

## The Complexities of Importing Into the European Union

By Tomasz Dziechciarz (Sandler & Travis Trade Advisory Services)

It is widely assumed that trade compliance is not a new topic in the European Union (EU). However, the EU, by the diversity of its members, as well as the variety of languages spoken and customs systems used, remains one of the most complex Customs Unions.

The idea of a united Europe is a recurring theme given the countries of this continent's long histories. Nowadays, the European Union is a unique vision of economic integration where European countries and their citizens can choose how much of their sovereignty they are ready to give up. United Europe does not equal The United States of Europe and this fact has significant impact on the implementation and adoption of EU Customs Law by the member states.

The background presented above is intended to help make non-EU citizens aware of potential compliance challenges connected with setting up their business activity or simply doing business, in the member states of The European Union. The primary Customs rules in the European Union are found in the Customs Code (Council Regulation (EEC No 2913/92) and the implementing regulations of the Code (Commission Regulation (EEC) No 2454/93). These rules were subsequently modified by the European Parliament in Commission

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## White House Says it Will Seek “Fast-track” Trade Authority

By Doug Palmer (Reuters)

The White House said in March it would work for approval of politically contentious legislation that would ease the way for new trade deals, as it tries to wrap up talks on an Asia-Pacific free-trade agreement this year.

But the brief reference to the legislation known as “trade promotion authority” in an annual report on the president's trade agenda failed to impress some key Republicans who have been pressing for action on the issue for years.

House of Representative Ways and Means Committee Chairman Dave Camp, a Michigan Republican, urged President Barack Obama to “demonstrate his commitment to a vigorous and productive trade policy” by opening talks with Congress on the “fast track” powers and “nominating a qualified and committed U.S. trade representative.”

The current U.S. trade representative, Ron Kirk, plans to step down soon. That will leave the position of chief U.S. trade negotiator vacant as the United

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Trade compliance in the EU remains challenging for non-EU exporters, but certain knowledge of regulations such as the requirements for transferring goods between EU member states can greatly improve the process.

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#### Trade Promotion Authority Needed

The White House said it will work toward the approval of politically sensitive legislation known as the Trade Promotion Authority, or “fast-track”, which would reduce Senate gridlock of deals, gearing up for a full trade agenda this year.

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#### Canada Customs and Counterfeit Goods

In March, the Government of Canada introduced a bill that will help prevent the import and export of counterfeit products, an encouraging development for trademark and copyright owners.

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#### China Exports to Latin America Rise

Within Latin America, China is finding Mexico an attractive place to export steel products to gain access to the U.S. market because among several reasons, it can benefit from NAFTA as long as their products meet NAFTA's “rules of origin”.

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regulation No. 450/2008 and by the Council on April 23, 2008. Further complicating Customs matters for global companies is that these new rules do not become fully effective until June 24, 2013. The dualism in customs law during the last four years, as well as rapid changes in IT technology, coupled with very recent additional changes in the Customs Code, that officially changed the name of the regulations to the Union Customs Code (UCC), has created huge uncertainty in terms of Customs planning, operations and IT infrastructure for exporters and importers. At the time of writing this article the following assumptions were officially published by European Commission:

“... the application of the provisions of the Regulation which depend on the use of electronic data-processing techniques and electronic systems will be suspended for the periods pending the availability of such systems. However such transitional periods and measures should not go beyond 31 December 2020 (...) a full implementation of the IT-related parts of the Regulation should therefore be ensured for that date, at the latest.”

As a result of this long implementation period the following 7 years should provide many headaches to both IT developers and Customs Compliance Professionals (CCP). Until then a

global company which is present in more than one EU member state must be prepared to file entry records via 26 different customs IT Windows. As of today, only the Customs Administrations of Germany and Austria accept entry logs via the same customs platform, “Atlas”. Additionally global companies must be prepared to communicate with EU Customs Authorities in 26 languages and be prepared to deal with national provisions and local interpretations of the common customs law.

To deal with this environment global companies must have access to high level customs professionals and service providers, that have proven experience with the Customs Authorities in the major logistics hubs in the EU. As a professional with over 15 years of experience in Customs and International Trade, I have had the opportunity to observe major changes in recent customs European legislation, the growing markets of former communist countries and the implementation of these laws. In my experience, global companies operating in the EU have approached compliance from two extremes. The first being, “Let’s ship it and see what happens” and the second being, “Let’s wait, check three times and evaluate the risk again, and wait.” Unfortunately and all too often the CCP is only invited to

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## Canada Takes Steps to Empower Customs Officials to Stop Counterfeit Goods at the Border

By Cyndee Todgham Cherniak (LexSage Professional Corporation)

On March 1, 2013, the Government of Canada introduced Bill C-56 “Combating Counterfeit Products Act” in the House of Commons. Bill C-56 provides copyright and trademark owners with a Canadian legal process to stop the import and export of counterfeit goods and permanently remove those goods out of the commercial stream. Trademark and/or copyright owners have been asking for effective anti-counterfeiting border enforcement measures in Canada and their wishes are in the process of being granted.<sup>1</sup>

Bill C-56 amends the *Trademarks Act* and the *Copyright Act* to empower Canada Border Services Agency (“CBSA”) officials to proactively target, detain and examine counterfeit goods at the Canadian border (whether imported into Canada or exported from Canada). Once Bill C-56 is passed into law, the trademark rights and/or copyright rights holders(s) may seek the assistance of the CBSA by filing a “request for assistance” in the form and manner to be specified by the Minister of Public Safety and Emergency Preparedness (the Minister to whom the CBSA reports). The substance of the “request for assistance” is a request to detain goods that are believed to be counterfeit. The request must include the trademark and/or copyright owner’s name and address in Canada and any other information required by the Minister, including information about the work or other subject-matter in question. Undoubtedly, the owner will be required to provide information to demonstrate his/her ownership and sufficient information to permit the CBSA officers to detain the alleged counterfeit goods. For example, the trademark and/or copyright owner would be required to provide samples of the goods they manufacture.

The CBSA will review the “request for assistance” and has the discretion whether or not to accept it. The Minister of Public Safety and Emergency Preparedness technically would be the person accepting the request for assistance under the proposed rules. The Minister may impose conditions of the acceptance of a request, such as the trademark and/or copyright owner may be required to post security in an amount to be determined by the Minister.

A “request for assistance” would be valid for a period of two years beginning on the day it is

accepted by the Minister (and may be extended every two years). If, after the “request for assistance” is granted, the ownership or substance of the trademark or copyright changes, trademark and/or copyright owner must inform the Minister in writing.

After the “request for assistance” is accepted, the CBSA may detain any goods that are the subject matter of the accepted request. The CBSA has the discretion to provide a sample of the suspected counterfeit/infringing goods to trademark and/or copyright owner and any information about the

**Bill C-56 also creates a new civil remedy for trademark and/or copyright owner(s) to pursue the infringer for monetary damages.**

copies that the CBSA officer reasonably believes does not directly or indirectly identify any person. The CBSA may also permit the trademark and/or copyright owner to inspect the detained goods. The trademarks and/or copyright owner will be given up to 10 days (5 days for perishable goods) to commence court proceedings to obtain a remedy under the Act. The trademark and/or copyright owner must provide the Minister with a copy of the document filed with the court to commence proceedings (the intake mechanism for the provision of the proof of court proceedings is yet to be determined). If trademark and/or copyright owner does not commence proceedings, the detained goods will be released.

Where infringing works or counterfeit goods are detained pursuant to an accepted “request for assistance”, the owner of the trademark and/or copyright is liable for the storage, handling and destruction costs. That being said, the owner of the infringing works or counterfeit goods and the importers or exporters are jointly and severally liable for all such charges if the goods are ultimately forfeited.

Bill C-56 also sets out the powers of the court in respect of the alleged infringing works or coun-

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terfeit goods. While the process for such court proceedings will develop over time, Bill C-56 does establish some of the rules for the proceeding. If the court finds in favour of the applicant, the court may make any order that it considers appropriate in the circumstances including an order that the detained goods be destroyed. The court also has the power to order the Minister/CBSA to detain goods to be imported or goods that have not been released.

If the detained goods are determined to not be infringing works or counterfeit goods or if the court proceedings are dismissed or discontinued, Bill C-56 grants the court the power to award damages against the trademark and/or copyright owner in respect of the losses, costs or prejudice suffered as a result of the detention.

Bill C-56 also creates a new civil remedy for trademark and/or copyright owner(s) to pursue the infringer for monetary damages. Bill C-56 also sets out new criminal offenses and permits

the court to impose fines up to \$1,000,000 and/or imprisonment up to five years. New criminal offenses include a prohibition against the possession of or exportation of infringing copies or counterfeit trade-marked goods, packaging or labels.

Bill C-56 will be closely watched. Trademark and/or copyright owners may start to prepare their "requests for assistance" so that action may be taken when Bill C-56 becomes law. Bill C-56 must proceed through the Canadian legislative process. However, with a majority government, it may not take long to become law. □

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1 This article originally appeared at [www.canada-us-blog.com](http://www.canada-us-blog.com) and has been modified slightly.

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## Trade Partnerships

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### South American and African Nations Meet to Strengthen Cooperation Ties; Trade Issues Addressed

*By Justin S. Miller and Staff (White & Case LLP)*

On February 20-23, 2013, the III Africa-South America (ASA) Presidential Summit took place in Malabo, Equatorial Guinea, under the theme "Strategies and Mechanisms to Strengthen South-South Cooperation." The ASA is a bi-regional initiative comprised of 54 African and 12 South American countries, created in 2006 with the objective of strengthening cooperation ties between both regions. To date, two Summits have taken place, in Abuja, Nigeria (2006) and Margarita Island, Venezuela (2009). We detail the most relevant issues included in the 2013 Malabo Declaration<sup>1</sup> adopted by ASA Leaders.

- **Trade Issues.** ASA Leaders highlighted that a successful, ambitious, comprehensive and balanced conclusion of the multilateral trade negotiations under the Doha Development Agenda (DDA) would contribute to sustainable economic growth. In this sense, both sides remarked that the coming World Trade Organization (WTO) Ministerial Conference in Bali in December 2013 should reach

a balanced outcome, taking into account the central role of agriculture for developing countries. Also, Leaders remarked on the importance of expanding their exports of manufactured products and reducing their traditional dependency on exports of agricultural and mineral commodities with no or little added value.

- **Investments.** Both sides stressed that funding is essential to promote development and sustainable growth and, therefore, agreed to promote policies conducive to increase public and private investment. Furthermore, Leaders recognized the need to tackle tax havens that facilitate tax evasion, corruption and criminal activities and offer an operating base to vulture funds. In this sense, ASA countries emphasized the need to put limits on the actions of these funds in order to avoid their behavior jeopardizing international financial stability.

- **Cooperation Ties.** Both sides underscored the importance of so-called "South-South" cooperation in all areas of common interests including, *inter alia*, trade, investment, power and energy, transport, and science and technology. Also, leaders expressed their intention to continue cooperation in the context of multilateral negotiations, particularly in reference to: (i) the reform of international financial institutions with a view to improving the participation of developing countries in these organizations; and (ii) environmental issues under the framework of the United Nations (UN).

During the Summit, Brazilian President Dilma Rousseff and Nigerian President Goodluck Ebele Jonathan released a joint statement and signed a Memorandum of Understanding<sup>2</sup>

in which both countries expressed an interest in increasing commercial ties and current levels of cooperation. □

1 For a copy of the Malabo Declaration, visit <http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/iii-cupula-de-chefes-de-estado-e-de-governo-america-do-sul-africa-asa-declaracao-de-malabo>.

2 For a copy of the Brazil-Nigeria Memorandum of Understanding, visit <http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/memorando-de-entendimento-entre-o-governo-da-republica-federativa-do-brasil-e-o-governo-da-republica-federal-da-nigeria-para-o-estabelecimento-de-mecanismo-de-dialogo-estrategico>.

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## China-Mexico Trade

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### NAFTA's 'Uninvited Guest': Why China's Path to U.S. Manufacturing Runs Through Mexico

*By Knowledge@Wharton (Wharton School of the University of Pennsylvania)*

Throughout Latin America, imports of Chinese steel are surging. In October 2012 alone, for example, Chinese steelmakers exported \$3.515 billion worth of steel products to Latin America. According to a joint study recently undertaken by the steel associations of Mexico, Brazil, Colombia and Argentina, Chinese steel exports to Latin America "have grown in a significant way, so that they now threaten the value chain of the industry."

Nowhere has that threat become more an issue than in Mexico. According to Canacero, the Mexican steel manufacturers association, Mexican imports of rolled sheets from China rose 140.6 percent, year-on-year, between January and November 2012. "A considerable volume of the total of Mexican steel imports comes from countries with which Mexico has no free-trade agreements, and which practice unfair trade practices, such as China, Russia and Ukraine," according to a statement by Canacero, which has filed anti-dumping charges against Chinese steelmakers on more than one occasion.

Why are Chinese steel exporters so attracted to Mexico? Does their expansion into Mexico por-

tend that Chinese automakers will soon be assembling some of their own vehicles in Mexico, and exporting some of that output to the United States? Or will the Chinese be tempted to build their own automotive assembly plants in the U.S. in order to take advantage of trade preferences offered by the North American Free Trade Agreement (NAFTA)? In what ways are China's trade and investment relationships with Mexico different from its ties with other emerging Latin American countries, such as Brazil and Colombia?

#### **The Unique Factors in Mexico-China Ties**

Opportunities for Chinese steel manufacturers in Mexico have been expanding because of strong demand for steel in the Mexican automotive sector. Companies such as Honda, GM, Nissan and Ford all operate plants in Mexico whose output is largely exported to the United States. Fausto Cuevas Mesa, director of the Mexican automotive industry association (AMIA), predicted recently that the output of the Mexican auto sector will continue to grow over the next five years at an annual pace of 8 percent to 10 percent, reaching

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3.9 million units by 2016. Mexican automotive output was projected to reach 2.86 million in 2012, according to LMC Automotive, a research firm, because of strong demand for vehicles in the United States.

In September, luxury automaker Audi announced it will build a \$1.3 billion plant in Puebla, its first production facility in the Americas. Most of Mexico's auto output is exported to its NAFTA partners, the United States and Canada. Only 990,000 to 1 million locally assembled vehicles were sold in Mexico in 2012, said Cuevas Mesa -- slightly higher than in 2011. Cuevas Mesa predicted that in coming years at least three more auto assemblers could come to Mexico, not just from Germany.

Will any of those additional automakers be coming from China? During the administration of former Mexican President Felipe Calderon, Mexico and China announced that they were

**Given its low costs and proximity to the U.S., Mexico can provide “a great platform” for a growing number of Chinese companies eager to penetrate the U.S. market.**

about to become “strategic partners.” But the meaning of their emerging partnership was only vaguely defined, notes Margaret Myers, director of the China-Latin America program of the Inter-American Dialogue, a non-profit policy research center in Washington, D.C.

For Chinese exporters of steel and other industrial inputs, Mexico has become a natural opportunity because of its proximity to the United States, says Myers, and the fact that Mexico's transportation networks and industrial supply chains are closely integrated into those of the U.S. and Canada, the other members of NAFTA. “In a way, China is a part of NAFTA because China contributes a lot to the goods that wind up” in the United States and Canada, says Myers.

However, there are some differences between China's relationship with Mexico, and China's relationships with the other emerging countries of Latin America, analysts point out. Kevin Gallagher, associate professor of International relations at Boston University, argues, “There are two ways in which the China-Mexico relationship is some-

what unique. Lots of South American countries are exporting raw materials to China and importing cheap goods from China,” which puts pressure on their domestic markets.

Thus, in effect, China pays for its imports of Peruvian and Chile copper, Argentine soybeans, Brazilian wheat, Colombian coal and so forth, by exporting low value manufactured goods to those countries. However, notes Gallagher, “Mexico is different in that its primary raw material export -- crude oil -- goes to the United States, and not much of Mexico's exports go to China.” The two countries also compete directly in a wider range of products. “Over 90 percent of Mexico's exports are under threats from China in markets where China is gaining market share and Mexico is losing it,” adds Gallagher, co-author of the 2010 book, *The Dragon in the Room: China and the Future of Latin American Industrialization*.

For his part, Enrique Dussel Peters, professor of economics at UNAM, the Mexican National University, highlights unique sources of tension in the China-Mexico relationship. First, he notes, Mexican elites began their integration with NAFTA way back in 1994, when NAFTA was established. That was long before the leading South American countries deregulated their trade regimes. As a result, “Mexican trade is very integrated into specific trade flows with the U.S. and Canada.” Second, Dussel Peters says, “Mexico prefers to settle its trade disputes via multilateral panels at the World Trade Organization, rather than settle disputes bilaterally. This is highly disliked by the Chinese,” who prefer to settle disputes bilaterally. This difference in mindset has fostered “distrust and misunderstanding” between Mexico and China. Third, although China has been Mexico's second-biggest trading partner (behind only the U.S.) ever since 2003, Mexican policymakers have yet to develop a clear and coherent strategy toward China. Dussel Peters argues that despite China's rising importance for NAFTA nations, China remains “NAFTA's uninvited guest. China is of critical importance to the region, but NAFTA has not been able to formalize relationships between the NAFTA countries and China.”

Felipe Monteiro, a senior fellow at Wharton's Mack Center for Technological Innovation, stresses that China-Mexico ties have been complicated by the fact that “China is a direct competitor of Mexico in the United States.” There was a time, notes Monteiro, when Mexico could afford to relegate its relationship with China to the back burner, but Mexican policy makers “have realized that you need a bilateral strategy with China.

China is too big a country [not to do so].” Short term, Mexico’s competitive disadvantage vis-à-vis China has “been tempered in the last year,” notes Gallagher, for two key reasons. On the one hand, the Chinese *yuan* has risen in value, making Chinese exports a bit more expensive. On the other hand, while Chinese wages have risen versus the peso or the dollar, Mexican wages have been largely stagnant -- thus, cutting into China’s wage-rate advantage. For years, Gallagher notes, China benefitted from having both an undervalued yen, and manufacturing wages of about 73 U.S. cents per hour. Since NAFTA, Mexican wages have risen at an annual rate of only 1.5 percent. While that sounds like something positive for Mexican workers, most Mexican manufacturing takes place in maquiladora enclaves into which 70 percent to 90 percent of all inputs are imported from outside Mexico, and then re-exported to the U.S. and Canada “with little impact on the rest of Mexico,” says Gallagher.

### A Strategic Decision

Given its low costs and proximity to the U.S., Mexico can provide “a great platform” for a growing number of Chinese companies eager to penetrate the U.S. market, notes Monteiro. However, he adds, some Chinese companies may opt to locate their new plants in the U.S., rather than Mexico, for other strategic reasons. Take, for example, Haier Electronics, the Chinese appliance manufacturer, which opened the first Chinese-owned plant in the U.S. back in 2000. Haier might have manufactured in Mexico at a fraction of the cost. According to Monteiro, “The obvious question is: Why didn’t Haier decide to have a plant in Mexico instead, and then export from there to the United States?” One key reason behind Haier’s decision may have been that the company, which is owned by the Chinese government, decided that “it was necessary to build manufacturing channels inside the United States, in order to reduce animosity against China. This was a strategic decision by the Chinese.” According to Monteiro, the strategic question for other Chinese companies in such a position is to decide: “Does developing strong relationships with our stakeholders inside the United States out-weigh [in importance] the extra costs” of building a plant inside the United States? Monteiro concludes, “The answer is not obvious. Short-term, it may make sense to be in Mexico, but longer term, it may be better to be in the U.S.”

Mexico’s membership in NAFTA enables any goods made by Chinese companies in Mexico to

benefit from NAFTA so long as they meet NAFTA’s “rules of origin” for gaining tariff preferences. NAFTA’S rules of origin “don’t talk about the firm of origin,” notes Gallagher. While they specify that a certain percentage of the value of vehicles sold in North America must be added in North America to qualify for those trade preferences, NAFTA rules of origin don’t specify that the “local value” in those vehicles must be added by companies owned by North Americans. Those goods could just as well be manufactured by Chinese-owned firms inside the walls of NAFTA.

If Chinese automakers calculate that they cannot meet NAFTA rules of origin by assembling those vehicles in Mexico, they can opt to build such a plant in the United States. In such a case, more of the steel they use to build those cars could wind up being sourced from the U.S. – or exported

**Between 2008 and 2010, China’s First Automobile Works exported a low-cost sedan to Mexico, but its sales figures in Mexico were so weak, FAW’s initial plans to build a factory in Mexico were shelved entirely.**

to Mexico, and then shipped to U.S. auto assembly plants. “The [Chinese-owned] plants don’t have to be in Mexico,” noted Dussel Peters. Like Honda, Toyota, Hyundai and other Asia automakers, he said, the Chinese could locate those plants in the United States.

Gallagher predicts that the next wave of Chinese exports to Mexico may well include finished vehicles, but he argues that those Chinese-built cars are more likely to be assembled in Mexico than in the U.S. “There will be Chinese automotive manufacturing plants in Mexico before there are any such plants in the U.S. because the costs are lower [in Mexico], and it is harder to operate a plant in the U.S., where there are so many regulations.” Nevertheless, Gallagher worries about whether Mexico’s transportation infrastructure is up to the task of handling huge, additional volumes of goods made within the country’s own borders. To overcome the significant gaps in Mexico’s industrial and transportation infrastructure, Gallagher suggests that Mexico approach the China Development Bank for loans that would be used to construct and expand Mexican seaports and high-speed highways. That way, Mexico could smoothly accommodate additional volumes of

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imported Chinese raw materials and components that would flow from the decision by Chinese firms to build automotive plants inside Mexico.

Between 2008 and 2010, China's First Automobile Works exported a low-cost sedan to Mexico, but its sales figures in Mexico were so weak, FAW's initial plans to build a factory in Mexico were shelved entirely. However, wage rates in China's major industrial areas have continued to rise in recent years, while wage rates in Mexico have barely risen, so that "the cost of labor in Mexico is now very similar [in Mexico] to that in the Pearl River Delta [of China]," notes Myers. Moreover, as Chinese auto producers improve their quality control and upgrade their automotive technology, FAW or another Chinese automaker may want to take the plunge into assembling in Mexico.

Although Mexico has enacted wide-ranging free-trade pacts with a few dozen other countries around the world, Mexico and China are unlikely to negotiate their own bilateral trade pact, ana-

lysts agree, because the two countries compete in too many product sectors, and there is too much resistance to such a pact in Mexico among low-value-added Mexican manufacturers who have already lost significant market share to Chinese competitors in their home market.

More encouragingly, inaugurated Mexican president Enrique Peña Nieto has shown interest in establishing a more cordial partnership with China, notes Myers. "Under [former President] Calderon, the relationship with China went to pieces, because he prioritized Mexico's relationship with the United States. But the view of Peña Nieto is that it is time to diversify Mexico's relationships," given the rising importance of Asia, and China in particular, Myers concludes. □

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## Round Up

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### Trade & Customs Round Up

*By Linda Zhang (Thomson Reuters)*

#### **Administration Holds Hearing on Negotiating Objectives for International Services Agreement**

On March 12, the Interagency Trade Policy Group led a public hearing which drew out key issues of the over 20 trading partners involved in the recently-announced International Services Agreement. Among the issues are increased market access and national treatment, cross-border data flows, and state-owned enterprises. The Deputy Assistant U.S. Trade Representative for Services Christopher P. Melly noted at the meeting that the USTR has collected close to 50 written submissions regarding the ISA, adding to the 12 witnesses who testified at the public hearing, according to the Sandler, Travis & Rosenberg Trade Report.

The ISA negotiations are scheduled to start in the spring and will involve Australia, Canada, Chile, Colombia, Costa Rica, the European Union,

Hong Kong, Iceland, Israel, Japan, Korea, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Taiwan and Turkey, which represents about two-thirds of the global services trade.

#### **Trade Association Urges USTR to Promote Digital Trade & Protect IP in the New Services Agreement Negotiations**

The Software & Information Industry Association (SIIA), the main trade association for the software and digital content sectors, urged the United States Trade Representative (USTR) to consider eliminating barriers to trade in digital services and maintain a strong stance on protecting intellectual property and enforcement in a comment to the USTR, according to the SIIA official press release. In the comments, SIIA echoes concerns of the government interfering with access to cross-border information flow and the required use of local infrastructure.



## **EU Readies for Retroactive Duties on China Solar Panels**

Starting March, European Union duties on Chinese solar panels could be implemented retroactively. EU customs officials have already begun to register imports of Chinese solar panels. The punitive actions result from investigations the European Commission launched last fall to determine whether solar panels from China were being dumped in EU markets or benefitting from illegal subsidies, according to Reuters.

The European Commission can impose provisional duties on the imports until June 6, and the Commission must impose definitive duties by December 5.

## **China Issues Final Anti-dumping Duties on European Chemical**

Amidst strained ties between China and the European Union over anti-dumping allegations, China issued final anti-dumping duties on toluene di-isocyanate imports from the European Union, announced the Commerce Ministry in March, according to Reuters.

This latest action poses duties of 6.6 percent to 37.7 percent on European exports of the chemical used in polyurethane, plastics and rubber production, said the Ministry. Companies Bayer Material Science AG will be subject to duties of 19.2 percent while Dow Chemical Tarragona and Perstorp France will suffer duties of 37.7 percent.

## **Thai Rosewood Gets International Protection to Curb China Trade**

Member states at the annual Convention on International Trade in Endangered Species voted to place Thai rosewood under international protection, in attempts to curb the smuggling of Thai rosewood mainly into China, according to Reuters. Though the logging of rosewood in Thailand is already banned by the 1989 National Logging Ban, a rising demand from Chinese wealthy elite along with the lack of aggressive law enforcement have driven sales of the precious wood species again. Thai rosewood can sell for as much as \$50,000 per cubic meter.

## **U.S. Groups Criticize India Drug, Tech, Farm Policies**

U.S. industry groups are pushing Washington to increase pressure on India to reform policies that they say are blocking U.S. exports of high-tech, agricultural and pharmaceutical products and hurt patent rights, according to Reuters. The groups claim that India is limiting drug patents of

U.S. products to benefit domestic companies. This push arises at a time when U.S. trade benefits for India are up for renewal.

## **New Orders, Exports Help U.S. Service Sector Grow in February**

A rise in demand for exports has helped drive the U.S. services sector to its fastest pace in a year in February, according to Reuters. The Institute for Supply Management recorded that its services index rose to 56 from 55.2 in January, exceeding economists' forecasts.

## **U.S. Farm Trade Frets over Sequestration, Meat Sector Worries Most**

Federal budgets will affect the supply chains of all commodities across the board, and could potentially hurt food exports which regularly post a large trade surplus, according to Reuters. The meat sector could particularly suffer if cuts are made to furlough USDA inspectors, which are required for any slaughterhouse activity to continue.

The cuts will be spread across the next seven months, so there is still opportunity to resolve budget issues prior to the furlough of inspectors, said a representative of a national meat council. U.S. agribusiness executives and officials have said they expect the government to carefully make decisions regarding the important U.S. food system to minimize disruptions. □

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these discussions when cargo is stopped, seized by customs or when customs auditors knock on the CEO's/CFO's door. A typical cause for this situation is that the CCP is treated as a "lonely island" inside a company. Over the years I have been asked many times, "Could you recommend the best department to place our CCP?" My typical answer is "Unfortunately I cannot find in your structure a department to which CCP should not be attached". While those asking this question initially find my answer to be confusing they come to understand it after we do a complete review of the relevant Customs rules as they apply to their export and import operations.

A company can put itself on the right track once it provides its CCP with knowledge of the its strategic plans, access to customs service providers, and by applying the benefits offered by special EU customs regimes and duty deferral programs.

The Union Customs Code provides for 8 customs procedures: release for free circulation,

treatment such as customs warehousing or free zones.

ii) Customs warehousing – Procedure allowing the storage of non-EU goods without subjecting them to import duties or commercial policy measures; (Art. 98 (1) CC)

Customs warehousing allows the owners to hold imported non-EU goods in the EU and choose when they pay the duties, or in turn re-export the goods

Daily practice shows that customs warehousing provides many of benefits, especially when the importer neither knows the exact time of usage of goods nor is sure whether goods will be finally dedicated to EU market (re-exportation possibility without paying duties and taxes to other non-EU countries).

iii) Inward processing (IPR) – Procedure allowing the import of goods for the purposes of processing and re-exportation; the import duties are either suspended, together with commercial policy measures (suspension system), or initially paid and refunded at re-export (drawback system); (Art. 114 CC)

Inward processing allows imported raw materials or semi-manufactured goods to be processed for re-export within the EU by EU manufacturers without a requirement that the manufacturers pay customs duty and VAT on the goods.

iv) Processing under customs control – Procedure allowing goods to be imported under suspension of import duties and commercial policy measures for the purposes of processing and subsequent release for free circulation at a more favorable import duty; (Art. 130 CC)

Processing under customs control means that goods may be processed into products which are subject to a lower duty rate before they are put into free circulation (e.g. PVC materials subject to a duty rate of 8.3 percent may be processed into film screens with a duty rate of 2.7 percent). The "inverted tariff" advantage obtained should contribute to creating or maintaining processing activities in the EU.

v) Temporary importation – This means that goods may be used in the EU without payment of duty or VAT under certain conditions and re-exported afterwards in the same state as they were imported; verbal, rather than written, declarations can be made for certain types of goods; very often an A.T.A. carnet is used in this procedure.

Moreover, in the importation process, it is worth mentioning free zones. Free zone treat-

**Most issues concerning importing into the EU come from a lack of knowledge of EU customs law and lack of understanding of EU historical and cultural background.**

transit, customs warehousing, inward processing, processing under customs control, temporary importation, outward processing, and exportation (Art. 4 (16) CC).

As is evident, the process of importation is dependent on the final destination of the goods, as well as the logistics process. For these reasons, the following procedures need to be considered:

i) Release for free circulation - Basic procedure when it comes to importation into EU; imported goods which have been released for free circulation after payment of the import duties are in free circulation within all EU

The purpose of the release for free circulation is to fulfill all import formalities so that the goods can be sold on the EU market like any other product made in the EU. Release for free circulation thus confers on non-EU goods the status of EU goods.

It is worth highlighting that goods can be placed under free circulation following another temporary customs procedure or approved

ment can be applied to non-EU goods. Free zones are special physical areas within the customs territory of the EU. Goods placed within these areas are free of import duties, VAT and other import charges. Non-EU goods stored in the zone are considered as not yet imported to the Customs territory of the EU.

Upon importation, free zones are mainly for storage of non-EU goods until they are released for free circulation. No import declaration has to be lodged as long as the goods are stored in the free zone. Import and export declarations only have to be lodged when the goods leave the free zone. In addition, there may be special reliefs available in free zones from other taxes, excises or local duties. These will differ from one zone to another.

vi) Transit procedure – Customs transit is a customs procedure used to facilitate the movement of goods between two points of a customs territory, via another customs territory, or between two or more different customs territories. It allows for the temporary suspension of duties, taxes and commercial policy measures that are applicable at import; thereby allowing customs clearance formalities to take place at the destination rather than at the point of entry into the customs territory.

Customs transit is particularly relevant in the EU where a single customs territory is combined with a multiplicity of fiscal territories. It allows the movement of goods under transit from their point of entry into the EU to their point of clearance where both the customs and national fiscal obligations are executed.

The customs transit procedure enables goods to move more freely and simplifies customs formalities. It takes the form of a temporary suspension of the duties and taxes normally due on goods imported into the customs territory. This procedure is based on a convention between the EU and the countries of the European Free Trade Area (EFTA).

Customs transit is a customs procedure that facilitates the transport of goods:

- Between two points in the customs territory;
- Between two points in the customs territory, via a different customs territory;
- Between two or more different customs territories.

So how are goods entered for the procedure? Imported goods are entered for the procedure by means of a customs declaration. The time of acceptance of the customs declaration for release

for free circulation (Articles 67, 201 (2), 214 CC) determines, in principle, the date to be taken into account for calculating the amount of import duties if the goods are liable to duties (as well as value added tax and, if applicable, excise duty). This applies both to the nature, customs value and quantity of the goods, as well as the duty or tax rate to be applied.

How best to classify the goods for importation into Europe? The European Union is a customs union where the same import duty rates are applicable in all member states. The tariff applicable to imports from the U.S. is the MFN (Most-Favored-Nation) tariff rate which also applies to other members of the WTO-agreement. EU TARIC (Integrated Tariff of the European Communities) is harmonized with the U.S. Harmonized Tariff Schedule up to the 6 digit sub-heading level. This also covers EU specific codes as a part of Import Control System and Export Control System and should be rechecked at the Member States' level.

The EU Tariff - import duty rates are expressed as:

- ad valorem tariffs equal to a percentage of the product's value
- specific tariffs per unit weight/volume/number of pieces
- a combination of ad valorem and specific tariffs

EU Customs use WTO Valuation Code to determine proper customs value, but customs value is calculated based on CIF value, not FOB. To determine customs value of goods the following elements must be included (e.g.):

1. Commissions and brokerage, except buying commissions
2. Costs of and charges for packing and containers
3. Assists, i.e. goods (materials, components, tools, dies, etc. or services for designs, plans, etc.) supplied free or at a reduced cost by the buyer for use in production of the imported goods
4. Royalties and license fees
5. The cost of transport, insurance and related charges to the first place of importation into the EU

The above mentioned additional dutiable elements may have significant impact on planning the company's customs budget when importing into the EU.

The following can be deducted from the customs value, if they can be distinguished from the price actually paid or payable:

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# Trade Compliance

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- Freight after importation into the customs territory of the EU
- Cost of construction, erection, assembly, maintenance or technical assistance occurring after importation

In case of any doubts Customs can reject the transaction value declared by an importer and require the use of (e.g.):

- transaction value of identical goods
- transaction value of similar goods

In addition to the calculation of duties applicable at the time of entry, determination of the value of imported merchandise is also necessary to calculate the Value-Added Tax ("VAT") due at time of entry. VAT is applied by each member country at the Member Specific rate (generally ranging from 18 percent-23 percent).

Attention must be paid to the fact that from July 1, 2009, the registration number attributed nationally is available at the EU Community level (EORI). Therefore, according to current legislation, registration numbers of any importing entities must be established in the member states by which the entity is supervised.

## Conclusion

Most issues concerning importing into the EU come from a lack of knowledge of EU customs law and lack of understanding of EU historical and cultural background; as well as the already

mentioned LSS approach "Let's ship it and see what happens". It is widely known that post entry adjustments, even if sometimes possible, are much more time consuming than pre-shipment customs analysis.

The following questions should be answered when discussing importing into the EU:

- What are the requirements for transferring goods between EU Member States?
- How does the EU Authorized Economic Operator Program compare to U.S. CBP's Customs and Trade Partnership Against Terrorism (C-TPAT) program?
- How can global companies benefit from EU FTAs?
- What other non-tariff measures may apply to imports into the EU?
- How can a global company protect itself by obtaining EU Binding Tariff or Origin Rulings

For global companies, importing into the EU can be complex, but may be successfully managed by taking the right Customs approach. □

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# Trade Promotion Authority

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*Fast-Track from page 1*

States prepares to launch trade talks with the European Union and as it seeks to finish talks on a Trans-Pacific Partnership pact by the end of the year.

Trade promotion authority, also known as TPA or "fast track," allows the White House to submit deals to Congress for straight up-or-down votes without any amendments.

It is considered essential to assuring other countries that any deal they reach with the United States will not be picked apart by U.S. lawmakers during the approval process.

Both Camp and Senate Finance Committee Chairman Max Baucus, a Democrat from Montana, have announced plans to pursue TPA legislation. But many lawmakers believe a strong push from Obama is needed because trade bills are unpopular with many Democrats.

After four years of telling Congress they would seek TPA at "the appropriate time," the

annual trade agenda released in March by the U.S. trade representative's office contained the administration's most forward-leaning language yet.

"To facilitate the conclusion, approval, and implementation of market-opening negotiating efforts, we will also work with Congress on Trade Promotion Authority. Such authority will guide current and future negotiations, and will thus support a jobs-focused trade agenda moving forward," the report said.

## Asia-Pacific Trade Push

The Obama administration, even without the authority, has pursued the proposed Trans-Pacific accord between the United States and 10 other countries in the Asia-Pacific region. But negotiators hope to finish those talks this year, possibly as early as the annual meeting of leaders from Asia-Pacific Economic Cooperation nations in

October in Bali. That could be hard if the White House does not have TPA.

"Whether you're talking about the Trans-Pacific Partnership or a U.S.-EU FTA, they're both going to be complicated and having them subject to amendment will make it tough to get them through the Senate," said Timothy Punke, a former Senate aide who is now a partner at Monument Policy Group.

Congress last approved TPA legislation in 2002, following a bitter fight. Republicans, who generally favor free trade, passed the bill over the objections of Democrats, many of whom blame past trade agreements for U.S. job losses.

Senator Orrin Hatch of Utah, the top Republican on the Senate Finance Committee, said in March he was pleased the White House was "finally" asking for renewal of the legislation.

But "making TPA a reality requires more than talk, it demands real leadership and action from the president," Hatch said, calling the legislation an essential "lynchpin" for Obama's trade agenda.

Senator Rob Portman, an Ohio Republican and former U.S. trade representative under President George W. Bush, welcomed the statement but said it was critical the administration "focus needed resources to developing and passing TPA."

The U.S. business community has made passage of TPA one of its top priorities this year.

"We think it's a critical tool to effectively negotiate agreements and get them passed by Congress," said John Engler, president of the Business Roundtable and a former Michigan Republican governor.

Christopher Wenk, senior director of international policy at the U.S. Chamber of Commerce, said his group welcomed the administration's acknowledgement that "TPA needs to be on the agenda" as it pursues an expanding list of trade initiatives. □

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## Trans Pacific Partnership

### 'Solid progress' at Pacific Trade Talks but No Quick Japan Entry

*By John O'Callaghan (Reuters)*

Progress is being made in Trans-Pacific Partnership (TPP) trade talks but hurdles remain and Japan is unlikely to be set to join the next round in May, negotiators said in March, pointing to a tough road for the 11 nations hoping for a deal in 2013.

If Japan wants to take part, it must first hold bilateral meetings with existing members and be supported by a consensus to "keep up the good momentum" as the countries prepare for the next talks in Peru, said Singapore negotiator Ng Bee Kim.

"I don't think we're looking at Japan specifically coming on board in Lima," Ng told a news conference after the 16th round of the three-year-old talks ended in Singapore.

The TPP, which has grown from seven countries, aims to eliminate barriers to goods and services and address issues including the movement of electronic data, market access for financial firms and copyright protection.

Japanese media say Prime Minister Shinzo Abe is expected to announce in March that Japan

would like to join the talks. Asked about Washington's concerns, U.S. negotiator Barbara Weisel noted a recent U.S.-Japan statement confirming the TPP stance that "all goods are on the table" and the goal that "the agreement will be comprehensive and high-standard."

For the United States, the TPP is the centerpiece of its efforts to refocus economic, diplomatic and security attention on the fast-growing Asia-Pacific region but it must contend with pressure at home about access to the U.S. market.

A statement on the Singapore talks noted "solid progress" to bridge gaps in a number of areas and said there were advances on regulatory issues, telecommunications, customs and development.

The "more challenging areas" include intellectual property, the environment, competition and labor, said the statement by Singapore's Ministry of Trade and Industry.

The goal is to wrap up negotiations by the end of this year or even by the Asia Pacific Economic Cooperation (APEC) summit on the Indonesian

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island of Bali in October. The next round of talks in Lima is due to be held from May 15-24.

Top trade officials from the TPP countries will also meet in Surabaya, Indonesia, in mid-April on the sidelines of the annual APEC trade ministers meeting.

"As the negotiations draw to a close, high-level officials will be more actively engaged with one another on ways to address the remaining sensitive issues," the U.S. Trade Representative's office said in a statement.

Negotiations shifted into a "higher gear" during the Singapore round, with "productive exchanges" on tariff phase-out agreements for agriculture, manufactured goods and textiles as well as rules of origin, USTR said.

The TPP countries are the United States, Canada, Mexico, Australia, New Zealand, Chile, Peru, Vietnam, Malaysia, Brunei and Singapore - many of them with differing issues about opening agricultural markets, protecting intellectual property and setting rules for state-linked companies.

If Japan does join the talks, it is expected to try to keep its barriers on rice imports and other agricultural goods. Several thousand people from a Japanese farm lobby group staged a rally on Tuesday to oppose their country's participation.

### **Calls for Flexibility**

Pharmaceuticals are another tricky area. The United States wants tougher patent protection to reflect the costs of research and development but

critics say that would keep drug prices too high for poor people by restricting generic versions.

Medecins Sans Frontieres (Doctors Without Borders), a humanitarian group, said the U.S. proposals "threaten to roll back internationally agreed public health safeguards and would put in place far-reaching monopoly protections."

"Too many people already die needlessly because the medicines they need are too expensive or do not exist," it said in a statement.

Vietnam, a major clothing exporter seeking greater access to the U.S. market, wants more flexible rules of origin to reflect the global supply chain but is "open to any proposal that can help us to move forward," said its negotiator, Khanh Tran Quoc.

Malaysian negotiator J. Jayasiri said his country is concerned about market access, especially for textiles, and wants "sufficient flexibilities to accommodate the kind of difficulties that we face" - including intellectual property.

In a statement, 10 business groups from TPP countries called for the negotiators "to show flexibility and narrow the range of differences" so a deal can be reached as quickly as possible.

"However, bearing in mind that TPP should be a high-quality agreement, we don't want to sacrifice substance for speed," it said.

"We welcome new parties to join the TPP but we hope that the inclusion of new participating economies would not slow down the current negotiation process." □

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## Trade Deals

### **Obama Says More Trade Deals Needed to Help Create Jobs**

*By Doug Palmer (Reuters)*

U.S. President Barack Obama said in March that forging new trade deals with Europe and 10 countries in the Asia-Pacific region would be an important part of his second-term agenda to spur economic growth and create jobs.

"What we know is that a lot of the growth, a lot of the new jobs that we've seen during the course of this recovery have been export driven," Obama said at a meeting of the President's Export Council, which brings together corporate leaders and members of Obama's Cabinet to discuss trade issues.

"The question now becomes how do we sustain this momentum. Part of it is making sure we get in place strong trade deals."

The statement reflected how far Obama has moved on trade since early in his administration, when he frustrated many business leaders for not moving quickly to enact free-trade pacts with Colombia, Panama and South Korea left over from Republican President George W. Bush's administration.

Obama submitted those deals to Congress for approval more than two and a half years into his

first term and only after making changes to shore up support among fellow Democrats.

**A ‘Most Ambitious Agenda’**

Now, his administration hopes to finish talks on the proposed Trans-Pacific Partnership with 10 countries in the Asia Pacific region by the end of the year and to start free-trade talks with the 27-nation European Union by June.

“If we succeed ... we will have created free trade with two-thirds of the world, both by GDP and by global trade,” the White House’s international economic affairs adviser Michael Froman told the group. “That will be perhaps the most ambitious trade agenda we’ve seen in a while.”

U.S. Trade Representative Ron Kirk, who is leaving his job soon to return home to Dallas, said the White House would formally notify Congress shortly of its plans to negotiate the U.S.-EU trade deal, a procedural step that allows lawmakers to weigh in before actual talks begin.

The talks are expected to be tough because of different approaches to food safety and other regulatory issues that have blocked exports of U.S. farm products and other items to Europe.

Obama said he believes Europe’s economic slump has made it “hungrier for a deal” than in the past and therefore more willing to address U.S. concerns.

EU Trade Commissioner Karel De Gucht said in March he would ask the 27 EU countries to approve his draft negotiating mandate, which will set out how much room for maneuver he has in his talks with Washington.

“I hope that member states will now quickly decide to open negotiations so work can begin with the United States ahead of the summer break”, De Gucht told a news conference at the European Parliament in Strasbourg, France.

The Commission also released a study by the London-based think tank, the Center for Economic Policy Research, showing that a free-trade pact could generate 119 billion euros (\$155 billion) a year for the European Union and 95 billion euros a year for the United States.

That translates on average to an extra 545 euros in disposable income each year for a family of four in the EU and \$854 per family in the United States.

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# Trade Deals

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According to the study, carmakers would likely be the biggest beneficiaries of an accord, because of the current high tariffs and differences in regulation on both sides of the Atlantic. Processed foods, chemicals and transport equipment would also see increases in sales, the study found.

## No Trade Nominations Yet

Despite the emphasis Obama is putting on trade in his second term, he has not yet nominated a replacement for Kirk, or for former Commerce Secretary John Bryson who left the administration last year because of a health problem.

Rebecca Blank has been serving as acting commerce secretary, but she recently interviewed for the position of chancellor at the University of Wisconsin-Madison, suggesting she may also leave the administration soon.

Froman, who has been a driving force on trade policy from his position at the White House, noted that the United States' negotiating agenda leaves out many important emerging economies like China, India, Brazil and South Africa.

"But we are very much prepared to work with them when they're ready to come to the table and play the role that we think they should play in the global economic system," he said.

The United States has criticized major emerging countries for not making better offers to open up their markets in the long-running Doha round of world trade talks.

Despite the impasse in the broader Doha negotiations, the United States hopes World Trade Organization members can reach a smaller "trade facilitation" deal to cut red tape in customs procedures by the end of the year, Froman said. □



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