on January 1, 2007 and October 1, 2007, respectively. House and Senate legislation, however, has been introduced to extend these programs by two years.

The U.S.-Mauritius TIFA is part of USTR's plans to increase its involvement with sub-Saharan African states. On June 5, 2006, Bhatia stated that the United States plans to explore new Bilateral Investment Treaties (BITs) and TIFAs with African countries but is not yet ready to initiate formal Free Trade Agreement (FTA) negotiations. U.S. BITs and TIFAs typically indicate that the United States is considering future FTAs with the BIT and TIFA partners, but as Bhatia noted, the United States will not likely initiate formal bilateral or regional FTA negotiations in the near future. This decision is likely based on the pending expiry of Presidential Trade Promotion Authority (TPA) in mid-2007, as well as the African countries' purported lack of economic development. On June 7, the United States signed a TIFA with Rwanda. To date, in sub-Saharan Africa, the United States has concluded TIFAs with Ghana, Mozambique, Nigeria, Rwanda, South Africa, the Common Market for Eastern and Southern Africa (COMESA), and the West African Economic and Monetary Union (WAEMU/UEMOA).

Congress Approves U.S.-Uruguay BIT, Will Enter Into Force Shortly

On September 12, 2006, the United States Senate approved the United States-Uruguay Bilateral Investment Treaty (BIT). The countries signed the treaty at the Summit of the Americas, in Mar del Plata, Argentina, on November 4, 2005, and the Government of Uruguay had completed its domestic ratification procedures in December 2005. With Senate approval of the BIT, the treaty will enter into force thirty days after the exchange of instruments of ratification.

Secretary of State Condoleezza Rice stated that "the U.S.-Uruguay BIT will help promote prosperity for both our peoples by creating jobs, and it is an important step toward deepening our economic and trade relationship." United States Trade Representative (USTR) Susan Schwab added that the agreement "advances the Administration's policies to strengthen trade and investment ties across Latin America" and "demonstrates the United States commitment to explore new and innovative economic opportunities with our neighbors in the hemisphere."

The treaty offers investment protections for current and future U.S. investors in Uruguay and establishes "a more stable and predictable legal and regulatory environment, promoting increased investment in Uruguay and greater two-way trade." The Office of the USTR notes that the BIT will generate increased investment and expand economic growth and prosperity in Uruguay. The Department of State and the Office of the USTR share the responsibility for BIT policy and negotiations.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

BITs have three main purposes: (i) to protect investment abroad in countries where investor rights are not already protected through existing agreements; (ii) to encourage the adoption of market-oriented domestic policies that treat private investment in an open, transparent, and non-discriminatory way; and (iii) to support the development of international law standards consistent with these objectives. The Office of the USTR states that BITs also provide investors six core benefits: (i)requiring that investors and their "covered investments" be treated as favorably as the host party treats its own investors and their investments or investors and investments from any third country (non-discrimination); (ii) establishing clear limits on the expropriation of investments and provide for payment of prompt, adequate, and effective compensation when expropriation takes place; (iii) providing for the transferability of investment-related funds into and out of a host country without delay, using a market rate of exchange; (iv) restricting the imposition of performance requirements as a condition for the establishment, acquisition, expansion, management, conduct, or operation of an investment; (v) giving covered investments the right to engage the top managerial personnel of their choice, regardless of nationality; and (vi) giving investors from each party the right to submit to international arbitration an investment dispute with the other party's government .

BITs usually serve as a precursor for the initiation of more formal Free Trade Agreement (FTA) negotiations. In the case of Uruguay, however, it seems unlikely that USTR will commence FTA talks at any point soon. With USTR resources focused on completion of the Korea, Malaysia, UAE, Panama, and Thailand FTA negotiations and with Trade Promotion Authority (TPA) expiry looming in 2007, USTR will likely remain at the BIT stage with Uruguay and will perhaps begin considering an FTA in the longer term. Because a "limited" trade agreement with Uruguay is not an option for the United States, U.S. trade officials would likely seek concessions in any Uruguay FTA similar to those obtained in other Latin American FTAs. FTA negotiations will not be easy for Uruguay because the country will have to make considerable concessions on market access for industrial goods and government procurement, as well as serious improvements in others areas, such as Intellectual Property Rights (IPR).

U.S. and Kuwait to Discuss "Longer-Term" FTA

The United States and Kuwait will meet on September 5, 2006 in Washington, D.C., under the auspices of the U.S.-Kuwait Trade and Investment Framework Agreement (TIFA) to discuss the possibility of a bilateral Free Trade Agreement (FTA). Officials from the Office of the United States Trade Representative (USTR) will meet with their Kuwaiti counterparts to assess the viability of an FTA, which USTR officials have deemed a "medium or long-term goal." Shaun Donnelly, Assistant USTR for Europe and the Middle East stated that "no one should expect any concrete announcements of an FTA" after the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

meeting, but he added that the United States "certainly ... sees Kuwait as a strong potential partner for an FTA at some point." Donnelly added that the July 2007 expiration of Presidential Trade Promotion Authority (TPA), which requires Congress to vote up or down on FTAs without amendment, makes it harder for the United States and Kuwait to announce the immediate launch of formal FTA negotiations because the Administration "prefers to negotiate FTAs with TPA in place. "

The United States and Kuwait signed their TIFA in 2004. TIFAs are limited trade agreements that establish "joint councils of trade and economic officials to discuss trade issues." Under U.S. trade policy, TIFAs are usually the first step towards the initiation of formal bilateral or regional FTA negotiations. The next step in the process would be for the countries to enter into a Bilateral Investment Treaty (BIT), which protect the rights of foreign subsidiaries and investors in the countries' home markets. As part of the TIFA meeting's FTA discussions, the United States and Kuwait will address the Administration's U.S. Middle East Free Trade Area (USMEFTA) initiative. In May 2003, President Bush proposed the creation of a USMEFTA with 18 Middle Eastern countries "to increase trade and investment with the United States and others in the world economy." Kuwait falls under the USMEFTA initiative, which the Administration hopes to complete by 2013. To date, the United States has completed FTAs with Jordan, Oman, and Bahrain and is in negotiations with the United Arab Emirates (UAE). An FTA with Kuwait, while certainly not immediate, seems a plausible longer-term objective that would help complete the USMEFTA initiative and increase U.S. presence in the Middle East region. Many insiders have opined that Kuwait is the obvious choice for the next U.S. FTA because of the countries' close diplomatic relationship after the first Iraq war, Kuwait's significant oil reserves and its relatively simple economy. It appears unlikely, however, that even with these supporting factors, formal U.S.-Kuwait FTA negotiations will begin anytime soon.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Multilateral

Managing the Challenges of WTO Participation: 45 Case Studies

Summary

This report examines the World Trade Organization's (WTO) Dispute Settlement mechanisms, treaties, and objectives. The report summarizes the WTO's "Managing the Challenges of WTO Participation: 45 Case Studies," which explores forty-five case studies from WTO Member economies. The case studies illustrate how governments, businesses and civil society participate at the WTO.

The compilation documents disparate experiences among economies in addressing the challenges of WTO participation and demonstrates that the organization of Member governments and their private-sector stakeholders strongly influences a Member's success or failure. The contributors, mainly from developing countries, give examples of participation with lessons for other WTO Members and show that when the system is accessed and employed effectively, it can "serve the interests of poor and rich countries alike." However, as several of the case studies demonstrate, a failure to communicate among interested parties at home often contributes to negative outcomes on the international front. The paper concludes that "above all, these case studies demonstrate that the WTO creates a framework within which sovereign decision-making can unleash important opportunities or undermine the potential benefits flowing from a rules-based international environment that promotes open trade."

Summaries of Case Studies

1. Dispute Settlement Between Developing Countries: Argentina & Chilean Price Bands

This case study examines a dispute between Argentina and Chile regarding price bands, tariffs, and non-tariff barriers (NTBs). Between 1997 and 2001, there was a sharp drop in the prices of vegetable oils and certain agricultural products as a result of problems with both supply and demand. Russia and Southeast Asia were experiencing severe economic crises and were forced to cut back their demand of Argentinean vegetable oil exports. On the supply side, Argentina and Brazil were experiencing peak harvests and were facing sharp increases in global production and consequently, an undesirable oversupply of some of their most important exports. In 1999, Chile implemented various trade policies that sparked controversy with various trading partners. It was employing a price band system (PBS) for certain goods that resulted in higher customs duties and varying tariff rates for edible vegetable oils and other agricultural products. These developments were a major problem for Argentina because it relied heavily on vegetable oil

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

exports for revenue, which would decline as a result of its loss in Chilean market share. It exported most of what it produced, consumed very little domestically, and sold nearly half of its exports to Chile at that time.

When Argentina sought to resolve the matter first with the Economic Complementary Agreement 35 Administration Commission and then with the World Trade Organization (WTO), two issues needed to be discussed: (i) whether Chile's PBS was a violation of bound-tariff regulations established in previous agreements—specifically, the General Agreement of Tariffs and Trade (GATT), Article II [b])—and (ii) whether the PBS was a kind of measure that should have been "tariffied" according to Article 4.2 of the Agreement on Agriculture. Tariffication refers to the procedure of converting NTBs into their tariff equivalents. Argentina argued that the Chilean PBS led to the application of *ad valorem* customs duties—which are rates based on a percent of total value—amounting to 64.41 percent for oils and 60.25 percent for wheat flour in 2000, thereby violating the ceiling that was set at 31.5 percent in the Uruguay Round. Further, the PBS was a variable levy with the level of protection remaining the same that needed to be converted into ordinary customs duties for transparency and compliance with previous commitments. Chile argued that PBS duties were in fact ordinary customs duties—and not non-tariff barriers—and did not have to be converted into their tariff equivalents. The WTO Panel ruled in line with Argentina's arguments and found that Chile was in violation of its multilateral trade obligations. It claimed that PBS duties were found to be "other duties or charges of any kind" imposed on imports and since Chile did not classify its system in that category, its policies were inconsistent with Article II (b) of GATT 1994.

2. Argentina and GATS: Domestic Determinants of GATS Commitments

Ranging from architecture to telecommunications and banking, services are the largest and most dynamic component of both developed and developing countries' economies. Not only do they compose a majority of global employment, they also serve as important inputs into the production of most goods. Observers forecast that this will continue well into the future as greater market access, the transfer of technology, and liberal economic policies increasingly dominate international economics. The General Agreement on Trade in Services (GATS) came into force in 1995. The commitments undertaken by Argentina throughout the negotiations were far greater in scope than those taken by its Latin American neighbors, including Chile and Brazil. Some analysts believe that its offers were largely a result of domestic influences.

Argentina first made an offer in 1991, two years prior to its presentation of a final list of proposed initiatives. Both offers were seen as a method of sending a strong message internationally of Argentina's commitment to economic reforms, increased market access and trade liberalization and of increasing the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

opportunity costs of future policy reversals—or the costs of undertaking alternative economic policy routes. Its representatives viewed GATS as an opportunity to bind some of their domestic reforms to international devices to ensure that the country would not return to protectionist policies. They believed that only in this manner would economic efficiency and growth increase in all relevant sectors. This was particularly true with regards to communications and financial services because of their tremendous contributions to Argentina's developing economy. The author of this case study concludes that if growth and efficiency had not been achieved in the negotiated aspects of the agreement, failure should be attributed to domestic influences such as interest groups and information failures rather than the rules that govern the international trading regime.

3. Rock 'n Roll in Bangladesh: Protecting Intellectual Property Rights in Music

This case study examines the protections that guard against flagrant, transnational violations of intellectual property rights (IPRs) and copyright laws. In 1993, a Bengali national composed a song that became popular in several countries. It was used in a Hindi blockbuster in India without the exclusive permission of the original composers. Because Bangladesh runs a huge trade deficit with India—in part due to its imports of Indian movies and music—Bangladeshi authorities and the writers of the hit song worried about future business prospects and the potential for unfair trade practices. They sought compensation in court after learning they could receive protection for their work under the copyright and related rights provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Various provisions in that agreement, also included in the Berne and Rome Conventions, require Member countries to provide authors of computer programs, sound recordings, and cinematographic films the right to authorize or prohibit the commercial rental or duplication of their copyrighted works. The presiding justice in that case ordered the film-makers and composers to remove the song from the soundtrack and further barred the respondents from manufacturing, selling, distributing or marketing any music cassette or disc containing the work.

This was a case that highlighted the far-reaching influence of the international trade regime. At first, IPR laws were applicable only within national boundaries and could serve only the nationals of any respective country. The Indian Copyright Act (ICA) amended previous legal doctrines by allowing the nationals of other states to take advantage of Indian IPR laws. They could do so if their country of origin had entered into a bilateral treaty with India, if both had been party to an international convention or treaty providing protection measures for intellectual property rights, or if the other state had adopted measures to protect the rights of Indian nationals and businesses. Both India and Bangladesh became members of the WTO in 1995, thereby allowing Bangladeshi citizens to appeal to IPR laws in India or wherever their IPRs are

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

violated. This was further reinforced by India's International Copyright Order of 1999, which allowed the citizens of any country party to the WTO to take advantage of the amended ICA. After the TRIPs Agreement, it was no longer possible for an individual to violate the intellectual property rights of foreign nationals by exploiting them for commercial purposes domestically or abroad.

4. Barbados: Telecommunications Liberalization

Because it depends heavily on tourism and financial and international business services for revenue and overall growth, Barbados has implemented various strategies in its efforts to liberalize the telecommunications sector—a measure that would eventually enhance its competitive position and stimulate further economic growth. Barbados, which is a founding member of the WTO, also adopted the value added tax (VAT) in 1997 to reduce its dependency on tariffs and enhance its position for future trade negotiations. It pursued programs that would integrate the Caribbean economies and has sought special and differential treatment and special status for small island developing states. Because tourism and financial services represent the majority of services exports and the main source of foreign exchange, its liberalization of telecommunications has allowed Barbados to integrate into the international trade regime, ameliorate its narrow range of resources and limited scale economy, and benefit from free trade.

Barbados employed various measures to achieve those ends. Domestic reforms forced a transition from a monopolized economy to one that thrives on competition. Reforms allowed new entrants into the telecommunications sector to connect with the existing network at a reasonable cost. They provided competitive safeguards to ensure efficiency and prevent a reemergence of a monopolistic business environment. Barbados also opened up the markets for internet access and domestic mobile phone services, as well as international long-distance and fixed line services, to competition. Incumbent corporations, however, have resisted changes and see very little economic benefit in permitting others to enter their markets. Nevertheless, the island nation has experienced a wide range of benefits from its new policies, including reductions in high-speed Internet access rates by nearly 22 percent and drops in long-distance costs by almost 50 percent. More work needs to be done, however. More effective legislation needs to be passed to prevent policy-reversals and ensure incumbent corporations' cooperation and fair market practices. Only then can Barbados really benefit to a greater extent from telecommunications liberalization.

5. Services Commitments: Case Studies from Belize & Costa Rica

Belize and Costa Rica both have vibrant service sub-sectors, are in serious need of foreign investment in other sectors, and have sizeable service export surpluses, yet they both made very modest commitments

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

in the GATS, at best. This case study examined the similarities and differences between the industrial compositions of the two countries, their differing commitments in international trade negotiations, and their perspectives on the WTO and benefits that could be gained from market liberalization.

The percentage of the workforce that exists in the services sector and the total proportion of gross domestic product (GDP) that it makes up are significant in both Belize and Costa Rica. The growth of their services trades over the past several years, which can partly be attributed to the growth in their tourism industries, demonstrates further services' importance to the welfare of each country's economy. Belize has a smaller population with lower rates of higher education and depends on financial and business registry services. It has a limited history of interaction with the international trading system, thereby forcing it to make commitments in sectors that were least problematic such as in telecommunications where they were geared towards limited liberalization. It did not prioritize its services sector in negotiations because of domestic primary commodity producers who have traditionally held tremendous political clout at various levels of government. Furthermore, it did not have any expertise in formal trade discussions, did not have a centralized ministry that oversaw trade issues, and did not have investment laws that were specific enough to promote efficiency and a stable inflow of international investment into its economy. Belize was also distracted by other domestic developments, consumed with passing appropriate legislation for offshore banking and implementing anti-money laundering policies.

Costa Rica concentrates on information technology (IT) for diversification. Its limited commitments reflected the degree to which its market was already open. It was already integrated into the Central American Common Market (CACM), previously had beneficial and stable trade relations with the United States, and had already recognized the importance of foreign direct investment and market liberalization. It has a positive view of the WTO and has promoted institutions geared towards promoting free trade, foreign direct investment, and diversification.

6. Inter-Agency Policy Coordination in Botswana

Botswana is a founding member of the WTO and joined the GATT in 1987. However, it has not effectively participated in WTO processes and has often delegated its responsibilities and policy-oriented obligations to its South African counterparts. It has contributed very little to regional conferences on trade issues and in the formation of integrated regional policies. Botswana's new foreign trade policy is aimed at acquiring free and sustainable access for its exports and lowering the cost of importing goods by reducing tariffs and trade barriers. For a long time, most of its exports were directed towards Europe and South Africa—diamonds and beef towards Europe and manufactured goods towards South Africa—and 80 percent of its imports came from South Africa. During that period, it did not see a need to actively

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

participate in the WTO. However, after South Africa opened up its market to foreign competition and the EU began to reconsider its discriminatory preferential market access agreements with certain African governments such as Botswana, the latter saw a need to engage with the international trading regime.

Botswana's Department of International Trade, which is responsible for foreign trade policy, has not satisfactorily performed its functions, however. It has not thoroughly consulted domestic stakeholders prior to negotiations in the WTO; it is handicapped by the limited size of its staff, whose members rarely have the academic background to comprehend international economics and even less so to implement effective trade policies; and there is a serious lack of political leadership which has contributed further to the minimal interest in, and understanding of, WTO issues. Botswana needs to revise its policies and needs to build up its analytical capacity by increasing the number of trade officials who are familiar with contemporary models of trade analysis and the operations of the global trading system. It should consolidate the various ministries and increase their staffs so that the Department of International Trade can have a more inclusive negotiation capacity that would give it greater impact on the formation of new international trading regimes and regional trade policies. Finally, it needs to involve a greater portion of the private and public sectors in the analytical and policy-formation processes to enhance interagency coordination.

7. Brazil and the G-20 Developing Countries

Brazil has often adopted an aggressive stance on the liberalization of trade in agriculture. It participates in the Cairns Group, which is a coalition of developed and developing countries exporting agricultural products. At the WTO Ministerial Conference in Cancun in September 2003, developing countries formed a coalition that adopted a unified position on all negotiated topics called the Group of 20 (G-20). Many of these countries had previously adopted incompatible policies and bargaining postures, such as Argentina and India, thereby losing leverage against more dominant states in multilateral talks. The G-20 was formed in response to a U.S.-EU text on agriculture that Brazil believed to be unsatisfactory and contrary to agreements reached in previous multilateral negotiations that highlighted agriculture. Brazil sought to create an organization of developing countries that had the characteristics of both bloc-type coalitions and issue-based alliances. In a word, it sought to counterbalance EU and U.S. common interests after Australia refused to take the lead in the Cairns Group to do so in negotiations.

Whereby Cairns is more focused on trade liberalization alone, the newly formed coalition tries to strike a balance between the interests of trade liberalization and the development objectives of its members. The two organizations' respective agendas and interests coincide as regards the need to end trade-distorting policies in agriculture and for the opening of developed countries' markets. The difference lies in their

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

definitions of special and differential treatment for developing countries, especially in the area of market access. Since its inception, the G-20 with Brazil at its head had established close relationships with other groups in the WTO with a special interest in agricultural negotiations. One of its main challenges was to build consensus among developing countries with heterogeneous interests in the multilateral talks, especially as developed countries sought to exploit differences in opinion between G-20 member states at every turn. In Cancun, however, it became clear that the G-20 had become a legitimate bargaining body that existed to advance the interests of developing states and to defend the idea of a development round of talks.

8. Cambodia's Accession to the WTO: "Fast Track" Accession by a Least Developed Country

With an estimated average per capita income of USD $300, Cambodia is the poorest and least developed country in the east Asian region and one of the poorest in the world. Cambodia became an active member of the WTO in October 2004. Plagued with socio-economic problems, it sought WTO membership to help it solve its domestic problems and initiate institutional reforms. Its primary objective in becoming a Member was to protect its deteriorating garment industry after the removal of export quotas at the end of 2004 under the Multi-Fiber Agreement (MFA) arrangements, applicable to all WTO Members. Garment exports make up the vast majority of total exported goods in Cambodia. Cambodia expected its membership to provide it with expanded markets for its products, even though Cambodian industries have not traditionally been recognized for their cost-effectiveness and competitiveness. Government officials also expected increases in local and foreign direct investment in various sectors as a result of accession.

In order to acquire membership in the WTO, Cambodia had to meet several conditions: it needed to lower tariff rates, adopt an accounting system based on the Anglo-Saxon model, and adopt a hybrid legal system integrating Anglo-Saxon and French standards. WTO accession certainly has its advantages. However, the benefit that Cambodia gains from its membership may be limited and may even decrease with time if the appropriate policies are not adopted. It has a weak production capacity and has a current account deficit of more than 10 percent. Opening its market to foreign competition and associated products may increase its deficit. Liberalizing trade in services will open the market to foreign competition which may have the effect of suffocating local suppliers, including small and medium sized establishments. When barriers are removed or even lowered, foreign producers have the opportunity to offer Cambodian consumers higher-quality products for even lower prices than the domestic manufacturers of certain goods. According to some observers, domestic firms competing in those markets will face declining sales and profit margins, which in turn could lead to lower wages and higher

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

unemployment rates. This would have the unintended effect of decreasing the country's overall welfare, and Cambodians may end up being worse off than before accession to the WTO. It is still too early to tell how much Cambodia will benefit from its WTO membership.

9. Canada and the WTO: The WTO Auto Pact Case

The following case study examines the proceedings of the WTO Auto Pact Case. Prior to Canada's WTO accession, there was widespread debate on the benefits of membership and on the impact it would have on a several key Canadian industries, such as auto manufacturing, on which thousands of citizens depended for employment. In 1965, Canada signed the Agreement Concerning Automotive Products ("Auto Pact") with the United States to compensate for that fact that it had always faced higher costs than non-Canadian competitors as a result of limited production volumes and duties on imported parts. The Auto Pact required U.S. (and other) auto manufacturers to increase their production levels in Canada in order to sell their vehicles duty-free in its domestic market. After the conclusion of the Canada-U.S. Free Trade Agreement of 1989, however, the duty-free option was no longer available to non-U.S. auto manufacturers. In 1996, an amendment was enacted: any auto manufacturer could bring auto parts into Canada duty-free. Auto Pact members who continued to meet the Canadian Value Added (CVA) production-to-sales ratio requirements retained the right to import new cars without paying duties, unlike their non-Auto Pact competitors. Japan and the European Community (EC) filed complaints targeting Canada's auto industry alleging that its new agreement was both in substance and implementation inconsistent with what it had signed with the United States decades earlier. Japan felt as though it was being discriminated against and that the playing field was not leveled: "Differential treatment under the current two-tiered auto policy clearly favors one group of automakers over another." In sum, some automakers were forced to pay duties on cars they imported from overseas whereas others were not (*i.e.*, U.S. and Canadian companies).

The tribunal members at both the Panel and the Appellate Body ruled that although the Canadian measures were not intended to discriminate against products based on their country of origin, their effect was discriminatory and unfair. It was held the Canada's measures were inconsistent with the Most Favored Nation (MFN) provisions set out in Article I:1 of GATT 1994. The Panel also found that the CVA requirements were inconsistent with the national treatment clause in GATT 1994. That clause requires that imported goods be given the same treatment as related domestic goods in terms of all laws and requirements affecting their sale, purchase, transportation, distribution or use. The Panel held that the CVA requirements in the Motor Vehicles Tariff Orders (MVTOs) and Special Remission Orders (SROs) "confer an advantage upon the use of domestic products but not upon the use of imported products'

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

because 'they adversely affect the equality of competitive opportunities of imported products in relation to like domestic products.'" Canada thus made the necessary changes.

10. The SPS Agreement and Crisis Management: The Chile-EU Avian Influenza Experience

This case study examines the events that transpired in Chile in May 2002 when authorities were alerted of a possible outbreak of avian influenza, also known as "bird flu." When the EC learned of this possibility, it quickly adopted Decision 2002/607/EC of July 23, requiring all member states to prohibit the importation of poultry products from Chile and requiring them to authorize the importation of certified exports for meat obtained from animals slaughtered before June 21. The decree posed a significant problem for Chilean poultry exporters because over 80 percent of their product was sold to the European Union and Mexico. It became obvious that Chile needed to control and then eradicate the disease while maintaining the confidence of trade partners. It sought to convince European officials to regionalize Chilean territory in such a way as to divide it into infected and unaffected areas—in which trade outflow would continue from the latter regions—once the disease was controlled and until Chile could regain disease-free status.

The Sanitary and Phyto Sanitary (SPS) Agreement recognizes the fundamental right of countries to protect the health and life of their consumers, animals, and plants against pests, diseases, and other threats to health. However, the basic right to protect against harmful pests and disease is tempered by several rules aimed at preventing the use of health measures in an unjustified, arbitrary, or discriminatory fashion. When Chile proved that the virus was confined to certain regions as demanded by paragraph 3 of Article 6 of the Agreement, and that various security measures—including the destruction of tens of thousands of birds, the installment of permanent surveillance devices around thousands of others, implementation of stringent bio-security measures to ensure that the virus does not circulate, and control and restriction of all product movements in and out of infected areas—had been adopted to ensure that it remain confined to those areas, Chile's trading partners were obligated to re-open their markets as explained in paragraph 1 of Article 6. The crisis was successfully managed as a result of Chile's transparency on various actions and objectives, teamwork between domestic and international players, and the active participation of Chile in the WTO. These events demonstrate the utility of various international trade agreements in restoring trade relations in times of crisis.

11. Shanghai's WTO Affairs Consultation Center

In the early 1990s, it became clear that China's growing industrial export base and highly competitive position in the world market would increasingly subject Chinese exporters to trade harassment. China, therefore, sought certain trade protections by joining the WTO in 2001. It was no longer labeled as a

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

"non-market economy," was shielded from anti-dumping actions, and was guaranteed equal opportunities for accessing foreign markets. Because of the importance of the WTO for Chinese trade relations, China established a professional, non-government consulting institution called the Shanghai WTO Affairs Consultation Center to provide legal and policy advice on international trade affairs, WTO rules and regulations, trade agreements, as well as WTO-related training services. The Center worked with various Chinese municipalities and the national government, in addition to Chinese corporations, universities and trading enterprises to discuss and explain the issues involved with and the benefits to be gained from WTO membership. The Center was composed of six divisions and assisted in ensuring that governments, enterprises, and public institutions adopted practices that were in accordance with relevant WTO rules. It also acted as a liaison between the Chinese government(s) and foreign governments that may take issue with certain policies.

In Shanghai, any individual who wanted to purchase an automobile needed to first obtain a license plate, which could only be bought at a monthly auction conducted by the municipal governments for regulatory and profit-driven purposes. U.S. officials informed the Center that different methods were being used for auctioning license plates for domestic and foreign automobiles and contended that such a practice was discriminatory [against imported cars] and hurting foreign competitors' access to the Chinese market. The Center conducted an investigation and discovered that certain municipalities imposed limits on the number of license plates sold for imported cars and that floor prices were being set for foreign vehicles only. Domestically manufactured cars were, therefore, made available at considerably lower prices. Given the WTO national treatment principle and the general elimination of quantitative restrictions, the Center realized that the different systems put in place by the regional governments for the acquisition of domestically made and imported cars resulted in different treatment and were therefore inconsistent with China's WTO commitments. It advised that these policies be reversed if China were to maintain a positive image in the eyes of foreign investors and benefit further from its membership in the WTO. Shortly thereafter, the discriminatory practices were abolished and the Center proved its worth yet again.

12. Costa Rica's Challenge to U.S. Restrictions on the Import of Underwear

In March 1995, the United States claimed that its domestic underwear industry was suffering because of damaged underwear imports from Costa Rica and six other countries. It initiated consultations with the governments of those countries and wanted to invoke the transitional safeguard provisions of the Agreement on Textiles and Clothing (ATC). Having failed to reach an agreement with Costa Rica, Honduras, Thailand and Turkey, the United States unilaterally introduced restrictions on the importation of

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

cotton and man-made-fiber underwear. Costa Rica then began the dispute settlement process under Article XXIII of the GATT and the corresponding provisions of the ATC.

Costa Rica believed that the United States was attempting to maintain control of a vertically integrated industry by requiring countries to use American fabric in garments intended for the American market. The restrictions that it imposed applied only to underwear garments made with foreign fabrics. Essentially, Costa Rica believed that the United States was attempting to protect its fabric industries rather than the domestic underwear industry by creating some link between them and exploiting the provisions of various trade agreements. Costa Rica argued that the transitional safeguard measures available under the ATC did not indicate that restrictions could be applied to the products of one industry—in this case, underwear garments—in order to protect the interests of another industry. It prevailed in both the dispute settlement process and the subsequent legal appeal. Not only did Costa Rica receive favorable rulings, but the United States also accepted and conformed to the decisions. The Textile Monitoring Body found that the United States had not demonstrated that its industry had suffered serious damage and that an actual threat of serious damage did not exist. Such a ruling helped to build the perception that small countries could benefit from WTO membership.

13. Fiji: Preparing for the End of Preferences

This case study explores the ways in which Fiji's public and private sectors are preparing to deal with the expected end of preferential trade relationships. Though in many instances both sectors' first reaction has been to pursue extensions of special trading arrangements, they have also adopted new policies and strategies that would allow their industries to remain competitive in world markets. Fiji's economy depends heavily on tourism, sugar and clothing exports. Sugar is Fiji's second largest export, contributing significantly to GDP and national employment. It has significantly benefited from the EU's preferential trade regime for sugar since they paid prices substantially above world market price levels. Now that the EU is considering to drastically cut the price paid for preferential sugar imports and facing stiff competition from other exporters like Brazil who make a profit even when selling on the world market at world prices, Fiji's economic situation looks dismal. Some observers claim that an "unconscious" decision has been made to abandon the industry altogether. Ethnic Fijians are not taking up sugar farming on lands previously leased to Indo-Fijians. The government has not invested in sugar mills, which have consequently become antiquated, and the Fiji Sugar Corporation shows no sign of undertaking product development research and marketing activities. Fiji is trying to diversify away from preference-dependent sectors, and that policy has increasingly become more urgent.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

The garment sector also benefited from preferential treatment, including the special preferential trading arrangements put in place by Australia and New Zealand under the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA). The impending end of quota arrangements under the WTO's ATC, however, suggests that the industry's profitability will decrease unless new strategies and policies are adopted by the relevant actors. According to observers, Fiji undoubtedly has alternative opportunities for the future—its economic and trade prospects are not limited to sugar and garment production. Mining (for gold), mahogany exports, the commercial fishing sector that specializes in fresh and chilled tuna, as well as canned tuna all show potential. Fiji Water, a locally bottled mineral water, has become the second-ranked mineral water in the U.S. market. Because of its location, the country has also become a regional center of information communications technology activities. Tourism shows promise as well, but the industry will flourish only if related industries become more efficient. For example, because it is tailored to middle-class tourist markets, the industry needs a more competitive and efficient aviation transport sector in the Pacific that is able to provide good quality service at reasonable prices.

14. The French Decision-Making Process and WTO Negotiations

This article focused on the influences on French trade policy and the ways in which the government participates in multilateral trade negotiations with a specific emphasis on Cancun. It demonstrated that France does not directly engage in WTO negotiations but rather focuses its efforts on establishing a common European trade policy, especially with regards to agricultural issues. Organized domestic groups and institutional influences at the domestic and EU levels affect the French decision-making process. The French Constitution grants greater power to the President over the government on foreign policy matters, and the Trade Ministry and its divisions, and Parliament all play a significant role in trade negotiations. Those involved in the agricultural sector have tremendous sway over the government's positions because France's agricultural community represents 25 percent of Europe's total agriculture and accounts for several hundreds of thousands of jobs across the country. Multinational groups and non-governmental organizations (NGOs), who most commonly focus on TRIPs enforcement, tariff peak elimination, anti-dumping, and other relevant trade agreements, are more influential and active than domestically-based businesses since they focus on single issues. The latter are not as active because WTO market access may have lost relevance because France trades mostly within the EU, with preferential trading zones and Organization for Economic Co-operation and Development (OECD) countries maintaining average low tariffs. Also, it is difficult to measure the gains from trade liberalization so businesses have little incentive to step up efforts in lobbying when the benefits are unclear.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

At Cancun, President Jacques Chirac focused on three sectors: (i) cultural goods, (ii) services and (iii) agriculture. With respect to services, he sought to ensure that free trade did not undermine French public services such as education and health. With regards to agriculture, he sought to uphold the principles of the Common Agricultural Policy and to guarantee that any outcomes of negotiations were compatible with its provisions. The French endorsed an Uruguay Round tariff reduction formula and a moratorium on all destabilizing export subsidies with regards to Africa, despite the fact that the latter had little chance of succeeding. Throughout the talks, it became clear that the French and EU positions were often inconsistent and that the French must work within EU framework in multilateral negotiations to promote their own interests. In the end, the French labeled Cancun a failure since agriculture was not fully discussed and because U.S. and EU positions on a variety of topics could not be streamlined.

15. The Decision-Making Process in India: Agricultural Negotiations

This case study examines India's proposal on agricultural reforms prior to the WTO negotiations in 2001. Agriculture has traditionally been a huge topic of concern for Indian lawmakers. Historically, the country depended heavily upon food aid and has recently implemented policies that would promote self-sufficiency. The sector comprises nearly a quarter of GDP, despite the fragility of cultivable land in the monsoon season, and provides livelihoods for over 700 million people. Finally, despite the fact that India is the world's second largest agricultural producer, its yields are strikingly low when compared to those of other producers. In drafting the proposal, Indian lawmakers faced a number of challenges. Perhaps the most significant was combining the diverse views and positions of the various stakeholders involved, ranging from a number of federal ministries, state governments, and highly-inclusive confederations of private and public sector companies such as the Confederation of Indian Industry to NGOs and think tanks. Drafters had to first identify the issues involved by sponsoring forums with relevant stakeholders and followed by drafting a detailed proposal for negotiations.

The final draft reflected India's fragile position within the global agricultural framework and its dependency on the industry. It started off with an emphasis on food security in which it recommended the establishment of a "food security box" that encompassed all the special and differential treatment flexibilities. It then shifted its focus to a reduction of tariff levels in developed countries while seeking some degree of flexibility on related tariffs on its food security crops. This measure was an obvious attempt to garner greater gains for Indian producers in foreign markets while maintaining their influence domestically and protecting their interests in regional economies. The proposal also suggested the complete elimination of all export subsidies and that all measures taken by developing countries for poverty alleviation, rural development, employment, and diversification of agricultural be exempted from

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

any reduction commitments. This final measure had little chance of endorsement at the WTO because developing countries such as India could interpret any number of measures to be related to those policies that could give them an unfair advantage in international trade. Developed countries would be forced to reduce tariffs and other related barriers on agricultural products while developing countries were not subject to the same standards. Overall, the case study successfully demonstrated the difficulties of drafting a trade proposal that reflected the views of a wide spectrum of players and the importance of agriculture to the Indian economy, its GDP, and the Indian people's livelihoods.

16. Protecting the Geographical Indication for Darjeeling Tea

India is the world's largest producer of tea. Indian tea's distinctive taste is a result of its geographical origins—particularly the Darjeeling district—and processing procedures. A major portion is exported to Japan, Russia, the United States, the UK, and EU member states such as France, Germany and the Netherlands. Even though the tea industry exists in the private sector, it has often been regulated by the Ministry of Commerce after the enactment of the Tea Act in 1953 under which the Tea Board was established. The Tea Board has enforced certain policies that would guarantee the supply of genuine Darjeeling tea and protect producers from the misuse of the word "Darjeeling" for tea sold worldwide. Further, it has sought to achieve an international status similar to champagne or Scotch whiskey in terms of both brand and equity and governance. In observance of these policies, all dealers in Darjeeling tea must enter into a license agreement with the Tea Board on payment of an annual license fee. The licenses must furnish information relating to the production and manufacture of the tea and its sale so that the Board can calculate the total volume of tea that is produced and sold in any given period. Next, certificates of origin are issued for export shipments and those that lack a certificate of origin identifying them as Darjeeling tea are not permitted to leave the country under that label. Furthermore, the Indian government registered the word "Darjeeling" and the Darjeeling logo as certification trade marks and is seeking further protections under the Geographical Indications (GI) of Goods Act because GI registration is necessary to obtain reciprocal protection of a mark mandate under EU regulations.

Recently, the Tea Board has filed for legal action against a number of foreign companies that it alleged failed to observe international copyright laws and have misused the Darjeeling name and its affiliated labels. In one instance, it pursued invalidation action on the mark "Divine Darjeeling" used by Mitsui Norin KK of Japan on the grounds that the label was misleading since the district of Darjeeling did not produce coffee or cocoa and because Darjeeling tea qualified as a geographical indication under international conventions including TRIPS. In France, the Tea Board of India failed to gain a favorable ruling when it claimed that Darjeeling had been misappropriated as a trade market with respect to other

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

goods including clothing, shoes, and headgear. The French examiner in this instance held that the respective goods did not have the same nature, function, and intended use as tea and did not have the same distribution circuits and that the Darjeeling logo could, therefore, be used a trademark in France without prejudicing the rights of the Tea Board. The Tea Board has faced similar difficulties in other countries and has launched intensified efforts within the WTO to protect one of its most important exports.

17. The Indian Shrimp Industry and the Threat of Anti-Dumping Action

This case examines the way in which the Indian shrimp industry responded when challenged by an anti-dumping action in the United States. On December 31, 2003, the Ad Hoc Shrimp Trade Action Committee, composed of eight U.S. southern states, filed an anti-dumping petition against Brazil, China, Ecuador, India, Thailand, and Vietnam. The Southern Shrimp Alliance (SSA) organized to seek redress and wanted an investigation of the alleged unfair pricing policies of other countries, claiming that the actions of certain southeast Asian states depressed the prices that domestic producers previously set for locally harvested shrimp. The SSA claimed that these countries dumped their exports on the U.S. market after being denied access on European markets and that the tremendous increase in U.S. shrimp imports from Southeast Asia over a small period of time was strangling the domestic industry. Shrimp importers and distributors, however, stood against such action fearing that a legal battle would hurt their prospects for business.

When India discovered that it would be subject to the anti-dumping action, it understood what was at stake. Because shrimp exports composed a significant portion of total exports, the Seafoods Exporters Association of India (SEAI) believed that any anti-dumping duties against its products would "ring the death knell" of the industry. India's representatives claimed that there are two major reasons why Indian shrimp is cheaper than American shrimp, both of which cannot be attributed to unfair trade practices. The first claims that there are specific variations between the shrimp caught in American and Indian water so that prices are bound to be different. The second argues that while fishing in the United States is a capital-intensive endeavor calling for a great deal of investment, it requires very little capital and investment in India thereby making the cost of production considerably lower. The case has not yet been closed, but Indian shrimp producers and stakeholders have been hard hit. Their industry is fragmented and dominated by small to medium sized actors and uncertainty for any reason both domestically and abroad create risks which they are not equipped to bear. This is because anti-dumping cases take a relatively long time to be decided. During that time, trade is affected because importers are likely to shift to new sources of supply until a decision is finally reached. Industries dominated by small to medium-

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

sized actors are consequently often unable to regain the market share that was lost during that time, even after the contested case is ruled in their favor.

18. Indonesia's Shrimp Exports: Meeting the Challenge of Quality Standards

Shrimp is one of Indonesia's most important exports. In 2002, shrimp accounted for nearly 50 percent of the total value of fishery exports. Today the Indonesian shrimp industry faces a spectrum of challenges and difficulties— both internally and externally. Internally, it faces problems in the production phase, such as disease infestation, shortage of shrimp fry, shrimp feed and medicine, regional planning and infrastructure, and farmer empowerment. Externally, the current flooding of relatively cheap imported shrimp into Indonesia has had a detrimental effect on the profitability of businesses. Some went bankrupt and even more faced financial difficulties after the U.S. government's anti-dumping measure against some of the largest global exporters that in turn depressed world prices. The most severe challenge deals with quality standards imposed by certain importers such as the United States, Japan, and the EU. These importers require shrimp imports to be free from viruses and antibiotics, including chloramphenicol, among other qualifications.

After the United States implemented anti-dumping measures against six shrimp-exporting countries, Indonesian shrimp exports to the United States increased dramatically. However, it seems impossible for Indonesian shrimp growers to meet the quality standards imposed by the United States and the EU—that is, they are unable to prevent certain viruses from appearing in their product. If they do not use chloramphenicol (which is discouraged, or whose use is rather prohibited, by importers), salmonella would infest their produce and reduce their production levels, and various importers would *still* refuse them entry since they require shrimp imports to be virus-free. To protect its domestic industry and maintain access to U.S. and European markets, the Indonesian government needs to adopt policies that would prevent transshipments from exporting countries such as China and Vietnam against whom U.S. anti-dumping measures have been directed. It also needs to increase domestic research and development in order to find new ways to boost the quality of its exports and better meet importers' standards. Developed countries within the EU framework, Japan, and the United States all need to play their part as well—they need to transfer technologies to their Indonesian counterparts and provide technical and financial assistance so that exporters are in a better position to comply with international quality standards.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

19. Kenya: Patents, Parallel Importation, and Compulsory Licensing of AIDS Drugs

It should come as no surprise that governments in Africa have faced great difficulties in accessing effective pharmaceuticals—particularly AIDS drugs—in the past. The daily number of deaths in Kenya from AIDS is around 300 and over 1.5 million individuals are presently infected with the virus. Although these figures may be a little bit overestimated, they signal a growing problem in a number of countries across the continent—more and more people are falling victim to deadly diseases and fewer each day are able to receive treatment for those illnesses. This case examines the issues involved with this problem with a particular focus on Kenya. AIDS drugs are expensive, especially when impoverished nations are trying to purchase them. This is partly because of royalties that must be paid to patent holders under the TRIPs Agreement and Kenya's Industrial Property Act, but also because of the very limited research and development conducted on diseases affecting certain groups of people. Various studies demonstrate that more than fifty percent of Kenyans live on less than USD $1 a day. It goes without saying that they can hardly afford these expensive antiretroviral drugs, not to mention an appropriate nutrition plan that is required when treated with these pharmaceuticals.

A number of African countries, with Kenya at their head, have launched a campaign in the WTO to relax patent protections. They have sought a greater role for generic substitutes that could be purchased for a fraction of the price charged by Western firms holding patents on drugs. At the Doha Ministerial Conference, the African Group argued that various articles of the TRIPs agreement worked against the interests of developing countries and that its provisions were inconsistent with real-time events on the ground. Some countries have proposed that the WTO be given the right to allow production of certain drugs without the consent of the patent holder to address public health needs in another country. In Cancun in September 2003, Members agreed to that proposal allowing for a patented technology required for the production of medicines and allied kits to be accessible to deserving WTO Members on favorable terms. Now, inexpensive generic drugs can be legally manufactured locally or imported, which allows for several times as many patients to be treated than when Western pharmaceuticals are purchased. African countries can implement a number of other policies to gain access to cheaper drugs and allow them to tackle public health issues more effectively. These include: therapeutic value pricing, whereby the buyer or the state determines the price of the drug based on its rate of success; pooled procurement, whereby several countries purchase drugs together and in bulk, thereby reducing their cost; and negotiated procurement, whereby large organization such as the World Health Organization (WHO) buys large quantities at drastically reduced prices.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

20. Kenya's Participation in the WTO: Lessons Learned

The following case study examines the challenges Kenya has faced in its capacity as a WTO Member and the lessons that have consequently been provided to itself and others. As a member of the WTO, Kenya is signatory to all WTO agreements, including the GATT, the Agreement on Agriculture (AOA), the GATS, the ATC and the TRIPs Agreement. Kenya's National Committee on WTO (NCWTO), which includes government, private sector, and civil society stakeholders, acts as a forum of discussion between the players involved in the policy-formation process and as an advisory board for the government on WTO issues. Membership in NCWTO is by invitation only. However, the subcommittees that exist to tackle the large number and highly complex trade issues are far more inclusive and accepting of new members. Each group of stakeholders face different challenges. Most private sector constituents lack the analytical capacity to understand the implications of various trade agreements. They have difficulty in streamlining their positions on economic and trade issues—each player has its own interests. Civil societies have lacked the necessary funding to conduct the proper research on the implications that any particular trade agreement may have on the country as a whole and on the poor. The government has divided trade matters among its various branches. Such a strategy has lead to communication failures and misunderstandings of the country's trade policy.

There are a number of obstacles that Kenya must overcome if it is to garner greater benefits from its membership. First, the NCWTO is not a legal entity. It exists as an informal advisory body and the government is not obligated to adopt its recommendations. Furthermore, it lacks the financial ability to conduct adequate research on a spectrum of issues, hold regular meetings, coordinate effectively between its members and others involved in WTO processes, and lobby the government to adopt particular stances on any specific issue. Second, Kenya must include more private sector actors in the decision-making process. The Kenya Fish Processors and Exporters Association (AFIPEK), for example, feels excluded from private-public sector consultations and claims to have never attended a NCWTO meeting. Third, Parliament, as the supreme body for the formulation of laws in the country, needs to develop a better understanding of WTO issues and become more involved in developing Kenya's position prior to talks. Finally, general public awareness of WTO issues needs to be enhanced. Overall, there does not exist an effective mechanism for coordination between the various stakeholders.

21. The Impact of a Trade Remedy Case in Korea

The following case examines the WTO's Dispute Settlement Mechanism (DSM) with regards to U.S.-imposed restrictions on the export of Korean televisions to the United States. In 1997, Korea brought its first case to the WTO's DSM against the United States, claiming that the United States was applying anti-

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

dumping duties against Korean-manufactured television receivers. These anti-dumping actions resulted in dramatic decreases in Korean television exports to the U.S. and price increases of Korean electronics in the U.S. market. Furthermore, small and medium-sized Korean firms could not afford to fight the measures at any level because of the tremendous costs involved and were forced to stop exporting altogether. At first, the Korean government did not feel that it could win a case under the pre-WTO General Agreement on Tariffs and Trade since that required all members to explicitly accept the panel decision. After the implementation of the DSM under the WTO, however, all GATT members would have to explicitly refuse the panel decision in order for it to fail. The Korean government moved forward.

The Korean government argued that U.S. actions violated Articles VI. 1 and VI. 6(a) of GATT 1994, and Articles 1 and 11.1 of the Anti-Dumping Agreement, which stipulate that anti-dumping measures shall be applied only if there is clear evidence of dumping by another player of the international trade regime and if it causes or threatens material injuries. These articles require further that anti-dumping duties remain in force only as long as it is necessary to circumvent dumping practices. After Korea demonstrated that the United States was in violation of a number of other articles of GATT and other international trade agreements, the U.S. Department of Commerce announced that it was revoking anti-dumping duties on imported color televisions with respect to Samsung. Since Korean firms exported a substantial portion of their products from their factories in Mexico and other countries included under NAFTA tariff preference provisions and since Korean television exports were unlikely to increase significantly in the near future, the U.S. government claimed that it no longer saw a need to impose those duties. Even though the United States claimed that Korea's case at the international level had nothing to do with its decision, it is clear that Korea used the WTO's DSM to terminate a trade barrier that had been in place for well over a decade.

22. Laos: The Textile and Garment Industry in the Post-ATC Era

The WTO Agreement on Textiles and Clothing (ATC) established a transitional mechanism to phase out quotas for trade in textiles and clothing at the end of 2004. It is expected that textile and garment companies in developing countries will expand their production and export capacities to become the primary suppliers of related products as a result of their competitive advantage. As one of the forty-nine least developed countries, Laos was granted duty-free and quota-free market access to certain developed countries under the Generalized System of Preferences (GSP). Laos' garment industry does not gain much from such a system, however, due to its strict "rules of origin" provisions particularly with regards to local content requirements. Garment companies in Laos mostly depend on imported fiber, yarn and fabric for assembling finished garments that are then re-exported. Countries like China and

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

India will increase textile and clothing exports at the expense of smaller countries like Laos. Because of Laos' limited production and supply capacities relative to neighboring production giants, it receives very few offers from major clothing corporations. Coupled with the problems of high transportation costs, lack of access to sea ports thereby decelerating the rate of export, and the elimination of import duties from countries that are not GSP beneficiaries, Laos faces a number of challenges in the near future.

Laos is not yet a member of the WTO and thus its textile and clothing trade is dependent on bilateral trade arrangements with its trading partners. WTO Membership would provide it with the predictable access to crucial markets that it desperately needs. To improve the country's already bleak situation, domestic producers need to modernize their production facilities and improve training for their workers so that they may remain competitive in an increasingly spirited industry. Government authorities must become aware of the impact of global competition, which requires short lead times, low prices, good-quality products and good-quality services and must support national corporations through negotiations on market access and trade facilitation. If such measures are not adopted, Laos will continue to lag behind economically.

23. Malawi in the Multilateral Trading System

This case study examines Malawi's position within the international trade regime, the problems that it faces, and the policies that its government and international institutions could adopt to improve its bleak situation. Malawi is located in east Africa and is one of the poorest countries in the world with a 2001 GDP per capita of USD $163. The government imposes tariffs liberally which continually affect Malawi's trade. Approximately 29 percent of all product lines continue to face non-tariff measures. With regards to exports, Malawi remains relatively open—all trade taxes and quotas on them have been eliminated since the late 1990s. In general, the country faces severe trade and economic problems, including declining commodity prices, weak infrastructure, lack of technology, high cost of inputs, lack of access to financing, weak institutional and human capacities, and high external debt. It is facing major constraints even as the country is engaged in multilateral negotiations, which have not yet generated any significant gains for a number of reasons.

Both private and public actors have not fully engaged in multilateral trade negotiations under the WTO. They are largely concerned about the large financial costs that may be incurred as the country strives to set up the necessary institutions and implement all associated standards required by the international community. Furthermore, because Malawi suffers from low productivity and a serious lack of know-how in most of its vital sectors, including agriculture, its industries continue to focus on domestic problems than on the potential gains from engagement in international trade. To improve the situation, the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

international community must provide it with considerable financial and technical assistance to set up the necessary frameworks within its various sectors so that it may be in a better position to comply with international standards and WTO regulations. The government of Malawi must step up its efforts to improve public-private sector consultations and coordination. It also needs to develop its marketing and transport systems while building up its storage and distribution capacities. Given the size of the country and its resource constraints, Malawi's stakeholders are fully aware that that the multilateral trading system can confer economic benefits. What they need now are the institutions that facilitate participation.

24. Malaysia: Labeling Regulations on Natural Rubber Condoms and the WTO TBT Agreement

When Medical-Latex SDN BHD (ML), a Malaysian condom manufacturer, discovered that the Ministry of Social Welfare of Colombia had proposed a new requirement for the labeling of natural latex condoms, it objected. Being the largest supplier of condoms in Latin America, corporate heads understood that a loss in market share would seriously hurt the company's profitability. The Ministry of Social Welfare of Colombia wanted a wide range of information to be printed on each separate condom package. ML believed that such a demand was baseless since the company met the highest European standards on condom manufacturing and printed all relevant points of information on the condom boxes with the most important warning on the individual condom wrappers—that the product contains natural rubber latex which may cause allergic reactions.

The Technical Barriers to Trade (TBT) Agreement seeks to ensure that technical regulations and standards do not create unnecessary obstacles to trade. It recognizes that countries have the right to protect human, animal and/or plant life and ensure that adequate health standards are met so long as "protection" measures are preceded by legitimate objectives that may not constitute disguised restrictions on international trade as mentioned in the preamble of the WTO/TBT agreement. Furthermore, product standards must be based on scientific information and evidence. ML saw the Colombian draft regulation as being without a legitimate objective and in direct violation of Article 2.2 of the TBT Agreement, because there is no scientific proof that natural rubber can cause allergies. In addition, Article 2.4 of the TBT Agreement stipulates that members should use existing technical regulations and relevant international standards where they exist. The Malaysian company argued that it abided by the international standards that had already been established in line with the principles of the TBT Agreement of transparency, non-discrimination, mutual recognition, equivalence and harmonization. Because procedure dictated that the country issuing the decree had to respond to Malaysia's arguments and that bilateral engagements had to precede any attempted resolution from within the WTO framework, it was assumed that the Colombian government withdrew its requests since they made no effort to respond to

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

the government of Malaysia. ML continues to manufacture condoms using its original packaging and still enjoys a majority of market share in Colombia.

25. Malaysia: Strategies for the Liberalization of the Services Sector

This case study examines Malaysia's services sector and the strategies it needs to adopt to cope with the pressures of market liberalization. Malaysia's services sector's share in GDP has grown from 48.8 percent in 1987 to 60.8 percent in 2003. Forecasts show that this share will continue to increase in the near future as the development of new technologies facilitates the quicker supply of services. Malaysia is signatory to the GATS and is expected to identify the services sectors in which it is willing to make commitments and indicate any limitations on market access and national treatment. Twenty-one countries have made requests directed towards Malaysia's market, covering a wide range of professional services, advertising, news agency services, telecommunications and computer-related services. The commitments undertaken by Malaysia under the GATS will lead to a greater presence of foreign services providers in the country. This will mean stiffer competition for local providers. Small and medium-sized enterprises (SMEs) must prepare themselves by adopting measures geared towards capacity building if they are to prevent closures, job loss, and declining profit margins.

The Malaysian services industry needs to boost its efficiency, productivity, and overall competitiveness. The government is currently exploring various strategies to achieve those objectives. Observers have made several suggestions and have claimed that various industry-specific policies need to be linked so that market efficiency and development are streamlined across all sectors and the economy as a whole can benefit from liberalization. The first thing the government must do is educate service providers on GATS and its implications on the industry and the latest WTO developments. Some observers believe that the second step requires the creation of an international business linkage in which Malaysian businesses would be kept aware of investment opportunities abroad. This would encourage quicker liberalization in services as companies recognize the benefits of participating in the international trade regime. The third step would be to encourage SMEs to concentrate on developing specific skill sets and competencies for the relevant export markets. The Malaysian government has established two bodies: (i) the National Professional Services Export Council (NAPSEC), which is responsible for the promotion of the export of professional services, and (ii) the Professional Services Development Corporation (PSDC), which is responsible for enhancing the skills and knowledge of all Malaysian professionals and promoting their marketability in an increasingly globalizing world. Analysts believe that both organizations will contribute to implementing the steps discussed above.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

26. Mauritius: Cooperation in an Economy Evolving for the Future

Mauritius's economy has traditionally been strong when compared with other island states. In 2004, it faced many growing challenges. Among them were a possible end to preferential treatment trade agreements, disruption to its textile and apparel industry because of the impending expiration of a global restraint system which encouraged producers to find locations that could benefit from marginal quota allocations, and competition from Brazil and other new entrants in multiple sectors. Observers claim that Mauritius' economy is heavily dependent on exports and because it often lacks a competitive advantage in the production of its most vital exports, it must adjust to the evolving international trade environment. This case study examines the government's reforms intended to adapt to changing international conditions and the prospects of the country's economy.

The government has adopted a number of policies to maintain Mauritius' strong economic performance. First, it has improved coordination between the public and private sectors and has given them both a stake in policy development. The Joint Economic Council (JEC) was initially a coordination body for private sector actors but became a forum for discussion between corporations and government officials. Second, it set up institutions for crisis management such as the Sugar Sector Strategic Plan and has encouraged experimentation, implementation of new ideas, and diversification. Third, in considering the vast distance between Mauritius and its main markets and the associated high transportation costs, the government initiated cost-reducing mechanisms such as modernizing facilities and using renewable resources for the production of electricity. Fourth, it has built upon regional relationships and has developed the country into a regional hub in a variety of sectors, including the fisheries sector. Because many of its neighbors lack the technology to process large catches, Mauritius expanded its processing facilities so that it could treat its neighbors' products before exporting them to European and the American markets. Finally, to keep competitive with sugar exporters such as Brazil, it reduced the number of factories the country operated, used renewable resources for the generation of electricity, and applied better technologies to production processes. Mauritius' greatest challenges today are combating corruption and improving literacy in Portuguese. Nevertheless, it remains to be an example for other island states and least developed states to follow.

27. Mauritius and Zambia: How Regional Economic Communities Can Facilitate Participation in WTO

The following case study examines the effects of regional organizations on participation in the WTO. Many developing countries are engaged in bilateral and regional trade agreements and in multilateralism and regionalism simultaneously. This has not prevented them from performing all of their duties and

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

remaining active in every organization of which they are a part. Many developing countries face obstacles in the policy-formation process at the WTO level as a result of human and financial resource constraints. Therefore, they participate in regional organizations in order to pool their resources and create synergies. Regional organizations also act as forums for discussion in which members can share their views on a spectrum of issues, generate policy input, make suggestions based on past experiences, and define and when necessary coordinate their positions. The most common argument against regional organizations is that they could divert time, attention, and resources away from WTO processes and initiatives in bi-regional trade negotiations.

Mauritius and Zambia belong to two regional organizations: the Common Market for Eastern and Southern Africa (COMESA) and the Southern Africa Development Community (SADC). COMESA promotes regional integration through cross-border trade and investment and has programs on trade and transport facilitation, trade in services, free movement of persons and investment. Members offer their colleagues preferential access to their markets. SADC is a development community with a broad range of objectives varying from self-sustained development, economic growth, and poverty alleviation to common political values, systems, and institutions. Both organizations contribute to their members' effective participation in the WTO and assist member states with preparatory work prior to negotiations and delegate responsibilities to each member so that none are overburdened in following and actively engaging in heavy WTO agendas which few developing countries can do on their own. COMESA and SADC also ensure coherence between the regional integration process and the WTO obligations of its members states.

28. Mexico's Agricultural Trade Policies

The article seeks to explain how the Mexican government modified its agricultural trade policies in response to peasant mobilizations and the government's international commitments. It also shows how Mexico has maintained an equilibrium in the WTO between domestic constraints and international needs. Between mid-2002 and the first quarter of 2003, Mexican peasants and workers in the agricultural sectors protested the government's agricultural policies. Various organizations demanded an increase in the agricultural budget, the prohibition of importing genetically modified staples and the leveling of the playing field with the developed partners in terms of standards and sanitary and phytosanitary (SPS) measures. In April 2003, President Vicente Fox signed the "National Agreement for the Countryside" (ANC) in which the government committed to a comprehensive review of agricultural trade policies. Fox wanted to implement reforms that would increase land productivity, improve the competitiveness of agricultural products, and dismantle price supports and protectionism. In the WTO, he wanted to defend Mexico's

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

position as a developing country claiming the right to impose quantitative or tariff restrictions on the basis of food security or food sovereignty concerns. The ANC opened the door to a new approach to Mexican agriculture and Mexico's trade positions vis-à-vis its North American Free Trade Agreement (NAFTA) partners.

Academic experts from leading Mexican universities believed that the Mexican rural sector needed a long-term state policy, the main goal of which is not protection but to increase the share of agricultural output in the country's GDP. This was grounded on the premise that market liberalization was not enough to make Mexican agriculture competitive. They recommended an increase in direct investment in the sector combined with the provision of "public goods" targeting market development. They also suggested that supports and subsidies be used sparingly since they benefit commercial farmers more than small, subsistence-oriented farmers or rural workers. Overall, Mexican public officials are convinced that NAFTA has been beneficial for Mexican agriculture since market shares in competitive products increased once the agreement came into force. Domestic production of certain products has not declined and imports have balanced the growth of national consumption.

29. Mongolia's WTO Accession: Expectations & Realities of WTO Membership

This case study examines the reasons for which Mongolia has failed to achieve all that the WTO has to offer. Mongolia faced a number of challenges in its bid for WTO membership. At first, it seemed that the government took the necessary steps to ensure a swift transition into the global trading regime. It issued Decree No. 6, which was an ambitious attempt to introduce comprehensive changes into the country's trading structure, including the development of a double-column (MFN and non-MFN) customs tariff system, review of the customs valuation rules, reform of the internal taxation system, simplification of export and import procedures, elimination of bans on certain products and modification of the intellectual property protection regime. It became clear later that the government only sought to bring national trade regulations into compliance with the WTO regime. This proved detrimental to the country's infant industries that did not gain much more additional access for their products in foreign markets through Mongolia's bid for membership.

Mongolia was poorly prepared for accession into the WTO. It had a newly emerging private sector that was not consulted on a spectrum of WTO-related issues. The government failed to stir debate at the national level on the potential benefits of GATT/WTO and did not fully understand the economic gains that membership could provide. Rather, it sought membership for purely political reasons: national image-building and to demonstrate the country's intention of embracing the market economy unreservedly. Mongolia also failed to reserve for itself sufficient transition period rights and exceptions

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

and was ready to make far-reaching concessions in return for very limited gains. It carried out negotiations with countries that it did not have any trade relations with at the time, such as Canada, the United States, and Mexico. There is still a serious lack of WTO expertise and of the political will to master WTO disciplines, and the country seems more interested in bilateral trade agreements such as Free Trade Agreements (FTAs) than in multilateralism. If Mongolia is to garner greater benefits from its membership in the WTO, it must adopt certain policies immediately. It should create the necessary institutions to understand the WTO's complicated disciplines and procedures, be more aggressive in seeking international market access for the country's products, establish channels of communication between the public and private sectors, and encourage private industries to coordinate and strengthen their associations so that they could more effectively articulate their interests to the government. The lessons learned from Mongolia's participation may be useful to other countries operating under similar conditions.

30. Nepal: The Role of an NGO in Support of Accession

This case study examines the role South Asia Watch on Trade, Economics and Environment (SAWTEE) and other NGOs played during Nepal's WTO accession process. Nepal's trade with India constitutes 55.9 percent of total trade, according to 2003 data. Bilateral trade treaties govern the trade that occurs between them, and a transit treaty traditionally gave Nepal with access to the sea. In the early 1990s, Nepal became interested in gaining membership in the WTO. It viewed membership as an opportunity to gain access to wider markets for its exports and acquire more sources of foreign investment. It applied formally in 1995.

SAWTEE provides South Asian states with the knowledge, information, and skills to integrate into the global trading system. It contributed significantly to Nepal's accession to the WTO and explained the benefits to be gained from participation in the world body, including certainty of market access, predictability of trade thereby encouraging trade and investment in the country, access to dispute settlement mechanisms, and transit rights for member countries. Nepal faced three main challenges in the process. They included: (i) tariff binding for agricultural products, (ii) resisting pressure to join the International Union for the Protection of New Varieties of Plants (UPOV), and (iii) gaining domestic political support for ratification of the accession agreements. SAWTEE and other NGOs helped the country overcome all of these challenges. With regards to the agriculture industry, they raised the average tariff binding rate on sensitive agricultural products to 51 percent during the transition period and 42 percent thereafter. They helped convince opposing developed countries of the policy's necessity. With regards to domestic support, local NGOs persuaded the public to support ratification through their

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

articles and deliberations in different forums. NGOs undoubtedly contribute a great deal in the accession process. They research the potential impacts of various WTO agreements on the poor, marginalized, and vulnerable, act as advisors to the government on how best to negotiate certain issues, and help governments gain public support for accession.

31. Nepal: Exports of Ayurvedic Herbal Remedies and SPS Issues

This case studies Nepal's attempt to implement and enforce SPS standards in its private sector. In 2000, Prem Raj Tiwari received a large order from a Swedish importer for processed medicinal herbs. The Swedish reporter withdrew his order soon afterwards because the company's product samples allegedly did not pass the "satisfactory and sufficient" sanitary and quality standard tests for access to the Swedish market. Tiwari was shocked to discover that each consignment required a certificate of good manufacturing practices (GMP). The GMP is a system of quality assurance and quality control not only for the products themselves but also for the pre- and post-manufacturing processes to ensure sanitation and the minimization of the risks inherent in food and medicinal production, processes which cannot be assessed by only testing the final products.

Tiwari expected a significant competitive advantage for his company to boost trade in the production of herbal products for a range of reasons. Initially, he believed that the Swedish importer's demands were arbitrary and intended as barriers to trade. He soon learned, however, that buyers could ask for compliance with international standards under the WTO's SPS Agreement and that he had no choice other than to prepare his company to meet international sanitary and quality standards if he did not want to lose any lucrative business orders in the future. When he contacted the Nepalese Royal Drug Research Lab and the Department of Food Technology and Quality Control, he was told that neither had a plan or policy regarding SPS standards and could not help him meet international requirements. With the endorsement of Nepal's membership to the WTO at the Cancun Ministerial in September 2003, however, the government was required to implement certain measures to rectify the existing system. Coordination between the public and private sectors intensified in order to implement WTO rules and regulations. The Department of Drug Administration (DDA) initiated efforts to achieve the inspection and auditing capacity for effectively monitoring and evaluating accreditation of GMP certification in Nepal. Domestic firms were obligated to meet certain criteria in order to operate under the new system, including the development of GMP-related physical facilities. Tiwari learned very quickly that in order to promote its export capacity, gain access to foreign markets and remain competitive, a company must meet international standards for sanitation, quality, production, and packaging, among other things.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

32. Import Prohibition as a Trade Policy Instrument: The Nigerian Experience

This case study examines Nigeria's import prohibition policy, its compatibility with WTO rules and regulations, its objectives, and its effects. Nigeria has engaged in import prohibition practices since the late 1970s. It has engaged in such import policies in its attempt to promote industry, increase employment, and adjust its balance-of-payments rate. Key elements of this regime include protecting existing domestic industries and reducing the country's perceived dependence on imports while ensuring the availability of raw materials and capital goods that cannot be obtained domestically. With regards to the agricultural sector, Nigeria's trade policy sought to discourage the importation of all food and raw materials that the county is considered able to produce on its own. Another major goal has been to increase the local content of Nigerian industrial output through the enhanced use of local raw materials. Producers of imported goods and their workers argue in favor of the import prohibition policy. Countries whose export products are denied market access in Nigeria, importers, and consumers are against it. Between 1980 and 1991, at least three countries filed formal complaints against Nigeria with respect to import prohibitions: Norway submitted a complaint on Nigeria's import ban on stockfish, Cote d'Ivoire on the import ban on textiles and the United States on the import ban on wheat and rice. While both Norway and the United States cited violations of GATT rules in their complaints, Cote d'Ivoire's case rested on a violation of the Economic Community Of West African States (ECOWAS) Treaty. The EU and Benin also took issue with Nigeria's trade policies.

The prices of import-banned products have increased while their quality has decreased. The operations of other sectors that use the prohibited imports as raw materials have been disrupted. The government has lost significant tariff revenues and has strained relations with several trading partners. In 1996, the WTO Committee on Balance of Payments Restrictions decided that Nigeria's import prohibitions could not be justified under WTO rules. Nigeria offered to eliminate these measures by 1997 but has not yet abided by its commitments. Perhaps the most significant lesson of this case study is that WTO members are provided with a strong external trade policy surveillance mechanism. That cannot be taken advantage of, however, until the government in question is committed to good trade policy and seeks to use external treaty obligations to suppress local vested interests and after external agents have adequate sanctions which they can use to punish deviations from internationally accepted trade practices. This has not been the case in Nigeria.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

33. The Pacific Island Nations: Towards Shared Representation

The following case study examines the benefits that regional integration may provide to less developed economies that often face hurdles in the global economy. The economies of Pacific island nations are among the most disadvantaged in the world today. Papua New Guinea, for example, is the size of California but has very limited human resources and cannot afford permanent representation in Geneva. Forty-six percent of its population of 5.3 million live on less than USD $1 a day. Because these states do not have enough market clout individually and are unable to acquire any significant results in bilateral and multilateral negotiations, the issue of regional integration has come to dominate their political agendas. The Pacific Plan, commissioned by leaders at the Pacific Islands Forum in August 2004, has identified further work to be done in pursuing the aim of regional cooperation in aviation, shipping, fisheries and counter-terrorism. If shared representation is successful in multilateral trade negotiations, it will set a powerful precedent regarding regional cooperation that will enable improved outcomes for the region when engaging on issues of international significance. Such an outcome would enhance regional unity and may serve as a model for cooperation in other areas of the world.

The benefits of regional cooperation are demonstrated through a specific case that recently dominated the economic agendas of four Pacific island states. Kava root is a traditional medicine used throughout Pacific societies as an analgesic, tranquillizer and anti-depressant. Kava exports contribute over USD $200 million annually to Pacific economies. In 2002, German health authorities, followed by other members of the EC, instituted a ban on kava products based on a link of kava consumption to a range of liver problems. Leaders in the Pacific responded quickly to this economic threat. Recognizing the difficulties each country would face if they were to fight the ban alone, the Pacific Islands Forum Secretariat moved to address this problem with the establishment of a joint representative body, the International Kava Executive Council (IKEC). In the end, IKEC was successful in initiating new studies into the health effects and safety of kava products and in convincing the German health authorities to review their ban. The director of Kava Traders in Vanuatu, Frank King, said that "the German minister, Dr. Schroeder, admits that the review of the kava position had been brought about by pressure from Pacific island states and organizations friendly to those states." Regional integration may prove to be the most valuable tool to small economies that would allow them to fully realize the benefits of the global trade regime.

34. Pakistan's Dispute Settlement Case on Combed Cotton Yarn Exports to the United States

On December 24, 1998 the U.S. government sent Pakistan a Call Notice for consultation regarding the implementation of quantitative restraints on Pakistani exports of combed cotton yarn. The United States

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

claimed that these Pakistani exports were harming the U.S. textile sector. The United States employed the transitional safeguard measures sanctioned under Article 6 of the WTO ATC. The Pakistani government attempted to resolve the issue through bilateral negotiations but soon decided to take the case to the Textile Monitoring Board (TMB) and finally to the WTO's DSB.

After 1995, Pakistan became the second largest exporter of combed cotton yarn to the United States. Referred to as the backbone of the Pakistani economy, it was the largest manufacturing sector with an 8.5 percent share of GDP. Because of the industry's importance and contribution to national employment, the Pakistani government sought to fight the quota restriction because of the direct economic benefits of their removal. Pakistan also sought to establish a legal precedent that would protect its industries in the future as well as those based in other developing countries. Pakistani authorities first took the case to the TMB. They argued that the United States "defined its domestic industry as the producers of yarn for sale in the merchant market, excluding from the data vertically integrated producers that were producing yarn as an intermediate good." They claimed that this definition violated Article 6.2 of the ATC, since it resulted in the failure of the United States to consider its entire domestic industry. The TMB ruled in favor of Pakistan and recommended the immediate lifting of the quota restrictions. Because TMB recommendations are non-binding, however, the United States did not rescind its policy and the Pakistani government decided to take its case to the DSB. DSB decisions are binding on any parties involved in the process. Pakistan contested the case successfully, and on May 31, 2001 the Panel recommended an immediate lifting of the quota restrictions by the United States. This case illustrates the utility of the WTO for developing countries and the various mechanisms that can be employed to contest another country's trade policies.

35. Pakistan: The Consequences of a Change in the EC Rice Regime

This case study explores the reasons that the EU rice trade regime imposed trade restrictions on Pakistan's super basmati, resulting in the withdrawal of a duty abatement of €250 a ton, an import duty derogation earlier allowed against the normal duty of €264. It also examines the possible implications of such a change for various stakeholders, including farmers, processors, traders and of course the overall national economy. Pakistan exports basmati rice worth USD $531 million to the EU each year, 80 percent of which is super basmati. The performance of this crop, on both production and export counts, therefore has long-term implications for both a sizable number of small farmers and the national economy.

The EU Agriculture Ministers adopted the legislative text of the agreement on reforms of the much disputed EU Common Agricultural Policy (CAP) on September 29, 2003. This agreement stipulated a 50 percent reduction in the intervention support price for paddy rice and an annual purchasing limit of 75,000

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

tons on the volume of rice that could be imported into the EU. EU rice farmers were to be compensated by the provision of area-based support payments, paid at a rate based on national/regional reference yields multiplied by a factor of €177 a ton. Accordingly, the subsidy payable to EU rice producers increased from €52.65 a ton to €177 a ton, of which €102 a ton was included in the single payment scheme. Under Article XXVIII of GATT 1994, the EU was obligated to undertake negotiations with the WTO Member countries expected to be affected by trade policy changes before making such changes in the rice import regime. The CAP reforms therefore mandated the Commission to open negotiations about modifying import arrangements prior to their doing so.

Pakistan decided to engage the EU in bilateral talks. The Pakistani economy and Pakistani farmers had experienced heavy losses as a result of the EU's policy, but the active engagement of both public and private sector actors helped resolve the issue temporarily. That solution resulted in a quota-restricted preferential treatment agreement in terms of duty-free market access. That solution was not expected to hold since preferential trade agreements inevitably erode under the WTO regime.

36. Philippines: Stakeholder Participation in Agricultural Policy Formation

The following case examines why it is necessary that cooperation take place between private and public sector actors in formulating a country's negotiating position prior to bilateral and multilateral trade talks. The agriculture sector is one of the most important to the Philippines' economy. It accounts for 21.5 percent of GDP, generates exports valued at over USD $1.5 billion, and provides over one-third of the country's employment. When the Philippines acceded to the WTO in 1995, various stakeholders were under the impression that they would benefit economically at a very quick pace as a result of the expected improvements in the efficiency of industries required by exposure to global competition. Those promised gains were not forthcoming, and private sector actors blamed the government for what they believed to be an inadequate effort to consult all those involved in the agriculture sector. The Task Force on WTO Agreement on Agriculture (re)negotiations (TF-WAR) was established to represent a broader constituency in the formulation of the Philippine negotiating position at the WTO Seattle Ministerial in late 1999. The main responsibility of the TF-WAR was to consider, develop, evaluate and recommend Philippine negotiating positions and strategies for the new round of negotiations. TF-WAR intended on giving stakeholders a central role throughout negotiations at WTO level.

Special Order No. 231 formed the TF-WAR core group on May 2, 2002. Specific tasks of the group include detailed evaluation of proposals submitted by WTO members, in-depth analysis of both the overall and specific impacts on Philippine agriculture, and the formulation and elaboration of specific proposals based on these analyses guided by the general policy direction decided in the TF-WAR. The

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

TF-WAR domestic process includes regular meetings, consultations between each TF-WAR member organization and its respective membership, workshops, technical work and research, and the approval and recommendation processes. The advantages of having such a group include the ensured institutionalized participation of stakeholders, thereby providing greater legitimacy to proposals submitted at the WTO level, acquisition of a more informed, balanced and credible negotiating position, the ensured diffusion of information domestically and greater efforts geared towards alliance-building at the international level, and a better understanding of the international trading regime for all involved actors. TF-WAR and its associated processes also have their weaknesses, including the lack of a complementary process that involves related sectors and the lack of an overall feedback mechanism that could take note of the lessons learned at various stages in negotiations.

37. Philippines: Adopting the Transaction Basis for Customs Valuation

This study describes the challenges customs officials faced in the Philippines when they adopted transaction valuation to facilitate imports and the ways in which they overcame these challenges. To adopt its international treaty obligations into domestic law, the Philippines government enacted two laws: (i) the Republic Act (RA) 8181 in 1997 and (ii) the RA 9135 in 2001. These two laws revolved around customs valuation, which was deemed necessary to reduce corruption, undo the abuses of customs officials, and reduce business transaction costs. The government tried to publish home consumption values, but this failed for a variety of reasons. The use of published values is in compliance with the WTO's transaction valuation rules if the prices published are transaction values at the time the merchandise is imported. In the Philippines, however, the published values were home consumption values, not updated in line with the market and the data was not comprehensive enough to cover all possible imported merchandise. Thus it was likely that the use of published values as ordered in RA 8181 would be inconsistent with transaction valuation rules. The value range information system (VRIS) was introduced to deter attempts to undervalue imported merchandise. The system consisted of a database that gave high and low transaction values of merchandise imported to the Philippines in commercial quantities. If the declared value of a given shipment fell outside the range, the importer would have to show the relevant documents to the Valuation and Classification Review Committee (VCRC) to support his declared value. This system ensured that smuggling and corrupt practices were minimized.

President Arroyo signed RA 9135 into law on April 28, 2001. Besides enabling transaction valuation in the Philippines, this Act was more transparent and more compliant with the WTO customs valuation agreement and ensured greater revenues than RA 8181. Transaction valuation reform is one of the most

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

effective measures in facilitating commerce. Under the auspices of the WTO, it will lead to a greater degree of transparency in global practices and procedures in determining dutiable values.

38. The Reform of South Africa's Anti-Dumping Regime

This case study examines the development and reform of South Africa's anti-dumping regime as an example of a country's WTO participation. The long history of South Africa's use of trade remedies illustrates that developing countries can successfully participate in the global trading system after having modified their domestic institutions and trade policies. By using the WTO's Anti-dumping Agreement (ADA) as a model for its own anti-dumping system, South Africa also serves as an example of how a country can make use of WTO instruments to ensure that its domestic legislation is complying with its international obligations.

In the 1990s, South Africa opened up its economy and implemented policies that would allow it to become more competitive. It engaged in rapid liberalization and introduced tariff offers similar to those of developed countries. Tariff rates declined dramatically, which left domestic producers facing stiffer competition from overseas. Trade remedies such as anti-dumping and countervailing measures became increasingly important for domestic producers since they would shield them from an overflow of imports. By joining the WTO in 1995, South Africa became party to all WTO agreements, including the Agreement on Implementation of Article VI of GATT 1994 (the Anti-dumping Agreement). That article allows members to pursue anti-dumping measures against imports that have been exported at prices below their normal values, which according to observers is usually the price of the product in the domestic market of the exporting country. Article 1 of the ADA requires that members only apply anti-dumping measures under the circumstances provided for in Article VI of GATT 1994 and only after investigations that been initiated and conducted in accordance with the provisions of the Agreement. South Africa's Board Amendment Act of 1995 made minor amendments to South African legislation in order to bring the country's anti-dumping regime more in line with the ADA. The restructuring of the anti-dumping regime finally became a reality with publication of the International Trade Administration (ITA) Act on January 22, 2003 that created a new body, the International Trade Administration Committee (ITAC), for the administration of trade remedies within South Africa. This was followed by the spread of detailed anti-dumping regulations in November 2003 to guide ITAC in conducting its anti-dumping investigations. All of this was done in South Africa's attempt to streamline its domestic laws with international standards. However, South Africa needs to improve the coordinative mechanisms between its public and private sectors in order to take full advantage of its newly established institutions.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

39. The Impact of GATS on Telecommunications Competition in Sri Lanka

This case study examines Sri Lanka's management of its telecommunications commitments under GATS and the degree to which it has kept them. The telecommunications sector is an engine for economic growth in Sri Lanka. Over the past two decades, over USD $1.3 billion has been invested in the industry. According to the Central Bank of Sri Lanka (2003) the telecommunications sector remains one of the highest growth sectors in the economy, expanding from 19.3 percent in 2002 to 24.5 percent in 2003. Sri Lanka is a signatory to the WTO Agreement on Basic Telecommunications Services and has fully adopted the Telecommunications Reference Paper that sets out the regulatory principles for the effective implementation of this Agreement as well as the Annex on Telecommunications Services. The Telecommunications Regulatory Commission of Sri Lanka (TRCSL) was created in 1996 to assist in the country's attempt to uphold its commitments. Sri Lanka's WTO commitments dictate that a fair interconnection regime be put in place, with cost-oriented rates that are transparent and sufficiently unbundled. Market players have reached a number of agreements, but they have rarely seen them to fruition. TRCSL's regulatory weakness and its inability to implement a working interconnection agreement has resulted in little progress in Sri Lanka's telecommunications segment.

Many hurdles need to be overcome, including inconsistencies in access to phone lines across the country, the concentration of fixed line users in Colombo, the tiny percentage of the population that has access to the internet, and regional imbalances in terms of accessibility and penetrability. Furthermore, the incumbent in the industry—the former monopoly called Sri Lanka Telecommunications Limited (SLTL)—has control over facilities and has periodically engaged in discriminatory and anti-competitive behaviors. To overcome these obstacles, the TRCSL implemented a set of Interconnection Rules in 2003 under section 68 of the amended Telecommunications Act, No. 25 of 1991. These rules required interconnection among connectable operators and disclosure of operators' interconnection regime to the TRCSL. They also include a provision to resolve interconnection disputes within thirty days of receipt of a complaint. According to one of the leading mobile operators, however, these rules have not been applied and have rarely been followed by market players. There is widespread debate on the extent to which Sri Lanka has met its GATS commitments, but most scholars and market players agree that, at least on paper, it has fulfilled it obligations regarding interconnection.

40. Thailand: Conciliating a Dispute on Tuna Exports to the EC

This case study examines Thailand's challenge at the WTO of the EC's tariff on tuna imports. When the EC granted tuna producers of African, Caribbean, and Pacific states (ACP) a preferential tariff agreement while maintaining a 24 percent tariff on countries such as Thailand, tuna producers in Thailand lobbied

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

their government to take up the matter at the WTO. They argued that the EC's policy undermined their comparative advantage in the industry and encouraged investors to view ACP countries as favorable investment destinations. The legal impetus that Thailand chose to use was based on the WTO's MFN principle, which required all parties to the WTO to grant all other Members equally favorable trading terms. There are three major stages to the DSU: (i) consultation between the concerned parties, (ii) adjudication by Panels and, if necessary, the Appellate Body, and (iii) implementation of the ruling. Most members prefer bilateral consultations to the WTO dispute settlement mechanism.

On November 14, 2001, the EC agreed to enter into full consultations with Thailand in order to examine the effects of the EC-ACP preferential trade agreement on Thailand's tuna industry. On September 4, 2002, both parties requested WTO mediation after they failed to reach a mutually acceptable agreement through bilateral negotiations. To demonstrate the negative implications of the EC's policies, the complainants noted that while the ACP countries' market share experienced substantial growth and paralleled the expansion of the EC market, the volume imported from Thailand decreased by 46 percent between 1994 and 2000. They argued that the EC's case that Thailand was not competitive was false by demonstrating that Thailand did not experience similar losses in its other markets. "According to them [the complainants], the fact that they managed to maintain a notable EC market presence despite the 24 percent handicap, while ACP countries were enjoying free access, was in itself a direct testament to the competitiveness and productivity of their industries." Thailand also argued that although positive discrimination was acceptable when it was directed towards assisting a least developed country, favorable treatment should not be extended to any developing member at the expense of another developing member. On December 20, 2002, the WTO mediation advisory opinion suggested that the EC open up a new quota of 25,000 tons at a tariff rate of 12 percent to four beneficiaries, including Thailand, thereby accepting the complainants' arguments. Although that opinion was not legally binding, the EC officially adopted it by passing EU Council Regulation No. 975/2003 in order to avoid a full-fledged legal battle with Thailand after the latter would take the matter up at Panel.

41. Uganda's Participation in WTO Negotiations: Institutional Challenges

This case study examines Uganda's ability to prepare for and participate in WTO trade negotiations. Uganda is party to many multilateral trade agreements, including the ACP-EU Cotonou Agreement, the COMESA, the East African Community (EAC) Customs Union and, most recently, the African Growth and Opportunities Act (AGOA) and 'Everything but Arms' (EBA) initiatives. Like most other developing countries, it is engaging in negotiations aimed at securing markets for new products, obtaining the cooperation of trading partners on technical and financial assistance required to meet market preferences,

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

and to comply with international health and technical standards as well as other customs or entry requirements. Through negotiations, it is also trying to address production and supply constraints.

Trade negotiations in the WTO seek to advance the economies of least developed countries (LDCs). LDCs are afforded longer transition periods, special and differential treatment, and more lenient demands post-negotiations. Many of them, however, have not taken advantage of these opportunities. In order to do so, countries like Uganda need to mainstream trade development strategies in the overall national development policy framework. Uganda must also view trade negotiations as an indispensable development tool in which it must invest. It must provide technical expertise in missions to trade bodies so that parties to such missions can "handle a number of issues at the same time, while also coordinating in time with The Ministry of Tourism, Trade and Industry (MTTI)." Furthermore, the country's negotiators must be better informed on trade issues and WTO developments so that they can better advise their government during the consultation phase prior to the actual negotiations. The process of preparing for trade negotiations in Uganda is largely a consultative process coordinated by the Inter-Institutional Trade Committee (IITC), which includes government institutions, the private sector, academia and civil society organizations. The country is slowly developing the necessary tools for engagement at WTO forums, but it must do a better job of involving all the relevant public and private sector stakeholders in developing a national agenda, formulating strategy, and identifying the national position on any particular issue.

42. Uruguay in the Services Negotiations: Strategy & Challenges

This case study explores the challenges that Uruguay has traditionally faced in services negotiations. It provides a few recommendations on how Uruguay can best overcome the obstacles it has encountered over the past several years. The services sector in Uruguay represents two-thirds of its employment and about 60 percent of GDP. However, like many other developing countries, Uruguay has not fully realized its potential and the benefits of WTO membership. During the first round of the GATS negotiations—the Uruguay Round (1986-1994)—Uruguay did not have a clearly defined strategy and its participation was rather minimal. Prior to the Doha Round, it sought to become more active and developed a more aggressive and liberalizing position in negotiations. Government actors have noted that this attitude has not been complemented by similar changes in domestic institutions and regulations. Services firms are not completely aware of the GATS, its relevance and potential, and they have only engaged in selling their products abroad through informal contacts and channels rather than through institutionalized networks.

Up to this point, Uruguayan services offers have included some competitive services that have already been exported and liberalized domestically. Those services that did not require protection against foreign

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

competition were also included. M. A. Peña, head of the integration and trade policies Department at the Planning and Budgeting Bureau, said that the rationale for such a policy was that "if it is the case of a competitive sector or a sector in which Uruguay has not a specific qualification, there is no need to be protectionist." Uruguayan entrepreneurs and corporations remain cautious with regards to liberalization and do not prefer to offer any sort of commitment when the situation is uncertain. Observers claim that this is because private sector actors are not as capable as government in considering strategies of access to extra-regional markets. Uruguay must educate all stakeholders on the benefits of liberalizing the services sector. It must facilitate coordination and cooperation between the many private sector actors and then develop a framework in which the private and public sectors can develop a common strategy prior to negotiations. "The non-tradable nature of services, the lack of experience in assessing the effects of trade policy and the non-existence of an institutional machinery to construct links between the different actors are but some of the challenges faced by Uruguay."

43. Vanuatu's Suspended Accession Bid: Second Thoughts?

This case study explores the reasons for which Vanuatu withdrew its bid for accession to the WTO. Initially, Vanuatu sought WTO membership because its import-substitution policy of the 1980s was failing. All of its neighbors and trading partners were WTO Members and there was a feeling that trade relations and the economy's status would be improved if it were integrated into the global economy under the WTO framework. The Comprehensive Reform Program (CRP) sought to cut the trade deficit and improve economic performance, but it failed to achieve the outlined objectives. Therefore, political actors explored other means to economic prosperity.

When various public servants pursued accession to the WTO, they were overcome by voices of dissent—many believed the WTO to be plagued with many of the same problems as the CRP. In 2001, just before the Doha Ministerial Conference when Vanuatu was due for accession, the Minister of Trade withdrew the country's bid for a variety of reasons. Protectionist pressures from various business interests influenced his decision at a time when general elections were approaching. There was also a fear among local people that, following independence in 1980, Vanuatu was re-selling its country to foreign interests. Also, the process was considered too burdensome for a least-developed country—those involved did not have any prior experience on the GATT or the WTO, and funding was too scarce. When information and technical expertise were scarce, the only logical policy decision for government actors to pursue was complete opposition to WTO accession.

Vanuatu had to make major commitments on goods and services in compensation for its inability to meet demands on issues such as land ownership. The combination of all these concessions contributed to the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

decision to suspend accession. For example, the Vanuatu Constitution prohibits the freehold ownership of land. Leasehold lasting seventy-five years is allowed in some areas, but mainly in urbanized regions. The United States requested the revision of land laws at the time Vanuatu was seeking accession to the WTO. To allow freehold ownership would have been politically suicidal and culturally unacceptable, so negotiators refused compromise on the issue. Demands such as this one, and the fact that WTO Members argued that since Vanuatu was not yet a Member of the WTO and consequently could not use special and differential treatment provisions, raised concerns as to the benefits that could be gained from membership. Observers claim that a particular lesson which Vanuatu learnt from accession was that there is no rush to achieve it.

44. Public and Private Participation in Agricultural Negotiations: The Experience of Venezuela

The following article explores the degree to which public and private stakeholders participated in WTO agricultural negotiations in Venezuela's experiences. Three types of changes are categorized with regards to Venezuelan agricultural negotiations —namely political, constitutional and institutional changes. Each had an impact on the country's posture in negotiations. After he was elected in 1998, President Hugo Chavez launched the National Plan for Economic and Social Development (NPESD), which sought to guarantee an adequate food supply to the majority of the population. The Chavez administration believed that past agricultural negotiations, such as those that took place in 1999, diminished the country's sovereignty and resulted in worse agricultural conditions. Therefore, officials began to adopt more stubborn attitudes and compromised very little on various issues. Institutional changes also affected the transition from one negotiation attitude to the other. The Commerce and Agricultural ministries merged in 1997 in order to deal with a spectrum of issues. In 2002, the government created the Ministry of Agriculture and Land (MAT). Observers have noted that despite these changes, effective coordination has been lacking in what is referred to as a "bureaucracy." Each institution has its own agenda and each provides a different set of instructions to foreign delegates. The private sector's participation in negotiations has further exacerbated the issue. There is little coordination and cooperation among the various actors, each of which has a different and conflicting view on any number of issues.

The article claims that Venezuela transitioned from a moderately offensive position to moderately defensive position between 1995 and 2000. It also claims that the government often lacks a specific plan of action and only maintains a general position on any given issue—it allegedly does not know which industries to protect, which to promote or which to reform since it rarely coordinates with private sector stakeholders. Venezuela must establish more effective communication links between the many players,

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

develop its human resource capacities and understanding of international trade developments, and avoid "politicizing" trade issues. It must adopt new policies that promote trade relations with other governments rather than preventing them from materializing. Only then will Venezuela and its various industries fully realize the benefits of the continually liberalizing global economy.

45. Preparation by Vietnam's Banking Sector for WTO Accession

This case study explores why Vietnam must reform its banking sector if its industries are to remain competitive after the country accedes to the WTO and the measures that Vietnam must adopt for such reforms to take place. Vietnam has repeatedly promised that it will meet international demands and standards on trade liberalization through commercial legislation, institutional reforms, and regulatory changes, and that it will have liberalized its financial institutions prior to the country's WTO accession. However, these promises have not yet been fulfilled. Vietnam's banking sector remains uncompetitive. Foreign investment is not forthcoming, and the economy is not growing at rates comparable to Vietnam's neighbors. Vietnamese banks are fully aware that they must either reform and improve their competency or lose crucial business to foreign banks and financial institutions. They know that even though the GATS does not require them to take such action, their customers will demand that such reforms are enacted—otherwise, they will turn to foreign institutions for the services that they need. Under competitive pressure for survival, institutions must restructure, adjust and change operational procedures, and even change their form of ownership to assist in the country's economic development. The financial system clearly needs overhauling to achieve these objectives.

Vietnam must comply with the Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) "road map" for tariff removal, implement the Bilateral Trade Agreement (with the United States) guidelines for banking services, train banking staff, and apply IT and other technologies in banking services so that Vietnamese banks can compete in the future. Currently, the country's various industries are having difficulty accessing "sources of foreign currencies." Corporate investments are financed through borrowed money—borrowed not by the corporations from banks, but from individuals from their families and friends. This does nothing to grow the economy and increase wealth. Government officials must revamp the banking sector. They need to attract foreign investment, increase banks' capacities and services, make new technologies available and retrain management of banks and financial institutions. If this is not done—if state-owned banks continue to dominate the system, overdue loan rates continue to increase, and banks retain their limited lending capacities—then Vietnamese import-competing industries will not become globally competitive after accession to the WTO.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Doha Update: G-20 Meeting Produces Nothing as Players Indicate Flexibility, Desire to Complete the Round

Summary

On September 9–10, 2006, trade ministers and senior officials from the Group of 20 (G-20) developing countries met in Rio de Janeiro, Brazil, to discuss resumption of the stalled World Trade Organization (WTO) Doha Round. During the second day of meetings, WTO Director General Pascal Lamy and trade officials from the United States, the EU and Japan also met with the G-20 to establish a timeframe for concluding the negotiations but were unable to produce a clear schedule for the resumption of formal talks. We review here the results of the G-20 meeting, WTO Members' positions on the Doha Round, and next steps.

Analysis

I. G-20: Urge Round Completion But No Timeframe To Resume Negotiations

On September 9-10, 2006, G-20 trade ministers and senior officials met in Rio de Janeiro, Brazil, to discuss how to resume the stalled Doha Round. Following the meeting, the G-20 countries, including Brazil and India, reaffirmed their commitment to an "ambitious, balanced, pro-development outcome" for the Doha Round and stated they are "prepared to work towards this end." The G-20 confirmed its readiness to reengage immediately in formal negotiations and urged WTO Director General Lamy to intensify the process of consultations among WTO Members to reach an agreement on negotiating modalities for agriculture and non-agricultural market access (NAMA).

G-20 Ministers also reaffirmed their willingness to ensure that the WTO negotiations on agriculture "live up to the commitments of the Doha Mandate" because "this would guarantee a substantial and effective reduction in trade-distorting domestic support coupled with necessary disciplines to prevent box-shifting and product-shifting of support; substantial improvement in market access; and an expeditious elimination of all forms of export subsidies." G-20 ministers highlighted the importance of Special and Differential treatment (S&D) for developing countries in all negotiating areas and emphasized the need for proportionality (*i.e.,* developing countries committing to lesser reductions than developed countries) and special safeguard mechanisms (SSMs) to address food security, rural development and livelihood concerns of developing countries.

G-20 officials also stated that developed members, in particular major trading powers including the United States and the EU, bear a larger burden of responsibility for the outcome of the Doha Round, and that

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

these countries must agree to remove subsidies and to open their markets because their current positions on these issues do not provide an adequate basis to conclude the talks successfully. However, even after meeting with their U.S., EU and Japanese counterparts on the second day of meetings, G-20 officials were unable to meet the original goal of the meeting: to establish a clear timeframe for the resumption of formal negotiations. This failure disappointed many who attended the meeting. Trade ministers will have another opportunity to discuss the Doha standstill at a September 20-22 meeting in Cairns, Australia organized by the Cairns Group of agriculture-exporting countries.

II. United States and EU: Stand-Off Over Agriculture But Evolving Positions

WTO Director General Pascal Lamy, United States Trade Representative (USTR) Susan Schwab, EU Trade Commissioner Peter Mandelson and Japanese Minister of Agriculture Shoichi Nakagawa also attended the G-20 meeting and met with Brazilian Foreign Affairs Minister Celso Amorim to discuss the stalled round. Lamy reiterated that WTO Members must reach a framework agreement on negotiating modalities by March 2007 before the expiration of U.S. Trade Promotion Authority (TPA) and the 2002 U.S. Farm Bill. TPA and the Farm Bill expire in July 2007 and September 2007, respectively. Lamy described the collapse of the Doha Round in July as a “serious accident” but added that “there is now more clarity to move [negotiations] forward.” USTR Schwab reaffirmed U.S. commitment to conclude the Doha Round and stated that “there is always time to resuscitate the talks if the political will is there.” Schwab warned, however, that “only when we have all the pieces aligned are we in a position to see if these expressions of political will can translate into substantial concessions.”

EU Trade Commissioner Peter Mandelson was less optimistic about the talks’ resumption and opined that WTO Members do not “lack the means or the personal relations to enable these negotiations to come to a successful conclusion [but] nonetheless we have a mountain to climb.” Mandelson’s statements came days after he stated that Europe's commitment to a successful Doha Round "remains paramount,” and that the EU is prepared to show some flexibility on agricultural tariffs and "sensitive" farm products. Mandelson stated, however, that the United States must “make the first move” in committing to further reductions in its farm support programs, adding that “everyone's got to pull their weight” because successful resumption “requires movement [by all WTO Members]."

Mandelson has stated that the EU is willing to improve on its original proposal on agricultural tariffs, made in October 2005, to within a "couple of percentage points" of the G-20's offer to cut tariffs by an average of 51.5 percent. This figure is an increase from the EU’s original offer of a 39 percent average reduction. In its 2005 offer, the United States proposed a 66 percent average cut in farm tariffs, but U.S. officials recently indicated that the United States would be willing to accept an average cut between its proposal

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

and what the G-20 has offered. This level, however, would still be significantly higher than the EU's revised offer. Mandelson also stated that the EU would be prepared to move on the treatment of sensitive products to "way below" the maximum 8 percent of tariff lines to be designated as "sensitive." The EU had proposed the 8 percent limit in its October offer. The United States, on the other hand, had proposed a 1 percent cap, but U.S. officials have unofficially stated that they could accept an upper limit of 3-4 percent.

Mandelson has opined that he sees no prospect of a resumption of negotiations ahead of November's mid-term elections in the United States and stated that WTO negotiations will likely remain stalled until year's end. He stated, however, that he hopes the standstill is more of "a temporary halt, rather than an indefinite suspension."

III. Other Groups Call For Timely Conclusion to Doha Round

Separate from the G-20 meeting, other international groups have called for a resumption of formal negotiations and a conclusion to the WTO round itself. On September 8, 2006, finance ministers from member economies of the Asia-Pacific Economic Cooperation (APEC) urged an early return to the Doha Round talks. In a joint statement, the APEC ministers said that they remain "firmly committed" to re-launching multilateral trade negotiations and to "achieving the breakthrough in market access and support to bring the negotiations to a successful conclusion." The officials stated they would work with national trade authorities to make "tangible contributions" to the recommencement of the Doha Round. They also voiced support for the continuing proliferation of regional and bilateral free trade agreements (FTAs), which they said "can make an important contribution to trade liberalization and can help invigorate the Doha negotiations."

French farm union Federation Nationale des Syndicats d'Exploitants Agricoles (FNSEA) has also called for a resumption of negotiations, and on August 31, 2006 a FNSEA spokesman indicated that FNSEA members would be willing to accept the December 2005 WTO Ministerial proposal to gradually eliminate agricultural export subsidies by 2013. FNSEA indicated that it would be open to new proposals by the EU, provided that the United States "moves" on its position on domestic supports. FNSEA continues to blame the United States' unwillingness to eliminate support for its farmers as the main obstacle to reaching an agreement in the negotiations. Despite FNSEA's acceptance of the December 2005 proposal, however, France's Agriculture Ministry in late June 2006 refused to support any further European Commission concessions beyond an October 2005 proposal that would have reduced developed countries' average agricultural import tariffs by 38 percent. Whether the FNSEA's latest statements are a step forward from France's June stance on market access is unclear.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Outlook

Although the G-20 meeting failed to establish a timeframe to resume the WTO talks, the meeting in Brazil provided WTO Members with their first opportunity to gauge the status of the talks and reevaluate their positions. Most G-20 developing nations agreed that it was unlikely to expect movement on the Doha Round before the U.S. mid-term elections in November. USTR Schwab, however, disagrees with this view and has stated that the U.S. “Congressional election is really not going to have an impact on this Round; we always knew that if we had a Doha Round agreement, the next Congress would be the one dealing with it.” She has also stated that WTO Members have “several months ahead of where we need to find out: is there convergence between the key players?”

Based on the G-20 meetings and Mandelson’s statements, the answer to Schwab’s question appears to be “no,” at least initially. Despite the statements of the EU and the United States that they are willing to adopt more flexible negotiating positions, neither side has proffered a concrete schedule for the resumption of talks or an altered agriculture proposal that could kickstart talks. In fact, despite their ameliorative rhetoric, both sides maintain the same positions on agricultural market access and domestic support that led to the round’s demise in July: neither side is willing to “move” on their own proposal until the other side moves first, and their market access numbers remain on opposite sides of the G-20 proposal. Moreover, the G-20 ministers’ statements ignore their countries’ own failings on NAMA, which contributed to EU and U.S. recalcitrance on agriculture. Indeed, a commitment by India and Brazil to lower their industrial tariffs could provide the same “kickstart” to the Round that a new EU or U.S. agriculture offer would create.

The ministers’ statements also indicate a new “deadline” for the negotiations: the completion of full modalities in agriculture and NAMA by March 2007 in order to meet the deadlines that TPA’s mid-2007 expiry impxoses on the United States’ ability to negotiate an agreement. This move is a significant change from the pre-collapse deadline of a completed Doha agreement – not just modalities – by December 31, 2006. In the coming weeks, Lamy will hold intense meetings with various negotiating groups in Geneva in an attempt to revive the talks. The September 20-22 Cairns Group meeting in Australia will provide another forum for trade ministers to discuss the standstill. However, unless WTO Members move beyond their rhetoric and express a willingness to make a first move, it seems likely that the Round will remained stalled until after the November U.S. elections and perhaps beyond. Given the TPA’s time constraints, such delay further jeopardizes the future of a Doha Round that already sits on life support.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Multilateral Highlights

China Blocks Panel Request on Auto Tariffs, U.S. Also Blocks Thai Request on Shrimp

On September 28, 2006, China and the United States blocked requests for the establishment of World Trade Organization (WTO) dispute settlement panels related to Chinese tariffs on auto parts imports and U.S. anti-dumping measures on Thai shrimp imports, respectively. Under WTO rules, the complainants in these cases may bring second panel requests, which China and the United States will be unable to block.

China blocked first panel requests from the United States, the EU, and Canada for the establishment of a dispute settlement panel to examine the WTO-consistency of China's import tariffs on auto parts. Each country argues that China has violated WTO rules by imposing discriminatory tariffs on imported auto parts aimed at favoring Chinese-based parts manufacturers. China has justified the measures by stating that they were necessary to stop importers from "evading" higher tariffs by importing automobiles categorized as auto parts. The United States, the EU, and Canada can renew their request for a panel at the next Dispute Settlement Body (DSB) meeting, scheduled for October 26, and DSB will automatically form a panel at that time.

Separately, the United States, blocked Thailand's first panel request related to U.S. anti-dumping duties on imports of Thai shrimp. U.S. officials stated that they were disappointed with the Thai request and added that the U.S. Department of Commerce (DOC) has already addressed one of the problems raised in the complaint regarding DOC's use of its "zeroing" methodology in anti-dumping investigations. Since 2004, the WTO has ruled against U.S. zeroing practices at least three times. U.S. officials also noted that they were working with Thailand to address the concerns raised in the Thai complaint and thus felt that the request for a panel was premature. Thailand, meanwhile, stated that the anti-dumping duties are threatening the "livelihood and sustainability" of its shrimp industry, which ships approximately 50 percent of its exports to the U.S. market. Thailand can also renew its panel request at the October 26 DSB meeting.

EU Requests New Consultations with United States on Zeroing Methodology

On September 22, 2006, the EU initiated a new World Trade Organization (WTO) complaint against the U.S. Department of Commerce's (DOC) zeroing methodology in antidumping proceedings. The EU has submitted a request for consultations challenging DOC's use of zeroing in 37 cases where the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

methodology was applied in the original dumping investigations, administrative reviews, and sunset reviews of EU imports, including ball bearings, steel products, pasta, and chemicals. Under WTO rules, if the EU and the United States are unable to resolve their differences over the next 60 days, the EU can request the establishment of a dispute settlement panel to rule on the validity of the U.S. measures.

The EU's complaint is similar to an earlier WTO dispute between the United States and the EU related to DOC's use of zeroing in 31 antidumping cases involving European ball bearings, steel, pasta and chemical products. In that complaint, the WTO's Appellate Body (AB) ruled on April 18, 2006 that the United States' use of zeroing in the original investigations and subsequent administrative reviews violated WTO rules. The WTO Dispute Settlement Body (DSB) adopted the ruling on May 9 and gave the United States until April 9, 2007 to comply. EU officials justified their new complaint by stating that the earlier WTO ruling "will not necessarily provide an adequate remedy," because the 37 cases referenced in the new complaint were initiated after the EU launched its original case and are thus not covered by the April 18 AB decision. The latest complaint seeks affirmation that zeroing in administrative reviews is illegal as such because it violates Articles 2.4 and 2.4.2 of the WTO Antidumping Agreement requiring "fair comparison" between the export prices and home market prices of a targeted product.

Zeroing occurs when an investigating authority makes multiple comparisons of the export price and home market price of an allegedly dumped good and applies a "zero" value where the export price exceeds the home market price (the "normal value"), rather than a negative dumping value. Under "simple zeroing," DOC determines a weighted average margin of dumping based on average-to-transaction or transaction-to-transaction comparisons between the export price and normal value of a product, and then in aggregating the results disregards any amounts by which export prices of individual transactions exceed normal value. Under "model zeroing," DOC makes average-to-average comparisons of export price and normal value within individual "averaging groups" established on the basis of the product's physical characteristics and disregards any amounts where the average export price exceeds the average normal value for a particular model. According to several WTO Members that have challenged the United States' use of zeroing, the practice increases the likelihood of an affirmative finding of dumping and the size of the corresponding dumping margin.

The United States practice of zeroing in anti-dumping investigations has suffered several losses at the WTO, and other WTO cases on the U.S. practice are still pending. On September 15, 2006, Thailand requested a panel to adjudicate whether U.S. anti-dumping duties on imports of Thai shrimp are consistent with WTO rules (DS343). The WTO's AB ruled on August 15, 2006, that the United States had failed to bring itself into compliance with its WTO obligations related to zeroing and other issues in the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

WTO dispute over anti-dumping duties on softwood lumber from Canada (DS264). On November 17, 2005, Ecuador initiated WTO dispute settlement proceedings (DS335) against the United States over zeroing methodology in anti-dumping investigations on shrimp, and on July 19, 2006 the WTO DSB established a panel to rule on the case. Finally, Japan requested the creation of a panel in February 2005 as part of its complaint (DS322) against several U.S. laws and regulations related to zeroing and sunset reviews, as well as the specific application of those measures in 16 anti-dumping cases against Japanese imports. The panel on September 20, 2006 found that the United States practice of "simple zeroing" in original anti-dumping investigations, and the use of zeroing in changed circumstances and sunset reviews did not violate WTO rules. However, because that decision contradicts the AB's August 2006 decision, Japan will likely appeal the ruling to the AB. The panel also ruled that the United States' use of "model zeroing" in original investigations is WTO inconsistent.

Cairns Group Meeting Establishes Work Program; WTO DG Lamy: Mid-November to Mid-March is "Crucial Window" for Doha Round

Members of the Cairns Group are urging the resumption of the World Trade Organization (WTO) Doha Round negotiations by November and have established a work program whose goal is to aid WTO Members reach consensus on contentious issues within the multilateral negotiations.. The Cairns Group released the work program during its September 20-22 ministerial meeting in Australia. The Cairns Group is composed of Australia, Canada, South Africa, Brazil, Pakistan, Indonesia, Malaysia, New Zealand, the Philippines, Argentina, Bolivia, Chile, Colombia, Costa Rica, Guatemala, Paraguay, Thailand, and Uruguay. Also at the meeting were United States Trade Representative (USTR) Susan Schwab, U.S. Agriculture Secretary Mike Johanns, EC Ambassador to the WTO Carlo Trojan, and Japan's Minister for Agriculture, Forestry and Fisheries Shoichi Nakagawa.

According to a Cairns Group press release, the goal of the Cairns Group work program "is to bring parties closer together on key issues and to contribute to farm policy reform in the United States and EU." The work program recommended several steps, among them having Cairns Group members lobby the group's position during upcoming reviews of the U.S. farm bill and the EU's common agricultural policy and "building convergence on some of the key issues of importance to developing countries.

At the ministerial meeting, group members and invited guests focused some discussion on special products. Cairns Group members Indonesia and the Philippines are among those countries that have stressed the importance of special product exceptions for developing countries. WTO Director-General Pascal Lamy also identified mid-November to mid-March as a "crucial window" for reviving the stalled

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Doha Round and urged WTO Members to kick-start the negotiations through a period of "quiet diplomacy." Lamy added that mid-November was the earliest possible date for renewing the negotiations because of the early November congressional elections in the United States. He noted that a mid-March agreement on agriculture and services modalities could persuade the U.S. Congress to extend Trade Promotion Authority (TPA) by six months in order to finalize the Doha Round agreement. The Office of the USTR was quick to point out, however, that TPA extension would be driven more by the agreement's substance rather than the calendar. USTR officials stated that "if there is an agreement that looks promising ... that will be the driving force for an extension."

Lamy opined that it would be unwise to go "back to the scene of the negotiation without enough [being done] through bilateral contact, through quiet diplomacy, through testing various formula of compromise bilaterally ... so that when we officially begin it's on the basis that there has been enough precooking." He thus urged WTO Members to employ this "quiet diplomacy" and to engage domestic constituencies that are nervous about Doha Round changes. Lamy opined that countries such as the United States, the EU states, India, Indonesia, and the Philippines need to maintain some levels of domestic support if they are to deliver improved proposals in other areas. Lamy also opined that "it is pretty unfortunate that the negotiations broke down over a few thousand tons of beef and a few thousand tons of poultry and a few billions of dollars of trade-distorting subsidies [because] the bigger picture went by unnoticed."

Meanwhile, Australian Trade Minister Mark Vaile stated that the Cairns Group must comply with the agreement on special products that was established in the July 2004 framework and "allow[s] developing countries to identify special products for special treatment based on rural livelihood sustainability grounds." He added that "each developing country should be free to nominate its own special products, but these products should be restricted to a very minimum number." Vaile opined that the Cairns Group meeting is also important "in terms of keeping the pressure up on major players" and noted that the group has proposed a further 5 percent cut in market access tariffs for the EU and an added $5 billion cut in farm subsidies for the United States as a way to kick-start the negotiations. Representatives of the EU, the United States, and Japan were cool to the proposal but stated that they were prepared to make further concessions to conclude the Doha Round negotiations if they saw that others were prepared to do the same. EU officials responded that they "have come a long way in trying to find the middle ground on agriculture." Japan also was "not able to accept" the Australian proposal and instead called on the United States to make further cuts to its domestic farm subsidies. USTR Schwab stated that although the United States is "prepared to do more in terms of cutting domestic support than we have on the table if and when there is significantly more market access on the table in agriculture," it was also unenthusiastic about the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Australian proposal. Secretary Johanns added that “the Cairns Group meeting is not a negotiating session,” and that “a cut of such magnitude would be very, very difficult.” He noted, however, that “the important point here is Australia stepped forward, made the proposal and has people talking and so we applaud them for that effort [although] the reaction of the EU was 'no’ [and] you don't get to 'yes' by saying 'no.'"

After the G-20 meeting in Brazil several weeks ago, the Cairns Group meeting was another opportunity for WTO Members to breathe life into the stalled multilateral negotiations. However, just as with the G-20 meetings, the Cairns talks resulted in neither a fixed timeframe for restarting talks nor a substantive agreement on how to move forward if and when they resume. Lamy’s “window of opportunity” timeframe provides a loose schedule for future talks, but Schwab’s reaction indicates that the schedule is Lamy’s alone. Moreover, if the EU, Japanese and American responses to the Cairns Group’s “5 for 5” proposal is indicative of the gridlocked talks’ current status, a prolonged standstill appears possible.

U.S. Releases List of Problem Areas During WTO China Transitional Review; Complaints Focus on Books, Coke and Fertilizer

On September 18, 2006, the United States released a list of complaints on trade barriers in the Chinese market during the World Trade Organization’s (WTO) “transitional review” of China's WTO accession commitments and whether China has made those commitments. When it first acceded to the WTO, China agreed to participate in annual reviews meant ot measure its compliance with is accession commitments. The review will go through 2009 and the WTO will conduct a final review in 2011. U.S. complaints include, but are not limited to: (i) Chinese barriers to printed materials including book, newspaper, and magazine imports; (ii) export restrictions on coking coke used in the production of steel; and (iii) tariff rate quotas (TRQs) on fertilizer imports and value-added taxes (VAT) on diammonium phosphate (DAP) fertilizer.

- **Printed Materials**. Under its accession agreement, China agreed to grant full trading rights to all Chinese and foreign firms and to eliminate restrictions in the area of distribution services. According to the United States, however, China continues to favor state-owned enterprises (SOEs) and gives the right to import publications of printed materials (i.e.-books, newspapers and magazines, audiovisual products, and electronic publications). China justified its actions on its right to restrict the importation or exportation of such products in order to protect public morals, public interest, and national security and added that Article XX of the General Agreement on Tariffs and Trade (GATT) allows it to do so.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

- **Coke.** The United States also complained that China has not yet formally announced when it will eliminate its coke export quota system. Chinese officials had promised to lift the export restrictions in 2006 but have not done so yet.
- **Fertilizers.** On fertilizers, the United States asked China to explain its plans to adjust the TRQ in this sector and whether China plans to end the discriminatory DAP tax treatment.

The transitional review mechanism (TRM) allows the United States and other WTO Members to gauge China's WTO accession commitments and provides a forum for Members to express their concerns on market access issues that they feel China has not yet addressed. The United States has been particularly vocal during these TRMs, serving as a mouthpiece for U.S. government bodies and U.S. businesses that feel that China is not complying with its multilateral commitments. Some government bodies, however, feel that China has ignored complaints raised during the TRM process. For example, the U.S.-China Economic and Security Review Commission (USCC) releases an annual report on China's WTO commitments. In its last report (November 2005), the USCC stated that "China has effectively marginalized the WTO's annual review of its progress in meeting its WTO accession commitments." The Office of the United States Trade Representative (USTR) also releases an annual "Top-to-Bottom" China review that includes a section on China's WTO accession commitments. USTR acknowledges that China has taken steps to liberalize its economy in line with its commitments but does echo some of the USCC's sentiment that China is not doing enough and often ignores the TRM.

On China's part, there has been no direct correlation between U.S. complaints brought through the TRM and Chinese actions to address such issues. Rather, the pattern is for China to continue to open its economy, which might include the specific U.S. complaints brought up at the TRM; the relationship, however, is not direct. For example, during a 2004 TRM, the United States complained about China's allegedly closed agriculture market. China changed its agricultural policies - a move that USTR hailed in its annual China report - but the changes came months after the initial TRM, and there was no evidence of a direct link between the U.S. complaint and China's changes. With this pattern in mind, China might address the problems that the United States raised in the most recent TRM meeting, but any changes will be part of broader institutional reform, rather than a direct response to TRM complaints.

United States Faces Two More Potential WTO Panels: Shrimp and Cotton

The United States faces two potential World Trade Organization (WTO) dispute settlement panels: (i) a panel requested by Thailand to adjudicate whether U.S. anti-dumping duties on imports of Thai shrimp

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

are consistent with WTO rules (DS343), and (ii) a compliance panel requested by Brazil to determine whether the United States has complied with a previous WTO ruling on U.S. cotton subsidies. On September 15, 2006, Thailand and Brazil made their respective requests. The WTO Dispute Settlement Body (DSB) will consider the requests at its September 26 meeting. Under WTO rules, the United States can block Thailand's request, but Thailand can submit a second panel request at the next DSB meeting, which the United States cannot block. The United States blocked Brazil's first panel request on September 1 and is therefore unable to block this second request. The DSB will automatically adopt the second request, pursuant to WTO rules.

Thailand's complaint alleges that the U.S. Department of Commerce's (DOC) "zeroing methodology" in the anti-dumping investigation of Thai shrimp imports is inconsistent with the WTO's Anti-dumping Agreement. Zeroing occurs when an investigating authority makes multiple comparisons of the export price and home market price ("Normal Value") of an allegedly dumped good and applies a "zero" value where the export price exceeds Normal Value, rather than applying a negative dumping margin. According to several WTO Members that have challenged the United States' use of zeroing, the practice increases the size of the overall dumping margin and thus the likelihood of an affirmative finding of dumping.

Thailand also challenges the U.S. Customs and Border Protection (CBP) Agency's amended directive on minimum bonds to be posted on imports of agricultural and aquaculture goods subject to anti-dumping and countervailing duties. Previously, exporters of goods subject to dumping duties were required to maintain a minimum bond equivalent to 10 percent of the duties to be paid. Under CBP's amended directive (Bond Directive 99-3510-004), however, exporters must maintain a minimum bond equivalent to the amount of the anti-dumping duty margin multiplied by the value of imports of the targeted good in the preceding year. Thailand argues that the amended directive violates the WTO's Anti-dumping Agreement because it imposes prohibitive costs on exporters above what is necessary to correct for dumping.

Brazil's second panel request focuses on whether the United States has complied with a 2004 WTO ruling which found that U.S. subsidies to domestic cotton producers violated the WTO's Agreement on Subsidies and Countervailing Measures (SCM) and prejudiced the trade interests of competing Brazilian producers by depressing global prices for cotton. Brazil initiated the new complaint in October 2005 and stated that it would seek WTO authorization to impose $1.037 billion in annual sanctions should the compliance panel rule in Brazil's favor.

The 2004 WTO decision found that price-contingent U.S. support programs for cotton producers paid out between 1999-2002 had caused "significant" price suppression in the world market for cotton within the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

meaning of Article 6.3(c) of the SCM Agreement. The panel in that case concluded that these payments caused "serious prejudice" to the Brazil's trade interests; the WTO Appellate Body (AB) upheld the ruling in March 2005.

The United States has been on the losing end of several WTO disputes related to its zeroing practices, with other cases still pending. On August 1, 2006, the United States informed the DSB that it will implement by April 9, 2007, a WTO AB ruling in favor of an EU complaint against the United States' use of zeroing in anti-dumping cases (DS294). The WTO's AB ruled on August 15, 2006, that the United States had failed to bring itself into compliance with its WTO obligations related to zeroing and other issues in the WTO dispute over anti-dumping duties on softwood lumber from Canada (DS264). On November 17, 2005, Ecuador initiated WTO dispute settlement proceedings (DS335) against the United States over zeroing methodology in AD investigations. Japan requested the creation of a panel in February 2005 as part of its complaint (DS322) against several U.S. laws and regulations related to zeroing and sunset reviews, as well as the specific application of those measures in 16 anti-dumping cases against Japanese imports. Thailand's request furthers the onslaught against U.S. zeroing in anti-dumping investigations.

In the cotton case, U.S. officials state that compliance litigation is unnecessary given the United States' August 1st repeal of the "Step 2" cotton program (Public Law No: 109-171), under which support payments to domestic cotton users and exporters were based on the difference between U.S. and world prices. Although the United States argues that its repeal of the "Step 2" program brings it into compliance with the AB ruling, the Brazilian Ministry of Foreign Affairs maintains that the repeal was "insufficient to fully comply with the WTO findings in the cotton case." Brazil's compliance panel request also follows the breakdown of the WTO's Doha Round of multilateral trade negotiations, in which the United States had agreed to reduce its farm subsidies. With the future of the Doha Round in doubt, U.S. subsidy levels might remain high. Other WTO Members, therefore, could turn to the WTO's dispute settlement process to force the United States to eliminate specific subsidy programs that it might have reduced as part of a Doha agreement. Sources have reported that U.S. subsidies for corn, rice, and soybeans may be targets for future WTO cases.

U.S., EU and Canada Request WTO Dispute Settlement Panel in China Auto Parts Case

On September 15, 2006, the United States, the EU and Canada submitted separate requests for the World Trade Organization (WTO) to establish a dispute settlement panel to adjudicate the WTO-

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

consistency of China's imposition of a tariff surcharge on imported automobile parts. All three requests noted that prior consultations with China had failed. The WTO Dispute Settlement Body (DSB) will consider the panel requests during its September 28 meeting. Under WTO rules, China can to block the requests at the DSB meeting, but the United States, the EU and Canada can resubmit their requests, which China cannot block. U.S. officials have already stated that if China blocks the first U.S. request, the United States will resubmit its panel request for the October 26 DSB meeting.

United States Trade Representative (USTR) Susan Schwab stated that the United States, the EU and Canada attempted to negotiate a resolution with China, and that the United States had made its first consultation request in March. She stated, however, that "China has demonstrated no willingness to remove its unfair charges… leav[ing] us no choice but to proceed with our WTO case." EU Trade Commissioner Peter Mandelson noted that the EU first raised the auto parts tariff issue with China in 2004 and asserted that EU officials "have tried again and again to find an acceptable negotiated solution to this issue [but] without Chinese engagement we have no alternative but to take this course of action." Canadian officials echoed Schwab's and Mandelson's comments.

According to the EU and U.S. complaints, China's taxes on imported auto parts are WTO-inconsistent because they discourage Chinese automobile manufacturers from using imported auto parts. China in April 2005 implemented regulations that impose a tax on imported auto parts equal to the tariff on complete automobiles if the final assembled vehicle fails to meet certain local content requirements. According to the complainants, these new rules discriminate against imported auto parts in favor of Chinese-manufactured parts in violation of China's National Treatment obligations under the 1994 General Agreement on Tariffs and Trade (GATT). The U.S. and EU complaints also allege that China's policies violate the WTO Agreements on Trade-Related Investment Measures (TRIMs) and Subsidies and Countervailing Measures (SCM), as well as specific commitments that China made as part of its WTO accession. (During China's accession, it committed to eliminate all local content requirements and to lower and bind its tariffs on auto parts. The newly-imposed regulations allegedly contradict these obligations.) China's tariff on complete automobiles currently stands at 25 percent, and China agreed to reduce tariffs on imported auto parts to 10 percent this year, in line with its WTO accession commitments. China's customs administration also announced in July that it will postpone until July 1, 2008 the surcharge on imported auto parts making up more than 60 percent of the final vehicle. EU officials, however, contend that the suspension does not adequately address its complaints.

The auto parts case would be the first dispute settlement panel that China would face since its 2001 accession to the WTO. The move indicates an evolving strategy for China's major trading partners: if

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

China does not comply with its WTO commitments, its trading partners are no longer content to use "quiet diplomacy" and thus avoid direct confrontation. Instead, the United States, the EU and others will likely seek to confront China in the WTO's dispute settlement system, rather than use a panel or Appellate Body as merely a threat to induce Chinese compliance. It is therefore likely that China's trading partners will bring other cases – most notably on intellectual property rights (IPR) protections – in the near future.

Mexico Takes First Step in Initiating WTO Compliance Panel on Latest U.S. OCTG Ruling

On August 21, Mexico requested consultations with the United States, taking the first step in initiating a new World Trade Organization (WTO) dispute settlement proceeding to challenge the United States' assertion that it has complied with a previous 2005 WTO ruling related to a U.S. anti-dumping order on Mexican oil country tubular goods (OCTG) (DS282). The 2005 WTO decision faulted the U.S. Department of Commerce's (DOC) five-year ("sunset") review of the anti-dumping order on imports of OCTG from Mexico.

On November 28, 2005, the WTO's Dispute Settlement Body (DSB) adopted the reports of both the Appellate Body (AB) and the Panel that ruled on the dispute. Among the holdings adopted by the DSB was the Panel's finding that DOC's "likelihood of dumping" determination in the sunset review was inconsistent with Article 11.3 of the Antidumping Agreement. The United States did not appeal the Panel's findings on this issue, and the United States and Mexico reached a procedural agreement that the reasonable period of time (RPT) for the United States to implement the DSB's rulings would expire on May 28, 2006.

On June 9, 2006, subsequent to the expiration of the RPT, DOC issued a "Section 129 Determination," which the United States claims brings it into compliance with the DSB's rulings and recommendations, as well as with U.S. WTO obligations. In the Section 129 Determination, DOC again found that revocation of the antidumping order on Mexican OCTG imports would be likely to lead to continuation or recurrence of dumping of the subject merchandise in the United States. Mexico asserts that DOC's Section 129 Determination did not comply with the rulings and recommendations of the DSB, and that it has failed to bring the United States into conformity with U.S. WTO obligations.

Pursuant to the U.S.– Mexico procedural agreement regarding this case, consultations were to be held within 15 days of the date of Mexico's request, with Mexico retaining the option to request the establishment of a WTO compliance panel thereafter if consultations failed to resolve the parties' differences. In the event that a WTO compliance panel ultimately sides with Mexico and finds that the

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

United States has failed to comply with the DSB rulings, Mexico could permissibly suspend concessions or other WTO obligations it has with the United States (*e.g.*, increasing tariffs on U.S. imports) until the United States brings itself into compliance.

The Section 129 Determination marks the fourth time that DOC has been required to demonstrate that its 2001 sunset determination is consistent with U.S. law and/or U.S. international legal obligations. A NAFTA Panel reviewing the determination's consistency with U.S. law has also rejected DOC's original 2001 sunset review decision, as well as two subsequent remand determinations that DOC issued in 2005 and 2006. A third DOC remand determination, issued on July 28, 2006 as part the NAFTA proceedings, is likely to be once again challenged by Mexican OCTG exporter Tubos de Acero de Mexico, S.A. in the near future.

U.S. Blocks Brazil's Request for Cotton Dispute Panel

On September 1, 2006, the United States blocked Brazil's request that the World Trade Organization's (WTO) Dispute Settlement Body (DSB) establish a panel to determine whether the United States has complied with a WTO Appellate Body (AB) ruling that U.S. cotton subsidies violated WTO rules and harmed Brazil's trade interests. On August 8, 2006, Brazil announced that it would request the "compliance panel," and it did so at the DSB's September 1 meeting. The deadline for the United States to comply with the AB's ruling expired on September 21, 2005. Brazil can renew its compliance panel request at the next DSB meeting scheduled for September 28. Under WTO rules, the United States cannot block the second request.

Observers have noted that the United States' decision to block Brazil's compliance panel request was "surprising" because of a previous bilateral agreement, under which the United States committed not to block a Brazilian request and to facilitate any compliance proceedings. U.S. officials, however, justified the move to block Brazil's panel request by stating that the bilateral agreement only applied to any Brazilian claims against "prohibited subsidies" and not to the United States' other cotton support programs. U.S. officials have also stated that they do not believe that compliance litigation is necessary "given the significant steps the United States has taken to implement the WTO recommendations and rulings including total repeal of the 'Step 2' program for both domestic cotton users and exporters as of August 1." This "program elimination" refers to the August 1st repeal of the "Step 2" cotton program (Public Law No: 109-171), under which support payments to domestic cotton users and exporters were based on the difference between U.S. and world prices. According to the United States, the repeal of the Step 2 program discontinues the U.S. export subsidies and import substitution subsidies that the AB ruled

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

were "prohibited" by the WTO Agreement on Subsidies and Countervailing Measures (the SCM Agreement). However, the Brazilian Ministry of Foreign Affairs has stated that the repeal was "insufficient to fully comply with the WTO findings in the cotton case."

U.S. officials have argued that the AB's March 21, 2005 ruling (which ultimately found that the U.S. cotton program is in violation of its WTO obligations) did not call for the outright repeal of all cotton subsidy programs, nor did it specify reducing the subsidy amounts, claiming that the WTO's instructions were only to "remedy them." Hence, U.S. officials justify their stance that the United States has complied with the AB ruling because the outright repeal of the Step 2 program is sufficient to "remedy" the "serious prejudice" that the cotton subsidy program inflicted upon Brazil. Brazil, on the other hand, seeks WTO authorization to impose $1.037 billion in annual retaliatory sanctions because it contends that the U.S. actions have not brought U.S. cotton subsides into conformity with WTO rules. Brazil will likely renew its compliance panel request at the next DSB meeting.

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