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Feature Article

UNCTAD XIII: Doha Doesn't Solve Doha Round

Dateline Doha

The thirteenth United Nations Conference on Trade and Development (UNCTAD) met in Doha, Qatar last week, at a time of high uncertainty in global trade negotiations. The multilateral talks that were launched in this same city in 2001 have been at an impasse for years, and while no one expected this latest Doha meeting to resolve the Doha Round the event highlighted the divisions between developing and industrialized countries in the World Trade Organization (WTO). The debates before and during UNCTAD XIII were more acrimonious than those held at UNCTAD XII in 2008, and the intensity of the criticisms that the United States and other industrialized countries levelled at UNCTAD led some to see an existential threat to the organization. The title of the compromise document that the conference produced — the [Doha Mandate](#) — may give a misleading sense of consensus.

There is nothing new about North-South trade frictions, which predate UNCTAD and the WTO by several generations. The disagreements are now more consequential than they were in past decades, however, as the time has long passed when a multilateral trade deal required the consent only of the United States, Europe, and a few other rich countries. The developing countries as a group, and especially the emerging economies of Brazil, Russia, India, China, and South Africa (the BRICS), are now indispensable players, and if the Doha Round is to be revived it will require accommodations between these rising powers and their industrialized partners in the Organization for Economic Cooperation and Development (OECD). Neither the BRICS nor the OECD countries showed any sign last week that they are prepared to break the current Doha deadlock.

The discussions in UNCTAD XIII centered more on matters of principle than on practical bargaining. Among the main points of friction were the perennial debates over the role of the state in national development, special and differential treatment for developing countries in trade agreements, and proposals either to expand or contract the UNCTAD secretariat's scope of work in research and technical assistance. The United States and its partners ultimately had less influence over the terms of the Doha Mandate than did the developing countries. Many of the items that the industrialized countries sought to delete or dilute survived the drafting process, and some of their proposed additions were left out of the text.

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For the proposals floated at the first UNCTAD meeting see Secretary General Raúl Prebisch's report entitled [Towards a New Trade Policy for Development](#) (1964).

The GSP could not enter into effect until granted a waiver from the universal and unconditional most-favored-nation requirements of GATT Article I. This was achieved in 1979 by the declaration on [Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries](#) (better known as the Enabling Clause).

UNCTAD's Role in the Trading System

UNCTAD is a United Nations organization that once aimed to be an alternative negotiating forum to the General Agreement on Tariffs and Trade (GATT), and that would — if its founders had their way — be where the North and South negotiated the terms of a “new international economic order” (NIEO). Key elements of that proposed order included commodity agreements that guaranteed high prices for developing countries' raw materials, import protection for these countries' infant industries, and open access to the industrialized countries markets' for their manufactured exports. Few of these proposals gained much traction, apart from creation of the Generalized System of Preferences (GSP) in the early 1970s; that concession to developing country demands required modification of GATT rules. The grand aspirations for an UNCTAD-led NIEO gave way to more modest and pro-market goals in the 1980s and 1990s, when many developing countries accepted the “Washington consensus” in favor of trade liberalization.

The relationship between UNCTAD and the WTO is now much more complementary than it had been in past decades, though relations between the two institutions remain complex. That complementarity is partly the result of much closer composition in their memberships. In the 1960s and 1970, most developing countries were not in GATT and the few that had joined confined their participation to demands for exemptions, special and differential treatment, and less than full reciprocity (i.e., few or no concessions on their part). The agreements negotiated in the Kennedy (1962-1967) and Tokyo (1972-1979) rounds were not part of a single undertaking, and thus not binding on the countries that opted not to sign them. That made it easy to think of the GATT as the place where industrialized countries negotiated among themselves but UNCTAD as the place where they negotiated with developing countries. The differences in membership narrowed in the ensuing decades, however, when numerous developing countries acceded to GATT and (after 1994) to the WTO. Following the accessions of large economies such as Mexico (1985), China (2001), Saudi Arabia (2005), Vietnam (2007), and Russia (pending), nearly every country in the world — apart from a few marginal or micro-economies and radical regimes such as North Korea — is either a WTO member or is currently in the process of accession.

No longer a forum for the negotiation of substantive initiatives such as the GSP, UNCTAD's chief functions today fall within the “three pillars” of technical assistance to developing countries, research and analysis, and consensus-building. Two of these pillars were especially controversial in Doha, with member countries divided over the range of issues on which UNCTAD should conduct its research and analysis and, in the process, they showed how elusive consensus remains among themselves.

UNCTAD and the WTO now cooperate in several ways. One is their joint sponsorship of the [International Trade Centre](#), a Geneva institution that provides assistance to policymakers and exporters in developing countries. Much of UNCTAD's technical assistance is complementary to WTO initiatives, such as aiding countries in their WTO accessions and in the negotiation and implementation of their commitments. Most of the diplomats who represent their countries in the WTO do double-duty, also being accredited to UNCTAD and other U.N. agencies in Geneva (though this is not the practice for the United States and several other industrialized countries). Top officials also have a good working relationship. WTO Director General [Pascal Lamy](#) was a very active participant in UNCTAD XIII, and UNCTAD

Secretary General [Supachai Panitchpakdi](#) had been Lamy's predecessor at the WTO.

The fact that there are two Geneva organizations devoted to trade nonetheless creates a potential problem of coherence. This is the term of art that international organization professionals use to describe the problem whereby a multiplicity of institutions at the national and international level deal with overlapping areas of public policy, and which can lead to forum-shopping, mixed signals, and — in the worst case — to conflicts of laws. One may find actual or potential problems of coherence with several international organizations *vis à vis* the WTO. The International Monetary Fund might oppose tariff cuts that threaten to reduce government revenue and contribute to budget deficits, for example, just as the World Health Organization might promote restrictions on trade in tobacco and the United Nations Educational, Scientific, and Cultural Organization may be more friendly to a “cultural exception” for trade in motion pictures. In the case of UNCTAD the potential for conflict can run deeper, insofar as trade is not a peripheral but a core issue in its mandate. Avoiding incoherence in what countries do in the WTO *versus* the IMF, WHO, and UNESCO requires domestic coordination between countries' ministries of trade, finance, health, and culture, but avoiding incoherence in what they do in the WTO and UNCTAD is primarily a matter of international negotiation between countries' Geneva missions.

[North-South Differences on Trade](#)

Relations between industrialized and developing countries have evolved over the nearly half-century in which UNCTAD has existed. Countries with very different degrees of economic development and political security will naturally have distinct perspectives on the nature of their trade relations. These perspectives have become more complex over time, with developing countries gravitating into differing groups.

It is difficult to situate the recurring debate over trade and development without delving into a bit of economic philosophy. The core question here concerns whether the received wisdom of trade economics applies equally to all countries at every level of economic and political development, or if the arguments in favor of open markets need to be modified by other considerations that perennially arise in developing countries. This is a debate that reaches back not just to UNCTAD I in 1964, but indeed to the origins of modern trade economics and the first wave of colonial independence from Europe. Countries that are poor, dependent on trade, and that often have legacies of colonialism are more likely than industrialized countries to fear the consequences of pursuing a purely market-oriented development strategy. Leaving it to the market to decide what they produce and trade, they frequently fear, will consign them to the lower rungs of the economic ladder, thus threatening both their prosperity and their sovereignty. These concerns have often led such countries to favor a much stronger role for the state, both domestically (in the form of import protection and industrial policy) and internationally (in the form of foreign assistance, commodity cartels, negotiated forms of special and differential treatment, etc.).

Those demands were once common to most developing countries, but positions began to diverge in the 1980s. That was the heyday of the Washington consensus, when many Latin American and African countries recognized that protectionism (under whatever name) had not served them nearly as well as had the export-led growth strategies of Asian developing countries. That pro-market reformation has since been followed by a statist

The U.S. position on these issues is vastly different today than it was in the early years of the country's existence. This very first developing country declared its independence in the same year as Adam Smith's [Wealth of Nations](#) (1776), and soon challenged Smith's contention that free trade will benefit all countries. Secretary of the Treasury Alexander Hamilton's [Report on Manufactures](#) (1791) laid out the rudiments of the terms-of-trade argument that Raúl Prebisch developed in greater detail in the decades before he became UNCTAD's first Secretary General. Both men argued that a developing country needs a strong and interventionist state to help it break free from dependence on commodity exports, with Hamilton's plea for infant-industry protection reemerging in the mid-20th century in the guise of Prebisch's import-substitution industrialization model. Hamilton was also the first developing country thinker to associate dependence on foreign markets and supplies as a threat to a country's security and sovereignty.

counter-reformation in some developing countries (e.g., those Latin American countries that now associates themselves with Cuba and Venezuela). These ideological shifts, coupled with the emergence of new powers and changes in the trade strategies of the United States and the European Union, has led to a fragmentation of a once-solid developing country bloc.

Developing countries in UNCTAD are still formally organized around the Group of 77, so named for original coalition from UNCTAD I, but that title is misleading on two counts. One is simple math: The group now comprises 132 countries, yet the only recognition of the additional 55 countries comes in the fact that it is now called the Group of 77 plus China. The second and more significant source of confusion is that there are at least three distinct subsets among the developing countries. One consists of a large number of small, poor countries that remain sceptical about trade liberalization both because they doubt their own competitiveness and because they fear that multilateral tariff cuts will erode the preferences that they now have in industrialized countries' markets. Prominent among these countries are the 48 that are formally identified as least developed countries, a set that overlaps somewhat with the African, Caribbean, and Pacific group. Their position stands in contrast to much more pro-trade positions of countries such as Chile, Costa Rica, Mexico, and Singapore, where policymakers show greater confidence in their countries' competitiveness and actively negotiate free trade agreements with the United States, the EU, and other major economies.

A third group consists of the BRICS, which — with variations among them — are caught between older aspirations to lead the developing world and newer interests in meeting the industrialized countries on their own terms. One of the greatest challenges in the trading system today comes in striking a proper balance in the rights and responsibilities of the BRICS. They are key to the Doha Round, with the United States consistently stating that it will not accept a deal that (as presently written) demands too little of the BRICS and offers them too many loopholes. These countries also seek greater authority in other bodies; Brazil wants a permanent seat on the U.N. Security Council, for example, and China seeks greater authority in the IMF. The BRICS may also be prominent players in the maneuvering over who will replace Pascal Lamy next year as WTO Director General.

At UNCTAD XIII the differences between these subgroups' views was apparent in a recurring debate over the significance of supply (or value) chains as the new paradigm for the conduct of trade. Minister of Trade Anabel Gonzalez of Costa Rica presented a pro-trade perspective, citing her country's success in the microchip industry as an example of how these chains can ease and accelerate developing countries' entry into higher value-added industries. WTO Director General Lamy concurred, saying that value chains reduce the price of the "entry ticket" that developing countries must pay to get into international trade networks. Trade Minister Rob Davies of South Africa disagreed, stating that value chains perpetuate the pattern by which developing countries mostly export raw materials and consume finished goods. The WTO ambassadors of Brazil and India shared his view, which was also expressed by representatives of other smaller and poorer developing countries, many of whose representatives are especially wary of the demands now being made upon them in negotiations with the European Union.

Wrangling over the Doha Mandate

One of the many differences between UNCTAD and the WTO lies in the nature of the instruments that their overlapping memberships conclude. The

aim of WTO negotiations is to produce legally binding rules and national schedules of commitments on tariffs, quotas, subsidies, and other matters. The limited references to principle in these agreements are usually restricted to the preamble. The declarations that UNCTAD's members issue at the end of each four-year conference are more in the nature of an extended preamble that deals with such matters of principle as the role of the state in the national economy and the relationship between trade and development. This is not to say that these declarations are of merely rhetorical importance. In addition to providing useful readings on the state of North-South negotiations, they also lay out the work program for the UNCTAD secretariat until the next conference. That program can influence the directions taken in developing countries' laws and policies.

The Doha Mandate has not, as of this writing, been posted to the websites of either [UNCTAD](#) or the [conference](#). A copy that WTR obtained can be accessed by clicking [here](#).

The negotiations over UNCTAD XIII's declaration, known as the Doha Mandate, were unusually difficult. As was previously reported ([WTR Vol.28 No.14](#)), the positions that the United States and associated countries took in these talks led to complaints that "efforts [were] afoot to silence" UNCTAD because "a few [industrialized] countries want to suppress any dissent with the prevailing orthodoxy." This complaint, which came from former UNCTAD leaders, staffers, and consultants, was seconded by developing countries and especially by civil society groups that gathered in Doha to engage in side events, monitor the conference, and influence the results.

The negotiations over the text that became the Doha Mandate were conducted in marathon sessions that bore a closer resemblance to the end-game in a trade negotiation than to the polite drafting of a diplomatic statement. The United States made common cause in these talks with Japan, Switzerland, Canada, Australia, Norway, and New Zealand in a coalition that is variously rendered as JUSCANZ, JUSSCANNZ, or simply JZ, and is rather charmingly pronounced "juice cans." Sometimes acting in cooperation with the European Union, this group was much more engaged in debate with the G-77 plus China than it had been in UNCTAD XII. The United States was not especially vocal, choosing to let Luzius Wasescha, Switzerland's ambassador to the WTO and UNCTAD, speak for the group.

The main efforts of the JUSCANZ countries were aimed at changing the terms of a draft text that was produced prior to the conference, the terms of which — in their estimation — leaned too far left. They were especially keen on avoiding the inclusion in the new declaration of anything like paragraph 115 of the declaration that emerged the UNCTAD XII conference in 2008. That passage in the [Accra Accord](#) read as follows:

Developing countries should pursue development strategies that are compatible with their specific conditions within the framework of an enabling State, which is a State that deploys its administrative and political means for the task of economic development, efficiently focusing human and financial resources. Such a State should also provide for the positive interaction between the public and private sectors.

That endorsement of government involvement in the economy stuck like a bone in the throat for countries that prefer to stress the market as the arbiter of economic development, and — as can be seen in a [leaked copy](#) of the April 21 draft of the "President's Suggested Distilled Negotiation Text" — the JUSCANZ countries proposed alternative language this time. They preferred that the text provide that, "An effective State, working with private, non-profit and other stakeholders, can help forge a coherent development strategy and

provide the right enabling environment for productive economic activity.” The final text was a compromise. On the one hand it provided in paragraph 17 that the Accra Accord “remains valid and relevant,” while on the other hand paragraph 12 reads as follows:

Each country has the primary responsibility for its own economic and social development, and national development efforts need to be supported by an enabling international economic environment. The State, having an important role to play, working with private, non-profit and other stakeholders, can help forge a coherent development strategy and provide an enabling environment for productive economic activity.

In the end the text referred to the state neither as “effective” nor as “enabling.” This particular paragraph may thus be seen as a draw, with neither the Group of 77 plus China nor the JUSCANZ countries having it entirely their way.

The same cannot be said for the bulk of the other language in contention in the text. There were many items in the April 21 draft that the JUSCANZ countries wanted either deleted altogether (as indicated by the notations “JZ delete” after a passage or “JZ delete para” after an entire paragraph), as well as additional language that these countries wanted to add (as indicated by bold text followed by “JZ”). A comparison of the April 21 draft with the April 26 final text shows that the JUSCANZ group prevailed far less frequently than the Group of 77 plus China. Many of the lines or paragraphs that it asked to be deleted remained in the text, sometimes in altered form, and many of its proposed additions did not survive the drafting process. The JUSCANZ countries were largely or entirely unsuccessful in their efforts to dilute or delete passages concerning the financial crisis (paragraph 2 in the final text), energy prices (paragraph 5), the environment (10), trade sanctions (paragraph 25), fiscal policies (paragraph 29), and debt (paragraph 30).

On the whole, the resulting text may be read as a win for the developing country bloc — or at least the faction within that bloc that most directly confronts the positions of the United States and its partners. That victory may be Pyrrhic, however, if what is really at stake is the conclusion of the Doha Round. Nothing in the conduct of the negotiations over this text suggested that the contending parties in those WTO negotiations are any more interested today in constructive give-and-take than they have been thus far in the round, and unless that happens the developing countries’ wins on points of principle will not easily translate into mutual gains in actual practice.

Operations of the UNCTAD Secretariat

The Doha Mandate also addresses the role of UNCTAD and the operations of its secretariat in the coming years. Here the JUSCANZ countries sought to narrow the scope of issues and operations, but again enjoyed little success. Paragraph 18 states that “UNCTAD should continue to work within its mandate,” but does not (as the JUSCANZ proposed) specify that its “activities should be delivered within its core mandate, within its existing capacities and resources, and without prejudice to the work of other international organizations.” The JUSCANZ wanted this text repeated as *chapeau* language in each of the several parts of the document that lay out the work program for the secretariat in specific areas.

One area where the JUSCANZ countries were partially successful concerned a review of the operations of the UNCTAD secretariat. They managed, over some objections, to include in the conference program the

See also the EU's March 19 [statement](#) in support of reviewing this document in UNCTAD XIII.

consideration of a critical report issued earlier this year by the U.N.'s [Joint Inspection Unit](#). Press reports about the JIU's [Review of Management and Administration in the United Nations Conference on Trade and Development \(UNCTAD\)](#) (JIU/REP/2012/1) accentuated the negative, highlighting passages stating that the secretariat "lacks a clear corporate strategy to successfully carry out its mandate," and noting "a perceived lack of leadership from top management." These reports also quoted sections stating that the agency was becoming "more and more bureaucratic" and that staff were "highly dissatisfied, frustrated and demotivated" by the human resources management.

The main findings of the report also included positive observations, but these did not make it past the general rule in the press that "if it bleeds it leads." The report praised the UNCTAD secretariat's technical cooperation and its success in model programs such as the Automated System for Customs Data (ASYCUDA). ASYCUDA, which helps developing countries to modernize their customs procedures and trade data systems, is already used in 90 countries and is being adopted by dozens more. "Due to their high potential impact," the report concluded that programs such as ASYCUDA "can serve to elaborate a 'best practices guide' based on lessons learned."

The report nonetheless offered ammunition to UNCTAD's critics, and became a point of friction in the weeks preceding the conference. The United States and the European Union insisted that the report had to be included on the agenda, a position that eventually prevailed. In the [U.S. Statement at UNCTAD XIII General Debate](#) on April 22, Ambassador Betty E. King asked UNCTAD "to closely examine how it can more fully embrace transparency and become more accountable to members." The critiques in the JIU report may also have strengthened the hands of the countries that argued in favor of a more focused mandate for UNCTAD's future research agenda.

The Doha Mandate reflects these demands, though somewhat vaguely, in paragraph 19. "In strengthening UNCTAD," it says, "efforts should be made to enhance its efficiency, effectiveness, transparency and accountability, including through effective results-based management and ensuring a member State-driven process through the intergovernmental machinery."

Latest Data: Presidential Election

Polling Averages

The numbers below are based on averages for recent public-opinion polls as reported on April 29.

	Obama	Romney
Pollster (all polls)	46.2%	46.8%
Pollster (telephone only)	46.5%	46.2%
RealClearPolitics	47.5%	44.2%

Note: Telephone interviews are generally considered more reliable than "robocalls" and Internet polls. The first result from Pollster and RealClearPolitics include all polls; the second result for Pollster includes only live telephone interview polls.

Forecasts of Electoral Votes

	A.P.	Cook	R.P.P.
Solid Democratic	186	175	186
Leans Democratic	—	52	51
Toss-Ups	196	101	95
Leans Republican	—	67	15
Solid Republican	156	143	191

Note: A candidate needs 270 electoral votes to win. Forecasts from the [Associated Press](#), the [Cook Political Report](#), and the [Rothenberg Political Report](#). For the Cook report we aggregate "likely" and "leans" into "leans."

Negotiations & Agreements

Republicans Criticize China's State-Owned Enterprises, Seek BIT Negotiations

The 22 Republican members of the House Ways and Means Committee [wrote](#) to senior Obama administration officials on April 27 to offer their advice on the highest trade and economic priorities that the administration should pursue when U.S. and Chinese senior officials meet in Beijing for the May 3-5 U.S.-China Strategic & Economic Dialog (S&ED) meeting. The legislators expressed full support for the administration's "rebalancing agenda" of broad-based, macroeconomic themes that the two countries should discuss, but warned that such a macroeconomic approach should not fail to deal with very specific trade concerns.

Their concerns centered on the significant problems for trade and investment with China that arise from the serious systemic problems presented by the pervasiveness and encouragement of state-owned enterprises. They warned that China imposes a wide variety of market barriers, investment restrictions, financial services barriers, non-transparent and often discriminatory regulatory and licensing procedures, WTO-illegal subsidies, and other means of favoring their state-owned enterprises over foreign competitors, investors, service providers, and foreign intellectual property owners.

Committee Chairman Dave Camp (R-MI) drew attention to the matter in his reaction to the release of the Obama administration's new [model Bilateral Investment Treaty](#) (BIT) ([WTR Vol.28 No.14](#)). On April 23 Camp expressed relief that a new model BIT has finally emerged, but seemed annoyed that "the new provisions on environment and labor go beyond the bipartisan consensus that we have reached on these issues and could undermine the United States' investment engagement through BITs, which have long helped raise labor and environment standards abroad." Camp appeared to be torn between approval that the administration has finally produced the new model BIT and dismay at what he sees as the misguided emphasis on the "green and blue" issues, while scarcely updating the central point of the BIT — investment. Of particular concern to Camp is the new model BIT's apparent neglect of state-owned enterprises as a source of discrimination and market distortion. Nevertheless, he strongly urged the administration to engage China as soon as possible in negotiations for a BIT.

One of the most striking aspects of this letter is how far down the list of concerns is currency manipulation. The legislators write that "currency misalignment also continues to be a serious problem," but devote much greater the weight of detail to other concerns.

Bureau Follows through on Cachaça Deal with Brazil

Alcohol and Tobacco Tax and Trade Bureau
Notice of Proposed Rulemaking
Comment deadline: June 29, 2012
Federal Register: [April 30, 2012](#)
([Vol.77 No.83](#))
Contact: Christopher M. Thiemann (202) 453-1039.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend the regulations setting forth the standards of identity for distilled spirits to include "cachaça" as a type of rum and as a distinctive product of Brazil. This proposal follows requests received from the Government of Brazil and subsequent discussions with the Office of the U.S. Trade Representative ([WTR Vol.28 No.13](#)). TTB invites comments on this proposed amendment to the regulations.

Colombia Sugar TRQ Will Be Administered Using Certificates of Quota Eligibility

Office of the U.S. Trade Representative
 Notice
 Effective date: May 15, 2012
 Federal Register: [April 25, 2012 \(Vol.77 No.80\)](#)
 Contact: Ann Heilman-Dahl
 (202) 395-6127

The Office of the U.S. Trade Representative is providing notice that the tariff-rate quota for sugar established by the United States-Colombia free trade agreement (FTA) will be administered using certificates of quota eligibility. No sugar that is the product of Colombia may be permitted entry under the in-quota tariff-rate established for imports of sugar from Colombia unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar. The Secretary of Agriculture will issue such certificates of quota eligibility to the Government of Colombia. These certificates, when duly executed and issued by the certifying authority of Colombia, will authorize entry into the United States at the in-quota tariff rate established under the agreement.

Under a bilateral protocol amendment to the Colombia TPA signed in 2007, the president was authorized to “take such action as may be necessary in implementing the tariff-rate quotas ... to ensure the orderly marketing of commodities in the United States.” USTR is providing notice that the United States, consistent with Note 9(a) of Appendix I, is administering the duty-free quantities of sugar established under the Agreement through a certificate system substantially similar to that described in 15 CFR 201.102(c) (2006). Consistent with 15 CFR 201.102(c), no sugar that is the product of Colombia may be permitted entry under the in-quota tariff-rate established for imports of sugar from Colombia unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar. The Secretary of Agriculture will issue such certificates of quota eligibility to the Government of Colombia. These certificates, when duly executed and issued by the certifying authority of Colombia, will authorize entry into the United States at the FTA’s in-quota tariff rate.

Openings for Trade Professionals in the Federal Government

Agency	Job Title	Salary Range	Close
U.S. Trade Representative	Minister Couns. for Trade (Beijing)	\$119,554-165,300	April 30
Commerce Dept./Int'l Trade Admin.	Senior Imp. Admin. Officer (Beijing)	\$94,064-138,137	April 30
Department of Labor	International Relations Analyst	\$51,630-97,333	May 1
Consumer Product Safety Comm.	International Trade Specialist	\$62,467-97,333	May 1
U.S. Agency for Int'l Development	Project Development Officer	\$38,394-63,071	May 4
Export-Import Bank	VP of Customer Experience	\$123,758-155,500	May 7
Export-Import Bank	Loan Specialist	\$62,467-115,742	May 10
Environmental Protection Agency	Director, Compliance Division	\$119,554-179,700	May 21
Department of Homeland Security	Assoc. Gen. Counsel for Tech. Progs.	\$119,554-179,700	May 21
USDA Economic Research Service	Director, Market & Trade Econ. Div.	\$119,554-179,700	May 21
U.S. Patent and Trademark Office	Attorney Advisor	\$89,033-155,500	June 7
Smithsonian Institution	Export Compliance Officer	\$105,702-137,410	June 21
USDA Economic Research Service	Research Agricultural Economist	\$74,872-115,742	Aug. 31
USDA Economic Research Service	Research Agricultural Economist	\$74,872-155,500	Aug. 31

Laws & Regulations

Chairman Camp Lays out Goals for Trade Bills in Remainder of 112th Congress

House Ways and Means Committee Chairman Dave Camp (R-MI) laid out a schedule of priorities for trade legislation in the remainder of 2012 in a [speech](#) to the Center for Strategic and International Studies in Washington on April 26. Camp charted the individual legislative items, and his hoped-for deadlines for action or completion in 2012.

What may be most notable is what Camp did *not* say. He made no mention of a new grant of trade promotion authority or the Doha Round.

Miscellaneous Tariff Bill

Camp noted that he and Senate Finance Committee Chairman Max Baucus (D-MT) had reached a bicameral agreement on procedures aimed at a completing a final bill by December, 2012 “to avoid a tax increase when over 600 provisions expire.” (See [next article](#).)

TransPacific Partnership

Declaring his strong support for the TPP negotiations, Camp said “we must conclude the TPP negotiations as soon as possible this year.” He believes the agreement will produce a “counterbalance to China” in the competition for markets in both the Asian and Latin American regions. Furthermore, the chairman noted, the agreement holds the promise of “combin[ing] the successes of past trade agreements with new approaches to meet the challenges to trade and investment in the 21st century.” He is heartened by the “considerable interest” several countries are showing in joining the TPP, which he views as a “positive development,” as long as those countries “do not slow down the negotiations or reduce their ambition.”

Permanent Normal Trade Relations for Russia

Camp announced his unreserved support for a grant of PNTR to Russia, and rejected the attempts by fellow legislators to link PNTR for Russia to non-trade foreign policy or human rights issues. He reinforced his commitment to speedy approval of a “clean” PNTR bill by announcing that his committee will hold a hearing on granting PNTR to Russia in June, although a specific date has not been set. “[H]olding up PNTR because of non-trade concerns does not increase our leverage to address them,” Camp said. He implied that the president has actually worsened the political environment for supporters of PNTR, saying “whispering presidents inadvertently heard around the world have not made our task any easier.”

Other Items on the To-Do List

Current sanctions against Burma expire later this summer “and we should carefully consider what would be the most constructive path at this point.” Camp also offered a list of “Must-Dos” before the end of the 112th Congress:

- Reauthorization of African Growth and Opportunity Act (AGOA) apparel duty-free benefits for third-country fabric for Least Developed beneficiary countries expire September 30, 2012.
- Non-controversial “fixes” to the Central American Free Trade Agreement textile provisions.

- PNTR for Moldova.
- Customs reauthorization bill.

The last of Camp's "must-do" items appears to be the most challenging to accomplish in the remaining months of the 112th Congress. As of this report, no one has introduced a bill to address problems in policing U.S. international borders while improving cross-border transit of legitimate persons and goods. In the previous, 111th Congress, the Senate Finance Committee made a good-faith effort to consider the "Customs Facilitation and Trade Enforcement Reauthorization Act" ([S.1631](#)), but it never emerged from committee. It was never taken up in the lower chamber at all.

Lawmakers Introduced over 900 Tariff-Suspension or -Reduction Bills Last Week

With today's deadline looming, lawmakers have picked up the pace in their introduction of bills to suspend or reduce tariffs on specific products. The two trade committees in Congress requested that legislators introduce any bills that they want included in this year's miscellaneous tariff bill (MTB) by April 30. This deadline is necessitated by the lengthy vetting process that will cull some bills and aggregate others into the MTB ([WTR Vol.28 No.11](#)).

Members of the House and Senate introduced at least 904 bills last week, a number too large to list each one individually. Together with the bills that had already been introduced before the MTB processed was announced, as well as those introduced earlier in April, that puts the total well over 1000.

Table 1 (pages 11-13) summarizes the latest batch of bills by sponsor. The great majority of these bills concern obscure chemical compounds that would be recognizable only to their manufacturers and industrial consumers (e.g., 2-Methyl-2-(methylthio)propanal O-(N-methylcarbamoyl)oxime). Many other items relate to the textile and apparel industries (e.g., fibers and dyes), though there are also some consumer products in the bunch. These include artichokes, capers, candy, footwear, sports bras, kitchen appliances, sporting goods, fireworks, and toiletries.

WTR will follow up next week with a summary of the final batch of bills introduced in time for today's deadline, with perhaps some stragglers that are introduced shortly after the formal deadline.

USTR Requests Comments on Andean Preferences; Ecuador to Be Last Beneficiary

Office of the U.S. Trade Representative
 Comment request
 Deadline: May 22, 2012
 Federal Register: [April 24, 2012 \(Vol.77 No.79\)](#)
 Contact: Bennett Harman (202) 395-9446

The Office of the U.S. Trade Representative (USTR) is requesting the views of interested parties on whether the remaining designated beneficiary country (as of May 15, 2012), Ecuador, is meeting the eligibility criteria under the Andean Trade Preference Act (ATPA). This information will be used in the preparation of a report to the Congress on the operation of the program.

Colombia and Ecuador are the only two of the original four participating countries of the ATPA that currently remain eligible for the program. Bolivia lost its beneficiary status as of July 1, 2009 because the country was found not to be satisfying the eligibility criteria. Peru's participation was terminated effective December 31, 2010, because of the entry into force of the U.S.-Peru Trade Promotion Agreement. Colombia's participation will end effective May 15, 2012, when the U.S.-Colombia TPA enters into force.

(continued on page 15)

Table 1: Tariff-Suspension and -Reduction Bills Filed April 23-27

Sponsor	Range of Bills	Products Included
Manzullo	H.R.4486-4487	Tow bundles
Biggert	H.R.4488-4496	Chemicals
Bishop	H.R.4497-4501	Chemicals
Carney	H.R.4502-4505	Men's and women's footwear
Coble	H.R.4506-4520	Chemicals
Courtney	H.R.4521-4535	Polymer blends, cashmere, animal hair
Ellmers	H.R.4536-4541	Chemicals, tungsten
Jones (NC)	H.R.4542-4554	Fibers, tow
Kinzinger	H.R.4555-4560	Chemicals
Luetkemeyer	H.R.4561-4581	Chemicals
Myrick	H.R.4582-4603	Tow, fibers, chemicals, dyes, window shades
Schock	H.R.4610-4619	Chemicals, pumps, gear boxes
Barletta	H.R.4626	Air pressure distillation columns
Thompson	H.R.4627	Cast stainless steel exhaust gas manifolds
Altmire	H.R.4632-4642	Chemicals
Bishop	H.R.4644-4653	Grills, related items, torches, fishing reels
Butterfield	H.R.4654-4656	Manicure sets, nail clippers, eyelash curlers
Cleaver	H.R.4657-4673	Chemicals
Cohen	H.R.4674	Diuron technical
Costa	H.R.4675-4687	Chemicals
Gerlach	H.R.4688-4690	Chemicals
Graves	H.R.4691-4700	Chemicals, herbicides
Green	H.R.4701-4708	Chemicals, herbicides
Guthrie	H.R.4709-4717	Chemicals, basketballs, volleyballs
Hastings	H.R.4718-4719	Linuron, terbacil
Holt	H.R.4721-4729	Chemicals
Huizenga	H.R.4732-4739	Chemicals, clock assemblies
Johnson (IL)	H.R.4741-4745	Chemicals
Johnson (TX)	H.R.4746-4758	Chemicals, dyes
Lewis	H.R.4760-4761	Polyvinyl formal resin, chemical
Neal	H.R.4762-4770	Chemicals, dyes
Nunes	H.R.4771-4772	Fungaflor technical, penbotec 400SC
Ross	H.R.4773-4795	Chemicals, pesticides
Scott	H.R.4796-4815	Ice shavers, toasters, coffee makers, etc.
Schakowsky	H.R.4820-4821	Earphones and microphones
Berman	H.R.4822-4824	Shopping bags, polyethylene materials
Nunnelee	H.R.4827-4829	Aluminum products, camshafts, crankshafts

Sponsor	Range of Bills	Products Included
Wilson (SC)	H.R.4830-4842	Glass fibers, chemicals, mfg. equip.
Runyan	H.R.4843-4844	Ion-exchange resins
Davis (KY)	H.R.4845	TFM
Andrews (NJ)	H.R.4851-4866	Chemicals
Campbell	H.R.4870-4872	Toric shaped polarized materials
Capito	H.R.4873-4890	Chemicals, resins
Carnahan	H.R.4891-4901	Footwear
Carter	H.R.4902	Photomask blanks
Clarke	H.R.4903-4912	Electronic boxes, rotor parts, pumps, etc.
Costa	H.R.4914	Mixtures of fluopyram and tebuconazole
Doyle	H.R.4915-4916	Agilon 400, brine electrolysis apparatus
Ellmers	H.R.4917	Ceiling fans for permanent installation
Fudge	H.R.4918	Sodium thiocyanate
Green	H.R.4919-4922	Chemicals
Hanna	H.R.4923-4925	Germanium, gallium
Harris	H.R.4926-4929	Footwear
Huizenga	H.R.4930-4932	Chemicals, dyes
LaTourette	H.R.4934-4946	Chemicals
Owens	H.R.4949-4952	Bulk container bags, axles, gear boxes
Petri	H.R.4954-4955	Piston engines, programmable controllers
Ruppersberger	H.R.4956-4962	Oleoresins
Watt	H.R.4964	Benzenesulfonyl chloride
Brown (OH)	S.2475-2507	Chemicals, frames for spectacles, etc.
Guinta	H.R.4968	Bitolylene diisocyanate
Aderholt	H.R.4973-4975	Sleeping bag carry cases and shells
Andrews (NJ)	H.R.4977	Chemical
Benishek	H.R.4980-4981	Fireworks
Blumenauer	H.R.4983-4991	Sports bras, tank tops, child carriers, etc.
Bonamici	H.R.4992-4995	Footwear
Burton	H.R.4996-5027	Chemicals
Canseco	H.R.5028	Nylon woolpacks used to package wool
Capps	H.R.5029-5030	Women's footwear
Carney	H.R.5031-5033	Chemicals
Delauo	H.R.5034-5035	Rooftop cargo bags, magnetic snaps
Dent	H.R.5036-5043	Fabrics, chocolate crumb, candy, chemicals
Deutch	H.R.5045-5046	Coffee brewers, ice shavers
Duncan	H.R.5047-5049	Mfg. Equipment, sector molds and tooling
Frank	H.R.5051-5062	Filament yarns, chemicals, dyes

Sponsor	Range of Bills	Products Included
Frelinghuysen	H.R.5063-5072	Pigments, chemicals, artichokes, oysters
Gerlach	H.R.5073-5102	Chemicals, AC electric motors
Herger	H.R.5104	Ski poles and parts and accessories thereof
Himes	H.R.5105-5112	Chemicals, tow, copper peptide
Huelskamp	H.R.5113-5128	Chemicals
Israel	H.R.5130-5142	Switches, sensors, batteries, etc.
Kissell	H.R.5145-5153	Chemicals, dyes
Loebsack	H.R.5155	Orthotoluidine
Luetkemeyer	H.R.5158-5159	Chemicals
Lummis	H.R.5160-5162	Acrylic fiber tow
Maloney	H.R.5164-5178	Footwear, chemicals, imitation jewelry
Marino	H.R.5179-5185	Chemicals
Mckeon	H.R.5189-5193	Work gloves
Mulvaney	H.R.5196-5226	Chemicals, shade material, valves, etc.
Murphy	H.R.5227-5253	Chemicals
Myrick	H.R.5254	Efka 6225
Neal	H.R.5255-5256	Fasteners, hand tools
Neugebauer	H.R.5257-5258	Chemicals
Nunes	H.R.5259	Fungaflor technical (Imazalil)
Olson	H.R.5260-5266	Chemicals
Pascrell	H.R.5267-5278	Chemicals, capers, pepperoncini, aspirin
Petri	H.R.5279	Portable personal area mosquito repellents
Pingree	H.R.5280-5282	Alginates
Roe	H.R.5285-5299	Chemicals
Rothman	H.R.5300-5302	Yarns
Schwartz	H.R.5304-5308	Glass bulbs, chemicals
Sessions	H.R.5309-5315	Chemicals, screws, bolts, nuts, etc.
Slaughter	H.R.5316-5317	Chemicals
Smith (TX)	H.R.5318	Ethylhexylglycerine
Levin	S.2328-2340	Chemicals, auto parts, clock movements
Levin	S.2348-2363	Chemicals, coffee makers, toasters, etc.
Rockefeller	S.2378-2386	Chemicals
Shaheen	S.2391	Bitolylene diisocyanate
Cardin	S.2392-2398	Oleoresins
Murray	S.2399-2403	Sports footwear
Lieberman	S.2405-2407	Polymer blends
Schumer	S.2408-2460	Cameras, lenses, connectors, chemicals, etc.
Levin	S.2463-2464	Fireworks

All bills beginning with an "H.R." were introduced in the House of Representatives; an "S." number indicates a bill introduced in the Senate.

To see the text of any bill in tables 1 or 2 click [here](#), enter "H.R.[number]" or "S.[number]" into the search box, click on the radio button for "Bill Number," and search. Bills can also be searched by the name of the sponsor or the product.

Ecuador's continued participation has been under special scrutiny. As a country that is more closely aligned with Venezuela than the United States it may be difficult for Ecuador to retain ATPA benefits once that program is reduced to an Ecuador-only affair.

The USTR is statutorily required to report to Congress no later than June 30, 2012 on the operation of the ATPA. The comments will help guide the preparation of this report.

Appropriations for Trade Agencies Would Rise in Fiscal Year 2013

Key documents are the House [Fiscal Year 2013 Commerce, Justice, Science Appropriations Bill](#) (no assigned H.R. number yet), the [House Bill report](#), and the Senate Fiscal Year 2013 Appropriations Bill for the Departments of Commerce and Justice, and Science, and Related Agencies ([S.2323](#))

Both the House and Senate Appropriations committees approved their versions of the Fiscal Year 2013 (October 1, 2012-September 30, 2013) funding bills for the Commerce Department and related trade agencies. Both bills increase funding for trade-related bureaus and agencies but do so at somewhat different levels.

Overall, the two bills fund the following trade-related bureaus and agencies as follows:

	House	Senate
International Trade Administration	\$468.0 million	\$496.4 million
Bureau of Industry and Security	\$101.0 million	\$102.3 million
U.S. Patent and Trademark Office	\$2.93 billion	\$2.93 billion
Office of the U.S. Trade Representative	\$51.25 million	\$53.0 million
U.S. International Trade Commission	\$83.0 million	\$82.8 million

The House and Senate bills differ significantly regarding funding for the new [Interagency Trade Enforcement Center](#) (ITEC) established by Executive Order on February 28, to be run out of the Office of the U.S. Trade Representative with interagency support from several departments. In his funding proposal, President Obama [requested \\$26 million](#) in new funding to support ITEC activities, with \$24 million shifted out of the budget of the International Trade Administration, and \$2 million coming from the budget of the U.S. Trade Representative. The Senate bill provides full funding for the ITEC at the president's requested level. The House bill appropriates \$15.075 million for the ITEC, shifted out of the ITA budget, which is increased only \$3 million over the FY 2012 appropriation.

Each bill now moves to the full chamber for a vote. Assuming passage, the two versions will move to a conference committee for reconciliation.

Senate Agriculture Committee Approves Five-Year Farm Bill

The Senate Committee on Agriculture, Nutrition and Forestry Committee approved the "Agriculture Reform, Food and Jobs Act of 2012" by a vote of 16-5 on April 26. The five-year bill would authorize food and farm programs through September 30, 2017, succeeding the current Farm Bill, which expires September 30, 2012.

The prospects for this bill remain uncertain. Given the differences between different segments of the agricultural community, as well as the tension between budgetary and electoral pressures, it would not be surprising if the efforts to enact and reconcile farm bills in the two chambers of Congress were to fail this year. In that instance Congress might "roll over": the existing programs for perhaps a year, with a view towards revisiting the initiative next year.

Among the significant changes included in the new farm bill ([as amended in committee](#)) is the elimination of direct payments to farmers for taking acreage out of production and repeal of counter-cyclical payments to farmers. On the other hand, the bill increases crop insurance payments to farmers and broadens the crop insurance program. Section 11021 of the bill offers a new “index-based weather insurance pilot program” offering crop insurance for “underserved specialty crops and livestock” to purchase weather insurance. Crop subsidies have also been reformed, and would be paid only if yields or prices drop.

Individual commodity programs are changed, with some payment programs eliminated, but new programs established. For example, the dairy title of the bill repeals the dairy product price support and milk income loss contract programs and the dairy export incentive program. In their place, however, the bill establishes new production and marketing programs, and reauthorizes other current dairy programs.

Title III of the bill reauthorizes funding for the export credit guarantee programs and market access agriculture programs, as well as several international food aid programs.

On cotton, sections 1204 through 1208 aim to keep U.S. policy in compliance with the agreement negotiated with Brazil in the World Trade Organization following that country’s successful complaint against U.S. cotton subsidy programs.

The bill provides a special crop insurance coverage for domestic catfish. It also continues funding to place a required catfish-inspection program within the Agriculture Department, rather than the Food and Drug Administration (FDA). The FDA is now in charge of seafood inspection; USDA inspects meat, poultry, and dairy. Domestic catfish producers are currently engaged in a fight to require a competing fish imported from Vietnam to be labeled “pangasius” rather than catfish.

The bill establishes several new programs are for “biobased” products such as chemicals and fuels produced with biomass inputs. Government procurement contracts would be directed to favor purchase of biobased products.

According to the [Congressional Budget Office](#) (CBO) the bill would reduce direct spending over a ten-year period (2013-2022) by \$24.7 billion over what would otherwise be spend if the current farm bill projected spending.

The Senate farm bill now moves to the Senate floor.

On the House side, Committee Chairman Frank Lucas (R-OK) congratulated his Senate counterparts for approving their version of the farm bill reauthorization, but made clear his strong opposition to a major portion of that bill, namely the commodities program reforms. He said,

I am disappointed by the Senate bill’s commodity title because it does not work for all of agriculture. It fails to provide producers a viable safety net and instead locks in profit for a couple of commodities. I have made it clear that my chief priority is making certain that the commodity title is equitable and provides a safety net for all covered commodities and all regions of the country. A shallow loss program is not a safety net. It does not provide protection against price declines over multiple years and it does not work for all commodities.

The House Agriculture Committee is still conducting hearings in preparation for drafting a farm bill. Chairman Lucas said that he would work

on a bipartisan basis with Ranking Member Collin Peterson (D-MN) and other committee members to produce a bill “in the coming weeks.”

FDA Issues Five-Year Strategic Plan for Food Safety

The U.S. Food and Drug Administration (FDA) released its final [Strategic Plan for the Foods and Veterinary Medicine Program for 2012-2016](#) on April 23. The plan identifies priority initiatives to advance food safety, nutrition and animal health. It outlines seven strategic program goals, each encompassing its own key objectives, as well as nearly 100 specific initiatives aimed at achieving those goals and objectives. The seven goals are:

1. Establish science-based preventive control standards across the farm-to-table continuum;
2. Achieve high rates of compliance with preventive control standards domestically and internationally;
3. Strengthen scientific leadership, capacity, and partnership to support public health and animal health decision making;
4. Provide accurate and useful information so consumers can choose a healthier diet and reduce the risk of chronic disease and obesity;
5. Encourage food product reformulation and safe production of dietary supplements;
6. Improve detection of and response to foodborne outbreaks and contamination incidents; and,
7. Advance animal drug safety and effectiveness.

The 29-page report describes how FDA will pursue these priorities, using the public comment process, science-based analysis, cross-agency coordination and consultation, and other approaches.

“Mad Cow” Disease Detected in U.S. Dairy Cow

Updates are regularly posted on the [BSE investigation](#).

Agriculture Secretary Vilsack publicly acknowledged the discovery of a [dairy cow infected with Bovine Spongiform Encephalopathy](#) (BSE), also known as “mad cow disease” on April 24. The carcass of the cow had been tested as part of the Food and Drug Administration’s spot-checking procedures and tested positive for the disease. The remains were withdrawn from further processing and never entered the food supply. The FDA also began the process of identifying any offspring of the cow and other cows that had been raised at the same location for signs of BSE. The cow, which came from a dairy farm in California, was more than ten years old and, according to the FDA, does not appear to have acquired the disease from feed.

To date, only Indonesia has imposed a ban on further imports of U.S. beef, pending satisfactory guarantees of the safety of U.S. beef.

FY2012 Sugar Tariff Rate Quotas Published

Office of the U.S. Trade Representative
Notice
Effective date: April 27, 2012
Federal Register: [April 26, 2012 \(Vol.77 No.81\)](#)
Contact: Ann Heilman-Dahl (202) 395-6127

The Office of the U.S. Trade Representative has now [published](#) the combined re-allocation and increase in the tariff-rate quota (TRQ) on a per-country basis previously reported ([WTR Vol.28 No.14](#)). Please consult the *Federal Register* notice for the country-by-country TRQ for Fiscal Year 2012.

Committee Approves Bill to Block Regulations from a Lame-Duck President Obama

Republicans in the House and Senate introduced the “Midnight Rule Relief Act” (H.R.4607/S.2368; not yet posted) on April 24. The bill was sponsored in the House by Representative Reid Ribble (R-WI); Senator Ron Johnson (R-WI) and 34 Republican colleagues introduced the legislation in the upper chamber. The bill would place a “blackout period” on the promulgation of “significant regulations” during the lame-duck period following the November 6 elections, and lasting through January 20, 2013.

The bill has very strong support among Republicans in both chambers. The House Oversight and Government Reform Committee took up Ribble’s bill on April 26, moving directly to a [markup](#) of the bill in a committee business meeting even before it had been officially given a bill number. H.R.4607 was reported favorably by voice vote, clearing the measure for House floor consideration.

Republicans said an outgoing president should not have the authority to issue rules having an impact on the economy of \$100 million or more. House Speaker John Boehner (R-OH) and Senate Minority Leader Mitch McConnell (R-KY) cosigned a letter to President Obama on April 11 cautioning him not to move forward with any significant regulations after the end of the current fiscal year (September 30, 2012) ([WTR Vol.28 No.13](#)).

Criticisms of CBP’s Proposed In-Bond Changes

U.S. Customs and Border Protection
 Comment request
 Deadline: April 23, 2012
 Federal Register: [February 22, 2012 \(Vol.77 No.35\)](#)
 Contact: Gary Schreffler (202) 344-1535

U.S. Customs and Border Protection (CBP) received 41 [comments](#) in response to its request regarding a proposed rule making changes to the in-bond process.

Under CBP regulations, imported merchandise may be transported in-bond. This process allows imported merchandise to be entered at one U.S. port of entry without appraisal or payment of duties and transported by a bonded carrier to another U.S. port of entry, provided that all statutory and regulatory conditions are met. At the destination port, the merchandise is either exported or it officially enters the commerce of the United States and duties are paid.

CBP is proposing changes to the in-bond regulations to enhance CBP’s ability to regulate and track in-bond merchandise. Among other things, the proposed changes would:

- Eliminate the paper in-bond application (CBP Form 7512) and require carriers or their agents to electronically file the in-bond application;
- Require additional information on the in-bond application including the six-digit Harmonized Tariff Schedule number, if available, and information relevant to the safety and security of the in-bond merchandise;
- Establish a 30-day maximum time to transport in-bond merchandise between U.S. ports, for all modes of transportation except pipeline;
- Require carriers to electronically request permission from CBP before diverting the in-bond merchandise from its intended destination port to another port; and
- Require carriers to report the arrival and location of the in-bond merchandise within 24 hours of arrival at the port of destination or port of export.

CBP also proposes various other changes, including the restructuring of the in-bond regulations, so that they are more logical and better track the in-bond process. At this time, CBP is not proposing to change the in-bond procedures found in the air commerce regulations, except to change certain times periods to conform to the proposed changes in this document.

CBP received a number of comments favoring the proposed rule, but also heard from individual companies as well as business associations that have concerns about one or more parts of the proposed rule.

[UPS](#) recommended that CBP refrain from issuing a final rule until it had undertaken a very extensive public process to debate proposed changes. CBP should gather more input from exporters, freight forwarders, warehouse operators, agents and carriers, according to UPS, so that both government officials and the trade can better understand the significant impact of these proposed changes, and can learn of alternatives that could improve the proposal. UPS also asked that any final rule include “a minimum of 180-240 days for implementation to allow sufficient time for all affected parties to complete any required systems programming and procedural review to remain compliant.”

Similarly, [Fedex](#) offered a detailed response requesting definitional changes, changes to the proposed requirements, and other detailed criticism.

Senators Debbie Stabenow (D-MI), Carl Levin (D-MI), Lamar Alexander (R-TN), and Bob Corker (R-TN) [cosigned a comment](#) requesting that CBP retain the current 60-day in-bond barge transit time, to help encourage the use of U.S. inland waterways for transportation, rather than moving to a 30-day maximum transport time.

Several commenters disagreed with CBP’s proposal shortening the reporting time to 24 hours. Among those dissenters were the [National Association of Foreign Trade Zones](#) (NAFTZ), [Laredo Licensed U.S. Customs Brokers Association, Inc.](#), [Fedex Freight](#), and the [American Association of Exporters and Importers](#). One [commenter](#) asked that in-bond merchandise should be reported within 24 *business* hours due to weekend arrivals.

Some commenters expressed detailed concerns regarding the new information requirements for in-bond shipments; see for example the [U.S. Business Alliance for Customs Modernization \(BACM\)](#). The [National Retail Federation](#) (NRF) was particularly perturbed about the disruptive and, in its view, ineffectually burdensome information collection requirements that would not improve the in-bond process.

CBP to Disclose Protected IPR Info to Rights Holder in Suspect Counterfeit Seizures

U.S. Customs and Border Protection
Interim rule
Effective date: April 24, 2012
Comment deadline: June 25, 2012
Federal Register: [April 24, 2012 \(Vol.77 No.79\)](#)
Contact: Paul Pizeck (202) 325-0020

U.S. Customs and Border Protection (CBP) is instituting on an interim basis regulations allowing the agency to disclose certain confidential information that is otherwise protected by law. The reason for instituting this interim rule, effective immediately, is to help CBP personnel who seize merchandise suspected of being counterfeit.

The interim regulations pertain to importations of merchandise bearing recorded trademarks or recorded trade names. They allow CBP, subject to limitations, to disclose to an intellectual property right holder information appearing on merchandise or its retail packaging that may comprise information otherwise protected by the Trade Secrets Act, for the purpose of assisting CBP in determining whether the merchandise bears a counterfeit

mark. Such information will be provided to the right holder in the form of photographs or a sample of the goods and/or their retail packaging in their condition as presented to CBP for examination and alphanumeric codes appearing on the goods. The information will include, but not be limited to, serial numbers, universal product codes, and stock keeping unit (SKU) numbers appearing on the imported merchandise and its retail packaging.

The amended regulations require that CBP make several changes to subpart C of part 133 of the CBP regulations (19 CFR part 133) regarding the detention of suspect merchandise and the disclosure of information to right holders during detention of goods bearing potentially counterfeit marks and after seizure of goods bearing counterfeit marks. These changes include a clarifying revision of the current regulation's definition of "counterfeit trademark" and an addition of a 30-day detention period relative to goods suspected of bearing counterfeit marks.

Reauthorization of Aviation Known-Shipper Verification Forms

Transportation Security Administration
 Comment request
 Deadline: April 25, 2012
 Federal Register: [April 24, 2012 \(Vol.77 No.79\)](#)
 Contact: Susan Perkins (571) 227-3398

The Transportation Security Administration (TSA) has submitted to the Office of Management and Budget its request to renew without changes its data collection form for air cargo security requirements. The forms used in this collection of information include the Aviation Security Known Shipper Verification Form, Cargo Reporting Template, and the Security Threat Assessment Application. Regulated entities including airports, passenger aircraft operators, foreign air carriers, indirect air carriers and all-cargo carriers operating under a TSA-approved security program.

CBP Reminder: ACE Portal Accounts Users

The ACE Ocean Manifest Implementation Guidelines for CAMIR and X12 can be found at http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace_edi_messages/

Additional information on the ACE e-Manifest: Rail and Sea deployment including specific record changes can be found at: http://www.cbp.gov/xp/cgov/trade/automated/modernization/trade_support_network/session_highlights/march_tsdt_seminar/

U.S. Customs and Border Protection (CBP) issued a reminder notice to Automated Commercial Environment(ACE) users, including Ocean Manifest Users (MVOCCs, NVOCCs, terminal operators, port authorities, software developers, and other entities who receive notifications) of the upcoming, September 29, 2012 deadline. As of that date the transition of ACS/AMS-EDI Ocean Manifest functionality to ACE as part of the ACE eManifest: Rail and Sea Deployment will take place. When this transition takes place, you will no longer be able transmit or receive data via ACS/AMS. Programming changes to comply with the modified record formats must be made in order to continue filing manifests electronically pursuant to the Trade Act of 2002. Please review these guidelines and program accordingly.

The ACE certification testing environment is now available for trade software testing. Please contact your Client Representative to begin testing.

FMC Plans to Modernize Rules for Non-Vessel Operating Common Carriers

See also FMC Commissioner Rebecca Dye April 18 [Statement](#) on Review of NVOCC Negotiated Rate Arrangements

Federal Maritime Commission (FMC) Chairman Richard Lidinsky, Jr. [told](#) a conference of the National Customs Brokers and Forwarders Association of America on April 24 that the commission is embarked on an effort "to modernize the rules for NVOCCs [non-vessel operating common carriers], from top to bottom." He laid out the FMC's schedule and plans for addressing the regulatory environment for non-vessel operating common carriers. The commission has just begun the process of improving the tariff rate publication exemption for Negotiated Rate Arrangements (NRAs). The FMC also issued a [Notice of Inquiry](#) seeking comments on ways to improve its 2005 rules for NVOCC Service Arrangements (NSAs).

Lidinsky announced that at the upcoming FMC meeting in May, the commission will begin considering updates to its regulations for NVOCC and Freight Forwarder licensing, registration, and proof of financial responsibility. His goal, he told his audience, is to be able to issue an advance notice of proposed rulemaking.

Lidinsky said he has instructed FMC staff to prepare a draft final rule to make changes to NVOCC documentation rules for NRAs based on comments the FMC has received regarding specific information collection requirements. A targeted final rule to make the changes quickly should be ready in a matter of weeks. He is particularly eager to see an analysis of a proposal to expand the NRA exemption to foreign, unlicensed NVOCCs, with proposed conditions or procedural changes that ensure that they respond in a full and timely manner to any Commission process, document requests, or orders — even if their country has a so-called “blocking statute,” Lidinsky said.

The chairman updated discussions with China and their approach to NVOCC regulation. Having heard several complaints about China’s maritime regime, Lidinsky said, the FMC began holding direct visits and discussions with their counterparts of the Shanghai Shipping Exchange to try to harmonize regulations where possible and address any conflicts. He reported that the effort has begun to pay off in solving some misunderstandings between the two agencies. He said that he is continuing to “urge them to work with us to lift burdens on NVOCCs, rather than to impose new ones.”

PHMSA Reg. Changes to Clarify Contents, Containers, etc. of Transported Materials

Pipeline and Hazardous Materials Safety Administration
 Notice of Proposed Rulemaking
 Comment deadline: June 25, 2012
 Federal Register: [April 26, 2012 \(Vol.77 No.81\)](#)
 Contact: Rob Benedict (202) 366-8553

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is proposing amendments to the Hazardous Materials Regulations to update and clarify certain regulatory requirements. These 18 proposed amendments are designed to promote safer transportation practices; eliminate unnecessary regulatory requirements; address a petition for rulemaking; incorporate a special permit into the Hazardous Materials Regulations; facilitate international commerce; and simplify the regulations. Among other provisions, PHMSA is proposing to update various entries in the Hazardous Materials Table and corresponding special provisions, clarify the lab pack requirements for temperature-controlled materials, and revise the training requirements to require that a hazardous material employer must make hazardous materials employee training records available upon request.

ITA Proposes Voluntary Forms to Identify U.S. Exporters

International Trade Administration
 Comment request
 Deadline: May 26, 2012
 Federal Register: [April 26, 2012 \(Vol.77 No.81\)](#)
 Contact: Wendy Liberante, (202) 395-3647

The International Trade Administration is submitting an information collection request to the Office of Management and Budget regarding voluntary data collection forms ITA-4158P (formerly 8710); ITA-4159P (formerly 8711); ITA-4160P (formerly 8712); and ITA-4161P (formerly 8713). The purpose of these forms is to identify U.S. businesses with the potential to export goods and services and provide such businesses with advice and information on establishing export businesses.

Cases & Sanctions

CIT Reviews Trade Issues

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[United States v. Nitek Elecs.](#), slip op. 12-50 (Ct. Int'l Trade Apr. 13, 2012)

[United States Steel Corp. v. United States](#), slip op. 12-48 (Ct. Int'l Trade Apr. 11, 2012)

[United States v. Great Am. Ins. Co. of NY](#), slip op. 12-49 (Ct. Int'l Trade Apr. 11, 2012)

Customs Fails on Penalty Case

The United States sued Nitek for lost duties, lost antidumping duties, and penalties based on negligence in the import of gas meter swivels and gas nuts from China that were misclassified and not identified as subject to the antidumping duty order on malleable iron pipe fittings from China. Nitek moved to dismiss, claiming lack of subject matter jurisdiction and failure to state a claim. The U.S. Court of International Trade (“CIT”) rejected Nitek’s motion regarding the claim for lost duties and lost antidumping duties but granted it on the claim for penalties. The claim filed at court, alleging negligence, was different from the claim at the administrative level, which was that Nitek had been grossly negligent. Thus, according to the CIT, “the administrative claim for which Customs is seeking recovery simply does not exist.”

Dumping Margin Adjustments

On remand, the Department of Commerce considered whether Essar Steel was entitled to a duty-drawback adjustment related to an antidumping duty calculation. Commerce reopened the record and found support for the requested adjustment. However, the U.S. industry argued that there was not sufficient support for one invoice and Commerce agreed. On appeal, the CIT sustained this finding and also granted Commerce’s request for a voluntary remand to correct a ministerial error. The U.S. industry also claimed that Commerce, having permitted Essar’s duty-drawback claim in part and adjusted its export price as a result, should also have made a corresponding adjustment by increasing Essar’s cost of production in accordance with a recent change in Commerce policy. The CIT agreed with the U.S. industry that Commerce must apply the new policy or explain why it should not apply it. Finally, the CIT rejected Essar’s request to use the date of the letter of credit rather than the date of invoice as the date of sale.

No Interest Due

The United States won a judgment against two surety companies and later moved for interest and equitable prejudgment interest. The CIT noted that “the Court’s judgment purposely excluded an award of interest because the Government did not raise this issue in its motion for summary judgment.” The CIT noted that the party seeking interest must clearly set forth its request for such relief and the legal basis for supporting it. The CIT also noted that the “Government’s contention that it is entitled to both statutory and equitable interest is incorrect because it is in the absence of a statute that provides for interest that a court may exercise its equitable powers to award prejudgment interest.”

WTO Dispute Settlement Body Acts on Three Complaints against the United States

Cases against the United States dominated the docket in April 24 meeting of the World Trade Organization's Dispute Settlement Body (DSB).

Clove Cigarettes: [DS406](#)

The "Family Smoking Prevention and Tobacco Control Act" prohibits the use of characterizing flavorings such as cloves, in cigarettes; the only flavoring allowed by the law is menthol. The United States raised several questions about the conclusion of the Appellate Body (AB) that its law resulted in a breach of Article 2.1 of the Technical Barriers to Trade Agreement. The United States criticized the AB for having placed itself in the position of the regulator, and warned that the results of this dispute should be of serious concern to any member regulating for the benefit of public health.

Internet Gambling: [DS285](#)

Antigua and Barbuda complained that the United States is not in compliance with the rulings in this case, and continues to prosecute Antiguan-based remote gaming service providers. Efforts to negotiate a settlement have failed because the United States never presented a plan nor worked towards a compromise, so Antigua and Barbuda has formally notified the United States that it would now seek recourse to the WTO Director General to find a mediated solution to this dispute. The United States denied these accusations and reiterated that it seeks a modification of its schedule of concessions in the General Agreement on Trade in Services. The United States said that the two sides had come close to a negotiated settlement and that further discussions would be more productive than resorting to a mediated settlement.

Zeroing in AD Cases: [DS382](#)

While Brazil acknowledged the U.S. efforts to abandon "zeroing" in future reviews, it remained concerned that the U.S. final rule does not address all the findings in this dispute. Brazil said that the new rule did not encompass the recalculation without "zeroing" of assessment rates applying to past entries that remain unliquidated at the end of the reasonable period of time. According to Brazil, full compliance requires that the United States not only abandon the use of "zeroing" but also stop collecting anti-dumping duties that were calculated with the use of that illegal methodology.

USTR Appeals Court Ruling Requiring Release of FTAA Investment Document

[Ruling](#): Center for International Environmental Law v. Office of the United States Trade Representative, et al.

[Defendant's Notice of Appeal of Civil Action No. 01-CV-498 \(RWR/JMF\)](#).

The U.S. Trade Representative (USTR) [entered an appeal](#) of [a ruling](#) in U.S. District Court on February 29 that had directed it to release a classified position paper that had been prepared during negotiations for the failed Free Trade Agreement of the Americas (FTAA). The Center for International Law had sued under the Freedom of Information Act (FOIA) to release the document. The USTR argued that disclosure would damage foreign relations and would harm national security.

The document in question concerns a clarification of a specific phrase in trade negotiations regarding investment rules. According to the judge's description of the USTR's brief, the USTR does not want the document released because "disclosing the document would harm national security by hindering the United States' flexibility to assert different meanings of 'in like circumstances' in different contexts, a tactic that could undermine foreign governments' trust in the United States."

Under the rules under which the FTAA negotiations were initiated, the negotiating partners agreed to release all documents as of December 31, 2013, “unless a country were to object to the release of one of its own documents at that time.” Given the willingness of the USTR to go to court to retain the confidentiality of this particular document, it is unlikely that the page would be released at that time. The agency continues to fight the Court’s ruling to release the document, and has decided to appeal the decision to the U.S. District Court. On April 26 the USTR filed an appeal of the ruling.

Sanctions Imposed against Specific Iranian and Syrian Persons

President Obama signed [Executive Order 13606](#) on April 22 imposing sanctions on specific, designated Iranian and Syrian persons or institutions, and prohibiting any financial interaction, including transfers of funds, property or other thing of value, or making a donation, to or from a person or entity included in the EO. They are Director Ali Mamluk of the Syrian General Intelligence Directorate, his directorate, Syriatel, and four other entities.

The order authorizes U.S. officials to impose sanctions against foreign nationals found to have used new technologies, including cellphone tracking and Internet monitoring, in pursuit of civil repression or other human rights violations. It specifically targets companies and individuals aiding the Iranian and Syrian governments, but administration officials say it could be expanded to include other countries using technology to crack down on dissent.

Argentina Senate Approves YPF Nationalization Bill

Argentina’s Senate on April 26 approved a bill clearing the way for government nationalization of YPF, a petroleum company that is owned by the Spanish company Repsol. Argentine President Christina Fernandez de Kirchner proposed that 51% of its stock be seized ([WTR Vol.28 No.14](#)). The bill passed by an overwhelming vote of 63-3, with four not voting. The bill is expected to win similar support in the lower chamber this week.

House Democrats Investigating Walmart and Washington Trade Groups

Ranking Member Henry Waxman (D-CA) of the House Energy and Commerce Committee and Ranking Member Elijah Cummings (D-MD) of the House Oversight and Government Reform Committee sent letters to the U.S. Chamber of Commerce and the Retail Industry Leaders Association on April 25 demanding documents and names of personnel connected to the lobbying campaign against the Foreign Corrupt Practices Act. They are investigating Wal-Mart’s business practices in foreign countries, and now seek to expand the probe to groups’ activities in the lobbying campaign.

AD/CVD Notices and Determinations Will Be Edited to Cut Agency Costs

Import Administration
Modification to Content
Published
Effective date: April 30, 2012
Federal Register: [April 30, 2012](#)
([Vol.77 No.83](#))
Contact: Dustin Ross (202) 482-0747

The Import Administration is cutting costs by reducing the amount of information included in antidumping and countervailing duty determinations published in the *Federal Register*. Much of the information previously included in the *Federal Register* notices will now be made available to the public in separate memoranda published on the [Import Administration’s website](#). Extension notices for preliminary and final results of reviews and certain other notices will no longer be published in the *Federal Register*.

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	Steel nails	China	ITA amended final results of administrative review weighted average margin ranges 3.80-118.04%	#79
AD	Citric acid and citrate salts	Canada	ITA final results of administrative review weighted average margin is 2.34%	#79
AD	Oil country tubular goods	China	ITA extends time limit for preliminary results of administrative review	#79
AD	Stainless steel butt-weld pipe fittings	Italy	ITA final results of administrative review weighted average margin is 0.00% and final no-shipment determination	#79
AD	Brass sheet and strip	France, Italy, Germany, Japan	ITA continues orders	#81
AD	Hand trucks and parts	China	ITA extends time limit for final results of administrative review	#82
AD	Copper pipe and tube	Mexico	ITA preliminary results of new shipper review weighted average margin is 0.00%	#82
AD	Carbon steel flat products	Germany, Korea	ITA extends time limit for preliminary and final results of sunset reviews	#82
AD	Orange juice	Brazil	ITA initiates administrative review	#83
AD	Brass sheet and strip	France, Germany, Italy,	ITA initiates administrative reviews	#83
AD	Cut-to-length carbon quality steel plate	Korea	ITA initiates administrative review	#83
AD	Polyvinyl alcohol	Taiwan	ITA initiates administrative review	#83
AD	Welded carbon steel pipe and tube	Thailand	ITA initiates administrative review	#83
AD	Frozen shrimp	China, Vietnam	ITA initiates administrative reviews	#83
AD	Glycine	China	ITA initiates administrative review	#83
AD	Sodium hexametaphosphate	China	ITA initiates administrative review	#83
AD	Hot-rolled carbon steel flat products	India	ITA rescission of administrative review	#83
AD	Corrosion-resistant carbon steel flat products	Korea	ITA extends time limit for preliminary results of administrative review	#83
AD/ CVD	Crystalline silicon photovoltaic cells	China	ITA aligns final CVD determination with final AD determination	#83
CVD	Drill pipe	China	ITA initiates administrative review	#83
CVD	Welded carbon steel pipe and tube	Turkey	ITA initiates administrative review	#83
337	Electronic devices having a retractable USB connector	—	ITC receives complaint	#79
337	Consumer electronics, including mobile phones and tablets	—	ITC initiates complaint investigation	#79
337	Wireless communications devices and systems	—	ITC declines to review initial determination terminating investigation on 337-TA-775	#80

Studies & Events

Senate Finance Committee Hearing for Meredith Broadbent USITC Nomination

The Senate Finance Committee will hold a [hearing](#) on May 8 to consider the nomination of Meredith Broadbent to join the [six-member](#) U.S. International Trade Commission. Broadbent has been nominated to replace current Chair Deanna Tanner Okun, whose nine-year term has expired. Under the terms of its charter the USITC can have no more than three members of the same party serving on the commission. Both Okun and Broadbent are Republicans.

FDA Report on Its Effort to Standardize Import Safety and Quality

The Food and Drug Administration (FDA) released its report on [Global Engagement](#). The report describes the steps the agency is taking to ensure that imported food, drugs, medical devices, and other regulated products meet U.S.-equivalent standards for safety and quality. The report builds on the global strategy the FDA unveiled in 2011, entitled [Pathway to Global Product Safety and Quality](#).

FDA-regulated products originate from more than 150 countries, 130,000 importers, and 300,000 foreign facilities. Each year from 2005-2011, food imports have grown by an average of 10 percent, while imports of pharmaceutical products have increased at nearly 13 percent and device imports have grown more than 10 percent. Approximately 50 percent of fresh fruits and 20 percent of fresh vegetables, as well as 80 percent of the seafood consumed in America come from abroad. Similarly, more than 80 percent of the active pharmaceutical ingredients used to make medicines are imported.

The report outlines a variety of approaches the FDA is using in partnership with other agencies, organizations and coalitions around the world to strengthen global, regulatory capacity-building efforts; develop and harmonize science-based regulatory standards; increase awareness about the importance of regulatory systems; and share information and data globally to facilitate rapid identification of and response to public health emergencies.

PIIE Study of Chinese Tires Protection Posted

Gary Hufbauer and Sean Lowry, [US Tire Tariffs: Saving Few Jobs at High Cost](#) PIIE Policy Brief 12-9

“American buyers of car and truck tires pay a hefty price” for President Obama’s decision to impose restrictions on Chinese tires in 2009, according to [this analysis](#). It finds that “the total cost to American consumers from higher prices resulting from safeguard tariffs on Chinese tires was around \$1.1 billion in 2011.” With a maximum of 1,200 saved, that amounted to at least \$900,000 per job that year. “Only a very small fraction of this bloated figure reached the pockets of tire workers,” the authors find, as “most of the money landed in the coffers of tire companies, mainly abroad but also at home.”

Calendar of Events

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

Date	Type	Event	More Information
April 30	Legislative	Due date for the submission of bills in Congress for inclusion in the 2012 miscellaneous tariff bill	—
April 30	Report	Due date for conclusion of the USTR's annual review of trading partners' protection of intellectual property rights	Federal Register Vol.76 No.249
April 30- May 3	Course	U.S. Export Controls on Non-U.S. Transactions (London)	ECTI
May 1-2	Meeting	WTO General Council meeting	Agenda
May 4	Data	BLS releases April employment report	Bureau of Labor Statistics
May 6	Election	Presidential election in France (second round)	Election Guide
May 6-9	Meeting	Warehousing Education and Research Council conference	WERC
May 7-8	Course	Complying with U.S. Export Controls (Washington, D.C.)	Bureau of Industry and Security
May 8	Regulatory	Due date for comments to Coast Guard on proposed amendments to regulations on the transfer of hazardous materials	Federal Register March 9, 2012 (Vol.77 No.47)
May 8-16	Meeting	Twelfth round of TPP negotiations (Dallas, Texas)	—
May 9	Data	Release of Transportation Services Index for March, 2012	Bureau of Transportation Statistics
May 9-10	Course	Complying with U.S. Export Controls (Newport Beach, CA)	Bureau of Industry and Security
May 9-11	Meeting	World Economic Forum meeting on Shaping Africa's Transformation	World Economic Forum
May 10	Data	First quarter U.S. merchandise trade data available on-line	DataWeb
May 10	Data	BEA releases March goods and services trade data	Bureau of Econ. Analysis
May 10	Data	Release of U.S. import and export price indexes for April, 2012	Bureau of Labor Statistics
May 10	Meeting	CBP sponsors the West Coast Trade Symposium in Long Beach, California	U.S. Customs and Border Protection
May 15	Agreement	U.S.-Colombia FTA enters into force	—
May 14- 17	Course	U.S. Export Controls on Non-U.S. Transactions (Montreal)	ECTI
May 19- 29	Legislative	House of Representatives not in session	House Calendar