



White & Case LLP General Trade Report - JETRO

July 2013

In This Issue

United States..... 1

General Trade Policy..... 1

Free Trade Agreements 8

Multilateral 14

Table of Contents

UNITED STATES	1
<i>US General Trade Policy Highlights.....</i>	1
US and ASEAN Officials Hold Ministerial Meeting on Margins of ASEAN Regional Forum to Discuss US-ASEAN Engagement.....	1
CRS Releases Report on Foreign Investment Restrictions in the United States.....	2
Senate Finance and House Ways and Means Committees Introduce Respective GSP Reauthorization Bills.....	3
USTR, State Department and DOL Announce US Action Plan for Improving Bangladesh Worker Safety.....	4
House Ways and Means Leadership Reintroduces MTB Legislation.....	4
VP Biden Speech Points to Indian IPR, Local Content, FDI, Tax and Market Access Issues; BIT Negotiations Resuming.....	5
USTR Initiates Annual GSP Country Practices Review in Context of Looming GSP Expiration.....	6
FDA Proposes New FSVP Regulations for Food and Feed Importers.....	7
<i>Free Trade Agreement Highlights.....</i>	8
US Business Group Sets Out Its Vision of TTIP.....	8
Rep. Levin Puts Forward Action Plan for Japanese Automotive Barriers and TPP.....	10
Stakeholders Testify Before House Energy and Commerce Subcommittee on Regulatory Issues in TTIP.....	11
President Obama Seeks Trade Promotion Authority Linked to Trade Adjustment Assistance.....	12
MULTILATERAL	14
<i>Multilateral Highlights.....</i>	14
ITA Expansion Negotiation Partners Suspend Talks, Citing Chinese Position as Basis for Decision.....	14

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

Contacts:

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

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

WHITE & CASE LLP | i

UNITED STATES

GENERAL TRADE POLICY

US General Trade Policy Highlights

US and ASEAN Officials Hold Ministerial Meeting on Margins of ASEAN Regional Forum to Discuss US-ASEAN Engagement

From July 1-2, 2013, the Association of Southeast Asian Nations (ASEAN) held its 20th Regional Forum meeting in Brunei, which facilitates high-level discussions between ASEAN members and its dialogue partners. On the margins of the regional forum, US Secretary of State John Kerry joined the foreign ministers of the ASEAN member states and the ASEAN Secretary-General for a joint meeting on present and future engagement and cooperation between ASEAN and the United States.

Secretary Kerry and Myanmar's Foreign Minister Wunna Maung Lwin gave a joint public opening statement before withdrawing into a closed session. Secretary Kerry emphasized the United States' support of ASEAN's economic integration, positive social development, and increased internal cooperation. Secretary Kerry then pledged to "invest significantly in technical assistance."

Specifically, Secretary Kerry set out three areas in which the United States plans to focus its economic engagement with ASEAN:

- **The Expanded Economic Engagement (E3) with ASEAN.** Launched in November 2012, E3 serves as a vehicle to coordinate US-ASEAN cooperation on international trade and investment issues, including (i) the 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;
- **Support for ASEAN Economic Integration.** In July 2013, the United States Agency for International Development (USAID), along with other US agencies working with ASEAN, will launch a new 5-year; USD 18 million program denominated the "ASEAN Connectivity for Trade and Investment" (ACTI). ACTI will provide technical assistance to ASEAN nations to enhance private sector integration and competitiveness by (i) improving standards and systems, (ii) boosting small- and medium-sized enterprise (SME) capacity, (iii) accelerating the deployment of clean energy technologies, and (iv) expanding information and communication technology (ICT) connectivity;

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

Contacts:

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

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

- **Collaborative ASEAN and APEC Activities.** The United States is also striving to extend aid to member states of the Asia-Pacific Economic Cooperation (APEC) forum that are not part of ASEAN. Specifically, the United States is providing aid in capacity-building activities, including (i) workshops on ethical business practices for SMEs, (ii) energy efficient building standards, (iii) food safety standards, (iv) food security, (v) emerging agricultural technologies, and (vi) good regulatory practices.

In addition to the United States' pledge to support the economic growth and further integration of ASEAN, Secretary Kerry highlighted ongoing security and socio-cultural engagements. The most noteworthy are the Partnership for Good Governance, Equitable and Sustainable Development, and Security (PROGRESS) and the cybercrime initiative.

Click [here](#) for a link to the Fact Sheet from the meeting.

CRS Releases Report on Foreign Investment Restrictions in the United States

The Congressional Research Service (CRS) issued a report on June 17, 2013 discussing laws applicable to foreign investment in the United States. The report provides an historical overview of US investment policy, examines constitutional jurisprudence on investment, and addresses foreign investment-related federal statutes, specifically in regard to investment in industries potentially affecting national security. The report also includes a brief examination of the Committee on Foreign Investment in the United States (CFIUS).

We provide below several highlights of the report:

- **Current Federal Foreign Investment-Related Statutes.** The report states that there are four broad-scope extant federal statutes that impact foreign investment in the United States: (i) the International Investment and Trade in Services Survey Act; (ii) the Foreign Direct Investment and International Financial Data Improvements Act of 1992; (iii) the Agricultural Foreign Investment Disclosure Act of 1978; and (iv) the Domestic and Foreign Investment Improved Disclosure Act. The report notes that these four statutes are information-gathering and disclosure statutes and that they therefore do not impose actual restrictions on foreign investment in the United States. However, the report asserts that laws do exist which restrict foreign investment in the United States in specific "industries which could affect national security." These industries include: (i) the shipping industry; (ii) the aircraft industry; (iii) mining; (iv) energy; (v) "lands", *i.e.* statutes regulating the use and sale of public land; (vi) communications; (vii) banking; (viii) government contracting, *i.e.* procurement; and (ix) regulation of foreign investment corporations; and
- **The Committee on Foreign Investment in the United States (CFIUS).** The report details the role of CFIUS, namely its ability to review transactions such as mergers, acquisitions, or takeovers by or with a foreign person in which a foreign entity gains "control" over a US business to evaluate that transaction's potential effect on national security. The report asserts that CFIUS weighs in its review "domestic production needed for projected national defense requirements, the capability and capacity of domestic industries to meet national defense requirements, the

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

control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security, and the potential effects of the proposed or pending transaction on United States international technological leadership in areas affecting United States national security.” Also, the report notes that if “the Committee determines that the acquiring party is an entity controlled by a foreign government, the Committee shall conduct an investigation of the transaction as a national security investigation.” The investigation refers to an additional 45-day period beyond the initial 30-day review process, and can only be waived in such an instance if it is found not to threaten national security by the Chairperson of CFIUS or Deputy Secretary of the Treasury and the head of any lead agency designated by CFIUS in that particular review.

The CRS report comes in the context of the proposed acquisition by Chinese Shanghai International of US pork product producer Smithfield. There is significant US domestic resistance to this acquisition in Congress relating to such issues as food security and safety and biosecurity, in addition to pending questions over China’s allegedly insufficient protection of US intellectual property rights. Results of a CFIUS review of the acquisition are forthcoming (*please see W&C US Trade Alert dated June 24, 2013*).

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

Senate Finance and House Ways and Means Committees Introduce Respective GSP Reauthorization Bills

Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) introduced legislation on July 18, 2013 to avoid expiration of the Generalized System of Preferences (GSP). Senate Finance Leadership’s introduction of the GSP reauthorization bill comes one day after House Ways and Means Committee Chairman Camp (R-MI), Ranking Member Levin (D-MI), Trade Subcommittee Chairman Nunes (R-CA) and Trade Subcommittee Ranking Member Rangel (D-NY) introduced similar legislation. GSP affords preferential duty-free treatment to certain imports into the United States originating in GSP developing beneficiary countries.

Following introduction of the bills, the Committees’ leadership issued press statements expressing strong, bipartisan support for GSP. The press statements pointed to: (i) the economic benefits of GSP for US firms and consumers, *i.e.*, firms may import less expensive intermediate goods, and consumers may purchase less expensive finished goods; and (ii) the economic development potential GSP provides to beneficiary countries. The Senate and House lawmakers also noted that GSP is an effective tool the United States uses to push many of its trading partners toward compliance with international trade rules. The GSP program is set to expire on July 31, 2013. Both the Senate and House bills introduced extend the program through September 30, 2015. House leadership has referred the House bill to the Committee on Ways and Means, and Senate Leadership has referred the Senate bill to the Committee on Finance.

Although the Government Printing Office (GPO) has published the House bill, it has not yet done so for the Senate bill. It therefore remains impossible to perform a side-by-side comparison of the two bills’ respective content. On several occasions, Chairmen Camp and Nunes have urged the Senate

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

to first pass a GSP reauthorization bill with no amendments, after which the House could pass an identical bill and send it to the Senate where no further action would be needed before enactment into law by the President. If, as introduced, the Senate bill is identical to the current House bill, their passage and enactment into law in the near-term should be relatively uncomplicated. However, Finance and Ways and Means Committee mark-ups of the bill could quickly change the bills' content, which would prolong the legislative process and thus delay GSP's reauthorization. Also, if the Senate and the House are unable to pass their respective GSP reauthorization bills before the August 2013 recess, a busy post-recess congressional docket makes prospects for the bills' passage in the Fall in any timely manner uncertain.

Click [here](#) for the Senate Finance Committee press release, and [here](#) for the House Ways and Means press release. Also, click [here](#) for a copy of the House bill.

USTR, State Department and DOL Announce US Action Plan for Improving Bangladesh Worker Safety

On July 19, 2013, the Office of the United States Trade Representative (USTR), the Department of Labor (DOL) and the State Department released a joint statement announcing the "Bangladesh Action Plan 2013" providing an outline for improvements in (i) government inspections for labor, fire and building standards; (ii) the ready-made garments (RMG)/knitwear sector; (iii) export processing zones (EPZ); and (iv) the shrimp processing sector. The US Action Plan provides a path for Bangladesh to again enjoy duty-free US market access for certain goods under the Generalized System of Preferences (GSP).

President Obama suspended Bangladesh's GSP benefits on June 27, 2013 following an extensive interagency review that found "insufficient progress by the Government of Bangladesh in affording [their] workers internationally recognized worker rights". The GSP benefits suspension followed the November 2012 Tazreen Fashions factory fire and the April 2013 Rana Plaza building collapse in Bangladesh which, together, killed more than 1,200 people, principally textile workers (*please see W&C US Trade Alert dated June 28, 2013*). USTR asserted that it made the plan public "as a means to reinforce and support the efforts of all international stakeholders to promote improved worker rights and worker safety in Bangladesh."

Click [here](#) for a link to the joint statement and plan.

House Ways and Means Leadership Reintroduces MTB Legislation

House Ways and Means Chairman Camp (R-MI), Ranking Member Levin (D-MI), Trade Subcommittee Chair Nunes (R-CA) and Subcommittee Ranking Member Rangel (D-NY) reintroduced on July 17, 2013 Miscellaneous Tariff Bill (MTB) legislation (H.R. 2708), titled the "US Job Creation and Manufacturing Competitiveness Act of 2013." MTB provides for the temporary reduction in or suspension of tariffs on certain intermediate imported products in order to reduce costs for US manufacturers and ultimately increase US competitiveness. Specifically, the purpose of

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

a MTB is to remove duties on goods essential to US manufacturing or businesses that are not produced in the United States.

The 2013 MTB bill is the result of a process that began in March 2012, when lawmakers began compiling individual MTBs based on requests from firms in their respective constituencies. The resulting final MTB bill, H.R. 6727, failed to pass by the end of the 112th Congress, and the existing MTB legislation lapsed on January 1, 2013. House leadership has referred H.R. 2708, which is essentially a reintroduction of H.R. 6727, to the House Ways and Means Committee.

The MTB faces opposition from Senate Republicans, who view it as a politically unpalatable earmark. Rep. Camp has signaled that he has not negotiated with his Senate colleagues to ensure the bill's passage. Instead, the introduction of H.R. 2708 serves to begin the process of passing MTB legislation, but H.R. 2708's future in the Senate remains unclear. In addition, on April 23, 2013, Sens. McCaskill (D-MO) and Portman (R-OH) reintroduced legislation that would reform the MTB process to make it more transparent, seeking to nullify complaints by some opponents that the current MTB process is excessively obfuscated.

The bill enjoys strong support from the US business community, with the National Association of Manufacturers, AAFA, ACC, CropLife America, MTB Coalition, NCTO, SOCM, Tariff Action Coalition, and Toy Industry Association all signing onto a joint letter supporting MTB legislation as "commonsense" legislation, and urging Congress to quickly pass it. The US Chamber of Commerce and the National Association of Manufacturers also individually sent letters to Congress, expressing the same sentiments. The Chamber of Commerce letter specifically addressed Republican members' concerns that tariff exclusions constitute earmarks, remarking that "MTB benefits are in no way limited [to ten entities or fewer, which would constitute an earmark] [...] they are available to all importers of the product."

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

VP Biden Speech Points to Indian IPR, Local Content, FDI, Tax and Market Access Issues; BIT Negotiations Resuming

On July 24, 2013, US Vice President Joe Biden gave remarks in Mumbai, outlining US goals for the future of the US-India bilateral trade and investment relationship. In his remarks, VP Biden urged deeper bilateral economic integration, and noted that the yet unconcluded US-India Bilateral Investment Treaty (BIT) would be a means to achieve such integration.

However, VP Biden pointed to several US concerns in regard to the bilateral trade and investment relationship, namely (i) allegedly inadequate protection of US intellectual property rights (IPR), (ii) Indian local content requirements, (iii) limits on foreign direct investment (FDI) into India, (iv) inconsistent tax treatment on the part of Indian tax authorities toward US persons, and (v) reported persistent barriers to Indian market access. VP Biden urged a further opening of India to international commerce, providing examples of the potential benefits thereof. He recognized the temptation for protectionism, but he stressed that India's "choices are not [the United States'] to make."

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

VP Biden noted that the potential BIT “would give investors in both countries more certainty and predictability; fair treatment under a single, consistent set of rules for” small and large foreign and domestic companies. He welcomed news that US and Indian BIT negotiators are resuming negotiations after a brief pause while India reviewed its model BIT.

VP Biden’s July 24 speech marked the culmination of a four-day trip to India, during which he met leaders of the Indian National Congress (INC), including Indian Prime Minister Singh, as well as key members of the Bharatiya Janata Party (BJP). Prior to the trip, the Obama Administration faced strong pressure from US domestic interest groups for VP Biden to apply pressure on Indian officials to limit or remove several trade- and investment-related barriers affecting US firms. Nonetheless, the concrete outcomes of VP Biden’s visit to India in regard to troublesome bilateral trade and investment issues remain unclear. However, his remarks clearly outline the salient US concerns in regard to the bilateral trade and investment relationship.

Click [here](#) for a copy of VP Biden’s speech.

USTR Initiates Annual GSP Country Practices Review in Context of Looming GSP Expiration

On July 29, 2013, the Office of the United States Trade Representative (USTR) published a notice in the Federal Register, announcing the initiation of the 2013 Annual Generalized System of Preference (GSP) Product and Country Practices Review. USTR welcomes petitions from interested parties to modify the list of products eligible for duty-free treatment under the GSP program and to modify the GSP status of certain GSP beneficiary developing countries based on country practices. USTR also welcomes such petitions to request waivers of competitive need limitations (CNLs).

Interested parties must submit by October 4, 2013 petitions to modify the list of articles eligible for duty-free treatment under GSP or to review the GSP status of a beneficiary developing country. Similarly, interested parties must submit by November 22, 2013 petitions to request CNL waivers. The FR notice states that USTR will continue to receive petitions even if authorization of the GSP program lapses on August 1, 2013. However, if GSP expires on July 31, 2013, USTR will take no further action on any petition submitted until the President enacts a GSP reauthorization bill into law.

The House Ways and Means and Senate Finance Committees’ leaderships have both introduced so-called “clean” (*i.e.*, without amendments) GSP reauthorization bills (*please see W&C US Trade Alert dated July 19, 2013*), but enactment into law of these identical clean bills before the July 31, 2013 GSP expiry is unlikely if lawmakers attach amendments to them. Sens. Coburn (R-OK) and Hagan (D-NC) have expressed opposition to voting on the Senate bill by unanimous consent, thus making difficult the prospect of passing a clean Senate bill before the GSP program’s looming expiry. These Senators’ objections stem from their respective concerns over how to offset the revenue lost as a result of foregone import duties otherwise levied on goods entering the United States under the GSP program.

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

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

FDA Proposes New FSVP Regulations for Food and Feed Importers

The US Food and Drug Administration (FDA) published a notice in the Federal Register (FR) on July 26, 2013, proposing new regulations to govern importers' foreign supplier verification program (FSVP) responsibilities under the 2011 Food Safety Modernization Act (FSMA). The proposed regulations would require importers to ensure that imported food is produced in a manner consistent with and comparable to US standards. The FR notice also addresses rules on an accreditation system to allow third-party auditors to certify foreign producers.

The proposed FSVP rules would require all importers to undertake the following (i) a compliance status review of the food stuffs they are importing and any corresponding foreign suppliers, (ii) a hazard analysis on the same, (iii) verification activities to ensure control of any hazards identified as reasonably likely to occur, (iv) an assessment of any complaints received and of actions taken to address such complaints, (v) periodic reassessments of their FSVP effectiveness, (vi) the provision upon import of the importer's name as well as the Dun and Bradstreet Data Universal Number System (DUNS) number for each line entry of food, and (vii) maintenance of records of all FSVP activities.

FDA set comment periods for the regulations at 120 days after the date of publication in the Federal Register. It also extended the comment period for the January 2013 regulations until September. The FDA will then take between 12 and 18 months to finalize the rules, after which it will set a deadline for importers to bring their procedures into compliance.

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

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

FREE TRADE AGREEMENTS

Free Trade Agreement Highlights

US Business Group Sets Out Its Vision of TTIP

The Business Coalition for Transatlantic Trade (BCTT), a coalition of large US firms and industry organizations advocating the creation of “an ambitious, comprehensive and high-standard trade and investment agreement between the United States and the European Union,” has issued several position papers on key areas for the ongoing negotiations toward the Transatlantic Trade and Investment Partnership (TTIP) between the United States and the European Union. In this regard, BCTT has set out objectives for a successful conclusion of TTIP talks in the areas of:

- **Goods.** TTIP negotiations should: (i) eliminate all import tariffs, (ii) achieve a relaxed rule of origin (ROO), (iii) allow for cumulation in such ROO, (iv) eliminate all fees on trade in goods, (v) reaffirm non-discrimination disciplines (e.g., national treatment and most favored nation provisions), and (vi) eliminate all NTBs, including those that lead to forced localization;
- **Competition Policy.** TTIP parties should: (i) identify and formalize transparency and due process obligations in antitrust proceedings, and (ii) codify Organization for Economic Cooperation and Development (OECD) and International Competition Network (ICN) merger review best practices, and (iii) address the challenges posed by the different levels of legal privilege extended to the lawyer-client relationship in the European Union, the United States and individual EU member nations;
- **Digital Trade.** TTIP should : (i) expand existing rights and obligations to contribute to a better transatlantic market of commerce and ideas, including a flexible framework for cooperation on privacy and security matters, (ii) build on the framework of the EU-US Trade Principles for Information and Communication Technology Services to establish a binding framework and ensure consistent and predictable rules, (iii) result in ambitious commitments in sectors critical to the functioning of the present and future digital economy, and (iv) strengthen existing joint mechanisms to emphasize the importance of digital trade;
- **Intellectual Property.** TTIP should: (i) maintain and promote existing IP frameworks, (ii) address issues that hinder IP protection and enforcement, (iii) assess and address areas where both parties can accomplish job creation through better IP enforcement, (iv) ensure that the rights of IP holders are protected from, *inter alia*, inappropriate disclosure, (v) ensure that TTIP allows for better protection of US and EU IP outside the bilateral relationship, and (vi) pursue cooperative efforts to establish effective standards for IP protection and enforcement to level the international playing field for US and EU businesses and global innovation as a whole;
- **Investment.** The TTIP negotiations should: (i) cover all investment and investors across the parties, (ii) open transatlantic investment by requiring the United States and European Union to accord non-discriminatory treatment to each other’s investors and investments, except in

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

exceptional cases, (iii) include high-standard, strong provisions protecting both parties investments and investors with respect to national treatment, expropriation, performance requirements, transparency, treatment of senior boards, and free flow of capital, (iv) incorporate enforcement of investment provisions through neutral tribunals, and (v) promote global investment standards and practices;

- **Mobility and Visa Issues.** The TTIP negotiations should: (i) streamline the ability of both parties' citizen's to travel between them, (ii) expedite visa proceedings for intra-company international employee transferees, specialized professionals and traders and investors, (iii) expedite visa proceedings for businesspeople and frequent travelers, and (iv) regularize professional standards on both sides of the Atlantic to facilitate movement of professionals;
- **Procurement.** The TTIP negotiations should: (i) tackle market access barriers beyond the requirements of the Agreement on Government Procurement (GPA), (ii) ensure an open, transparent, non-discriminatory and efficient government procurement process, (iii) explore expanded means of coverage that go beyond GPA, and (iv) create new high-level standards to increase access to procurement markets on all levels of government and serve as an example for future international agreements;
- **Regulatory Cooperation.** The TTIP should: (i) strengthen existing regulatory frameworks, (ii) attempt equivalence in regulations wherever possible, and provide transparent justifications where impossible, (iii) create a governing process to guide regulatory cooperation, (iv) create a framework for TTIP to be a "living agreement", which will allow both regulatory autonomy and an ongoing process of regulatory cooperation, (v) lead to broader transatlantic and international agreement on regulations and standards, and (vi) develop detailed sector-specific standards whenever possible;
- **Services.** The services agreement of TTIP should: (i) define limitations on market access as narrowly as possible, (ii) include all future services that are currently unforeseeable, and take into account integrated services, and (iii) establish universal rules enshrining free competition in data flows, localization, performance requirements, business operations, universal service requirements, state-owned/supported enterprises, transparency and licensing;
- **Supply Chain, Customs and Trade Facilitation.** TTIP should: (i) harmonize effective customs procedures, (ii) improve clearance procedures, (iii) coordinate multilateral inspection procedures, (iv) create a single venue for customs information depositions, (v) eliminate redundancy in data, (vi) commit parties to jointly developing future border processes, (vii) streamline existing trusted trader programs, (viii) streamline duty drawback procedures, (ix) raise the baseline *de minimis* threshold to at least USD 800, (x) create a mechanism to streamline cross-border supply chain connectivity, (xi) create an expedited procedure for express shipments, (xii) simplify and align free-trade zone proposals, and (xiii) designate a single regulatory agency to facilitate trade; and
- **Other Issues.** BCTT aims for a streamlining of sanitary and phytosanitary measures, as well as other issues relating to food and agriculture.

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

The BCTT is advocating a comprehensive agreement that eliminates many of the existing barriers to trade that businesses face in the United States and European Union. The official TTIP negotiations began with a first round of negotiations on July 8, 2013 in Washington. At the earliest, EU and US officials are hoping to conclude them by the end of 2014. The BCTT shares this optimism. A more realistic date of completion is the late-2017 deadline set by US President Obama, although even that is doubtful given the size and complexity of the agreement. As evidenced by the BCTT recommendations, the business community on both sides of the Atlantic is very supportive of the successful conclusion of the TTIP.

Click [here](#) for access to the BCTT position papers.

Rep. Levin Puts Forward Action Plan for Japanese Automotive Barriers and TPP

On July 23, 2013, House Ways and Means Committee Ranking Member Sander Levin (D-MI) prescribed to US TPP negotiators several negotiating priorities, including on alleged Japanese currency manipulation and Japanese market access issues for US automotive manufacturers. He detailed in his speech a three-part action plan to address the challenges US firms reportedly face in this regard:

- **US Tariff Phase-Out Based on Reciprocal Market Access.** Rep. Levin proposed to condition US automotive tariff phase-outs on US auto market penetration rates in Japan. Specifically, (i) if the US automotive export penetration rate in Japan increases substantially from its current (i.e., 2013) rate, the United States will phase out its tariffs quickly, and (ii) if Japanese market access for US automotive exports does not improve significantly, the US tariff phase-out will be prolonged. Rep. Levin provided a detailed schedule of phase-outs in cases (i) and (ii) in his proposal.
- **Ending Currency Manipulation.** Rep. Levin alleged long-standing and persistent currency manipulation on the part of Japan. He noted that ending currency manipulation should be a key goal of TPP, proposing that: (i) all parties should adhere to core IMF guidelines prohibiting currency manipulations, which prohibit, *inter alia*, protracted large-scale intervention in one direction in the exchange market, excessive and prolonged official or quasi-official accumulation of foreign assets, and large and prolonged current account surpluses; (ii) the TPP should allow for consultations between parties if any party believes that another has engaged in explicit action with the purpose of weakening their currency; (iii) there be agreement between TPP parties to promptly address currency manipulation by non-parties; and (iv) each TPP party agree to transparency, including data disclosure obligations on any exchange rate interventions or foreign asset accumulations. He further proposed that these obligations be enforceable through the TPP's dispute settlement mechanism.
- **Addressing Extant Non-Tariff Barriers.** Rep. Levin asserted that Japan must remove all existing non-tariff barriers (NTBs) on auto sector goods, including, *inter alia*, restrictions on foreign automotive parts, vehicle certification processes for foreign vehicles, and a reported unwillingness on the part Japanese automobile dealerships to sell foreign car models. Rep.

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

Levin also requested that Japan refrain from imposing any future NTBs on cars. He proposed enforcement of this through: (i) strict dispute settlement processes; and (ii) the use of retaliatory measures if allowed by a dispute settlement ruling.

Rep. Levin represents the interests of Michigan, which accounts for a large proportion of US automotive production. US automakers and related organized labor have recently increased the pressure on lawmakers to impose stringent requirements on Japan as part of the latter's adherence to the TPP. Rep. Levin also opposes the April 2013 US-Japan agreement establishing several negotiating obligations for Japan, particularly in the automotive sector.

Click [here](#) for a copy of Rep. Levin's speech, [here](#) for a copy of his proposal, and [here](#) for a copy of the US-Japan agreement.

Stakeholders Testify Before House Energy and Commerce Subcommittee on Regulatory Issues in TTIP

On July 24, 2013, the House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade held a hearing titled, "The US-EU Free Trade Agreement: Tipping over the Regulatory Barriers." At the hearing, the six witnesses representing of both the industrial and consumer sectors discussed their desired outcomes for negotiations occurring between the United States and European Union toward the Transatlantic Trade and Investment Partnership (TTIP).

We provide below highlights from witness' testimony:

- **American Automotive Policy Council President Matt Blunt** asserted that the best possible outcome for TTIP would be harmonized automotive standards and mutually-recognized automotive safety regulation between the United States and the European Union. Mr. Blunt expressed concern over current negotiations to harmonize automotive standards, citing inefficiency and lack of progress;
- **Pharmaceutical Research and Manufacturers of America (PhRMA) President and CEO John Castellani** stated that TTIP will allow PhRMA to benefit patients around the world. Specifically, in order for TTIP to be meaningful and comprehensive, it must address market access, intellectual property protections and regulatory compatibility initiatives. Mr. Castellani expressed several concerns in the current EU environment, including in regard to (i) cost containment measures, and (ii) EU data disclosure policies;
- **American Chemistry Council President and CEO Calvin Dooley** asserted that reducing or eliminating tariffs and technical barriers to trade (TBTs) with the EU would create new commercial growth and expansion opportunities for the United States. He cited a recent study showing that the removal of such barriers would boost US exports to the EU by an additional USD 123 billion;
- **Information Technology Industry Council (ITI) President and CEO Dean Garfield** asserted that to be successful, TTIP must foster competitiveness, growth and jobs through e-commerce, reduce technical barriers to trade as an example to the rest of the world, and promote greater

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

regulatory alignment between both parties. President and CEO Garfield stressed that unfettered market access is one of the Council's most important methods of sustaining US technology leadership;

- **Consumers Union Senior Advisor for International Affairs Jean Halloran** expressed deep misgivings on matters of regulatory convergence, mutual recognition and harmonization in TTIP, stating that it could lead to an erosion of consumer protection. Ms. Halloran suggested instead that the negotiators harmonize to the highest levels of consumer protection, remove the proposed investor-state dispute resolution mechanism, and make parts of the text public to ensure transparency in negotiations; and
- **Center for International Environmental Law President and CEO Carroll Muffett** expressed misgivings about harmonization, stating that it has often resulted in simply decreasing the level of protection afforded to the public, often amounting to simple deregulation. President and CEO Muffett also expressed concern over mutual recognition of chemicals and other sensitive sectors, citing that the European Union and United States should reserve the right to determine their respective levels of health protection against and regulation on toxic chemicals.

The difference in opinion between industry and consumer groups reflects the sharp division in opinion within the House Committee. Several Democratic members expressed strong reservations about TTIP eroding regulations, and have also expressed concerns that TTIP will result in a reduction in standards for consumer goods. Several Republican lawmakers instead sided with the business community in their support of the potential economic benefits of the TTIP. The divisions in the Committee also reflect the growing divide in wider popular opinion toward TTIP, whereby some see the potential benefits of regulatory convergence and others conflate convergence with deregulation.

On July 8-12, 2013, the Office of the United States Trade Representative (USTR) and EU negotiators held the first round of negotiations for TTIP in Washington. Parties will hold the second round of negotiations in Brussels beginning on October 7, 2013.

Click [here](#) for a link to the background memorandum by the Commerce and Energy Committee.

President Obama Seeks Trade Promotion Authority Linked to Trade Adjustment Assistance

On July 30, 2013, US President Obama gave a speech in Tennessee, in which he laid out, *inter alia*, his position on several international trade issues, including his support of and request for the Trade Promotion Authority (TPA) with further Trade Adjustment Assistance (TAA). TPA is a now-expired law that, if renewed, would give the President authority to negotiate trade agreements, and would mandate that lawmakers vote up or down on such trade agreements without proposing amendments. TAA is a program that aims to aid sectors of the economy affected by international trade, focusing resources on: (i) workers, (ii) firms, (iii) communities, and (iv) farmers. The Departments of Labor, Commerce and Agriculture oversee TAA.

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

In his remarks, President Obama lauded the benefits of international trade. He pointed specifically to the US-Korea free trade agreement (FTA), which allowed the US “Big Three Automakers [to sell] 18 percent more cars in Korea than [before the agreement].” President Obama also asserted that the United States must “help more of [its] businesses do the same thing.” In order to do so, President Obama asserted that he will “[ask] Congress for the authority to negotiate the best trade deals possible for [US] workers and combine it with robust training and assistance measures to make sure [they] have the support and the skills [...] for [...] global competition,” in reference to TPA and TAA.

Senate Finance and House Ways and Means Committees’ respective leaderships support TPA renewal. In a July 30 speech, Senate Finance Committee Ranking Member Hatch (R-UT) called for the Obama Administration to aggressively engage congress in crafting a TPA renewal, and also urged Democrats to limit TPA language on labor and environmental protections. However, House Ways and Means Committee Ranking Member Levin (D-MI), noted in a July 23 speech that the process of crafting the TPA renewal is still in the nascent stages. TAA does not enjoy a broad support as TPA, particularly among congressional Republicans. Given the early-stage crafting of the TPA renewal and uneven support for TAA, it remains unclear when President Obama will be able to enact TPA into law if, in fact, he insists that lawmakers link TPA and TAA.

Click [here](#) for a copy of President Obama’s speech, [here](#) for a copy of Sen. Hatch’s remarks, and [here](#) for a copy of Rep. Levin’s remarks.

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

Contacts

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

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

WHITE & CASE LLP | 13

MULTILATERAL

MULTILATERAL

Multilateral Highlights

ITA Expansion Negotiation Partners Suspend Talks, Citing Chinese Position as Basis for Decision

On July 17, 2013, the countries involved in the effort to expand and update the World Trade Organization (WTO) Information Technology Agreement (ITA) suspended negotiations. The group, led by the United States, the European Union and Japan, cited China's request for the exclusion of 106 of the 256 products under discussion as the reason behind the suspension. 25 WTO members are negotiating the ITA expansion, including large producers of IT goods; however, several major emerging economies party to the original ITA, most notably India, have not joined the expansion effort.

USTR Michael Froman released a statement on the suspension, stating that "a diverse group of Members participating in the negotiations determined that China's current position makes progress impossible at this stage," and that the protesting members "are hopeful that China will carefully consider the concerns it heard this week from many of its negotiating partners, and revise its position in a way that will allow the prompt resumption of the negotiations."

Participants had originally hoped to conclude the expansion talks by the end of July, but after the suspension, the way forward is now unclear. China is unlikely to reduce its list of sensitive products before the end of the WTO's working session at the beginning of August. Meaningful movement forward is also, therefore, unlikely until the end of the summer break. That participants have suspended ITA expansion negotiations imperils the prospects of concluding an agreement by the WTO Ministerial meeting in December 2013.

The ITA, signed in 1995 under the aegis of the World Trade Organization (WTO), aims to remove duties on IT goods. Each ITA signatory provides their own schedule of IT goods to which it applies low or no tariffs. There are broad similarities between individual countries' ITA schedules. The proposed expansion would broaden the 25 negotiating partner countries' schedules to include a negotiated list of additional IT goods.

Click [here](#) for USTR Froman's statement.

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