WHITE & CASE

White & Case LLP
General Trade Report - JETRO

July 2012

In This Issue

Table of Contents

Contacts:

Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

UNITED STATES

GENERAL TRADE POLICY

US Eases Burmese Sanctions on New Investment and Exportation of Financial Services

Summary

On May 17, 2012, the Obama Administration announced that it would begin the process of suspending sanctions against Burma. On July 11, 2012, the Administration issued two general licenses authorizing both the exportation of financial services to Burma and new investment by US persons in Burma, subject to certain limitations and reporting requirements. The Administration simultaneously issued a new Executive Order, which blocks the property and interests in property of individuals and entities found to be a threat to the peace, security and stability of Burma.

The Administration notes that apart from these modifications, the sanctions regime against Burma will remain in effect in order to provide the US Government with leverage to reinstate full sanctions should political progress in Burma stall. Further, the general licenses expressly do not authorize investments or financial services involving the Burmese Ministry of Defense, state or non-state armed groups, or entities owned by the foregoing, or transactions with, directly or indirectly, blocked persons, which include both individuals and entities listed on the Specially Designated Nationals List ("SDN List"), as well as any entities 50 percent or more owned by a Specially Designated National (SDN).

Analysis

I. GENERAL LICENSES AND US STATE DEPARTMENT REPORTING REQUIREMENTS

On July 11, 2012, the Treasury Department"s Office of Foreign Assets Control (OFAC) issued General License No. 16 (GL 16) and General License No. 17 (GL 17), easing restrictions on, respectively, the exportation of financial services to Burma and new investment in Burma.

Subject to a number of exceptions, GL 16 broadly authorizes the direct or indirect exportation or reexportation of financial services from the United States or by US persons to Burma. GL 16 expressly does not authorize the exportation of financial services, in connection with the provision of security services, to the Burmese Ministry of Defense, state or non-state armed groups (including the military), or entities in which any of the foregoing owns a 50 percent or greater interest. GL 16 also does not authorize the exportation of financial services to any person blocked under the Burmese sanctions, although the transfer of funds to or from an account of a blocked financial institution is authorized provided that the account is not on the books of a financial institution that is a US person.

Contacts:

Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
50 Raffles Place, #30-00, Singapore, 048623
sscoles@whitecase.com

GL 17 authorizes new investment by US persons in Burma, subject to the same limitations outlined in GL 16 on engaging with the Burmese Ministry of Defense and blocked persons. GL 17 also requires US persons engaging in new investment in Burma to report to the US Department of State in compliance with the requirements set forth in the "Reporting Requirements on Responsible Investment in Burma" ("Reporting Requirements"). These Reporting Requirements, which are designed to increase transparency and encourage responsible investment, mandate that US persons engaged in new investment in Burma: (i) notify the Department of State in writing within 60 days of undertaking a new investment pursuant to an agreement with Myanma Oil and Gas Enterprise ("MOGE") (the "MOGE Investment Notification"); and (ii) submit two versions of an annual report, one for the US Government and another that will be publicly available, providing specific information regarding their aggregate investment in Burma if any investment in Burma exceeds USD 500,000 (the "Annual Reporting Requirement"). The Annual Reports will be due on April 1 of each year. These questions cover a broad range of topics that includes, among others, information regarding policies and procedures with respect to human rights, workers‟ rights, land acquisitions, arrangements with security service providers and aggregate annual payments exceeding USD 10,000 to Burmese government entities.

II. EXECUTIVE ORDER 13619: BLOCKING PROPERTY OF PERSONS THREATENING THE PEACE, SECURITY, OR STABILITY OF BURMA

- President Obama also issued Executive Order 13619, which allows the US Government to sanction individuals or entities that threaten the peace, security or stability of Burma, including those who undermine or obstruct the political reform process or the ongoing peace process with ethnic minorities, those who are responsible for or complicit in the commission of human rights abuses in Burma, and those who have directly or indirectly imported, exported, reexported, sold, or supplied arms or related materiel from North Korea to Burma. The Executive Order also authorizes sanctions against senior officials of entities that are determined to have engaged in any of the aforementioned acts, as well as against any individual or entity that is found to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, the aforementioned acts or any blocked person. In addition, any person found to be owned or controlled by, or to have acted or purported to act for or on behalf of, any person blocked pursuant to the Executive Order may also be sanctioned. Such sanctions would sever access for these individuals or entities to the US financial system by blocking all property and interests in property of these individuals or entities that are in or hereafter come into the United States or into the possession or control of a US person, including any foreign branch.

III. SPECIALLY DESIGNATED NATIONALS LIST ADDITIONS

- OFAC also announced that, pursuant to the Administration‟s May directive to review and modify the SDN List, two names will be added to the list. These designated entities are the Directorate of Defence Industries (also known as "Ka Pa Sa" and "DDI") and Innwa Bank Ltd. Transactions by US persons with these entities are prohibited and their property and interests in property in the United States or in the possession or control of US persons is blocked.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

Outlook

The actions described above authorize significant Burma-related transactions by US persons. As noted, however, significant restrictions and conditions continue to apply, particularly the prohibition on dealings with blocked parties. Involvement in Burma-related business will require careful attention to continuing compliance and reporting obligations. Companies pursuing investment and business opportunities in Burma should ensure they have adequate compliance programs in place.

Click here to view a copy of GL 16, here for a copy of GL 17, here for a copy of the Reporting Requirements, and here for a copy of Executive Order 13619.

US General Trade Policy Highlights

Senate Finance Committee Approves Trade-Related Legislation

On July 18, 2012, the Senate Finance Committee marked up and approved several pieces of trade-related legislation, including three bills intended to amend or extend two US trade agreements, renew certain import restrictions, establish trust funds for several commodities, and curtail duty evasion. Although the Senate Finance Committee easily approved the three measures by voice vote, the measures appear unlikely to be passed into law within the near-term.

The Senate Finance Committee marked up and approved four pieces of legislation on July 18, most notable of which was the "Russia and Moldova Jackson-Vanik Repeal Act of 2012" (S 3406). Among other things, S 3406 allows the President to grant Permanent Normal Trade Relations (PNTR) to Russia *(please refer to the W&C US Trade Alert from July 26, 2012).* In addition to S 3406, the Senate Finance Committee marked up and approved the following three pieces of legislation:

- **Modifications or Extensions to Certain US Trade Agreements and Sanctions Legislation.** The Senate Finance Committee marked up and approved S 3326, which, *inter alia*: (i) amends the African Growth and Opportunity Act (AGOA) to extend the third-country fabric provision until 2015 and adds South Sudan to the list of beneficiary countries; (ii) makes technical corrections to the US Harmonized Tariff Schedule (USHTS) related to the treatment of textile and apparel products under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA); and (iii) renews a ban on imports of all articles that are products of Myanmar, as authorized under the Burmese Freedom and Democracy Act of 2003, until July 2015;

- **Enforcing Orders and Reducing Customs Evasion (ENFORCE) Act.** The Senate Finance Committee marked up and approved the ENFORCE Act (S 1133), which creates a set of procedures and deadlines Customs and Border Protection (CBP) must adhere to in its investigations of antidumping (AD) and countervailing (CV) duty evasion; and

- **Cotton, Citrus and Wool Trust Funds.** The Senate Finance Committee marked up and approved legislation that (i) reauthorizes and modifies the Cotton Trust Fund, which supports US cotton product

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

producers; (ii) modifies and extends the Wool Trust Fund, which supports US wool growers and wool product producers; and (iii) establishes a Citrus Trust Fund to support activities to combat citrus diseases and pests.

S 3326 was expected to move quickly through the House and Senate plenaries until, on July 23, 2012, Sens. Robert Menendez (D-NJ) and Tom Coburn (R-OK) placed holds on the legislation, *i.e.,* they informed Senate leadership that they do not wish the legislation to reach the plenary for consideration. Sen. Coburn placed his hold on the bill because he opposes the way in which it is funded. Sen. Menendez has stated that he will not remove his hold without assurances regarding the passage of the legislation that reauthorizes the Cotton Trust Fund. In response to these holds, the House has since delayed its consideration of S 3326.

The ENFORCE Act is unlikely to be considered by the House within the near term; House lawmakers are split in regard to their support for the legislation. While House Democrats support the measure, House Republicans, who are in the majority, favor alternative legislation known as the "Preventing Recurring Trade Evasion and Circumvention Act" (PROTECT Act or HR 5708). Although also intended to intensify efforts to counter duty evasion, the PROTECT Act does not impose deadlines within which CBP must respond to evasion allegations. Furthermore, House Ways and Means Committee Chairman Dave Camp (R-MI) has expressed interest in delaying consideration of legislation regarding duty evasion until the Committee considers a larger Customs reauthorization package. Although the Committee leadership has expressed an interest in considering a Customs reauthorization package during the fall of 2012, the precedence of other legislation and distraction of the November 2012 elections may force lawmakers to delay such consideration until 2013.

Click here for a copy of S 3326, as marked up and approved by the Senate Finance Committee, here for a copy of the ENFORCE Act, as marked up and approved by the Senate Finance Committee, and here for a copy of an overview of the legislation regarding the cotton, citrus and wool trust funds, as marked up and approved by the Senate Finance Committee.

Congress Makes Progress Towards Granting Russia PNTR

On July 26, 2012, the House Ways and Means Committee marked up and approved legislation that, *inter alia*, allows for the extension of Permanent Normal Trade Relations (PNTR), *i.e.,* Most-Favored Nation (MFN) status, to Russia. This development follows the Senate Finance Committee‟s July 18, 2012 mark up and approval of nearly identical legislation. Now that both pieces of legislation have been approved at the Committee level, House and Senate leadership will need to work together to agree upon a common piece of legislation and a process by which to move it through the House and Senate plenaries.

Granting Russia PNTR requires that Congress pass and the President enact legislation revoking the Jackson-Vanik Amendment‟s (under Title IV of the Trade Act of 1974) application to Russia. As approved by the House and Senate Committees, Title I of the "Russia and Moldova Jackson-Vanik Repeal Act of 2012" (HR 6516 and S 3406) allows for the President to make the determination that the Jackson-Vanik Amendment no longer applies to Russia. After making such a determination, the legislation states that the President may proclaim the extension of PNTR to Russia.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

HR 6516 and S 3406 also require the publication of numerous trade and trade-related reports on Russia, including:

- **Implementation of WTO Obligations Report.** The US Trade Representative (USTR) must publish an annual report assessing the extent to which Russia has implemented its World Trade Organization (WTO) obligations, including those related to the Sanitary and Phytosanitary (SPS) Agreement and the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The report must also detail progress Russia has made acceding to, and implementing, the Information Technology Agreement (ITA) and the Government Procurement Agreement (GPA). If USTR finds that Russia has not fully implemented an agreement or has not made adequate progress toward acceding to an agreement, USTR must specify in the report how it will address the issue, unless such information is deemed classified;

- **Trade Enforcement Report.** USTR must also publish an annual report describing trade enforcement actions taken by the United States against Russia to ensure Russia fully complies with its WTO obligations;

- **Rule of Law Reports.** The Department of State (DOS) and USTR must publish an annual report regarding rule of law in Russia, including efforts to, *inter alia*, negotiate a new bilateral investment treaty (BIT) and promote the claims of US investors who lost money when the Russian government expropriated the Yukos Oil Company. The Department of Commerce (DOC) must also publish an annual report on bribery in Russia; and

- **Addition to Special 301 Report.** The legislation expands USTR"s annual Special 301 Report on Intellectual Property Rights (IPR) to also address any Russian laws, policies or practices that discriminate against US digital trade.

Both pieces of legislation also require USTR to continue efforts to: (i) negotiate an agreement under which Russia will accept US SPS measures as equivalent to their own; and (ii) devise an action plan for ensuring greater IPR protections in Russia. HR 6516 and S 3406 also allow for the President to make the determination that the Jackson-Vanik Amendment no longer applies to Moldova. After making such a determination, the bills state that the President may proclaim the extension of PNTR to Moldova. Moldova acceded to the WTO in 2001.

The major difference between the two pieces of legislation is that S 3406 includes the "Sergei Magnitsky Rule of Law Accountability Act of 2012" (S 1039 or the "Magnitsky bill"), while HR 6156 does not. After the Senate Committee on Foreign Affairs marked up and approved the Magnitsky bill, the Senate Finance Committee added the legislation to S 3406 during the July 18 mark up. S 1039 requires the US government to, *inter alia*, freeze certain assets and deny US visas to persons named by DOS as responsible for extrajudicial killings, torture or other human rights violations committed against individuals seeking to promote human rights or expose illegal activity carried out by Russian government officials. Despite this discrepancy between the two pieces of legislation, both House Ways and Means Chairman Dave Camp (R-MI) and Ranking Member Sander Levin (D-MI) have expressed their support for adding the Magnitsky bill to HR 6156 before it is considered by the House plenary.

On July 23, 2012 Russia notified the WTO that it ratified its accession package. As a result, Russia will become an official member of the WTO on August 22, 2012. If Congress does not pass HR 6156 and S 3406 by August

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

22, or shortly thereafter, the United States may lose key market share in Russia to other WTO members. That Congress will recess for approximately one month starting on or around August 6, 2012 means that lawmakers are under significant pressure to pass the legislation during the week July 30, 2012. Although neither the House nor Senate leadership has made a commitment regarding when it will bring the legislation to the floor, experts note that it is likely, though not guaranteed, that Congress will enable the President to grant Russia PNTR within the near-term.

Click here for a copy of S 3406, and here for a copy of HR 6156.

China Initiates AD, CVD Investigations into Solar-Grade Polysilicon Imports from the United States

On July 20, 2012, the Chinese Ministry of Commerce (MOFCOM) published two official notices announcing the initiation of an antidumping (AD) investigation involving imports of solar-grade polysilicon from Korea and the United States (Notice No. 40 [2012]) and a countervailing duty (CVD) investigation of the same product imported from the United States (Notice No. 41 [2012]). Solar-grade polysilicon, which is classified under tariff code 28046190 of the *Import and Export Tariff Code of China*, is a primary input for the production of solar panels.

Four companies, namely Jiangsu Zhongneng Silicon Technology Development Co., Ltd. (a subsidiary company of GCL-Poly Energy Holdings Limited), LDK Solar Co. Ltd., China Silicon Corporation Ltd., and Daqo New Energy Co., Ltd., filed the petition on July 2, 2012. The subject merchandise is solar-grade polysilicon, which is classified under tariff code 28046190 of the *Import and Export Tariff Code of China*.

MOFCOM‟s AD & CVD investigations will examine imports during the twelve-month period July 1, 2011 through June 30, 2012. MOFCOM‟s separate material injury analysis will examine the condition of the Chinese domestic industry during the period from January 1, 2008 through June 30, 2012. Pursuant to Notice No. 41 [2012], in the CVD investigation against US imports, MOFCOM will investigate one federal subsidy program and 15 local subsidy programs provided by the US states of Michigan, Tennessee, Washington, and Idaho.

Any interested party can apply to participate in these investigations within 20 days from the initiation date, *i.e.*, by August 8, 2012. MOFCOM will issue a definitive determination prior to July 20, 2013, but also could extend the deadline for issuing the final determination until no later than January 20, 2014.

Four Chinese companies, namely Jiangsu Zhongneng Silicon Technology Development Co., Ltd. (a subsidiary company of GCL-Poly Energy Holdings Limited), LDK Solar Co. Ltd., China Silicon Corporation Ltd., and Daqo New Energy Co., Ltd., filed the petition on July 2, 2012. The petition cites several US companies as possible targeted exporters for the AD investigation, including AE Polysilicon Corporation, Hemlock Semiconductor Group, Hoku Corporation, MEMC Electronic Materials, Inc., and REC Silicon Inc. The petition also cites several US federal- and state-level subsidy programs to be investigated within the CVD investigation. These programs are listed in the table below.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

US Subsidy Programs To Be Investigated Under Solar-Grade Polysilicon CVD Investigation	
Level at Which Subsidy is Distributed	**Subsidy Name or Description**
Federal	Advanced Energy Manufacturing Tax Credit
State (Michigan)	Refundable Photovoltaic Manufacturing Tax Credit
State (Michigan)	Michigan Economic Growth Authority (MEGA) High-tech Tax Credit
State (Michigan)	Personal Property Tax Exemption in Distressed Communities
State (Michigan)	Industrial Facilities Exemption
State (Michigan)	High-tech Anchor Company
State (Michigan)	(Subsidy name not provided)
State (Michigan)	Renewable Energy Renaissance Zones – Michigan Renaissance Zone Act
State (Michigan)	Alternative Energy Personal Property Tax Exemption
State (Michigan)	MEGA Standard Job Creation Tax Credits
State (Michigan)	Michigan Department of Transportation (MDOT) –Transportation Economic Development Fund – Category A Grant
State (Michigan)	Economic Development Job Training
State (Tennessee)	"Bill No. 3" and "No. 5," which were issued in 2009 to provide financial support to Hemlock‟s infrastructure
State (Tennessee)	Grants for training Hemlock Semiconductor Group‟s employees
State (Tennessee)	Subsidy to Hemlock Semiconductor Group for low-price acquisition of land
State (Washington)	Preferential tax rate for polysilicon producers pursuant to the State Law Section 82.04.294
State (Washington)	Research and development expenses deduced pursuant to the State Law Section 82.04.4452
State (Pennsylvania)	Machinery and Equipment Loan Fund
State (Idaho)	Workforce Development Training Fund
State (Idaho)	Free land use rights provided to Hoku Corporation in 2007

The AD and CVD investigations will examine imports during the twelve-month period July 1, 2011 through June 30, 2012. MOFCOM‟s separate material injury analysis will examine the condition of the Chinese domestic industry during the period January 1, 2008 through June 30, 2012.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

Any interested party can apply to participate in these investigations within 20 days from the initiation date, *i.e.*, by August 8, 2012. MOFCOM will issue a definitive determination prior to July 20, 2013, but could also extend the deadline for issuing the final determination until no later than January 20, 2014.

China‟s initiation of these AD and CVD investigations is the latest in a series of green energy-related trade disputes between the United States and China. In December 2010, the United States requested World Trade Organization (WTO) consultations with China regarding subsidies provided to Chinese wind power equipment manufacturers. Also in December 2010, China initiated an AD investigation, which has since been terminated, into US imports of distiller‟s dried grains, a byproduct of ethanol. In November 2011, the Department of Commerce (DOC) initiated AD and CVD investigations into Chinese imports of solar cells. Also in November 2011, MOFCOM initiated a trade barrier investigation into certain US subsidy policies applied on its clean energy industry. Most recently, in January 2012, DOC initiated AD and CVD investigations into imported wind towers from China.

Click here for a copy of Notice No. 40 [2012] (in Chinese), here for a copy of Notice No. 41 [2012] (in Chinese), and here for a copy of the public version of the petition files (in Chinese), and here for the attachment to the petition files (in Chinese).

United States and Indonesia Hold TIFA Talks

The United States and Indonesia held a two-day meeting in Bali concluding on July 17, 2012 under the bilateral Trade and Investment Framework Agreement (TIFA) to discuss ways to increase bilateral trade and investment and address associated issues. Under the TIFA, the United States Trade Representative (USTR) and Indonesian Ministry of Trade (MOT) co-chair bilateral working groups that focus on intellectual property rights (IPR), agriculture, services, and investment issues. The TIFA, which was originally signed in 1996 and expanded in 2007, serves as a dialogue platform to discuss priority trade issues and the basis for exploratory talks on a bilateral investment treaty and updated investment incentive agreement.

During the meeting, both sides agreed to intensify their engagement under the TIFA and reactivate TIFA working groups in an effort to resolve certain bilateral trade and investment-related issues. For example, the two countries agreed to launch a program of expanded engagement under the TIFA working group on IPR. The program will address the United States‟ increasing objections to Indonesia‟s IPR regime. USTR‟s 2012 Special 301 Report on IPR Enforcement lists Indonesia as a Priority Watch Country *(please refer to the W&C US Trade Report from May 4, 2012).* Moreover, in June 2012, USTR accepted a petition to review Indonesia‟s eligibility as a Generalized System of Preferences (GSP) beneficiary country as it relates to the country‟s IPR regime *(please refer to the W&C US Trade Alert from July 13, 2012).*

According to a July 17, 2012 USTR press release, the United States also used the TIFA meeting to express concern over certain trade and investment measures implemented by the Indonesian government that could restrict US exports of livestock and horticulture, among other products. Such a concern comes in the context of recent trade tensions between the United States and Indonesia regarding Indonesia‟s import policies, particularly the passage of MOT Decree No. 27/M-DAG/PER/5/2012 on Terms of Importer Identity Number on May 1, 2012 *(please refer to the W&C US Trade Report dated June 22, 2012)*. Notably, the United States also raised the

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

issue of restricted market access for livestock at the June 22, 2012 World Trade Organization (WTO) Council for Trade in Goods meeting. At the WTO meeting, the United States expressed additional concern regarding Indonesia"s import licensing requirements on textiles and apparel, electronics, household appliances and food and beverages, as well as the country"s "disguised" pre-shipment inspection requirements.

According to USTR, the United States and Indonesia intend to hold another TIFA meeting in mid-September 2012. As the United States and Indonesia typically only hold TIFA meetings once a year, the goal of holding another TIFA meeting so soon after the July TIFA meeting likely reflects an interest on the part of both countries in addressing recent trade tensions.

Click here for a copy of USTR"s July 17 press release.

USTR Welcomes WTO Panel Ruling on China's Electronic Payment Services

On July 16, 2012, the World Trade Organization (WTO) released a panel report on a dispute brought by the United States against measures imposed by the Chinese government affecting electronic payment services (DS413). Although the panel report did not rule in favor of the United States on each of its claims, the Office of the US Trade Representative (USTR) issued a press release on the same day as the release of the report stating that the United States had won the dispute.

Electronic payment services facilitate the transfer of funds and information required when transactions involving credit, debit, pre-paid and other payment cards are made. In September 2010, the United States requested WTO consultations with China regarding restrictions and requirements imposed by the Chinese government on foreign providers of electronic payment services, which the United States alleged contravened China"s market access and national treatment obligations under the WTO General Agreement on Trade in Services (GATS). In February 2011, the United States requested the WTO Dispute Settlement Body (DSB) establish a panel to address the issue.

The July 16 panel report rules in favor of the United States on multiple counts. Most notably, the report finds three requirements made by China regarding Chinese electronic payment services provider China UnionPay (CUP) to be inconsistent with China"s national treatment obligations under Article XVII of the GATS. These requirements include that: (i) all payment cards issued in China must bear the CUP logo and be compatible with all CUP processing devices; (ii) all terminal equipment, *e.g.,* ATM machines, must accept CUP cards; and (iii) all acquiring institutions, *e.g.,* banks, must join the CUP network. The report also found that China contravened its market access commitments under Article XVI:2(a) of the GATS by granting CUP a monopoly for the processing of electronic payment services involving RMB payment cards issued in China and used in Hong Kong and Macau or issued in Hong Kong and Macau and used in China.

The panel report also ruled against the United States in several instances. For example, the panel found that there was insufficient evidence to prove that China established CUP as an across-the-board monopoly supplier for the processing of RMB payment card transactions in China. In addition, the report rejected the US claim that

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

China‟s WTO accession schedule for services included a market access commitment for the supply of electronic payment services in China by foreign suppliers.

According to USTR, the panel‟s report should prompt China to reform its regulation of electronic payment services. Nonetheless, experts expect that both parties will appeal the panel‟s ruling to the WTO Appellate Body within the near term.

Click here for a copy of USTR‟s press release.

TPP Members Conclude 13th Round of Negotiations

On July 10, 2012 the nine members of the Trans-Pacific Partnership agreement (TPP) completed the 13th round of negotiations in San Diego, California. Although a July 10 press release issued by the Office of the US Trade Representative (USTR) stipulates that "important progress" was accomplished during the round, few concrete signs of progress have been reported.

The TPP is comprised of more than 20 chapters. According to USTR, "significant progress" was achieved during the 13th round on the following chapters: (i) customs; (ii) cross-border trade in services; (iii) telecommunications; (iv) government procurement; (v) competition; and (vi) capacity building. USTR reported that some progress was also made on the following chapters: (i) rules of origin (ROO); (ii) investment; (iii) financial services; and (iv) temporary entry.

On July 3, 2012, USTR announced it had tabled a new provision on copyright exceptions and limitations for inclusion in TPP‟s intellectual property rights (IPR) chapter. According to USTR, copyright exceptions and limitations should be allowed for the purposes of criticism, comment, news, reporting, teaching, scholarship and research. The provision tabled by USTR is reportedly consistent with the "three-step test," which appears in Article 13 of the World Trade Organization (WTO) Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. Under the "three-step test," limitations on copyrights are restricted to "certain special cases" that do not conflict with a "normal exploitation of the work" and do not "unreasonably prejudice the legitimate interests of the author."

TPP negotiators also held discussions during the round on Australia‟s counter-proposal regarding cross-border data flows. At the 12th round of TPP negotiations Australia expressed concern that the US proposal on cross-border data flows, which would prohibit countries from blocking cross-border transfers of data over the internet, may contradict their national privacy laws. Sources note that the Australian counter-proposal is meant to uphold the ability of countries to ensure that data is protected for privacy reasons.

During the 13th round, the effect of the upcoming November 2012 US elections on the TPP negotiations was prominent. Notably, the United States refrained from tabling certain proposals currently the subject of domestic debate. Because the Obama Administration would like to avoid tabling proposals that may favor one domestic constituency over another and thus negatively impact President Obama‟s re-election campaign, the United States is likely to continue to wait until after the November elections to table these proposals. Such proposals include those that address the following issues, among others:

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

- **Tobacco.** USTR announced in May 2012 that it is drafting a proposal regarding tobacco products in the TPP that includes three main elements, namely: (i) recognition of the unique status of tobacco products from a health and regulatory perspective; (ii) tariff phase-outs for tobacco products; and (iii) language in the "general exceptions" chapter that allows health authorities in TPP countries to adopt regulations that impose origin-neutral, science-based restrictions on specific tobacco products for the purposes of safeguarding public health. The proposal has received criticism from US anti-tobacco advocates, who argue it is not robust enough, and lawmakers from states located in the southern United States, who assert it will negatively impact US tobacco farmers;

- **Medicines.** The United States has not yet defined the timeframe for its "Trade Enhancing Access to Medicines" (TEAM) text. The TEAM text, which the United States tabled during the 8th round of TPP negotiations, proposes providing certain pharmaceutical-specific IPR protections to firms that bring medicines to TPP markets within an agreed timeframe. In addition, the United States has not yet proposed how many years of data exclusivity should be given to biologics drugs. While the Affordable Health Care for America Act mandates 12 years of data protection for biologics, the Obama Administration"s 2012 budget assumes seven years of data protection for biologics. Both medicines-related issues are the subject of significant debate amongst US public health groups, generic drug companies and brand-name pharmaceutical companies; and

- **Textiles, Apparel and Footwear.** Debate continues between US importers and exporters of textiles, apparel, and footwear as to how the United States should address these goods within the TPP. Generally speaking, importers support strong tariff reductions and oppose a "yarn forward" ROO,[1] whereas exporters have encouraged US officials to maintain high tariff levels on certain goods and push forward with a "yarn forward" ROO.

It is also possible that the approach of the US elections will result in a certain amount of reluctance on the part of other TPP members to negotiate key issues with the United States. TPP members may wait until it becomes clear whether or not President Obama will serve a second term to try and close chapters addressing issues on which a Republican administration may have a different negotiating stance than the Obama Administration, *e.g.,* labor rights and environmental protection.

On July 9 and 10, 2012, USTR sent letters of notification to Congress of its intention to include Mexico and Canada, respectively, in the TPP negotiations. The letters signify the start of a 90-day consultation period between Congress and USTR regarding the inclusion of these two countries. After this consultation period lapses, Canada and Mexico will be able to join the negotiations. As a result, the two countries are expected to join the negotiations during the 15th round, which will likely take place in December 2012.

[1] A yarn forward ROO requires that the yarn production and all subsequent operations (*i.e.,* fabric production through apparel assembly) occur within the countries party to the trade agreement for the product to receive preferential treatment.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

At the end of the 12th round of negotiations, USTR announced that, for the first time since TPP negotiations started, negotiators were able to close, or complete negotiations, on a chapter of the agreement. The chapter they closed addressed issues related to small- and medium-sized enterprises (SMEs). Although negotiators were expected to close additional chapters during the 13th round, USTR made no such announcement. Nonetheless, sources note that the following chapters are close to being closed: (i) sanitary and phytosanitary (SPS) measures; (ii) technical barriers to trade (TBT); (iii) regulatory coherence; (iv) customs; and (v) business facilitation. The most contentious chapters of the agreement remain those that address: (i) state-owned enterprises (SOEs); (ii) IPR; (iii) market access; (iv) labor rights; and (v) environmental protection. Of these texts, several will need to be closed at a higher political level during the final stages of negotiations.

Many of the leaders of TPP member countries are expected to attend the 2012 Asia-Pacific Economic Cooperation (APEC) Leaders‟ Summit, which will take place in Vladivostok, Russia from September 2-9, 2012. President Obama is not expected to be among those TPP leaders present. USTR has stated that it remains unclear whether TPP leaders will hold a meeting on the sidelines of the Summit. The 14th round of TPP negotiations is scheduled for September 6-15, 2012 in Leesburg, Virginia.

Click here for a copy of USTR‟s July 10 press release.

USTR Requests WTO Consultations with China Regarding Duties Imposed on Certain Automobiles from the United States

On July 5, 2012, US Trade Representative (USTR) Ron Kirk announced that the United States had requested World Trade Organization (WTO) consultations with China regarding antidumping (AD) and countervailing (CV) duties imposed on certain automobiles from the United States (DS440). According to USTR, this request represents the third time the United States has challenged China‟s “misuse” of trade remedies.

Pursuant to the WTO Dispute Settlement Understanding (DSU), the United States and China have 60 days to settle the dispute through consultations. If the parties fail to settle the dispute through consultations within the designated timeframe, the United States may request the WTO Dispute Settlement Body (DSB) to establish a panel to consider whether the contested measure is WTO-inconsistent.

Following the Obama Administration‟s September 2009 announcement that it would impose duties on imports of Chinese tires pursuant to Section 421 of the Trade Act of 1974, the Chinese government initiated AD and CVD investigations on imports of US cars and sport utility vehicles (SUVs). Although the Chinese government issued final affirmative determinations for both investigations in May 2011, no duties were imposed until after the United States requested, in early December 2011, the WTO DSB to establish a panel to consider duties imposed by the Chinese government on imports of certain US poultry products (DS427).

In late December 2011 the Chinese government began imposing AD duty rates ranging from 2.0 to 8.9 percent, with an “all others” rate of 21.5 percent, and CV duty rates ranging from 6.2 to 12.9 percent, with an “all others” rate of 12.9 percent, on US cars and SUVs with an engine capacity of 2.5 liters or larger. The duties in question cover more than 80 percent of US autos exported to China. According to USTR, in 2011, the United States exported more than USD 3 billion worth of these types of automobiles to China.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

According to the United States‟ Request for Consultations (WT/DS440/1), the imposition of these AD and CV duties violates numerous provisions under the General Agreement on Tariffs and Trade (GATT), as well as the WTO Antidumping Agreement (AD Agreement) and the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). More specifically, the United States is concerned that China failed to, *inter alia*: (i) properly examine the degree of support by domestic producers of like products for the investigations before initiating them; (ii) review the evidence provided for use in the investigations for accuracy and adequacy; (iii) disclose certain information used to determine the various rates; (iv) objectively examine all relevant economic factors and indices before making affirmative determinations in both investigations; and (v) provide an opportunity for interested parties to defend their interests.

The July 5 request for consultations reflects the United States‟ belief that China has adopted a "tit-for-tat" use of trade remedies, *i.e.*, the Chinese government seems to employ its domestic trade remedy procedures against US imports in response to actions taken by the United States under its own trade remedies laws. The United States has already challenged China‟s alleged "misuse" of trade remedies twice at the WTO. In September 2010, the United States requested consultations with China regarding its imposition of duties on imports of grain oriented flat-rolled steel from the United States (DS414). On June 15, 2012 the WTO panel for DS414 circulated its report, which found that China contravened certain provisions within the AD and SCM Agreements. DS427 was initiated in September 2011.

Click here for a copy of USTR‟s July 5 press release.

US, Other WTO Members Release Statement on International Services Agreement Talks

On July 5, 2012, the United States and 17 other members[2] of the World Trade Organization (WTO) released a statement on the International Services Agreement (ISA) talks. According to the statement, these countries "intend to enter a new phase of talks" toward the ISA starting in September 2012.

In January 2012, the United States began exploratory talks with other interested WTO members regarding the negotiation of the ISA. To date, there are a total of 20 members[3] of the "Really Good Friends of Services" group (RGF), 18 of which signed the July 5 statement. Although Chile and Singapore did not sign the statement, US officials have asserted that they agree with the statement‟s content.

According to the statement, the signatories have spent the past 6 months exploring different negotiating approaches toward the ISA. In September 2012, the signatories will enter a new phase of talks, during which they will work to identify specific aspects to be included in the Agreement. The identification of these aspects will

[2] The other 17 members include: Australia, Canada, Colombia, Costa Rica, European Union, Hong Kong, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Peru, South Korea, Switzerland, Taiwan, and Turkey.

[3] The 20 members of the RGF include those mentioned above as well as Chile and Singapore.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

enable signatories to carry out the necessary domestic procedures and stakeholder consultations prior to the start of formal ISA negotiations.

In the statement the signatories agree that an ISA should have the following three characteristics:

- **Be Comprehensive in Scope**. The ISA should cover substantially all services sectors. In addition, no services sectors or methods of supplying services should be excluded from the Agreement before negotiations begin;

- **Ensure Improved Market Access for Services.** The ISA should commit its signatories to providing improved market access opportunities that "closely reflect services-related practices"; and

- **Contain New and Strengthened Rules for Trade in Services.** Sources note that, among other things, this characteristic likely refers to the signatories‟ intention of addressing new disciplines within the services sectors, including e-commerce, telecom, data flows, financial services, and express delivery.

Although the statement notes that the signatories have spent the past 6 months discussing the different negotiating approaches to the ISA, the July 5 statement makes no announcements regarding the architecture of the Agreement. Two main issues have prevented the RGF members from establishing the negotiating approach, namely:

- **Most-Favored Nation (MFN) Treatment versus Non-MFN Treatment.** RGF members such as the United States are interested in negotiating the ISA on the basis of Article V of the WTO General Agreement on Trade in Services (GATS), in which case market access benefits would be granted to the Agreement‟s signatories only, *i.e.*, non-MFN treatment, and not to all WTO members. The United States is interested in pursuing this approach as a means of avoiding "free rider" issues, *i.e.,* circumstances in which countries that did not participate in the negotiations benefit from the Agreement‟s provisions. Members such as the European Union (EU) have demonstrated their opposition to the Article V approach, arguing that non-MFN treatment would likely result in the exclusion of emerging economies with growing services industries, such as Brazil, India, China, South Africa (all of which have declined to join the ISA talks), from the Agreement; and

- **Positive versus Negative List.** RGF members such as the United States would like to negotiate the ISA from a negative list approach, *i.e.,* all services sectors and modes of supplying services would be covered under the Agreement except those specifically listed. The United States supports this approach because it is generally considered to produce a more ambitious outcome than the positive list approach. Members such as the EU prefer negotiating on the basis of positive lists, *i.e.,* services sectors and modes of supplying services covered by the Agreement would be limited to those specifically listed. The EU has urged other RGF members to support this approach in part because it would make it easier for the EU to obtain a negotiating mandate to join the ISA negotiations.

In addition to not making any announcement regarding the legal framework of the ISA, the July 5 statement also makes no mention of when formal ISA negotiations will begin. Nonetheless, sources note that RGF members are currently aiming to begin such negotiations in 2013.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

Click here for a copy of the July 5, 2012 press release from the Office of the US Trade Representative.

DOC Proposes Change to Calculation Methodology of Input Price in NME AD Proceedings

On June 28, 2012, the Department of Commerce (DOC) published a Federal Register (FR) Notice entitled "Proposed Modification to Regulation Concerning the Use of Market Economy Input Prices in Nonmarket Economy Proceedings" (77 FR 38553) (the "Notice"). The Notice details proposed changes to the method by which DOC calculates input prices in antidumping (AD) proceedings involving non-market economies (NMEs), *e.g.,* China and Vietnam. The proposal will remain open for public comments through July 30, 2012.

In AD proceedings involving NMEs, DOC calculates normal value, *i.e.,* the price against which the export price is compared to determine the dumping margin, by valuing the NME producer"s inputs using prices from a market economy (ME) country that is at a comparable level of economic development to that of the NME and that is also a significant producer of comparable merchandise. This methodology is commonly referred to as "surrogate value" valuation. If an NME producer purchases the total volume of an input from NME suppliers, the value of that input is calculated using surrogate values. In the event that an NME producer purchases the total volume of an input, or a portion of the total volume of an input, from ME suppliers and pays for such input in ME currency, the method of calculating the value of that input changes.

Current DOC practice for calculating normal value dictates that, in the event that an NME producer has purchased less than 33 percent of the total volume of an input purchased during the period of investigation from ME suppliers, DOC will calculate the price of that input by weight-averaging the ME purchase price and an appropriate surrogate value, using as weights the relative quantities of the input imported from ME suppliers and purchased from domestic sources. If, however, the total volume of the input purchased from ME suppliers represents a "meaningful" share, *i.e.*, 33 percent or more, of the total volume of the input purchased from all sources, DOC will not use a surrogate value, but instead will use the weighted-average purchase price paid for the input sourced from ME suppliers to value all of the input.

Under the proposed modification, DOC would not use the weighted-average purchase price of an input sourced from ME suppliers to value an input unless the following two conditions are met: (i) the input must be produced in, not just sold through, one or more MEs; and (ii) "substantially all" of the input, *i.e.,* 85 percent or more of the total purchased volume of the particular input, must be purchased from ME suppliers. If the input purchased from ME suppliers does not meet these conditions, DOC would weight-average the ME purchase price and surrogate value, using the respective quantities of the input sourced, from ME and NME suppliers, to calculate the normal value.

According to DOC, the price of an input purchased from ME suppliers not constituting substantially all of the total volume of purchases of the input is not objective enough to use in the calculation of normal value. The Notice further states that the proposed requirement that such input be produced in MEs, not just sold through MEs, also serves the purpose of avoiding market distortion in NMEs as much as possible.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

This proposed methodological change is part of DOC‟s 2010-2011 "Trade Law Enforcement Package," the primary objective of which was to outline and then implement technical changes to the underlying practices employed in NME AD and CVD proceedings. The initiatives were put forward in response to the National Export Initiative (NEI), a plan initiated by President Obama in 2010 with the aim of doubling US exports by 2015.

The higher threshold for using ME purchase prices proposed in the Notice would increase the likelihood of needing to use surrogate values in calculating normal value of goods in NME AD proceedings. Because surrogate values are often higher than ME purchase prices, analysts opine that this increased use of surrogate values could, in turn, result in higher AD margins. For this reason, US producers competing with Chinese and Vietnamese producers will likely support this proposed change.

Click here for a copy of the Notice.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

CUSTOMS

Customs Highlights

DOC Final Section 129 Determinations Affirm Preliminary Determinations on Double Counting and Public Bodies

On July 31, 2012, the Department of Commerce (DOC) released its Section 129 final determinations for the four trade remedy cases underlying the World Trade Organization (WTO) dispute in *United States — Definitive Antidumping and Countervailing Duties on Certain Products from China* (DS379),[4] affirming findings set forth in the preliminary determinations issued in May 2012. The final Section 129 determinations detail how DOC will proceed in addressing the adverse WTO Appellate Body (AB) report findings on so-called "double remedies" and "public bodies" in DS379.[5]

The AB ruled in March 2011 that the imposition of double remedies in four antidumping and countervailing duty cases involving China-origin imports to the United States is inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM Agreement). The AB also ruled that DOC"s presumption in regard to whether state-owned enterprises (SOEs) can be classified as "public bodies" is inconsistent with the SCM Agreement and GATT 1994. DOC issued the final determinations for the four cases under DS379 pursuant to Section 129 of the Uruguay Round Agreements Act (URAA), which governs DOC"s actions in response to adverse WTO Dispute Settlement Body (DSB) findings, *e.g.*, the March 2011 AB report.

DOC explains in the final determinations the reasons for which it intends to adhere to its findings set forth in the May 2012 preliminary determinations, including discussions in the following key areas:

- **Necessary Fact-Based Inquiries.** The final determinations note that the AB was "not convinced that double remedies necessarily result in every instance of […] concurrent application of [antidumping ("AD") and countervailing] duties" in regard to a non-market economy (NME). However, the final determinations also note that the AB found the United States in breach of its WTO commitments because it had failed to "establish whether or to what degree it would offset the same subsidies twice by imposing antidumping duties calculated under its NME methodology, concurrently with countervailing duties." The final determinations assert that DOC is now engaged in fact-based inquiries to determine the instance and/or degree of such remedies so as to implement the AB finding; and

[4] The four cases are (i) circular welded carbon quality steel pipe (CWP); (ii) certain new pneumatic off-the-road tires (OTR); (iii) light-walled rectangular pipe and tube (LWRP); and (iv) laminated woven sacks ("Sacks").

[5] "Double remedies" refers to the double counting of overlapping countervailing duty ("CVD") and AD rates that DOC applies to NME-origin goods where both AD and CVD orders are in place.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

- **Pass-Through.** DOC noted in its May 2012 preliminary determinations that it would adjust its NME calculation methodology only in regard to input subsidies and only to the extent that the value of the subsidies impacted variable costs (*i.e.*, the extent to which input subsidies were "passed through" to export prices). DOC reaffirms in the final determinations its argument supporting this pass-through, thus reasserting its intention to adjust the calculation methodology in regard to only one of the many types of subsidies and, in addition, offsets only a fraction of the alleged double remedies.

DOC explains in the final determinations the reasons for which it intends to follow its already-established path forward in regard to public bodies, including a key discussion on:

- **Public Bodies – Definition.** DOC issued on May 18, 2012 a memorandum titled "Section 129 Determination of the Countervailing Duty Investigation of [Certain Goods from China]: An Analysis of Public Bodies in the People‟s Republic of China in Accordance with the WTO Appellate Body‟s Findings in WTO DS 379" setting forth DOC‟s findings as to which Chinese SOEs constitute public bodies. In response to the May 18 DOC memorandum, China argued, *inter alia,* that DOC (i) did not properly consider all the record evidence, (ii) sought an excessive amount of information, and (iii) did not properly consider that Chinese laws and institutions demonstrate that the entities at issue are not public bodies. Nonetheless, DOC rejected China‟s arguments and asserts in the final determinations that it is adopting as final the May 18 memorandum on public bodies.

In regard to the issues of double counting and public bodies, DOC‟s final determinations are unlikely to please Chinese trade officials as well as the Chinese commercial parties involved in the four underlying cases. Chinese officials reportedly assert that that DOC‟s proposed path forward on double counting relies on rough assumptions and estimations and is not based on price and cost data relevant to the industries affected by concurrent application of antidumping and countervailing duties. Also, Chinese officials reportedly view DOC‟s proposed path forward on public bodies as "excessively burdensome" as it requires Chinese companies to provide DOC with "unprecedented and excessive amounts of information." However, US petitioners reportedly see DOC‟s proposed path forward on both issues as positive as it further allows DOC to apply both antidumping and countervailing duties against Chinese-origin goods.

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

MULTILATERIAL

Multilaterial Highlights

Russian Duma Passes Vehicle Utilization Fee That Could Discriminate Against Imported Vehicles

On 13 July 2012, Russia‟s lower legislative chamber, known as the Duma, passed a law imposing a "utilization fee" on cars, which may have the effect of discriminating against imported cars. The Utilization Fee Law imposes a fee on vehicles imported into Russia and on those cars manufactured or assembled in Russia. While the Utilization Fee Law is purportedly being passed to address environmental concerns, it provides for certain exceptions which may have the effect of protecting Russian car manufacturers, as well as foreign companies assembling cars in Russia. Pursuant to its World Trade Organization (WTO) accession commitments, Russia will have to reduce import tariffs on cars, and the Russian industry is concerned about the likely increase of imports. The amendments are expected to enter into force on September 1, 2012 after they are approved by the upper legislative chamber, known as the Federation Council of the Parliament, and signed by the President.

According to the Utilization Fee Law, the utilization fee is being introduced "to ensure environmental safety" and to address the costs associated with the disposal of vehicles that are no longer operational. Specifically, the Russian government will disburse the accumulated utilization fees to entities involved in the disposal of vehicles to defray their expenses under conditions and in the amounts yet to be determined by the Russian government.

The Utilization Fee Law includes several exceptions. Notably, it exempts vehicles produced or manufactured by entities that undertake to safely dispose of the cars once they are no longer used. The procedure and the conditions for assuming such an obligation have not yet been defined by the Russian government. This provision may be potentially problematic as it could favor Russian producers and foreign producers assembling cars in Russia because their presence in Russia could place them in a better position to ensure safe disposal of their vehicles than that of their foreign competitors with no production or assembly base in Russia. For these reasons, the utilization fee has been criticized as discriminatory by several of Russia‟s key trading partners, including the European Union (EU).

Under the Utilization Fee Law, the amount of the fee will be determined based on the production year, weight, and other physical characteristics of the vehicle that may affect the disposal costs. The government has not yet announced the final rates. Reportedly, the base rate for light vehicles could be approximately RUB 20,000 – 45,000 (approximately USD 650 – 1,500) and for cargo vehicles RUB 150,000 – 400,000 (approximately USD 5,000 – 13,300) per vehicle. The base rate will then be subject to a multiplying coefficient that will depend on the technical characteristics of the vehicle. For instance, for light vehicles with less than 10 seats, weighing less than 3,000 tons and having an engine volume less than 1.3 liters, the multiplying coefficient will be 0.5, *i.e.,* the charge will equal to RUB 10,000 (approximately USD 335). Second-hand cars will be subject to increased coefficients (up to four or more).

Contacts:
Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com

Construction and road machinery, as well as agricultural and forestry/logging machinery, may also be subject to a utilization fee based on another law that is pending before the Russian Duma. On July 11, 2012, a draft law "On Introduction of Amendments to the Federal Law „On Consumption and Industrial Wastes" in the Part Relating to Ensuring Safe Utilization of Self-Moving Agricultural and Forest Industrial Vehicles, Construction and Road Machinery" was submitted for consideration to the State Duma Committee for Resources, Environmental Management and Ecology. While supporters justify this law on the basis of environmental concerns, it may also be a measure taken to address the likely increase in imports of such machinery. The base rates for new agricultural machinery are expected to be RUB 30,000 (approximately USD 1,000) and for construction, road and timber cutting machinery RUB 35,000 (approximately USD 1,160). Multiplying coefficients for new machinery will vary from 2.5 up to 15. The coefficients for used equipment could be twice as high. As with the Utilization Fee Law mentioned above, Russian producers and foreign producers assembling machinery in Russia that ensure the safe disposal of their products will most likely be exempted from the charge.

WTO agreements do not prohibit utilization fees as such, especially those introduced for environmental purposes. However, if the fees operate to protect domestic industry and discriminate against imports, this would raise concerns over Russia"s compliance with its obligations as a WTO member. The national treatment obligation under the General Agreement on Tariffs and Trade (GATT) requires that imported products may not be treated less favorably than like (similar) domestic products. If the utilization fee created a competitive advantage for domestic car producers and manufacturers, it could raise an issue of WTO consistency.

Contacts:

Scott Lincicome, Esq.
701 13th Street NW, Washington, DC 20005
slincicome@whitecase.com

Samuel Scoles
8 Marina View, #27-01, Singapore, 018960
sscoles@whitecase.com