



# White & Case LLP General Trade Report - JETRO

June 2013

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**Contacts:**

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

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

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## UNITED STATES

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### GENERAL TRADE POLICY

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#### *US General Trade Policy Highlights*

### Group of Senators Reintroduces 2011 Currency Bill; House Letter on Currency Practices and TPP Sent to President Obama

On June 5, 2013, eight Senators introduced the “Currency Exchange Rate Oversight and Reform Act of 2013” (“the bill”). The bill would target so-called “fundamentally misaligned currencies” (FMCs), and would authorize the initiation of an investigation into whether such FMC provides a countervailable subsidy. Also, 230 House lawmakers sent a letter to President Obama, urging the inclusion of currency-related language in the Trans-Pacific Partnership (TPP) text.

We provide below several of the bill’s highlights:

- **Treasury Reports.** The Treasury Department would expand its existing biannual reports to both houses of Congress to better focus on alleged currency manipulation. Upon request, the Secretary of the Treasury would appear before relevant committees of jurisdiction in both chambers of Congress to answer questions relating to these reports. These reports would include: (i) an analysis of overall currency market developments; (ii) a review of monetary policies of major economies and their effects on exchange rates; (iii) descriptions of policies undertaken by any country to modify that country’s exchange rate relative to the US dollar; (iv) an analysis of systemic economic factors influencing international currency markets; (v) a list of currencies defined as “fundamentally misaligned”; (vi) a list of currencies designated for “priority action” as defined in the bill; (vii) an estimation of the nominal medium-term equilibrium exchange rate of any currency targeted in the previous section; (viii) a description of actions and/or consultations taken as a result of the previous sections; and (ix) a description of any international financial institution being influenced by a country with a FMC;
- **Measures.** On the basis of the findings of these reports and other findings, the US would take “appropriate policies to address the misalignment.” The first step would be bilateral consultations between the US and the country to which the FMC corresponds. If these result in failure, the US would take any of the following actions: (i) adjust under US antidumping (AD) law the price used to establish export price or constructed export price to reflect the fundamental misalignment of the currency of the country for any AD investigations, reviews or orders involving that country; (ii) prohibit the US government from procuring goods and services from that country, unless it is a party to the WTO Agreement on Government Procurement (GPA); (iii) request that the IMF take action to bring that country’s exchange rate to a rate consistent with its obligations

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#### Contacts:

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

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

under the IMF agreement; (iv) prohibit the Overseas Private Investment Corporation (OPIC) from investing in that country; and (v) instruct executive directors of multilateral banks to cease financing of new projects in that country; and

- **Additional Measures.** The bill authorizes the initiation of an investigation to determine whether currency undervaluation by the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy. The bill also envisages the United States Trade Representative (USTR) requesting WTO consultations with the country in regard to its alleged FMC.

The bill has a good measure of support largely among Democrats in the House and, also, among certain domestic industry coalitions and organized labor. Although the bill does not explicitly mandate anything to this effect, China's currency practices are likely the principal target of the bill; the bill allows for the designation for "priority action" a country that intervenes in large-scale currency market intervention, accumulates foreign exchange reserves, and/or restricts the inflow or outflow of capital, which are activities in which China reportedly engages. In addition, the bill's Senate introduction shortly before a high-level meeting between President Obama and Chinese President Xi Jinping is likely an attempt to pressure the Obama Administration into discussing currency issues with President Xi.

While China is likely the principal target of the bill, pressure also continues to mount in regard to Japan's currency practices, particularly in the context of Japan's forthcoming accession to negotiations toward TPP. 183 House Democratic and 47 Republican lawmakers urged President Obama in a June 6 letter to seek provisions relating to currency in the final TPP text, a position strongly supported by the AFL-CIO, United Autoworkers (UAW), Alliance for American Manufacturing (AAM), American Automotive Policy Council (AAPC) and the American Iron and Steel Institute (AISI). Although the June 6 letter does not include any mention of Japan, a press statement released by Rep. John Dingell (D-MI) in support of the letter asserts that "Japan has a well-documented history of manipulating the value of the yen to help its exporters," and US automakers and organized labor have long asserted that Japan's currency practices disadvantage US automobiles and auto parts in both the Japanese and US market in favor of Japanese automotive goods.

Click [here](#) for a copy of the Senate Bill's description, and [here](#) for a copy of the June 6 letter.

## Senate Finance Committee Holds Confirmation Hearing for USTR Nominee Froman

The Senate Finance Committee held on June 6, 2013 a confirmation hearing on the nomination of Deputy National Security Advisor (DNSA) for International Economic Affairs Michael Froman for US Trade Representative (USTR). Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) introduced DNSA Froman. DNSA Froman then gave his opening statement and answered the questions of the committee.

We provide below several highlights of this testimony:

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

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

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- **Sen. Baucus** opened with glowing remarks about the work of USTR and DNSA Froman. He emphasized the positive role of USTR in expanding US exports while ensuring that the rules of trade implemented “expand commerce, promote growth and create jobs [in the United States]”. Sen. Baucus discussed DNSA Froman’s credentials and “skillful representation” of the United States in international fora, specifically toward the promotion of “initiatives that have boosted America’s exports by more than 40 percent.” Sen. Baucus then provided an overview of the major initiatives and challenges facing USTR in the coming years. He lent special emphasis to the Trans-Pacific Partnership (TPP) negotiations, which the Obama Administration hopes to conclude before 2014, and the Transatlantic Trade and Investment Partnership (TTIP) with the European Union. Sen. Baucus concluded, giving his support to the renewal of the Trade Promotion Authority (TPA) and Trade Adjustment Assistance (TAA), as well to the maintenance of the USTR under the aegis of the Executive Office of the President as opposed to rolling it into a larger entity;
- **Sen. Hatch** discussed DNSA Froman’s nomination on its merits, citing many of the same facts as Sen. Baucus. Sen. Hatch stressed the need for strong leadership within USTR. He also urged the expedient reauthorization of TPA, which he described as essential to US trade goals. Sen. Hatch concluded his remarks, endorsing DNSA Froman as someone “who has the trade expertise, political savvy and leadership skills necessary to effectively lead [USTR]”.
- **DNSA Froman** stated that his number one goal would be to “promote growth, create jobs and strengthen the middle class.” After citing his background in the Administrations of Presidents H. W. Bush and Clinton, DNSA Froman provided an overview of the work USTR’s TPP and TTIP negotiations, in addition to negotiations within the World Trade Organization (WTO). However, in regard to the ongoing TPP and TTIP negotiations, DNSA Froman stated that he would rather have “no agreement than a bad agreement.” He then emphasized the potential of trade to aid developing countries. In that vein, he pledged to work to renew the Generalized System of Preferences (GSP) and African Growth and Opportunity Act (AGOA). DNSA Froman subsequently pledged to protect US workers by enforcing “trade rights and trade laws” and ensuring that “displaced workers obtain the skills and jobs they need.” He concluded his remarks, promising to work with the Senate to pass TPA, as well as to “do everything in [his] ability to promote the interests of [US] workers, farmers and ranchers; [US] manufacturers and service providers; [US] innovators, investors and consumers.”

DNSA Froman faced little opposition during the Finance Committee confirmation hearing, but did field several questions about his personal finances and previous employment in the private sector. He also received several questions regarding the roadmap for the reauthorization of TPA, his answers to which provided few specifics. This lack of controversy suggests that the Senate will likely confirm DNSA Froman’s nomination. DNSA Froman’s arrival at USTR will unlikely mark a departure from the Obama Administration’s trade policy, in which enforcement of existing trade rules appears tantamount to trade liberalization.

Click [here](#) for a copy of Senator Baucus’ statement, [here](#) for a copy of Senator Hatch’s statement, and [here](#) for a copy of Mr. Froman’s opening statement.

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

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

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## Freshman Democratic House Members Express Concern with TPA and TPP

On June 7, 2013, 32 freshman Democratic members of the House of Representatives sent a letter to House Committee on Ways and Means Ranking Member Sander Levin (D-MI) and House Minority Leader Nancy Pelosi (D-CA), expressing concern over the reauthorization of the Trade Promotion Authority (TPA) and the allegedly non-transparent nature of the ongoing negotiations toward the Trans-Pacific Partnership (TPP). We provide below several highlights of the letter:

- **Concern over “job offshoring”.** The members expressed concern over alleged increased outsourcing of US manufacturing jobs. They stated that the economy cannot recover if such job outsourcing continues. They condemned “[the United States] past model of ‘trade’ agreements that facilitate offshoring, undermine Buy American [provisions], and subject [US] law to review by foreign tribunals empowered to order payment of unlimited US tax dollars to foreign firms that seek to avoid playing by the same rules as US firms.”
- **Opposition to TPA.** The letter expressed opposition to the renewal of the TPA, calling it “[a delegation of] wide swaths of [Congress] Constitutional authority to regulate trade (Article 1, Section 8) to the President,” and urged the non-renewal of “the ‘fast track’ or any other open-ended delegation of ‘trade promotion’ authority.”
- **Concern with TPP.** The letter also expressed concern over the negotiations toward TPP. Specifically, it called for greater transparency in such negotiations, and repeated a prior demand for the release of a draft text. In addition, the letter claimed that the TPP negotiations would “create binding policies on future [US] Congresses” in such areas as “labor, patent and copyright, land use, food, agriculture and product standards, natural resources, the environment, professional licensing, state-owned enterprises and procurement policies, as well as financial, healthcare, energy, telecommunications and other service sector regulations.”
- **Reorientation of US trade policy.** The members called for a reorientation of trade policymaking away from the President and toward Congress. They cited the “misguided” nature of current US trade policy and the binding nature of free trade agreements (FTAs) as the impetus for maintaining Congress’ authority to regulate commerce.

Most Republicans, who enjoy a majority in the House, and many congressional Democrats oppose the viewpoints espoused in the June 7 letter. Moreover, the support among leadership of House and Senate committees of jurisdiction of passing new TPA legislation covering TPP stands in contrast to the lawmakers’ concerns expressed in the letter. Consequently, the letter is unlikely to have any significant effect on TPA, TPP or US trade policy as a whole. However, lawmakers will likely continue to call for greater transparency in the TPP negotiations.

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

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

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

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## Fifteen GSP Beneficiary Countries Ask for Extension of Trade Benefits

The Alliance of Generalized System of Preferences Countries sent a letter to House Ways and Means Committee Chairman Dave Camp (R-MI) on June 11, 2013, urging Congress to renew authorization for GSP before it expires on July 31, 2013. The letter asserts that Generalized System of Preferences (GSP) benefits more than 3.8 billion people living in two-thirds of the world's economies by providing for duty-free treatment of imports into the United States, and aims to create tangible economic development while maintaining internationally recognized worker rights and the protection of intellectual property. Countries represented in the letter include Algeria, Bangladesh, Ecuador, Fiji, Georgia, Indonesia, Moldova, Mongolia, Pakistan, Philippines, Sri Lanka, Thailand, Tunisia, Uruguay and Yemen.

According to the letter, in 2012, 127 GSP beneficiary economies exported to the United States goods valued at approximately USD 20 billion, thus translating in duty saving for importers of approximately USD 750 million. If GSP is not reauthorized, the letter asserts that US companies, including small- and medium-sized, will face USD 2 million daily of tariffs levied on raw materials, intermediary goods and machinery.

House Ways and Means trade subcommittee Chairman Devin Nunes (R-CA) noted on June 12, 2013 that he highly doubts lawmakers will be able to reauthorize GSP before it expires, citing a lack of floor time for debate due to the busy congressional schedule. House Ways and Means Committee leadership also appears unwilling to move on GSP authorization renewal legislation due to a suspicion that members of the Senate Finance committee wish to amend the GSP legislation to change its period and/or scope of application or to add non-germane language to it, which House Ways and Means Committee leadership opposes. Therefore, Rep. Nunes stresses that the House will not send any GSP authorization renewal bill to the House plenary without a "total agreement [with Senate Finance leadership] beforehand."

Click [here](#) for a copy of the June 11 letter.

## Obama Administration Issues New Sanctions Targeting Iranian Currency and Automotive Sector

On June 3, 2013, President Obama issued Executive Order No. 13645 ("EO 13645" or the "EO") authorizing the implementation of new sanctions against Iran, including certain sanctions contemplated under the *Iran Freedom and Counter-Proliferation Act of 2012* ("IFCA 2012"), which targets dealings in Iranian currency ("the rial" or IRR) and with the Iranian automotive sector. According to a June 3 Obama Administration press statement, EO 13645 aims to "further tighten [US] sanctions on Iran and isolate the Iranian government for its continued failure to meet its international obligations." The new sanctions take effect as of July 1, 2013.

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Scott Lincicome, Esq.  
701 Thirteenth Street NW, Washington, DC 20005  
[slincicome@whitecase.com](mailto:slincicome@whitecase.com)

Samuel Scoles  
8 Marina View, #27-01, Singapore, 018960  
[sscoles@whitecase.com](mailto:sscoles@whitecase.com)

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Key highlights of EO 13645 are as follows:

- **Currency.** EO 13645 authorizes the imposition of sanctions on foreign financial institutions that knowingly conduct or facilitate significant transactions for the purchase or sale of IRR, or that maintain significant accounts outside Iran denominated in IRR. According to EO No. 13645, these foreign financial institutions include “any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent.” The June 3 Obama Administration press release notes that EO 13645 constitutes the first instance in which sanctions directly target trade in IRR.
- **Automotive Sector.** EO13645 authorizes the imposition of sanctions against persons, including foreign financial institutions and entities, that knowingly engage in significant financial or other transactions for the sale, supply or transfer to Iran of significant goods or services used in connection with the manufacturing or assembling in Iran of light and heavy vehicles, including passenger cars, trucks, buses, minibuses, pick-up trucks and motorcycles, as well as original equipment manufacturing (“OEM”) and after-market parts manufacturing relating to such vehicles, which does not appear to exclude any specific automotive part or component. Also, EO 13645 simply defines “person” to mean an individual or entity, but does not provide any nationality requirements for such persons. The June 3 Obama Administration press release notes that EO 13645’s automotive sector-specific language complements IFCA 2012 sanctions imposed on Iran’s shipping, shipbuilding and energy sectors.

EO 13645 authorizes imposing additional sanctions on persons who provide material support to Iranian persons and others included on the Treasury Department-maintained list of Specially Designated Nationals and Blocked Persons (“SDN List”), although exceptions do exist for certain Iranian depository institutions and activities relating to an Azerbaijan-Turkey-Europe natural gas pipeline. EO 13645 does not define “significant” or “material,” thus affording relevant US authorities a certain measure of room for interpretation.

Click [here](#) for a copy of EO 13645, [here](#) for a copy of the June 3 Obama Administration fact sheet, and [here](#) for a State Department fact sheet on IFCA 2012.

## Industry Groups Send Letter to Congress Rejecting “Buy American”

On June 5, 2013, 15 US industry groups sent a letter to all members of Congress, urging them to oppose any legislation containing new or more stringent so-called “Buy American” rules on government-funded infrastructure projects and government procurement more generally. These industry groups include, *inter alia*, the US Chamber of Commerce, the National Foreign Trade Council, Emergency Committee for American Trade and the United States Council for International Business.

We provide below some highlights of the letter:

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slincicome@whitecase.com

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

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- **Shielding the Domestic Market.** The groups emphasized the need to avoid protectionism, despite the pressure to shield domestic markets stemming from the financial crisis, stating that such policies are “inherently flawed and counter-productive.”
- **Stimulus.** The letter cited the American Recovery and Reinvestment Act (the “stimulus bill”) as an example of how Buy American provisions in legislation have had unintended negative effects. The letter used the example of water infrastructure projects funded through state revolving funds (SRFs) to show the administrative hurdles those projects faced during implementation due to Buy American legislative provisions. In fact, according to the letter, several communities decided to forgo any assistance from SRFs because of the bureaucratic obstacles in obtaining such assistance.
- **Supply Chains.** The letter asserts that, by creating complicated legal requirements and detailed litmus tests, according to the letter, Buy American provisions impose costs on manufacturers, who often have very globalized supply chains and must overcome a number of legal hurdles to prove that their products meet those Buy American requirements. The letter also suggests that Buy American provisions also create costs for municipalities, which often must defend their procurement choices and prove that they too are buying “American.”
- **Retaliation.** Another consequence of Buy American provisions, according to the letter, is the international response to such measures. The letter asserts that US imposition of barriers in international competition runs the risk of sparking retaliatory measures from the United States’ trading partners; as a result, US firms are unable to compete for international procurement contracts, thus diminishing exports.
- **Employment.** The letter concludes, positing that shielding the US domestic market through Buy American legislative provisions leads to –at best– no net change in US employment, and frequently leads to a net loss in US employment. The letter cites the 2008 G20 meeting, at which leaders issued a joint statement supporting free trade, and urges US legislators to stay true to that commitment.

21 US states and the US federal government have passed Buy American statutes. Many apply only to certain sectors and contain many loopholes. Most notably, they often do not apply to firms from certain countries with free trade agreements (FTAs) with the United States, as well as countries party to the World Trade Organization’s Agreement on Government Procurement (GPA). However, the GPA only applies in 37 US states and individual states have different obligations under the US FTAs. Moreover, there are sectors in which the GPA does not apply.

In addition, the ongoing discussions toward the US-EU Transatlantic Trade and Investment Partnership (TTIP) have broached government procurement, with the current EU draft mandate calling for “rules and disciplines to address barriers having a negative impact on [the Parties’] public procurement markets, in particular Buy America(n) provisions”. The final TTIP, if concluded, will likely include a reciprocal agreement on government procurement aimed at voiding or at least weakening Buy American provisions for EU firms.

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

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

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## US and Indonesian Trade Officials Hold Talks on Market Access, Investment and Intellectual Property Rights under Bilateral TIFA

On June 14, 2013, Indonesian Ministry of Trade (MOT) officials gave an off-the-record debriefing in Washington on the June 13 bilateral meeting to discuss bilateral, regional and multilateral trade- and investment-related issues under the aegis of the bilateral Trade and Investment Framework Agreement (TIFA). Office of the United States Trade Representative (USTR) and Department of Commerce (DOC) officials gave a similar off-the-record debriefing immediately thereafter.

The TIFA, which was originally signed in 1996 and expanded in 2007, serves as a platform for US and Indonesian trade and investment authorities to discuss priority trade and investment issues. Unlike a bilateral investment treaty (BIT) or a free trade agreement (FTA), TIFAs do not contain specific and binding commitments, but rather aim to strengthen bilateral economic ties, serving as a mechanism for ongoing dialogue, goodwill and cooperation. USTR and MOT co-chair bilateral working groups that focus on issues relating to agriculture and market access, services, investment and intellectual property rights (IPR).

The off-the-record debriefings focused on specific market access, investment and IPR concerns. The following section provides several highlights of USTR and DOC officials' remarks and any related commentary provided by Indonesian MOT officials:

- **Market Access.** US officials specifically pointed to: (i) import licensing requirements for mobile devices, which Indonesian MOT officials asserted respond to counterfeit and substandard imported devices, and noted are under review for a possible exception to or an extension of the transition period at the end of which importers must be in compliance;<sup>1</sup> (ii) an increasing number of local content requirements, particularly in the telecommunications and energy sectors; (iii) new measures on food and toy safety; (iv) alleged restrictions on the export from Indonesia of certain mineral ores, which Indonesian MOT officials contend respond to domestic environmental concerns relating to illegal mining; and (v) Indonesia's reluctance to join the effort to expand the World Trade Organization (WTO) plurilateral Agreement on Information Technology (ITA), although US officials do note that this decision on joining is currently progressing slowly through Indonesia's interagency process.
- **Investment.** US officials remarked on: (i) the forthcoming expiration of agreements allowing for the supply of cabotage services by foreign firms; (ii) an increasing number of measures requiring domestic data center localization, which Indonesian MOT officials claimed respond to data privacy and security concerns, and about which Indonesian MOT officials noted a desire for the United States to take a leadership role in creating more secure networks to obviate the need for

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<sup>1</sup> On January 1, 2013, a new regulation entered into effect allowing only MOT-licensed importers with an importer registration number who hold at least three import agreements with local distributors to import the subject goods. The regulation also imposed certain labeling requirements for imported cellphones and handheld computers.

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slincicome@whitecase.com

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

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such localization requirements; (iii) restrictions on the equity purchase and divestiture of publicly traded companies by foreigners; and (iv) the ongoing revision of Indonesia's Negative Investment List (NIL),<sup>2</sup> which Indonesian authorities aim to complete before 2014.

- **Intellectual Property Rights.** US officials cited Indonesia's appearance on USTR's 2013 Special 301 Report's Priority Watch List (PWL) due to "gaps in Indonesia's laws relating to the protection and enforcement of [intellectual property rights]." They noted that Indonesian officials have likely only decided to reengage the United States on IPR issues under the TIFA IPR Working Group and through a bilateral IPR action plan due to the ongoing Country Practice Review of Indonesia for the US Generalized System of Preferences (GSP). During this review, USTR weighs a GSP beneficiary country's protection of US intellectual property. Other key issues included Indonesia's lack of copyright protection legislation, allegedly unfair pharmaceutical marketing approval rules relating to data protection and compulsory licensing, and Indonesian officials' preference for educating the public on respecting IPR instead of enacting deterrence legislation.

The two sides also addressed during the July 2013 bilateral TIFA talks issues relating to the forthcoming Asia-Pacific Economic Cooperation (APEC) Leaders' Meeting and the WTO Ministerial session, both of which Indonesia will host in Bali in October and December of 2013, respectively. Additionally, the Parties addressed the US-ASEAN Expanded Economic Engagement (E3) Initiative. The United States and ASEAN launched this initiative in November 2012. E3 serves as a vehicle to coordinate US-ASEAN cooperation on international trade and investment issues. According to an Obama Administration E3 fact sheet, ASEAN Members and the United States will engage on series of concrete joint activities, namely (i) negotiation of a US-ASEAN trade facilitation agreement; (ii) joint development of information and communications technology principles; (iii) joint development of investment principles to address essential elements of investment policies; and (iv) additional work on standards development processes, small- and medium-sized enterprises (SME), and trade and the environment. Indonesian officials asserted that they already agree with many of the E3 proposals already tabled under (i) through (iv), and that there will likely be forward movement on the E3 initiative at the October 2013 ASEAN-US Leaders' Meeting in Brunei.

Indonesia and the United States last held TIFA talks in July 2012 in Bali. Similar to the recently concluded June 2013 TIFA talks, US officials used the July 2012 TIFA talks to express US stakeholders' concern over and seek solutions to such issues in Indonesia as: (i) IPR protection and enforcement; (ii) import-restrictive measures; (iii) an increasingly difficult investment climate. US and Indonesian officials have not yet set a specific date for the next high-level bilateral meeting under the TIFA, although the USTR Office of Southeast Asia and the Pacific does note that it will likely to occur within the next 4-6 months. Nonetheless, the USTR Office of Southeast Asia and the Pacific asserts that US and Indonesian officials will continue technical-level discussions between high-level meetings to address contentious trade and investment issues.

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<sup>2</sup> On May 25, 2010, the Government of Indonesia issued decrees establishing NIL, which enumerates sectors that are either wholly or partially closed to private foreign and/or domestic investment.

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slincicome@whitecase.com

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

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Click [here](#) for a copy of USTR's press release on the TIFA discussions, [here](#) for a copy of the TIFA, and [here](#) for a copy of the Obama Administration E3 fact sheet.

## Lawmakers Urge Action on Indian IPR and Other Trade Practices

On June 14, 2013, Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) sent a letter to Secretary of State John Kerry, expressing their concern in regard to India's intellectual property rights (IPR) protection and enforcement. The following week, on June 18, 2013, 171 House lawmakers sent a letter to President Obama, also expressing concern in regard to IPR issues in India, in addition to certain domestic localization requirements in the manufacturing sector.

The Sens. Baucus and Hatch letter asserts that certain Indian government policies "shut out [US-made] innovative products and transfer [US] intellectual property to [the Indian] domestic industry." Their letter focuses on India's treatment and enforcement of US patents, specifically in regard to pharmaceuticals and information and communication technology (ICT) goods, and of US copyrights.

The House lawmakers' letters assert that US companies "have suffered from a whole host of [IPR] issues in areas including information technology, renewable energy and biopharmaceuticals." Their letter also state that "Indian policymakers and courts have taken a series of actions designed to block imports by forcing local production of a wide range of manufactured goods," particularly in regard to information technology and clean energy equipment.

The letters come prior to Secretary of State Kerry's visit to India where he will participate in, *inter alia*, the US-India Strategic Dialogue starting June 24, 2013. The House and Senate lawmakers urge Secretary Kerry to make India's IPR protection and enforcement practices, in addition to domestic localization requirements, priority items at such Dialogue. However, Assistant Secretary of State for South Asia Robert Blake suggested on June 19, 2013 that there will unlikely be significant movement on these issues. However, Assistant Secretary Blake did note that Secretary Kerry will likely encourage Indian officials to reengage their US counterparts in negotiations toward concluding a bilateral investment treaty (BIT), which could eventually address, at least in part, the Senate and House lawmakers' concerns.

Click [here](#) for the House lawmakers' letter, and [here](#) for the Sens. Baucus and Hatch letter.

## House Lawmakers Reject Farm Bill in Unexpected Outcome

On June 20, 2013, House lawmakers voted 195 to 234 to unexpectedly defeat the Federal Agriculture Reform and Risk Management Act ("House Farm Bill"). 172 of the 234 House lawmakers who voted against passage of the Farm Bill were Democrats.

The Obama Administration and many congressional Democrats recently expressed opposition to the House Farm Bill due to the cuts to Supplemental Nutrition Assistance Program (SNAP) envisaged therein. House Republicans largely supported the Farm Bill's SNAP reforms; in response to the

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### Contacts:

Scott Lincicome, Esq.  
701 Thirteenth Street NW, Washington, DC 20005  
[slincicome@whitecase.com](mailto:slincicome@whitecase.com)

Samuel Scoles  
8 Marina View, #27-01, Singapore, 018960  
[sscoles@whitecase.com](mailto:sscoles@whitecase.com)

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House's failure to pass the Farm Bill, House Majority Leader Eric Cantor (R-VA) released a press statement, asserting that "Democrats [...] chose politics over progress and meaningful reform."

The Senate passed in early-June 2013 the Agriculture Reform, Food and Jobs Act ("Senate Farm Bill"); however, the prospects for passing a House Farm Bill in the near-term are now uncertain. House Agriculture Committee Ranking Member Collin Peterson (D-MN) released a statement following the June 20 House vote, stating that he has "a hard time seeing where [to] go from here."

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

## Bipartisan Group of Senators Send Letter to US Treasury Secretary Lew Urging Caution in Smithfield Acquisition

On June 20, 2013, fifteen US Senators sent a letter to Secretary of the Treasury Jacob Lew, expressing concern over the proposed acquisition by Chinese Shanghui International of US pork product producer Smithfield. Senate Agriculture Committee Chairwoman Debbie Stabenow (D-MI) and Ranking Member Thad Cochran (R-MI) and thirteen other Democratic and Republican Senate Agriculture Committee members included in the letter their recommendations and several questions in regard to how the US government should weigh this acquisition.

We provide below several highlights of the letter:

- **CFIUS Composition.** The Senators urged Secretary Lew to add the heads of the Department of Agriculture (USDA) and Food and Drug Administration (FDA) to the Committee on Foreign Investment in the United States (CFIUS). CFIUS is set to review and decide on whether to allow the proposed Smithfield acquisition;
- **Critical Infrastructure.** The Senators stated that the United States' food supply is "critical infrastructure" which falls "within any reasonable person's definition of national security." They therefore argued that CFIUS should "look behind any direct impact on government agencies and operations to the broader issues of food security, food safety, and biosecurity;" and
- **Future Acquisitions.** The Senators noted the possibility of further foreign acquisitions of major US food producers, and expressed caution in regard to how Parties to such acquisitions would "comply with stringent American food safety and biosecurity standards." The Senators also urged CFIUS to consider whether: (i) "taxpayer supported research and development and any resulting intellectual property [would be] properly safeguarded [following such acquisitions]; and (ii) trends in foreign acquisitions [would] be monitored to ensure the ongoing integrity of key components of the American food supply.

CFIUS is an interagency review board chaired by the Treasury Secretary. It reviews "covered transactions" in which a foreign person obtains "control" over a US business to evaluate whether the transaction poses a threat to US national security. Transactions go through a 30-day review period after which CFIUS can approve the deal or order further investigation. If further investigation is sought, CFIUS has an additional 45 days to consider whether the transaction poses a threat to US national security. CFIUS may clear the transaction to proceed if it finds no threat to national security,

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---

### Contacts:

Scott Lincicome, Esq.  
701 Thirteenth Street NW, Washington, DC 20005  
[slincicome@whitecase.com](mailto:slincicome@whitecase.com)

Samuel Scoles  
8 Marina View, #27-01, Singapore, 018960  
[sscoles@whitecase.com](mailto:sscoles@whitecase.com)

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or recommend the President block or require divestment of the transaction if CFIUS deems it poses a threat to national security. The President has 15 days after the 45-day investigation period to act on the CFIUS recommendation.

This letter reflects the uneasiness in Congress at the sale of Smithfield to a Chinese firm, as well as many legislators' China-skeptic posture. That the Senate lawmakers pointed to food security and safety and biosecurity is consistent with prior domestic industry concerns in food stuff-related international trade matters. Also, China's allegedly insufficient protection of US intellectual property rights is a recurring difficult topic in the US-China bilateral trade relationship.

CFIUS has a mixed record in regard to approving or denying Chinese investments in the United States. It currently remains unclear how CFIUS will decide in this matter.

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

## OMB IPEC Releases 2013 Joint Strategic Plan for IPR Enforcement

The Intellectual Property Enforcement Coordinator (IPEC), which operates within the Office of Management and Budget (OMB), released on June 20, 2013 its 2013 Joint Strategic plan on Intellectual Property Enforcement. This constitutes the second plan IPEC has released following its establishment in 2009; IPEC released the first in 2010. The 2013 plan cites increased success of enforcement measures from 2010 to 2013, but cautions that enforcement efforts must increase in order to protect US innovation industries.

We provide below several highlights of the plan:

- **Enforcement Successes.** Since 2010, investigations have increased by 71 percent, arrests by 159 percent, convictions by 103 percent and indictments by 264 percent; food and drug safety investigations have risen by 308 percent, arrests by 286 percent and new trade secret theft cases by 39 percent; cumulative border seizures of infringing imports have increased by 53 percent;
- **Private-Sector Voluntary Initiatives.** Prominent private companies, including, *inter alia*, Microsoft, VISA, MasterCard, American Express, Facebook and Google, created the Center for Safe Internet Pharmacies, a non-profit entity with a mandate to prevent fake online pharmacies from selling counterfeit drugs. Internet service providers (ISPs) and music labels cooperated to reduce online piracy by sending letters to ISP customers in cases where these customers appear to be illegally sharing or downloading copyrighted material. MasterCard, VISA, PayPal, American Express and Discover adopted best-practice guidelines to freeze payments on pirated or counterfeit goods;
- **Legislative Initiatives.** In March 2011, IPEC released a recommendation for 20 pieces of legislation the government could adopt to better IPR enforcement. The 2013 plan noted that Congress has enacted seven of those recommendations thus far. These pieces of legislation include those: (i) increasing penalties on sales of counterfeit goods or services to US defense

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Scott Lincicome, Esq.  
701 Thirteenth Street NW, Washington, DC 20005  
[slincicome@whitecase.com](mailto:slincicome@whitecase.com)

Samuel Scoles  
8 Marina View, #27-01, Singapore, 018960  
[sscoles@whitecase.com](mailto:sscoles@whitecase.com)

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and national security organizations; (ii) increasing penalties for economic espionage and theft of trade secrets; (iii) bolstering border protection capacities by allowing for streamlined determination of counterfeit with the holder of the copyright; (iv) increasing penalties for illegally trafficking counterfeit drugs; (v) reviewing guidelines on counterfeit drug offenses; (vi) granting the Food and Drug Administration (FDA) the authority to destroy counterfeit drugs imported in small quantities; and (vii) granting the FDA the authority to require drug manufacturers to notify the FDA if one of their drugs has been counterfeited;

- **IPR and Trade.** The plan noted that the United States Trade Representative (USTR) has entered the United States into trade agreements with South Korea, Colombia and Panama, and is also negotiating trade agreements with the European Union, *i.e.*, Transatlantic Trade and Investment Partnership (TTIP), and with Pacific Rim countries, *i.e.*, Trans-Pacific Partnership (TPP). The plan emphasized USTR's IPR-related accomplishments in the trade agreements with Korea, Colombia and Panama, in addition to its IPR-related goals in the context of TPP and TTIP; and
- **Future Initiatives.** The plan outlined several new IPEC initiatives moving forward and expansions of existing initiatives under its mandate. These include, *inter alia*: (i) facilitating voluntary cooperation between ISPs and businesses to minimize the effects of online piracy; (ii) improving transparency on new and existing IPR legislation; (iii) improving law enforcement communication with stakeholders; (iv) educating users on "fair use" doctrine; and (v) considering the establishment of "small claims" courts for "small" copyright and patent cases.

IPEC has a mandate to coordinate the IPR enforcement efforts of the US government's several agencies under whose purview IPR falls. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 established IPEC as an independent body. Victoria Espinel, confirmed in 2009, is IPEC's first and – so far – only head.

Much of the business community has greeted IPEC's 2013 plan warmly, with such advocacy groups as the Recording Industry Association of America lauding the efforts of the IPEC in protecting intellectual property. Fair use advocates have also welcomed the plan and lauded the efforts of the IPEC to educate authors on fair use requirements as well as address "abusive patent litigation".

Click [here](#) for a copy of IPEC's 2013 plan.

## Obama Administration Seeks WTO Plurilateral Agreement on Trade in Environmental Goods

On June 25, 2013, the Executive Office of the President released a "Climate Action Plan," which addresses climate change and sets out several goals, including (i) cutting carbon pollution, (ii) preparing the United States for the impacts of climate change, and (iii) leading international efforts to combat global climate change and prepare for its impacts. Within (iii), the Obama Administration commits the United States to "work with trading partners to launch negotiations at the World Trade Organization [(WTO)] towards global free trade in environmental goods."

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---

### Contacts:

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

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

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The Obama Administration plan notes that the WTO plurilateral agreement on trade in environmental goods would build on the list of 54 environmental goods the United States negotiated with its Asia-Pacific Economic Cooperation (APEC) partners in 2011 for which participants would reduce tariffs to 5 percent or less by 2015 (*please see W&C US Trade Alert dated September 12, 2012*). These “environmental goods” include, *inter alia*, (i) renewable and clean energy technologies, e.g., solar, wind, hydro and geothermal; (ii) wastewater treatment technologies; (iii) air pollution control technologies; (iv) solid and hazardous waste treatment technologies; and (v) environmental monitoring and assessment equipment.

Perhaps recognizing the difficulty in achieving the support of all WTO members in such endeavor in the near-term, the Obama Administration aims to work over the coming year toward securing participation of countries which account for 90 percent of global trade in environmental goods. This approach is consistent with the so-called “critical mass” approach USTR has taken in regard to the ongoing negotiations toward the WTO Trade in Services Agreement (TISA), *i.e.*, achieve participation of WTO members accounting for an overwhelming share of global trade, and hope that remaining WTO members take notice and follow suit. The European Union and Japan will likely view President Obama’s plan for this plurilateral agreement in a positive light. The Obama Administration is also seeking through TISA free trade in environmental services.

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

## **USTR Announces Results of 2012 GSP Review; Obama Administration Suspends Benefits for Bangladesh and Ecuador Renounces Similar Trade Preferences**

On June 27, 2013, the Office of the United States Trade Representative (USTR) released the results of the Obama Administration’s 2012 Annual Review under the Generalized System of Preferences (GSP) program. GSP provides preferential duty-free treatment to certain imports from beneficiary developing countries. In general, USTR reviews annually the product and country eligibility under GSP.

Based on the 2012 GSP review President Obama: (i) granted petitioned and *de minimis* waivers of competitive need limitations (CNLs) “for over 100 products from 14 countries;” and (ii) made ineligible for preferential duty-free treatment under GSP a corn product from Brazil and passenger tires from Indonesia because these countries are sufficiently competitive and/or have exceeded the corresponding CNLs. These products’ GSP eligibility status will become effective on July 1, 2013.

President Obama also decided to suspend the GSP benefits afforded to Bangladesh based on USTR’s finding of “that country’s failure to meet the statutory GSP country eligibility criterion related to worker rights.” There has been increased pressure from US lawmakers, private sectors groups and organized labor following the April 28, 2013 collapse of a factory building in Dhaka. Press reports note that the Bangladeshi government has urged the United States to reconsider its decision to suspend its GSP benefits. Bangladeshi government officials have reportedly cited recent improvements in labor rights and work standards, as well as ongoing, concrete efforts to enforce those rights. USTR Michael Froman stated in a June 27 press release that the Obama

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### **Contacts:**

Scott Lincicome, Esq.  
701 Thirteenth Street NW, Washington, DC 20005  
[slincicome@whitecase.com](mailto:slincicome@whitecase.com)

Samuel Scoles  
8 Marina View, #27-01, Singapore, 018960  
[sscoles@whitecase.com](mailto:sscoles@whitecase.com)

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Administration “is [...] initiating [...] discussions with [...] Bangladesh [...] to improve [its] worker rights environment [...] so that [its] GSP benefits can be restored.”

USTR also, intends to review in the near-term a country practice petition on Ecuador relating to an alleged failure on the part of the Ecuadorean government to recognize and enforce arbitral awards, e.g., that which favors Chevron. In a related development, the Ecuadorean government announced on June 27, 2013 that it “renounces unilaterally and irrevocably trade preferences with the United States” under the Andean Trade Promotion and Drug Eradication Act (ATPA), which is a program similar – but not identical - and complimentary to GSP. The Ecuadorean government renounced ATPDEA trade benefits due to demands from US officials that Ecuador not extend asylum to Edward Snowden, whom US officials accuse of having leaked classified information.

Click [here](#) for the results of the 2012 GSP Annual Review, and [here](#) for USTR Froman’s June 27 press release on Bangladesh.

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

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

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## FREE TRADE AGREEMENTS

### *Free Trade Agreement Highlights*

## EU Member States Approve TTIP Mandate; US and EU Leaders Announce July 2013 Launching of TTIP Negotiations

On June 17, 2013, President Obama, European Union (EU) Commission President Barroso and EU Council President Van Rompuy held a joint press conference during which they announced the formal start of substantive Transatlantic Trade and Investment Partnership (TTIP) negotiations in early July 2013. This joint press conference follows the formal passage of the EU's TTIP mandate on June 14 by EU member states.

According to an EU memo, the mandate provides EU TTIP negotiating objectives in regard to (i) market access; (ii) regulatory issues and non-tariff barriers; and (iii) shared global trade challenges and opportunities:

- **Within (i)**, the mandate provides EU negotiators direction in such areas as (i) tariffs; (ii) rules of origin (ROO); (iii) trade defense measures, e.g., antidumping (AD) and antisubsidy measures; (iv) services; (v) investment, e.g., in regard to expropriation, free transfer of funds, of fair and equitable treatment, and investor-state dispute settlement (ISDS); (vi) public, i.e., government, procurement;
- **Within (ii)**, the mandate provides EU negotiators direction in such areas as (i) sanitary and phytosanitary (SPS) measures; (ii) technical barriers to trade (TBTs); and (iii) regulatory convergence and compatibility by sector, e.g., chemical, automotive, information and communication technology (ICT), pharmaceutical, health, financial services; and
- **Within (iii)**, the mandate provides EU negotiators direction in such areas as (i) intellectual property rights (IPR), particularly in regard to geographic indications (GIs); (ii) social and environmental aspects of trade and sustainable development; and (iii) other issues, e.g., customs and trade facilitation, competition and state-owned enterprises (SOEs), raw materials and energy, small- and medium-sized enterprises (SMEs) and transparency.

Notably, the EU memo also addresses the request from France and several other EU member states for the mandate to exclude the audiovisual (AV) sector from negotiations. The EU memo states that the mandate provides no specific "carve-out" for the AV sector, although it also states that AV services "are presently not part of the mandate." Therefore, member states may vote to include AV services in a revised mandate at a later stage, although this is an unlikely scenario in the near-term.

With the expiration in 2007 of the 2002 Trade Promotion Authority (TPA), the United States lacks a formal TTIP negotiating mandate. However, an Obama Administration fact sheet foresees broad negotiations in the following areas: (i) further opening of EU markets to US goods; (ii) strengthen

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

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

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rules-based investment; (iii) elimination of all tariffs on trade; (iv) tackle behind-the-border non-tariff barriers; (v) obtain improved market access on trade in services; (vi) promote greater compatibility in regulations and standards; (vii) develop rules, principles, market-based disciplines and new modes of cooperation on such issues as (IPR), SOEs and discriminatory localization barriers to trade; and (viii) promote the global competitiveness of SMEs. It remains unclear when the Obama Administration will seek a new TPA from Congress.

President Obama has suggested in remarks that TTIP negotiations could last into 2017. However, this projection still constitutes an ambitious deadline given the proposed broad scope of the negotiations and the sensitivities and complexities that stem thereof.

Click [here](#) for the Obama administration factsheet, and [here](#) for a copy of the EU TTIP memo.

## Sen. Feinstein Introduces Bill to Extend TPL Program with Nicaragua Until 2024

Senator Diane Feinstein (D-CA) introduced on June 13, 2013 a bill (S. 1136) to extend through 2024 preferential tariff treatment for certain textile goods imported from Nicaragua under the existing tariff preference level (TPL). Without an extension, the program will expire in 2014. The program operates under the aegis of the Dominican Republic – Central America Free Trade Agreement (CAFTA-DR) between the United States, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and the Dominican Republic.

In remarks to the Senate plenary upon the bill's introduction, Sen. Feinstein argued that the TPL program benefits Nicaraguan apparel factories, US apparel companies and retailers, and US fabric and yarn mills. The program allows Nicaragua to export to the United States duty-free 100 million square meter equivalents (SMEs) of apparel made with fabric from non-CAFTA countries provided that the apparel undergoes assembly in Nicaragua. In addition, Sen. Feinstein asserted that the program creates a benefit for US textile manufacturers by requiring Nicaragua to purchase one square meter of US fabric for every one square meter of non-CAFTA woven trouser fabric it exports to the United States, with a limit of up to 50 million square meter equivalents.

Sen. Feinstein also emphasized the development-related aim of the TPL program, asserting that Nicaragua is the second-poorest country in the Western Hemisphere. She then remarked on the timing of the bill's introduction, urging its passage as quickly as possible so that US businesses can plan properly. Major industry groups such as the American Apparel and Footwear Association, the National Retail Federation, the Retail Industry Leaders Association, and the United States Association of Importers of Textile and Apparel are in favor of the TPL program, and have supported its renewal, citing the same planning concerns as Sen. Feinstein.

Senate leadership has sent S. 1136 to the Committee on Finance. It remains unclear if the Committee will mark up the bill for a plenary vote.

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

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---

### Contacts:

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

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

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## MULTILATERAL

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### MULTILATERAL

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## WTO Reports on G-20 Trade Measures

### Summary

Director-General of the World Trade Organization (WTO) Pascal Lamy published on June 17, 2013 the ninth monitoring report ( "Report"), reviewing trade and trade-related measures implemented by the Group of 20 (G-20) countries.<sup>3</sup> The Report covers the period mid-October 2012 through mid-May 2013. In the Report, D-G Lamy notes that G-20 countries have increased the pace of adoption of new trade-restrictive measures; over the past seven months, G-20 Countries implemented 109 such measures compared with 71 restrictions recorded over mid-May 2012 through mid-October 2012.

In addition, the Report indicates that the outlook for economic growth and job creation remains a major concern in most countries. The global economy has continued to struggle over the review period, and the most recent forecast for 2013 shows that world trade will likely grow by 3.3 percent in 2013. Therefore, D-G Lamy urged G-20 leaders to avoid the adoption of isolationist policies and measures that restrict trade, and which could engender so-called "tit-for-tat" reactions. Instead, D-G Lamy emphasized that G-20 leaders should take steps to ensure a positive outcome at the next WTO Ministerial Conference in Bali, on 3-6 December 2013.

### Analysis

#### I. TRADE AND TRADE-RELATED POLICY DEVELOPMENTS

- **Overview.** The pace of implementation of new restrictive, or potentially restrictive, measures has increased, with 109 new measures over the past 7 months (*i.e.*, an average of 15.6 measures per month). During the previous period (May 2012-October 2012), G-20 countries adopted 71 import-restrictive measures (*i.e.*, an average of 14.2 per month). Trade-restrictive measures adopted during the current review period affected 0.4 percent of total world imports of goods or 0.5 percent of G-20 countries total imports of goods.

The initiation of trade-remedy investigations, in particular of antidumping (AD) cases, remains the most frequently implemented measure over the review period, accounting for approximately

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<sup>3</sup> These reports have been prepared in response to the request of the G-20 to the WTO, together with the Organization for Economic Co-operation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD), to monitor and report publicly on G-20 adherence to their undertakings on resisting trade and investment protectionism and promoting global trade and investment.

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---

#### Contacts:

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

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

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61 percent of total restrictions, followed by import tariff increases. In regard to scope, the sectors most affected in terms of trade coverage are electrical machinery, animal or vegetable fats and oils, and machinery and mechanical appliances.

During the review period, some G-20 economies also put in place measures aimed at liberalizing trade. The Report notes that G-20 countries adopted 70 of such measures during the review period, mainly in the form of termination of trade remedy actions (e.g., removal of duties or termination of investigations without the imposition of duties), temporary tariff reductions, and streamlined customs procedures. Of 179 trade measures recorded during the period, close to 40 percent are trade-liberalizing measures.

The majority of trade restrictions introduced by G-20 economies, as recorded in the trade monitoring reports since October 2008, remain in place. By mid-May 2013, G-20 countries had only removed 18.6 percent of these measures.

- **Import Measures.** Between mid-October 2012 and mid-May 2013, G-20 countries adopted 59 new measures affecting imports (excluding trade-remedy actions). Of the 59 measures, 30 were trade-liberalizing measures and 29 were trade-restrictive measures. Brazil and India were the G-20 countries that most adopted trade-liberalizing measures, while the G-20 economies that most implemented import restrictions during the period under review were Brazil, Argentina, South Africa and Indonesia.
- **Export Measures.** Over the past seven months, G-20 economies implemented seven export restrictions, principally relating to customs procedures. The principal products affected by these measures were wood, base metals and fruits. Also, G-20 countries implemented four export-liberalizing measures through the elimination or reduction of export duties and quantitative restrictions.
- **Trade Remedies.** From October 2012-April 2013, G-20 countries initiated 74 new AD investigations, a decrease as compared to the previous period (October 2011-April 2012) when G-20 countries initiated 85 new AD investigations. This overall decline was principally attributable to a sharp decline in initiations by both the European Union (EU) and the United States, which offset increases by other major AD users such as Argentina (10 new investigations), Brazil (18 new investigations) and India (15 new investigations).

In October 2012-April 2013, G-20 members initiated 22 countervailing duty (CVD) investigations, an increase as compared to the 15 in the previous period. Only six G-20 members initiated CVD investigations: Australia, Brazil, Canada, China, the EU, and the United States.

In October 2012-April 2013, initiations of safeguard investigations by G-20 members more than doubled from the previous period (October 2011-April 2012). Five G-20 members initiated ten new safeguard investigations. Indonesia, India and South Africa collectively accounted for more 80 percent of all activity during the period in this regard.

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

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

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## II. OTHER ISSUES INCLUDED IN THE REPORT

- **General Economic Support Measures.** During the review period, G-20 countries implemented 29 new confirmed economic support measures (and 6 unconfirmed). The measures principally provide economic assistance and financial support to certain sectors, as was the case in previous periods. Once again, these were principally rescue aid for specific industries, restructuring aid, export support (e.g., tax credit and export finance), and general financial support in the form of insurance, guarantee and credit. The principal beneficiary sectors were small- and medium-sized enterprises (SMEs), and selected industries in the manufacturing sector (e.g., automotive industry and telecommunications).
- **Recent Economic and Trade trends.** The report indicates that the global economy has continued to struggle since the previous monitoring report. Adverse economic developments in certain countries have overshadowed modest improvements in economic conditions in several countries, with negative consequences for global and G-20 trade flows. The WTO predicts below-average growth of 3.3 percent in the volume of world merchandise trade for 2013, followed by a 5 percent increase in 2014 as the global economy regains momentum. Exports of developed economies will likely increase by approximately 1.4 percent this year, while shipments from developing economies will likely expand by approximately 5.3 percent.

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

### *Multilateral Highlights*

## OECD Ministers Urge Progress toward Bali Package on Trade Facilitation, Agriculture and Development; Pessimism Abounds

Organisation for Economic Co-operation and Development Ministers (“OECD Ministers”) issued a statement on May 30, 2013, urging all World Trade Organization (WTO) members to “work with flexibility and realism” to achieve “significant and substantive outcomes at the [December 3-6, 2013] 9th WTO Ministerial Meeting” in Bali. However, the OECD Ministers note in the statement that “negotiations are [...] not on a path that provides confidence of success.”

Reaffirming their “commitment to a rules-based, open trading and investment system, expanding markets and resisting protectionism in all its forms,” the OECD Ministers asserted that the outcomes of the Ministerial meeting should encompass: (i) a trade facilitation agreement (TFA); and (ii) an agreement on some issues of interest to least developed countries (LDCs), including those relating to agriculture and development. We discuss below these areas:

- **Trade Facilitation.** TFA Negotiations center on WTO members: (i) clarifying and improving disciplines on freedom of transit, import/export fees and formalities, and trade regulation publication and administration; (ii) enhancing technical assistance and capacity building in these areas; and (iii) improving trade facilitation- and customs compliance-related cooperation between members’ authorities; and

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

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

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- **Agriculture and Development for LDCs.** There are several proposals on the table in regard to agriculture and development and LDCs: (i) a Group of 20 (“G-20”) major economies’ proposal to improve administration of tariff-rate quotas (TRQs); (ii) another G-20 proposal to require developed countries to reduce farm support, *i.e.*, the so-called “export competition” proposal; and (iii) a Group of 33 (G-33) developing countries’ food security proposal to allow developing country governments to purchase and store food at above market prices.

Disagreements among developed and developing WTO member countries have hampered progress toward positive Bali outcomes on TFA and agriculture and development. Such developing countries as India and South Africa have reportedly shown resistance to conceding ground on TFA in light of an alleged lack of flexibility on the part of such developed economies as the United States and the European Union in regard to agriculture- and development-related proposals.

In July 2013, WTO members will likely take stock of progress made and subsequently decide whether significant and substantive outcomes on TFA and agriculture and developments for LDCs are feasible for the December 2013 Bali Ministerial. Deputy United States Trade Representative (DUSTR) Michael Punke opined in a May 29 statement that the Bali Ministerial will mark a turning point for the WTO; success at the Bali Ministerial will revitalize trade liberalization within the context of the WTO, while failure will further encourage WTO members to “create new trading opportunities bilaterally and plurilaterally [but] the WTO as a negotiating body will [...] fall behind.”

Click [here](#) for the OECD Ministers statement, and [here](#) for DUSTR Punke’s statement.

## WTO Committee on Government Procurement Grants Russia Observer Status

The World Trade Organization (WTO) Committee on Government Procurement (CPG) granted Russia observer status on May 29<sup>th</sup> 2013. CPG administers the plurilateral Agreement on Government Procurement (GPA). GPA binds members to procure goods and services in an open, transparent and non-discriminatory manner.

Russia agreed to seek accession to GPA within four years of becoming a WTO member; Russia joined the WTO in August 2012. This commitment to seek GPA accession stems from the greater package of reforms the Russian Federation Accession Working Party (“Working Party”) negotiated with Russia in November 2011 as requirements for its WTO accession, including in regard to: (i) goods and services market access; (ii) export duties; (iii) industrial and agricultural subsidies; (iv) sanitary and phytosanitary (SPS) measures; (v) technical barriers to trade (TBTs); (vi) investment; (vii) intellectual property rights (IPR); and (viii) government procurement (*please see W&C US Trade Alert dated November 10, 2011*). In addition to becoming a GPA observer, a WTO press release notes that Russia has enacted new government procurement legislation to take effect on January 1, 2014; such law aims to increase transparency and streamline procedures in the Russian government’s procurement of goods and services.

Russia joins 26 other WTO members as observers to GPA. 42 WTO members constitute the GPA membership, which comprises such major economies as the United States, the 27 EU member

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### Contacts:

Scott Lincicome, Esq.  
701 Thirteenth Street NW, Washington, DC 20005  
[slincicome@whitecase.com](mailto:slincicome@whitecase.com)

Samuel Scoles  
8 Marina View, #27-01, Singapore, 018960  
[sscoles@whitecase.com](mailto:sscoles@whitecase.com)

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states and Japan. Russia's new status as an observer to GPA represents the first and an important step toward its expected full accession to GPA.

Click [here](#) for a copy of the WTO press release.

## WTO Releases 2013 Annual Report

On May 31, 2013 the World Trade Organization (WTO) released its 2013 Annual Report ("Report"). This Report provides an overview of the WTO's structure and purpose, and summarizes actions within the WTO and among WTO members during 2012 in such areas as (i) trade negotiations, (ii) implementation and monitoring, and (iii) dispute settlement.

### Trade Negotiations

The Report notes the deadlock in the Doha Development Agenda (DDA or "Doha Round") negotiations, and describes the current state-of-play in such DDA areas as (i) agriculture, (ii) market access for non-agricultural products, (iii) services, (iv) trade-related aspects of intellectual property rights (TRIPS), (v) development, (vi) transfer of technology, (vii) environment, (viii) trade facilitation, (ix) rules, (x) dispute settlement, and (xi) government procurement. However, the Report asserts that progress made on (i), (viii) and (xi) could allow for a package of deliverables in these areas during the December 2013 9<sup>th</sup> Ministerial Conference in Bali. Despite generalized pessimism surrounding conclusion of the Doha Round, the Report adopts an optimistic tone in regard to such conclusion, noting that any "early package" of positive outcomes in the above-enumerated DDA areas does not represent the end of Doha Round negotiations but, rather, a "milestone."

### Implementation and Monitoring

In regard to implementation and monitoring of WTO agreements, the Report points to activities of the WTO General Council and WTO committees, working groups and individual WTO members in such areas as (i) goods trade, *e.g.*, market access, agriculture, sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBTs), subsidies and countervailing measures, antidumping (AD) practices, customs valuation, rules of origin (ROOs), import licensing, safeguards, trade-related investment measures, information technology (IT), state-trading enterprises (STEs), and civil aircraft trade; (ii) services trade, (iii) TRIPS, (iv) environment, (v) regional trade agreements (RTAs), *e.g.*, free trade agreements (FTAs), (vi) trade policy reviews (TPRs), (vii) trade monitoring reports (TMRs), (viii) trade, debt and finance, (ix) government procurement, and (x) the Integrated Trade Intelligence Portal (I-TIP).

- **On activities of the General Council**, the Report notes that the Council approved improved guidelines providing a streamlined framework for the entry of least-developed countries (LDCs) into the WTO, and also approved the WTO membership of Laos and Tajikistan;
- **On (v)**, the Report notes that WTO received 37 new notifications of RTAs between WTO members in 2012, as compared to the 25 notified in 2011. Latin America and the Commonwealth of Independent States (CIS) saw a particularly marked growth in RTAs, with 10 and 8 new Agreements, respectively; and

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

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

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- **On (vii)**, the Report notes that WTO members and observers largely forewent applying protectionist measures in 2012, despite domestic pressures to do so stemming from the overall negative economic outlook.

#### Dispute Settlement

The Report notes that WTO members filed in 2012 27 “request for consultation” notifications, thereby taking the first step in the dispute settlement process; WTO members filed 8 such notifications in 2011.

- **Complainants.** The four WTO members that filed the greatest number of such notifications are (i) United States, with 5 notifications, (ii) Japan, with 3 notifications, (iii) China, with 3 notifications, and (iv) Argentina with 3 notifications;
- **Respondents.** The three countries against which WTO members filed the greatest number of such notifications are (i) China, with 7 notifications, (ii) United States, with 6 notifications, and (iii) Argentina, with 5 notifications.

Beyond this first step in cases in which complainants and respondents were unable to arrive at a mutually satisfactory solution during consultations, the Dispute Settlement Body (DSB) established in 2012 11 new dispute settlement panels, and adopted 18 panel and 11 Appellate Body reports.

The Report also highlights a November 2012 agreement between the EU and select Latin American countries, formally ending 20 year dispute over the banana trade. The EU and these Latin American countries both agreed to drop all pending disputes and abide by the terms of the agreement.

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

## WTO TRIPS Council Grants Extension of Transition Period to LDCs

On June 12, 2013, the World Trade Organization (WTO) Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) granted an extension until 2021 of the so-called “transition period” to least developed country (LDC) members. During this transition period LDCs may apply only Articles 3 (National Treatment), 4 (Most Favored Nation Treatment) and 5 (Multilateral Agreements on Acquisition or Maintenance of Protection) of the TRIPS Agreement.

The TRIPS Council decision to extend the transition period applies only to countries that fit the categorization of an LDC according to the United Nations. Moreover, countries that develop beyond the status of LDC lose the extension of the transition period and must apply the entirety of the TRIPS agreement. In addition, the extension granted in this decision does not change the decision made in 2002 to extend the transition period on pharmaceutical goods to LDCs until 2016. Unless members pass an extension, such transition period will expire on schedule.

LDCs and Non-Governmental Organizations (NGOs) originally asked for an indefinite extension, which would have allowed LDCs to only apply TRIPS Articles 3, 4 and 5 until such point that they

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701 Thirteenth Street NW, Washington, DC 20005  
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Samuel Scoles  
8 Marina View, #27-01, Singapore, 018960  
sscoles@whitecase.com

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were no longer LDCs. Council members also discussed a controversial “non-rollback clause,” present in the 2005-2013 extension. This non-rollback clause would have forbidden LDCs from repealing measures towards adhesion to the TRIPS agreement which they had already taken.

The final agreement is a compromise, which eliminates the non-rollback clause, while also including a time limit for the extension. However, the decision explicitly allows for another extension in 2021. Therefore, the time limit serves to set the date for the negotiation of a future extension. 34 WTO members currently fit the UN categorization of LDC, including: Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, DR Congo, Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Lao PDR, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Samoa, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Vanuatu and Zambia. A majority of LDCs are located in sub-Saharan Africa, with several also in Southeast Asia, the Pacific, South Asia and the Caribbean.

Click [here](#) for a copy of the WTO decision, and [here](#) for a copy of the TRIPS agreement.

## WTO Issues Compilation on Special and Differential Treatment Provisions

In response to a request from the Committee on Trade and Development, the World Trade Organization (WTO) Secretariat published on June 14, 2013 a compilation of all “Special and Differential Treatment Provisions in WTO Agreements and Decisions,” which updates and streamlines September 2001 and June 2010 versions of the same compilation. WTO Agreements and Decisions include provisions that afford developing countries special and differential treatment (SDT), including longer periods to phase in obligations and more lenient obligations.

In accordance with the typology developed by the Secretariat in the 2001 document, the SDT provisions in the most recent update fall into six categories: (i) provisions aimed at increasing the trade opportunities of developing country members; (ii) provisions under which WTO Members should safeguard the interests of developing country members; (iii) flexibility of commitments, of action, and use of policy instruments; (iv) transitional time periods; (v) technical assistance; and (vi) provisions relating to least developed country (LDC) members. The June 14 compilation asserts that:

- **General Agreement on Tariffs and Trade (GATT) 1994** contains 25 SDT provisions;
- **Understanding on Balance of Payments of GATT 1994** contains 2 SDT provisions;
- **Agreement on Agriculture** contains 13 SDT provisions;
- **Agreement on the Technical Application of Sanitary and Phytosanitary (SPS) Measures** contains 6 SDT provisions;
- **Agreement on Technical Barriers to Trade** contains 19 SDT provisions;
- **Agreement on Trade-Related Investment Measures** contains 3 SDT provisions;

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

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

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- **Agreement on Implementation of Article VI of GATT 1994** contains 1 SDT provision;
- **Agreement on Implementation of Article VII of GATT 1994** contains 8 SDT provisions;
- **Agreement on Import Licensing Procedures** contains 4 SDT provisions;
- **Agreement on Subsidies and Countervailing Measures (SCM)** contains 16 SDT provisions;
- **Agreement on Safeguards** contains 2 SDT provisions;
- **General Agreement on Trade in Services (GATS)** contains 13 SDT provisions;
- **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)** contains 6 SDT provisions;
- **Understanding on Rules and Procedures Governing the Settlement of Disputes** contains 11 SDT provisions; and
- **Agreement on Government Procurement (GPA)** contains 10 SDT provisions;

The compilation also enumerates the Ministerial, General Council and other relevant decisions that contain SDT provisions.

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

## USTR Releases Report on US Enforcement Efforts Targeting Russia's Compliance with WTO Commitments

On June 18, 2013, the United States Trade Representative (USTR) released a report titled "Report on WTO Enforcement Actions: Russia" describing USTR enforcement actions to ensure Russia's compliance with its World Trade Organization (WTO) obligations. Pursuant to the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, which, among other things, extended permanent normal trade relations to Russia, USTR must submit this report annually to the Senate Committee on Finance and the House Committee on Ways and Means.

The report identifies several areas of concern to the United States regarding Russia's compliance with its WTO commitments:

- **Sanitary and Phytosanitary (SPS) Measures.** The report notes that the United States remains concerned over Russia's implementation of certain obligations under the WTO Agreement on Sanitary and Phytosanitary Measures and certain commitments in its Working Party Report, such as: (i) the harmonization of sanitary and veterinary measures with relevant international standards; (ii) the adoption of inspection guidelines in accordance with Codex Alimentarius; and (iii) ensuring that SPS measures that are more stringent than international standards are based on science and risk analyses.

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

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

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- **Motor Vehicle Recycling Fee.** The report notes concerns over a fee Russia imposes on imported motor vehicles to cover the cost of recycling the vehicles. The recycling fee does not apply to domestic manufacturers who agree to cover the cost of recycling a vehicle at the end of its useful life, thus leading US officials to allege discrimination against foreign manufacturers.
- **Information Technology Agreement (ITA).** As part of its accession, Russia agreed to join the WTO ITA. The report notes concerns over Russia's failure to complete its ITA accession and the omission of several tariff lines from Russia's draft ITA schedule.
- **Intellectual Property Rights (IPR).** To better understand Russia's compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), USTR has requested through the TRIPS Committee that Russia clarifies certain elements of Russia's Civil Code relating to IPR issues, including in regard to licenses and transfer of ownership of IPR, and the operation of laws regarding copyrights, trademarks, industrial design, patents and data protection. USTR has also sought information in regard to Russia's protection of plant varieties and integrated circuits.
- **Transparency.** The report notes that the United States remains concerned over Russia's failure to publish and notify to the WTO several measures related to trade in goods, services and intellectual property. The United States cited lack of notifications related to the import licensing regime as an area of particular concern. The report also notes the United States' concerns over reportedly inadequate notice and comment procedures regarding technical regulations.
- **Technical Barriers Governing Alcoholic Beverages.** The report notes that the United States remains concerned over certain regulations imposing "burdensome and unnecessary" restrictions on alcoholic beverage storage practices. The report also notes concerns over allegedly duplicative registration requirements on alcohol in Russia at the national level.
- **Safeguard Investigations.** Russia agreed during its WTO accession to ensure that safeguard measures and investigations are consistent with the WTO Agreement on Safeguards, even though the Eurasian Economic Commission (EEC) is the body that conducts safeguard investigations. The United States remains concerned over the EEC's methodology and the consistency of its actions with various provisions of the WTO Agreement on Safeguards, particularly in regard to US-origin combine harvesters and modules.
- **Trade Related Investment Measures.** In regard to compliance with the WTO Agreement on Trade Related Investment Measures (TRIMS), the report notes concerns over an automotive industry investment incentive regime which allows for the duty-free entry of auto parts used in the production of vehicles that contain a certain level of Russian content. The report also notes concerns over a leasing program of state-owned RosAgroLeasing (RAL) to provide favorable leasing terms to farmers on agriculture equipment "manufactured in the Russian Federation."
- **Government procurement.** The report notes that the United States continues to urge Russia to accede to the WTO Government Procurement Agreement.

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

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The USTR report also emphasizes the positive implications of Russia's accession to the WTO. For example, USTR notes that US exports to Russia increased 29 percent from 2011 to 2012, and were on pace to grow even further in 2013. However, the report does note that USTR will continue to closely monitor developments in order to ensure that Russia is complying with its WTO obligations. Other WTO members have raised similar concerns and Russia has already indicated that it plans on addressing some of these concerns, such as the motor vehicle recycling fee.

Click [here](#) for a copy of USTR's report on Russia's compliance with its WTO obligations.

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Samuel Scoles  
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sscoles@whitecase.com

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