Expert Group meeting for Least Developed Countries on the preparation for the World Trade Organization Ministerial Conference, Bali, Indonesia

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Feature Article

Duty-Free, Quota-Free for the Least Developed

One of the key issues for the upcoming Bali ministerial conference of the World Trade Organization (WTO) is a set of reforms intended to aid the least developed countries, generally known as the "LDC package," including the achievement of the long-sought goal of duty-free, quota-free (DFQF) treatment for all imports from all LDCs. This is an objective that predates even the Doha Round of multilateral trade negotiations, having been enshrined as one of the Millennium Development Goals that the United Nations adopted in 2000 before it also became a part of the Doha Ministerial Declaration (see paragraph 42) the next year.

The DFQF pledge has thus far been left to the preference-granting countries to implement, and several of them have undertaken wide-ranging programs on an autonomous basis. The United States has taken only partial steps towards this end, offering something approximating DFQF access for most but by no means all imports from the LDCs. While the United States has several programs in place that offer preferential access to its market for imports from Haiti and many African LDCs, they do not ensure that all imports from these countries enjoy fully free access. The LDCs are, as a group, subject to higher average tariffs than other US trading partners.

US trade policy is not geared to the granting of preferences to LDCs *per se*. While there are some provisions in US law that offer special recognition to this subset of developing countries, US policymakers tend to place more emphasis on a country's geographic location than on its income level when designing preferential trade programs. Unlike the European Union, where ties to most of the LDCs are strengthened by past colonial relations, there are only two LDCs with which the United States has special relationships. One of these is based on proximity and a diaspora community (i.e., Haiti), and the other on the country's unique historical origins (i.e., Liberia).

The LDCs to which the United States extends the closest approximation of DFQF treatment are all in either the Americas (Haiti) or in sub-Saharan Africa. Those LDCs that are located in Asia and the Pacific are granted only limited preferences, and most notably are not given DFQF treatment for their apparel exports. This restriction is especially consequential for Bangladesh and Cambodia.

Origin and Evolution of the DFQF Commitment

The DFQF commitment has evolved in a series of multilateral meetings. The general trend over the years has been for a seemingly straightforward commitment to become compromised in three respects: (1) efforts have been made to narrow its scope, (2) an unconditional commitment has come to be treated by some countries as a matter of reciprocal bargaining in the WTO, and (3) the fulfillment of the commitment has been repeatedly delayed. The greatest of these delays came with the linkage between the DFQF commitment and the Doha Round itself.

The DFQF commitment was originally made a year before the launch of the Doha Round. In September, 2000, at the United Nations Millennium Summit, world leaders agreed to a set of time-bound and measurable goals and targets for combating poverty, hunger, disease, illiteracy, environmental degradation, and discrimination against women. The Summit's Millennium Declaration enumerated these Millennium Development Goals (MDGs). The MDGs provide a framework for the entire UN system to work coherently together towards a common end. One of the MDGs in this declaration called on the industrialized countries to adopt "a policy of duty- and quota-free access for essentially all exports from the least developed countries."

Part of MDG III.15, as recorded in UN document A/RES/55/2 (September 18, 2000).

The DFQF goal was later taken up as part of the Doha Round. In paragraph 42 of the Doha Ministerial Declaration of 2001, the ministers recognized "that the integration of the LDCs into the multilateral trading system requires meaningful market access, support for the diversification of their production and export base, and trade-related technical assistance and capacity building." In that same paragraph, the ministers stated that they "commit[ted them]selves to the objective of duty-free, quota-free market access for products originating from LDCs."

WTO document WT/MIN(01)/DEC/W/1 (November 14, 2001).

The Bali Ministerial is not the first time that ministers will have attempted to deliver an "early harvest" out of the Doha Round for developing countries. That was also an aim for the Hong Kong ministerial in 2005, but the results were limited. The Ministerial Decision on DFQFMA provided that —

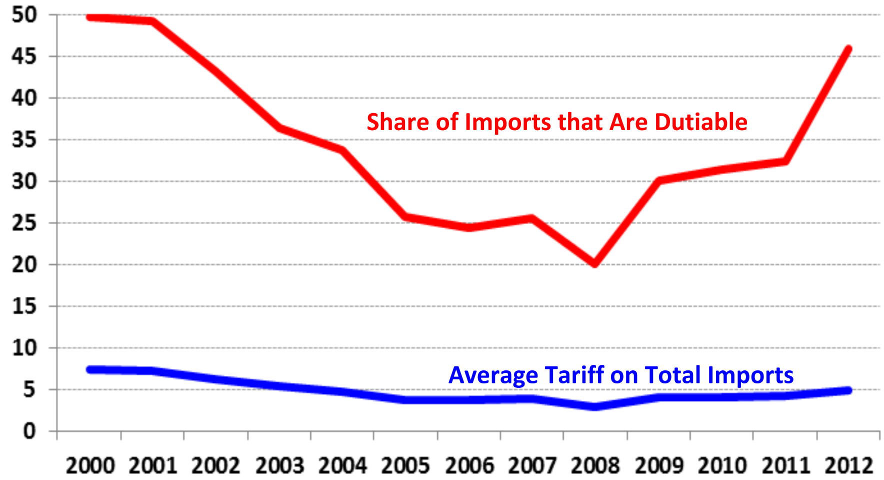
> developed-country Members shall … [p]rovide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.

WTO document WT/MIN(05)/DEC (December 18, 2005).

That commitment was nevertheless restricted by a further proviso that members "facing difficulties" in meeting this obligation "shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by 2008 or no later than the start of the implementation period." The 97% figure may appear at first glance to require substantial coverage, but this proportion is to be counted by tariff lines and not on a trade-weighted basis. Considering the facts that (1) there are thousands of items in the Harmonized System of tariff nomenclature, (2) the number of these items that figure prominently in imports from the LDCs number less than 100, and (3) there is an even smaller number of items on this list that would be subject to relatively high MFN duties, it is apparent that — depending on how the exclusions are selected — subtracting 3% of the lines could leave a DFQF initiative that represents little change from the status quo.

Figure 1: Dutiability of US Imports from LDCs, 2000-2012

Percentages



Source: All trade data reported here are WTR calculations based on data downloaded from the US International Trade Commission's DataWeb.

The Tariff Treatment of US Imports from the LDCs

How close does the United States come to meeting the DFQF pledge? The question can be answered either by looking at the aggregate data for all US imports from the group, or by examining the patterns for groups of countries and individual LDCs. We will do both here.

The data illustrated in Figure 1 show that while the United States was moving progressively closer towards DFQF treatment for the LDCs in the first eight years of the new millennium, progress has reversed since that time. At the time that the MDGs were first adopted, about half of all US imports from these countries were dutiable, and the average tariff on all imports from the LDCs was 7.5%. Both figures then dropped for several years, until in 2008 just 20.2% of all imports from the LDCs were dutiable, and the average tariff was 2.9%. By 2012, however, the share of dutiable imports had reverted to 46.0%, and the average tariff had climbed back up to 5.0%.

What accounts for this change? In a word, apparel. The United States had adopted a series of programs that helped to extend DFQF-like treatment to imports from many LDCs, but much of the growth in US imports from the LDCs over the past several years has been in apparel from countries such as Bangladesh and Cambodia that do not benefit from these programs.

The US imports from the LDCs fall into three categories: (1) oil and gas products that are subject to very low MFN tariffs, and for which the benefits of preferences are commensurately insignificant; (2) apparel products that are subject or very high MFN tariffs, and for which the benefits of preferences are commensurately high; and (3) everything else (most of which will be subject to low rather than high MFN tariffs). As can be appreciated from the data illustrated in Figure 2, the first two categories of products account for about three-quarters of US imports from the LDCs. These imports are distributed very differently among the group. Those countries for which apparel products comprise the majority of their exports continue to face higher barriers in their access to the US market than do other LDCs. The barriers are highest for apparel-dependent, Asian LDCs such as Bangladesh, Cambodia, Laos, and Nepal.

Figure 2: Composition of US Imports from LDCs, 2000-2012

Imports for Consumption, Customs Value, in Billions of Dollars

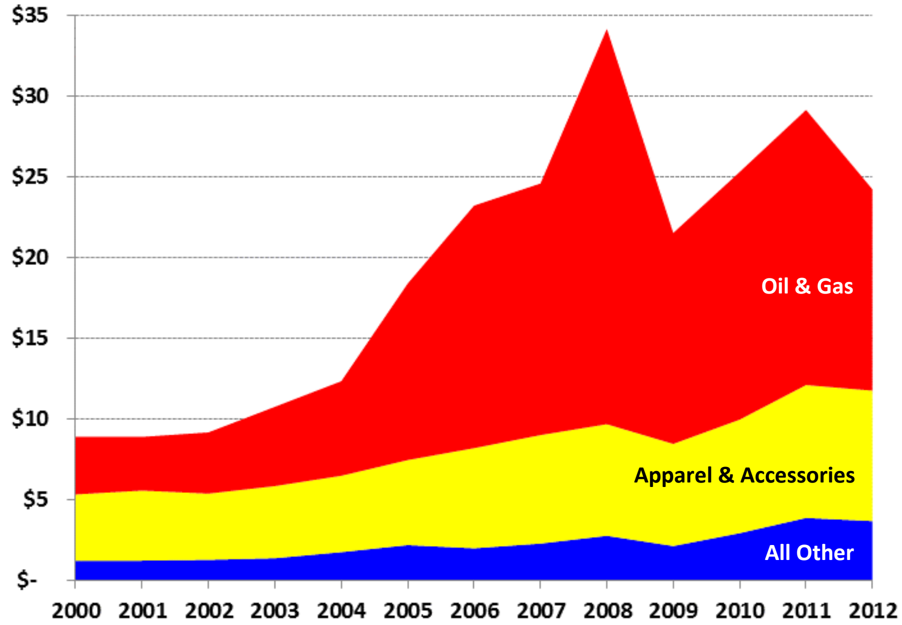


Table 1 provides more specific information on the various preferential programs under which the United States provides duty-free access to its market for goods from LDCs and other developing countries. The United States has extended preferential access to developing countries ever since the Generalized System of Preferences (GSP) entered into effect in 1976. The scope of GSP benefits was expanded in 1997 for the least developed beneficiary countries (LDBCs), including duty-free access for petroleum. Other programs that offer preferential access to the LDCs include the African Growth and Opportunity Act (AGOA), which came into effect in 2001, and the Haitian Hemispheric Opportunity through Partnership Encouragement Act, which came into effect in 2007.

Being an LDC is neither a necessary nor a sufficient condition to benefit from the preferential trade programs of the United States. Two of these programs do extend better treatment to the poorest beneficiaries. The range of goods that are eligible for duty-free treatment under the GSP is much wider for the LDCs than it is for other developing countries, but the law does not specify the standards by which the LDCs are to be determined. Not all of the LDCs are designated for GSP-LBDC treatment. Four LDCs are denied basic GSP treatment, and hence are excluded from the GSP-LDC program as well, and three LDCs benefit only from the regular GSP program. In the case of AGOA, the "lesser developed beneficiary sub-Saharan African countries" are subject to less onerous rules on apparel imports. The criterion is simple: A per capita gross national product of less than $1,500 in 1998. In addition to all of the LDCs in sub-Saharan Africa, this definition covers six countries that are not considered to be LDCs under the U.N. criteria (i.e., Botswana, Cameroon, Ghana, Kenya, Namibia, and Nigeria). The United States thus takes a more restrictive approach than the U.N. when defining LDCs for purposes of the GSP, and a less restrictive approach for purposes of AGOA.

Table 1: US Preferential Programs for LDCs

Listed in Order of Scheduled Expirations of Programs' Authorizations

Program	LDC Coverage	Product Coverage	Current Status
Generalized System of Preferences (GSP)	All but four LDCs are designated for the program	Narrow: Excludes many products that face high tariffs	The most recent authorization for the program expired on July 31, 2013; unclear when Congress will act to reauthorize it.
GSP for Least Developed Beneficiary Countries (GSP for LDBCs)	All but seven LDCs are designated for the program	Wider: Covers many of the products not eligible for ordinary GSP, but not textile and apparel	Same as the overall GSP program.
African Growth and Opportunity Act (AGOA)	27 LDCs are designated for the program	Wide: Covers almost all products except textiles and apparel	The current authorization for the program will expire September 30, 2015.
AGOA Preferences for Textile and Apparel Products	Ten LDCs are designated for the program	Widest: Countries designated for these preferences may ship qualifying apparel duty-free	The current authorization for the third-country fabric provision will expire September 30, 2015.
Haitian Hemispheric Opportunity through Partnership for Encouragement Act (HOPE)	Haiti is the only country (LDC or not) covered by the program	Widest: Provides preferences to Haitian apparel that is subject to less strict rules of origin	The current authorization for the program will expire September 30, 2018.

Preferential imports from the LDCs have increased over the past decade, as can be appreciated from the data in Figure 3, but so have dutiable imports. Preferential imports from the LDCs peaked in 2008, reaching $24.5 billion; MFN dutiable imports that year were valued at $6.9 billion. By 2012, the MFN dutiable imports were, at $11.1 billion, larger than the $10.7 billion in preferential imports. In contrast to imports from the world as a whole, a large share of which are duty-free on an MFN basis, a very small share of US imports from the LDCs fall under this category.

The Tariff Treatment of Imports from Specific LDCs

Looking more precisely at individual LDCs, it is evident from the data in Figure 4 that a small number of countries dominate the aggregate statistics for US imports from the LDCs. The three largest traders in the group, including oil-exporting Angola and Chad and apparel-exporting Bangladesh, accounted for 64.7% of US imports from the group in 2000 and — following rapid growth in imports from Chad — 71.6% in 2012. There are two ironies at work here, as none of these three countries depend much on preferences. For Angola and Chad, the very low MFN tariffs on oil mean that the margins of preference offered by AGOA are almost negligible. Bangladesh is heavily dependent on apparel, and almost none of what it exports to the United States is eligible for preferential treatment.

The data in tables 2 through 6 offer much more detail on the tariff treatment that the United States extends to each of the LDCs, divided here into five categories. The actual value of the preferences that any given

Figure 3: Tariff Treatment of US Imports from LDCs, 2000-2012

Imports for Consumption, Customs Value, in Billions of Dollars

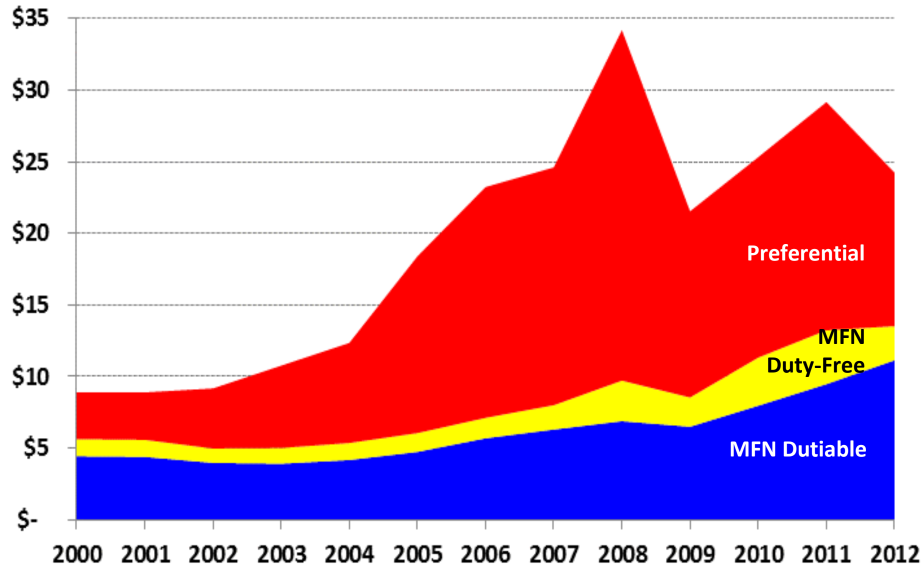
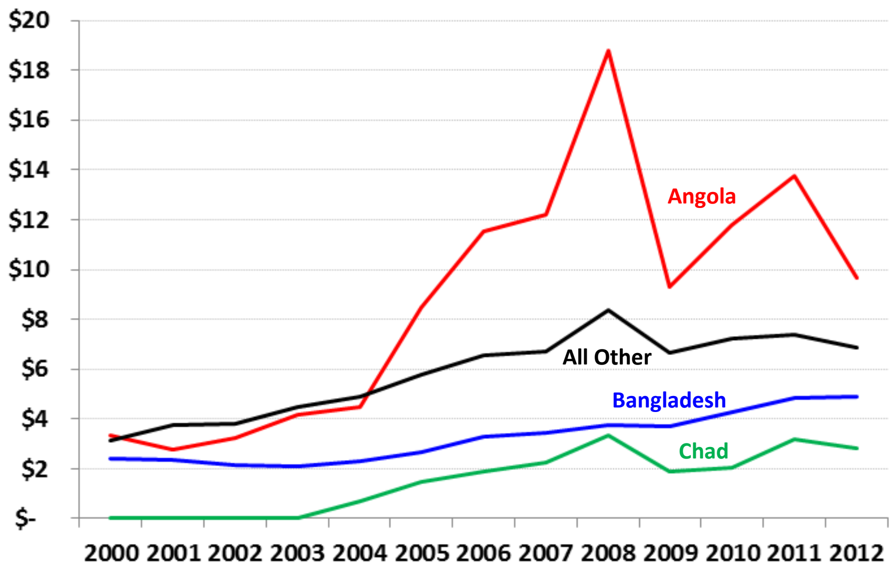


Figure 4: Origin of US Imports from LDCs, 2000-2012

Imports for Consumption, Customs Value, in Billions of Dollars



country receives, and the degree to which its treatment approaches the DFQF ideal, depends both on the special programs to which it has been designated and the commodity composition of its exports.

Table 2 provides the data on those LDCs that have been designated for the most preferential programs, namely full AGOA benefits or the special program for Haiti. As a group, these countries receive preferential treatment for two-thirds of their exports and face an average tariff of just 0.04%. Only two of these countries — The Gambia and Mozambique — face average tariffs in excess of 1%. Haiti and Lesotho are the two countries in this group

Table 2: US Imports from LDCs Designated for Full Preferences under AGOA or HOPE, 2012

	Total Imports ($Millions)	% Preferential	Tariffs Paid ($Thousands)	Average Tariff	Share Oil and Gas	Share Apparel
Benin	$2.7	1.83	$4	0.15	0.00	0.00
Burkina Faso	$2.3	3.08	$2	0.09	0.00	0.13
Cape Verde	$1.3	9.75	$10	0.76	0.00	1.45
Chad	$2,376.7	83.90	$202	0.01	84.10	0.00
Ethiopia	$183.0	11.97	$94	0.05	0.00	6.16
The Gambia	$0.3	6.30	$5	1.43	0.00	2.01
Haiti	$774.0	56.50	$456	0.06	0.00	94.32
Lesotho	$310.6	96.79	$74	0.02	0.00	96.90
Liberia	$144.1	0.05	$9	0.01	0.00	0.00
Malawi	$62.0	85.70	$23	0.04	0.00	9.23
Mozambique	$38.5	0.17	$410	1.06	0.00	0.00
Niger	$81.7	0.15	$34	0.04	0.00	0.00
Rwanda	$33.3	1.13	$8	0.02	0.00	0.03
Senegal	$16.8	36.46	$12	0.07	0.00	0.14
Sierra Leone	$17.9	0.84	$104	0.58	0.00	0.65
Tanzania	$115.6	10.25	$56	0.05	0.00	6.53
Uganda	$34.5	5.33	$36	0.10	0.00	0.45
Zambia	$63.0	0.37	$3	0.00	0.00	0.01
Total	**$4,258.3**	**66.41**	**$1,542**	**0.04**	**46.90**	**24.80**

Table 3: US Imports from LDCs Designated for Partial AGOA Preferences, 2012

	Total Imports ($Millions)	% Preferential	Tariffs Paid ($Thousands)	Average Tariff	Share Oil and Gas	Share Apparel
Angola	$9,647.0	75.59	$1,706	0.02	92.78	0.00
Burundi	$4.8	0.37	$0	0.00	0.00	0.02
Comoros	$2.0	0.00	$1	0.05	0.00	0.36
Djibouti	$11.9	0.00	$2	0.02	0.00	0.01
Guinea	$103.1	0.09	$7	0.01	0.00	0.02
Guinea-Bissau	$0.1	0.00	$0	0.00	0.00	0.00
Mauritania	$0.7	3.47	$3	0.43	0.00	0.43
Sao Tome & Prin.	$0.6	5.24	$4	0.72	0.00	0.00
South Sudan	$0.0	0.00	$0	0.00	0.00	0.00
Togo	$51.9	85.77	$13	0.03	0.00	0.02
Total	**$9,822.1**	**74.70**	**$1,736**	**0.02**	**91.10**	**0.00**

Table 4: US Imports from LDCs Limited to GSP-LDBC Preferences, 2012

	Total Imports ($Millions)	% Preferential	Tariffs Paid ($Thousands)	Average Tariff	Share Oil and Gas	Share Apparel
Afghanistan	$33.2	0.37	$29	0.09	0.00	0.09
Bangladesh*	$4,878.4	0.71	$731,823	15.00	0.00	90.96
Bhutan	$0.6	15.69	$7	1.14	0.00	0.00
Cambodia	$2,675.3	1.30	$451,832	16.89	0.00	94.21
Central African Rep.	$4.1	0.00	$0	0.00	0.00	0.00
Congo (DROC)	$132.8	70.55	$8	0.01	69.13	0.00
Kiribati	$0.6	2.52	$3	0.50	0.00	3.52
Madagascar	$109.6	1.81	$7,855	7.17	0.00	39.35
Mali	$3.6	3.46	$18	0.49	0.00	1.37
Nepal	$83.3	5.42	$2,485	2.98	0.00	20.44
Samoa	$2.4	42.07	$14	0.59	0.00	0.38
Solomon Islands	$1.6	56.17	$1	0.06	0.00	0.00
Timor-Leste	$0.1	0.00	$0	0.00	0.00	0.00
Tuvalu	$0.0	0.00	$1	2.50	0.00	0.00
Vanuatu	$2.6	8.32	$2	0.08	0.00	0.00
Yemen	$87.1	0.07	$2	0.00	96.89	0.01
Total	**$8,015.3**	**2.15**	**$1,194,080**	**14.90**	**2.20**	**87.56**

Table 5: US Imports from LDCs Limited to Ordinary GSP Preferences, 2012

	Total Imports ($Millions)	% Preferential	Tariffs Paid ($Thousands)	Average Tariff	Share Oil and Gas	Share Apparel
Eritrea	$0.2	14.00	$1	0.50	0.00	0.00
Maldives	$17.6	0.04	$0	0.00	0.00	0.00
Somalia	$7.4	0.00	$0	0.00	0.00	0.00
Total	**$25.2**	**14.04**	**$1**	**0.00**	**0.00**	**0.00**

Table 6: US Imports from LDCs Receiving No Preferences, 2012

	Total Imports ($Millions)	% Preferential	Tariffs Paid ($Thousands)	Average Tariff	Share Oil and Gas	Share Apparel
Equatorial Guinea	$1,647.0	0.00	$6,503	0.39	0.00	0.00
Laos	$25.4	0.00	$2,510	9.88	0.00	46.03
Myanmar	$0.0	0.00	$0	0.00	0.00	0.00
Sudan	$6.5	0.00	$0	0.00	0.00	0.00
Total	**$1,678.9**	**0.00**	**$9,013**	**0.54**	**0.00**	**0.70**

* : Note that Bangladesh is currently suspended from the GSP program, but was a beneficiary in 2012.

for whom the preferences are most beneficial, as each of them would otherwise face very high MFN tariffs on their apparel exports.

The countries that are designated for partial AGOA benefits, as shown in Table 3, do not face higher tariff walls for their exports. None of these countries export significant amounts of apparel to the United States. The share of their trade that is preferential is higher than the share for the countries that receive full AGOA preferences, and the average tariff that they face is lower.

The preferences extended to several other LDCs are limited either to the special GSP program for LDCs (Table 4), or even to the ordinary GSP program (Table 5). For these countries, the principal determinant of the degree of their preferential treatment is the relative magnitude of their apparel exports. Those countries for whom apparel is important, such as Bangladesh, Cambodia, Madagascar, and Nepal, enjoy preferential access for low shares of their exports and face relatively high average tariffs. For most of the other countries in these two tables, average tariff rates are well below 1%.

Four other LDCs, as shown in Table 6, are given no preferences at all in their exports to the United States. Only Laos, for which apparel accounts for close to half of its US-bound exports, faces relatively high tariffs among this group. Trade with all of these countries is, however, stifled by other factors.

Prospects for Expansion of DFQF Treatment

What are the chances that the United States would extend fully DFQF treatment to all imports from the LDCs? The more precise question is, on what terms might the United States extend duty-free access to imports of apparel from the LDCs in Asia and the Pacific? There are two possible routes.

The preferred approach, at least from the perspective of US negotiators, is to achieve this end as part of a larger deal in the Doha Round. While other countries may see the MDGs of 2000 or the DFQF provisions in the Doha Ministerial Declaration as morally or even legally binding obligations, the United States has always treated them as optional expressions of "soft law." These provisions may have given some impetus to the creation or expansion of the special programs that are now in place, but policymakers in neither the executive nor the legislative branch have acted as if the United States were under any obligation to extend such treatment to Asian or Pacific LDCs unless and until these sentiments were translated into the hard-law commitments of a final Doha Round package.

What is now at issue for the Bali Ministerial Conference, as was earlier the case for the Hong Kong Ministerial Conference of 2005, is whether a more binding DFQF commitment can be produced in an "early harvest." It might be part of an exchange that also includes, among other elements, a deal on trade facilitation. The LDC Group itself proposed in a May paper (see next page) that a deadline be set for all developed countries to achieve the 97% coverage called for in Hong Kong.

A second option for achieving the DFQF commitment, or at least offering an opportunity for most LDC exports to enjoy such access to the US market (provided that they meet the rules of origin), would be to enact a new preferential program in the United States. There have been proposals made in the past decade for such a program, but none of the draft bills advanced far in the legislative process. No action has been taken on this legislation in the 113th Congress (2013-2014), apart from the introduction of two bills that

What the LDCs Seek on DFQF Treatment

Excerpt from a Proposal Circulated by Nepal on Behalf of the LDC Group on May 31, 2013 (WTO Document TN/C/W/63)

1.7. Developed country Members that yet do not provide duty-free quota-free market access for at least 97 per cent of all products originating in LDCs shall do so by [insert date of implementation] ensuring enhanced and commercially-meaningful market access for all LDCs. In doing so, due care shall be taken not to diminish the existing market access enjoyed by any LDC, as of the date of this decision.

1.8. All developed country Members shall progressively work towards duty-free quota-free market access for all products originating from all LDCs if they have not achieved this goal on the date of this decision. The progress in this respect shall be reviewed annually, on a line by line basis, in the Committee on Trade and Development, and a report shall be submitted annually to the General Council for appropriate action.

1.9. Developing country Members that have provided duty-free quota-free market access for products originating in LDCs as of the date of this decision shall endeavour to expand the current duty-free quota-free coverage to the goal of providing such access for at least 97 per cent of all products originating in LDCs. Developing country Members that yet do not provide duty-free quota-free access will also endeavour to provide increasingly DFQF access in an expeditious manner and in line with the 2005 Decision.

1.10. For the purposes of paragraphs 5 to 7 above, the level of duty-free quota-free market access shall be defined as the percentage of the total number of tariff lines that are zero-rated for all LDCs.

1.11. In providing duty-free quota-free market access to LDC exports, Members shall ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access.

1.12. In order to ensure that the duty-free quota-free market access provided to products originating in LDCs under this decision is not nullified by non-tariff barriers to trade, sanitary and phyto-sanitary measures, and other technical barriers to trade, developed- and developing-country Members commit to work with LDCs to ensure that they receive the necessary trade-related technical assistance, capacity building, and aid for trade to allow them to conform with any non-tariff regulations governing imports into developed- and developing-country Members' markets.

1.13. The Committee on Trade and Development shall periodically review the notifications on preferential regimes.

lack much support. The Asia-South Pacific Trade Preferences Act (S.432), of which Senate Dianne Feinstein (D-CA) is the sole sponsor, would authorize the president to extend AGOA-like treatment to Asian LDCs. Senator Feinstein is also the only sponsor of the Nepal Trade Preferences Act (S.431), which would do the same for that one country.

One other issue that is more likely to addressed in the near future concerns renewal of the authorization for the GSP. The most recent authorization expired at the end of July, and for the past few months many imports from LDCs (and other developing countries) that would otherwise receive duty-free treatment have been subject to MFN tariffs. There are renewal bills now pending in both the House (H.R.2709) and the Senate (S.1331), each of them sponsored by the leaders in the two chambers' trade committees, that would reauthorize the program through September 30, 2015 (i.e., the end of the next fiscal year). Those bills were introduced in July but have not yet been acted upon. The Senate version of the bill also provides for how the resulting loss of tariff revenue would be "paid for," by extending for three more months (in 2021-2022) the Customs Service User Fee and making a technical adjustment to the payment schedule for corporate taxes.

One might speculate that when GSP renewal is taken up in Congress it could also be the occasion to consider the extension of DFQF treatment to a wider range of LDCs. There is at present no pressure for such a move in Washington, however, and little likelihood that the issue would be taken up unless prodded by progress in Bali. Even then, it cannot be taken for granted that Congress would be eager to extend preferences to Asian and Pacific LDCs whose exports might compete with those of other, more politically favored LDCs.

Negotiations & Agreements

Senators Continue Opposition to EU Emissions Tax on US Air Carriers

Senators John Thune (R-SD) and Claire McCaskill (D-MO), ranking member and committee member respectively of the Senate Commerce, Science and Transportation Committee, wrote a letter to the Obama administration on October 31 to reemphasize their opposition to the European Union (EU) carbon tax on aviation emissions. They congratulated the officials for resisting such efforts and for negotiating the final resolution approved by the General Assembly of the International Civil Aviation Organization (ICAO) last month (WTR Vol.29 No.38). That resolution opposed unilateral imposition of aviation emissions taxes in favor of agreement to negotiate a consensus-based approach on the issue within ICAO.

The senators wrote,

> As we move forward from the Montreal agreement, we urge you to reinforce a key component of the final resolution that specifically requires ICAO member states to engage in discussions to reach agreement with other member states before designing and implementing new or existing market based measures (MBMs) for aviation emissions. It is important that our nation remains firm in our commitment to the goal of a consensus-based approach for aviation emissions at ICAO. Efforts to implement MBMs without consensus could undermine the effectiveness of global efforts to address emissions and would contravene the newly minted agreement.
>
> This is especially important as the EU works to update their ETS [Emissions Trading Scheme]. Any provisions that allow U.S. operators and passengers to be unilaterally and illegally taxed would be a violation of both the [General] Assembly resolution and the directives laid out by the European Union Emissions Trading Scheme Prohibition Act of 2011 (P.L.112-200).

Thune and McCaskill are the chief authors of a law that bars US operators of civil aircraft from paying the European emissions tax and requiring the Federal government to hold the commercial aviation firms harmless for refusing to pay the ETS tax. The European Union placed a one-year moratorium on application of the ETS to non-EU carriers last April in order to give ICAO an opportunity to negotiate a global policy. The moratorium ends in April, 2014; until then the EU is applying its ETS exclusively to EU carriers flying within and between EU countries. The senators' letter reiterate their opposition to any efforts by the European Union to reinstitute the ETS on US carriers next year.

The letter was sent to Transportation Secretary Anthony Foxx, US Ambassador to ICAO Duane Woerth, Federal Aviation Administration Assistant Administrator Julie Oettinger, and State Department Special Envoy Todd Stern.

TISA Negotiators Remove All Brackets from "Negative List" of Draft Text

The Office of the US Trade Representative released a brief statement on November 8 reporting that negotiators on the Trade in Services Agreement concluded the fourth round of TISA talks last week in Geneva. According to the USTR, the round accomplished the removal of all brackets in the draft text of the agreement concerning the "negative list" approach. Participants are now expected to table offers by the end of November.

A $2 Million WikiLeaks Bounty on the TPP Draft

A group calling itself Just Foreign Policy is running a "crowdsource" pledge for interested persons to promise donations to WikiLeaks if the website leaks the Trans Pacific Partnership (TPP) negotiating text. WikiLeaks, founded by Julian Assange and others, is the website that posts confidential US documents online. The group issued its "crowdsourced" reward to the outlaw website in August, at which time it had gotten promises of $14,543 based on 344 pledges, of which the median pledge was $25. The crowdsource pledge drive currently stands at $2,147,483,647. Of course, there is no way to ensure that such pledges would actually be paid in the event that WikiLeaks actually posted the TPP negotiating text.

The appeal and running tally of pledges is available at http://freetpp.org.

US Signs Minamata Convention to Reduce Use, Emissions of Mercury

The Obama administration on November 6 signed the Minamata Convention. The international treaty negotiated under the auspices of the United Nations Environment Programme aims to reduce exposure to mercury, which is toxic to humans and can damage the brain and nervous system. The text of the convention was adopted by representatives of more than 140 countries on January 19, 2013, following a four-year negotiation. It was opened for signature in Japan as of October 10. It will enter into force after 50 countries have joined.

Once in force, the Minamata Convention will have an impact on small-scale gold mining, coal-fired power plants and other incineration facilities, and design, manufacture, and disposal of products that use mercury. The convention requires party nations to:

- Reduce and where feasible eliminate the use and release of mercury from artisanal and small-scale gold mining;
- Control mercury air emissions from coal-fired power plants, coal-fired industrial boilers, certain non-ferrous metals production operations, waste

incineration and cement production;

- Phase-out or take measures to reduce mercury use in certain products such as batteries, switches, lights, cosmetics, pesticides and measuring devices, and create initiatives to reduce the use of mercury in dental amalgam;
- Phase out or reduce the use of mercury in manufacturing processes such as chlor-alkali production, vinyl chloride monomer production, and acetaldehyde production; and
- In addition, the convention addresses the supply and trade of mercury; safer storage and disposal, and strategies to address contaminated sites.

The convention includes provisions for technical assistance, information exchange, public awareness, and research and monitoring. It also requires Parties to report on measures taken to implement certain provisions. The agreement will be periodically evaluated to assess its effectiveness at meeting its objective of protecting human health and the environment from mercury pollution.

Signing for the administration was Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs Kerri-Ann Jones.

Laws & Regulations

Washington State Voters Reject Mandatory GMO Food Labeling Proposal

Voters in Washington State rejected a proposal to require food labels to bear information detailing whether the contents include genetically modified organisms (GMOs). Ballot initiative 522 would have required GMO labeling on most foods and beverages sold in that state starting in July, 2015.

If this initiative had passed and been signed into law, any foods sold in that state's market would have to disclose on a consumer-accessible label each individual component of the contents that was genetically modified. Since Washington State is not self-sufficient in food, all non-Washington food producers seeking to sell into that market would have been forced to comply with the GMO requirement.

As discussed in last week's WTR, the House-Senate conference committee for the proposed 2013 farm bill will have to decide whether to include a provision barring any state from imposing an agriculture production requirement for products sold in that state, because of the potential reach of such a law. The proposed GMO-labeling initiative was precisely the kind of state law that this provision would ban.

CBO Report on "Cybersecurity Act" Moves Forward

The Congressional Budget Office issued its report on the budgetary effects of the "Cybersecurity Act" (S.1353) on November 5. The bill would give the National Institute of Standards and Technology (NIST) authority to facilitate and support the development of voluntary, industry-led cyber standards and best practices for critical infrastructure. The bill is cosponsored by Chairman Jay Rockefeller (D-WV) and Ranking Member John Thune (R-SD) of the Senate Commerce Committee.

National Institute of Standards and Technology
Comment request
Deadline: December 13, 2013
Federal Register: October 29, 2013 (Vol.78 No.209)
Contact: Diane Honeycutt (301) 975-8443

The legislation is the latest iteration of the effort to establish a legal framework to shield businesses and organizations that cooperate with government agencies in sharing threat and vulnerability information from lawsuits and similar threats. It is also supposed to erect rules allowing coordination across Federal agencies for cyber information-sharing, while also guarding against such information being used by other Federal agencies for the purpose of regulating nonpertinent activities.

Earlier attempts to approve the "Cyber Intelligence Sharing and Protection Act" (CISPA) have died without action in one chamber or the other. Most recently President Obama signed Executive Order 13636 directing several Federal agencies, led by the NIST, to develop a framework to reduce cyber risks to critical infrastructure, and to harden physical and electronic entities against cyberattack (WTR Vol.29 No.6).

The CBO report is a necessary step that each chamber requires before a bill may come to the floor for debate and vote.

In related news, NIST is soliciting public comments on its preliminary Cybersecurity Framework drafted as a result of EO 13636. Comments are due on December 13 (WTR Vol.29 No.40).

Tax-Free Accounts for Domestic Manufacturing Reinvestment

Senators Richard Blumenthal (D-CT) and Christopher Murphy (D-CT) introduced the "Manufacturing Reinvestment Account Act" (S.1651) on November 5. The bill would allow manufacturing businesses in the United States to establish tax-free manufacturing reinvestment accounts to be used to purchase equipment, facilities, and workforce training. Eligible for the MRA would be any manufacturing company, whether domestic or foreign, in which the gross receipts of the taxpayer are derived from activities associated with manufacturing in whole in in significant part within the United States.

The bill has been referred to the Senate Finance Committee, of which neither sponsor is a member.

Comment on Trucker's Participation in NAFTA Long-Haul Pilot Program

Federal Motor Carrier Safety Administration
Comment request
Deadline: November 22, 2013
Federal Register: November 12, 2013 (Vol.78 No.218)
Contact: Marcelo Perez (202) 510-0211

The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on data and information concerning the Pre-Authorization Safety Audit (PASA) for Road Machinery Co SA de CV with US Department of Transportation (USDOT) number 2091627. The audit is required as part of the company's participation in the long-haul pilot program under the North American Free Trade Agreement (NAFTA). The NAFTA trucker pilot program is testing and demonstrating the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities.

FDA to Extend Comment Period for Foreign Supplier Verification Third-Party Rules

The Food and Drug Administration (FDA) will shortly announce a 60-day extension of the comment period on proposed rules for Foreign Supplier Verification Programs for Importers of Food for Humans and Animals and Accreditation of Third-Party Auditors/Certification bodies to Conduct Food Safety Audits to Issue Certifications.

Under the new proposed rules for the Foreign Supplier Verification Programs, importers would need to verify that their suppliers are meeting

US food safety requirements. In addition, FDA would establish a program for accreditation of third-party auditors to conduct food safety audits and issue certifications of foreign facilities and the foods they produce for both humans and animals.

The current comment period for both proposed rules is scheduled to end November 26, 2013. The FDA is giving a heads-up to commenters that it plans to extend the comment period until the end of January.

APHIS Clarifies Procedures for Plant Products Transiting the United States

Animal and Plant Health Inspection Service
Transit Permit customer service
(301) 851-2046 or toll-free (877) 770-5990

The Animal and Plant Health Inspection Service (APHIS) has recently updated and clarified the policy and procedures concerning Transit Permits for plants and plant products. APHIS requires a Transit Permit for soil, insects, and certain foreign plants and plant products (i.e., fresh fruits and vegetables, seeds, and plants) moving through, but not remaining in, the United States, moving under Transportation and Exportation (T&E) or Immediate Export (IE) bonds.

Transit Permits are required only for plants and plant products requiring an APHIS import permit, treatment for entry, phytosanitary certification, or other proof of origination. Even if a written transit permit is not required, regulated products (e.g., APHIS-precleared commodities) are still subject to inspection and additional safeguarding requirements at the discretion of the US Customs and Border Protection (CBP), according to CBP procedures.

Transit Permits outline specific actions or conditions that are required for a regulated commodity to moves through the United States. All shipments must meet the requirements specified on the authorizing permit. CBP enforces permit conditions and monitors shipment movement by verifying the exit of regulated agricultural cargo.

A Transit Permit must be obtained prior to arrival of shipment for transit movement. All movement details must be evaluated by APHIS and CBP prior to any authorizations for in-bond movement; this takes time because various risk and resource factors are assessed for each proposed movement. As such, CBP and APHIS may refuse in-bond movements if pest risk cannot be sufficiently mitigated with facilities, staff and other needed resources.

FSIS Eases Generic Approval for Meat and Poultry Labels

Food Safety and Inspection Service
Final rule
Effective date: January 6, 2014
Federal Register: November 7, 2013 (Vol.78 No.216)
Contact: Jeff Canavan (301) 504-0879

The Food Safety and Inspection Service (FSIS) is amending the meat and poultry products inspection regulations to expand the circumstances in which FSIS will generically approve the labels of meat and poultry products. The FSIS also is consolidating the regulations that provide for the approval of labels for meat products and poultry products into a new Code of Federal Regulations (CFR) part.

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) direct the Secretary of Agriculture to maintain meat and poultry product inspection programs designed to assure consumers that meat and poultry products distributed to them (including imports) are safe, wholesome, not adulterated, and properly marked, labeled, and packaged. They also prohibit the sale or offer for sale by any person, firm, or corporation of any article in commerce under any name or other marking or labeling that is false or misleading or in any container of a misleading form or size. To ensure that meat and poultry products comply with the FMIA and PPIA and their implementing regulations, FSIS conducts a prior approval program for labels that are to be used on federally inspected meat and poultry products and imported products.

NIST Waives Buy American for Projects Funded by Grants

National Institute of Standards and Technology
Notice
Effective date: November 8, 2013
Federal Register: (Vol.78 No.217)
Contact: Michael Diestel
michael.diestael@nist.gov

The National Institute of Standards and Technology (NIST) is providing two program-wide, limited public interest waivers of the Buy American requirements set forth in the American Recovery and Reinvestment Act of 2009 (ARRA) projects constructed by recipients receiving financial assistance awards (grants) pursuant to the NIST. The first limited, program-wide, public interest waiver applies to a grant recipient's use of a *de minimis* amount of non-domestic iron, steel or manufactured goods that, in the aggregate, comprises no more than five percent of the total cost such materials used in a grant recipient's ARRA construction project. The second waiver applies to a grant recipient's use of non-domestic manufactured goods where such non-domestic goods are necessary for the integration and operation of the recipient's construction project into the recipient's existing safety and security systems. Both waivers apply over the entire award period of the grant projects.

Information Collection Requests by Federal Agencies

The items listed below are submissions to the Office of Management and Budget for clearance on information-collection activities. For further details, including opportunities to comment on the matter, click on the *Federal Register* notice in the rightmost column.

Agency	**Topic**	**Change from Current Practice**	***Fed. Reg*. Ref.**
Animal and Plant Health Inspection Service	Importation of French beans and runner beans from Kenya into the United States	No	#214
Animal and Plant Health Inspection Service	Importation of clementines, mandarins, and tangerines from Chile	No	#216
International Trade Administration	Procedures for considering requests and comments under the textile safeguard provision of the US-Peru Trade Promotion Agreement	Yes	#217
International Trade Administration	Implementation of TRQ for imports of certain worsted wool fabric	Yes	#218
US Customs and Border Protection	Importer ID input record	No	#218

Cases & Sanctions

CAFC Agrees With Customs

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Customs Classifies Punches Correctly

Wilton Indus., Inc. v. United States, slip op. 2013-1028 (Fed. Cir. Nov. 5, 2013)

Wilton challenged the U.S. Customs and Border Protection's ("Customs") classification of its paper punches as "perforating punches and similar handtools," claiming that they should be classified as "cutting machines." The U.S. Court of International Trade ("CIT") agreed with Customs and Wilton appealed to the U.S. Court of Appeals for the Federal Circuit. Wilton fared no better at the Federal Circuit. The Federal Circuit ruled that the imported handtools were described *eo nomine* by heading 8203.40, HTSUS, as perforating punches and similar handtools. According to the Federal Circuit, the fact that the punches were operated by hand was enough for the language of the heading to apply.

Commerce Nails It On Remand

GPX Int'l Tire Corp. v. United States, slip op. 13-132 (Ct. Int'l Trade Oct. 30, 2013)

Both the U.S. industry and Chinese producers and exporters disagreed with the Department of Commerce's remand redetermination in the countervailing duty investigation of off-the-road tires from China. The CIT reviewed the arguments but sustained each of Commerce's remand determinations. Specifically, the CIT ruled that Commerce properly: (1) determined that the sale of one respondent's assets were not conducted at arm's length; (2) determined that the appraisals offered by another respondent were unsatisfactory for benchmarking purposes; (3) explained its inability to calculate a purchase price offset; (4) explained its loan benefit calculation and why it rejected an alternative approach; and (5) considered evidence regarding benefits from countervailable debt forgiveness and reduced the benefit calculation accordingly.

Penalty Calculation Not Supported

United States v. Lafidale, Inc., slip op. 13-133 (Ct. Int'l Trade Oct. 30, 2013)

Customs sued Lafidale for penalties, claiming that it was grossly negligent in entering handbags and wallets at a provision requiring that they be covered in paper when they were not. Lafidale did not respond to the suit and Customs filed a motion for a default judgment. The CIT ruled that Customs had established liability for a grossly negligent violation of the law but that the loss of revenue claimed was not adequately supported. Thus, the CIT denied the motion with leave to refile to provide an explanation for the penalty calculation.

State Notifies Congress of Export Licenses for Defense Articles to Israel

State Department
Federal Register: November 12, 2013 (Vol.78 No.218)
Contact: Lisa Aguirre (202) 663-2830

The State Department has notified Congress of its certification of a proposed export license for the manufacture of defense articles, including technical data, and defense services to Israel to support the development and manufacture of various component parts of pistols and rifles.

Actions Taken under the Trade-Remedy Laws by the International Trade Administration (ITA) and the US International Trade Commission (ITC)

Law	Product	Exporters	Action	FR Vol.78
AD	Steel threaded rod	China	ITA final results of 2011-2012 administrative review weighted average margin is 19.54%	#214
AD	Stearic acid	United States	ITC notice of NAFTA panel decision affirming Mexican final determination	#216
AD	Low enriched uranium	France	ITA final results of changed circumstances review	#216
AD	Carbon and alloy seamless standard, line and pressure pipe	Germany	ITA initiates administrative review	#217
AD	Magnesia carbon bricks	Mexico, China	ITA initiates administrative reviews	#217
AD	Light-walled rectangular pipe and tube	Mexico	ITA initiates administrative review	#217
AD	Frozen fish fillets	Vietnam	ITA initiates administrative review	#217
AD	Narrow woven ribbon with woven selvedge	Taiwan, China	ITA initiates administrative reviews	#217
AD	Crawfish tailmeat	China	ITA initiates administrative review	#217
AD	Fresh garlic	China	ITA preliminary results of new shipper review weighted average margin is $0.44/kg	#217
AD	PET film, sheet and strip	India, Taiwan	ITA preliminary results of sunset reviews	#217
AD	Cut-to-length carbon steel plate	Ukraine	ITA suspension agreement final results of administrative review	#218
AD	Solid urea	Russian Federation	ITA final results of 2011-2012 administrative review weighted average margin is 0.00%	#218
AD/ CVD	Steel threaded rod	India, Thailand	ITC affirmative preliminary determinations	#214
AD/ CVD	1,1,1,2-Tetrafluoroethane	China	ITC extends deadline for determining adequacy of the petitions until December 2, 2103	#216
AD/ CVD	Aluminum extrusions	China	ITC preliminary results of changed circumstances reviews and intent to revoke orders in part	#216
AD/ CVD	Lined paper products	India	ITA initiates administrative reviews	#217
AD/ CVD	Kitchen appliance shelving and racks	China	ITA initiates administrative reviews	#217
AD/ CVD	Off-road tires	China	ITA initiates administrative reviews	#217
CVD	Narrow woven ribbon with woven selvedge	China	ITA initiates administrative review	#217
CVD	Magnesia carbon bricks	China	ITA initiates administrative review	#217
CVD	Aluminum extrusions	China	ITA intent to rescind 2012 administrative review in part; notice of partial rescission of administrative review	#217; #217

Law	Product	Exporters	Action	FR VOL.78
337	Antivenom compositions and products	—	ITC receives complaint and requests public comments	#215
337	Products containing interactive program guide and parental control technology	—	ITC terminates investigation	#216
337	Point-to-point network communications devices and products	—	ITC terminates investigation as to two respondents	#216

Leaders in Trade

De Gucht Faces Personal Tax Accusations as Second TTIP Round Takes Place

US and European trade negotiators are scheduled to hold a second round of talks throughout this week on the proposed Transatlantic Trade and Investment Partnership (TTIP). The leader of the European delegation, Trade Commissioner Karel De Gucht, will also be battling accusations of tax fraud by Belgium tax authorities. He and his wife will have a court hearing on November 25 in Ghent to fight a claim by authorities that he owes €900,000 on income from a share transaction that took place in 2005.

Belgian tax authorities charge that the commissioner owes taxes on the original transaction, a punitive additional amount for nonpayment, and interest on the unpaid taxes. De Gucht has been negotiating with tax authorities, offering a payment of one-tenth of the amount assessed, but that offer has been rejected. While the personal tax dispute is not being associated in any way with his work as trade commissioner, it could undercut his political standing and authority. De Gucht has told Belgian media that he wants to renew his mandate at the Commission at the end of 2014, and has reportedly said that there are "political" motivations for the tax investigations.

Hearing Wednesday for Johnson, Nominee for Secretary of Homeland Security

The Senate Homeland Security and Governmental Affairs Committee will hold a confirmation hearing on November 13 on the nomination of Jeh Johnson to be the next Secretary of Homeland Security.

Baucus Names New Trade Counsel to Finance Committee Democratic Staff

Senate Finance Committee Chairman Max Baucus (D-MT) announced on November 4 hired Jason Park to serve as the international trade counsel to the committee's Democratic majority. His portfolio will include Trade Adjustment Assistance, Customs, and other trade issues.

Park joins the committee from the majority staff of the Senate Budget Committee, where he served as revenues counsel, working on trade and tax issues.

Studies & Events

Aviation and Aerospace Mission to Brazil

Int'l Trade Administration
Deadline: March 5, 2014
Mission dates: May 12-16, 2014
Federal Register: November 5, 2013 (Vol.78 No.214)
Contact: Alexis Haakensen (202) 482-6235

The International Trade Administration is organizing an Aerospace and Aviation trade mission to Brazil. Target sectors holding high potential for US exporters include: aircraft parts (particularly for the aftermarket), business aviation, general aviation and helicopters, airspace and air traffic flow management, ground support equipment, baggage handling systems, meteorological information management, surveillance and satellite navigation, and airport/aviation security.

CBP Reschedules East Coast Trade Symposium for Next March

US Customs and Border Protection (CBP) has rescheduled its 2013 East Coast Trade Symposium, which was indefinitely postponed because of the Federal government shutdown that took place October 1-16 (WTR Vol.29 No.39). The annual event had originally been set to take place October 24-26. It has been rescheduled for March 6-7, 2014.

Those who had registered for the original event and had sent in their payment were promised reimbursement by CBP. CBP will post further information regarding symposium details and online registration for the March symposium shortly.

USITC Reschedules Deadlines for EU Trade Barriers Report

US International Trade Commission
Notice
Federal Register: November 7, 2013 (Vol.78 No.216)

The US International Trade Commission has rescheduled its hearing date, filing requests, and other procedures and deadlines for completing its report on *Trade Barriers That U.S. Small and Medium-Sized Enterprises Perceive as Affecting Exports to the European Union*. The rescheduling is due to the 16-day government furlough in October.

Apply to Join Manufacturing Council

International Trade Administration
Notice
Application deadline: December 6, 2013
Federal Register: November 8, 2013 (Vol.78 No.217)
Contact: Elizabeth Emanuel (202) 482-1369

The Commerce Department invites applications from representatives of the US manufacturing industry for five vacant positions on the Manufacturing Council for the current member appointment terms that run through November 30, 2014. For the remainder of the current charter term, the department is expanding the scope of entities eligible for representation on the council to include US businesses in the manufacturing industry that are controlled directly or indirectly by a foreign parent company (i.e., US subsidiaries of foreign companies), as previously reported (WTR Vol.29 No.41).