



White & Case LLP General Trade Report - JETRO

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General Trade Policy 1

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UNITED STATES

GENERAL TRADE POLICY

US General Trade Policy Highlights

TPP Members Conclude 15th Round of Negotiations

On December 12, 2012, the eleven members of the Trans-Pacific Partnership Agreement (TPP) completed the 15th round of negotiations in Auckland, New Zealand. A December 11, 2012 US Trade Representative (USTR) press release notes that, although the round was the first at which Mexico and Canada participated, the two countries were still able to contribute to the progress achieved at the round. The press release further notes that the negotiating partners used the round to find “pragmatic and mutually-beneficial outcomes to remaining issues under consideration, while isolating the outstanding challenges to be addressed in the months ahead.”

The 15th round of TPP negotiations follows the November 20, 2012 meeting of the leaders of seven of the eleven TPP countries on the sidelines of the East Asia Summit, including Australia, Brunei, Malaysia, New Zealand, Singapore, the United States, and Vietnam. According to a White House press briefing, during the meeting, the TPP leaders: (i) reviewed the progress made in negotiations over the course of the last year; (ii) discussed the recent addition of Canada and Mexico to the TPP negotiations; and (iii) discussed the interest of Thailand and Japan in joining the negotiations. New Zealand Trade Minister Tim Groser noted that TPP leaders also expressed interest in achieving a “political conclusion” to the negotiations by October 2013, likely in time for the gathering of TPP leaders at the Asia-Pacific Economic Cooperation (APEC) Summit, which will be held from October 1-8, 2013 in Bali, Indonesia.

The USTR press release provides insight into progress made at the 15th round; issue areas in which Parties made some measure of progress include, *inter alia*: (i) trade in goods; (ii) services and investment; (iii) government procurement; (iv) tariff offers for industrial goods; and (v) agriculture. Sources indicate that Parties also made some progress in regard to ROOs for textiles and apparel. Negotiations regarding this issue have been stalled for months due to opposition to the United States’ proposed yarn-forward ROO for textiles and apparel. While the United States has not signaled an interest in abandoning the yarn-forward ROO, US negotiators report to have engaged in discussions with their counterparts on establishing a process for accommodating their demands for a more flexible ROO.

At a December 11, 2012 event at the think tank Third Way, USTR Ron Kirk identified the remaining difficult issue areas as, *inter alia*: (i) disciplines for state-owned enterprises (SOEs); (ii) intellectual property rights (IPR) protection; and (iii) ROOs for textiles and apparel. Another difficult issue appears to be whether certain texts should be enforceable under the Agreement’s dispute settlement procedures. For example, media sources indicate TPP members have pushed back against the US position that the environment and labor texts of the Agreement should be enforceable. Other sources indicate the United States may table a revised proposal that

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would make the SPS obligations under the Agreement similarly enforceable. The United States failed to table such a revised proposal during the 15th round. Sources indicate that USTR may be reluctant to table such a proposal because of opposition from certain departments within the US government that fear enforceable SPS provisions may limit their ability to regulate related matters. In addition to the SPS text, the United States also failed to table a revised proposal on patent protections for pharmaceuticals and a proposal regarding the treatment of tobacco products.

Parties will hold the 16th round of TPP negotiations March 4-13, 2013 in Singapore. The 17th round is expected to take place in Peru in May 2013, and the 18th round is expected to take place in September 2013, although Parties have yet to choose the location. In addition, a number of intercessional meetings are expected to take place throughout the year.

With the 2012 US elections behind them, US negotiators are now in a stronger position to make the decisions necessary to achieve progress on the Agreement. Although TPP leaders have expressed interest in completing the Agreement within the next year, the progress achieved within the first few months of 2013 will help determine whether or not such a goal is truly feasible. For example, analysts note that TPP members should table all outstanding and revised proposals by early 2013 to allow members to better identify the most sensitive issues.

Click [here](#) for a copy of USTR's December 11 press release.

USTR Publishes Third Special 301 Out-of-Cycle Review of Notorious Markets

On December 13, 2012, the US Trade Representative (USTR) released the "Special 301 Out-of-Cycle Review of Notorious Markets" ("2012 Review"). The 2012 Review identifies at least 47 notorious markets that are reportedly engaged in substantial piracy and counterfeiting and 8 markets that were previously listed in the December 2011 Review that have been removed from the 2012 Review.

The 2012 Review is the third such Review USTR has published. 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), USTR publishes a "Special 301 Report" ("Report") in April of every year. USTR began to publish a Notorious Market List within the Report in 2006. In 2010, USTR announced that it would begin publishing this list in a separate document known as the "Special 301 Out-of-Cycle Review of Notorious Markets."

Unlike the Report, the Review does not reflect the US Government's review of the state of intellectual property rights (IPR) protection and enforcement in the countries mentioned. According to USTR, the markets listed in the 2012 Review have been selected for inclusion because they "exemplify wider concerns about global trademark counterfeiting and/or copyright piracy, and because their scale and popularity can cause economic harm to US and other IPR holders." The 2012 Review was initiated on August 14, 2012, when USTR published a Federal Register (FR) notice requesting submissions from the public identifying potential Internet and physical notorious markets that exist outside the United States.

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The 2012 Review identifies at least 47 notorious markets. The markets are identified as either physical or Internet markets. Eighteen of the notorious markets are Internet markets based in or hosted out of, *inter alia*, China, Sweden, Russia, United Kingdom, Ukraine, Canada, Panama, Switzerland Bulgaria, and Vietnam. The Internet markets listed in the Review fall into one of the following subcategories of Internet markets: (i) Multi-platform Sites; (ii) Linking; (iii) Hosting/Cyberlockers; (iv) Business-to-Business and Business-to-Consumer; (iv) BitTorrent Indexing; (v) BitTorrent Trackers; (vi) Social Media Sites; and (vii) Pay-per-download. The 2012 Review also identifies 29 physical markets or groups of physical markets located in Ecuador, China, Paraguay, Indonesia, Argentina, India, Ukraine, Mexico, Thailand, Colombia, and Pakistan.

Eight markets previously included in the December 2011 Review do not appear in the 2012 Review due to law enforcement actions against those markets or significant voluntary actions by market operators aimed at resolving identified IPR issues. The markets removed from the 2012 Review include: (i) the Chinese website “Taobao”; (ii) the Chinese website “Sogou”; (iii) the website “MegaUpload”; (iv) the website “btjunkie”; (v) the website “Demonoid”; (vi) the Canadian website “Modchip.ca”; (vii) the Canadian website “Consolesource”; and (viii) the physical market “Quiapo Shopping District,” located in the Philippines. Although USTR commends the efforts that led to the removal of these markets from the 2012 Review, it also notes that these markets may be listed in the Review again in the future if corrective actions prove insufficient or fleeting.

USTR’s publication of the Special 301 Out-of-Cycle Review of Notorious Markets acts as a complement to Special 301 Report. While the Report provides an overview of IPR protection based on country, the Review highlights specific Internet and physical markets whose IPR infringement practices are of particular concern to the US government and US businesses. Although USTR has thus far only published three of these Reviews, experts note the removal of eight markets from the 2012 Review can be interpreted as a preliminary sign of the Review’s effectiveness.

Click [here](#) for a copy of the 2012 Review.

EU and US Officials Indicate EU-US High Level Working Group Still Undecided on Final Recommendations as Discussions Continue in December

In late November and early December 2012, several US officials made comments suggesting the European Union (EU)-US High Level Working Group (“Working Group”) has not yet decided whether to recommend that the United States and the EU pursue negotiations toward a comprehensive trade and investment agreement. In the meantime, EU officials expressed support for such a recommendation while acknowledging that Working Group discussions are continuing in December and it may take some time before the final report is issued.

During the 2011 EU-US Summit, EU and US leaders called for the establishment of the Working Group, which they tasked with identifying policies and measures to increase EU-US trade and investment to support job creation, economic growth and international competitiveness. The EU and US leaders further directed the Working Group to submit an interim report by June 2012, and provide its final report by the end of 2012. In its June 2012 interim report, the Working Group stated that, if both sides were able to “satisfactorily” address certain

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issues on which the United States and the EU would likely disagree in the context of trade agreement negotiations, the final report would endorse the pursuit of a comprehensive agreement (*please refer to W&C US Trade Alert dated June 25, 2012*).

On November 30, 2012, in remarks at the Transatlantic Legislators' Dialogue, Deputy US Trade Representative (DUSTR) Miriam Sapiro indicated that EU and US officials are still not confident that both sides would be able to achieve an ambitious agreement within a reasonable amount of time. If the parties decided to launch negotiations, DUSTR Sapiro stated that, because US trade agreements are typically quite comprehensive in nature, the EU-US agreement would need to eliminate all, or virtually all, tariffs. DUSTR Sapiro noted that such an agreement would also need to address issues related to the following areas, *inter alia*: (i) sanitary and phytosanitary (SPS) measures; (ii) non-tariff barriers (NTBs); (iii) technical barriers to trade (TBTs); and (iv) barriers to EU-US trade in services and investment flows.

Several of these issues, including agricultural market access, regulatory coherence and government-afforded subsidies, among others, represent longstanding EU-US trade irritants. In fact, the two trade partners have already identified specific regulatory trade barriers (mainly relating to SPS) in each other's markets for short-term resolution as part of a confidence-building exercise. As a result, the EU has addressed a ban on lactic acid use for beef decontamination, but sources indicate that more work is needed from both sides to confirm that other difficult regulatory issues can be resolved within a free trade negotiation framework. On December 6, 2012, in remarks to the President's Export Council, media sources allege Deputy National Security Advisor for International Economic Affairs Michael Froman also noted that EU and US officials are still assessing whether there is enough political will to resolve these types of longstanding issues within trade agreement negotiations.

On December 5, 2012, EU Trade Commissioner Karel De Gucht addressed the ongoing Working Group discussions at a launch event held in Brussels for the Transatlantic Business Council. In his remarks, Commissioner De Gucht confirmed that the Working Group is aiming to deliver the final report – which will hopefully recommend comprehensive free trade agreement negotiations in light of both parties' need for growth and confidence – in the coming weeks, but work continues on finding the right structure for a potential agreement. He also alluded to the ongoing confidence-building efforts on regulatory trade barriers by acknowledging that regulatory cooperation would be one of the key issues of negotiations, while stressing that it would be important to maintain a broader perspective on mutual health and safety goals in this context.

Several sources indicate that the presence of unresolved issues may prevent the Working Group from releasing its final report by the end of 2012. According to media sources, EU Delegation Ambassador João Vale de Almeida recently noted that, although both sides are closer than ever to a possible start of negotiations, parties remain “maybe a few weeks away from a decision, maybe a few months away from a decision.” Despite these comments, DUSTR Sapiro expressed optimism regarding the possibility of a trade agreement, noting that “the idea of an ambitious, comprehensive trade agreement is one that, with a bit more work, [she] hope[s] [she] will be able to recommend to [the relevant] leadership.”

Click [here](#) for a copy of DUSTR Sapiro's November 31 remarks.

Click [here](#) for a copy of EU Trade Commissioner De Gucht's December 5 remarks.

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ITC Report on Remanufacturing Provides Insight into Export and Import Markets, Trade Barriers

On November 28, 2012 the US International Trade Commission (ITC) publically released the publication “Remanufactured Goods: An Overview of the US and Global Industries, Markets and Trade” (“Report”). Remanufacturing is an industrial process that restores end-of-life goods to their original working condition. According to the Report, the United States is the world’s largest producer, consumer and exporter of remanufactured goods.

Remanufacturing occurs across a wide range of sectors. The following sectors are those the Report finds account for the majority of remanufacturing activity in the United States: (i) aerospace; (ii) heavy-duty and off-road (HDOR) equipment; (iii) motor vehicle parts; (iv) machinery; (v) information technology (IT) products; (vi) medical devices; (vii) retreaded tires; (ix) consumer products; and (x) other sectors, including those that produce electrical apparatus, locomotives, office furniture, and restaurant equipment.

According to the Report, the United States’ exportation of remanufactured goods increased by 50 percent from 2009-2011; the United States’ importation of such goods increased by 64 percent over the same period. The following sectors account for the largest share of US exports of remanufactured goods: (i) aerospace; (ii) HDOR equipment; and (iii) machinery. Major destinations for US remanufactured goods include Canada, the European Union (EU), Japan, Mexico, Australia, Saudi Arabia, Hong Kong, Brazil, and Vietnam. The Report also finds that US free trade agreement (FTA) partners are important destinations for exports of US remanufactured goods; almost 40 percent of US exports of remanufactured goods go to US FTA partners. Of these FTA partners, Canada, Mexico, Australia, Singapore, and the countries party to the Dominican Republic-Central America-United States FTA (CAFTA-DR), *i.e.*, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua and the Dominican Republic, are top destinations for US exports of remanufactured goods. The leading suppliers of remanufactured goods to the United States include the EU, Canada, Japan, Mexico, Korea, Switzerland and China.

Regulatory barriers have proven a significant impediment to trade in remanufactured goods. The Report notes that one of the most common regulatory barriers is the absence of a commonly accepted legal definition of remanufactured goods. Without such a definition, many customs authorities classify remanufactured goods as used products. Trade in used/remanufactured products is heavily restricted and sometimes prohibited due to, *inter alia*: (i) health, environmental and consumer safety considerations; (ii) efforts to protect competing domestic industries; (iii) pre-conceived notions that used/remanufactured goods are low-quality. The Report cites Brazil, India and China as three countries that have remanufacturing sectors in varying degrees of development and restrict trade in remanufactured goods.

In June 2011, US Trade Representative (USTR) Ron Kirk wrote a letter to ITC Chairman Deanna Tanner Okun requesting the ITC complete this Report on remanufacturing. In his letter, USTR Kirk noted that the Report would help the United States engage in talks to eliminate barriers to trade in remanufactured goods bilaterally, as well as within certain regional and multilateral fora, namely Asia-Pacific Economic Cooperation (APEC) and the World Trade Organization (WTO).

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US, ASEAN Leaders Launch Expanded Economic Engagement Initiative

During the November 19, 2012 US-ASEAN Leaders Meeting in Phnom Penh, Cambodia, President Obama and his ASEAN counterparts announced the launch of the US-ASEAN Expanded Economic Engagement (“E3”). According to a White House Fact Sheet released the same day, E3 is a new framework for economic cooperation between the United States and ASEAN designed to facilitate trade and investment, improve trade flows and supply chains, and increase awareness of business opportunities. Furthermore, the Fact Sheet states E3 will “lay the groundwork for ASEAN countries to prepare to join high-standard agreements, such as the Trans-Pacific Partnership (TPP).”

The White House Fact Sheet states E3 will focus on the following initially:

- **Trade Facilitation.** The United States and ASEAN members agreed to negotiate a trade facilitation agreement that will include simplified customs procedures and increased customs-related transparency;
- **Information and Communication Technology (ICT).** The United States and ASEAN will develop principles that address ICT-related policy issues such as cross-border data flows, localization and regulatory bodies;
- **Investment.** The United States and ASEAN will develop principles that address investment-related issues including market access, non-discrimination, investor protections, transparency, and business conduct; and
- **Standards, Small- and Medium-Sized Enterprises (SMEs), and Environmental Issues.** The United States and ASEAN will cooperate on the development of standards, issues related to SMEs, and environmental issues as they relate to international trade.

In a recent interview with the media, Deputy US Trade Representative (DUSTR) Demetrios Marantis noted that E3 builds upon the work completed under the US-ASEAN Trade and Investment Framework Arrangement (TIFA). In regard to TPP, DUSTR Marantis indicated that, by pursuing the above-mentioned goals related to trade facilitation, ICT and investment, ASEAN members not currently party to the TPP negotiations will be more prepared to take on the obligations associated with the TPP’s customs, investment, intellectual property, e-commerce and telecom texts, among others. Of the 10 ASEAN members, 4 are current TPP negotiating members, namely Brunei, Malaysia, Singapore, and Vietnam. On November 18, 2012, Thailand expressed interest in joining the negotiations, subject to necessary domestic procedures. According to DUSTR Marantis, Philippines may, at some point in the future, also hope to be part of the agreement.

Click [here](#) for the White House Fact Sheet.

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Energy Department-Commissioned Report Supports Increasing LNG Exports

The Department of Energy (DOE) released on December 3, 2012 a report demonstrating clear benefits to the US economy of permitting greater export volumes of liquefied natural gas (LNG). US law largely prohibits LNG exports to countries with which the United States does not have a free trade agreement (FTA) if the Department of Energy finds that the LNG exports to such non-FTA partners would be adverse to US public interests. Accordingly, LNG producers in the United States must obtain a permit prior to exporting LNG, and DOE is currently engaged in the process of adjudicating several high-profile applications for such export permits.

The report, titled “Macroeconomic Impacts of LNG Exports from the United States” (“Report”), concludes that net economic gains to the United States increase as US LNG exports increase. At the request of DOE, Nera Economic Consulting examines in the Report the effects on US national income of increased LNG exports and the likely resulting changes to employment and real wages, *i.e.*, wages adjusted for inflation, and capital-, labor- and resource-derived income. The Report makes multi-scenario assumptions about US and world LNG production costs, demand and prices for the sake of this examination. The Report argues that increased overall US income from LNG export expansion outweighs expected declines in capital-derived income, *i.e.*, income from positive returns to capital, and real wages.

DOE must now decide whether to take action based on the Report’s recommendation to allow for greater LNG exports. Meanwhile, congressional reaction to the Report is mixed:

- **Rep. Upton (R-MI)** welcomed the Report’s findings, noting that LNG production is a “bright spot” in the US economy;
- **Sen. Murkowski (R-AL)** lauded the Report’s findings, noting that increasing US LNG exports is an opportunity to [...] tilt the balance of trade in [...] favor [of the United States] for the first time in decades”; but
- **Rep. Ed Markey (D-MA)**, who introduced in February 2012 the “Keep American Natural Gas Here Act” (H.R. 4025), rejected the Report’s findings, noting that the winners would “mainly [be] those in the natural gas business and those holding their stock.”

In addition, **Center for Liquefied Natural Gas President Bill Cooper** welcomed the Report’s findings, noting that the United States “can export LNG without adversely affecting the availability or affordability of [the United States’] abundant natural gas supplies.”

The existing DOE LNG export permit policy is a politically contentious issue both in the United States and abroad. Recent low-cost LNG production from shale, combined with the US export permit requirement, is a boon for US LNG commercial and individual consumers who enjoy depressed LNG prices. Likewise, it is a potential point of contention between the United States and many of its non-FTA trading partners who do not currently enjoy such benefits of this low-cost LNG production.

Click [here](#) for a copy of the Report.

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