



# White & Case LLP General Trade Report - JETRO

October 2014

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## UNITED STATES

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### GENERAL TRADE POLICY

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#### *US General Trade Policy Highlights*

### United States and Brazil Settle Longstanding Cotton Subsidy Dispute

On October 1, 2014, the United States and Brazil negotiated a Memorandum of Understanding (MOU), settling a longstanding World Trade Organization (WTO) dispute regarding US cotton domestic support programs and export credit guarantees. The MOU – which was signed by US Trade Representative Michael Froman, US Agriculture Secretary Tom Vilsack, Brazilian Foreign Minister Luiz Alberto Figueiredo, and Brazilian Agriculture Minister Neri Geller – resolves a politically contentious dispute that has beset US-Brazilian trade relations for over one decade.

According to the 2005 and 2008 Appellate Body Reports in *United States – Subsidies on Upland Cotton* (DS267), the US cotton domestic support programs and export credit guarantees at issue violated the United States' commitments under the Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures. As a result of the United States' non-compliance with the Appellate Body Reports, WTO arbitrators determined in 2009 that Brazil could impose countermeasures valued at USD 830 million. In 2010, however, the United States and Brazil signed a Framework Agreement to avert the imposition of any such countermeasures. That Agreement required (i) the United States to pay USD 147 million annually to the Brazil Cotton Institute, and (ii) the United States and Brazil to engage in consultations regarding potential reforms to US cotton domestic support programs and export credit guarantees. The Agreement expired on February 7, 2014, when the 2014 Farm Bill was enacted.

Under the terms of the MOU, the United States agrees to (i) make a one-time payment of USD 300 million to the Brazil Cotton Institute; and (ii) establish new limits to its "GSM-102" export credit guarantee program, mainly by imposing shorter repayment terms and higher fees. Brazil agrees to (i) withdraw DS267, forfeiting all rights to countermeasures against the United States and further proceedings in the dispute; (ii) abstain from initiating any WTO disputes against US cotton support programs while the existing five-year US Farm Bill is in force; and (iii) abstain from initiating any WTO disputes against certain US GSM-102 export credit guarantees, provided that said guarantees are operated consistently with the terms of the MOU.

The American Farm Bureau Federation, the National Cotton Council of America, and the US Chamber of Commerce responded positively to the MOU. US Trade Representative Michael Froman stated that resolution of the dispute "brings to close a matter which put hundreds of millions of dollars in US exports at risk." Critics of the MOU, however, argue that whereas the United States

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now subsidizes both US and Brazilian cotton, the United States instead should reduce or eliminate cotton subsidies altogether.

Click [here](#) for the Memorandum of Understanding.

## US Congressional-Executive Commission on China Releases 2014 Annual Report

On October 9, 2014, the US Congressional-Executive Commission on China (CECC) released its 2014 annual report, covering the period from fall 2013 to fall 2014. Established by the US-China Relations Act of 2000 (19 U.S.C. 1307), CECC is required to monitor and report annually on human rights and the development of the rule of law in China. CECC addresses trade and other international economic law and policy issues as part of its investigation into commercial rule of law in China.

The 2014 CECC annual report recommends that the US Congress and the Obama Administration take the following actions:

- Ensure that China makes concrete improvements to end currency controls, subsidies for state-owned enterprises, and other policies that allegedly violate China's international trading obligations. According to CECC, such improvements should be "condition[s] for progress in any US trade-related negotiations with China."
- Direct the US Trade Representative (USTR) to create a public database of China's WTO accession commitments and annually identify any compliance concerns and whether USTR took action. CECC recommends that USTR create a similar public database, accompanied by similar reporting requirements, regarding China's commitments made pursuant to the US-China Joint Commission on Commerce and Trade and the US-China Strategic and Economic Dialogue.
- Develop and support a project surveying Internet restrictions in China and their impact on US businesses. CECC specifically recommends that USTR report on Internet censorship in annual USTR reports addressing foreign trade barriers and China's WTO compliance. CECC recommends further that USTR make a formal WTO request for detailed information regarding China's Internet restrictions, followed by the initiation of a WTO dispute, if warranted.
- Work with the Chinese government to stop cyber theft originating in China and to strengthen the protection of trade secrets in China. CECC also recommends that the United States provide additional support to US companies litigating intellectual property cases in China, and that the US Department of Justice consider reporting on intellectual property cases involving Chinese companies and nationals.
- Ensure that US food and drug safety inspection officials can obtain visas and conduct unannounced inspections of Chinese facilities that export products to the United States.

CECC consists of nine Senators, nine Members of the House of Representatives, and five senior Executive Administration officials appointed by the President to represent the Department of

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Commerce, the Department of Labor, and the Department of State. CECC is co-chaired by Sen. Sherrod Brown (D-OH) and Rep. Christopher Smith (R-NJ).

Click [here](#) to access the 2014 annual report.

## USTR Seeks Comments for Out-of-Cycle Review of India's Intellectual Property Policies; India Declines to Cooperate

In a notice published in the Federal Register on October 14, 2014, the Office of the United States Trade Representative (USTR) requested public comments regarding India's intellectual property rights (IPR) regime (79 FR 61685). The request corresponds to a review by USTR of India's IPR regime, which review is intended to supplement the 2014 edition of USTR's Special 301 Report, an annual report examining international IPR practices. The review thus constitutes an additional review (*i.e.*, "Out-of-Cycle Review" or "OCR") of India's IPR regime.

In its 2014 Special 301 Report, published in April 2014, USTR (i) placed India on its IPR "Priority Watch List", thereby identifying India as one of ten countries in which "particular problems exist... with respect to IPR protection, enforcement, or market access"; (ii) highlighted multiple IPR issues of concern regarding India, including copyrights, counterfeiting, data protection, localization trends, patents, trade secrets, and trademarks; and (iii) announced plans to conduct the OCR in the fall of 2014.

The Indian government reportedly informed US officials that it will not cooperate with the OCR, opining that USTR's actions are unilateral and that US-Indian IPR issues should be addressed exclusively through the high-level US-India IPR working group established last month during Indian Prime Minister Narendra Modi's meetings with US President Barack Obama. The US-India IPR working group is scheduled to begin meetings next month during the next US-India Trade Policy Forum. India announced last month that it is in the process of inaugurating an IPR policy to respond to concerns – particularly concerns related to pharmaceuticals – by the US and other governments and international businesses.

USTR's OCR comes during an important period in the economic relationship between the United States and India. On September 29–30, Prime Minister Modi met with President Obama to discuss trade, investment, defense, and security issues. Despite those meetings, economic frictions continue to exist between the US and Indian governments. Most notably, the meetings did not lead to a solution to ongoing tensions at the World Trade Organization (WTO) regarding India's July 31, 2014 refusal to support the adoption of the Trade Facilitation Agreement Protocol of Amendment.

In addition, USTR's OCR follows an earlier request by US Congressional trade leaders that the US International Trade Commission conduct an investigation into Indian trade practices. In their request, the Congressional trade leaders alleged that certain Indian trade practices are "unfair" and discriminatory against US trade and investment.

Public comments related to the OCR are due October 31, 2014.

Click [here](#) for the Federal Register notice and [here](#) for USTR's 2014 Special 301 Report.

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## US-Mexico Cross-Border Trucking Program Expires; Department of Transportation Permits Limited Extension During Program Review Period

On October 14, 2014, a three-year cross-border pilot program permitting Mexican delivery trucks expanded access to US roads expired. The program was established in 2011 as a step toward resolving a bilateral dispute stemming from the United States' longstanding refusal to provide complete access to Mexican trucking services. The Obama Administration has stated that it is reviewing safety data collected during the program and that it intends to seek a permanent solution to the dispute.

Under the terms of the 1994 North American Free Trade Agreement (NAFTA), the United States and Mexico agreed to permit unrestricted cross-border delivery trucking, provided that participating trucks and drivers satisfy applicable safety regulations. In 1995, then-President Bill Clinton, citing safety concerns and under pressure from labor unions, suspended implementation of the trucking agreement. In 2007, then-President George Bush launched a pilot program to permit a limited number of Mexican trucks increased access to the United States. In 2009, a bipartisan majority in Congress, citing safety concerns and under continued pressure from labor unions, voted to eliminate funding for the program.

In 2011, President Obama reinstated the pilot program, with certain modifications. As part of the program, the US Department of Transportation (DOT) collected data from more than 5,500 truck and driver inspections. In a 2011 Federal Register notice, DOT estimated that 4,100 inspections would be necessary to yield a statistical sample sufficiently valid to analyze safety data. However, critics of the program – most notably, the International Brotherhood of Teamsters – claim that the sample data is unreliable and statistically inadequate. The Obama Administration is now in the process of reviewing the collected data.

While the Obama Administration continues its review, DOT will permit 13 Mexican trucking companies that participated in the program to continue expanded operations in the United States. The Obama Administration has stated that it intends to develop a permanent solution to bring the United States in compliance with its NAFTA commitments, but any potential compliance actions most likely will not be announced until DOT has issued a mandatory report on the program.

Mexican Economy Secretary Idefonso Guajardo acknowledged the termination of the program and stated that Mexico is “highly confident” that the United States and Mexico will implement unrestricted “free trade in services in land transportation” in the near term. However, should the United States fail to fully open its trucking market, Mexico might impose retaliatory tariffs against US exports. Mexico removed previously imposed retaliatory tariffs in 2011, upon the launch of the pilot program.

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## US Patent and Trademark Office Signs Electronic Priority Document Exchange Agreement with State Intellectual Property Office of China

On October 10, 2014, the US Patent and Trademark Office (USPTO) and the State Intellectual Property Office of China (SIPO) launched a new service to facilitate direct US-Chinese exchanges of electronic patent application priority documents. According to USPTO, the new service permits USPTO and SIPO “to obtain electronic copies of priority documents filed with the other office from its electronic records management system at no cost to the applicant.”

Prior to the launching of this new system, the World Intellectual Property Organization (WIPO) intermediated US-Chinese exchange processes related to patent application priority documents. USPTO highlights that in addition to streamlining US-Chinese exchange processes, the new system reduces administrative procedures and expenses for businesses that seek to pursue patent rights internationally. In particular, patent applicants no longer will be required to obtain or file paper copies of priority documents.

USPTO now has priority document exchange agreements with the intellectual property offices of China, the European Union, Japan, Korea, and WIPO.

Forms and instructions for using the new system are available [here](#).

## United States and Mexico Sign Customs Security Collaboration Agreement

On October 17, 2014, the US Customs and Border Protection (CBP) Commissioner and Mexico’s Tax Administration Service (SAT) Chief signed a mutual recognition agreement to increase collaboration between CBP’s Customs-Trade Partnership Against Terrorism (C-TPAT) and SAT’s New Certified Companies Scheme (NEEC). C-TPAT is a supply chain security program, and NEEC is a trusted trader program that resembles C-TPAT and is modeled after the World Customs Organization’s framework to secure trade. Each program is a voluntary government-industry initiative.

According to CBP, the mutual recognition agreement will produce a collaborative arrangement “to link the two industry partnership programs, so that together they create a unified and sustainable security posture that can assist in securing and facilitating global cargo trade.” By participating in the mutual recognition arrangement, companies may benefit from (i) fewer exams when shipping cargo, (ii) common US-Mexican customs standards, (iii) faster validation processes, (iv) transparency between US and Mexican customs administrations, (v) business resumption, (vi) front-of-the-line processing, and (vii) marketability.

C-TPAT was initiated shortly after the September 11, 2001 terrorist attacks in the United States. The program has grown from seven to over 10,000 industry participants.

The United States now has mutual recognition customs arrangements with Canada, the European

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Union, Israel, Japan, Jordan, Korea, Mexico, New Zealand, and the Taipei Economic and Cultural Representative Office.

## Department of Commerce to Terminate Suspension Agreement with Russia Regarding Imports of Hot-Rolled Steel

On October 17, 2014, the US Department of Commerce (DOC) informed the Russian Ministry of Economic Development (MED) of the DOC's decision to terminate a longstanding agreement suspending an antidumping (AD) investigation into imports of certain hot-rolled flat-rolled carbon quality steel products from Russia. The termination will be effective December 16, 2014, at which time AD duties could go into effect against imports of applicable hot-rolled steel products from Russia.

In a letter to MED Director Veronika Nikishina announcing the termination of the suspension agreement, DOC Deputy Assistant Secretary Ronald Lorentzen stated that “[w]hile no explanation for termination is required under the terms of the Agreement, it no longer appears that an agreement appropriately addresses injurious dumping with respect to the subject merchandise.”

The termination of the suspension agreement, which had been in place since July 1999, occurs amidst an ongoing administrative review of the suspension agreement, initiated by DOC on August 29, 2014. However, DOC intends to rescind that review upon termination of the suspension agreement. On July 10, 2014, DOC received a formal request from US steelmakers to terminate the suspension agreement.

The American Iron and Steel Institute applauded the decision, issuing a press release stating that the US steel industry “should not have to endure injury from surging imports of Russian hot-rolled steel that are coming in to this country under a deal that no longer serves its intended purpose.” Industry analysts note that termination of the suspension agreement likely will result in the imposition of AD duties – ranging from 73.59 to 184.56 percent – against applicable imports from Russia.

A copy of the DOC letter is available upon request.

## US Department of Commerce Reaches Draft AD and CVD Suspension Agreements with Mexico Regarding Imports of Mexican Sugar

On October 27, 2014, the US Department of Commerce (DOC) announced that it had reached draft agreements with Mexico and Mexican sugar exporters to suspend antidumping duty (AD) and countervailing duty (CVD) investigations regarding imports of sugar from Mexico. If finalized, as is expected, the suspension agreements would allow Mexican sugar to continue to be exported to the United States without the application of ADs or CVDs. The agreements also would further solidify US government-managed imports of sugar from Mexico, which were valued at approximately USD

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1.1 billion in 2013.

The draft AD suspension agreement subjects imports of sugar from Mexico to per-pound reference prices of USD 0.2357 dollars (refined sugar) and USD 0.2075 dollars (all other sugar). The draft CVD suspension agreement subjects imports of sugar from Mexico to a quota, which DOC calculates through a complex formula that incorporates domestic sugar usage, annual domestic beginning stocks, domestic production levels, and US imports under a multilateral tariff rate quota established during the Uruguay Round of trade negotiations.

The draft agreements were announced on the same day that DOC established preliminary AD rates for sugar imports from Mexico ranging from 39.54 to 47.26 percent. On August 26, 2014, DOC established preliminary CVD rates for sugar imports from Mexico ranging from 2.99 to 17.01 percent. However, if final AD and CVD suspension agreements are reached, Commerce will suspend the AD and CVD investigations. DOC initiated the investigations in April 2014 at the request of the US sugar industry.

According to DOC, the draft AD and CVD suspension agreements will “prevent imports from being concentrated during certain times of the year, limit the amount of refined sugar that may enter the U.S. market, and establish minimum price mechanisms to guard against undercutting or suppression of U.S. prices.” In addition, the draft CVD suspension agreement will guard against “an oversupply of Mexican sugar that could cause price declines that threaten the U.S. industry and farmers.”

Stefan Selig, Under Secretary of Commerce for International Trade, praised the draft suspension agreements, stating that they “should provide critical stability” in the sugar market “while also ensuring that farmers and sugar refiners in the United States have an opportunity to compete on a level playing field.” However, critics of the draft suspension agreements argue that they benefit concentrated US producers at the expense of US consumers.

The Mexican National Chamber for the Sugar and Alcoholic Industry (*Asociación Nacional Mexicana para la Industria Alcohólica y Azucarera*) welcomed the draft suspension agreements, highlighting that they will deescalate the politically contentious dispute and permit Mexican exporters to continue accessing the US market under a “flexible agreement.” Carlos Rello, Director of the Mexican Fund for Expropriated Enterprises of the Sugar Industry (*Fondo de Empresas Expropiadas del Sector Azucarero*), also endorsed the draft suspension agreements, claiming that the negotiated “floor” on sugar exports is sufficiently flexible to represent the interests of both US sugar producers and Mexican exporters.

DOC will receive public comments on the draft suspension agreements until November 10, 2014. Final suspension agreements may be signed no earlier than November 26, 2014.

Copies of the draft suspension agreements are available upon request.

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## US Energy Information Administration Issues New Report on Natural Gas Exports

On October 29, 2014, the US Energy Information Administration (EIA) released a new report on the economic effects of increased US natural gas exports. The EIA report will enhance the economic argument for increased US LNG exports but likely will have little effect on the United States' restrictive LNG export licensing regime, which remains controversial in relation to World Trade Organization rules.

The EIA report stems from a request from the US Department of Energy's (DOE) Office of Fossil Energy to update EIA's January 2012 report regarding liquefied natural gas (LNG) export scenarios. The January 2012 report has contributed to the political debate over increasing US LNG exports and reforming the current restrictions thereto. The new EIA report is generally consistent with the 2012 report but examines higher export scenarios (*i.e.*, 12 billion standard cubic feet per day (Bcf/d), 16 Bcf/d, and 20 Bcf/d, with these exports phased in at a rate of 2 Bcf/d each year beginning in 2015). The new EIA report also considers different reference cases, which vary from the EIA's 2014 Annual Energy Outlook baseline case according to (i) changes in domestic oil and gas output, (ii) higher US economic growth, and (iii) higher costs for coal and nuclear energy generation.

Based on these different scenarios, the new EIA report makes the following conclusions:

- **Increased LNG exports:** Under all scenarios, US natural gas exports increase, with only modest gains (3.3 Bcf/d by 2020) in the low-output scenario and very large gains (14.0 Bcf/d by around 2025) in the high-output scenario. EIA's reference case shows middling gains of approximately 8.0 Bcf/d before 2025.
- **Higher domestic natural gas prices:** Under all scenarios, domestic natural gas prices rise in response to increased US exports. The magnitude of the price increases, however, varies widely: prices rise to USD 4.34/Million British thermal units (MMBtu) in the high-output scenario to USD 10.08/MMBtu in the low-output scenarios by 2040. Prices rise to USD 7.25/MMBtu in the baseline reference scenario, also by 2040.
- **Relationship between domestic prices and exports:** The report notes that some of the modeled scenarios are implausible due to supply/demand conditions. In particular, "[h]igh additional levels of LNG exports are unlikely to occur under baseline conditions associated with high US natural gas prices because high domestic prices and limited resources to grow supply would discourage investment in projects to liquefy and export domestic gas." The report finds the high price/high export combination to be "particularly implausible."
- **Relationship between exports and US production:** Across all scenarios, higher natural gas production satisfies most (61% to 84%) of the increase in natural gas demand from LNG exports, with a minor additional contribution from increased imports from Canada. Three-quarters of this increased production is from shale sources.
- **Higher economic output and employment:** Increased LNG exports result in higher levels of economic output, as measured by gross domestic product (GDP). Increased energy production

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will spur investment, which “more than offsets the adverse impact of somewhat higher energy prices” under all export scenarios. Economic gains range from 0.05% to 0.17% of US GDP and generally increase with the amount of added LNG exports. Changes in domestic employment levels tend to track these increases. The report notes that the economic gains could further increase when effects outside the US energy system are considered.

- **Other effects:** The report found that increased LNG exports would (i) slightly increase CO2 emissions in the United States; (ii) modestly increase US consumer energy bills; and (iii) increase domestic consumption expenditures for goods and services, “as the positive impacts of increased energy production outweigh energy price changes.”

The 2012 EIA report contributed to the political debate over increased US natural gas exports and to DOE’s consideration of LNG export license applications. The new 2014 report will play a similar role and will be used to support a more comprehensive study – conducted by a private firm selected by DOE – on increasing LNG exports. Because this more comprehensive study has not been commissioned, DOE likely will not alter its current policy toward LNG exports, including its application of the discretionary “public interest” standard for export applications, anytime soon. Whether the US Congress will intervene remains uncertain.

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

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## FREE TRADE AGREEMENTS

### *Free Trade Agreement Highlights*

## Seventh Round of TTIP Negotiations Results in Minimal Progress

From September 29–October 3, 2014, US and EU trade negotiators for the prospective Transatlantic Trade and Investment Partnership (TTIP) convened the Seventh Round of TTIP negotiations in the Washington, DC area. The negotiations addressed a variety of topics but produced limited substantive or strategic progress and failed to resolve multiple disagreements that might limit the scope of any potential TTIP agreement.

The following outcomes of the Seventh Round negotiations are noteworthy:

- **Services market access:** Negotiators completed discussions on approximately fifty percent of potential market access commitments for services. However, discussions mainly addressed technical issues, and little progress occurred regarding government procurement. The United States continues to use a “negative list” approach to schedule commitments (by which a party grants national treatment and market access in all non-designated sectors), while the European Union continues to use a “hybrid” approach (by which a party grants national treatment in all non-designated sectors but grants market access only in designated sectors). US negotiators argue that the EU offer is inadequate, while EU negotiators respond that the US must provide a list detailing market access restrictions at sub-federal levels. The European Union used a negative list approach in the recently concluded Canada-European Union Comprehensive Economic and Trade Agreement.
- **Public services:** Negotiations did not address market access for public services. Assistant US Trade Representative (USTR) Dan Mullaney stated that the United States will not seek privatization of such public service sectors as education, national health care, or water utilities.
- **Financial services:** The European Union continues to exclude financial services from its market access offer, mainly in response to firm US opposition to including financial services regulations in TTIP. The United States opposes such inclusion due to fears that inclusion could weaken the US regulatory apparatus instituted pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Dodd-Frank, which was signed into law in 2010, instituted broad reforms to the US financial regulatory system.
- **Investor-state dispute settlement:** Negotiations did not address investor-state dispute settlement (ISDS), a highly controversial issue, particularly among EU countries. Negotiations regarding ISDS remain suspended while the European Union reviews comments received during a March 27–July 13, 2014 public consultation. EU Trade Commissioner designate Cecilia Malmstrom has commented publically regarding possible exclusion of ISDS from TTIP.

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- **Sanitary and phytosanitary measures:** The European Union tabled a proposal for a sanitary and phytosanitary (SPS) chapter. The proposal reportedly addresses SPS issues beyond the provisions of the World Trade Organization's SPS Agreement and incorporates portions of a failed US-EU Veterinary Equivalence Agreement reached in 1998. The United States did not table an SPS proposal but intends to do so prior to the Eighth Round of negotiations.
- **Regulatory coherence:** The Seventh Round addressed regulatory coherence but failed to produce any major substantive outcomes. Relevant discussions focused mainly on energy, raw materials, customs, trade facilitation, intellectual property, and small- and medium-sized enterprises. EU chief negotiator Ignacio Garcia-Bercero stated that the parties will not pursue regulatory coherence regarding consumer health, the environment, data privacy, "or indeed any other public policy goal" merely to reach an agreement. The European Union tabled papers regarding regulatory cooperation in automotive and chemical sectors, while Assistant USTR Mullaney clarified that the parties are not discussing regulatory coherence in chemicals, but rather efforts to collaborate and cooperate.

In both the United States and the European Union, any enthusiasm, momentum, or level of ambition initially associated with TTIP largely has waned. Significant difficulties and disagreements between the parties have not been resolved, and a new infusion of political willpower will be essential to redirect negotiations toward the attainment of a high-level agreement. The Eighth Round of TTIP negotiations is expected to occur in early December 2014, following a November meeting between USTR Michael Froman and EU Trade Commissioner designate Cecilia Malmstrom.

## Alleged Draft TPP Intellectual Property Chapter Leaked

On October 16, 2014, the non-profit organization Wikileaks published an alleged draft of the intellectual property (IP) chapter of the Trans-Pacific Partnership (TPP) agreement. The draft chapter, dated May 16, 2014, includes provisions related to "all categories of intellectual property that are the subject of Section 1 through 7 of Part II" of the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights. These categories are: (i) copyright and related rights, (ii) trademarks, (iii) geographical indications, (iv) industrial designs, (v) patents, (vi) layout-designs of integrated circuits, and (vii) protection of undisclosed information. The draft chapter also includes provisions related to cooperation and enforcement.

The draft chapter alleges the following information:

- **Copyrights:** The United States has withdrawn a proposal limiting the abilities of Parties to permit circumvention of technological protection measures that prevent unauthorized access to copyrighted works (*i.e.*, "digital locks"). The United States also has withdrawn a proposal prohibiting imports of works made outside the United States without the permission of the copyright holder (*i.e.*, "parallel importation"). These actions might be directed toward appeasing Senate Finance Committee Chairman Ron Wyden (D-OR), who frequently takes positions favorable to digital content providers.
- **Patents:** The United States has withdrawn proposals that Parties make patenting available for certain plants, animals, and diagnostic, surgical, and therapeutic products. Instead, the United

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States seeks patenting availability for plant-based inventions.

- **Pharmaceuticals:** The draft chapter includes a proposal, from an unidentified sponsor, that Parties be granted varying transition periods, based on economic development levels, to comply with pharmaceutical IP protections. The United States, Japan, and Singapore would be granted two years to comply with applicable commitments; Mexico and Brunei would be granted an extended compliance period; and Peru and Vietnam would be granted a further extended compliance period. Compliance periods for additional TPP Parties are not specified. This development-based approach is generally consistent with a US proposal published by media in August 2014. However, specific mechanisms to transition Parties to higher IP protection standards reportedly remain under negotiation.

The Office of the United States Trade Representative declined to comment on the authenticity of the alleged draft chapter but stated that it “does not reflect the current state of the negotiation.” Indeed, the May 16 date of the draft chapter suggests that it might be an outdated version of the IP chapter currently under negotiation. This is because several plurilateral TPP negotiations have occurred since May 16, including: (i) May 19–20 TPP ministerial meetings in Singapore, (ii) July 3–12 officials meetings in Canada, and (iii) September 1–10 officials meetings in Vietnam. The next ministerial meetings are scheduled for October 25–27 in Australia.

Click [here](#) for the alleged draft IP chapter.

## Congressional Lawmakers Press USTR to Oppose Limits on Cross-Border Data Flows in TPP

On October 24, 2014, key members of the US Senate and the US House of Representatives sent letters to US Trade Representative (USTR) Michael Froman, requesting that US trade negotiators oppose restrictions to cross-border data flows in the Trans-Pacific Partnership (TPP) agreement. A bipartisan Senate letter was signed by Sens. Ron Wyden (D-OR) and Orrin Hatch (R-UT), Chairman and Ranking Member, respectively, of the Senate Finance Committee, and Sens. John Rockefeller (D-WV) and John Thune (R-SD), Chairman and Ranking Member, respectively, of the Senate Commerce Committee. A bipartisan House letter was signed by Reps. Lee Terry (R-NE), Chairman of the House Commerce, Manufacturing, and Trade Subcommittee, and Peter Welsh (D-VT), a member of the House Energy and Commerce Committee.

Issues related to the cross-border transfer, storage, and processing of data remain contentious among TPP parties. The US position largely coincides with the positions of Congressional trade leaders and global companies, which generally support a liberalized cross-border data regime. Other countries, however, have expressed concerns regarding security and privacy. Australia and New Zealand, for example, have objected to proposals that would prevent them from implementing “forced localization,” or the requirement that certain computer servers be located domestically. Malaysia and Vietnam reportedly also are seeking exceptions to permit forced localization and to restrict certain data flows.

In their letter, the Senators state that any TPP agreement must “prohibit unnecessary limitations on

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the cross-border transfer, storage and processing of data or the physical location of computing infrastructure.” The Senators encourage USTR Froman to “stand firm against efforts by other countries to seek reservations and overly broad exceptions that would undermine these obligations.” In their letter, the Representatives denounce “a growing trend of foreign governments enacting data transfer laws and regulations that serve as non-tariff barriers” and urge USTR Froman “to secure enforceable commitments to free and open cross-border data flows.”

The Congressional letters follow a September 11, 2014 report by the US International Trade Commission (ITC) regarding the effects of foreign trade barriers on international digital trade by US firms. In addition, on September 17, 2014, the House Commerce, Manufacturing, and Trade Subcommittee held a hearing entitled “Cross Border Data Flows: Could Foreign Protectionism Hurt U.S. Jobs?”

Click [here](#) for the Senate letter, [here](#) for the House of Representatives letter, [here](#) for the ITC report, and [here](#) for information regarding the House hearing.

## House Ways and Means Committee Ranking Member Observes TPP Negotiations and Urges Increased Transparency and Public Input

On October 27, 2014, House Ways and Means Committee Ranking Member Sander Levin (D-MI) released a statement regarding the Trans-Pacific Partnership (TPP) negotiations, urging “increased transparency,” greater attention to negotiating details, and “more public input and debate.” Ranking Member Levin’s statement follows his attendance of recently concluded TPP ministerial meetings in Sydney, Australia.

Ranking Member Levin expressed concern regarding the status of the negotiations, stating that “the devil will be in the details of the text, in the annexes and the ‘non-conforming measures,’ and in the implementation of the obligations.” He noted that “many outstanding, unresolved issues” exist and highlighted the environment, labor, state-owned enterprises (SOEs), and market access as “critical areas” requiring further attention. In addition, Ranking Member Levin stated that Malaysia and Vietnam, as a result of “different structures,” pose “special challenges” to US negotiators. His comments presumably refer to the unique labor rights regimes and prevalence of SOEs in the Malaysian and Vietnamese economies.

Individual members of Congress do not regularly attend bilateral or plurilateral trade negotiations. Ranking Member Levin’s attendance at TPP ministerial meetings thus underscores his interest in the agreement. In addition to voicing broad concerns regarding transparency, public input, labor, the environment, investment, and other issues, Ranking Member Levin is particularly concerned with market access for automobiles. Having represented Michigan in the US House of Representatives since 1983, Ranking Member Levin has long-criticized Japan’s automobile policies, which he regards as discriminatory against US automobile companies and manufacturers. In his October 27 statement, he argued that “we must confront Japan’s longstanding and persistent exclusions of agricultural and automotive products from its markets.”

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Click [here](#) for a press release from the office of Ranking Member Levin.

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## MULTILATERAL

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### MULTILATERAL

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#### *Multilateral Highlights*

### Second Round of Environmental Goods Agreement Negotiations Concludes

From September 22–26, 2014, participating parties concluded the Second Round of negotiations on the proposed Environmental Goods Agreement (EGA), a potential plurilateral agreement among 14 parties to eliminate tariffs on certain environmental products and technologies. In addition to the United States, the following parties are participating in the negotiations: Australia, Canada, China, Chinese Taipei, Costa Rica, the European Union, Hong Kong, Japan, Korea, New Zealand, Norway, Singapore, and Switzerland.

In the Second Round of negotiations, parties made progress on elaborating the list of products that the EGA eventually will cover and set a goal to produce a consolidated list of products by March 2015. Five parties (Australia, Canada, Japan, New Zealand, and the United States) each tabled product nominations for two of the 10 or 11 product categories that the EGA eventually will cover. These two categories were air pollution and waste management. Each of these five parties tabled 30 nominations in each these two categories. If accepted by other parties, these nominations will expand significantly the list of covered goods beyond the APEC list agreed to in 2012.

Whether parties will seek to incorporate the EGA into the multilateral Doha Round, or leave the EGA as a self-standing plurilateral agreement, remains uncertain. That decision will depend in part on the status of the Doha Round at the end of 2015, as well as on whether EGA parties achieve a coverage level of world trade in environmental goods sufficient to apply MFN to all WTO members. The 14 current EGA parties account for approximately 86% of world trade in the 54 environmental goods categories that the parties initially agreed to liberalize. However, that share might decrease or increase if the list of covered goods or participating parties expands. Several large countries – for example, Brazil and India – currently are not participating in the negotiations.

While EGA negotiations are progressing, much work remains to be done regarding product scope specifically and level of ambition generally. Certain parties aspire to complete the EGA by the end of 2015, in tandem with the United Nations Climate Change Conference, scheduled for November 30, 2014 – December 11, 2015, and the World Trade Organization's 10th Ministerial Conference, scheduled for December 2015. The Third Round of EGA negotiations is scheduled for December 1–5, 2015.

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## WTO Trade Negotiations Committee Meeting Fails to Resolve Trade Facilitation Agreement Impasse

An October 16, 2014 meeting of the World Trade Organization's (WTO) Trade Negotiations Committee (TNC) failed to register progress on the Doha Round agenda in general and the pending Trade Facilitation Agreement (TFA) in particular. The TFA, which was negotiated at the 9<sup>th</sup> Ministerial Conference in Bali in December 2013, contains provisions for more efficient, transparent, and globally uniform customs procedures. However, WTO Members failed to meet the July 31, 2014 deadline to adopt the TFA Protocol of Amendment, due mainly to lack of support from India, which was dissatisfied with a Bali decision regarding domestic food security stockholding programs.

At the TNC meeting, WTO Director-General Roberto Azevêdo stated that the TFA impasse has produced "a growing distrust" and "could be the most serious situation that this organization has ever faced." He indicated that a compromise between India and other Members regarding TFA and food security does not appear possible and expressed concerns regarding the institutional effects to the WTO from potential plurilateral negotiations on trade facilitation. The Chairman of the General Council and the Chairs of each of the Negotiating Groups made similar statements. US Ambassador to the WTO Michael Punke criticized India, questioned "whether any multilateral agreement is possible," and reflected on the potential to advance trade facilitation at a plurilateral level.

While the TNC meeting did not produce concrete conclusions or actions, an upcoming General Council meeting on October 21 might result in more specific decisions regarding the Bali package or the intended end-of-year deadline to produce a post-Bali work programme to conclude the Doha Round. As a result of the TFA impasse, paralysis has spread to all WTO Negotiating Groups, which have failed to make progress toward designing a blueprint to conclude other elements of the Doha Round.

The TNC meeting follows several unsuccessful formal and informal meetings aimed to advance a multilateral trade facilitation agenda. On September 29, 2014, the WTO's Preparatory Committee on Trade Facilitation met to discuss trade facilitation, but progress regarding the TFA impasse did not result.

Click [here](#) for Director-General Azevêdo's speech and [here](#) for Ambassador Michael Punke's speech.

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