



White & Case LLP General Trade Report - JETRO

November 2010

In This Issue

United States..... 1

Free Trade Agreements 20

Table of Contents

UNITED STATES	1
GENERAL TRADE POLICY	1
Republicans Win in House and Make Substantial Gains in Senate; Mixed Implications for US Trade Policy	1
Consumer Product Safety Commission Votes to Implement Online Product Safety Database	8
General Trade Policy Highlights	10
Coalition of US Companies Urge Lawmakers to Renew GSP Program in Lame-Duck Session.....	10
Obama Administration Creates New Export Controls Coordination Center.....	11
ACTA Parties Finalize Agreement, After Reaching Compromise on Key Sections	11
Leaders at G-20, APEC Meetings Claim Renewed Commitment to Stalled Doha Round	13
Antidumping/Countervailing Duty Evasion Schemes Detailed in Senate Report	14
Possible Trade Measures During 2010 Congressional Lame-Duck Session.....	16
Constitutional Issue Could Delay Final Passage of Food Safety Bill that Includes New Requirements for Food Importers and Foreign Producers	18
House of Representatives Issues Draft of Second MTB	19
FREE TRADE AGREEMENTS	20
Free Trade Agreement Highlights.....	20
Japan Signals Interest, Hesitance regarding TPP Accession	20
United States and Korea Unable to Conclude KORUS at G-20 Summit in Seoul.....	21
APEC Leaders Announce Vietnam’s Full Participation in TPP Negotiations	22
US and Korea Arrive at Tentative Deal on KORUS	23

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | i

UNITED STATES

GENERAL TRADE POLICY

Republicans Win in House and Make Substantial Gains in Senate; Mixed Implications for US Trade Policy

Summary

On November 2, 2010, the United States held midterm elections in which the Republicans won majority Control of the House and won several seats in the Senate although the Democrats retained majority-control of this chamber. The Republican gains, as well as the consequent changes in trade-related Committee leadership and constitution, will impact in the general tone of US trade policy during the coming 112th Congress in that fewer anti-trade bills or provisions (in larger bills) can be expected. However, poor US job market performance and the Obama administration's general reluctance to pursue a robust US trade policy will limit the ability of free trade-friendly lawmakers to pursue a broad free trade agenda. The impact on longer-term US trade policy of the freshman class of Republican Tea Party-backed lawmakers is yet to become clear but, in the near term, the Tea Party influence is unlikely to harm pro-trade efforts in Congress.

Analysis

I. ELECTION RESULTS AT-A-GLANCE

On November 2, 2010, the United States held midterm elections for the entirety of the House of Representatives and approximately one-third of the Senate. The House, which is majority-controlled by the Democrats during the current 111th Congress (255 Democrats and 178 Republicans), will be majority-controlled by the Republicans in the 112th Congress with the Democrats having lost 61 seats to the Republicans.¹ The Democrats were able to retain a slight majority in the Senate for the 112th Congress despite having lost 6 seats to the Republicans in this chamber such that the balance will be 53 Democrats and 41 Republicans.

Impact of Midterm Elections on US Trade Policy

The fundamental assumption that can be made when analyzing how the outcome of the US midterm elections might affect US trade policy is that Democrats are more likely to advocate or condone protectionist policies on trade issues than are Republicans. Although this is a generalization that does not always hold true, particularly in states with strong organized labor, prevalent low-end manufacturing or a firm agricultural base, it is an assumption based on observation and analysis of congressional voting records of the last decade.

¹ As of November 15, 2010

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 1

Despite the Republicans having won majority-control of the House and gained several seats in the Senate, a solidly pro-free trade agenda is unlikely in the 112th Congress for the following reasons: (i) the Executive Branch, namely the President and USTR, drives US trade policy such that large Republican gains in Congress should not be able to offset the Obama Administration's weak ideological support for free trade; (ii) some Congressional Republicans could obstruct Obama Administration trade policies for political gain (i.e., in order to deny the President a "victory" on any issue, even one that they ideologically support like trade); and (iii) the fragile state of the US economy and, in particular, the slow recovery of the US job market could cause some Republicans to avoid broad free trade initiatives. This is especially true for new Republican members of the House from trade-suspicious states/districts who will face reelection in two years. Per analysis of past voting records of these recently elected lawmakers, few strongly advocate free trade policies, including pending free trade agreements.

The Dynamic between the House and the Senate

Another reason for which a solidly pro-free trade agenda is unlikely in the 112th Congress is that, despite the Republicans having won majority-control of the House, the Democrats will still control the Senate. Even if the Republican-controlled House were to pursue such an agenda, any bill to greatly liberalize trade would still face difficult scrutiny in the Democrat-controlled Senate and by a Democratic President who is not an ideological, stalwart defender of free trade. That a solidly pro-free trade agenda is unlikely in the 112th Congress does not imply, however, that there will not be a measureable reduction in the number and/or scope of anti-free trade bills or provisions (inserted into larger bills). The Republican Party is, in general, free trade-friendly and the expected Republican Party leadership in the House, including John Boehner (R-OH) as the Speaker of the House (expected), Rep. Dave Camp (R-MI) as the Chairman of the House Ways and Means Committee (expected) and Rep. Kevin Brady (R-TX) as Chairman of the House Ways and Means Subcommittee on Trade (expected), boast relatively pro-free trade voting records and rhetoric such that, while economic conditions and poor US job market numbers may prevent the Republican-controlled House from pursuing a bold free trade agenda, free trade-hostile bills or provisions (inserted into larger bills) will likely evidence a sizeable reduction in number and scope.

The Democrats lost 6 Senate seats to the Republicans and, while this Chamber will remain Democrat-controlled for the 112th Congress, any Democrat mandate to squelch pro-free trade legislation or to push anti-free trade bills or provisions (inserted into larger bills) has been greatly reduced. Furthermore, the Congressional trade agenda is largely dictated by trade-related Committee leadership and constitution and, as discussed below, the Chairman of the most important trade-related Senate Committee, Sen. Max Baucus (D-MT) is not, despite his Democratic Party affiliation, hostile to free trade.

II. CHANGE IN LEADERSHIP OF KEY TRADE COMMITTEES

With the Republicans having won majority control of the House for the 112th Congress, House Committee leadership must change. House Committee Chairs will be Republican and House Committee Ranking Members will be Democrat. In the case of many Committees, this implies that the Republican Ranking Member of a Committee during the 111th Congress will become the Chairperson of the Committee for the 112th Congress while the Democratic Chairperson during the 111th Congress will become the Ranking Member for the 112th Congress. This is not, however, the case in many Committees for a myriad of reasons, including: (i) Republican and Democratic party rules often put term limits on Committee membership; (ii) internal party politics may cause

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 2

a Committee leader to voluntarily withdraw his or her candidacy for leadership in the next Congress; and (iii) Committee membership and party representation within Committees ultimately depend on policy objectives of each party and a bipartisan agreement on Committee constitution. Although the Democrats retained majority-control of the Senate and, therefore, Committee leadership will not be changing parties for the 112th Congress, Committee membership and party representation within Senate Committees are also subject to individual party policy objectives and the above-mentioned bipartisan agreement.

With the 2010 midterm elections having come to a close, both the Republican and the Democratic parties will separately nominate Representatives and Senators to House and Senate leadership and non-leadership roles (supposedly) before the commencement of the 112th Congress. Below we outline the expected party leadership in key trade-related House and Senate Committees.

Leadership in the House Committee on Ways and Means

In the 112th Congress, Rep. Dave Camp (R-MI) will likely replace Rep. Sander Levin (D-MI) as Chairman of the House Committee on Ways and Means. Rep. Camp, while not a strong free trader, has a relatively pro-free trade voting record and has consistently voted in favor of eliminating trade barriers through free trade agreements, including NAFTA, the US-Oman FTA, US-Bahrain FTA, DR-CAFTA, US-Morocco FTA, US-Australia FTA, US-Chile FTA, and US-Singapore FTA. Rep. Camp has, however, voted to uphold certain other barriers to trade such as the ban on Mexican motor carriers from circulating in US territory, prohibiting the Chinese oil company CNOOC from purchasing US oil company UNOCAL and bolstering US antidumping laws. Despite his occasional support of trade barriers on these select issues and a few others, Rep. Camp has voted to eliminate trade barriers on 43 out of 58 occasions (74 percent) across his 20-year career² in the US House of Representatives.

Rep. Levin, whom Rep. Camp will likely be replacing as Chairman of the House Ways and Means Committee, also has a relatively pro-free trade voting record although, in the past few years, his voting record has reflected an increasing hostility toward free trade. While Rep. Levin voted in favor of eliminating trade barriers through the passage of implementing legislation for the US-Bahrain, US-Morocco, US-Australia, US-Chile, and US-Singapore FTAs, he also voted against against passing implementing legislation for the US-Oman FTA and CAFTA. Rep. Levin has also voiced opposition to the US-Korea FTA (likely due to his connections to the US automobile industry) and has voted on several occasions to either revoke or suspend Trade Promotion Authority and to extend the ban on Mexican motor carriers from operating in US territory. Rep. Levin has voted to eliminate trade barriers on 36 out of 57 occasions (63 percent)³, which qualifies him as more hostile to free trade than the new (expected) Chairman of the House Ways and Means Committee, Rep. Camp.

That Rep. Camp will likely replace Rep. Levin as Chairman of the House Ways and Means Committee does not mean that Rep. Levin will assume Rep. Camp's previous post as the Ranking member of the Committee. Both Republican and Democrat House Leadership will convene before the start of the 112th Congressional session to decide who will assume key Committee leadership roles. According to our sources, likely candidates to assume the post of Ranking Member of the House Ways and Mean Committee are Rep. Levin, Rep. Richard Neal (D-MA)

² Cato Institute, Free Trade, Free Markets: Rrating of Congress (<http://www.cato.org/trade-immigration/congress/>).

³ Ibid

Contacts:

and Rep. Charles Rangel (D-NY). Both Rep. Neal and Rep. Rangel have voting records similar to that of Rep. Levin with respect to the elimination of trade barriers as both have, on certain occasions, voted in favor of passing implementing legislation for FTAs and, on other occasions, have voted against this legislation. Also, Rep. Neal and Rep. Rangel have, on occasion, voted in favor of non-FTA-related trade barriers such as extending the ban on Mexican motor carriers from operating in the United States and preventing the Dubai World Ports deal. Rep. Neal has voted to eliminate trade barriers on 35 out of 57 occasions (61 percent)⁴ and Rep. Rangel has voted to eliminate trade barriers on 34 out of 54 occasions (63 percent)⁵, numbers comparable to those of Rep. Levin.

Leadership in the House Committee on Energy and Commerce

In mid-2010, when polls began predicting that the Republicans were likely to retake control of the House, it had been a foregone conclusion that Rep. Joe Barton (R-TX) would replace Rep. Henry Waxman (D-CA) as Chairman of the House Committee on Energy and Commerce. It is now unclear whether Rep. Barton will assume Chairmanship or not due to several reasons, including (waivable) House Republican rules that limit to six years the amount of time a Representative may remain as a top Republican member on any given Committee and controversial remarks Rep. Barton made regarding the oil spill in the Gulf of Mexico. If Rep. Barton were not to assume Chairmanship of the House Energy and Commerce Committee, Rep. Fred Upton (R-MI) would likely do so. Rep. Upton boasts a voting record which is more favorable to free trade when compared to that of Rep. Barton. Rep. Upton has voted to eliminate trade barriers on 44 out of 58 occasions (76 percent)⁶ while Rep. Barton has voted to eliminate trade barriers on 34 out of 55 occasions (62 percent)⁷. Current Chairman of the House Energy and Commerce Committee Rep. Waxman has voted to eliminate trade barriers on 28 out of 55 occasions (51 percent)⁸. It remains unclear whether Rep. Waxman will assume the post of the Committee's Ranking Member for the 112th Congress.

Leadership in the Senate Committee on Finance

Sen. Max Baucus (D-MT) will likely retain Chairmanship of the Senate Finance Committee for 112th Congress. Sen. Baucus has a relatively pro-free trade voting record. He has, on certain occasions, voted in favor of passing implementing legislation for free trade agreements, including the US-Peru FTA, US-Oman FTA, US-Morocco FTA, US Chile FTA, US-Singapore FTA, and NAFTA. Sen. Baucus did, however, vote against passing DR-CAFTA and, also, voted to extend the ban on Mexican motor carriers from operating in US territory. He has been generally supportive of the US-Korea FTA but has qualified his statements of support by saying that introduction to Congress and passage of Agreement's implementing legislation is dependant upon Korea's willingness to

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Ibid

⁸ Ibid

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 4

resolve issues on beef (likely due to that Sen. Baucus is from a cattle-intensive state) and automobiles. Sen. Baucus has voted to eliminate trade barriers on 37 out of 50 occasions (74 percent)⁹.

Current Ranking Member of the Senate Finance Committee Sen. Charles Grassley (R-IA) will not retain this post due to Senate Republican term limits on Committee leadership. He will likely be replaced by Sen. Orrin Hatch (R-UT) in the 112th Congress. Sen. Hatch has a relatively pro-free trade voting record. He has consistently voted in favor of passing implementing legislation for FTAs although he has, on occasion, voted in favor of upholding trade barriers such as the ban on Mexican motor carriers from operating in the United States and the approval of steel import quotas. Sen. Hatch has voted to eliminate trade barriers on 38 out of 50 occasions (76 percent)¹⁰ while Sen Grassley has voted to eliminate trade barriers on 41 out of 51 occasions (80 percent)¹¹.

Leadership in the Senate Committee on Banking, Housing and Urban Affairs

Current Chairman of the Senate Banking, Housing and Urban Affairs Committee Sen. Chris Dodd (D-CT) will be retiring at the close of the 111th Congress. Likely candidates to replace Sen. Dodd as Chairman are Sen. Tim Johnson (D-SD) and Sen. Jack Reed (D-RI). Sen. Johnson has voted in favor of passing implementing legislation for some FTAs such as the US-Peru FTA and against passing that of other FTAs such as CAFTA, and boasts a largely anti-free trade voting record with respect to less visible trade barrier measures. Sen. Johnson has voted to eliminate trade barriers on 18 out of 46 occasions (39 percent)¹². Sen. Reed, much like Sen. Johnson, has voted in favor of passing implementing legislation for some FTAs such as the US-Morocco FTA and against passing that of other FTAs such as CAFTA, and also boasts a largely anti-free trade voting record with respect to less visible trade barrier measures. Sen. Reed has voted to eliminate trade barriers on 17 out of 49 occasions (35 percent)¹³.

Current Ranking Member of the Senate Banking, Housing and Urban Affairs Committee Sen. Richard Shelby (R-AL) has won reelection and will likely retain his post as Ranking Member of the Committee for the 112th Congress. Sen. Shelby has voted in favor of passing implementing legislation for FTAs, including the US-Peru FTA, US-Oman FTA, and US-Australia FTA, but has voted against passing this legislation for other FTAs, including DR-CAFTA, US-Morocco FTA, US Chile FTA, US-Singapore FTA, and NAFTA. He has also voted in favor of upholding smaller, less visible trade barriers such as extending the ban Mexican motor carriers from operating in US territory. Sen. Shelby has voted to eliminate trade barriers 23 out of 49 occasions (49 percent)¹⁴.

III. IMPACT OF THE TEA PARTY ON US TRADE POLICY

Although in past elections Republican gains in Congress typically translated into a more or less proportional move toward a pro-free trade Congressional agenda, there is skepticism about the position toward free trade of

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ Ibid

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 5

many of the recently elected Tea Party-backed Republican lawmakers. The Tea Party is, as of yet, a social movement which advocates fiscal responsibility, adherence to the constitution and limited government, and this movement has not yet formed a proper political party with a single, defined leadership and a formal platform, including a position on free trade. FreedomWorks and Americans for Prosperity are two prominent national organizations of the more than a dozen which support Tea Party causes and candidates. Both of these organizations espouse the belief that free markets and competition are good and each group has expressed unconditional support for free trade. No Tea Party organization has, however, made free trade a central issue.

Uncertainty surrounding the future Tea Party position toward free trade has been accentuated by the perception that citizens who identify themselves as “Tea Partiers” are prone to populist rhetoric about foreign influence and jobs going overseas. While this perception may hold true with respect to most Tea Partiers, none of the Tea Party-backed candidates, independent of which of the many National Tea Party-related organizations supports them, campaigned on an anti-free trade platform. Dr. Rand Paul, the newly-elected Republican Tea Party-backed junior Senator from Kentucky, supports free trade citing that it brings prosperity although he opposes free trade agreements on ideological grounds citing that they undermine national sovereignty (he has, however, expressed openness to passing the US-Korea, US-Colombia and US-Panama FTAs). Marco Rubio, the newly-elected Republican Tea Party-backed junior Senator from Florida, is a staunch supporter of free trade and has vocally supported the passage of the currently stalled FTAs as well as seeking further trade agreements in the future as a manner in which to create jobs. Founder and Chair of the House Tea Party Caucus Rep. Michele Bachmann (R-MN) has given a post-midterm election interview to Investor’s Business Daily in which she highlights the benefits of free trade and declares herself a supporter of it. Finally, while not a recent candidate, former Alaska Governor, Vice-Presidential candidate and current Tea Party activist Sarah Palin, wrote an open letter to the freshman class of Republican lawmakers on November 13, 2010 in which she urged them to “stick to their principles” among which is free trade. She further pushed these new lawmakers to pursue job-creating opportunities such as the US-Korea and the US-Colombia FTAs.

While the Tea Party movement has attempted to distinguish itself from the Republican Party, it is yet to appear on any ballot as an established political party. Consequently, Tea Party-backed candidates ran on the Republican ticket and those who were elected must operate within the general Republican Party directives, including openness to free trade. In addition to the pressure the Republican Party leadership is sure to apply on the freshman class of Republican lawmakers in the 112th Congress, including those who were Tea Party-backed, lobbying groups representing US business, which has a tangible interest in promoting a pro-free trade agenda, will likely pressure these new lawmakers to temper any overt opposition or skepticism toward free trade. Also, the Tea Party has demonstrated an aggressive aversion to organized labor, which has proved to be a formidable opponent of free trade. As such, any future Tea Party position on free trade is unlikely to be influenced by labor unions’ hostility toward the same.

Outlook

The 112th Congress promises to be more amenable to free trade policies than its predecessor, but several factors will limit the scope of its trade efforts. Partisan gridlock, Democratic Party hostility to free trade, and high unemployment constrained any attempt at a free trade agenda in the 111th Congress. With the Republicans having won majority-control of the House and made significant gains in the Senate, the prospects are favorable

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 6

for a more pro-free trade 112th Congress. Furthermore, as all revenue- and tariff-related bills must originate in the House where the majority party decides which bills are introduced and referred to committee, the Republican-majority House during the 112th Congress will likely limit the number of protectionist or hostile trade-related bills and will also likely reduce the number of protectionist provisions inserted into larger bills. In the Senate, Republican gains, despite the Democrats having maintained a slight majority, should temper Democrats' anti-trade impulses. Despite these improvements, it is unlikely that the 112th Congress will pursue a bold free trade agenda for two reasons. First, the United States' trade agenda originates in the Executive Branch, and the Obama administration has proven reluctant to pursue significant trade liberalization. Second, the continued weakness in the economy should temper congressional support for trade, as many Americans blame globalization for the country's economic woes. Given these issues, the 112th Congress probably will not introduce large free trade legislation, but it should witness a significant decrease in anti-trade measures, whether as stand-alone bills or provisions in larger pieces of legislation.

With regard to signed but still pending FTAs and the TPP, US President Obama and Korea President Lee Myung-bak were unable to arrive at a compromise on the US-Korea FTA by the close of the November 11-12, 2010, G-20 Summit held in Seoul - a deadline that both leaders set in advance of the June 2010 G-20 Summit in Toronto. Korean market access for US beef and automobiles continues to thwart the efforts to conclude the Agreement but, according to sources, were the United States and Korea to resolve their respective differences on these two issues shortly, the Agreement's implementing legislation would enjoy sufficient support in the US Congress to pass in 2011. It is unlikely, however, that the two countries' negotiators will arrive at a suitable compromise if one could not be reached in the context of a face-to-face meeting between the US and Korean Presidents at the November 2010 G-20 Summit in Seoul. Therefore, it is unclear whether the implementing legislation for the US-Korea FTA will be introduced, considered and passed in the 112th Congress. The United States is now competing for Korean market share with the European Union, which signed an FTA with Korea on October 6, 2010, as well as with Canada, Australia and New Zealand, with which Korea is in the final stages of FTA negotiations. Whether the Obama Administration decides to make the necessary concessions to Korea on beef and automobiles and submit the Agreement's implementing legislation to Congress in the near-term now depends on whether the Obama Administration, in light of its own goal to double US exports in the next five years, deems it acceptable to forego this potential loss of Korean market share in favor of appeasing US cattle ranchers, automakers and organized labor from whom President Obama will require support in his bid for reelection in 2012. With regard to the US-Colombia and US-Panama FTAs, the expected Chairman of the House Ways and Means Committee in the 112th Congress Rep. Dave Camp has repeatedly stated that it is a priority of his that Congress pass these agreements in order to boost economic growth and create jobs, and Chairman of the Senate Finance Committee Sen. Max Baucus boasts, despite his party affiliation, a relatively pro-free trade agenda. The US-Colombia and US-Panama FTAs still face, however, some opposition from lawmakers who cite these countries' weak labor and environmental standards, and the Administration has yet to propose a firm timeline for submitting the agreements' implementing legislation to Congress. The future of these agreements, therefore, still remains unclear. TPP negotiations most likely will not be finalized in 2011 such that the President most likely will not submit the TPP to Congress for consideration prior to 2012.

It is unlikely that US lawmakers in the 112th Congress, despite Republican gains in the 2010 midterm elections, will support the needed reduction in agricultural subsidies in order to push the Doha round forward.

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 7

Congressional Republicans's voting records with respect to subsidies are similar to those of Congressional Democrats such that it is unlikely that any 2011 congressional initiatives will meaningfully affect the Doha Round.

The White House and USTR will likely continue to support US industry complaints before the WTO, particularly with respect to China. The Obama Administration has made clear that it is not in favor of employing unilateral action to engage trading partners on contentious trade issues. Rather, the Administration views the WTO as the proper forum in which to address US industry concerns about allegedly unfair trade practices.

Consumer Product Safety Commission Votes to Implement Online Product Safety Database

Summary

On November 24, 2010, the Consumer Product Safety Commission (CPSC) voted 3-2 in favor of a rule to implement the publicly available Consumer Product Safety Information Database (CPID). The CPID allows consumers to share and access safety information regarding products they own or are considering for purchase. At the hearing prior to the vote, Republican CPSC Commissioners voiced concerns also held by manufacturers that the CPID allows most anyone to file an unfounded product safety complaint and thus slander the manufacturer of the product. Democratic CPSC members lauded the CPID as an additional consumer protection mechanism.

Analysis

I. CPSC HEARING AND VOTATION

The Consumer Product Safety Commission (CPSC) met on November 24, 2010 to vote on establishing a final blueprint for the Publicly Available Consumer Product Safety Information Database (CPID). The purpose of the CPID, as envisioned under the Consumer Product Safety Improvement Act (CPSIA), which was enacted in 2008, is to allow consumers to share online their concerns or complaints about the safety of consumer products and file injury reports.

During the pre-vote hearing, the two Republican members of the CPSC, Commissioner Nancy Nord and Commissioner Anne Northrup, disagreed with the three Democratic members of the CPSC, Chairperson Inez Tenenbaum, Commissioner Robert Adler and Commissioner Thomas Moore, with respect to who qualifies as a "consumer." According to Commissioners Nord and Northrup, when Congress passed the CPSIA, it provided the CPSC with a discrete list of those whose complaints could be posted to the CPID. This list included "consumers" defined as "those who had purchased or used the product" as well as "those who, in a professional capacity, would be in a position to understand and comment on the [product safety] incident." Commissioners Nord and Northrup claim that the CPSC staff proposal expanded this list such that the CPID now provides for product safety complaints to also be filed by attorneys (representing clients injured by consumer products), investigators, professional engineers, agents of a user of consumer products, observers of the consumer products being used, consumer advocates and consumer advocacy organizations. Commissioners Nord and Northrup argued that such a broad definition of "consumer" makes the CPID vulnerable to potential abuses and inaccuracies, alleging

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 8

that a large portion of future complaints are likely to be financially or politically motivated instead of driven by valid concerns over product safety.

Commissioners Nord and Northrup backed an amendment to the CPID to narrow the definition of “consumer” and, thus, restrict who would be able to post complaints to the database. This amended version of the CPID, however, was defeated 3-2 along party lines and, therefore, not included in the final rule.

In a written majority statement issued following the vote, Democratic Chairwoman and Commissioners Inez M. Tenenbaum, Robert Adler and Thomas Moore countered the Republican criticism of the CPID, stating that the CPID has “built-in protections and procedures” to prevent inaccurate information from being posted on the database that would otherwise harm manufacturers. Protections and Procedures cited in this statement include:

- If a manufacturer believes that a complaint submitted to the database by a member of the public is materially inaccurate or contains confidential material, the manufacturer may request that the CPSC correct the report or retract the confidential information; and
- The CPSC will require that all product safety complaints submitted to, stored in and accessible to the public through CPID carry the disclaimer “The Commission does not guarantee the accuracy, completeness or adequacy of the contents of the Consumer Product Safety Information Database, particularly with respect to the accuracy, completeness, or adequacy of information submitted by persons outside the CPSC.”

The majority statement further posits that the CPID benefits manufacturers in that the complaints lodged with the database can be used as a tool “to inform manufacturers’ quality control programs and ensure that safer products are available on store shelves.”

In a dissenting written statement, Republican Commissioners Nord and Northrup questioned the effectiveness of these “protections and procedures”, stating that there is nothing in the approved rule that obliges the CPSC to address manufacturers’ claims of material inaccuracy contained in product safety complaints submitted to and posted on CPID. The Nord and Northrup statement also claims that the Democratic CPSC majority failed protect manufacturers from erroneous or unfounded complaints by refusing to include language in the final rule that would “flag” complaints alleged to contain material inaccuracies. Furthermore, the Nord and Northrup statement dismisses the majority claim that complaints posted to CPID will inform manufacturers’ quality assurance programs, stating that the final rule adopted by the CPSC does not require submitted complaints to contain specific information such as the place of the (product safety) incident or the model number of the allegedly unsafe product.

Outlook

Hearings on CPID have drawn much attention from consumer advocacy groups and caused manufacturers much concern as they mark the first time the CPSC, despite having been established in 1972, has ruled to make available to the public information on product-related injuries without prior consent from the manufacturer in question. While certain consumer advocacy groups, such as the Consumer Federation of America, Consumers Union, Kids in Danger, Public Citizen, Union of Concerned Scientists and the US Public Interest Research Group, expressed relief that the CPSC staff proposal of the CPID had passed without the Nord/Northrup amendment,

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 9

manufacturers and industry organizations expressed concern that the CPID, in its current form, will become a vehicle for slander and will do little to further consumer safety. Experts note that, in light of that the CPSC staff proposal passed on November 24, 2010 did greatly expand the list of those whose complaints could be submitted to and posted on CPID, manufacturers and industry groups are claiming that the commission has misinterpreted the spirit of the CPSIA. Although an appeal process is a possibility, without a change in the composition of the 5 CPSC members, an appeal in the near-term is unlikely to lead to a more favorable decision for manufacturers.

CPID is scheduled to go online in March 2011 at www.saferproducts.gov.

General Trade Policy Highlights

Coalition of US Companies Urge Lawmakers to Renew GSP Program in Lame-Duck Session

On November 10, 2010, the Coalition for GSP, an agglomeration of 79 US companies and trade associations, sent a letter to Chairman of the House Committee on Ways and Means Rep. Sander Levin (D-MI), Ranking Member of the House Committee on Ways and Means Rep. Dave Camp (R-MI), Chairman of the Senate Committee on Finance Sen. Max Baucus (D-MT) and Ranking Member of the Senate Committee on Finance Sen. Charles Grassley (R-IA), in which they urged the lawmakers to pursue a renewal of the Generalized System of Preferences (GSP) during the lame-duck session, which commenced on November 15, 2010 and is expected to adjourn in mid-December 2010. In the letter, the Coalition for GSP argues that “the GSP program supports American manufacturing by reducing costs of inputs, machinery and equipment.” The GSP currently in effect will expire on December 31, 2010 and, if not renewed, import tariffs will be imposed on applicable goods starting January 1, 2011.

According to our sources, the leadership in the House Ways and Means and the Senate Finance Committees has indicated its intention to push for GSP renewal during the lame-duck session. Experts note that a GSP renewal could be inserted into a larger omnibus spending bill, however, with current partisan gridlock concerning government spending, such a bill could stall in the lame-duck session thus leaving the GSP program without the needed renewal until Democrats and Republicans arrive at a compromise on spending in the 112th Congress commencing in 2011. Adding to the complexity of passing a GSP renewal, Pay-Go rules require that Congress offset the approximately 500 million dollars in tariffs, which the US government would otherwise collect were duty-free treatment not given to applicable goods under the GSP program. It remains unclear how Congress will find the approximately 500 million dollars needed for this offset. In spite of the seemingly difficult prospect for a GSP renewal in the lame-duck-session, the GSP program enjoys strong bipartisan support and, consequently, it is likely that a one or two-year GSP renewal could be granted through a last-minute vote. Still, it is possible that the preference program could be allowed to briefly lapse and be reinstated at a later date with benefits applying retroactively.

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 10

Obama Administration Creates New Export Controls Coordination Center

On November 9, 2010, President Barack Obama issued Executive Order No. 13558 establishing the interagency Federal Export Enforcement Coordination Center (EECC) that will coordinate the enforcement of US export control laws. The primary function of the EECC, as set forth in the Executive Order, will be to “coordinate and enhance [...] export control enforcement efforts and identify and resolve conflicts [...] involving violations of US export control laws.” The EECC will not, itself, investigate export violations, but rather will provide a medium for sharing and analyzing information between agencies charged with export controls enforcement. The EECC will also act as a liaison between federal law enforcement and the intelligence community with regard to export control enforcement issues.

The EECC will coordinate the enforcement efforts of eight different departments, agencies and offices involved in export controls enforcement, including the Departments of Justice, Defense, Commerce, and Treasury, as well as the Office of the Director of National Intelligence. The Department of Homeland Security will house and fund the EECC, and the Secretary of Homeland Security will designate the EECC’s director. The Executive Order also gives the President the power to include other departments, agencies and offices in the EECC’s work “from time to time.” A Government-wide statistical tracking system will also be established by the EECC, which will further enhance the sharing of information pertaining to enforcement activities.

The creation of the EECC follows the Obama Administration’s review of the current US export controls system, which was a pillar of the Export Promotion Cabinet’s September 2010 *Plan for Doubling US Exports in Five Years*. The *Plan* noted the “decades-old export controls system” and opined that “reforms of export controls will strengthen national security, while enhancing the competitiveness of key American industries.” Four key reforms were identified in the report, including the creation of a “single enforcement-coordination agency.” In a press statement released concerning the Report’s findings, the White House noted that the current system is “overly complicated, contains too many redundancies, and, in trying to protect too much, diminishes our ability to focus our efforts on the most critical national security priorities.” These findings prompted the Administration to announce that it would seek to reform the system. The establishment of the EECC is one aspect of this effort.

ACTA Parties Finalize Agreement, After Reaching Compromise on Key Sections

On November 15, 2010, countries¹⁵ negotiating the Anti-Counterfeiting Trade Agreement (ACTA) announced that they have finalized the ACTA text and resolved all outstanding issues from the final negotiating round, which took place from September 23 to October 1, 2010, in Tokyo. According to a press release made by the Office of the United States Trade Representative (USTR), participating countries are currently publishing the finalized text of the agreement, which will then undergo the relevant domestic procedures within the respective participant countries.

¹⁵ Participants in the negotiations include Australia, Canada, the European Union (EU) and its Member States, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States.

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 11

Participating countries released a deliberative draft of the ACTA text on October 2, 2010, which reflected several unresolved concerns. For instance, the United States was particularly opposed to the inclusion of patents in parts of the agreement, particularly in the Civil Enforcement Section as patent infringement is not criminally enforceable under US law. Consequently, the latest ACTA draft, which was released on November 15 and is still subject to legal review, excludes patents and protection of undisclosed information from the scope of the Section as well as from the remainder of the Agreement.

In the Border Measures Section, the European Union (EU) opposed the use of ~~un~~“unreasonably” in the first paragraph of this section, arguing that the term ~~un~~“unreasonably” is open to interpretation and this could ultimately result in ACTA participating countries discriminating against EU geographic indications (GIs) in favor of trademarks. The language in the previous text stipulated that ~~...for~~“for effective border enforcement of intellectual property rights (IPRs), a party should do so in a manner that does not discriminate unreasonably between IPRs and that avoids the creation of barriers to legitimate trade.” The latest text provides more precise wording, stating that: ~~for~~“for effective border enforcement of IPRs, a Party should do so in a manner that does not discriminate unjustifiably between IPRs and that avoids the creation of barriers to legitimate trade.”

In the Section on the Enforcement of Intellectual Property Rights in the Digital Environment, the European Union was opposed to the use of ~~widespread~~“widespread distribution” in the second paragraph of the section, arguing that use of the term could be misleading and subject to broad interpretations among ACTA partners. The language in the previous text stated that each country’s enforcement procedures would apply to infringement of ~~at~~“at least trademark and copyright or related rights over digital networks, including the unlawful use of means of widespread distribution for infringing purposes.” The latest text, upon which the negotiating partners finally agreed, states that enforcement procedures shall apply simply to infringement of ~~copyright~~“copyright or related rights [...] which may include the unlawful use of means of widespread distribution for infringing purposes.” The use of ~~may~~“may” and removal of ~~at~~“at least trademark” provides more flexibility to ACTA partners.

The compromise language in the latest text also makes it optional for ACTA member countries to criminally prosecute unauthorized video recording in theatres in the Criminal Enforcement Section.

Although ACTA partners have now finalized the Agreement’s text, the ACTA must still undergo legal verification and then be submitted to ACTA’s respective country governments to be implemented according to a country’s domestic legal procedures. Experts note that, with respect to the United States, USTR has negotiated ACTA as an executive agreement whereby the President can approve it by means of an executive order. Consequently, according to experts, ratification of ACTA in the US Congress is required.

ACTA partners are yet to set a fixed date for the signing of the Agreement, but countries are scheduled to hold a technical meeting in Sydney, Australia on November 30, 2010 to verify the legal drafting of the ACTA text follows appropriate treaty drafting conventions. In Sydney, the ACTA members will likely set a definitive signing date.

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 12

Leaders at G-20, APEC Meetings Claim Renewed Commitment to Stalled Doha Round

On November 12, 2010, President Obama stated at a working lunch in the context of the November 11-12 G-20 Summit in Seoul, Korea that he is willing to make efforts to ensure that the World Trade Organization (WTO) Doha Round is concluded in the near-term. Despite President Obama's remarks, neither he nor any of the G-20 leaders present at the working lunch, who also expressed a similar willingness, provided a specific date for when the round could be concluded or what specific concessions the WTO's 153 member delegations could make in order to conclude the Round.

Remarks made by other attendees to the G-20 working lunch are as follows:

- UK Prime Minister David Cameron noted that "it's got to be something we achieve next year" and suggested that WTO Director-General Pascal Lamy provide quarterly updates regarding the Round's progress;
- Brazilian President Luiz Inácio Lula da Silva stated that 90 percent of the Round has been successfully negotiated and that Brazil was "ready to deal" in order to conclude the Round;
- German Chancellor Angela Merkel stated that "there is now a window of opportunity to reach agreement" and that "all negotiating parties" must initiate the end game of the Doha trade talks";

Also, sources state that China, while it did not explicitly comment at the G-20 working lunch on its commitment to moving the Doha Round forward, has since echoed Chancellor Merkel's comment about the need to "initiate the end game."

The G-20 leaders' comments mirror those made by APEC Ministers at the XXII APEC Ministerial Meeting held in Yokohama, Japan from November 10-11, 2010, in which they expressed their strong commitment to concluding the Doha Round "as soon as possible." In a written statement, the APEC Ministers opined that 2011 is a "critically important window of opportunity" and stated that they are "resolved to engage in comprehensive negotiations with a sense of urgency in the end game."

The Doha Round commenced on November 9, 2001 in Doha, Qatar with the stated objective of liberalizing trade in services and agricultural and industrial goods as well as expanding intellectual property regulation. The Round's progress has been repeatedly thwarted, however, by WTO member countries' differences on issues related primarily to agriculture, non-agricultural market access (NAMA) and services:

- **Agriculture.** Emerging economies such as Brazil and India insist that the United States end trade-distorting farm subsidy programs, claiming that these programs are tantamount to a barrier to agricultural goods produced in developing countries;
- **NAMA.** The United States, European Union and Japan propose a substantial reduction in import duties for non-agricultural (industrial) goods but many developing and emerging countries are opposed to this proposal,

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 13

particularly in light of developed countries' alleged inaction and/or past unwillingness to reduce or eliminate their respective agricultural subsidy programs; and

- **Services.** The United States, along with certain other developed countries, assert that emerging economies need to make broader concessions with respect to market access for services.

In light of the comments made by the G-20 leaders in Korea that reflect an apparent optimism for completing the Doha Round in the near-term, WTO Director-General Pascal Lamy noted in a November 15, 2010 welcoming speech to the attendees of the 21st Geneva Week that the G-20 Leaders have sent strong signals of political resolve to conclude the Doha Development Round... and have provided a clear signal that they expect the Doha Development Round to be deliverable next year." Consequently, Director-General Lamy invited all 153 WTO member delegations to a November 30, 2010 meeting to address the outstanding issues that need to be resolved to conclude the Round. Director-General Lamy cautioned, however, that the challenge is now to translate this political will into negotiations [...] in Geneva." Experts also urge caution with respect to the G-20 and APEC leaders' comments, noting that leaders have expressed desire and willingness to conclude the Doha Round at previous summits, but efforts to do so have ultimately ended in a continued stalemate between negotiating partners.

It is unlikely that the United States will be able to appease other Doha negotiating members by reducing or eliminating its agricultural subsidy programs. Although the November 2 mid-term elections gave the pro-trade Republican Party majority-control of the House of Representatives (as well as several seats in the Senate), the voting records of most Republicans indicates strong support for agricultural subsidy programs. Thus, GOP gains in the US Congress are unlikely to have any significant effect on the United State's negotiating position in regard to domestic farm support programs. Also, sources present at the G-20 Summit in Korea note that many of the US' trading partners have expressed doubt that President Obama would be able to secure Congressional approval for an agreement on the Doha Round. At the working lunch, President Obama addressed these doubts, stating that he is prepared to take the risks necessary to conclude the Round although it remains unclear what risks he is able or willing to take in the context of a still underperforming US job market and an approaching election season for the 2012 presidential elections.

Should the United States and other WTO Members agree at the November 30 meeting in Geneva to make an aggressive push to complete the Round by the end of 2011, they would have to complete the framework agreements, including modalities for agriculture and NAMA, by the Spring in order complete technical schedules by the end of the year. Such a short timeframe appears very difficult, given the United States' limited room for negotiation on agriculture and other Members' similarly-constrained positions on other issues.

Antidumping/Countervailing Duty Evasion Schemes Detailed in Senate Report

On November 8, 2010, Sen. Ron Wyden (D-OR) released a report detailing the results of a recent Senate staff investigation into apparent antidumping (AD) and countervailing duty (CVD) evasion schemes orchestrated by several Chinese exporters, overseas logistics companies and US importers. Senate staff conducted the investigation in response to concern among various US industries—including producers of uncovered mattress

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 14

innerspring units, lined paper, steel nails, wire garment hangers, paint brushes, rectangular pipe and tube, and other products— that several foreign exporters and US importers are routinely and illegally avoiding the payment of AD/CVD duties. A copy of the report is available here:

<http://wyden.senate.gov/download/?id=ab312b37-d16b-495c-a103-c1887afb37af>

According to the Senate report, the alleged AD/CVD circumvention schemes include: (1) transshipping goods through third countries in order to confer a false country-of-origin designation on the merchandise and avoid the payment of US AD/CVD duties; (2) issuing false, undervalued invoices in order to lower AD/CVD liability upon importation into the United States; and (3) misclassifying merchandise that would otherwise be subject to the collection of AD/CVD duties. The Senate investigation and report focus largely on the prevalence of the illegal transshipment of China-origin goods through third countries —including Malaysia, Indonesia, Singapore, Canada, Bangladesh, Taiwan, and Hong Kong— in order to confer a false country-of-origin label on the merchandise and avoid the payment of AD/CVD duties in the United States.

During the course of the Senate investigation, a Senate staff person posed as a purchasing agent for a fictitious US trading company and contacted, via a Chinese e-commerce web site, more than one-hundred Chinese producers/exporters of various products covered by US AD/CVD orders. After exchanging email messages with representatives from dozens of Chinese companies who responded to the initial e-commerce inquiries, Senate staff identified ten Chinese companies that offered to orchestrate AD/CVD circumvention schemes in order to ship products to the United States without regard for applicable AD/CVD duties. These products included uncovered mattress innerspring units, lined paper, steel nails, paint brushes and rectangular pipe and tube. According to the Senate report, the AD/CVD duties collected on imports of these products cover 120 US companies and 12,000 workers.

The Senate report, in addition to providing an overview of the various methods Chinese companies have been using to evade US AD/CVD duties, includes specific examples of the email messages exchanged between Senate staff and Chinese exporters, a list of Chinese companies that promote their ability and willingness to circumvent AD/CVD duties, and examples of web sites for Chinese companies that actively offer AD/CVD circumvention services. A confidential version of the report, including the names of the Chinese companies with which Senate staff corresponded, has been provided to U.S. Customs and Border Protection and Immigration and Customs Enforcement for possible further action.

The Senate report follows on the heels of new legislation Senator Wyden and Senator Olympia Snowe (R-Maine) introduced in August that is aimed at the stricter enforcement of US AD/CVD laws. The Enforcing Orders and Reducing Circumvention and Evasion (ENFORCE) Act of 2010 calls for: (1) expanding the authority of the U.S. Department of Commerce to investigate AD/CVD circumvention activities; (2) establishing a sixty-day timeframe within which US government trade officials must act on allegations of AD/CVD evasion; and (3) better information sharing among US government agencies regarding import safety issues arising from AD/CVD circumvention activities. The Senate report released November 8 is likely to lend some urgency to the legislation introduced in August.

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 15

Possible Trade Measures During 2010 Congressional Lame-Duck Session

The renewal of the Generalized system of Preferences (GSP) and regional trade preference programs is likely to be considered in the lame-duck session of the 111th Congress thus leaving all other trade-related bills for consideration during the 112th Congress. In the November 2, 2010 midterm elections, the Republicans won majority-control of the House and made significant gains in the Senate for the 112th Congress to commence on January 5, 2011. The current lame-duck session is lawmakers' final opportunity in the 111th Congress to move forward on any outstanding legislative initiatives before the composition of Congress is substantially altered by the incoming freshman class of lawmakers, most of whom are Republican.

The prospects for consideration and passage of trade-related legislation during the lame-duck session can be summarized as follows:

- **Preference Programs.** On November 16, 2010, the Ranking Member of the House Ways and Means Subcommittee on Trade Rep. Kevin Brady (R-TX) indicated that he expects a simple extension of GSP and other regional trade preference programs, such as the Andean Trade Promotion and Drug Eradication Act (ATPDEA), during the remaining weeks of the 111th Congress (lame-duck session). Rep. Brady's remarks regarding a renewal of GSP and regional trade preference programs are consistent with those made by the current House Ways and Means and Senate Finance Committee leadership, which has indicated that it will push for this renewal during the lame-duck session. Congressional sources note that a renewal of trade preference programs could be included in a larger omnibus spending bill. With current partisan gridlock concerning government spending, however, such a bill could stall in the lame-duck session thus leaving the trade preference programs without the needed renewal until Democrats and Republicans arrive at a compromise on spending in the 112th Congress. The prospect for the renewal of trade preference programs is further complicated by the Pay-Go rules which require Congress to offset all foregone tariffs that the US government would otherwise collect were duty-free treatment not given to applicable goods under the trade preference programs. Despite the seemingly difficult prospect for a renewal of the trade preference programs in the lame-duck session, these programs enjoy strong bipartisan support and, consequently, it is likely that a renewal will be granted through a last-minute vote although it remains unclear what the duration of any renewal will be. It should be noted, however, that the preference programs could be allowed to briefly lapse and be reinstated at a later date with benefits applying retroactively. Permanent GSP reform is still under discussion between the Obama Administration and Congress and, consequently, such reform will not be considered in the current lame-duck session.
- **Currency Legislation.** Rep. Brady also opined on November 16 that the Senate would not move on any bill to address alleged misalignment of the Chinese currency (RMB) despite the House having passed the Currency Reform for Fair Trade Act (H.R. 2378) on September 29, 2010. Congressional sources echo Rep. Brady's remarks with respect to consideration and passage in the Senate of any piece of legislation addressing China's alleged currency manipulation during the lame-duck session. Experts note that Democrats, despite having lost several seats in the Senate, retained a majority control of the chamber and have likely been subject to pressure from the Obama Administration to move such legislation off the Senate

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 16

docket. Senate Democrats are also likely aware that, were they to consider and pass China currency legislation, President Obama would not likely sign the bill into law.

- **Miscellaneous Tariff Bill.** Congressional sources note that the Miscellaneous Tariff Bill (MTB) had been on the expected congressional docket for consideration during the lame-duck session but the recent Republican push for “earmark” reform has made the prospects of MTB passage unclear in the near-term. Through a November 16, 2010 non-binding vote, the Senate Republican Conference banned the use of “earmarks” (certain provisions to spend approved funds) for two years. According to experts, this ban covers “limited tariff benefits” such as those envisioned under the MTB such that the MTB would not likely enjoy unanimous support in the Senate (the previous MTB was passed in the Senate on July 27, 2010 by unanimous consent). Consequently, it is unlikely that the MTB will be considered in the Senate during the lame-duck session. It is possible, however, for the MTB to be considered in the 112th Congress as several Senate Republicans, such as Sen. James Inhofe (R-OK) and Sen. Lisa Murkowski (R-AK), have indicated that they will not adhere to the earmark ban.
- **Customs Reauthorization.** The Senate Finance Committee held hearings on the Customs Facilitation and Trade Enforcement Reauthorization Act (S. 1631) in October 2009 but the Committee has yet to mark up the bill and report it to the plenary of the Senate. As of September 2010, the Chairman of the House Ways and Means Committee Rep. Sander Levin (D-MI) had stated on repeated occasions that the Committee would soon present a House version of S. 1631 although none such has yet been introduced. That the Senate version has not moved out of Committee and the House version is yet to be defined, it is unlikely that Congress will consider a Customs reauthorization bill in what remains of the lame-duck session.
- **Food Safety.** On November 17, 2010, the Senate voted to invoke cloture of the FDA Food Safety Modernization Act (S. 510), which aims to improve the safety of food products manufactured in and imported into the United States. If passed in the Senate, the House is expected to pass a similar version quickly and send it to the President for his signature. According to a November 18, 2010 press release from the Office of Sen. Mitch McConnell (Senate Minority Leader in the 111th Congress), the Senate will resume consideration of S. 510 following the Thanksgiving Day holiday although it remains unclear if the Senate will pass the bill in what remains of the lame-duck session.

President Barack Obama and Congressional leaders are scheduled to meet on November 30, 2010 to discuss the congressional docket for the lame-duck session. This was originally scheduled for November 18, 2010 but was pushed back at the request of Senate Minority Leader of both the 111th and 112th Congresses Mitch McConnell (R-KY) and current House Minority Leader and expected Speaker of the House for the 112th Congress, John Boehner (R-OH). Although the primary focus of this meeting is not to discuss trade-related congressional items, the outcome of this meeting will likely determine how much time Congress will be able to dedicate to trade given the other substantive items on the lame-duck docket such as the extension of the Bush-era tax cuts and funding the federal government in 2011.

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 17

Constitutional Issue Could Delay Final Passage of Food Safety Bill that Includes New Requirements for Food Importers and Foreign Producers

On November 30, 2010, the US Senate approved the Food and Drug Administration (FDA) Food Safety Modernization Act (S. 510) which greatly increases the FDA's authority regarding food safety and imposes added scrutiny on food importers and foreign producers. It had been expected that the House would quickly pass S. 510 but many House lawmakers, including Democrats, are now claiming that, in passing S. 510, the Senate usurped the House's tax-writing authority. Article I, Section VII of the US Constitution stipulates that "all bills for raising revenue (tax measures) shall originate in the House of Representatives". Section 107 of S. 510 imposes revenue-raising fees (which can be considered taxes) such that it is yet to be determined how House and Senate lawmakers will overcome this constitutional hurdle.

S. 510, which received bipartisan support, is a less stringent version of the House bill which was passed over a year ago on July 30, 2009 and was entitled the Food Safety Enhancement Act of 2009 (H.R. 2749). The House leadership indicated a potential willingness to accept S. 510 in an effort to speed up the process of enactment of the legislation. In doing so, House lawmakers sought to avoid the potentially lengthy conference process of reconciling the different bills passed by each chamber. The revenue-raising provision (Section 107 of S. 510) presents an obstacle to this plan.

S. 510 provides for greatly increased safety standards to be required by both foreign and domestic food producers. For food imported from foreign producers, the bill requires US importers to develop risk-based foreign supplier verification programs. S. 510 also authorizes FDA to require certifications that imported food complies with US food safety standards. The United States would also have the authority to send third parties to foreign facilities in order to certify that a business is in compliance with US food safety standards. With the added focus on foreign facilities, the new bill allows for the United States to deny importation of any foods which come from a business that has refused to allow US inspectors access to its facilities.

In the United States, the bill requires farmers and companies to be actively involved in the prevention of food contamination rather than solely relying on government inspection and, in the event of a recall, allows the FDA to issue mandatory recalls if businesses have not already initiated a voluntary recall. Under the new bill, the FDA is also given greater access to the records of registered facilities if a food emergency occurs.

One of the lead sponsors of the S. 510 was Senate Health, Education, Labor, and Pensions Committee Chairman Tom Harkin (D-IA), who explained in a Press Release on November 30, 2010 that the bill establishes "enough new protections against contaminated food."

Senator Harry Reid (D-NV) announced his support for the new bill in a Press Release issued on November 30, 2010. Senator Reid noted that the "food-safety system has not been updated in almost a century," and continued that the new bill will "improve on the current system by giving the FDA the resources it needs to keep up with advances in food production and marketing, while keeping the regulatory burdens of farmers and food producers to a minimum."

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 18

Despite strong bipartisan support for the passage of a food safety bill, it remains unclear how, or if, lawmakers will be able to move forward with S. 510. One option is for the House to take the contents of S. 510 and place it in a House bill, pass the bill and send it back to the Senate for consideration. Another scenario is that in which House and Senate lawmakers enter into a conference process whereby S. 510 and H.R. 2749 are reconciled and a unified bill is then sent to both chambers for a vote. However, either option requires time, which is a scarce resource in the current "lame-duck" session. Therefore, experts note that this procedural overlook has made it such that passage of a food safety bill might not be possible before the mid-December 2010 adjournment of the 111th Congress.

House of Representatives Issues Draft of Second MTB

On November 24, 2010, the House Ways and Means Committee released a bipartisan draft of the second Miscellaneous Tariff Bill (MTB). The draft bill, which builds on H.R. 4380, the US Manufacturing Enhancement Act of 2010 enacted into law by President Obama on August 11, 2010, features new tariff suspensions and reductions and also allows for retroactive treatment for bills thus extending expired provisions. The current draft also includes tariff suspensions requiring only a Senate or House sponsor, as opposed to the previous version of the MTB which required sponsors from both the Senate and House.

The announcement of a new draft of the MTB, which is a program that eliminates tariffs on foreign inputs used in US manufacturing, comes just weeks after the Senate Republican Conference voted on November 16, 2010 to ban earmarks (provisions of Legislation allotting money to certain projects often introduced to benefit specific constituents). The vote initially put the MTB in jeopardy as the ban covered "limited tariff benefits," which is an aspect included in the previous MTB passed on July 27, 2010.

The release of the bipartisan draft comes as a surprise to many experts who initially noted the potential conflicts between the second MTB and the moratorium on earmarks. With this apparent conflict amidst a tight schedule for the current lame-duck session, experts did not expect the MTB to be pushed through before the 111th Congress came to an end. The House Ways and Means Committee leadership has indicated possible consideration of the second MTB bill over the next few weeks and, consequently, it is possible although not guaranteed that the House could pass the bill and send it to the Senate before the 112th Congress commences on January 5, 2011.

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 19

FREE TRADE AGREEMENTS

Free Trade Agreement Highlights

Japan Signals Interest, Hesitance regarding TPP Accession

On November 6, 2010, Japan's Ministerial Committee on Comprehensive Economic Partnerships, released a statement signaling Japan's interest in commencing consultations with the nine Trans-Pacific Partnership (TPP) negotiating partner countries – Australia, Brunei, Chile, New Zealand, Malaysia, Peru, Singapore, the United States, and Vietnam (as an “associate member”). The statement does not specifically clarify whether Japan wishes to join the ongoing TPP negotiations or accede to a completed agreement. It does, however, emphasize that Japan intends to improve its “domestic environment” to facilitate its consultations with the TPP negotiating partners, and to expedite its ongoing free trade agreement (FTA) negotiations in general.

Analysts opine that if Japan makes a firm commitment to join the TPP, the Japanese government would likely face opposition from stakeholders in the agricultural sector, due to concerns about increased competition from other TPP countries. Some observers predict that, in joining the TPP, the government would likely find it necessary to expand the already existing agricultural income support program (subsidies) in order to be able to reduce the scope of its tariffs and other border measures currently protecting Japanese farmers. The November 6 statement thus outlines a timetable for agricultural sector reform and sets a deadline to establish a basic reform policy in Japan by June 2011. The Japanese Prime Minister Naoto Kan will chair a study group placed in charge of drafting the action plan for the basic reform policy. The government expects to implement the action plan shortly after its tentative release date set for October 2011. Analysts therefore predict that if Japan makes a firm decision on the TPP, it would likely seek accession in late 2011.

On Japan joining the TPP, Assistant United States Trade Representative (USTR) Barbara Weisel signaled on October 25, 2010 that the United States is open to the prospect of Japan joining the TPP. However, she added that any new entrants to the TPP talks must be prepared to open its markets across the board. Analysts conclude that the United States is primarily concerned with: (i) Japanese market access for US beef; (ii) non-tariff barrier-related issues; and (iii) Japan's state-controlled firms which, according to the USTR, enjoy advantages not enjoyed by their foreign competitors.

Although TPP negotiating partners have set a tentative deadline to conclude negotiations by November 2011, most experts express skepticism that the parties will reach an acceptable agreement by then. Negotiating partners are yet to resolve contentious issues related to: (i) market access schedules; and (ii) regulatory coherence, particularly with respect to labor and environment. Thus, analysts predict that if Japan decides to join the negotiations in late 2011, TPP negotiating partners may be reluctant to disrupt negotiations to admit another negotiating partner so close to the tentative deadline. Therefore, countries such as the Philippines, Thailand and Japan, which have expressed some interest in joining the TPP, may be forced to accede to a finished TPP agreement.

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 20

United States and Korea Unable to Conclude KORUS at G-20 Summit in Seoul

On November 11, 2010, US President Barack Obama and Korean President Lee Myung-bak announced that negotiators from the two countries would be unable to conclude negotiations on the United States-Korea Free Trade Agreement (KORUS FTA) by the close of the November 11-12, 2010, G-20 Summit held in Seoul - a deadline that both leaders set in advance of the June 2010 G-20 Summit in Toronto. Despite their inability to finalize the Agreement, both Presidents expressed optimism for a quick resolution, with President Obama noting, “we want this to be done in a matter of weeks.”

The United States and the Republic of Korea signed KORUS on June 30, 2007. Since then, however, the Agreement has stalled due to US concerns over Korean market access for US beef and automobiles. In 2003, Korea halted imports of US beef due to concerns about incidences of Mad Cow Disease in the United States but resumed these imports in 2008 after the United States agreed to limit Korea-bound US beef exports to cattle under 30 months of age. US KORUS negotiators are requesting Korean market access for all cuts of US beef, regardless of the age of the cattle. However, the day before the Obama-Lee announcement, the US beef industry had expressed support for the agreement, thus signaling a softening of their opposition. As for the positions of US automakers, both Ford and Chrysler are opposed to the KORUS FTA while General Motors (GM) has remained neutral. The United Autoworkers union (UAW) also strongly opposes the agreement, claiming that KORUS “would exacerbate the totally one-sided auto trade imbalance between South Korea and the United States and jeopardize the jobs of tens of thousands of American workers.” All of these opponents believe that the FTA does not do enough to guarantee Korean market access for US cars. In particular, the companies and the UAW take issue with current language requiring US automobile exports to meet Korean environmental and safety standards which, although non-discriminatory, are alleged to be non-tariff barriers to US autos. Almost all other American business and consumer groups are strongly supportive of the FTA, which has been estimated to increase annual US GDP by between \$17 and \$43 billion.

The joint announcement was met with surprise and disappointment in the United States. The US Chamber of Commerce expressed disappointment, but stated that it was pleased that both Presidents had “strongly reaffirmed their commitment to KORUS,” and that some progress on the agreement was made. According to the group’s press release, “the Chamber is ready to pull out all the stops to explain the benefits of this agreement to the American people” because, without KORUS, “American workers stand to lose 340,000 jobs” – a statistic from the organization’s 2010 analysis on competitive disadvantages for US exporters that could result from the 2011 implementation of the EU-Korea FTA.

Outgoing House Ways and Means Committee Chairman Sander Levin (D-MI) and Ranking Member Dave Camp (R-MI) issued a joint statement following the announcement of the breakdown of KORUS talks, noting that there exists a “dangerously lopsided trade in automotive vehicles” which needs to be resolved. The two opined that “further negotiations will succeed only if South Korea adopts concrete steps to open its market to US exports.” The strong remarks towards Korea made by Representative Camp, who is expected to assume the Chairmanship of the House Committee on Ways and Means for the 112th Congress stands in stark contrast to his October 2010 expression of frustration with US delays on pending FTAs, noting that Congress’ “action is inexcusable, especially in light of nearly 10 percent unemployment.” Representative Camp went on to state that his goal was

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 21

to complete KORUS by the end of 2010 and the pending Colombia and Panama agreements within six months. However, given that Camp is from Michigan (a large automobile producing state), his most recent statements are unsurprising and could represent political posturing rather than staunch opposition to a completed KORUS FTA.

The Senate Finance Committee Chairman Max Baucus (D-MT), who comes from a state active in cattle ranching, responded to the news by stating that, while he is disappointed that KORUS was not completed, he intends to ensure that negotiations yield an agreement that works for ranchers, farmers and businesses in Montana and across the [United States],” and that he would not hold Senate Finance Committee hearings on the Agreement unless Korea opened its market to US beef of all cuts and ages.

Aside from President Obama’s expectations of finishing the deal within weeks, it remains unclear when KORUS will, in fact, be concluded. Experts note that, as the Seoul G-20 Summit has passed, the absence of a deadline reduces the pressure on the US and Korean Presidents to reach a final agreement on KORUS in a timely manner. On the other hand, that Korea has signed an FTA with the European Union and is nearing conclusion of FTA negotiations with Canada, Australia and New Zealand places pressure on President Obama to drop the automobile demands and submit the Agreement’s implementing legislation to Congress where, according to experts, it would enjoy sufficient votes to pass.

APEC Leaders Announce Vietnam’s Full Participation in TPP Negotiations

On November 14, 2010, all eight Trans-Pacific Partnership (TPP) members attending the Asia-Pacific Economic Cooperation (APEC) Summit in Yokohama, Japan, announced that Vietnam has completed the necessary “domestic procedures” to become eligible to participate fully in the TPP negotiations. Vietnam joined the negotiations as an “associate partner” on March 19, 2009 and, in that role, has participated in the three rounds of formal TPP negotiations that have, to date, been held.

As an associate partner, Vietnam assumed fewer responsibilities than the full TPP negotiating partners. For example, Vietnam was not obligated to provide all of the supplementary information and data that other participating countries were required to provide when presenting negotiating proposals. Therefore, several full participant countries argued that Vietnam’s continued status as an associate partner undermined the progress that could be made at each negotiating round on key issues such as market access and regulatory coherence. As a result, at the third and latest round of negotiations held in Brunei from October 4-6, 2010, the United States along with other TPP countries pressured Vietnam to decide before the fourth round whether it would fully participate in the negotiations.

According to media sources, Vietnam initially hesitated to fully commit to the negotiations because it faced potential political difficulties ahead of the upcoming 11th National Party Congress in January 2011. However, State President Nguyen Minh Triet subsequently affirmed that Vietnam was ready to participate fully in the negotiations and “will work together with other members to turn TPP into a new and dynamic regional economic integration [...] and contribute to promoting economic integration, growth and prosperity in the region.”

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 22

During the third round held in Brunei, negotiators discussed trade in goods, services, agriculture, sanitary and phytosanitary standards (SPS), investment, intellectual property rights (IPR), government procurement, labor and environment. Furthermore, negotiators discussed horizontal issues such as how to promote competitiveness, facilitate supply chain development and provide access for small- and medium-sized businesses through regulatory coherence. Also, the then seven full TPP negotiating partners (Australia, Brunei, Chile, New Zealand, Peru, Singapore, United States) and Vietnam (as an associate partner) unanimously voted to include Malaysia in the negotiations.

The next round of negotiations is scheduled to commence on December 6, 2010, in New Zealand. TPP negotiating partners anticipate five more rounds of negotiations in 2011, with member countries hoping that the final round will take place by November 2011. Experts opine, however, that negotiators are unlikely to meet this deadline due to the recent additions of member countries and still unresolved differences between the United States and Australia (and New Zealand) regarding the nature of the Agreement's market access schedules. Australia is advocating a single, over-arching market access schedule that would encompass trade between all TPP members. The United States, however, opposes this idea because it does not wish to renegotiate existing market access schedules contained in free trade agreements (FTAs) already in effect between it and other TPP countries, *e.g.*, Australia. Rather, the United States would prefer to maintain existing market access schedules and negotiate new bilateral market access schedules with the remaining TPP members with which it does not have an FTA in effect. Experts also note that achieving regulatory coherence among TPP members has, as of yet, been difficult and could burden the agendas of future negotiating rounds, thus making the November 2011 deadline increasingly difficult to meet.

US and Korea Arrive at Tentative Deal on KORUS

On December 3, 2010, United States Trade Representative (USTR) Ron Kirk and Korean Trade Minister Kim Jong-hoon, after four days of high-level talks in Columbia, MD, have reached a tentative agreement on automobile tariffs within the context of the US-Korea Free Trade Agreement (KORUS) negotiations. Experts opine that, with the tentative agreement on automobile tariffs in hand, the United States and Korea have removed the major obstacle preventing finalization of the KORUS during the G-20 Summit in Seoul (November 2010).

According to the White House Fact Sheet (attached), the United States will maintain the 2.5 percent tariff currently imposed on Korean-built automobiles until KORUS' fifth year while Korea agreed to immediately reduce the tariff currently imposed on US-built automobiles to 4 percent and eliminate this tariff in the Agreement's fifth year. Under the previous terms of the KORUS agreement, to which the United States and Korea had agreed in 2007, Korean automobiles were to gain immediate duty-free access to the US market. Ford Motor Company, Chrysler and the United Autoworkers (organized labor), however, favored a 10-year phase-out period of the US 2.5 percent tariff, and until the December 3, 2010 tentative agreement on the elimination of the tariff in the Agreement's fifth year, neither the United States nor Korea had been willing to compromise. As noted in the White House Fact Sheet, the United States will maintain the 25 percent tariff currently imposed on Korean trucks until KORUS' eighth year and will phase this tariff out completely by the Agreement's tenth year.

After the December 3, 2010 meeting with Minister Jong-hoon, USTR Kirk stated that the discussion resulted in "substantial progress" and that it was "time for the leaders to review this progress before we move forward."

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 23

Minister Jong-hoon stated that, once this review is done, ~~we~~ will synchronize a time and date to go into a detailed announcement” although he did not specify what such an announcement would entail.

Neither USTR Kirk nor Minister Jong-hoon commented on any progress made on Korean market access for US beef, which has been the other major sticking point for US KORUS negotiators. Experts note that the United States has not renounced its objectives on beef although it is unclear at this time whether this issue will prove insurmountable for US and Korean negotiators to conclude KORUS in the near-term.

Reaction to the revised KORUS agreement can be summarized as follows:

- According to sources, current Chairman of the House Ways and Means Committee Rep. Sander Levin (D-MI) and expected Chairman of the Committee for the 112th Congress Rep. Dave Camp have expressed that they are willing to accept the automobile terms to which the United States and Korea reached at Columbia, MD.
- Chairman of the Senate Finance Committee Sen. Max Baucus (D-MT) is reportedly unhappy with KORUS’ provisions on beef but experts opine that he is under pressure from USTR, operating at the behest of the Obama Administration, not to obstruct passage of the Agreement.
- Ford Motor Company CEO Alan Mulally has lauded the Obama Administration for having ~~vigorously~~ “advocated the importance of two-way trade” and further states that Ford ~~ap~~plauds the outline of the revised” KORUS.
- The United States Chamber of Commerce issued a statement urging Congress to swiftly pass the implementing legislation for KORUS, noting that the Agreement ~~will~~ create thousands of new jobs, advance our national goal of doubling exports in five years, and demonstrates that America is once again ready to lead on trade.”
- The American Manufacturing Trade Action Coalition (AMTAC) has issued a statement expressing strong opposition to the revised KORUS agreement. AMTAC claims that issues such as non-reciprocal tariff phase-outs, rule of origin loopholes and customs enforcement language were not addressed.
- Public Citizen also issued a statement expressing strong opposition to the KORUS, claiming that the majority of Americans are opposed to ~~more-of-the-same~~ job-offshoring [trade] agreements.”

Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice. No specific action is to be taken on the information provided without prior consultation with White & Case LLP.

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

WHITE & CASE LLP | 24