



White & Case LLP General Trade Report - JETRO

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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

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UNITED STATES

GENERAL TRADE POLICY

USTR Releases 2011 “Special 301” Report on IPR Enforcement

Summary

On May 2, 2011, the Office of the United States Trade Representative (USTR) released its “Special 301” annual report on the adequacy and effectiveness of US trading partners’ intellectual property rights (IPR) protections. The report identifies a wide range of issues that may unfairly disadvantage US rights holders and addresses the “ongoing, systematic IPR enforcement issues presented in [US] trading partners around the world.” We review here the 2011 Special 301 annual report and several of its country assessments.

Analysis

I. BACKGROUND

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994) (“Special 301”), USTR must annually identify those countries that deny adequate and effective IPR protections. According to the report, “countries that have the most onerous or egregious acts, policies or practices and whose acts, policies or practices have the greatest adverse impact on the relevant US products” are designated as “Priority Foreign Countries.” Priority Foreign Countries are potentially subject to an investigation under the Section 301 provisions of the Trade Act of 1974, under which the United States may impose trade sanctions against foreign countries that maintain acts, policies and practices that violate or deny US rights or benefits under trade agreements, or are unjustifiable, unreasonable or discriminatory and burden or restrict US commerce.

As part of its Special 301 duties, USTR has created a “Priority Watch List” (PWL) and “Watch List” (WL). Placement of a trading partner on either list indicates that particular IPR-related problems – including protection, enforcement and market access – exist in that country. Countries that have been placed on the PWL are “the focus of increased bilateral attention concerning the problem areas.” Additionally, under Section 306, USTR monitors a country’s compliance with bilateral intellectual property agreements that are the basis for resolving an investigation under Section 301. USTR may apply sanctions if a country fails to “satisfactorily” implement an agreement.

II. 2011 SPECIAL 301 REPORT

USTR reviewed 77 trading partners for the 2011 Special 301 Report, and placed 42 countries on the PWL, WL or the Section 306 monitoring list. There are twelve countries included in the 2011 PWL (an increase from the

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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

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eleven countries included in the 2010 PWL after the addition of Israel): Algeria, Argentina, Canada, Chile, China, India, Israel, Indonesia, Pakistan, Russia, Thailand and Venezuela. There are 28 countries included in the 2011 WL (a decrease from the 29 countries included in the 2010 WL; Lebanon was removed). Trading partners on the WL include Belarus, Bolivia, Brazil, Brunei, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Finland, Greece, Guatemala, Italy, Jamaica, Kuwait, Malaysia, Mexico, Norway, Peru, Philippines, Romania, Spain, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan and Vietnam. Paraguay will continue to be subject to Section 306 monitoring under a bilateral Memorandum of Understanding (MoU) that establishes objectives and actions for addressing IPR concerns in that country.

III. POSITIVE DEVELOPMENTS

USTR notes in the 2011 Special 301 report that there has been some progress by US trading partners to address IPR concerns:

- **Anti-Counterfeiting Trade Agreement (ACTA).** The report notes that Australia, Canada, the European Union (EU), Japan, Korea, Mexico, Morocco, New Zealand, Singapore and Switzerland finalized in December 2010 the text of ACTA, which aims to combat counterfeiting and copyright piracy;
- **Mexico.** The report notes that Mexico enacted a law, allowing authorities to self initiate (*ex officio*) criminal investigations into trademark counterfeiting and copyright piracy without the rights holder first filing a complaint;
- **Philippines.** The Philippines enacted a law to address clandestine camcording of movies in theaters;
- **Russia.** The report notes that Russia fulfilled its commitments under the 2006 Bilateral Agreement on Protection and Enforcement of Intellectual Property Rights by: (i) amending its civil code; (ii) enacting Federal Law on Customs Regulation, allowing for customs officials to have *ex officio* authority to investigate IPR infringement; (iii) amending Law on Activity Licensing, prohibiting the renewal of optical media production licenses; and (iv) amending Law on Circulation of Medicines, protecting undisclosed data used to obtain marketing approval; and
- **Spain.** The report notes that Spain enacted legislation to remove or block online access to infringing content, thus addressing copyright piracy on the internet.

The 2011 Special 301 commends **Argentina, Canada, Guatemala, Italy, Malaysia, Mexico** and **Pakistan** for fostering an “open and transparent” environment, thus “bringing about legislative or regulatory [IPR regime] change. Also, the report commends China and Russia for efforts made to combat counterfeit drugs.

IV. INITIATIVE FOR SPECIAL 301 ACTION PLANS

USTR, in accordance with the Obama Administration’s 2010 Joint Strategic Plan on IPR Enforcement and in coordination with the Intellectual Property Enforcement Coordinator (IPEC), has initiated an interagency process to establish such benchmarks as legislative, policy or regulatory action by which to measure progress on the part of US trading partners in the area of IPR protection and enforcement. Within the context of this process, USTR

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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

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invites any US trading partner appearing on the Special 301 PWL or WL to work with the United States in developing an action plan upon which both parties agree to improve that party's protection and enforcement of IPR. The report notes that, while working with the United States to develop and implement an IPR action plan does not guarantee a party's removal from the (P)WL, such cooperation has led to the removal from said lists of Russia, Taiwan and other US trading partners.

V. PWL COUNTRIES

We highlight USTR's assessment of the IPR regimes of several other countries placed on the 2011 Special 301 PWL.

- **China.** China remains on the PWL and subject to Section 306 monitoring. In this context, the United States' top priorities are China's IPR enforcement and fulfillment of its IPR-related WTO commitments. Concretely, the report cites concerns over: (i) online piracy, including that relating to the illegal downloading or streaming of IP-protected music or movies; (ii) counterfeiting issues, including those involving apparel and footwear, mobile phones, pharmaceuticals and medical equipment, herbal remedies, wine and liquor, chemicals, electronic components, IT equipment, software, batteries, cigarettes, cosmetics, appliances, cement, autos parts and copyrighted works; (iii) China's proposed treatment of patented technology in connection with the development process for domestic standards; and iv) "indigenous innovation" policies, including those relating to preference in government procurement or other such benefits derived from Chinese IP ownership or development.

The report does note, however, progress made on IPR-related issues in the context of the December 2010 Joint Commission on Commerce and Trade (JCCT), in which China committed to "not link its innovation policies to the provision of government procurement preferences." It remains unclear, however, whether China will entirely fulfill this commitment. USTR also awaits the conclusion and results of the "Program for Special Campaign on Combating IPR Infringement and Manufacture and Sales of Counterfeiting and Shoddy Commodities," which was launched by Premier Wen Jiabao in October 2010 and aims to curb: (i) online piracy; (ii) software piracy; and (iii) trademark infringement.

- **Russia.** Russia remains on the PWL due to ongoing concerns, particularly in regard to online piracy and IPR enforcement in general. Concretely, the report notes concern over (i) hard goods counterfeiting and piracy, in particular that of movies, television and entertainment software; (ii) storage of pirated goods on government-controlled sites; (iii) the alleged selective nature of raids; and (iv) the uncertainty surrounding the collection of royalties.

In addition to the progress detailed above, USTR commends Russia for reducing the incidence of piracy and counterfeiting in pharmaceuticals and optical discs.

- **Argentina.** Argentina remains on the PWL due to concerns over (i) widespread availability of pirated and counterfeited goods including books, pharmaceuticals and online content; (ii) an allegedly inefficient judicial system in regard to adjudicating criminal and civil IPR-related cases; and (iii) failure to impose adequate deterrence measures.

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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

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USTR does commend Argentina, however, on the Attorney General's issuance of new guidance on IPR-related crime, enhanced cooperation between stakeholders and law enforcement regarding raids and for addressing its backlog.

- **Canada.** Canada remains on the PWL due to concerns over its alleged failure to fulfill previous commitments to improve its legal framework for IPR protection and enforcement. Concretely, the report cites: (i) the unsuccessful effort to enact long-awaited copyright legislation; (ii) alleged lack of deterrence measures; (iii) lack of *ex officio* authority for customs officials to stop pirated and counterfeited goods at the border; (iv) concerns over the administrative process for reviewing the regulatory approval of pharmaceutical products; and (v) alleged limitations in the trademark regime.

The report does commend Canada on its efforts to cooperate with US authorities on IPR-related issues.

- **Chile.** Chile remains on the PWL due to ongoing concerns in regard to Chile having yet to: (i) accede to and ratify the International Convention for the Protection of New Varieties of Plants; (ii) implement an effective system to address patent issues expeditiously in connection with applications to market pharmaceutical products; (iii) implement measures against the circumvention of technological protection; (iv) implement measures protecting encrypted program-carrying satellite signals; (v) ensure that administrative and judicial procedures and deterrent remedies are made available to rights holders; (vi) provide protection for undisclosed data generated to obtain marketing approvals for pharmaceutical products; and (vii) amend its Internet service provider liability regime to permit effective action against any act of infringement of copyright and related rights.

The report commends Chile on: (i) launching a Ministerial-level interagency committee on IPR; (ii) implementing new copyright legislation; and (iii) ratifying the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellites (Brussels Convention) and the Trademark Law Treaty.

- **India.** India remains on the PWL in 2011 due to concerns over its inadequate legal framework and ineffective enforcement. Specifically, the report cites concerns over: (i) provisions in India's Patent Law that prohibit patents on certain chemical forms absent a showing of increased efficacy, which according to US industry, limits the patentability of such potentially beneficial innovations as temperature-stable forms of a drug or new means of drug delivery; and (ii) continued widespread availability of such pirated and counterfeited goods as optical disks and pharmaceuticals.

The report commends India, however, on the introduction of the Copyright Amendment Bill, which may assist in addressing some aspects of the widespread piracy of copyrighted material on the Internet, as well as on improved cooperation with law enforcement on IPR-related enforcement.

- **Indonesia.** Indonesia remains on the PWL due to ongoing concerns over insufficient enforcement efforts, particularly in regard to the widespread availability of counterfeit pharmaceutical products and other counterfeit hard goods. Specifically, the report cites: (i) problems within the judicial system; (ii) insufficient deterrence measures; (iii) lack of courts to impose said measures; (iv) lack of an effective system for protecting undisclosed data generated to obtain marketing approval for pharmaceutical and agricultural chemical products; and (v) market access barriers for IPR-intensive products.

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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

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However, the report commends Indonesia for: (i) continued enforcement efforts; (ii) enhanced cooperation with rights holders; and (iii) adopting helpful practices and policies with respect to cable piracy.

- **Israel.** Israel remains on the PWL due to ongoing concerns over: (i) reportedly weak laws to protect pharmaceutical test data and patent extensions; (ii) widespread online and software piracy; and (iii) weak infrastructure for payment of broadcast television royalties.

USTR commends Israel on signing an Understanding of IPR in February 2010 but notes that Israel has failed to enact legislation stemming from the Understanding.

- **Pakistan.** Pakistan remains on the PWL as a result of widespread copyright piracy (including piracy of software programs in enterprises and book piracy) as well as trademark counterfeiting. USTR encourages Pakistan to: (i) provide *ex officio* authority to Pakistani enforcement officials; (ii) provide for deterrent-level penalties for IPR violations; (iii) develop an effective system to protect against unfair commercial use/unauthorized disclosure of unreleased tests and other data generated to obtain marketing approval for pharmaceutical products; and (iv) develop an effective system to expeditiously resolve patent issues associated with applications to market pharmaceutical products.

The report also noted progress made by Pakistan in 2010, including improved cooperation between enforcement authorities and the copyright industry as well as more vigorous enforcement against book and optical disk piracy. Additionally USTR notes that, while Pakistan's copyright laws require reform, the United States has been encouraged by the Intellectual Property Office's endorsement of reform of the Copyright Ordinance in order to conform to international standards.

- **Thailand.** Thailand remains on the PWL for 2011 due to: (i) its failure to make substantial progress on several key pieces of pending legislation, including legislation aimed at addressing landlord liability, unauthorized camcording of motion pictures in theaters and legislation that would provide authority to Thai Customs officials to seize suspect goods without a formal complaint by a rights holder; (ii) its failure to enact amendments to the Copyright Act which would implement the WIPO Internet Treaties; and (iii) its failure to control piracy and counterfeiting in areas such as illegal downloading from the internet of pirated works and the theft of cable and satellite signals.

USTR commends Thailand's senior level officials of the Royal Thai Government for its demonstrated commitment to improving IPR protection and enforcement, including the implementation of the Creative Economy Initiative, which led to the announcement of public awareness and educational projects pertaining to IPR and also established a National Committee on Creative Economy. Also, the report highlights the formation of the Thai-US Creative Partnership which will address, among other things, intellectual property issues.

- **Venezuela.** Venezuela remains on the PWL due to its IPR protection and enforcement which has, as USTR states, "continued to deteriorate in 2010." The report notes Venezuela's withdrawal from the Andean Community in 2006, which was followed by its reinstatement of the 1955 Industrial Property Law. The reinstatement not only created uncertainty as to the status of protection for trademarks registered under the Andean Community law, but also, according to USTR, eliminated protections for certain formerly patentable

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

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

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inventions. Copyright piracy remains widespread according to the report, including piracy over the Internet as well as trademark counterfeiting.

The report indicates that Venezuela has passed the Law on Crime and Contraband in 2010, which provides for the seizure of IPR infringing goods as well as imposes penalties for smuggling violations. This includes providing an effective system to protect against unfair commercial use/unauthorized disclosure of unreleased tests and other data generated to obtain marketing approval for pharmaceutical products.

VI. WL COUNTRIES

We highlight USTR's assessment of the IPR regimes of several other countries placed on the 2011 Special 301 WL.

- **Brazil.** Brazil remains on the WL for 2011 as a result of USTR concerns of persistent piracy and counterfeiting at "significant levels," including book and Internet piracy. While the report acknowledges improvement in enforcement efforts such as increased raids and seizures, USTR notes that stronger enforcement is needed at the border and deterrent level sentences are necessary. USTR calls for Brazil to ensure that any amendment made to its copyright laws provide for strong protections and establish means to enable effective enforcement aimed at IPR violations committed on the Internet. The report also encourages Brazil to develop an effective system to protect against unfair commercial use/unauthorized disclosure of unreleased tests and other data generated to obtain marketing approval for pharmaceutical products.

USTR commends Brazil for "recent improvements" made to its IPR protection and enforcement, including a recent opinion from the Federal Attorney General indicating that the Brazilian sanitary regulatory agency, ANVISA, lacks the authority to review patentability requirements when analyzing pharmaceutical patent applications and that the only administrative agency possessing authority to decide questions of patentability with respect to patent applications is the National Industrial Property Institute (INPI). The report cited an increase in enforcement action as an encouraging step, which included "several major operations" in the beginning of 2011.

- **Colombia.** Colombia remains on the WL due to a lack of additional resources and training pertaining to enforcement efforts as well as continued concerns over optical disc piracy. USTR encourages Colombia to not only develop an effective system to expeditiously address patent issues pertaining to applications to market pharmaceutical products, but to also develop a mechanism to improve enforcement against Internet piracy.

USTR commends Colombia for including IPR protection in its National Development Plan and notes that the country has hired additional examiners and digitized its patent database in order to address its patent backlog. The report indicates that Colombia continued to combat IPR infringement through enforcement actions and has not only improved the coordination among IPR enforcement agencies, but has also improved the cooperation of such agencies with rights holder organizations.

- **Egypt.** Egypt remains on the WL in 2011 due to ineffective IPR protection and enforcement including inadequate enforcement efforts and failure to provide additional training for judges presiding over IPR matters.

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

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

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The USTR calls for Egypt to clarify its commitment to protect against unfair commercial use/unauthorized disclosure of unreleased tests and other data generated to obtain marketing approval for pharmaceutical products, as well as Egypt's need to develop an effective system to expeditiously address patent issues pertaining to applications to market pharmaceutical products.

The report indicates that Egypt has made progress towards improving its IPR regime in 2010 and highlights the establishment of the National Observatory for Industry Products, which is an organization that inspects foods for patent and trademark infringement, and also highlights various campaigns conducted in order to raise public awareness of counterfeit pharmaceutical products.

- **Kuwait.** Kuwait remains on the WL in 2011 as a result of: (i) stifled enforcement efforts due to a lack of coordination among different agencies; (ii) Kuwait's judiciary failing to impose deterrent penalties against IPR violators; and (iii) the failure to pass key pieces of draft IPR legislation.

The report notes that while efforts have been hampered for various reasons, Kuwait continues to make progress on enforcement against piracy and counterfeiting.

- **Malaysia.** Malaysia remains on the WL due to: (i) lack of follow-up investigations and effective prosecutions; (ii) widespread availability in Malaysia of pirated and counterfeit products; (iii) continued book and Internet piracy; (iv) lack of an effective system to expeditiously address patent issues pertaining to applications for marketing of pharmaceutical products; and (v) lack of addressing the issue of protection against unfair commercial use/unauthorized disclosure of unreleased tests and other data generated to obtain marketing approval for pharmaceutical products.

USTR notes Malaysia's positive progress pertaining to IPR protection and enforcement in 2010 and cites: (i) Malaysia's introduction of amendments to its copyright law intended to, among other things, implement the WIPO Internet Treaties and prohibit unauthorized camcording of motion pictures in theaters; (ii) the Ministry of Domestic Trade, Cooperatives and Consumerism's (MDTCC) offering of more cooperation with rights holders on IPR enforcement matters; (iii) MDTCC's instruction to its enforcement division to commence taking *ex officio* action in 2010, which resulted in "significant" seizures of pirated products; and (iv) Malaysia's establishment of specialized IPR courts as well as its IPR training provided to prosecutors.

- **Mexico.** Mexico remains on the WL in 2011 as a result of high rates of piracy and counterfeiting as well as weak enforcement-related coordination at the federal, state and municipal levels. Additionally, USTR recommends that Mexico: (i) enact legislation to bolster its copyright regime, including by implementing the WIPO Internet Treaties and also by providing stronger protection measures against unauthorized camcording of motion pictures in theaters; (ii) develop protection against unfair commercial use/unauthorized disclosure of unreleased tests and other data generated to obtain marketing approval for pharmaceutical products; (iii) clarify its system for addressing allegations pertaining to patent infringement during the pendency of a related application for marketing approval of a pharmaceutical product; (iv) provide its Customs officials with *ex officio* authority; (v) prosecute all IPR violations in a uniform, consistent manner; and (vi) increase the resources devoted to prosecuting IPR violations and to improve border enforcement efforts.

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slincicome@whitecase.com

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

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USTR commends Mexico for its progress in IPR enforcement efforts in 2010 and noted Mexico's "record number of convictions" for IPR violations, which included its first conviction for unauthorized camcording of motion pictures in theaters. Further indicating positive trends, the report cites Mexico's enactment of legislation which granted *ex officio* authority to Mexico's law enforcement officials as well the increase in the number of prosecutions and deterrent-level sentences.

- **Peru.** Peru remains on the WL in 2011 as a result of: (i) the need for additional resources to expand enforcement efforts; (ii) the need to improve its judicial system and border controls; (iii) the need for an increase in efforts to prevent the government's use of unlicensed software in accordance with the United States-Peru Trade Promotion Agreement; and (iv) US concerns relating to recent developments in the protection of patents in Peru. USTR also encourages Peru to clarify the protection it affords to biotechnologically-derived pharmaceutical products.

The report notes progress Peru has made in its IPR enforcement efforts by implementing its National Strategic Plan to combat piracy and counterfeiting as well as actions taken by Peru's tax authority and intellectual property office, which led to significant raids and seizures at ports and some of the largest, most well-known markets in Peru. The report also indicates Peru's improvement in its system for protecting unreleased tests or other data submitted to obtain marketing approval for agricultural chemical products.

- **Vietnam.** Vietnam remains on the WL in 2011 because of: (i) high levels of copyright piracy; (ii) increasing levels of Internet piracy; (iii) cable signal and satellite piracy; (iv) general availability of counterfeit goods in the marketplace; and (v) the need to streamline enforcement efforts and to improve coordination among enforcement authorities. USTR encourages Vietnam to: (i) do more to ensure full implementation of its IP Law; (ii) impose more deterrent-level sentences in appropriate cases and initiate more criminal prosecutions; and (iii) clarify its system for protecting against unfair commercial use/unauthorized disclosure of unreleased tests and other data generated to obtain marketing approval for pharmaceutical products.

The report indicates that Vietnam has made positive progress in 2010 by: (i) implementing important amendments to its IP Law; (ii) clarifying certain administrative procedures; and (iii) establishing an investigative IPR protection task force to focus efforts on protecting IPRs at the border.

Outlook

With the exception of a few elements, the 2011 Special 301 Report was largely similar to the 2010 Special 301 Report. In regard to the report's composition, the US trading partners appearing on the 2010 PWL and WL, for the most part, appeared again on the same respective list. The exceptions to this are Israel, which appeared in the 2010 report as "status pending" but was included on the PWL in the 2011 report, and Lebanon, which was included in the WL in the 2010 report but was not included on said list in the 2011 report. China and Russia continue to top the list of countries that, according to USTR, require strengthened IPR regimes. Similar to previous years' reports, USTR's 2011 assessment of China's IPR regime continues to be the longest and the most comprehensive, and USTR's assessment of Russia was also more comprehensive than the assessments of the other US trading partners on the PWL and WL. With respect to content, the 2011 report closely mirrored that of 2010 in that it again focused on US trading partners' IPR protection and enforcement regimes in regard to the piracy and counterfeiting of hard goods, online piracy, domestic law or regulations that force IP transfer, IP in the

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slincicome@whitecase.com

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

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context of government procurement, IP in the context of public health and compliance with international standards and multilateral IP-related agreements.

New to the 2011 Special 301 Report is the section on the Initiative for Special 301 Action Plans, which initiates an interagency process to establish such benchmarks as legislative, policy or regulatory action by which to measure progress on the part of US trading partners in the area of IPR protection and enforcement in accordance with the Obama Administration's 2010 Joint Strategic Plan on IPR Enforcement and in coordination with the Intellectual Property Enforcement Coordinator (IPEC). While USTR posits that the Initiative for Special 301 Action Plans is a manner in which the United States can assist its trading partners to bolster their respective IPR regimes and, in doing so, foster a domestic creative economy, experts opine that it approximates an encroachment on sovereign powers of the US trading partner in that USTR would be actively involved in the design of that trading partner's bolstered IPR regime and would then effectively condition the trading partner's removal from the PWL or WL on the implementation of domestic IPR-related regulations or laws. Also new to the 2011 report is a section titled "Best Practices by Trading Partners – IPR Enforcement," which, as called for under the Obama Administration's Joint Strategic Plan on IPR Enforcement, highlights best IPR enforcement practices of US trading partners. USTR highlights openness and transparency in regard to regulatory or legal changes, interagency or interdepartmental cooperation on IPR, and capacity building efforts and training. The Best Practices by Trading Partners – IPR Enforcement section is consistent with the country-specific language found in the 2011 report in that, where USTR cites improvement in a country's IPR regime, it is largely in regard to these three best practices cited.

US and China Hold Third Strategic & Economic Dialogue

Summary

From May 9-10, 2011, US and Chinese officials met in Washington, DC for the third Strategic and Economic Dialogue (S&ED). The two parties reaffirmed the commitments made during President Hu Jintao's state visit to the United States in January 2011 and previous S&EDs and held discussions on promoting strong, sustainable and balanced growth, strengthening financial systems and improving financial supervision, and enhancing trade and investment cooperation.

Analysis

US Secretary of the Treasury Timothy Geithner and Chinese Vice Premier Wang Qishan chaired the Economic Track of the S&ED but were accompanied by a high-level delegation of cabinet members, agency heads and senior officials from both countries. The two parties reaffirmed the commitments made during President Hu Jintao's state visit to the United States in January 2011 and previous S&EDs. Fulfilling one of the commitments made during President Hu's visit, the two parties released a document titled "Comprehensive Framework for Promoting Strong, Sustainable and Balanced Growth and Economic Cooperation," ("the Framework") which details the underlying principles upon which the United States and China will deepen economic cooperation, develop a more balanced trade and investment relationship, deepen cooperation in the financial sector and strengthen regional international economic cooperation. Consistent with the Framework, the two parties held

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slincicome@whitecase.com

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

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discussions in three principle areas: (i) promoting strong, sustainable and balanced growth; (ii) strengthening financial systems and improving financial supervision; and (iii) enhancing trade and investment cooperation.

I. PROMOTING STRONG, SUSTAINABLE AND BALANCED GROWTH

In light of the understood causes of, the remedial measures taken during and the ongoing recovery from the global economic downturn, the two parties reaffirmed their commitment to enhance macroeconomic cooperation in order to ensure that the recovery is strong, foster healthy job growth and provide for a strong, sustainable and balanced growth. The concrete areas of discussion are as follow:

- **Domestic demand and sustainability.** China committed to taking steps to increase domestic demand by increasing the household buying power. The United States committed to increasing domestic savings and exports and improving fiscal sustainability. Both sides agreed to promote information exchange at city and firm level and cooperation on energy conservation and environmental protection technology, industrial energy efficiency and infrastructure construction;
- **Service sector.** China committed to increasing the service sector's share of the Chinese economy by four percentage points by 2016;
- **Investment.** China committed to further opening its service sector to US providers and to foster capital investment in services by both public and private firms. The United States committed to increasing investment in innovation, infrastructure, and education;
- **Exchange rate.** China acknowledged the importance of appreciation of the renmimbi (RMB) in order to combat inflationary pressure, and committed to promoting greater exchange rate flexibility. The United States committed to adjusting its monetary policy to promote economic sustainability and price stability, and remain vigilant against violent fluctuation of exchange rates; and
- **RMB internationalization.** China committed to taking steps to promote more open capital flows into and out of China in order to further internationalize the RMB and make it a commonly traded currency.

II. STRENGTHENING FINANCIAL SYSTEMS AND IMPROVING FINANCIAL SUPERVISION

The two parties reiterated their commitment to expanding bilateral and multilateral cooperation on financial sector investment and regulation, with an aim to improve global sector regulation, institute close international coordination to prevent future crises and ensure equal treatment for foreign investors in the financial services and banking sector. The concrete areas of discussion are as follow:

- **Financial system reform.** Both sides committed to pushing forward the financial system reform by following the steps laid out by international standard setting institutions, continuing to improve their regulatory and supervision, enhancing compensation policy reform, strengthening information sharing on financial regulatory reform, and ensuring the financial system reform is carried out in a fair and non-discriminatory way. The United States committed to continuing its current efforts to reform its financial system after the passage of

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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

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Dodd-Frank Act and China committed to allowing US financial services firms further liberty to operate in China in order to provide more efficient service, control risk and promote innovation in the sector;

- **Investment in financial sectors.** The United States expressed openness to foreign investment in sectors including the financial sector, and committed to affording equal treatment to Chinese banks, securities, and fund management companies;
- **Wealth management.** China committed to allowing US banks incorporated in China to sell mutual funds, obtain licenses to act as mutual fund custodians and act as Margin Depository Banks in Qualified Foreign Institutional Investor (QFII) futures transactions;
- **Third-party liability insurance.** China committed to moving toward allowing US insurance companies to sell mandatory third-party liability auto insurance, but the process will be time-consuming since China has pervasive and long-standing market access restrictions and discriminatory regulatory practices;
- **Bond market.** China committed to moving toward allowing foreign banks to underwrite corporate bonds in the interbank bond market;
- **QFII.** China committed to making progress toward increasing the total quotas under QFII, which allows foreign investors to invest in Chinese stocks and bonds;
- **Market-priced risk.** China committed to moving toward allowing the market to determine interest rates in order to better price risk and more efficiently allocate capital; and
 - **Illicit financing threats.** China committed to strengthening its financial system to combat money laundering, counterfeiting, terrorism financing and the proliferation of weapons of mass destruction.

III. ENHANCING TRADE AND INVESTMENT COOPERATION

The two parties acknowledged the importance of open trade and investment in promoting economic growth, job creation, innovation and prosperity and thus reiterated their commitment to making progress toward liberalizing global trade and investment. Furthermore, the two parties reaffirmed their commitment to address irritants to bilateral trade and investment in a constructive, cooperative and mutually beneficial manner. The concrete areas of discussion are as follow:

- **IPR protection and enforcement.** China committed to improving its IPR protection and enforcement mechanism through the Special Campaign against IPR Infringement and Fake and Shoddy Products;
- **Software legalization.** China committed to ensuring that software used by all levels of government agencies is legitimate;
- **Export Controls.** The United States committed to considering China's request for fair treatment in the context of its export control system reform, and to continuing to engage in discussion on export control status of certain parts, components, and other items. Both sides agreed to implement the Action Plan for US-China

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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

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High Technology Trade in Key Sectors Cooperation, hold high-tech fora and other forms of information exchange to enhance cooperation on high-tech and strategic trade through the US-China High Technology Working Group;

- **Indigenous Innovation.** China committed to eliminating its government procurement indigenous innovation product catalogues and, also, to revise Article 9 of the draft Government Procurement Law Implementing Regulations, which is consistent with a January 2011 commitment President Hu made to de-link Chinese innovation policies from government procurement preferences;
- **China's Market Economy Status.** The United States agreed to consider recognizing China's Market Economy Status through the Joint Commission on Commerce and Trade (JCCT) in a cooperative, expeditious and comprehensive way, and committed to consider in good faith Chinese enterprises' claims of being "market-oriented industry" in US antidumping proceedings;
- **SOEs.** In regard to access to credit and factors of production, tax treatment and regulatory applicability, the two parties discussed equal treatment for state-owned, -controlled or -invested enterprises (SOEs), private enterprises and foreign enterprises;
- **Export financing.** The two parties emphasized the need for transparency and fairness in affording export credits, and agreed to further discuss alternative export financing arrangements;
- **Notice and comment.** China committed to implementing a requirement that all trade- and economic-related proposed regulations and rules be published on the State Council Legislative Affairs Office website, and to allow a comment period of no less than 30 days; and
- **Others.** Both sides agreed to enhance exchanges in the areas of export credit system, laws and regulations, rules of origin, and aircraft airworthiness certification in order to promote mutual acceptance of civil transport category airplanes.

IV. REACTION

The third S&ED was generally viewed by congressional, industry and trade observers as a positive step forward for US-China relations, although not all reactions from observers were supportive. Reaction can be summarized as follows:

- **Rep. Gary Miller (R-CA).** Chairman of the House Financial Services Subcommittee on International Monetary Policy and Trade Rep. Miller noted that he was "pleased" that the two countries "have come together once again to discuss issues of mutual importance to our countries and the global economy." Rep. Miller stated that the United States and China have the most important bilateral economic relationship in the world and expressed his interest in continued progress in helping China to modernize its financial system as well as to develop an economy that is more dependent on its own consumption as opposed to exports;
- **US Chamber of Commerce.** The Chamber noted its support for the results of the S&ED and welcomed China's commitments which "have the potential to bolster the confidence of American investors and exporters

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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

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in the on-the-ground business environment and the approach of the Chinese policymakers to foreign companies.” In particular, the Chamber expressed its satisfaction with China’s commitments to de-link indigenous innovations policies from government procurement at all levels of government, to build on continued efforts to curb online piracy and counterfeiting and to enforce in a non-discriminatory manner its anti-monopoly law. The “importance of timely implementation” was also noted by the Chamber;

- **US-China Business Council (USCBC).** USCBC welcomed the “commercial-related outcomes” of the third S&ED and indicated its satisfaction with the dialogues discussions on China’s need to follow international rules surrounding the provisions of financial support for its exports as well as the S&ED’s focus on eliminating unfair advantages by state-owned companies. USCBC noted that “[n]ot every problem got resolved, but once again, steady and focused engagement with China proves to show results”;
- **American Iron and Steel Institute (AISI).** AISI expressed support for the Obama Administration’s approach to resolving outstanding issues with China at the S&ED. In particular, AISI noted the need to continue to call upon China to “open up its markets to US exports and put an end to its industrial policies that discriminate against US and other countries’ products both in China and in third country markets.” AISI stated that United States should continue to engage China on abandoning its protectionist policies;
- **Alliance for American Manufacturing (AAM).** AAM expressed its dissatisfaction with the third S&ED in noting that China “accomplished its main objective of the talks: to avoid any consequences for its harmful, mercantilist economic policies.” A lack of understanding of the consequences China will face if it does not honor international standards on various issues, as well as the joint fact sheets’ lack of objective criteria are cited by AAM as reasons for its disapproval of the dialogue. AAM called for a firm stance with China as opposed to the current tactic surrounding outstanding issues which AAM claims has been to raise issues “politely and then to move on”;
- **China Institutes of Contemporary International Relations (CICIR).** CICIR opines that the third round of S&ED has grown into constructive mature dialogue from the tentative communication in the first round and the mutual “blame” in the second round. The Framework signed during this round provides clear principles and guidelines for expanding bilateral trade and avoiding trade-related frictions, which shows that both sides are more candid and reasonable in regard to trade disputes. The third round is also the first time that Chinese high-level military members attended the S&ED, which will also help enhance mutual trust between China and the United States and reduce possible confrontation in Asia-Pacific regions;
- **Chinese Academy of Social Sciences (CASS).** CASS viewed the third S&ED as more specific and fruitful than last two rounds. CASS opined that this round deepened bilateral economic relations and provided a roadmap for moving forward on the same, and stabilized bilateral non-economic relations by launching the strategic security dialogue; and
- **Academy of Macroeconomy Research.** The Academy commented that S&ED helped enhance communication and reduce misunderstanding, which is vital for two countries with different political systems and levels of development. According to the Academy, the Framework is constructive and positive, listing demands of both sides, which shows that both sides recognize that the other’s economic prosperity and developmental needs are indispensable.

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

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

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Outlook

Both China and the United States considered the third round of S&ED as positive. For China, the United States' continued commitment on export control reform and work toward the recognition of China's market economy status ranked high on its list of top priorities. For the United States, it is a positive step that China agreed to adjust the exchange rate of RMB and de-link the indigenous innovation policies from government procurement practices. However, the Chinese government has yet to provide a clear timetable for said adjustment and de-linking. According to Chinese Vice Minister of Finance Zhu Guangyao, China would adjust the exchange rate at its own pace, which means there would not be a drastic increase in the exchange rate in the short-term. Although uncertainties remain, the S&ED still plays an important role in strengthening mutual trust and communication between China and the United States. Although other specific trade issues may not be resolved as a direct result of this third round of the S&ED, analysts expect that the JCCT, as the main forum for addressing bilateral trade matters and promoting commercial opportunities between the United States and China, may provide impetus for more substantive movement on specific trade issues. The next round of S&ED is scheduled to take place in China in 2012.

APEC Trade Ministers Meet in Big Sky, United States

Summary

From May 19-20, 2011, trade ministers from Asia-Pacific Economic Cooperation (APEC) countries met in Big Sky (Montana) to discuss regional economic cooperation and World Trade Organization (WTO) issues, including the Doha Development Round ("Doha") and Russian accession to the WTO. Current members of the Trans-Pacific Partnership (TPP) met on the sidelines of the APEC talks to discuss the Agreement's ongoing negotiations.

Analysis

Trade ministers from APEC countries met in Big Sky (Montana) from May 19-20, 2011, under the chairmanship of US Trade Representative (USTR) Ron Kirk, to discuss the progress and next steps for regional economic cooperation. Pursuant to APEC's central mission of promoting free and open trade and investment in order to provide for economic growth, employment and prosperity across the region, the ministers' discussions focused on three priority areas: (i) strengthening regional economic integration and expanding trade; (ii) promoting green growth; and (iii) advancing regulatory convergence and cooperation. Additionally, the current members of TPP met on the sidelines of the APEC talks to take stock of progress made in the context of the ongoing negotiations and consider the path forward toward reaching a final agreement. Several trade ministers, including USTR Kirk, commented on the status of Doha and Russian accession to the WTO. We detail these developments below:

I. STRENGTHENING REGIONAL ECONOMIC INTEGRATION AND EXPANDING FREE TRADE

The concrete areas of discussion are as follow:

- **Free Trade Area of the Asia-Pacific (FTAAP).** As a precursor to defining, shaping and addressing the trade and investment issues that an FTAAP should contain, the ministers identified several areas to be addressed in 2011 through substantive and specific outcomes: (i) facilitating global supply chains; (ii) enhancing small-

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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

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and medium-sized enterprise participation in global supply chains; and (iii) promoting effective, non-discriminatory and market-driven innovation policies.

- **Bogor goals.** The ministers directed their respective officials to finalize by November 2011 a more robust process by which to measure APEC economies' progress toward meeting the Bogor Goals¹ of free and open trade and investment.
- **Supply chain efficiency.** The ministers instructed their respective officials to implement the APEC Supply-Chain Connectivity Framework Action Plan by November 2011, and to: (i) identify ways to simplify customs procedures; (ii) increase efficiency of customs clearance and release processes; (iii) complete and implement the APEC Authorized Economic Operator (AEO) Best Practices Guidelines document; (iv) take steps to enhance the competitiveness of local and regional logistics subproviders; and (v) develop practical guidelines for customs officials of APEC countries to combat IPR infringement.
- **APEC New Strategy for Structural Reform (ANNSR).** The ministers directed their respective officials to foster more balanced, inclusive and sustainable growth by implementing, through capacity building and technical assistance, the ANNSR.²
- **Food security.** The ministers committed to fully implement the Niigata Declaration on APEC Food Security and its Action Plan, and reiterated their rejection of WTO-inconsistent export restrictions on food stuffs.
- **Food safety.** The ministers agreed to promote and adopt transparent and science-based regulatory approaches to food safety that are consistent with international obligations, including: (i) reducing unnecessary requirement in official food export certificates, particularly those not science-based; (ii) harmonizing maximum pesticide residue limits with international standards; (iii) developing and utilizing a risk-based management protocols in regard to food safety incidents; (iv) enhancing cooperation and coordination among APEC members in the area of food safety; and (v) improving food safety through better laboratory testing capabilities.

II. PROMOTING GREEN GROWTH

The concrete areas of discussion are as follow:

- **Environmental Goods and Services (EGS).** The ministers agreed to take steps to reduce unnecessary trade and investment barriers to EGSs in order to lower the cost of and increase citizen access to the same. In this regard, the Ministers instructed their respective officials to develop a work plan by November 2011.

¹ APEC Leaders agreed to the Bogor Goals in the 1994 Bogor Declaration, which was to establish common goals of free and open trade and investment by 2010 for industrialized economies and 2020 for developing economies. They agreed to pursue these targets by reducing trade and investment barriers to promote free flow of goods, services and capital among APEC economies.

² The ANNSR set forth priority areas for structural reform, such as promoting quality education, increasing labor market opportunities, promoting SME development, enhancing opportunities for the vulnerable, promoting effective social safety net programs and financial market development and improving market efficiencies.

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slincicome@whitecase.com

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

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- **Green vehicles and technologies.** The ministers agreed to identify by November 2011 ways in which to streamline procedures and regulations relating to the temporary importation of alternatively-fueled demonstration vehicles.
- **Illegal logging.** The ministers instructed their respective officials to establish a working group on promoting trade in legally-harvested forest products.
- **Remanufacturing.** The ministers instructed their respective officials to take steps by November 2011 to facilitate trade in remanufactured (refurbished) goods in order to use less energy, materials and water.
- **Fossil fuel subsidies.** The ministers instructed their respective officials to establish a robust work plan on rationalizing and phasing out inefficient fossil fuel subsidies that encourage wasteful consumption.

III. ADVANCING REGULATORY CONVERGENCE AND COOPERATION

The concrete areas of discussion are as follow:

- **Regulatory effectiveness and efficiency.** The ministers instructed their respective officials to identify by November 2011 ways in which to improve: (i) internal coordination of rulemaking activity; (ii) regulatory impact assessment; and (iii) public consultation mechanisms.
- **Regulatory Cooperation Plan (RCP).** The ministers instructed their respective officials to develop a draft APEC RCP by November 2011 in order to ensure that the members' regulatory cooperation efforts are effective and that resources are used efficiently.
- **Emerging Technologies.** The ministers instructed their respective officials to develop by November 2011 recommendations to be taken under consideration by APEC countries as to how to eliminate or prevent technical barriers to trade in regard to standards and conformance requirements relating to emerging technologies.
- **Medical products and chemicals.** The ministers committed to taking steps toward regulatory convergence and cooperation with respect to trade in medical products and chemicals.

IV. TRANS-PACIFIC PARTNERSHIP

The ministers from current TPP negotiating countries met on the sidelines of the APEC on May 19, 2011 to discuss the progress made over the six completed rounds and the prospects for TPP becoming a pathway toward FTAAP. The ministers noted the following progress made and challenges ahead:

- **Legal texts.** More than 20 negotiating teams have consolidated texts reflecting the members' positions in almost all areas to be covered by TPP and the members continue to negotiate these texts. The negotiating teams have made substantive progress with respect to market access in the areas of industrial goods, agriculture, textiles, services, investment and government procurement.

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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

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- **Cross-cutting issues.** The TPP members have proposed creative approaches to promoting cooperation on regulatory issues, facilitating business and strengthening regional supply and production chains, fostering the participation in the Agreement of small- and medium-sized enterprises and supporting development.
- **New entrants.** Members agreed to continue to work bilaterally with countries interested in acceding to TPP and to consider the membership of APEC members if and when they are ready to meet the high standards of the agreement.
- **Goal for November 2011.** The ministers expressed their goal of reaching the broad, framework agreement over the three remaining rounds before the November 2011 APEC Summit in Honolulu, Hawaii.

V. DOHA AND RUSSIAN ACCESSION TO WTO

With the WTO Director General in attendance, USTR Kirk shared remarks with the APEC plenary on the state of the Doha round, pointing out that the negotiations “are not in good shape.” USTR Kirk expressed US disappointment at the members’ failure to progress on Doha since the November 2010 APEC talks in Yokohama, Japan where WTO members renewed their commitment to the Round. He further noted that the United States now has a clearer idea of how large the gaps are with respect to the core question of market access ambition in the areas of industrial goods, services and agriculture. USTR Kirk concluded by putting forth three possible paths forward: (i) continue to push forward with Doha using the same negotiating positions; (ii) pursue an alternative to Doha; or (iii) “give up.” While he warned against (iii), USTR Kirk did not communicate to the APEC plenary whether the United States now will pursue (i) or (ii).

The APEC ministers also issued a joint statement on Doha, titled “Statement on the WTO Doha Development Agenda Negotiations and Resisting Protectionism.” In the statement, the ministers reaffirmed their belief in the primacy of the multilateral, rules-based trading system, lamented the difficulties confronting the Doha round and urged all WTO members to explore options for moving beyond the current impasse. The ministers also express in the statement support for finalizing Russia’s accession to the WTO in 2011.

Outlook

While the commitments made during the May 19-20 APEC talks suggest that APEC remains faithful to its central mission of promoting free and open trade and investment to provide for economic growth, employment and prosperity across the Asia-Pacific region, experts opine that most of these commitments are vague and/or it is unclear when they will come to fruition.

Creating an FTAAP, for example, continues to be a long-term goal of APEC although member countries have not yet provided specific details as to how a finished TPP would interplay with FTAAP plans of a larger scope. Some experts note that uncertainties surrounding TPP-FTAAP interplay are particularly relevant and should be addressed in the near-term as many of the horizontal, cross-cutting issues currently being negotiated in the context of the TPP are also issues on which participants in these past APEC talks made commitments, such as cooperation on regulatory issues, business facilitation, regional supply and production chains, and small- and medium-sized enterprise participation. Although USTR Kirk has expressed that the United States now sees the TPP as a “stepping stone” toward an eventual FTAAP, it cannot be ruled out that such APEC members as China,

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

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

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Russia, Canada and Mexico, who are not negotiating members of TPP, could disagree with the TPP being touted as the precursor to the FTAAP.

US General Trade Policy Highlights

Lawmakers Introduce Bill Requiring US Steel Be Used for Public Works

On May 3, 2011, Rep. Tim Murphy (R-PA) and Rep. Pete Visclosky (D-IN) introduced the American Steel First Act (HR 1703) in the House of Representatives. If enacted, HR 1703 would require “covered federal agencies” to use iron and steel produced in the United States in carrying out projects for the construction, alteration or repair of a public building or public work, among other things. Under HR 1703, “covered federal agencies” include the Departments of Transportation, Defense and Homeland Security, and the terms “public building” and “public work” include airports, bridges, canals, dams, dikes, pipelines, railroads, multiline mass transit systems, roads, tunnels, harbors, and piers.

Exceptions to the US iron and steel requirement comprise: (i) when the requirement does not serve the US public interest; (ii) when the iron and/or steel needed for the project are (is) not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (iii) when the use of iron and/or steel produced in the United States will increase the cost of the overall project contract by more than 25 percent. In order for such an exception to be granted, the head of the relevant federal agency must publish in the Federal Register (FR) a detailed written justification as to why the exception is needed as well as provide the public with a reasonable period of time for notice and comment.

In a press release issued after HR 1703’s introduction, Rep. Murphy stated that “[US] taxpayer dollars should be used to buy products made in America by Americans [and] should not be sent overseas to buy inferior steel from China for rebuilding [US] bridges and protecting [US] troops.” Rep. Murphy and Rep. Visclosky are Chairman and Vice-Chairman of the congressional Steel Caucus, respectively. The Caucus is a bloc of legislators from districts with a steel industry presence who are interested in the welfare of the US steel industry.

HR 1703 has been referred to the House Committees on Transportation and Infrastructure, Homeland Security, and Armed Services where there has been no further movement on the bill. While it is possible that HR 1703 may enjoy broad support among the constituencies represented by the congressional Steel Caucus, experts opine that the bill will not likely garner the support needed to reach a House vote given that Republicans, who are generally averse to such so-called “make it in America” measures, control the majority of the House.

Senator Richard Burr Joins Senate Finance Committee

On May 11, 2011, Sen. Richard Burr (R-NC) announced that he will occupy the Senate Finance Committee seat vacated by Sen. John Ensign (R-NV) who resigned from the Senate on May 3, 2011. Sen. Burr will leave his post on the Senate Energy and Natural Resources Committee in order to occupy the Senate Finance Committee position.

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

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

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Senate Minority Leader Sen. Mitch McConnell (R-KY), to whom decisions on Republican Senate committee appointments correspond, appointed Sen. Burr to the Senate Finance Committee post after passing over Sen. Jim DeMint (R-SC), who was next in line in seniority to occupy the post. (If there is only one post open on a committee, seniority ranking need not be followed according to Republican rules on committee appointments.)

Senator Burr has a mixed record on trade. Since his election to the Senate in 2004, Sen. Burr has voted on 10 out of 14 occasions to eliminate trade barriers, including in favor of the US-Peru Free Trade Agreement (FTA) in 2009, against a ban on Mexican trucks in 2007 and against 100 percent scanning of containers at port (2006). In 2005, however, he voted in favor of tabling sanctions against China over concerns about the allegedly undervalued renminbi (RMB), and, in the same year, voted to uphold the Byrd Amendment, which provides for the distribution of antidumping duties collected by the US government to the domestic companies that filed the original antidumping petitions, and had been repeatedly ruled WTO-inconsistent by the WTO Appellate Body. Furthermore, Sen. Burr has voted on 2 out of 4 occasions to eliminate domestic subsidies.

Democratic Senator from Wisconsin Announces Retirement

On May 13, 2011, Sen. Herb Kohl (D-WI) announced in Milwaukee that he will not seek re-election in 2012. Sen. Kohl, who currently serves on the Senate Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies and the Senate Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies, is the sixth Democratic Senator to announce retirement in advance of the 2012 election. The Democratic Senatorial Campaign Committee does not expect any other Democratic Senators to retire before the 2012 election.³ Two Republican Senators have also ruled out running for re-election in 2012.⁴

Sen. Kohl has a mixed record on trade. Since his election to the Senate in 1988, he has voted to eliminate trade barriers on 22 out of 51 occasions; he has voted to oppose domestic subsidies on 4 of 14 occasions. Experts opine that former Senator Russ Feingold, Rep. Tammy Baldwin (D-WI) and Rep. Paul Ryan (R-WI) are the most likely candidates to run for Sen. Kohl's seat. Former Sen. Feingold has a weak record on supporting free trade. During his 18-year Senate tenure, from 1992 to 2010, Sen. Feingold voted to eliminate trade barriers on 8 out of 52 occasions and voted in opposition of domestic subsidies on 7 out of 14 occasions. Rep. Baldwin also has a weak record on supporting free trade. Since her election to Congress in 1998, she has voted to remove trade barriers on 18 out of 53 occasions and voted to remove domestic subsidies on 12 out of 22 occasions. Both Sen. Feingold and Rep. Baldwin voted against Trade Promotion Authority (TPA) as well as against free trade agreements (FTAs) with Peru, Oman, Morocco, Australia, Chile, and Singapore. Sen. Feingold also voted against NAFTA. Rep. Paul Ryan (R-WI) is viewed as the most likely Republican candidate to run for Kohl's Senate seat in 2012. Rep. Ryan has a generally strong record on supporting free trade. Since his election to the House in 1998, he has voted to remove trade barriers on 43 out of 52 occasions although he has voted against domestic subsidies on only 11 out of 22 occasions.

³ The other retiring Democrat Senators are Daniel Akaka (D-HI), Jeff Bingaman (D-NM), Kent Conrad (D-ND), Joe Lieberman (I-CT), and Jim Webb (D-VA).

⁴ The retiring Republican Senators are Kay Bailey Hutchison (R-TX) and John Kyl (R-AZ).

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

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

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Obama Administration Nominates Energy Company Executive to Head Department of Commerce

On May 31, 2011, The Obama Administration released a statement, announcing President Obama's intention to nominate John Bryson to replace Gary Locke as Department of Commerce Secretary. Gary Locke is the Obama Administration's nominee to become US Ambassador to China.

According to the statement, John Bryson "will continue the [DOC's] mission to drive US competitiveness in the global marketplace, strengthen the international economic position of the United States and [open] new markets for US goods and services." With regard to opening new markets, the statement states that John Bryson "will continue the ongoing effort to meet the President's goal of doubling America's exports [by 2014] to support millions of American jobs."

From 1990 to 2008, John Bryson was the Chairman and Chief Executive Officer (CEO) of Edison International, the parent company of California's largest electric utility. He remains a Director of the Boeing company and the Walt Disney Company, Chairman of the Board of BrightSource Energy, a renewable energy company, and occupies other executive advisory positions within several profit and non-profit organizations, including Deutsche Bank Americas, the Public Policy Institute of California, the Pacific Council on International Policy and the California Institute of Technology.

Experts note that the nomination to Commerce Secretary of John Bryson, a well-regarded business leader, is a clear indication of the Obama Administration's desire to mend, before the 2012 presidential campaign intensifies, relations with the private sector, which were strained by the passage of health care finance reform and the financial regulatory overhaul. However, these experts cite lingering skepticism within the private sector in regard to this apparent desire. Despite the mention in the May 31 statement of the mission to drive US competitiveness, the Obama Administration appears intent on promoting export-driven economic growth, as captured in the National Export Initiative, but US industry representatives note that improving the competitiveness of US businesses (in part through importing more economical inputs) is paramount to simply increasing exports. Despite John Bryson's background in the private sector and understanding of business competitiveness, as Commerce Secretary, he would operate at the behest of the Obama Administration, for which experts note that current trends in trade remedy action could continue unfettered under Secretary Bryson.

John Bryson's nomination requires confirmation in the Senate. Shortly after the May 31 statement was released, however, congressional Republicans reiterated a March 2011 promise to block any trade-related nominations until President Obama sends to Congress the implementing bills for the free trade agreements (FTAs) with Korea, Colombia and Panama. The Obama Administration, in turn, insists on the passage of an expanded version of the Trade Adjustment Assistance (TAA) program, opposed by congressional Republicans, before it will send the FTAs' implementing bills to Congress. Consequently, both the eventual resolution of the FTA-TAA impasse and prospects for John Bryson's successful Senate confirmation remain unclear.

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

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

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FREE TRADE AGREEMENTS

Free Trade Agreement Highlights

USTR Announces Readiness to Commence Technical Discussion with Congress on US-Colombia FTA

On May 4, 2011, US Trade Representative Ron Kirk sent a letter to the Chairman of the Senate Committee on Finance Sen. Max Baucus (D-MT), announcing the Obama Administration's readiness to commence technical discussions with Members of Congress on the draft implementing legislation and draft Statement of Administrative Action for the US-Colombia free trade agreement (FTA). The letter attributes the Obama Administration's readiness to Colombia having met the necessary milestones contemplated in the April 7, 2011 bilateral action plan on labor rights.

President Obama and Colombian President Juan Manuel Santos met in Washington, DC on April 7, 2011 where they agreed to pursue an action plan titled "Leveling the Playing Field: Labor Protections and the US-Colombia Trade Promotion Agreement" to address lingering US concerns over the labor code and violence against organized labor leaders in Colombia, and advance the US-Colombia FTA closer to congressional consideration in the United States. The action plan detailed the steps Colombia will take to address US concerns and deadlines for undertaking these steps in order for President Obama to submit the US-Colombia FTA's implementing legislation to Congress. Although the deadlines under the action plan extend into 2012, US and Colombian negotiators reportedly agreed that Colombia successfully meeting the April 22, 2011 deadline, which provided for a protection program for teachers, labor leaders and activists in Colombia, demonstrated a good faith effort such that USTR could begin technical discussion with Congress. According to USTR, Colombia has met and exceeded the April 22 milestone, having done the following:

- **Prosecution.** Hire 100 full-time judicial police investigators to support prosecutors handling cases of crimes against union members (originally scheduled for December 2011);
- **Cooperative Misuse.** Change to June 2011 from July 2013 the effective date of certain legal provisions in the Colombian labor code to prohibit the misuse of cooperatives and other employment relationships that undermine workers' rights;
- **Labor inspection.** Hire 100 new labor inspectors, with an additional 380 inspectors to be hired subsequently to enforce the Colombian labor code (originally scheduled for the end of 2011); and
- **Temporary hires.** Improve inspection and labor code enforcement to prevent the use of temporary service agencies to circumvent workers' rights (originally scheduled for June 15, 2011).

Analysts opine that USTR's announcement likely signals the beginning of the end to the impasse that has impeded progress on US trade policy in the current 112th Congress. In 2011, the US-Colombia FTA has served

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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

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as a lynchpin for lawmakers and President Obama. Congressional Republicans have been largely unwilling to move forward on other trade initiatives, such as the US-Korea and US-Panama FTAs and renewing the Generalized System of Preferences (GSP) and Trade Adjustment Assistance (TAA), without a firm commitment from the Obama Administration to advance the US-Colombia FTA, while congressional Democrats and the Obama Administration have been largely hesitant to push the US-Colombia FTA due to alleged pressure from US organized labor, which has assumed a firm position against it. While USTR's announcement indicates that the long-standing deadlock over the three pending FTAs could soon be broken, questions remain regarding how the Obama Administration will sequence the introduction in Congress of the three FTAs' respective implementing bills. Congressional Republicans are reportedly reluctant to deliver a symbolic victory to the Obama Administration for achieving passage in Congress of the less-controversial FTAs with Korea and Panama without securing a commitment from it on the FTA with Colombia, about which President Obama is less enthusiastic. Consequently, it remains unclear in what order the Obama Administration will choose to submit to Congress the respective implementing bills of the three FTAs.

Analysts also note that USTR's announcement leaves unanswered questions in regard to when and in what form such non-FTA trade initiatives as GSP and TAA will advance. GSP still faces a challenge from Sen. Jeff Sessions (R-AL) who blocked the program's renewal in late 2010 due to objections concerning duty-free treatment being afforded to sleeping bags from Bangladesh, which directly compete with sleeping bags produced in Alabama. Were GSP to be renewed, it also remains unclear whether duty-free treatment would be applied retroactively to December 31, 2011, the date on which the program expired. In regard to TAA, it remains unclear whether congressional Republicans, in light of current budgetary concerns, will acquiesce in approving a strengthened version of the program; Democrats actively support approving the revised version. While USTR's announcement regarding the US-Colombia FTA does not immediately clarify what 2011 US trade policy will look like, analysts agree that the panorama will become much clearer once the three pending FTAs are submitted to Congress.

Lawmakers Send Letter to Transportation Secretary Urging Pullback on Program for Mexican Trucks

On May 4, 2011, 44 Democratic and Republican lawmakers⁵ from the House of Representatives sent a letter to US Department of Transportation (DOT) Secretary Ray LaHood, expressing concern over a DOT proposal to initiate a US-Mexico cross-border long-haul trucking pilot program. In the letter, the lawmakers posit that the proposed cross-border trucking program is a potential threat to road safety and security along the southern

⁵ Rep. Duncan Hunter (R-CA), Rep. Daniel Lipinski (D-IL), Rep. Nick Rahall (D-WV), Rep. Dan Burton (R-IN), Rep. Candice Miller (R-MI), Rep. Peter DeFazio (D-OR), Rep. Bob Filner (D-CA), Rep. Sam Graves (R-MO), Rep. Walter Jones (R-NC), Rep. Gary Miller (R-CA), Rep. James McGovern (D-MA), Rep. Steven LaTourette (R-OH), Rep. Shelley Berkley (D-NV), Rep. Betty Sutton (D-OH), Rep. Frank LoBiondo (R-NJ), Rep. Ted Poe (R-TX), Rep. Pete Visclosky (D-IN), Rep. Mike Michaud (D-ME), Rep. Jerry Costello (D-IL), Rep. Leonard Boswell (D-IA), Rep. Tim Ryan (D-OH), Rep. Jason Altmire (D-PA), Rep. Bill Huizenga (R-MI), Rep. Joe Baca (D-CA), Rep. Thaddeus McCotter (R-MI), Rep. Loretta Sanchez (D-CA), Rep. Alcee Hastings (D-FL), Rep. Bruce Braley (D-IA), Rep. Linda Sanchez (D-CA), Rep. Michael Doyle (D-PA), Rep. Elijah Cummings (D-MD), Rep. Pete Stark (D-CA), Rep. Russ Carnahan (D-MO), Rep. Andre Carson (D-IN), Rep. Mark Critz (D-PA), Rep. Bill Pascrell (D-NJ), Rep. David Loebsack (D-IA), Rep. Michael Capuano (D-MA), Rep. Chris Smith (R-NJ), Rep. Jon Runyan (R-NJ), Rep. Gary Peters (D-MI), Rep. Tim Holden (D-PA), Rep. Martin Heinrich (D-NM), Rep. Carolyn McCarthy (D-NY)

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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

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border, and urge Secretary LaHood to keep in place the current system whereby the Mexican trucks are only authorized to operate “within a defined commercial zone.”

The May 4 letter cites “serious gaps” in the Federal Motor Carrier Safety Administration’s (FMCSA) ability to ensure that every Mexican truck was duly inspected at the border between April 27, 2007 and March 11, 2009, during which time the US and Mexican Governments collaborated on the implementation of a pilot cross-border trucking program (Bush-era trucking program) that allowed a limited number of Mexican trucking companies to operate in US territory. The letter also notes that the proposal requires Mexican trucks to carry Electronic On Board Recorders (EOBRs) and that funds from the Highway Trust Fund will be used to pay for such devices. The lawmakers point out that, because US carriers will be required to also use such recorders but must pay for EOBRs themselves, the use of Highway Trust Funds for Mexican truckers is an “inappropriate use of highway funds and an unreasonable expenditure for taxpayers.” The letter further expresses concern that the program could allow an increase in drug smuggling by Mexican cartels via commercial vehicles which, according to the lawmakers, is a tactic widely used by Mexican drug trafficking organizations.

Articles 1108 and 1206 of North American Free Trade Agreement (NAFTA), as well as Annex I (“Reservations for Existing Measures and Liberalization Commitments”), provide for the liberalization of cargo trucking services in US and Mexican border states by December 18, 1995 with such liberalization intended to encompass the entire territories of both countries by January 1, 2000. With the exception of the period during which the Bush-era trucking program operated, the United States has not fulfilled its obligations to grant national and/or most favored nation (MFN) treatment to Mexican firms engaged in cross-border transport of cargo. In response to these unfulfilled NAFTA obligations, Mexico’s Secretary of Economy (SE) published on March 18, 2009 a list of 89 US goods on which Mexico would impose retaliatory import duties in accordance with Article 2019 of NAFTA, which permits Mexico in a dispute to suspend benefits until both countries reach an agreement on the resolution of the dispute. To date, these retaliatory tariffs remain in effect although the list of US goods rotates periodically. Experts widely attribute US resistance to the liberalization of cross-border cargo transport to the pressure that the International Brotherhood of Teamsters, the labor union representing US truckers, has applied on the successive Clinton, Bush and Obama Administrations. Since the trucking dispute began, the Teamsters and many US lawmakers receiving support from the same have asserted that Mexican trucks have subpar vehicular safety standards despite statistics computed as part of the Bush-era pilot program that showed that Mexican trucks were safer than their US counterparts.

On April 13, 2011, DOT released a Federal Register (FR) Notice seeking comments on its proposal for the initiation of the US-Mexico cross-border long-haul trucking pilot program. The proposal, which permits Mexican trucks to operate within the United States for up to three years, is an effort to fully implement the NAFTA cross-border long-haul trucking provisions. According to the proposal, the focus of the program is to “test and demonstrate the ability of Mexico-based motor carriers to operate safely in the United States beyond the municipalities and commercial zones along the United States-Mexico border.” The pilot program would also give reciprocal rights to US trucks to operate in Mexico for the same period. In response to the proposal, Mexico indicated that it will suspend 50 percent of its retaliatory tariffs when a final agreement for the pilot program is signed and the remaining 50 percent of the tariffs will be removed when DOT approves the first Mexican company for participation in the program.

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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

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While it remains unclear what the eventual scope of the cross-border trucking program will be, it is unlikely that lawmakers' May 4 letter will cause the Obama Administration and, by extension, DOT to chart a new course in regard to coming into compliance with the NAFTA cross-border trucking provisions. Although President Obama is not a stalwart supporter of NAFTA and, during his presidential campaign, then Sen. Obama (D-IL) hinted at the possibility of reopening the Agreement, the Mexican retaliatory tariffs have targeted certain US goods produced in certain key states and/or congressional districts and have been effective in applying pressure on the Obama Administration to work toward resolving the dispute. However, it cannot be ruled out that, in light of the looming 2012 presidential election, during which President Obama will again need support from US organized labor, DOT will eventually implement a scaled-back version of the program.

Obama Administration Conditions Submission of FTAs on Passage of Bolstered TAA; GSP and ATPDEA Not Part of Deal

On May 16, 2011, National Economic Council Director and Assistant to President Obama for Economic Policy Gene Sperling stated in a closed conference call that the Obama Administration would not submit the implementing legislation for the US-Korea, US-Colombia and US-Panama free trade agreements (FTAs) until Congress provides a credible assurance that it will renew an "expanded" Trade Adjustment Assistance (TAA) program. The US Trade Representative (USTR) Ron Kirk noted on the call that the Obama Administration has concluded negotiations of all three pending FTAs and has engaged the House Committee on Ways and Means and the Senate Committee on Finance in technical discussion on the draft language of the FTAs' implementing bills, but asserted that the Obama Administration will seek to "move TAA forward at the same time [as the three pending FTAs]." Neither Director Sperling nor USTR Kirk mentioned the Generalized System of Preferences (GSP) or the Andean Trade Promotion and Drug Eradication Act (ATPDEA) as part of any deal.

The scope and cost of TAA was expanded under the 2009 American Recovery and Reinvestment Act (ARRA), *i.e.*, the 2009 stimulus bill, to include US service workers displaced by off-shoring, agricultural workers and workers not otherwise affected by imports under an FTA to which the US is party. However, the TAA provisions contained in the 2009 ARRA expired on February 13, 2011 such that the TAA program has returned to its 2002 scope and level of funding. Analysts note that it was largely Republican lawmakers in the House and Senate that allowed TAA to lapse, citing concerns over the inflated cost of the program in the context of growing concerns over US government spending and debt.

Tying passage of the pending FTAs to renewal of a bolstered TAA is the latest in a long line of challenges facing the FTAs. Although all three Agreements were completed in 2007 under the Bush Administration, such obstacles as the renegotiation of the US-Korea FTA's auto provisions at the request of the Detroit automakers, and the insistence on the part of the US organized labor that the Colombian government implement measures against anti-union violence and for greater workers' rights and that Panama address alleged tax haven issues by entering into a Tax Information Exchange Agreement (TIEA) with the United States, plagued the prospects for eventual passage of the Agreements but have now seemingly been resolved. Other obstacles, however, remain such as: (i) US organized labor's unwavering and fierce opposition to the US-Colombia FTA and the great pressure organized labor exerts on Democratic lawmakers and the Obama Administration; (ii) US-Korea FTA's uncertain eligibility under Trade Promotion Authority (TPA) procedural rules whereby Congress must vote up or down on the Agreement without amending it; and (iii) the current conditioning of FTA submission on TAA renewal likely

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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

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stemming from the Obama Administration's tepid enthusiasm for most free trade initiatives. Experts opine that it is unlikely that this conditioning will indefinitely block passage of the pending FTAs in light of that TAA, in one form or another, normally enjoys bipartisan support and the Obama Administration is becoming acutely aware of the need to move beyond the FTAs before the 2012 presidential election intensifies given that US employment is likely to be a central issue. It remains unclear, however, the fate of the remainder of US trade policy that has been put on hold due to the TAA-FTA impasse, including GSP and ATPDEA.

Finance Committee Members Urge Strong IPR Provisions in TPP

On May 17, 2011, 28 Republican and Democratic Senators, of whom 11 sit on the Senate Committee on Finance,⁶ sent a letter to President Obama, urging him to defend the inclusion of strong intellectual property rights (IPR) provisions in the context of ongoing negotiations for the Trans-Pacific Partnership (TPP) and to reject efforts by other TPP members to "weaken" IPR standards. The Senators state in their letter that IP-intensive industries "employ more than 19 million workers [and] create higher paying jobs across all skill levels" in the United States as well as "support more than 60 percent of total US exports."

The United States Trade Representative (USTR) tabled its proposed IPR text in early February 2011 before the fifth round of TPP talks in Santiago, Chile. This proposed text did not include language on patent linkage, patent term extension and data exclusivity, which are three areas included in the so-called May 10 issues.⁷ Largely due to pressure from US pharmaceutical companies, however, these three areas were included in the still pending US-Korea FTA. In the May 17 letter, the Senators urge the Obama Administration to build "upon the high [IPR] standards set forth in the US-Korea FTA and US law."

The Senators also insist in their letter that strong IPR provisions apply equally to all TPP members as opposed to applying different IPR treatment to different members based each member's respective level of development and ability to adequately protect and enforce such IPR rules. According to the letter, equal application of strong IPR-related rules to all TPP members is "particularly important" because the current negotiating members "intend [...] to incorporate new [...] markets in which [the United States has] struggled for years to improve respect for and enforcement of IP rights."

The Senators' letter effectively highlights a growing rift between certain TPP negotiating members in regard to the Agreement's eventual IPR-related language. On one side, New Zealand defends the inclusion in TPP of less stringent IPR provisions similar to those captured in the World Trade Organization (WTO) Trade-Related Aspect of Intellectual Property Rights (TRIPS), arguing that overly stringent IPR rules could impede innovation in and stunt the development of countries that are dependent on importing technology. On the other hand, according to

⁶ Sens. Orrin Hatch (R-UT), Maria Cantwell (D-WA), Tom Carper (D-DE), Charles Grassley (R-IA), Jon Kyl (R-AZ), Pat Roberts (R-KS), Mike Enzi (R-WY), Tom Coburn (R-OK), John Cornyn (R-TX), Richard Burr (R-NC) and John Thune (R-SD), Sens. Mark Udall (D-CO), Scott Brown (R-MA), Dan Coats (R-IN), Chris Coons (D-DE), Mark Pryor (D-AR), Rob Portman (R-OH), John Barrasso (R-WY), Richard Lugar (R-IN), Roger Wicker (R-MS), Roy Blunt (R-MO), Mark Kirk (R-IL), Patty Murray (D-WA), Patrick Toomey (R-PA), Mark Warner (D-VA), Michael Bennett (D-CO), Joe Lieberman (I-CT) and Marco Rubio (R-FL).

⁷ On May 10, 2007, the Bush Administration and congressional Democrats arrived at an agreement to modify the IP provisions in the US-Peru, US-Panama and US-Colombia FTAs, essentially allowing for access to affordable medicines in these developing countries.

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

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sources, the United States will table a revised IPR text in mid-June 2011 before the seventh round of TPP talks in Vietnam, which contains stronger language than that contained in TRIPS and that closely resembles the US-Korea FTA. These sources further note that the US text will contain strong language on patent linkage, patent term extension and data exclusivity, as was included in the US-Korea FTA, and will seek equal treatment for all current and future TPP members as opposed to “special and differential treatment” for developing countries provided for under TRIPS. Although experts remain divided as to how and when New Zealand and the United States will reconcile their respective views on IPR issues, most experts do agree that the issue can only be addressed and resolved either before the November 2011 Asia-Pacific Economic Cooperation (APEC) talks in Hawaii or after the November 2012 US presidential elections due to the sensitive nature of IPR to US industry and the pressure exerted by the same on the Obama Administration.

Republican and Democratic Governors Send Letter Urging FTAs to Move in Tandem with TAA

On May 23, 2011, 22 Republican and 3 Democratic Governors sent a letter to President Obama, Senate Majority Leader Sen. Harry Reid (D-NV), Speaker of the House Rep. John Boehner (R-OH), Senate Minority Leader Sen. Mitch McConnell (R-KY) and House Minority Leader Rep. Nancy Pelosi (D-CA), supporting the three pending free trade agreements (FTAs) with Korea, Colombia and Panama and urging bipartisan action to ensure concurrent passage of the FTAs and the Trade Adjustment Assistance (TAA) program. Additionally, the letter urges Congress to once again grant the President Trade Promotion Authority (TPA).

The letter states that the new and expanded FTAs create “important opportunities for [US] workers” and enhance “overall [US] competitiveness,” and cites the FTAs with Chile, Singapore, Australia, Israel and Jordan, linking them to “much of the improvement in the [US] trade balance.” The letter urges a holistic approach to international trade and recognizes that “economic adjustments” are necessary in impacted industries. As such, the letter cites TAA as a “critical program to move in tandem” with FTAs in order to help American workers “adapt to changes in the global marketplace” and to “assist them in securing new opportunities in which they can excel.” Additionally, the letter maintains that in order to keep pace with global competitors, TPA is necessary for enabling the US President to swiftly conclude trade agreements. Without such authority, according to the letter, US businesses and agricultural producers will lose market opportunities and jobs to other countries.

Experts note that, despite broad objection in the Republican-controlled House and among Senate Republicans to renewing TAA as expanded by the 2009 American Recovery and Reinvestment Act (ARRA) due to concerns over the inflated cost of the program, it will likely be eventually renewed for several reasons: i) Obama Administration officials have stated that President Obama will not submit the implementing legislation for the US-Korea, US-Colombia and US-Panama FTAs until Congress provides a credible assurance that it will renew an “expanded” TAA program and congressional Republicans are eager to ratify the three pending FTAs that have languished since 2007; ii) not voting in favor of TAA renewal could prove toxic for Republicans in light of the 2012 election season in which US employment is expected to be a central issue; and iii) the remainder of US trade policy, as it emanates from Congress, including US preference programs, customs reauthorization and Permanent Normal Trade Relations (PNTR) with Russia, is unlikely to move until the Obama Administration submits the pending FTAs, which, in turn, hinges on whether Congress renews TAA.

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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

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President Obama Effects Modification to US-Singapore FTA by Proclamation

On May 23, 2011, President Obama issued Presidential Proclamation No. 8682, modifying the rules of origin (ROO) set forth in the US-Singapore Free Trade Agreement (USSFTA). The proclamation effects a technical correction to the Harmonized Tariff Schedule (HTS) modified by Presidential Proclamation 8214 on December 27, 2007.

Presidential Proclamation No. 8214 adjusted the rules of origin under the USSFTA to ensure the continuance of tariff and other treatment enjoyed by certain originating goods from Singapore, and to carry out certain duty reductions. In drafting Presidential Proclamation No. 8214, an ROO was inadvertently omitted from HTS General Note 25, which provides the general rules of interpretation of ROOs under USSFTA. Presidential Proclamation No. 8682 corrects this inadvertent ROO omission and, in doing so, provides for the intended tariff and certain other treatment accorded under USSFTA to be extended to originating goods of Singapore.

Certain language under USSFTA authorizes the President to proclaim ROOs set out in the Agreement and, also, to proclaim modifications to previously modified ROOs. To do so, however, consultation and layover requirement must be followed, whereby the President seeks advice in regard to the proposed modification from certain advisory committees and the International Trade Commission (ITC), and reports the proposed modification to the House Ways and Means and Senate Finance Committees.

Presidential Proclamation No. 8682 also effects certain modifications to HTS General Note 5, in regard to the US-Peru Trade Promotion Agreement (TPA), and HTS General Note 12, in regard the North American Free Trade Agreement (NAFTA). These modifications were subject to similar consultation and layover requirements.

United States and Mexico Accord Mutual Recognition on Telecom Equipment Conformity Assessments

On May 25, 2011, US Trade Representative (USTR) Ron Kirk and Mexican Secretary of Economy (*Secretaría de Economía* (SE)) Bruno Ferrari signed in Paris an agreement according mutual recognition of telecommunication equipment conformity assessments. The Agreement permits recognized laboratories of one party to assess telecommunications equipment for conformity with technical requirements of the other party.

According to USTR, this mutual recognition of conformity assessments will save US and Mexican telecommunications equipment manufacturers resources otherwise spent on additional product testing prior to exporting the equipment to the other party, thus lowering prices for end-users. The Agreement covers equipment subject to regulation, including wired/wireless and terrestrial/satellite equipment, and provides for the parties to hold joint meetings and training opportunities for officials involved in designating and recognizing testing laboratories and reviewing conformity assessments.

The United States and Mexico arrived at the mutual recognition agreement pursuant to Article 1304(6) of the North American Free Trade Agreement (NAFTA), which requires the parties to “adopt, as part of its conformity

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

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

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assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of another Party for tests performed in accordance with the accepting Party's standards-related measures and procedures." The Agreement enters into force on June 10, 2011.

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sscoles@whitecase.com

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