

# WASHINGTON TRADE REPORT

Volume XXVIII Number 12

April 9, 2012



## Feature Article

[Season of Reports, Reciprocity & Sanctions](#) 1

## Negotiations & Agreements

[NAFTA Leaders Meet amid Trilateral Tensions](#) 10

[Demands on Japan Prior to TPP Talks](#) 11

[Ocampo Attracts Support to Head WB](#) 12

[U.S. & Brazil Toast One Another's Liquor](#) 12

## Laws & Regulations

[President Obama Signs JOBS Act](#) 13

[House Hearing Considers Impact of Trade](#) 13

[Annual ITAR Revisions Delayed](#) 13

[Technical Corrections for CBP Fines](#) 14

[Domestic "BioPreferred" Procurement](#) 14

[CBP's Customs Automation Test](#) 14

[Fees for Food Aid Exports](#) 14

[FDA Continues to Bar O.J. Imports](#) 15

[CBP Information Collection Requests](#) 15

[USITC on Used Electronic Product Exports](#) 15

## Cases & Sanctions

[Classification and Revocation Dates](#) 16

[Anti-Smoking Initiatives in WTO and WHO](#) 17

[Senators Ask FTC to Fight Software Piracy](#) 18

[List of Products Made with Child Labor](#) 19

[Honduran Labor Rights Violations](#) 19

[India Threatens Complaint over Visa Fees](#) 20

[USTR Invites Comments on Rare Earths](#) 20

[AD/CVD Administrative Review Requests](#) 20

[Actions Taken under Trade-Remedy Laws](#) 21

## Studies & Events

[Global IT Supply Chain Poses Security Risk](#) 22

[Trade Professionals Optimistic about 2012](#) 22

[National Network for Mfg. Innovation](#) 23

[Travel and Tourism Board Meeting](#) 23

[Research: Disputes and Arbitration](#) 23

[Calendar of Events](#) 24

## Feature Article

### The Season of Reports, Reciprocity & Sanctions

Spring is once more upon us, and a statesman's fancy turns to thoughts of reciprocity and sanctions. This is the time of year when the Office of the U.S. Trade Representative (USTR) names the trading partners that violate U.S. trade rights, the Treasury contemplates whether to call out a country for manipulating exchange rates, and the State Department announces whether new trade sanctions should be imposed on countries that deny religious liberty. These reports and decisions, which are as perennial as the cherry blossoms but usually more punctual, offer a preview of the cases that may erupt over the next year under U.S. trade laws, in sanctions policy, and in the dispute-settlement process of the World Trade Organization (WTO) and other fora.

For trade policymakers the most important reports are issued every March and April by the USTR, which is tasked under 1980s-era laws with producing a series of documents and decisions. These include a *National Trade Estimate* (NTE) report that covers trade policy in general, as well as separate action on telecommunications goods and services and on protection of intellectual property rights.

These reports take on more meaning by the emphasis that the Obama administration now places on the enforcement of U.S. trade rights. The administration signalled this renewed stress when it proposed on January 13 to [reorganize U.S. trade policymaking agencies](#) (emphasizing the exploitation of existing agreements over the negotiation of new ones); when President Obama underlined the topic in his January 24 [State of the Union message](#); and when it established a new [Interagency Trade Enforcement Center](#) on February 28.

The administration's reports this go-around appear to aim for a politically delicate balance in an election year. The White House wants on the one hand to show how its policies have contributed to the goal of "doubl[ing] our exports over the next five years," as set in President Obama's [2010 State of the Union address](#), and hence its reports highlight progress achieved with some partners over the past year. It wants on the other hand to step up the pressure on other partners, and to be seen doing so by the electorate. The reports therefore place even greater emphasis on the administration's determination to press hard for action in the coming months from other partners, above all from China.

## WASHINGTON TRADE REPORT

1318 Independence Avenue SE  
Washington, D.C. 20003  
Phone (202) 544-2881

[www.washingtontradereport.com](http://www.washingtontradereport.com)  
[editor@washingtontradereport.com](mailto:editor@washingtontradereport.com)

For further details, definitions, and legal texts related to the U.S. reciprocity policy see the CENTRAL guide to [Disputes and Trade-Remedy Laws](#).

The tentative legal status of the GSP program, which is an exception rather than an enforceable right, is established by the decision on [Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries](#) (commonly called the Enabling Clause).

For further background on each of these annual reports see the WTR website page on [Key Documents on U.S. Trade Policy](#).

See the [calendar of events](#) on the WTR website for a more complete catalog.

### *The Reciprocity Policy and the Sequence of Mandated Reports*

Most of the reports discussed here are required under congressional mandates that date back to the 1980s, when “reciprocity” policies were all the rage in Congress. Under [the meaning then given to this term](#) — which is quite different from the way it is understood in the larger international trading system — reciprocity meant a policy by which the United States would identify foreign violations of (self-identified) U.S. trade rights and then seek to eliminate them under the threat of retaliation. The principal tools of the reciprocity policy were [section 301 of the Trade Act of 1974](#) (as amended numerous times), a “[Super 301](#)” law that required annual identification of major targets, a “[Special 301](#)” law that focused on intellectual property rights, and targeted reciprocity laws for specific sectors such as telecommunications and wine.

The reciprocity policy was scrapped in the mid-1990s with the conclusion of the Uruguay Round of multilateral trade negotiations and the creation of the WTO’s [Dispute Settlement Body](#) (DSB). With rare exceptions, the cases that used to be pursued unilaterally under section 301 and related statutes are now brought to the DSB. This has not actually meant a reduction in the number or severity of disputes, but has transformed the process from one of unilateral threats based on U.S. law to multilateral adjudication based on agreed international rules. In the event that the United States wins a case in the DSB and opts to impose retaliation, however, the section 301 law is still on hand to provide the legal authority for the sanctions.

There nonetheless remain in effect two important parts of the 1980s-era reciprocity policy. One is the use of the [Generalized System of Preferences](#) (GSP) as an instrument of reciprocity. This program, which extends duty-free treatment to imports of many products from most developing countries, is treated in the WTO system as a privilege rather than a right. It is therefore easy for GSP-granting countries such as the United States to threaten or actually remove these privileges, in whole or in part, from GSP beneficiary countries that are found to violate the designation criteria for the program. The decision to remove Argentina’s GSP status in an investment dispute, as discussed in our last report ([WTR Vol.28 No.11](#)), is an example of this policy at work.

The other carry-over from the reciprocity policy is the series of mandated annual reports from the USTR. These reports, as required under the omnibus trade laws that Congress enacted in 1984 and 1988, are intended to put pressure not just on U.S. trading partners but on the executive branch itself. The legislators who wrote these laws hoped that requiring the USTR to identify explicitly those countries that violate U.S. rights would force the executive to take a more aggressive approach to prosecuting these cases.

Over the past four decades the USTR has devised a regular process for the production of these reports. The current cycle began last August when the agency published its [request for comments](#) to be considered in writing the NTE, asking that any interested parties submit their comments by October 4. Similar comment procedures then followed for the other reports discussed here. Those comments are then taken up in an inter-agency process, together with information developed within the government, in preparation for the springtime release. The sequence of reports and actions begins on March 1, when the USTR issues the annual [Trade Policy Agenda and Annual Report](#). Each March 31 the USTR completes the National Trade Estimate on Foreign Trade Barriers and the Telecommunications Reciprocity report (but this year the two documents were not actually released until April 2 and 4,

The full text of the NTE can be downloaded by clicking [here](#). Alternatively, click [here](#) for the table of contents in order to reach the entries on specific countries.

For the great grandfather to the NTE report see Secretary of State Thomas Jefferson's classic [Report on the Privileges and Restrictions on the Commerce of the United States in Foreign Countries](#) (1793). Jefferson not only catalogued the barriers that European countries erected to U.S. exports but also advocated a retaliation-based approach to trade negotiations that was much like the policies that were so popular in Congress during the 1980s.

respectively), and within 30 days it reaches its determinations under the Special 301 intellectual property law.

Springtime is also when other trade-related government reports are in bloom. One is the semi-annual Treasury report on exchange-rate manipulation that, as discussed in our last report ([WTR Vol.28 No.11](#)), is next due on April 15. Another, as discussed [below](#), is a State Department update on the use of trade sanctions and other means to promote religious freedom abroad.

### *The National Trade Estimate*

This report, as required by [19 U.S.C. 2241](#), is an annual catalog of partners' policies that may be alleged to violate U.S. rights. More formally, it lists those "acts, policies, or practices of each foreign country which constitute significant barriers to, or distortions of" U.S. exports of goods or services, foreign direct investment by U.S. persons ("especially if such investment has implications for trade in goods or services"), and U.S. electronic commerce.

The NTE has now been in continuous production for a generation, and has antecedents reaching back over more than two centuries. Each new iteration of the report tends to be only incrementally different from the one that preceded it. The changes sometimes reflect the addition of a country that had not previously been listed, but the text is more frequently expanded by the addition of measures that were not previously listed, and is always updated to show either advances or retreats in the specific problem areas.

The immensity of the report — which [this year](#) reaches 420 pages covering 60 countries, the European Union, and the Arab League — makes it nearly impossible for journalists and other analysts to reduce it to headline-length conclusions, and often encourages sloppy attempts at quantification. From the very start it has been a widespread practice among reporters to count the number of pages devoted to a single country, thus offering a quick-and-dirty way of assessing the relative level of attention to that country compared either to others that same year or to the same country the year before. The fact that the 2012 report has 40 pages devoted to China, for example, may seem to imply that concerns with that country are 2.5 times larger than those with Japan (whose section runs to 16 pages), and represents an 11.1% increase over the attention given to China in 2011 (when that section had 36 pages). This simplistic approach assumes that all words are of equal value and takes no account of the fact that some verbiage in the NTE is devoted to reporting progress achieved towards resolving disputes.

### *Which Are the Items in the NTE that Matter?*

Not all complaints have the same chance of becoming the bases for disputes in the WTO or other fora. To understand the emphasis that the USTR places on any given measure listed in the NTE it is important to know how that item is situated at the two ends of the policymaking process. At one end is the original input from the private sector, and at the other end is the final output — or at least the final arbiter of what the output will be — in Congress. The USTR is something more than a middleman between these two ends, though at times the distinction is difficult to discern. All other things being equal, we can expect the USTR to place the highest emphasis on those items in the NTE that reflect the demands of specific interest groups or members of Congress, and especially those that speak to the demands at both ends.

To start with the private sector, it is important to read any NTE in conjunction with the raw material from which it was produced. This means checking it against the comment files of the USTR, as summarized in Table 1.

**Table 1: U.S. Firms and Industry Associations' Comments to the USTR in the 2012 NTE Process**

<b>Agriculture, Food, &amp; Beverages</b>	<b>Manufactures</b>
American Frozen Food Institute	American Apparel & Footwear Ass'n
American Potato Trade Alliance	Harley-Davidson Motor Company
American Soybean Ass'n	National Electrical Mfgs. Ass'n
California Cherry Advisory Board	
California Cling Peach Board	<b>Energy &amp; Minerals</b>
California Olive Ass'n	ANSAC (soda ash)
California Table Grape Commission	Chevron
Campbell Soup Company	USEC Inc.
ConAgra Foods	
Cranberry Marketing Comm.	<b>Services, IPR, Computers, &amp; Related</b>
Distilled Spirits Council of the U.S.	Computer & Comms. Industry Ass'n
Grocery Manufacturers Ass'n	Google
Hazelnut Marketing Board	Int'l Intellectual Property Alliance
Herbalife International of America, Inc.	Motion Picture Ass'n of America
Hop Industry Plant Protection Comm.	Pharma. Research & Mfgs. of America
National Confectioners Ass'n	Rapiscan
National Milk Producer's Federation	Telecommunications Industry Ass'n
National Oilseed Processors Ass'n	
National Potato Council	
North America Export Grain Council	
Northwest Horticultural Council	
Pepperidge Farm	
Sunkist Growers	
U.S. Meat Export Federation	
U.S. Wheat Associates	
USA Rice Federation	
Yum! Restaurants International	

All of the comments listed here may be reached at the following link on Regulations.gov: [USTR-2011-0008](https://www.regulations.gov/search?term=USTR-2011-0008).

In this year's NTE process the USTR received comments from 41 U.S. firms and industry associations, some of which made multiple filings (a practice that is especially prevalent in the food and agriculture sector). Links to all of those filings may be found in the table. As a general rule, any item that is identified in the NTE and also backed up with comments in these filings stands a better chance of being made a priority for U.S. negotiators and litigators in the months to come.

It is worth noting that the great majority of the comments filed with the USTR came from firms or industry associations in the agriculture, food, and

The signatories to this letter included Ranking Minority Member Sander Levin (D-MI), former chairman Charles Rangel (D-NY), and representatives Jim McDermott (D-WA), Pete Stark (D-CA), John Lewis (D-GA), Richard Neal (D-MA), Xavier Becerra (D-CA), John Larson (D-CT), and Shelley Berkley (D-NV).

The comments filed with the USTR for the SPS report can be found by clicking [here](#), and the comments for the TBT report are available [here](#).

beverage sectors. These are industries that generally face higher than average tariff barriers abroad, as well as sanitary and phytosanitary or technical barriers to trade (see below). The USTR also received numerous comments from the high-tech and services sectors, but remarkably few from producers of non-agricultural goods.

At the other end of the policy-making process, the USTR is always under pressure from Congress. That pressure resulted strategically in the creation of the reciprocity laws a generation ago, and is still felt at the tactical level. One example came in a [letter](#) that nine Democratic members of the House Ways and Means Committee sent to President Obama on April 2 (the day that the NTE was released). The signatories to this letter said that the NTE “serves as a reminder of the need to act aggressively to eliminate foreign barriers,” and singled out China as a country that deserves special attention from the Interagency Trade Enforcement Center. The letter referred to “Chinese threats and acts of retaliation aimed at chilling efforts to ensure China’s compliance with trade rules,” and to “the overwhelming opaqueness in Chinese laws and policies” that “is inspiring countries such as Argentina and others to employ similarly opaque and discriminatory policies.”

The only other country to which the letter referred was Japan, as is discussed in the [next section](#) of this report.

### *[Supplementary Reports on Sanitary/Phytosanitary & Technical Barriers](#)*

While not explicitly required by law, under this administration the USTR has supplemented the NTE report with additional reports on sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT). These are the principal categories of non-tariff barriers to trade in agricultural and non-agricultural products, respectively, and have become more significant as tariffs and quotas have receded.

The USTR’s third [Report on Sanitary and Phytosanitary Measures](#) provides 113 pages of details on the barriers that U.S. agricultural exports face. Like the NTE report, this document is primarily organized along national lines. It has separate entries on 47 countries, common markets, and regional trade arrangements. It also has sections on crosscutting issues such as export certification requirements, biotechnology, bovine spongiform encephalopathy, avian influenza, and maximum residue levels for pesticides. The 100-page [Report on Technical Barriers to Trade](#) devotes more attention to crosscutting issues than to the bilateral matters, but still has sections devoted to 21 individual partners.

In both of these reports the USTR stressed its accomplishments as well as the remaining problems. In the SPS report, for example, it said that “the United States achieved some important successes” since the previous year, citing the removal of barriers to cherries and citrus in Japan and Korea and to apples and seed potatoes in South Africa and Sri Lanka, as well as restrictions on poultry and beef products. Similarly, in the TBT report the USTR said that the United States had “significantly advanced its efforts to resolve concerns with unjustifiable barriers to trade and to prevent their emergence.” Among the “important additions to the arsenal of tools at its disposal to combat unnecessary trade barriers” were passage of the free trade agreements with Korea, Colombia, and Panama; the creation of new cooperation initiatives related to regulatory and standards issues several fora; and progress on the negotiation of a modernized TBT chapter in the Trans-Pacific Partnership.

**Table 2: Selected Countries and Concerns Identified in the USTR's Telecommunications Reciprocity Report**

Country	Areas of Concern
Brazil	Mandatory certification requirements and requirements for local testing; local content requirements
Canada	Foreign investment limits
China	Multi-level protection scheme; mandatory certification requirements and requirements for local testing; restrictions on data access and transfers; operators' ability to offer satellite capacity to customers
Costa Rica	Mandatory certification requirements and requirements for local testing; licensing of internet via satellite services
El Salvador	Fixed and mobile call termination rates; tax on inbound international traffic
Germany	Access to major supplier networks
Ghana	Fixed and mobile call termination rates
India	Restrictions on use of strong encryption and onerous security requirements for the importation of telecommunications network equipment; operators' ability to offer satellite capacity to customers and obtain competitive access to cable landing stations; mandatory certification requirements and requirements for local testing; local content requirements
Indonesia	Local content requirements
Jamaica	Fixed and mobile call termination rates
Mexico	Foreign investment limits; access to major supplier networks
Thailand	Foreign investment limits
Tonga	Tax on inbound international traffic
Vietnam	Restrictions on data access and transfers

Source: Office of the U.S. Trade Representative, [2012 Section 1377 Review On Compliance with Telecommunications Trade Agreements \(2012\)](#)

### *Telecommunications Reciprocity*

The Telecommunications Trade Act is another law that dates from the reciprocity craze of the 1980s, but has tended to grow in significance since then. Originally enacted as section 1377 of the Omnibus Trade and Competitiveness Act of 1988 and codified as [19 U.S.C. 3106](#), this law requires that as the USTR prepares the aforementioned *National Trade Estimate* it also “review the operation and effectiveness of (A) each trade agreement negotiated by reason of this chapter that is in force with respect to the United States; and (B) every other trade agreement regarding telecommunications products or services that is in force with respect to the United States.”

[This year's report](#), as released on April 4, is not nearly as sprawling as either the NTE or its SPS and TBT supplements. Weighing in at just 17 pages, it lends itself better to the summation given in Table 2. The document devotes close attention to fourteen partners, from very small to very large ones, offering details on U.S. concerns in areas ranging from limits on foreign

investment to restrictions on data networks. Overall, India and China come in for the most detailed criticism.

As in the case of the SPS and TBT reports, Ambassador Kirk noted progress in addressing issues that had been outlined in last year's report. "In Mexico," for example, "through the efforts of USTR and all parties involved, providers have resolved several disputes with a U.S.-affiliated competitor and agreed to work on long-term solutions to pricing and access." The United States and Mexico also concluded a Telecommunication Mutual Recognition Agreement. He further cited accomplishments on investment limits in Canada, on access to submarine cable landing stations in India, and the proposed new rules to ensure fair access to "Next-Generation networks" in Germany.

### *Intellectual Property Rights and the Special 301 Process*

The next step in the springtime rites of U.S. trade policymaking is the issuance of the USTR's annual determinations in the Special 301 process, which are to come out within 30 days of the NTE report. The Special 301 ([19 U.S.C. 2242](#)) requires that the USTR annually identify "those foreign countries that (A) deny adequate and effective protection of intellectual property rights, or (B) deny fair and equitable market access to United States persons that rely upon intellectual property protection," and also indicate which of them "are determined by the Trade Representative to be priority foreign countries." The latter group of countries may be made subject to the threat of retaliation. When the law was first enacted in the 1980s these threats were made unilaterally, but since the conclusion of the Uruguay Round and the entry into force of the [Agreement on Trade-Related Aspects of Intellectual Property Rights](#) (TRIPs) the United States has instead brought cases against countries in the WTO's Dispute Settlement Body.

The Special 301 process is not the only game in town for trade and intellectual property rights, as the [Office of the Intellectual Property Enforcement Coordinator](#) (OIPEC) also issues regular reports on the subject. OIPEC was established in the White House by the Prioritizing Resources and Organization for Intellectual Property Act of 2008 ([Public Law 110-403](#)), or PRO-IP Act. The OIPEC report follows the Special 301 process in focusing on the shortcomings of other countries, but also emphasizes the steps taken by the U.S. government to achieve the goals set under the [2010 Joint Strategic Plan on Intellectual Property Enforcement](#). In the report issued last month OIPEC said that "[i]n 2011, the US Government made great strides toward implementing the Strategy." In addition to issuing the [Administration's White Paper on Intellectual Property Enforcement Legislative Recommendations](#), 2011 saw stepped-up enforcement of IP laws by the Department of Homeland Security and other agencies as well as the voluntary adoption of best practices by the private sector to reduce infringement online. The sections of the report that do discuss problems in specific countries devote more attention to China than to any other country, observing at one point that, "China is the number one source of infringing products seized at the U.S. border and is a major focus of the Administration's increased attention to the problems of inadequate protection and enforcement of intellectual property rights in foreign countries" (page 9).

### *State Department's Religious Freedom Determinations*

Another set of determinations that get reported this time of year are in one sense similar to, yet in another quite different from, the reciprocity laws. The [International Religious Freedom Act of 1998](#), as amended, makes the defense

For more information on U.S. law and policy on in this field see the CENTRAL guide to [Intellectual Property Rights](#).

Office of the Intellectual Property Enforcement Coordinator, [2011 U.S. Intellectual Property Enforcement Coordinator Annual Report on Intellectual Property Enforcement](#) (2012).

**Table 3: Sanctions under the International Religious Freedom Act**

Country	State Department's Determination
Burma	Continue the existing arms embargo
China	Continue the existing restrictions on exports to China of crime control and detection instruments and equipment
Eritrea	Continue the existing arms embargo
Iran	Continue the existing trade restrictions under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010
North Korea	Continue the existing trade restrictions under the Jackson-Vanik Amendment to the Trade Act of 1974
Saudi Arabia	Granted a waiver pursuant to <a href="#">section 407 of the Act</a> (i.e., allowing a waiver when it "would further the purposes of this chapter")
Sudan	Continue the existing foreign assistance sanctions
Uzbekistan	Granted a waiver pursuant to <a href="#">section 407 of the Act</a> (i.e., allowing a waiver when it "would further the purposes of this chapter")

Source: Department of State, "Secretary of State's Determination Under the International Religious Freedom Act of 1998" Federal Register [Volume 77 Number 66](#) (April 5, 2012).

of religious freedom a matter not just of U.S. policy but of law, and establishes a regular process by which countries that are alleged to deny these freedoms may be investigated, named, and potentially made subject to (among other things) trade sanctions. In that way it resembles the reciprocity laws, but the differences come in the facts that (1) it is the State Department rather than the USTR that takes the lead, and (2) the process is more diplomatic and somewhat less confrontational.

In contrast to the very public way in which the USTR identifies countries under the reciprocity laws, the State Department's determinations under this law are not made publicly available until months after they are made internally. This gives the agency an opportunity to deal with the country in question through that clichéd phrase of "quiet diplomacy." This assumes that the United States has relations with the country in the first place. In the case of several countries that are identified under this law the United States either does not have formal diplomatic relations or those ties are very seriously strained.

The State Department published its most recent [determinations](#) under this law last week. The actual decisions, however, date to August 18, 2011. As summarized in Table 3, Secretary of State Hillary Clinton identified eight countries as (in the language of the law) "countries of particular concern" regarding the denial of religious freedom. In none of these cases, however, has this determination led to any changes in U.S. policy. Two of the countries (Saudi Arabia and Uzbekistan) were granted waivers under a provision of the law that, in catch-all fashion, permits such action if it is determined that this would further the purposes of securing religious freedom. All of the other countries are already subject to one form or another of trade sanction, which by these determinations are being neither tightened nor relaxed.

#### *Risks to the United States from Stepping up Dispute-Settlement*

The laws and reports reviewed above all date to past decades, but each has renewed relevance under the Obama administration's emphasis on trade enforcement. While there are both economic and political advantages to that policy, the reliance on dispute-settlement also poses three risks.



The cases are enumerated in WTO Dispute Settlement Body, [23 March 2012 Proposed Agenda](#) WT/DSB/W/476 (21 March 2012).

One risk comes in the opportunity cost of litigation: Time and money spent in disputes are finite institutional resources that might otherwise be devoted to negotiating new agreements. That point is reinforced by the second risk, which is that disputes have a tendency to boomerang. A trading partner against whom the United States brings a complaint will commonly respond in kind, filing a complaint of its own against some U.S. measure that is either analogous to it or of greater value. This point was demonstrated by the full agenda of the Dispute Settlement Body last month, where the docket for March 23 was dominated by cases in which the United States is the respondent. The marquee case that day was the Boeing-Airbus dispute — perhaps the biggest boomerang ever — but the DSB also considered the status of implementation or related matters in no fewer than eight other cases in which the United States was the respondent. On that occasion the United States looked more like the WTO's biggest scofflaw than the most ardent friend of the court.

The third risk is that some cases lead to unintended consequences at home, a problem made especially acute when the issue concerns politically sensitive issues of social policy, human health, or the environment. Political support for trade liberalization, both in the general public and among elected officials, was badly undercut in past decades by a series of high-profile cases in which U.S. environmental laws were treated as non-tariff trade barriers. One can well imagine the same thing happening now that one WTO ruling has gone against U.S. restrictions on clove cigarettes and another case is being developed against Australian anti-smoking measures (see the [story](#) below on these cases). No matter what the legal merits of these cases, it is indisputable that the friends of free trade in general and the WTO in particular will not find it easier to make their case if the trade rules are seen as a means of undermining efforts to reduce teen smoking.

## Latest Data: Unemployment and the Election

### Unemployment by Industry

Percentage of unemployed workers by industry, March, 2011 and March, 2012:

	2011	2012
Construction	20.0%	17.2%
Agriculture & related	14.5%	15.7%
Leisure & hospitality	13.2%	10.9%
Wholesale/retail trade	8.8%	8.6%
Non-durable goods	9.3%	8.2%
Information services	7.6%	8.0%
Durable goods	10.0%	7.2%
Transportation & utilities	9.6%	6.7%
Mining, oil & gas	5.9%	6.3%
Financial activities	7.1%	5.7%
Education & health	5.3%	5.3%
Government workers	4.0%	3.7%

Source: [Bureau of Labor Statistics](#).

### InTrade Political Prediction Market

Chances of winning the Republican presidential nomination:

Governor Mitt Romney	96.1%
Representative Ron Paul	0.7%
Senator Rick Santorum	0.6%
Speaker Newt Gingrich	0.2%

Chances of winning the presidential election:

President Barack Obama	60.7%
Governor Mitt Romney	37.0%

Outcome of the congressional elections:

Republicans retain control of House	69.0%
Democrats retain control of Senate	31.4%

*Note: In a prediction market participants trade futures contracts on real-world outcomes. The InTrade market, which is the largest such trading center, is at <http://www.intrade.com/v4/home/>. Results shown here are as of April 8, 2012.*

## Negotiations & Agreements

### NAFTA Leaders Meet amid Trilateral Tensions

President Obama hosted his North American Free Trade Agreement (NAFTA) counterparts, Canadian Prime Minister Stephen Harper and Mexican President Felipe Calderon, at the White House for a North American Leaders Summit on April 2. The leaders released a [Joint Statement](#) pledging to address a wide range of issues, from supply chain security to economic prosperity, regulatory reform, and other topics.

Although relations between the leaders appear harmonious on the surface that may be misleading. There are numerous sources of friction in the trilateral relations, not the least of them being the U.S. hesitance to back Canadian and Mexican entry into the TransPacific Partnership (TPP) negotiations. The United States already has NAFTA relations with both countries, and hence has little to gain from their entry into the TPP, but both of them want a seat at what is, with the near-death of the Doha Round of multilateral negotiations, the biggest table in the trading system today. This has been met with a combination of U.S. concerns over Canadian agricultural protection and efforts to leverage as much as possible from Mexico in advance of negotiations. The maneuvering over the TPP, coupled with other irritants, made this a testier encounter than most North American meetings.

#### *A Rough Patch in U.S.-Canadian Relations*

A passage in the [Joint Statement](#) “welcome[s] increasing North American Energy trade,” but that sentiment is belied by tensions in bilateral energy trade. It is ironic to note that one of the original U.S. objectives in negotiating free trade with Canada, which was first floated in the Carter administration and then realized in the Reagan administration, was to secure U.S. access to Canadian oil. Officials in those two administrations might be surprised to know that one of the most significant sources of tension between the Obama and Harper administrations is the internal U.S. division over the routing of the Keystone XL pipeline from Canada. That division has already delayed the project, and has the potential to kill it, much to the consternation of Canada.

Prime Minister Harper’s frustration was evident shortly after the summit meeting, when he went down the street from the White House to the Wilson Center to discuss Canadian energy and trade relations with the United States. He made very clear that Canadian and U.S. interests on energy diverge. Obviously irritated about the concerns over the Keystone XL pipeline, which would bring his country’s tar sands oil south of the border, Harper told the audience that Canada would no longer be a “captive supplier” of the U.S. energy market. Harper said that, until now, the United States has enjoyed a discount price for Canadian oil. Under Canada’s National Energy Policy, Canada has charged 15% more to customers outside of the United States.

Harper apparently has decided to change that policy, whether or not Obama decides to reverse himself on the pipeline. “We cannot be,” according to Harper, “in a situation where really our one and in many cases only energy partner could say no to our energy products.” Noting that Canada faces “the necessity of diversifying our energy export markets,” he said that “when it comes to oil in particular, we do face a significant discount on the marketplace because of the fact that we’re a captive supplier” but “one of our national

priorities is to make sure that we have the infrastructure and the capacity to export our energy products outside of North America.”

### *Tensions with Mexico, and Congressional Demands*

Relations are also difficult between President Obama and his Mexican counterpart. President Calderon was reportedly extremely angry over the gunwalking scandal known as “Fast and Furious” that is now under investigation in the House Oversight and Government Reform Committee. There is no mention of this or other controversial border-security problems in the Joint Statement, though it does include a paragraph supporting “shared responsibility, mutual trust, and respect” with the promise “to cooperate in key areas such as countering arms trafficking and money laundering consistent with our laws and constitutions.”

While the Obama administration appears to be more favorably disposed towards Mexico than Canada as a TPP partner, that may only increase the interest of Congress in seeking to leverage concessions from Mexico in advance. That interest was evident on April 2 when a bipartisan group of 16 senators from poultry-producing states cosigned a [letter](#) to U.S. Trade Representative (USTR) Ron Kirk seeking his help in pressing Mexico to drop its antidumping investigation against U.S. chicken leg quarters. Mexico has issued an affirmative preliminary finding of dumping ranging from 64% to 129%; a final determination is currently scheduled to be reached by August.

The senators specifically bring up Mexico’s interest in joining the TPP negotiations in the context of the AD investigation. According to the senators, Mexico is basing its dumping finding on “flawed” assumptions that, if allowed to continue, could “encourage others in Mexico to institute frivolous antidumping actions against our beef, pork or dairy sectors.” They called on Kirk to use Mexico’s interest in joining TPP to persuade the government to terminate the AD investigation. “As we continue the Trans-Pacific Partnership negotiations,” they wrote, “we urge you to resolve this situation and ensure that Mexico honors its commitment under NAFTA. We hope the antidumping case by Mexico is terminated and look forward to working with you to resolve this matter.”

Mexico is not the only TPP suitor that is subject to this type of pre-negotiation negotiation, as is clear from the story below.

## **Demands on Japan Prior to its Entry into TPP Negotiations**

Like Canada and Mexico, Japan is seeking to become a party to the negotiations over a TransPacific Partnership (TPP). And also like Mexico, as described above, Japan is under pressure to make concessions to U.S. demands as a condition for its entry into these talks.

### *Democrats Link Japan’s Entry to Market-Access Concerns*

A group of nine Democrats in the House of Representatives raised concerns over trade with that country in an [April 2 letter](#) to President Obama. All nine signatories are members of the Ways and Means Committee. While they devoted the majority of their letter to their complaints regarding China, as discussed [above](#), the final paragraph of their letter was devoted to Japan.

Observing that the *National Trade Estimate* report issued that day “details barriers [in Japan] to U.S. auto sector exports, agriculture products, insurance, drugs and medical devices,” they declared that —

*The endemic barriers in that market not only present a significant trade enforcement challenge, but there also must be full knowledge of their nature in each of these areas, and whether and how they can be successfully addressed under the framework of potential entry by Japan in the Trans-Pacific Partnership.*

The overall tone of the letter suggests that, in contrast to the more bellicose position taken with respect to China, the lawmakers are more interested in stepping up pressure on Japan in advance of TPP negotiations than in the initiation of dispute-settlement proceedings.

### ***Japan under Pressure on Trade in Services***

In contrast to the fairly vague demands made in the legislators' letter, the Coalition of Service Industries (CSI) has a much more specific message to Japan. CSI is speaking out against a Japanese bill to revise its Postal Privatization Law. The bill, submitted to Japan's Diet on March 30, would grant regulatory exemptions to Japan Post Bank, Japan Post Insurance, and Japan Post Services. These state-owned or state-supported services companies would enjoy significant exemptions from regulations, including those that implement Japan's Banking Law and Insurance Business Law. Foreign competitors would not enjoy the same treatment.

CSI President Bob Vastine is linking this issue to Japan's participation in the TPP. He said on April 6 that "this highly significant legislative measure will seriously complicate Japan's potential for joining the TPP negotiations if it is passed," and that if Japan wants to join the TPP "it will have to demonstrate that it welcomes competition in all sectors of its economy on a level playing field, including with its state supported enterprises."

## **Nominee Ocampo Attracts Some Support to be World Bank President**

More than 100 economists from institutions all around the world cosigned a [petition](#) to the Board of Executive Directors of the World Bank urging them to select Jose Antonio Ocampo as the next president of the institution. Ocampo is currently a professor at Columbia University, where he specializes in development economics.

President Obama's nominee for the post is Dartmouth College President Jim Yong Kim. A group of three African countries (Angola, Nigeria, and South Africa), have nominated Ngozi Okonjo-Iweala, Coordinating Minister of the Economy and Minister of Finance of the Government of Nigeria. In the 68-year history of the institution the presidency has always gone to the U.S. nominee.

Following World Bank procedures, the Board of Executive Directors is currently conducting formal interviews with the three candidates, and is expected to announce its choice by the 2012 Spring Meetings.

## **United States and Brazil Toast One Another's Liquor**

For WTO law on geographical indications see [Section 3](#) of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

The United States and Brazil will today recognize the exclusivity of two types of liquor. What was once marketed in the United States as Brazilian Rum will now be recognized as cachaça, and Brazil will recognize bourbon. This will take the form of an exchange of letters between U.S. Trade Representative Ron Kirk and Brazilian Minister for Industry, Development, and Trade Fernando Pimentel.

## Laws & Regulations

### President Obama Signs JOBS Act

President Obama signed the “Jumpstart Our Business Startups (JOBS) Act” ([H.R.3606](#)) into law on April 5 in a Rose Garden ceremony. The main purpose of the bill is to make it easier for small businesses to raise capital and operate by temporarily exempting emerging growth companies from certain reporting requirements of the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#). Small businesses are defined in the law as companies that had annual gross revenues of less than \$1 billion during its most recently completed fiscal year.

### House Committee Hearing in Pittsburgh Considers Impact of Trade on Business

In related news, the House Small Business Committee’s Subcommittee on Agriculture, Energy and Trade held a [field hearing](#) in Pittsburgh, Pennsylvania on April 2 to consider the impact of U.S. trade policies on small businesses and manufacturing. Chairman Scott Tipton (R-CO) highlighted international trade as “a major component to the U.S. economy, and American businesses that contributes to the creation of millions of good-paying local jobs.”

Justin McElhattan of Industrial Scientific Corporation [expressed frustration](#) with export controls. Explaining that his company’s products, such as equipment that monitors chlorine and sulfur dioxide, are considered “dual-use,” such items are “subject to certain export controls that are terribly costly, complex, and burdensome in service to our customers. Further, the potential penalties for non-compliance are incredibly harsh and costly to a growing company.” He described the intense monitoring and reporting requirements his company faces all along the sales and distribution chain, as well as the difficulties his company faces in consulting with or hiring non-U.S. citizens. He asked the legislators to “recognize the tremendous burden this system places on a company’s growth and nimbleness.” More important, he called on them to “seek ways to simplify the export control process for growing companies.”

The private sector witnesses invited to testify represent companies that depend on a global market, so they all endorsed the connection between international trade and the prosperity of small business.

### Annual Revisions to International Traffic in Arms Regulations Delayed

The annual revisions to the International Traffic in Arms Regulations (ITAR), which are supposed to be issued each April 1, have been delayed. The same is true for the Section 655 Annual Military Assistance Report, sometimes referred to as the [Section 655 report](#), which reports for a fiscal year the aggregate dollar value and quantity of defense articles and defense services authorized as direct commercial sales to each foreign country. Under Section 655 of the Foreign Assistance Act, these reports are supposed to come out on April 1 of each year. The report will be delayed for a few weeks, a State Department spokesperson told WTR.

## Technical Corrections for CBP Fines, Penalties, and Forfeitures

U.S. Customs and Border Protection, Department of Homeland Security  
Final rule; technical corrections  
Effective date: April 2, 2012  
Federal Register: [April 2, 2012 \(Vol.77 No.63\)](#)  
Contact: Todd Schneider (202) 325-0261

U.S. Customs and Border Protection (CBP) is making technical corrections to reflect the repeal of one of the underlying statutory authorities regarding petitions for relief from a fine, penalty, forfeiture, or liquidated damages under a law administered by CBP. Administrative petitioning rights are not affected by removal of this authority because CBP has other existing statutory authority for these provisions. This document also amends regulations to reflect changes in delegation authority as effected by the transfer of CBP from the Treasury Department to the Department of Homeland Security (DHS), and makes non-substantive editorial and nomenclature changes.

## Domestic “BioPreferred” Government Procurement Rule for Thirteen Products

Office of Procurement and Property Management, Agriculture Department  
Final rule  
Effective date: May 4, 2012  
Federal Register: [April 4, 2012 \(Vol.77 No.65\)](#)  
Contact: Ron Buckhalt (202) 205-4008

The Agriculture Department is instituting Federal procurement preferences for products that substitute sufficient domestic biobased content for imported petroleum inputs. In the final rule, USDA is designating thirteen product categories for the preferred procurement program. They range from air fresheners and deodorizers to wood and concrete stains. To qualify for preferred procurement a product must be within a designated product category and must contain at least the minimum biobased content established for the designated item. USDA invites the manufacturers and vendors of qualifying products to provide information on the product, contacts, and performance testing for posting on its BioPreferred Web site, <http://www.biopREFERRED.gov>.

## Invitation to Participate in CBP’s Customs Automation Test on Document Imaging

U.S. Customs and Border Protection, Department of Homeland Security  
General notice  
Federal Register: [April 6, 2012 \(Vol.77 No.67\)](#)  
Contact: Monica Crockett [monica.crockett@dhs.gov](mailto:monica.crockett@dhs.gov) (policy)  
Susan Dyszel at [susan.dyszel@dhs.gov](mailto:susan.dyszel@dhs.gov) (to participate)

U.S. Customs and Border Protection (CBP) announces that, commencing April 6, the agency is conducting a National Customs Automation Program (NCAP) test concerning document imaging. During the test, certain Automated Commercial Environment (ACE) participants will be able to submit electronic images of a specific set of CBP and Participating Government Agency (PGA) forms and supporting information to CBP.

Parties who have been accepted in previous Entry, Summary, Accounts and Revenue (ESAR) tests and who file entry summaries in ACE are now invited to submit specified CBP and PGA documents via the Electronic Data Interchange (EDI) as part of the Document Image System (DIS) test. DIS capabilities will be delivered in multiple phases. The first phase will enable participating importers and brokers to transmit images of specified CBP and PGA forms with supporting information via EDI in an Extensible Markup Language format, in lieu of conventional paper methods. Additional information pertaining to technical specifications (see DIS Implementation Guidelines) can be accessed on [CBP.gov](http://www.cbp.gov) at the following link [http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace\\_edi\\_messages/catair\\_main/abi\\_catair/catair\\_chapters/document\\_imaging\\_igs/](http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace_edi_messages/catair_main/abi_catair/catair_chapters/document_imaging_igs/).

## Licensing Fee Schedule and User Fees for Food Aid Exports

Farm Service Agency, Agriculture Department  
Notice of Licensing Agreement  
Fee Schedule  
Effective date: April 4, 2012  
Federal Register: [April 4, 2012 \(Vol.77 No.65\)](#)  
Contact: Patricia Barrett (202)

The Farm Service Agency (FSA) is announcing the fee schedule for the new Export Food Aid Commodities (EFAC) licensing agreement offered by FSA under the United States Warehouse Act (USWA). Agricultural products that may be stored under an EFAC licensing agreement include, but are not limited to, corn soy blend, vegetable oil, and pulses such as peas, beans, and lentils. USWA licensing is a voluntary program. The EFAC licensing agreement will be available to port and transload facility operators storing or

720-3877

handling EFAC. The fees are intended to cover the costs of administering the licensing program, including the costs of inspections. Both the fee schedule and the licensing agreement will be posted on the FSA Web site at <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=was-ua>.

## FDA Continues to Bar O.J. Imports Containing Banned Fungicide Carbendazim

### FDA Import Alert 99-08:

“Detention Without Physical Examination Of Processed Foods for Pesticides”

The Food and Drug Administration (FDA) continues to test imported orange juice for the presence of the pesticide carbendazim, a fungicide that is not legal for use on oranges in the United States. Testing began in early January, following notification to the agency by PepsiCo’s Tropicana Products Inc., and Coca Cola’s Minute Maid, that they had found traces of the fungicide in their products. As a result of testing the agency barred two dozen shipments of imported juice and frozen juice concentrate, of which half originated in Brazil. Brazil initially threatened to bring a complaint to the World Trade Organization but ultimately agreed to comply with U.S. restrictions.

As of March 30, the FDA has collected samples from 144 shipments of orange juice or orange juice concentrate. Of these, 103 shipments tested negative for carbendazim, but the FDA found 30 samples that tested positive. All 30 shipments have detained and/or refused. Of the 30 samples, 12 were shipments from Canada, 14 were from Brazil, two from Costa Rica, and one each from the Dominican Republic and Poland.

## CBP Information Collection Extension Comment Requests

U.S. Customs and Border Protection  
Comment request  
Comment deadline: May 2, 2012  
Federal Register: [April 2, 2012](#)  
[Vol.77 No.63](#)  
Contact: Tracey Denning (202) 325-0265

U.S. Customs and Border Protection (CBP) invites comments on the extension of its information collection requirements regarding “Importers of Merchandise Subject to Actual Use Provisions.”

## USITC Questionnaire on Used Electronic Product Exports

U.S. International Trade Commission  
Comment request  
Comment deadline: June 1, 2012  
Federal Register: [April 4, 2012](#)  
[Vol.77 No.65](#)

The U.S. International Trade Commission is submitting a request to the Office of Management and Budget regarding a proposed questionnaire it has designed for use in preparing its upcoming report to the U.S. Trade Representative on “Used Electronic Products: An Examination of U.S. Exports” (Inv. No. 332-528). The draft questionnaire and other supplementary documents may be downloaded at <http://www.usitc.gov/332528comments>.

## Openings for Trade Professionals in the Federal Government

Agency	Job Title	Salary Range	Close
Export-Import Bank	<a href="#">Attorney-Advisor</a>	\$89,033-136,771	April 9
Export-Import Bank	<a href="#">Business Development Assistant</a>	\$51,630-67,114	April 10
U.S. Int’l Trade Commission	<a href="#">International Economist</a>	\$105,211-136,771	April 12
Export-Import Bank	<a href="#">Attorney-Advisor</a>	\$76,644-118,481	April 16
Department of the Treasury	<a href="#">Dep’y Asst. Gen. Coun. (Int’l Affairs)</a>	\$119,554-179,700	April 28
Export-Import Bank	<a href="#">Loan Specialist</a>	\$76,644-118,481	April 23

## Cases & Sanctions

### Classification and Revocation Date Reversals

Prepared by Laura Fraedrich  
Kirkland & Ellis LLP  
(202) 879-5990  
[lfraedrich@kirkland.com](mailto:lfraedrich@kirkland.com)

[Target Stores v. United States](#), slip op. 12-41 (Ct. Int'l Trade Mar. 22, 2012)

#### *A Gazebo is Not a Tent*

The U.S. Court of International Trade (“CIT”) considered the classification of items called “gazebos” imported by Target. U.S. Customs and Border Protection classified the gazebos as “tents” under heading 6306, HTSUS, with a duty rate of 8.8%. Target objected and claimed classification as a structure of iron or steel under heading 7308, HTSUS, which is duty free. The CIT agreed with Target. According to the CIT, the “record evidence establishes without contradiction that plaintiff’s merchandise herein is marketed, sold, assembled, displayed, and enjoyed as gazebos, not as tents.”

[Heveafil Sdn. Bhd. v. United States](#), slip op. 12-38 (Ct. Int'l Trade Mar. 21, 2012)

#### *Revocation Date Adjustment*

Heveafil requested a changed circumstances review of the antidumping duty order on extruded rubber thread from Malaysia after the only U.S. company producing the product went bankrupt. The Department of Commerce revoked the order, but Heveafil challenged the effective date of the revocation. Heveafil wanted the revocation to be effective as of the earliest date of an unliquidated entry. Commerce did not want it to cover any entries that had already been subject to administrative review. The CIT stated that “Commerce’s assertion that the antidumping rate determined in the 1995-1996 review must be assessed on the unliquidated entries covered in that review contravenes the remedial purpose of the statute given the absence of a domestic industry. Therefore, Commerce’s determination is unreasonable, not supported by substantial evidence and not in accordance with law.”

[Yangzhou Bestpak Gifts v. United States](#), slip op. 12-40 (Ct. Int'l Trade Mar. 22, 2012)

#### *Separate Rate Affirmed*

In the antidumping duty investigation on narrow woven ribbons from China, the Department of Commerce selected only two mandatory respondents. One cooperated and received a zero rate while the other failed to cooperate and received an adverse facts available rate of 247.65%. Normally, Commerce would not use either a zero or facts available rate to calculate the rate for those qualifying for separate rate status. But, having no other rates to work with, it calculated a simple average of these two rates for the separate rate. Bestpak objected and asked for a zero rate. The CIT rejected the request. The CIT noted that this approach “may be unfortunate and even frustrating, but it is not unreasonable on this limited administrative record.”

[Ad Hoc Shrimp Trade Action Comm. v. United States](#), slip op. 12-36 (Ct. Int'l Trade Mar. 20, 2012)

#### *Data Selection is Reasonable*

After remand, the Department of Commerce continued to find that Type 03 entry data from U.S. Customs and Border Protection was the best available information when selecting mandatory respondents in the fourth administrative review of the antidumping duty order on warmwater shrimp from China. The U.S. industry contested this finding. This time, the CIT sustained this approach. The CIT noted that Commerce considered the evidence of inaccuracy as required by the remand order and made a



reasonable decision to rely exclusively on the Type 03 data rather than other possible data sets.

## Anti-Smoking Initiatives at Issue in WTO Disputes and WHO Agreement

Appellate Body Report, United States – Measures Affecting the Production and Sale of Clove Cigarettes  
[WT/DS406/AB/R](#)

Trade in tobacco and other smoking products is on the agenda in two Geneva organizations, where the World Trade Organization (WTO) is host to two disputes and the World Health Organization (WHO) has adopted a new, anti-smoking text.

### *United States Loses Appeal in the Clove Cigarette Case*

On April 4 the Appellate Body (AB) of the WTO upheld a dispute-settlement panel's [finding](#) in favor of Indonesia over the U.S. ban on clove cigarettes. Indonesia was challenging a U.S. law that imposed a ban on cigarettes that included flavorings or additives that would appeal to children, such as clove flavorings, but specifically excluded menthol-flavored cigarettes from the ban.

The dispute concerned Section 907 of the [Family Smoking Prevention Tobacco Control Act of 2009](#). That provision stated that “a cigarette or any of its component parts ... shall not contain ... an artificial or natural flavor (other than tobacco or menthol) or an herb or spice,” specifying “clove” among the banned flavors. Indonesia pointed to the exception for menthol cigarettes (which are produced in the United States) and the ban on clove (which are not) as a violation of the principle of national treatment.

Last September a panel sided with Indonesia, finding that the ban is inconsistent with the national treatment obligation in Article 2.1 of the [Agreement on Technical Barriers to Trade](#) (TBT) because it accords clove cigarettes less favorable treatment than that accorded to menthol-flavored cigarettes. The DSB rejected Indonesia's second main claim, which was that the ban is unnecessary. In this regard, the DSB found that Indonesia had failed to demonstrate that the ban is more trade-restrictive than necessary to fulfill a legitimate objective (in this case, reducing youth smoking) within the meaning of Article 2.2 of the TBT Agreement. With regard to other claims presented by Indonesia in its complaint, the panel came to a mixed decision.

### *Honduras, Ukraine Challenge Australia on Cigarette Package Law*

In a related development, Honduras brought a complaint ([DS435](#)) against Australia to the WTO on April 4. The Central American tobacco exporter is challenging Australia's [Tobacco Plain Packaging Bill 2011](#) that requires all tobacco products sold in Australia to be in plain packaging without brands or logos starting December 1, 2012. It is aimed at discouraging the use of such products, particularly by underage consumers.

Australia's law will require that, as of December 1, 2012, all tobacco products sold must be packaged in drab, olive-brown paper or cardboard with deliberately revolting images of specific health consequences of tobacco use covering 75 percent of the front of the package, and a ban on any brand imagery or promotional text of any sort. Among the imagery that would be displayed would be photographs of gangrenous toes, full-color close-ups of mouth cancer, and similar pictures. Honduras and Ukraine argue that Australia's law violates its commitments under the [Agreement on Trade-Related Aspects of Intellectual Property Rights](#) (TRIPS). Honduras further alleges that the Australian measure imposes technical barriers to trade.

The law is already being challenged in court in Australia. On April 17

Australia's High Court is scheduled to hear arguments brought by British-American Tobacco, Phillip Morris, Imperial Tobacco Australia, and Japan Tobacco International, who argue that the law breaches the Australian Constitution because it seeks to acquire property (brand names and logos) without providing compensation. The government responds that it is restricting the use of brand names and logos, not taking them over.

### *WHO Adopts New Protocol to Convention on Tobacco Control*

Whether or not Australia's law is WTO-legal, it has the support of the World Health Organization (WHO). On March 22 WHO Director-General Margaret Chan urged the world to "stand shoulder to shoulder" against the tobacco industry and support Australia's tobacco-control law.

On April 4 the WHO provisionally adopted a protocol to the 2005 [Framework Convention on Tobacco Control](#) (FCTC) aimed at fighting illicit trade in tobacco products. The agreement, the terms of which have not been publicly released, would require manufacturers to be licensed and for tobacco packaging to bear markings so that any goods seized on illegal markets can be traced back through the supply chain, including the companies that shipped them. Tobacco products sold in duty-free shops and over the Internet would also be covered by the accord, which obliges authorities to provide legal assistance to other countries investigating illicit but highly lucrative trade channels, according to WHO officials.

The text will be considered for adoption at the WHO meeting to be held in November in Seoul, Korea. It will have to be ratified by 40 countries to enter into force. WHO believes that process will take two years

### *Cases Gives Ammunition to Anti-Trade Groups*

The anti-trade group Public Citizen is seeking to increase public censure against tobacco as a useful tool in its continuing fight against the WTO. In a campaign to "Shine the spotlight on the WTO's attack on consumer rights" Public Citizen has [posted](#) a "Consumer Rights Pledge" that it asks individuals to sign on-line. Irate that the WTO has recently found three U.S. laws that the group categorizes as "popular U.S. consumer policies" — country-of-origin labeling on meat; dolphin-safe tuna labeling; and the sweet-flavored (clove) cigarettes —the group calls on signatories to get their friends and family to sign the pledge and gather as many signatures as possible in order to gain "the attention of the public, media, President Obama and Congress ... This is only the beginning of all of our efforts."

## **Senators Ask FTC to Help Fight Software Piracy**

Chairwoman Mary Landrieu (D-LA) and 15 of her bipartisan colleagues on the Senate Small Business and Entrepreneurship committee sent a [letter](#) on April 2 to the Federal Trade Commission asking the agency to use all available FTC authority to protect U.S. manufacturing information technology (IT) and intellectual property (IT) from theft and illegal use by foreign competitors. They asked the FTC to support 39 state attorneys general, who [wrote](#) to the FTC in November to request the commission's support at the Federal level to protect U.S. software firms and protect U.S. manufacturing by fighting foreign use of pirated and illegal software in their manufactured goods and processes.

## DOL Revised List of Products Made with Forced or Indentured Child Labor

Labor Department  
Final determination  
Effective date: April 3, 2012  
Federal Register: [April 3, 2012](#)  
(Vol.77 No.64)

The complete list and other matters are addressed at <http://www.dol.gov/ILAB/regs/eo13126/main.htm>.

The U.S. Department of Labor's Bureau of International Labor Affairs on April 3 published a revised list of products that Federal contractors must certify under [Executive Order 13126](#) are not produced with forced or indentured child labor. Three products are being added:

- Bricks from Afghanistan
- Cassiterite from the Democratic Republic of the Congo
- Coltan from the Democratic Republic of the Congo.

The departments of Labor, State and Homeland Security believe these products might have been mined, produced or manufactured by forced or indentured child labor.

## Complaint about Honduran Labor Rights Violations under CAFTA-DR

A delegation of Honduran labor leaders, joined by the AFL-CIO, filed a petition with the Labor Department's [Office of Trade and Labor Affairs](#) (OTLA) that alleges that the Honduran Government has failed to enforce its own labor laws, contrary to its obligations under the United States-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR). The petition alleges "repeated and well-documented violations of workers' rights" in three export-related sectors: manufacturing, agriculture, and port operations. According to the complaint, the Government of Honduras has "utterly failed to address" the violations. The AFL-CIO joined major Honduran trade unions in a petition asking the U.S. government to act under the terms of the trade agreement.

As described by the AFL-CIO, the petition focuses on the Honduran government's failure to enforce labor laws in export sectors. The petition also alleges that workers in Honduras have continued to see violations of their rights of freedom of association, collective bargaining and acceptable conditions of work under national and international law. According to the petitioners, many workers do not have access to fair and efficient administrative or judicial tribunals. Child labor, particularly in the agricultural sector, is also a serious concern. Joining the AFL-CIO were the Honduran General Workers Confederation (CGT) and the apparel and textile federation (FESITRATMASH), which is affiliated with the CGT, Independent Federation of Workers of Honduras (FITH), and the San Pedro Sula Municipal Employees' Union (SIDEYTMS).

The petitioners included a March 5, 2012 [letter](#) signed by seven Senate Democrats to Secretary of State Hillary Clinton raising concerns about human rights violations in Honduras, including violence against union leaders, farmers, and several other "vulnerable sectors." "It appears that many abuses are linked to state security forces," the senators wrote.

OTLA is already examining workers' rights complaints among several CAFTA-DR countries. The agency accepted a [workers' rights petition](#) filed in December against the Government of the Dominican Republic. The AFL-CIO has previously filed a workers' rights [complaint](#) against Guatemala, and is in the process of filing one against Costa Rica.

## India Threatens WTO Complaint over U.S. Increase in Visa Fee

India's Commerce Department is putting together a complaint charging discrimination by the United States against India's software companies over H-1B and L-1A and L-1B visa fees. According to an India official speaking to reporters in New Delhi on April 1, the U.S. law results in discrimination against Indian software companies which are being asked to pay higher H1B and L1 visa fees for their employees than do the U.S. firms that bring in skilled immigrants. The law, sometimes referred to as the "50-50 rule," substantially increased the fees for those two categories of visas for company applicants that employ more than 50 persons in the United States, or have more than 50% of their employees admitted on non-immigrant visas. The increased visa fees, originally enacted by [P.L.111-230](#) and scheduled to expire in 2014, were subsequently extended through 2015 in the "James Zadroga Act" ([P.L.111-347](#)).

The law increases the price of the specialized visas. First, it raises the L visa (intracompany transfer) nonimmigrant application filing fee and fraud prevention and detection fee by \$2,250 for applicants that employ 50 or more employees in the United States if more than 50% of the applicant's employees are L visa or H-1b visa (nonagricultural specialty worker) nonimmigrants. Second, it raises the H-1b visa application filing fee and fraud prevention and detection fee by \$2,000 for applicants that employ 50 or more employees in the United States if more than 50% of the applicant's employees are H-1b or L visa nonimmigrants.

The official told reporters that "the [Indian] Department of Commerce is working to build up a case of WTO violations by U.S. resulting from the implementation of the visa fee hike." The official said both the Indian and the U.S. service suppliers perform similar services but are "being treated differently ... resulting in formally and substantively different treatment [and] violations of the specific commitments of the U.S. under WTO."

## USTR Invites Comments on China Rare Earths Complaint in WTO

Office of the U.S. Trade Representative  
 Comment request  
 Deadline: April 30, 2012  
 Federal Register: [April 4, 2012 \(Vol.77 No.65\)](#)  
 Contact: Jared Wessel (202) 395-3150

On March 13, 2012, the United States requested consultations under the auspices of the World Trade Organization (WTO) regarding restraints on the export from China of various forms of rare earths, tungsten and molybdenum ([DS431](#)). The Office of the U.S. Trade Representative invites written comments from the public concerning the issues raised in this dispute.

## AD/CVD Administrative Review Requests Invited

International Trade Administration, Commerce Department  
 Comment request  
 Comment deadline: April 30, 2012  
 Federal Register: [April 2, 2012 \(Vol.77 No.63\)](#)  
 Contact: Brenda Waters (202) 482-4735

The International Trade Administration invites interested parties to request an administrative review of antidumping or countervailing duty orders with anniversary dates in April. Please consult the *Federal Register* notice for the list of eligible orders.

### Actions Taken under the Trade-Remedy Laws by the International Trade Administration (ITA) and the U.S. International Trade Commission (ITC)

Law	Product	Exporters	Action	FR Vol.77
AD	Frozen shrimp	Brazil, India, Thailand	ITA initiates administrative reviews and request for revocation of order in part	<a href="#">#63</a>
AD	Hot-rolled flat-rolled carbon-quality steel products	Russian Federation	ITA extends deadline for preliminary results of administrative review of suspension agreement	<a href="#">#63</a>
AD	Polyester staple fiber	China	ITA extends deadline for preliminary results of administrative review	<a href="#">#63</a>
AD	Preserved mushrooms	China	ITA initiates new shipper review	<a href="#">#63</a>
AD	Low enriched uranium	France	ITA final results of changed circumstances review	<a href="#">#63</a>
AD	Folding gift boxes	China	ITA, ITC initiate sunset reviews	<a href="#">#63</a> ; <a href="#">#63</a>
AD	Seamless and pressure pipe	Germany	ITA, ITC initiate sunset reviews	<a href="#">#63</a> ; <a href="#">#63</a>
AD	Chlorinated isocyanurates	China	ITA rescission of new shipper review	<a href="#">#63</a>
AD	Frozen fish fillets	Vietnam	ITA initiates new shipper review	<a href="#">#64</a>
AD	Frozen fish fillets	Vietnam	ITA extends deadline for preliminary results of administrative review and new shipper review	<a href="#">#65</a>
AD	PET film, sheet, and strip	United Arab Emirates	ITA final results of administrative review weighted average margin is 3.14 percent	<a href="#">#65</a>
AD	Frozen shrimp	Vietnam	ITA final results of new shipper review weighted average margin is 0.00 percent	<a href="#">#65</a>
AD	Silicon metal	China	ITC affirmative determination of sunset review	<a href="#">#66</a>
AD	Circular welded carbon-steel pipes and tubes	Thailand	ITA preliminary results of administrative review weighted average margin ranges from 1.23 to 5.81 percent	<a href="#">#67</a>
AD	Diamond sawblades and parts	Korea, China	ITA extends deadline for final results of administrative reviews	<a href="#">#67</a>
AD	Foundry coke products	China	ITA affirmative final result of expedited sunset review	<a href="#">#67</a>
AD	Fresh garlic	China	ITC votes on determination in administrative review	<a href="#">#67</a>
CVD	Welded carbon steel pipe	Turkey	ITA preliminary results of review net subsidy rate is <i>de minimis</i>	<a href="#">#63</a>
CVD	PET film, sheet, and strip	India	ITA rescission of administrative review	<a href="#">#63</a>
CVD	Circular welded carbon-quality steep pipe	Oman	ITA negative preliminary determination and alignment of final CVD and AD determinations	<a href="#">#63</a>
CVD	Stainless steel sinks	China	ITC votes April 13 on preliminary determinations	<a href="#">#67</a>

## Studies & Events

### GAO: Global IT Supply Chain Poses New National Security Risk

GAO, *National Security-Related Agencies Need to Better Address Risks* ([GAO-12-361](#))

Government Accountability Office testimony: "IT Supply Chain: Additional Efforts Needed by National Security-Related Agencies to Address Risks" ([GAO-12-579T](#))

A Government Accountability Office (GAO) report finds that the global supply-chain for information technology (IT) products could threaten national security. Examining the potential that IT systems could be deeply compromised, GAO looked into the protective measures that four critical executive department — Energy, Homeland Security, Justice, and Defense — are taking to secure their information systems.

GAO found that two of the agencies, Energy and Homeland Security, have not even yet attempted to define supply chain protection measures for their systems and “are not in a position to have implementing procedures or monitoring capabilities to verify compliance with and effectiveness of any such measures.” Justice has identified protection measures, GAO reported, but has not implemented them, and cannot monitor their effectiveness. Only the Defense Department has made any progress in securing its IT systems, GAO found, using “its incremental approach to supply chain risk management. “The department has defined supply chain protection measures and procedures for implementing and monitoring these measures.”

GAO warned that, as long as the agencies rely on a global supply chain for IT systems, they remain vulnerable to multiple risks. Foreign intelligence services or counterfeiters “may exploit vulnerabilities in the supply chain and thus compromise the confidentiality, integrity, or availability of an end system and the information it contains,” and this “in turn can adversely affect an agency’s ability to effectively carry out its mission.”

GAO is recommending that the Departments of Energy, Homeland Security, and Justice take steps, as needed, to develop and document policies, procedures, and monitoring capabilities that address IT supply chain risk.

### Trade Professionals Are Optimistic about 2012

Based on a survey of over 250 buyers and suppliers worldwide, *The State of Global Trade in 2012* found that half of global trade professionals are optimistic about the global economy in 2012 and nearly three quarters plan to spend at or above 2011 levels. The survey points out that larger organizations may still have doubts about a full recovery. Respondents at companies with over \$100 million in revenue were two times more pessimistic than those at companies with less than \$100 million in revenue (30% vs. 14%), according to the report. Regardless of company size, the three top concerns about the economy were a slump in global demand, volatility in commodity prices, and rising labor costs (31%, 23%, and 18%, respectively).

Suppliers and buyers vary when it comes to rising labor costs concerns. Only 7% of suppliers cited rising wages in manufacturing hotspots as a biggest economic concern for 2012, compared to 26% of buyers. Buyers are shifting sourcing outside of China, the report found. Although 73% of buyer respondents currently source from China, 68% cited sourcing outside of China as “much more important” or “more important” in 2012 as compared to 2011. In fact, 34% of all buyers cited sourcing in new geographies as their top way of managing costs in the year ahead.

## Workshop on Building the National Network for Manufacturing Innovation

Advanced Manufacturing  
National Program Office  
Public Workshop: April 25,  
2012 (8:00 am-3:00 pm ET)  
Transmittal of report: May 22,  
2012  
Federal Register: [March 29,  
2012 \(Vol.77 No.61\)](#)  
Contact: Heidi Colby-Oizumi  
(202) 205-3391

The Advanced Manufacturing National Program Office, National Institute of Standards and Technology, Department of Commerce will hold a public workshop on “Designing for Impact: Workshop on Building the National Network for Manufacturing Innovation” at Rensselaer Polytechnic Institute, Troy, New York. [On-line registration](#) for the workshop will close at 5:00 pm (ET) April 20, 2012.

## Travel and Tourism Board Meeting in Los Angeles

International Trade  
Administration, Commerce  
Department  
Open meeting  
April 23, 2012 (9:00-11:00 am  
PT)  
Federal Register: [April 3, 2012  
\(Vol.77 No.64\)](#)  
Contact: Jennifer Pilat (202)  
482-4501

The United States Travel and Tourism Advisory Board will hold an open meeting at the Los Angeles Convention Center in Los Angeles, California. The agenda may change to accommodate Board business. The final agenda will be posted on the Department of Commerce Web site for the Board at [http://tinet.ita.doc.gov/TTAB/TTAB\\_Home.html](http://tinet.ita.doc.gov/TTAB/TTAB_Home.html), at least one week in advance of the meeting.

## New Research: Dispute-Settlement and Arbitration

Leon Trakman, “[Investor State Arbitration or Local Courts: Will Australia Set a New Trend?](#)” Journal of World Trade Volume 46 Number 1 (2012)

The Australian Government will no longer include arbitration clauses in its investment treaties but will instead provide that investment disputes between foreign investors and host states be heard by the domestic courts of those host states. This statement reflects doubts about the efficiency of bilateral investment treaties in general and investment arbitration in particular, and raises the question whether other countries will follow particular strategies to suit their discrete needs. This article highlighting the significance of competing options.

Raúl A. Torres, “[Use of the WTO Trade Dispute Settlement Mechanism by the Latin American Countries](#)” ERSD Working Paper Number 2012-03 (2012)

This paper presents statistical evidence of how Latin American countries have been very active in their use of the dispute-settlement mechanism, especially when their use of the mechanism is compared to their participation in world trade. This paper also analyses how Latin American countries have come up with innovative and creative solutions without deviating from the guidelines established by WTO rules.

Brett G. Williams, “[The WTO Dispute over Implementation of the Rulings in the US Cotton Case](#)” Sydney Law School Research Paper Number 12/07 (2012)

The cotton case is only the second time that an implementation dispute has arisen in the context of rules regulating subsidies on the basis of their effects and it was the first time that the WTO Appellate Body (AB) considered the issue. The AB clarified that a Member has failed to comply with a ruling to remove adverse effects found to be caused by a subsidy in a particular period when the measures remaining in place after the implementation date continue to cause adverse effects in the period after the implementation date has passed.

## Calendar of Events

For the full calendar of trade events go to <http://www.WashingtonTradeReport.com/calendar>

Date(s)	Type	Event or Initiative	More Information
April 11	Election	Parliamentary election in Korea	<a href="#">Election Guide</a>
April 11	Data	Release of U.S. import and export price indexes for March, 2012	<a href="#">Bureau of Labor Statistics</a>
April 11	Data	Release of Transportation Services Index for Feb.	<a href="#">Bureau of Transportation Stats.</a>
April 12	Data	WTO releases trade statistics	<a href="#">WTO</a>
April 12	Data	Feb. U.S. merchandise trade data available on-line	<a href="#">DataWeb</a>
April 12	Data	BEA releases Feb. goods and services trade data	<a href="#">Bureau of Economic Analysis</a>
April 12-18	Meeting	World Economic Forum on Regional Transformation in a New Global Context (Latin America)	<a href="#">World Economic Forum</a>
April 13	Meeting	WTO Dispute Settlement Body	<a href="#">WTO</a>
April 14-15	Meeting	Sixth Summit of the Americas (Cartagena, Colombia)	<a href="#">Summit website</a>
April 17	Remedies	USITC final injury vote in AD/CVD investigations of refrigerator-freezers from Korea and Mexico; certain steel wheels from China	USITC pages on <a href="#">refrigerator-freezers</a> and <a href="#">steel wheels</a>
April 17-19	Meeting	World Customs Organization and the Korea Customs Service jointly co-host the WCO Global AEO Conference in Seoul, Korea.	<a href="#">World Customs Organization</a>
April 19	Remedies	USITC final injury vote in AD investigations of certain steel nails from the United Arab Emirates; certain stilbenic optical brightening agents from China and Taiwan	USITC pages on <a href="#">nails</a> and <a href="#">brightening agents</a>
April 21-26	Meeting	13 <sup>th</sup> session of the United Nations Conference on Trade and Development (UNCTAD XIII) in Doha	<a href="#">UNCTAD XIII website</a>
April 22	Election	Presidential election in France (first round)	<a href="#">Election Guide</a>
April 23	Remedies	USITC final injury vote in AD/CVD investigation of galvanized steel wire from China and Mexico	<a href="#">USITC</a>
April 23	Report	USITC report to House Ways and Means Committee on the global competitiveness of the U.S. business jet aircraft industry	<a href="#">USITC release</a>
April 23-25	Meeting	2 <sup>nd</sup> Annual International Trade Compliance Conference	<a href="#">On line</a>
April 23-25	Meeting	Council of Supply Chain Management Professionals 8th European conference	<a href="#">On line</a>
April 24	Meeting	WTO Dispute Settlement Body meeting	Agenda TBD