US & Multilateral Trade and Policy Developments

Japan External Trade Organization

September 2015

Contents

US General Trade Policy Highlights 1

Momentum Builds for Reform of US Crude Oil Export Restrictions 1

USDA Subjects Twenty Additional Wood Products to Lacey Act Declaration Requirement 2

Free Trade Agreement Highlights 4

First US-India Strategic and Commercial Dialogue Yields Minimal Results on BIT and Trade Issues 4

US Department of Labor Accepts Petition to Investigate Peru's Alleged Noncompliance with US-Peru FTA Labor Commitments 5

Multilateral Policy Highlights 6

Key WTO Members to Discuss Possible Doha Outcomes for December Ministerial Conference in Nairobi 6

Update on Negotiations to Reform WTO Dispute Settlement Procedures 7

US General Trade Policy Highlights

Momentum Builds for Reform of US Crude Oil Export Restrictions

Efforts to reform the US crude oil export restrictions have gained substantial momentum in recent months, and there is now a real possibility that the US Congress will enact legislation reforming the restrictions before the 2016 US Presidential elections. The United States maintains an effective ban on almost all crude oil exports pursuant to Section 103 of the *Energy Policy and Conservation Act of 1975* (EPCA), which requires the President to "promulgate a rule prohibiting the export of crude oil and natural gas produced in the United States." Although the EPCA authorizes the President to exempt certain exports from the ban for national interest purposes, such exemptions are rare, and the resulting exports have amounted to less than one percent of total US crude production in recent years.

Several recent developments suggest growing congressional attention to, and support for, legislative efforts to reform or repeal the restrictions. We summarize these developments below.

- **House of Representatives to Vote on Repeal Bill This Autumn.** House Speaker John Boehner (R-OH) on July 30 announced his support for eliminating the restrictions on U.S. crude oil exports, and subsequently pledged to hold a floor vote this autumn on a pending House bill, H.R.702, that would repeal the restrictions outright. The House Energy and Commerce Subcommittee on Energy and Power approved H.R.702 by a voice vote on September 10, referring the bill to the full Energy and Commerce Committee for consideration. While it is expected that the House would ultimately approve H.R.702 with mostly Republican support, the bill in its current form is not considered to be viable in the Senate, where Republicans hold a narrow majority and therefore are more reliant on Democratic support to pass legislation. Most Senate Democrats who potentially would support liberalization of U.S. crude exports are unlikely to support an outright repeal of the restrictions, and will likely insist on compromise provisions that would allow the Executive branch to retain at least some authority over crude exports. It is possible that H.R.702 will be amended to include such provisions during a full Energy and Commerce Committee markup of the bill which is expected to occur in the coming weeks. Otherwise, House approval of H.R.702 in its current form would be largely symbolic, though it could put pressure on the Senate leadership to take up the issue.

- **Senate Energy Committee Approves Repeal Bill, But Senate Floor Action Is Uncertain.** On July 30, the Senate Energy and Natural Resources Committee voted 12-10 to approve a new bill introduced by Sen. Lisa Murkowski (R-AK), the *Offshore Production and Energizing National Security Act* ("OPENS Act"), which incorporated Sen. Murkowski's previous bill (S.1312) that would repeal the restrictions outright. The OPENS Act was approved on a party-line vote without the support of any Democratic members of the Committee. Subsequently, Senate Banking Committee Chairman Richard Shelby (R-AL) indicated that he plans to hold a Committee vote this fall on a separate repeal bill introduced by Sen. Murkowski and Sen. Heidi Heitkamp (D-ND). That bill, S.1372, is likely to be more palatable to Senate Democrats because it would authorize the President to restrict crude exports in a variety of circumstances (*e.g.,* if supply shortages or price increases occur and are expected to negatively impact U.S. employment). Senate Majority Leader Mitch McConnell (R-KY) has not yet committed to bringing legislation on crude oil exports to the Senate floor for a vote, and it appears unlikely that the Senate will have time to debate the issue this year. However, other members of the Senate Republican leadership have recently reiterated their support for repeal and have indicated that the issue will likely come up for a vote in the Senate in early 2016.

- **Senate Democratic Leadership Open to Compromise on Crude Exports.** Following Speaker Boehner's announcement and the Senate Energy Committee's approval of the OPENS Act, several Senate Democrats, including Senate Minority Leader Harry Reid (D-NV), have expressed willingness to compromise on some sort of crude oil export reform legislation. Despite Sen. Reid's previous opposition to allowing U.S. crude exports, he stated in mid-August that he now believes Congress should "work out some sort of compromise" on the issue. This shift might indicate that Sen. Reid and other crude export opponents now believe a repeal bill

would have enough votes to pass despite their objections, and are therefore willing to settle for a compromise bill that might include some Democratic priorities. Indeed, some Senate Democrats have now stated that they could support a repeal bill if it also included provisions that would extend tax credits for the renewable energy industry.

- **Export-Import Bank Connection.** One option under consideration by House and Senate GOP leadership is to pair legislation repealing the crude oil export restrictions with a bill to fund the now-expired Export-Import (ExIm) Bank in order to garner sufficient Democrat support in the Senate. ExIm Bank reauthorization is widely supported by Democrats and the White House, as well as Speaker Boehner, Senate Majority Leader McConnell and other moderate, pro-business Republicans. Leadership would use the package to garner sufficient Republicans and Democrats in both chambers to pass both bills as a package deal. This strategy, however, would be highly controversial among many Republicans and conservative activists who vehemently oppose ExIm Bank reauthorization, despite also opposing the crude oil restrictions. Our sources nevertheless indicate that GOP leadership is inclined to package the two bills if other avenues for ExIm Bank reauthorization fail to materialize.

- **U.S. Energy Information Administration Report and Iran Agreement Used to Bolster Case for Repeal.** A new U.S. Energy Information Administration (EIA) study released on September 1 found that U.S. gasoline prices "would be either unchanged or slightly reduced" if the restrictions are lifted, because the resulting increase in U.S. crude production would cause a decline in the global benchmark prices from which U.S. gasoline prices are largely derived. Congressional proponents of repeal have begun to cite the EIA study in an effort to assuage concerns that increased U.S. crude exports would cause gasoline prices to rise. In addition, several influential lawmakers, including Speaker Boehner, have begun to argue that the recent agreement on Iran's nuclear program further strengthens the case for liberalization of U.S. crude exports. These lawmakers have noted that, absent congressional action to repeal the restrictions, the agreement would allow Iranian producers to resume exporting crude oil while U.S. producers would remain prohibited from doing so. Some congressional Democrats who support the Iran agreement might find such a scenario politically difficult to justify, and could end up going along with some sort of U.S. crude export liberalization as a result.

These and other related developments suggest that there might be a window in early 2016 for some sort of crude oil export reform legislation to become law. This view is bolstered by the fact that most US presidential candidates support repeal (former Gov. Jeb Bush (R-FL), Sen. Marco Rubio (R-FL), Gov. Scott Walker (R-WI), Gov. Chris Christie (R-NJ), Sen. Ted Cruz (R-TX), Sen. Rand Paul (R-KY), Gov. Bobby Jindal (R-LA), former Gov. Rick Perry (R-TX), Carly Fiorina) or reform (Dr. Ben Carson) of the restrictions, or have not yet take a position (former Secretary of State Hillary Clinton, Gov. John Kasich (R-OH), Donald Trump). Of the declared candidates, only Sen. Bernie Sanders (D-VT) appears to oppose lifting the crude oil export restrictions. On the other hand, Congress might be reluctant to act during an election year – particularly later in the year, closer to the elections – for fear of the political ramifications if US gasoline prices subsequently rise. Given these concerns, and the difficulty of finding a compromise bill by early 2016 that can pass both chambers, many US energy market analysts believe that the issue will not be resolved until after the elections. Nonetheless, overall prospects for reform in the next two years appear to be positive, and US producers seem optimistic that the restrictions will be lifted. For example, one US energy company, Cheniere Energy, Inc., announced in June that it plans to move forward with construction of a USD 550 million export terminal in Texas that will ship processed condensate to international markets, in part because the company is confident that the United States will allow "unfettered crude oil exports" at some point in the future.

USDA Subjects Twenty Additional Wood Products to Lacey Act Declaration Requirement

On September 4, 2015, the US Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) announced the addition of twenty wood products to the APHIS Schedule of Enforcement for the *Lacey Act* ("the Act").[1] As a result, importations of these wood products are now subject to the Act's Plant and Product Declaration

[1] 16 U.S.C. 3371 *et seq*.

requirement, and must therefore be accompanied by a declaration form specifying, *inter alia*, the genus, species, and country of harvest of the imported product. The declaration requirement and other components of the Act aim to promote environmental conservation by enabling APHIS to identify, and prevent the importation of, wood and other plant products that have been harvested, possessed, transported, or sold in violation of foreign laws.

The twenty wood products that have been added to the Schedule of Enforcement include various barrels, casks, furniture, and certain parts thereof, and are listed in the table below along with the applicable Harmonized Tariff System of the United States (HTSUS) numbers. Importers are required to complete and file the Plant and Plant Product Declaration Form (PPQ Form 505), which is available on the APHIS *Lacey Act* website, upon importation into the United States of any products classified under these HTSUS numbers. Failure to file a declaration for these or any other product types listed on the Schedule of Enforcement may result in civil or criminal penalties and forfeiture of shipments.

HTSUS Number	Description
4416.00.3010	New casks, barrels and parts of wood
4416.00.3020	Used assembled casks of wood
4416.00.3030	Used unassembled casks of wood
4416.00.6010	New barrel staves of wood
4416.00.6020	New barrel hoops of softwood
4416.00.6030	New tight barrelheads of wood
4416.00.6040	Used barrels staves of softwood
4416.00.6050	Used hoops, tight barrelheads of softwood
4416.00.9020	New other casks, barrels, wood
4416.00.9040	Used other cooper goods, wood
8211.92.6000	Hunting knives with wood handles
8215.99.2400	Table barbeque forks with wood handles
9401.61.2010	Upholstered teak chairs, household
9401.61.2030	Upholstered teak chairs, other
9401.90.1500	Parts of bent-wood seats
9403.30.4000	Bent-wood office furniture
9403.40.4000	Bent-wood kitchen furniture
9403.50.4000	Bent-wood bedroom furniture
9403.60.4000	Other bent-wood furniture
9614.00.2100	Rough wood blocks for smoking pipe manufacture

The declaration requirement was established by an amendment of the Act contained in the *Food, Conservation, and Energy Act of 2008* ("2008 Farm bill"). Since the enactment of the 2008 Farm bill, APHIS has implemented the declaration requirement in phases by periodically adding new product types to the Schedule of Enforcement. The addition of the products listed above represents the fourth phase of APHIS's implementation of the declaration requirement.

A copy of the full Schedule of Enforcement is attached for reference. Click **here** to view the APHIS Lacey Act

website, which contains the latest version of the Plant and Product Declaration Form (PPQ Form 505).

Free Trade Agreement Highlights

First US-India Strategic and Commercial Dialogue Yields Minimal Results on BIT and Trade Issues

Senior US and Indian officials concluded the first annual US-India Strategic and Commercial Dialogue (S&CD) in Washington, DC on September 22, 2015, but announced few substantive outcomes in the areas of trade and investment. Among the trade and investment issues discussed at the S&CD were the potential US-India Bilateral Investment Treaty (BIT), India's progress towards ratifying the WTO Trade Facilitation Agreement (TFA), and mutual efforts to minimize non-tariff barriers. However, few formal commitments resulted from these discussions, and several priority issues raised by US congressional leaders in advance of the meeting do not appear to have figured prominently at the S&CD.

Bilateral Investment Treaty

Despite US officials' recent calls for the resumption of the US-India BIT negotiations, Indian Minister of Commerce and Industry Nirmala Sitharaman indicated at the S&CD that substantive negotiations on the BIT are unlikely to resume in the near future, stating that "we have to make other things possible before we maybe get to working on new treaties." This statement likely refers to the fact that India since 2012 has been in the process of revising its model BIT, and is unlikely to resume substantive negotiations with the United States until this process is completed. However, negotiators might struggle to make progress even after India's model BIT is finalized, unless US concerns with the draft version published by India's Ministry of Finance in March 2015 are addressed in the final version. Several aspects of the March 2015 draft – including its exclusion of a most-favored-nation (MFN) provision and its requirement that investors exhaust local remedies before initiating ISDS proceedings – differ from common clauses in model BITs and have received strong criticism from US business groups. These issues might have prompted US Assistant Secretary of State Nisha Biswal to propose on September 17 that India use the investment chapter of the India-Japan Comprehensive Economic Partnership Agreement (CEPA) as the basis for its BIT negotiations with the United States. However, India appears unlikely to adopt this approach. If the US and Indian BIT approaches continue to diverge during the remainder of President Obama's term, negotiation of a US-India BIT could end up being a low priority for the next US administration.

Cooperation on Regulations and Standards

In a fact sheet issued at the conclusion of the S&CD, the US Department of Commerce (DOC) announced the creation of a US-India "joint work stream on the Ease of Doing Business" that will "focus on a number of issues that would increase bilateral trade," including non-tariff barriers. Other initiatives announced at the S&CD include (i) a bilateral exchange of best practices for the operation of national Enquiry Points under the WTO Agreement on Technical Barriers to Trade; (ii) a commitment to information exchanges between certain regulators with the goal of minimizing regulatory barriers to trade; and (iii) a new portal containing standards information to be used by businesses, which will be maintained by the American National Standards Institute and the Confederation of Indian Industry.

Trade Facilitation Agreement

According to the DOC fact sheet issued after the S&CD, India "has agreed to ratify the WTO's Trade Facilitation Agreement[.]" However, the fact sheet does not specify whether India plans to ratify the TFA before the WTO's 10th Ministerial Conference this December in Nairobi. Recent press reports indicate that India plans to ratify the TFA in November in order to boost its negotiating leverage on food security and other issues heading into the Nairobi Ministerial, but Indian officials have not confirmed these accounts.

US Congressional Priorities for the S&CD

Prior to the S&CD, the Chairmen and Ranking Members of the House Ways and Means and Senate Finance

Committees sent a letter to US Secretary of Commerce Penny Pritzker and Secretary of State John Kerry, outlining congressional priorities for the S&CD in the areas of trade and investment. The letter stated that the S&CD should strive to address the following alleged trade barriers maintained by India: (i) India's policy of requiring in-country security testing for telecommunications equipment; (ii) inadequate intellectual property rights protections, most notably relating to biopharmaceuticals; (iii) non-transparent and discriminatory regulatory and licensing procedures and practices; (iv) forced localization measures covering products ranging from solar to information technology; (v) backlogs in India's food approval system; and (vi) non-science based sanitary and phytosanitary measures. The letter also alleges that the Government of India, in its 2015 budget, "actually raised applied tariffs on information technology products contravening its commitments under the World Trade Organization's Information Technology Agreement." Although US and Indian trade officials present at the S&CD do not appear to have made substantive progress on these issues, they might seek to do so during the upcoming US-India Trade Policy Forum, which is expected to occur in October 2015.

US Department of Labor Accepts Petition to Investigate Peru's Alleged Noncompliance with US-Peru FTA Labor Commitments

On September 25, 2015, the US Department of Labor (DOL) announced its acceptance of a petition filed by the International Labor Rights Forum and seven Peruvian labor organizations concerning the alleged failure of the Government of Peru to comply with its obligations under the labor chapter of the US-Peru Trade Promotion Agreement (PTPA). DOL has 180 days to investigate the allegations contained in the petition before it must issue a recommendation to the US Secretary of Labor as to whether the United States should initiate formal consultations with Peru under the labor chapter of the PTPA.

Petitioners allege that, by permitting the "unlimited consecutive renewal" of short-term labor contracts in the garment and textile sectors under Peru's *Non-Traditional Export Promotion Law* (Law No. 22342) and its *Law of Productivity and Labor Competitiveness* (Law No. 728), the Government of Peru has violated Article 17.2(a) and (b) of the PTPA. Article 17.2 requires each Party to adopt and maintain, in its statutes, regulations, and practices thereunder: (a) the right to freedom of association; and (b) the effective recognition of the right to collective bargaining, as set forth in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)*. Petitioners allege that the Government of Peru is not in compliance with these provisions because, *inter alia*: (i) the aforementioned Peruvian laws permit employers in Peru's garment and textile sectors to hire workers for an unlimited duration on a series of renewable, temporary contracts; and (ii) such employers have taken advantage of these laws by "systematically declining to renew the contracts of thousands of workers who joined unions in an effort to improve wages and working conditions."

In addition, petitioners allege that the Government of Peru has failed to effectively enforce its existing labor laws, and is therefore in violation of Article 17.3 of the PTPA. In particular, petitioners allege that employers in Peru's garment and textile sectors "violate Peruvian labor law with virtual impunity, dismissing workers for union activity, employing workers on fraudulent contracts, and failing to pay legally mandated bonuses." Petitioners further allege that employers in Peru's export-intensive agricultural sector are engaged in similar practices, and claim that Peru's regional labor ministries have failed to enforce the applicable labor laws governing this sector.

DOL's decision to accept the petition for review does not indicate any determination as to the validity of the allegations contained therein. Nonetheless, should DOL decide that the Peruvian Government's actions were inconsistent with its labor commitments under the PTPA, Article 17.7 of the same states that DOL may request cooperative labor consultations with Peru in order to reach a mutually satisfactory resolution of the matter. If DOL were to make such a request, it would be the first time that the United States has done so under the PTPA. Only one other petition, filed in 2010 by a Peruvian labor union, has been submitted to DOL under the labor chapter of the PTPA. DOL accepted that petition for review, but opted not to recommend formal consultations under Article 17.7 because actions were taken by the Government of Peru to modify the measures at issue.

Click **here** for DOL's *Federal Register* notice concerning the petition.

Multilateral Policy Highlights

Key WTO Members to Discuss Possible Doha Outcomes for December Ministerial Conference in Nairobi

From September 15-16, 2015, Australia will host a senior officials meeting in Geneva with key WTO Members (the United States, the European Union, Japan, China, India and Brazil) to discuss what elements of the Doha Round can be delivered at the WTO's 10th Ministerial Conference in Nairobi in December. Possible deliverables include the enhanced Information Technology Agreement (ITA-II) and the Environmental Goods Agreement (EGA), both of which would deliver significant improvements in market access.

The meeting will be critical. These WTO Members need urgently to establish their leadership and set the tone and direction for negotiations this autumn. The United States and the European Union have already said that they regard the Nairobi Conference as the last opportunity to produce a significant outcome from the Doha Round and that, if that is not achieved, then Members will have to acknowledge that Doha has failed.

WTO Members failed to agree on the "Bali Work Programme" by the end-July deadline when negotiations stalled on agricultural subsidies and market access for agricultural and industrial goods. The Bali Work Programme was intended to be blueprint for concluding negotiations on all elements of the Doha Round. That proved to be too ambitious. WTO Director-General Roberto Azevêdo's conclusion was that the Bali Work Programme has now expired and that Members need to focus in the autumn on specific "do-able" results on elements of the Doha Round for Nairobi. DG Azevêdo has therefore challenged Members to identify which specific elements of Doha might attract consensus and whether those elements can be packaged in a way that all Members can agree on in Nairobi.

The Chairs of the Negotiating Groups or individual Members have identified various elements that might be agreed on in Nairobi:

- **Prohibiting agricultural export subsidies and disciplining other programmes such as loan guarantees.** The United States proposed this in July as a stand-alone result from the agriculture negotiations given the inability of WTO Members to make any progress on the broader agriculture agenda, and the Chairman of the Agriculture Negotiating Group described it in his report to the Trade Negotiations Committee (TNC) as "more mature" than other elements of the agriculture negotiations. In principle it should be "do-able" since both the United States and the EU have already phased out to a very great extent their agricultural export subsidies, although recently India and China are suspected of beginning to engage quite heavily in subsidizing some of their export shipments. The EU, Brazil, India and China reacted negatively to the US proposal in July, but perhaps more on the grounds that they would want reciprocal concessions elsewhere before accepting this result rather than opposition to the proposal *per se*.
- **Permanent carve-out for food security programmes in developing countries.** India made this the *quid pro quo* for accepting the Trade Facilitation Agreement (TFA) last year and continues to insist that it must be part of any deal in Nairobi. It has already gained the agreement of the United States and the EU for an open-ended, temporary carve-out for subsidies for food security programmes in developing countries. Making that permanent and legally-binding under WTO rules would appear to be "do-able" for Nairobi if India is prepared to be flexible on other issues.
- **Critical mass agreements to reduce or eliminate tariffs on certain industrial products.** There are good prospects for the completion of the ITA-II and the EGA by the end of the year. Beyond that, the United States and other developed countries are pressing China and other advanced developing countries to agree to eliminate tariffs in some other sectors too, such as chemicals and electronic goods. The agreement of China, India, Brazil and South Africa would be essential to achieve a result here, but since these would be critical mass agreements they would not need the support of all developing countries.

- **Development issues.** There are good prospects for concluding negotiations to make relatively minor changes to the Special and Differential Treatment (S&D) provisions of a number of GATT Articles and WTO Agreements; most of these were already agreed on in principle at the Hong Kong Ministerial meeting and they need only to be signed off formally. There are good prospects too for establishing a monitoring mechanism within the Committee on Trade and Development to review all S&D provisions.

- **Special advantages for least-developed countries (LDCs).** DG Azevêdo pointed to this in July as a promising deliverable for Nairobi. The G-90, which includes the African Group, the African, Caribbean and Pacific (ACP) countries, and the LDCs, has proposed changes to a number of WTO Agreements in favor of the LDCs. These proposals follow the TFA model of making implementation conditional on the provision of financial and technical assistance from donors to ensure that the LDCs can comply with the agreements and improve their export market access (such as the Sanitary and Phytosanitary Agreement and the Customs Valuation Agreement).

- **Cotton.** Although this is an issue that is of primary concern only to a handful of African countries, it has become something of a standard-bearer for development issues more generally since it is most often portrayed as a problem of domestic support to cotton farmers in the United States diminishing the export opportunities of small-scale African cotton farmers. The Chairman of the Agriculture Negotiations Group has highlighted this issue, stating that "there is no doubt that cotton will necessarily need to be part of any outcome" from the Nairobi conference. It is a sensitive issue in the United States however, and it may require other big cotton producers, such as China and India, to agree to limit their domestic support for cotton production too before it could become a deliverable.

These elements, if they could all be agreed on, would represent only a small result for Nairobi but one that might nevertheless allow WTO Members to state that they have achieved as much as they can from the Doha Round and that they have now concluded the negotiations and will move on. However, it is not clear that this sort of package would be acceptable to Members such as Brazil, Japan and the EU, who have been seeking, respectively, as a priority results from the negotiations on agricultural subsidies and market access, changes to the Anti-Dumping Agreement and disciplines on Fishery subsidies under the Rules negotiations, and geographical indications, even if these Members must surely recognize now that there seems little prospect of them achieving these results before Nairobi.

Update on Negotiations to Reform WTO Dispute Settlement Procedures

When a small group of WTO Members meets this week to discuss realistic objectives for December's Ministerial Conference in Nairobi, negotiations on the Dispute Settlement Body (DSB) could figure in their deliberations. The negotiations might deliver a small package of results that affect Members' participation in future WTO disputes, including enhancement of third-party rights in disputes.

The Chairman of the DSB negotiations reported in July to the Trade Negotiations Committee that "certain issues are sufficiently mature to be part of a final outcome," while others could be brought to that level of maturity through further negotiations this autumn. We summarize below several key issues raised in the Chairman's report.

- **Pre-Panel Consultations.** There seems to be convergence on accepting automatically requests from interested Members to join pre-panel consultations as third parties, unless the respondent in the dispute formally rejects their involvement. There also is support for allowing consultations to start at the latest 45 days after the request for consultations (currently 30 days) when the respondent is a developing country.

- **Panel Proceedings.** There is support for (i) codifying the current 10-day rule for notifying third party interest, as long as there remains flexibility for considering later notifications made beyond that period; and (ii) enhancing third-party rights to include their presence throughout both substantive meetings with the panel and their right to receive all written submissions of the parties prior to the panel's interim report.

Negotiators also appear to be approaching agreement on (i) changing the timetable for panel proceedings to allow more time for the preparation of the respondent's first written submission; (ii) requiring panel proceedings to be suspended upon joint request by the parties to facilitate a mutually agreed solution; (iii) requiring panels to protect strictly confidential information if requested; and (iv) setting out formally the overall combination of expertise required in the composition of panels.

On the other hand, the Chairman indicated that there is not enough support to consider opening the panel process to the public or accepting unsolicited *amicus curae* briefs.

- **Appellate Body Proceedings.** There are concerns about allowing Members to notify a third-party interest for the first time at the appellate stage because of the potential management problems that this could cause for the Appellate Body and the parties, but there is sympathy for allowing the Appellate Body to take decisions on this issue through its working procedures, rather than referring directly to it in the DSU.

On the other hand, there is support for creating the possibility of suspending Appellate Body proceedings upon joint request of the parties, and for allowing issues that are still unresolved at the end of the appellate proceedings to be addressed on an expedited basis without having to initiate entirely new proceedings for this purpose. However, there is no significant support for a fully-fledged remand mechanism.

- **Adoption and Compliance.** There is convergence on (i) the introduction of an enhanced notification requirement at the end of the "reasonable period of time" for implementation of a panel or Appellate Body's findings; (ii) the clarification of certain aspects of compliance proceedings under Article 21.5 of the DSU, including the confirmation of third party rights in compliance proceedings; and (iii) confirmation that compliance proceedings must be completed before an authorization to suspend obligations can be granted.
- **Mutually Agreed Solutions.** There is agreement that mutually agreed solutions between parties to a dispute remain the preferred outcome.

These "improvements and clarifications" to the dispute settlement procedures are modest but at this stage, where key Members are searching for deliverables that can produce some degree of success for the Nairobi Conference, they could nonetheless prove valuable. The prospects for adoption of the reforms depend on there being a successful result overall at the Nairobi Conference, but there are not strong trade-offs between the DSB reforms and other parts of the Doha agenda so that it is quite plausible for these reforms to figure in a package of deliverables in Nairobi.

A copy of the Chairman's report is attached for reference.

Contact us

Washington

White & Case LLP
701 Thirteenth Street NW
Washington
DC 20005-3807

Scott Lincicome, Esq
Counsel

T +1 202 626 3592
E slincicome@whitecase.com

Singapore

White & Case Pte. Ltd.
8 Marina View #27-01
Asia Square Tower 1
Singapore 018960

Samuel Scoles
Regional Director Asia, International Trade Advisory Services

T +65 6347 1527
E sscoles@whitecase.com

WHITE & CASE

whitecase.com