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Feature Article

RTAs: From Building Blocks to Stumbling Blocks

The debate over the relationship between discrimination and multilateralism may be the single most important controversy in the trading system today, and represents a major shift in focus. The days have long passed when the principal question was whether countries would opt for free trade or protection; the choice today is instead between what route they will take towards free trade.

This controversy stretches back to the years before inauguration of the World Trade Organization (WTO) in 1995. Free trade agreements (FTAs) and other forms of regional trade arrangements (RTAs) were always permitted under the terms of Article XXIV of the General Agreement on Tariffs and Trade (GATT), but remained rare exceptions to the general rule of multilateralism until the very end of the GATT system. The pace of RTA negotiations stepped up greatly after the United States reached its first FTA (with Israel) in 1985, prompting scholars to ask what this portended. By the early 1990s Robert Z. Lawrence had distilled this debate into the question of whether RTAs were best seen as building blocks or as stumbling blocks for the multilateral system.

The analysis that follows stresses the differing relationships between RTAs and multilateralism in the GATT period (and more specifically the Uruguay Round) *versus* the WTO period (and more specifically the Doha Round). The differences begin with the numbers. What was once the exception has very nearly become the rule, with RTAs having gone from scarce to abundant.

The more significant differences are qualitative. In the waning days of the GATT system there may indeed have been a strong case for portraying RTAs as building blocks, especially with regard to the introduction of new issues, but in the WTO era their capacity to block multilateral progress has been much more in evidence. Whereas RTAs helped to advance the Uruguay Round by setting useful precedents for issues that were then taken up in the multilateral talks, the Doha Round has seen the reverse sequence: Issues that were taken off the table in the round are instead being pursued in RTAs.

RTAs also have different meanings today in both North-South and in North-North relations. For developing countries

they can create a disincentive to completing the round. While policymakers in a few developing countries view the Doha Round as a complement to RTAs and as an opportunity, many others see it as a substitute and a threat. That is especially notable for those developing countries that want to achieve and preserve preferential access to the markets of industrialized countries, and for whom multilateral liberalization may mean reductions in their existing margins of preference. As for the developed countries, and especially the largest among them, RTA negotiations are no longer confined to their smaller partners. As long as there existed a "glass ceiling" that prevented the major players from negotiating RTAs with one another, they reserved their major initiatives for the multilateral talks. Now that the ceiling is shattered, serious questions arise about the future of negotiations in the WTO.

RTAs as Building Blocks: The Introduction of New Issues

The best argument to be made in favor of RTAs, from the multilateralist's perspective, is in their role as policy laboratories. The parties to a regional agreement may use the negotiations as an opportunity to set precedents on new issues that might later be taken up in multilateral talks. The actual meaning of those precedents may depend, however, on the sequence of the negotiations. The ideal order is one in which the RTA negotiations precede the multilateral talks, and allow the *demandeur* on a new issue to demonstrate to other members how the issue might be handled if it were taken up multilaterally. In another variation the *demandeur* that has been rebuffed at the multilateral level may repair instead to bilateral and regional negotiations. That second variation does not preclude a return to the first; it is possible that the resistance in the WTO may later abate, allowing the precedents set in the RTA negotiations to be taken up in a global deal.

The first of these sequences is best demonstrated by the approach that the United States took towards the "new issues" of investment, services, and intellectual property rights in the 1980s. While the US-Israel trade relationship in 1985 was relatively small, the precedents set by the FTA negotiated that year were large. This was the first agreement covering the new issues, and preceded the launch of the Uruguay Round by a year. Later US RTAs expanded greatly on this agreement's toeholds, as shown in Table 1, and also set precedents of their own on other new issues. It is no coincidence that the negotiations over the US-Canada FTA (begun in 1986 and concluded in 1988) and then NAFTA (begun in 1991, concluded in 1992, and revised in 1993) came during the start- and end-games, respectively, of the Uruguay Round. The first of these FTAs was intended by US policymakers not only to govern the world's largest bilateral trade relationship but also to set significant precedents for the multilateral system; the second FTA demonstrated that these same issues can be negotiated in a North-South agreement.

The European Union followed a different sequence in its efforts to advance the Singapore issues, treating RTAs as fallbacks rather than laboratories. The Singapore issues — so called for their association with the WTO's Singapore ministerial of 1996 — are competition policy, government procurement, investment, and trade facilitation. The European Union was the chief *demandeur* on each of these issues, for which it argued that a new round of multilateral negotiations was in order. It managed to secure the provisional inclusion of each of these issues in the Doha Round when it was launched in 2001, but encountered strong opposition from developing countries. That

Table 1: Issue Coverage of Selected FTAs of the United States and the European Union

Years Indicate Date of Signature

	FTAs of the United States				FTAs of the European Union			
	Israel 1985	NAFTA 1993	Chile 2003	Korea 2007	Andorra 1991	Tunisia 1995	Chile 2002	Korea 2010
Uruguay Issues								
Intellectual Property	⊙	●	●	●	–	●	●	●
Services	⊙	●	●	●	–	●	●	●
Singapore Issues								
Competition Policy	–	●	●	●	–	●	●	●
Gov't Procurement	⊙	●	●	●	–	⊙	●	●
Investment	⊙	●	●	●	–	⊙	⊙	●
Trade Facilitation	–	●	●	●	–	⊙	⊙	●
Other Issues								
Labour Rights	–	●	●	●	–	–	⊙	⊙
Environment	–	●	●	●	–	⊙	⊙	●
Electronic Commerce	–	–	●	●	–	–	⊙	●
Geographical Indics.	–	⊙	⊙	⊙	–	○	○	⊙

● *= Full chapter, annex, appendix, or other section or side agreement devoted to the issue.*

⊙ *= One or more full articles devoted to the issue.*

○ *= Other coverage of the issue (e.g., language within the terms of an article dealing with a related issue).*

– *= No coverage.*

opposition eventually convinced the European Union to take three of these issues off the table in 2003-2004; the only one that remains part of the Doha Round is trade facilitation. Removing these issues from the multilateral negotiations has not meant expelling them from trade talks altogether, but instead shunted them to other negotiations.

As shown in Table 1, the United States and the European Union have continued to use RTAs as means of securing deeper commitments on new issues. These include not just the topics that the United States brought into the system in the Uruguay Round and those that the European Union failed to keep on the table in the Doha Round, but also other subjects that have faced even sharper opposition. Most of the FTAs that these two largest players have reached after the Cancún ministerial of 2003 include commitments on labour rights and the environment. It is doubtful, however, that any precedents set on those issues in North-South RTAs will be taken up in new negotiations at the multilateral level.

The Strategy of Competitive Liberalization

The strategy of competitive liberalization sought to build upon the positive experience of the 1980s and 1990s, using RTAs as a means of promoting deeper commitments both on traditional and newer issues in trade negotiations. This is a strategy that treats bilateral, regional, and multilateral negotiations as progressive steps towards the shared objective of open markets. It can be pursued in either of two ways. One is the more cooperative, "bandwagon" variant in which a country encourages its trading partners to climb aboard in order to enjoy the best access to the largest market at the earliest time. There is no promise here that the preferential access of an RTA will be exclusive; its margins of preference will be diluted by the negotiation of like agreements at the regional level, and further eroded by multilateral agreements. The other approach is more confrontational, threatening actual or potential partners that if they do not negotiate the issues and agreements that the country proposes they may find themselves left behind.

The stricter version dates from the late GATT period, and was part of the aforementioned US efforts to advance the "new issues" of services, intellectual property rights, and investment. The first step in the US strategy was to respond to the preoccupation of Canadian trade officials over Washington's apparent move towards protectionism, as manifested in the increasing use of the trade-remedy laws, by agreeing to negotiate an FTA as long as it covered the new issues. Launching those bilateral talks signaled to other GATT countries that the United States was prepared to "go bilateral" if the proposed new round did not likewise include these topics. The Uruguay Round was in fact launched four months after the bilateral talks began in May, 1986, and did take up the new issues that the United States promoted.

Competitive liberalization has not been as successful in the Doha Round. The United States kept the strategy in place after the Doha Round suffered a setback in the 2003 Cancún ministerial, but now it had a sharper edge. Then-US Trade Representative Robert Zoellick distinguished between what he called the "can-do" and the "won't-do" countries, expressing his disgust in a *Financial Times* editorial with "the transformation of the WTO into a forum for the politics of protest." After two years of pushing "to open markets globally, in our hemisphere, and with sub-regions or individual countries," he warned, the United States would not wait any longer, but would instead "move towards free trade with can-do countries." It was at that point that the pace of US FTA negotiations accelerated. At the start of 2003 the United States had FTAs in place or under development with just five partners; over the next three years it would initiate negotiations with 22 countries and conclude them with 14.

How did that strategy fare? There is evidence to suggest that bilateral agreements do encourage more of the same, but the evidence is much weaker on whether smaller agreements effectively encourage larger ones at the regional and multilateral levels. As time went on negotiations floundered; the mega-regional negotiations in the Asia Pacific Economic Cooperation forum and for a Free Trade Area of the Americas each ground to a near-halt by 2003, and the Doha Round went into a lower gear at about the same time.

RTAs as Stumbling Blocks: The Proliferation of Agreements

RTAs were rarities for much of the GATT period, but their numbers proliferated towards the end of that era. The rate of increase stepped up after the WTO came into effect, with the average number of RTAs among these

members more than doubling between 1985 and 1995, and then more than tripling between 1995 and 2005. WTO members concluded more new RTAs in the seven years from 2005 to 2012 than in the preceding ten years.

From a regime standpoint the raw number of RTAs is less important than who is negotiating them with whom. It is one thing when small- or mid-sized trading countries strike bargains with their immediate neighbors, and something altogether different when those countries negotiate extra-regional agreements with the biggest players. The most consequential change comes when the largest players start to negotiate RTAs with one another. The patterns of RTA negotiations can be reduced to three phases. The first lasted from the start of the GATT system through the early 1980s, when RTAs remained rare exceptions that were largely confined to the negotiation of partial scope agreements, FTAs, or customs unions among countries in the same region. These were common both to the developing countries and, in the case of Western Europe, the developed countries. The second phase, which roughly coincided with the period of the Uruguay Round, saw an increase in extra-regional negotiations and a small but precedential number of North-South initiatives. The European Union and the United States each began to negotiate FTAs with developing countries in the late GATT period. The third phase began with the start of the WTO period. The only real difference between this third phase and the one before it was in the quantity.

The point is sharper still if one looks only at the four largest members. The European Union, United States, China, and Japan collectively account for close to half of global trade, and also have outsized influence in determining the direction of the multilateral trading system. These members of the "new Quad" have distinct histories of negotiating RTAs. The European Union and its predecessor arrangements came first, starting in the early 1950s. It began to negotiate FTAs with other partners in the 1970s, starting first in Europe and then going extra-regional. The United States then followed in the 1980s, as did China and Japan in the 2000s. The rapid rise in these members' RTAs can be seen in Figure 1.

Until recently these four countries have exercised real restraint in their RTA negotiations, with the cut-off point having been drawn at the next largest set of trading powers. Australia, Canada, and Korea had been the limit for the new Quad. By about 2010, however, the four largest members began to consider other, bigger plans. By then Japan was weighing its options for entry into the TransPacific Partnership negotiations, and hence into an FTA relationship with the United States, as well as FTAs with both the European Union and China. The European Union and the United States also began moving towards an FTA. Altogether, four of the six possible configurations of FTA negotiations among new quad were at some stage of active consideration by the start of this year. The only two arrangements that policymakers had yet to broach are those aforementioned US-China or EU-China agreements.

Figure 2 elaborates on this pattern, showing the RTAs among ten members that collectively account for two-thirds of global merchandise trade. There are 45 bilateral relationships (or dyads) among these ten members. As of 1995 there was only one RTA in effect among them, with three joined together in NAFTA. Today the number of RTAs had grown to eleven (24.4% of the 45 dyads), as well as fifteen more under negotiation (33.3%) and at least seven others that are known to be in some stage of study or pre-negotiations (15.6%). Altogether, nearly three-quarters (73.3%) of these

Figure 1: Regional Trade Arrangements of the Four Largest WTO Members, 1975-2012

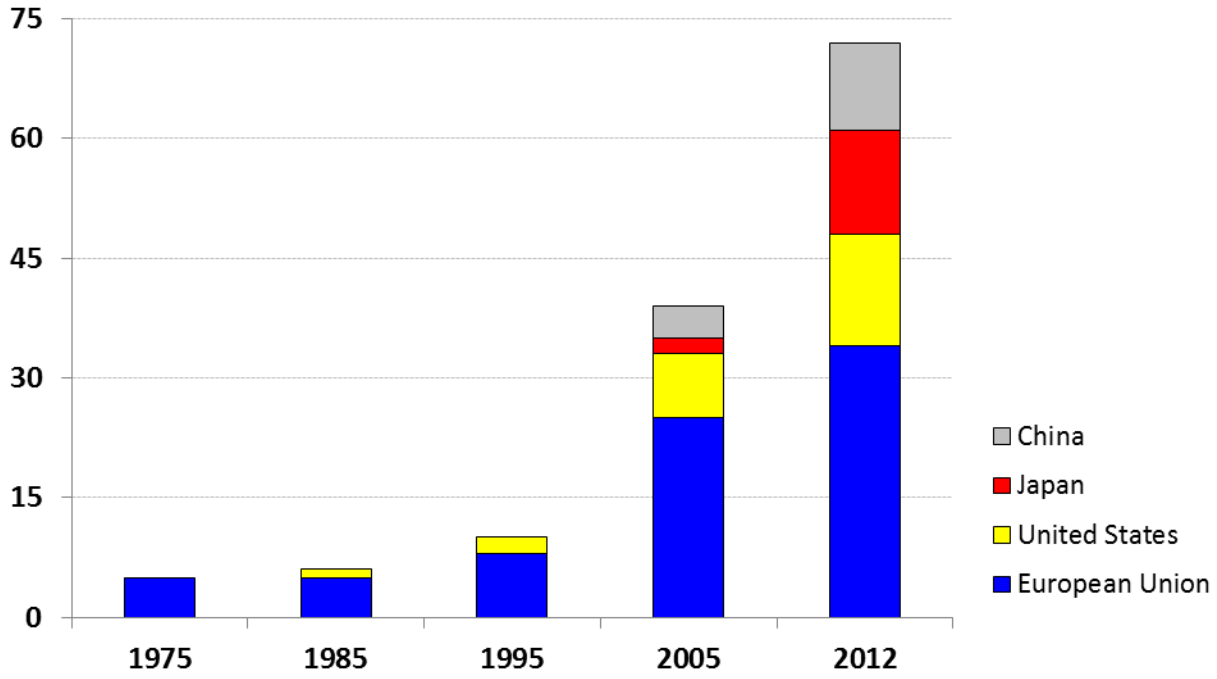

Figure 2: Regional Trade Arrangements among the Ten Largest WTO Members, 1995 and 2013

2013: \ 1995:	USA	CHN	JPN	AUS	HK	CAN	KOR	MEX	IND	
										EU
USA						■		■		USA
CHN										CHN
JPN	?	?								JPN
AUS		■	■	■						AUS
HK			■							HK
CAN	■	■	?	■	■			■		CAN
KOR	■	■	?	■	■		■			KOR
MEX	■	■	?	■	■		■	■		MEX
IND	■		?	■	■		■	■	?	IND
	EU	USA	CHN	JPN	AUS	HK	CAN	KOR	MEX	

Key:

Proposed or under consideration:	?
Under negotiation or pending approval:	■
Agreement in effect:	■

Source: Tabulated from the Regional Trade Agreements Information System (http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx) and other sources (principally the websites of the ten members' trade ministries).

dyads had already produced RTAs or appeared to be headed that way. The only one of these ten biggest traders that had not engaged in multiple RTA negotiations with the others was Hong Kong, a special case whose economy is already the most open in the world. With that exception, the only potential agreements among these ten that had yet to reach even the stage of formal (acknowledged) study were the EU-Australia, US-India, EU-China, and US-China configurations. Those are the only shards left in the glass ceiling.

The net effect of RTAs on the multilateral system appears to be significantly less positive today than it was during the time of the Uruguay Round, serving less as laboratories for new issues than as fallbacks for the failure of the round. It would be far too strong a claim to argue that RTAs are uniquely responsible for that failure; there are numerous other causes that need to bear part of the blame, including the absence of strong US leadership, the difficulties of reaching consensus among a large and diverse membership, and the intangible but very real sense that cautions are greater and ambitions are lower now than they were during the Uruguay Round. The proliferation of RTA negotiations nevertheless appears to have added to the burden of the Doha Round, creating disincentives to negotiate in some countries and distracting negotiators' time and resources in others.

Negotiations & Agreements

Secretary Kerry Signs UN Arms Trade Treaty

Secretary of State John Kerry on September 25 signed the United Nations Arms Trade Treaty (UNATT) for the United States. The signing took place alongside the speeches and ceremonies surrounding the opening of the 68th session of the UN General Assembly. The ATT was adopted by the General Assembly on April 2. So far 112 UN Member States have signed the treaty and seven have already ratified it. The treaty is unpopular on Capitol Hill, where opponents in the Senate had cautioned President Obama neither to sign it nor to take any action to implement the treaty without the consent of the Senate.

The treaty is very unlikely to be submitted to the Senate for ratification in the 113th Congress (2013-2014). As recently as March 23 Senator James Inhofe (R-OK) successfully sponsored an amendment to the Senate's Fiscal Year 2014 budget resolution (S.Con.Res.8) specifically "preventing the United States from entering into the United Nations Arms Trade Treaty." The amendment passed by a vote of 53-46 (WTR Vol.29 No.11).

Secretary of state Kerry said in signing the treaty for the United States that —

> This is about keeping weapons out of the hands of terrorists and rogue actors. This is about reducing the risk of international transfers of conventional arms that will be used to carry out the world's worst crimes. This is about keeping Americans safe and keeping America strong.

The administration argues that the treaty requires no changes in current US law or practice in order for the United States to be in compliance with its strictures. Opponents worry that the treaty is vague on several points, including language regarding trade in conventional small arms.

Many of the treaty's US opponents believe that the Obama administration, aware that it could not win a fight in the Senate for ratification (which

requires the support of two-thirds of the 100-member upper chamber), will simply use executive orders or other steps to implement the terms. The National Rifle Association, which has led popular opposition to the treaty, issued a video report contending that it poses a threat to US sovereign rights under the Second Amendment of the US Constitution (i.e., the right to keep and bear arms). While advocates of the treaty argue that the treaty's aim is to stop the illegal international trade in small arms and other weapons, US opponents fear that its "real agenda … is domestic gun control," as former UN Ambassador John Bolton says in the video.

The day before Kerry signed the treaty, Senator Bob Corker (R-TN) wrote a letter to President Obama warning him that, "Any act to implement this treaty, provisionally or otherwise, before the Congress provides its advice and consent would be inconsistent with the United States constitution, law, and practice." Corker, who is the Ranking Member of the Senate Foreign Relations Committee, wrote —

> As you know, Article II, Section 2 of the United States Constitution requires the United States Senate to provide its advice and consent before a treaty becomes binding under United States law. The Senate has not yet provided its advice and consent, and may not provide such consent. As a result, the Executive Branch is not authorized to take any steps to implement the treaty.
>
> Moreover, even after the Senate provides its advice and consent, certain treaties require changes to United States law in the form of legislation passed by both the House and Senate. The ATT is such a treaty. Various provisions of the ATT, including but not limited to those related to the regulation of imports and trade in conventional arms, require such implementing legislation and relate to matters exclusively reserved to Congress under our Constitution.

Senator James Inhofe (R-OK) was even more direct. He called Kerry and Obama "dishonest" for signing a treaty that has no chance of ratification by the Senate. In his letter to Kerry on September 24 Inhofe reminded him of the vote in March, in which "53 Senators from both parties went on record to vote for my amendment to the Budget Resolution preventing the United States from entering into the treaty." Inhofe stated flatly that the arms trade treaty would "collect dust" in the same way as the Law of the Sea Treaty, the Convention on the Rights of Persons with Disabilities, and the Kyoto Protocol. Inhofe wrote that "the U.N. should not be deceived into thinking the U.S. will ratify a treaty just because it has been signed by the President or someone in his Administration," and declared that "The Administration wastes its time, the United Nations' time, and the Senate's time by signing a treaty which does not have the support of the Senate or the American people."

On Capitol Hill, the warnings about the lack of political support for the treaty were, if anything, bolstered by the outcome of a special recall election that took place on September 10 in Colorado. Two Colorado state senators, including the Colorado State Senate President John Morse, were unceremoniously ousted and immediately replaced by two Republicans. The special election resulted from popular anger over the Democrats' support for four gun-control laws that were signed into law by Governor John Hickenlooper (D).

Senators Urge Inclusion of Anti-Currency Manipulation Enforcement in TPP

A bipartisan group of sixty senators, led by Lindsey Graham (R-SC) and Debbie Stabenow (D-MI), sent a letter to Treasury Secretary Jack Lew and US Trade Representative Michael Froman on September 23 urging that the

TransPacific Partnership (TPP) "include strong and enforceable foreign currency manipulation disciplines" as part of the final agreement. The senators argued that

> Currency is the medium through which trade occurs and exchange rates determine its comparative value. It is as important to trade outcomes as is the quality of the goods or services traded. Currency manipulation can negate or greatly reduce the benefits of a free trade agreement and may have a devastating impact on American companies and workers… A free trade agreement purporting to increase trade but failing to address foreign currency manipulation, could lead to a permanent unfair trade relationship that further harms the United States economy.

The Alliance for American Manufacturing (AAM), which is publicizing the letter, links the currency issue to the recent addition of Japan as a TPP negotiating partner. The group helped organize a similar letter that gathered 230 bipartisan signatories from the House of Representatives in June in the lead-up to Japan's entry into the negotiations (WTR Vol.29 No.21). AAM was founded by the United Steelworkers union.

At least two House members commended the senators for the letter: House Ways and Means Committee Ranking Member Sander Levin (D-MI) and Representative Michael Michaud (D-ME), chairman of the House Trade Working Group. Levin has pressed the administration to include currency manipulation as an integral part of any trade agreement, particularly the TPP. During a July speech, Ranking Member Levin laid out a currency proposal for the TPP negotiations (WTR Vol.29 No.27).

Congressman Calls for Tougher Rules on State-Owned Enterprises

Congressman Michaud wrote to the USTR on September 25 expressing his dismay with the US proposal on disciplines for state-owned enterprises (SOEs) offered in the TPP negotiations. According to Michaud the proposal must be improved in several ways. The agreement should include "explicit transparency requirements for SOE reporting" and also design an accessible registry of SOEs, including the types of subsidies that each listed entity receives. The definition of an SOE must also be broad enough "to include those companies involved in commercial trade activities that are either recognized as an SOE by the government or acting as an SOE." He added that certain types of public services must not be included, such as universities, hospitals, and public utilities. Michaud insisted that SOE disciplines "must be subject to a dispute settlement mechanisms and that mechanism must be able to respond to petition s of injury efficiently." To that end, Michaud strongly recommended that the injury test should be the "injury standard found in U.S. trade law" and that the threat of injury should be actionable. Finally, he recommended establishing a transparent procedure through which stakeholders can submit concerns and a docket to accept petitions regarding SOE "problematic activities."

US-Japan Agreement Recognizes Each Other's "Organic" Food Certification

The United States and Japan announced on September 26 that they have reached an agreement to recognize each other's certification for organic standards for fruit and vegetable products. The agreement enters into force as of January 1, 2014. Beginning on that date, all certified organic plant and plant-based processed products that are produced in the United States or Japan, or which have final processing, packaging, or labeling in either country

may access either market. Organic plant and plant-based processed products must be accompanied by the appropriate export certificates and national organic labeling requirements, as applicable.

Business Groups Push Obama to Demand Changes on Indian Trade Barriers

Eighteen major business and industry trade organizations cosigned a letter to President Obama on September 26 urging him to address India's trade barriers and insufficient intellectual property (IP) protections during his meeting with Prime Minister Manmohan Singh the following day, September 27. The business groups, which have established the *ad hoc* Alliance for Fair Trade with India (AFTI), complained of "India's consistent failure to protect IP rights, uncertain and arbitrary tax policy and tax administration, forced local production of certain information technology and clean energy equipment, and compulsory licenses and patent revocations for innovative medicines." These shortcomings, according to the group, "give India's domestic corporations an unfair advantage over businesses and workers in the United States" and "are inconsistent with India's international obligations and undermine India's own creative community and the ability of American companies to invest."

Laws & Regulations

House-Senate Farm Bill Conference Can Start Once House Conferees Chosen

The House of Representatives moved one procedural step forward in the farm bill debate. On September 28 the House approved resolution H.Res.361 on a nearly party-line basis of 226-191 to incorporate the "Nutrition Reform and Work Opportunity Act" (H.R.3102) foodstamp bill as title IV of the "Agriculture Reform, Food, and Jobs Act" (H.R.2642). The House will thus be ready to move to conference on its version of H.R.2642 with the Senate's version of the bill, once House leaders appoint their conferees. Senate conferees were appointed on August 1.

Update on the Generalized System of Preferences

The authorization for the Generalized System of Preferences (GSP) expired on July 31, 2013. Legislation (H.R.2709) reauthorizing the program through September 30, 2015 was introduced by House Ways and Means Committee Chairman Dave Camp (R-MI) and seven bipartisan committee cosponsors on July 17 (WTR Vol.29 No.29). No further action has taken place as of this report.

Despite the lack of congressional action to reauthorize the program as of this report, there is an expectation that Congress will ultimately renew it. To that end, Representative Lee Terry (R-NE) introduced the "Playing Fair on Trade and Innovation Act" (H.R.3167; not posted yet) on September 20. The bill would toughen the requirements for developing countries to enjoy beneficiary status under the GSP. The bill would add two new requirements for GSP eligibility. The first would mandate that the country provide "adequate and effective protection for intellectual property rights." The second would deny eligibility to a developing country that "maintains local content requirement," except for such government-procurement of products purchased for exclusively governmental purposes.

Introduction of the bill was timed to coincide with the visit of Prime Minister Manmohan Singh of India to Washington. In his introductory remarks for the bill Terry said,

> Countries like India are engaged in a growing pattern of unfair and discriminatory treatment designed to benefit its own domestic companies at the expense of American manufacturing and jobs. India recently has announced rules requiring the local production of information technology and clean energy equipment. It has denied or revoked patents for well over a dozen innovative medicines.

The bill has been referred to the House Ways and Means Committee, of which Terry is not a member. Authorization for the GSP program expired on July 31.

Industry Group Wants Changes to GSP Beneficiary Requirements

The National Pork Producers Council (NPPC) is preparing to press Congress to reconsider the eligibility of South Africa to remain a beneficiary country under the African Growth and Opportunity Act (AGOA). The NPPC is also pressing to remove Generalized System of Preferences (GSP) eligibility for South Africa, the Philippines, and Thailand.

According to the NPPC, each of the three developing countries employ nontariff trade barriers to keep US pork out of their markets. South Africa blocks US pork exports based on concerns about certain porcine diseases including reproductive and respiratory syndrome (PRRS), pseudo rabies (PRV) and trichinae. NPPC argues that PRRS is not a food safety issue, and there is negligible risk of PRV and trichinae in the US commercial herd. Thailand bans pork imports produced using ractopamine which is widely used in US herds, refuses to grant import licenses for uncooked US pork, and imposes an inspection fee of five Baht per kilogram ($160 per metric ton) on imported pork compared with an inspection fee of only $15 on domestic pork. The Philippines applies a reference price scheme and imposes cold storage requirements that only apply to imported pork.

The GSP program expired on July 31 and has not yet been reauthorized. The AGOA program is currently scheduled to expire as of September 30, 2015, unless it is reauthorized.

Helium Bill Will Allow Sales to Continue, Phase in Market Pricing

Bureau of Land Management backgrounder on the Federal Helium Program

Congress approved the "Responsible Helium Administration and Stewardship Act" (H.R.527), sending it to the White House for the president's signature on September 27. The bill authorizes the continuation of sales from the Federal Helium Reserve, but would introduce a new, more free-market oriented auction based program. Without the authorization bill, the Bureau of Land Management (BLM) — which runs the program — will have to terminate further sales as of October 7. The authorizing legislation is necessary but not sufficient to continued operations; Congress must also pass appropriations to continue funding the program. As of this date, the House and Senate remain sharply divided over Fiscal Year 2014 appropriations. The two houses are even at odds on passage of a short-term Continuing Resolution to keep the government operating after today, September 30.

Helium is a critical input in the manufacture of a wide variety of defense-related technology, advanced medical equipment, and commercial goods. In 1925 the Federal government established an underground Federal Helium Reserve reservoir. The government has purchased and sold helium produced

by US natural gas companies under rules that have distorted the market for helium. Congress later passed the "Helium Privatization Act of 1996" (P.L.104-273) directing the Department of the Interior to start liquidating the reserve by 2005 to eliminate the $1.3 billion debt incurred in previous years as a result of the program that sold helium at below-market prices. The helium debt balance will be paid in full on October 7. Once the debt is paid off, the Helium Production Fund is terminated, according to the law, unless Congress appropriates funds to allow continued Reserve operations. Although helium remains in the reserve, if the program is shut down, Federal sales of helium out of the reserve stop, which would upset the global helium market.

H.R.527 is intended to ensure a consistent supply of helium and introduce a more market-oriented system for selling the gas. The bill authorizes BLM to continue operating the reserve, but makes changes both to rules governing who may supply the gas as well as how it is sold. The bill opens the pipeline to potential suppliers other than the current four natural gas refiners situated along the route of the pipeline. It implements a new auction-based program for selling helium, with no fewer than two auctions per year. The legislation will also mandate transparency in pricing as well as operational maintenance of the physical plant in order to prevent artificial shortages in the helium market.

The bill also includes language phasing out the Federal involvement in the commercial helium market. Beginning when there is 3 billion cubic feet of helium remaining in the reserve, commercial sales of helium will end. The remaining helium will only be available for Federal national security and scientific needs.

President Obama is expected to sign the bill into law.

Fresh Potatoes from Mexico

Animal and Plant Health Inspection Service
Proposed rule
Comment deadline: November 26, 2013
Federal Register: September 27, 2013 (vol.78 No.188)
Contact: David Lamb (301) 851-2018

The Animal and Plant Health Inspection Service (APHIS) proposes to allow the importation of fresh potatoes (*Solanum tuberosum L.*) from Mexico into the United States. As a condition of entry, the potatoes would have to be produced in accordance with a systems approach employing a combination of mitigation measures to prevent the introduction and dissemination of plant pests into the United States. The potatoes would have to be imported in commercial consignments, would have to be produced by a grower who is registered in a certification program, would have to be packed in registered packinghouses, would have to be washed, cleaned, and treated with a sprout inhibitor, and would have to be inspected after packing for quarantine pests. The potatoes would also have to be accompanied by a phytosanitary certificate that declares that the conditions for importation have been met. Finally, the national plant protection organization (NPPO) of Mexico would have to provide a bilateral workplan to APHIS that details the activities that the NPPO of Mexico will carry out to meet these requirements.

Blueberry Promotion Assessment Increased by Fifty Percent

Agricultural Marketing Service
Final rule
Effective date: January 1, 2014
Federal Register: September 30, 2013 (Vol.78 No.189)
Contact: Maureen Pello (503) 632-8848

The Agricultural Marketing Service is increasing the Blueberry Promotion, Research and Information Order assessment rate from $12 to $18 per ton (an increase of $0.003 per pound). Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for highbush blueberries in the United States and abroad.

Proposed Changes to Softwood Lumber Board Membership

Agricultural Marketing Service
Proposed rule
Deadline: October 25, 2013
Federal Register: September 25, 2013 (Vol.78 No.186)
Contact: Maureen Pello (503) 632-8848

The Agricultural Marketing Service (AMS) invites comments on changes to the membership of the Softwood Lumber Board established under the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order. Under the order, assessments are collected from domestic manufacturers and importers and used for projects to promote softwood lumber within the United States. This proposal would revise the board's membership to reflect the diversity of the industry in terms of size of operation; allow companies that operate in multiple geographic regions to seek representation in any region in which they operate (US or import); add flexibility for the board to nominate eligible persons to fill vacancies that occur during a term; and re-designate the states of Virginia and West Virginia to the US South Region. AMS believes these changes would help facilitate program operations.

Initiative to Persuade Procurement Officers of "Best-Value" over "Least Cost"

The US Trade and Development Agency (USTDA) has launched a new "Global Procurement Initiative" that seeks to convince foreign government procurement officers of the competitiveness of US-manufactured goods and services that may not meet "least-cost" procurement policies, but offer superior quality and value. The President's Export Council (PEC) has issued a letter of support for the USTDA's "Best-Value" approach of its Global Procurement Initiative to "improve procurement officers' abilities to make an objective evaluation of quality that takes into account all relevant costs of goods and services over the entire project life cycle."

AGOA Duty-Free, Quota-Free Apparel Benefits for Fiscal Year 2014

Committee for the Implementation of Textile Agreements
Effective date: October 1, 2013
Federal Register: September 30, 2013 (Vol.78 No.189)
Contact: Don Niewiatoski, Jr. (202) 482-2496

The Committee for the Implementation of Textile Agreements has issued the new 12-month cap on duty-and quota-free benefits of apparel articles under the African Growth and Opportunity Act (AGOA). For the one-year period beginning on October 1, 2013, and extending through September 30, 2014 the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,784,195,681 square meters equivalent. Of this amount, 892,097,841 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

ITA Solicits US Companies for Environment-Promotion Exports

International Trade Administration
Comment request
Deadline:
Federal Register: September 24, 2013 (Vol.78 No.185)
Contact: Maureen Hinman (202) 482-0627

The International Trade Administration (ITA) is requesting input from US businesses capable of exporting their goods or services relevant to (a) arsenic removal from drinking water; (b) management, use, or disposal of biosolids; and (c) secondary and advanced wastewater treatment. The ITA continues to develop the web-based US Environmental Solutions Toolkit to be used by foreign environmental officials and foreign end-users of environmental technologies. US companies capable of exporting goods or services relevant to the environmental issues outlined above that are interested in participating in the US Environmental Solutions Toolkit should self-identify by November 1, 2013, at 5:00 p.m. (EST).

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 horses, ruminants, swine, and dogs; inspection and treatment for screwworm	No	#185
Animal and Plant Health Inspection Service	Importation of fresh pomegranates from Chile	No	#186
US Customs and Border Protection	Entry and manifest of merchandise free of duty, carrier's certificate and release	No	#187
Transportation Security Administration	Transportation worker identification credential program	Yes	#187
Transportation Security Administration	PreV™ application program	Yes	#187
Bureau of Alcohol, Tobacco, Firearms and Explosives	Notice of firearms manufactured or imported	Yes	#188
Animal and Plant Health Inspection Service	Importation of table eggs from regions where Newcastle disease exists	No	#189
Bureau of Consular Affairs	Application for a US passport	No	#189

Cases & Sanctions

Fed. Cir. Affirms Customs' Rulings

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Del Monte Corp. v. United States, slip op. 2013-1105 (Fed. Cir. Sept. 16, 2013)

Classification and Valuation Correct

Del Monte objected to the classification and valuation determinations of US Customs and Border Protection ("Customs") for its imported tuna. The US Court of International Trade agreed with Customs and Del Monte took its case to the US Court of Appeals for the Federal Circuit. Del Monte fared no better at the appeals court.

The Federal Circuit ruled that Customs properly classified Del Monte's tuna product as tuna "in oil" because the sauce included oil, albeit in small amounts. The court cited a note to the tariff schedule which "makes clear that the goods are considered 'in oil' even if the liquid substance does not consist entirely of oil, and it sets no minimum threshold for the amount of oil

that must be present." The Federal Circuit also sustained Customs' determination as to the value of the goods. Del Monte claimed that applying the agreed "formula" for the valuation of the goods should reduce the value (and thus the duty owed) by approximately $1.5 million. But, the Federal Circuit did not find a clear and definite formula for the adjustment claimed by Del Monte. Instead, there was no written contract, formal policy, or other hallmark of a formal agreement between Del Monte and its supplier. Thus, the Federal Circuit found not enough evidence to overcome the statutory mandate to disregard any post-importation decrease in the price actually paid.

Respondent Responsible for Correcting Errors

Guangxi Jisheng Foods, Inc. v. United States, slip op. 13-112 (Ct. Int'l Trade Aug. 23, 2013)

In this previously confidential opinion, the CIT considered plaintiffs' challenge to the Department of Commerce's decision to use partial adverse facts available to value some factors of production in the administrative review of the antidumping duty order on certain mushrooms from China. The CIT affirmed Commerce's approach even though it noted that plaintiff had expended significant effort in attempting to respond to Commerce's questionnaires. The court noted that it was incumbent on the plaintiff to clearly identify and explain the nature of the errors to Commerce.

CIT Orders Redo on Wooden Bedroom Furniture Review

Dongguan Sunrise Furniture Co. v. United States, slip op. 13-119 (Ct. Int'l Trade Sept. 4, 2013)

The CIT considered the Department of Commerce's remand determination regarding an administrative review of the antidumping duty order on wooden bedroom furniture from China. The CIT ruled that Commerce complied with its instructions regarding the calculation of surrogate financial ratios but that it did not provide substantial evidence for four partial adverse facts available rates assigned to one of the respondents' unreported sales of dressers, armoires, chests, and nightstands. The CIT noted that Commerce did not "attempt to significantly change the selected rates or its methodology and instead attempts to support its original determinations with what it suggests are new explanations." Thus, the CIT once again remanded the issue to Commerce and instructed Commerce to rely on a significant portion of the available evidence to determine the rates.

Groups Ask USDA to Stick to Its Guns and Enforce COOL Rule Fully

The World Trade Organization (WTO) on September 25 approved a request by complainants Canada and Mexico to establish a compliance panel in the dispute over US country-of-origin labeling (COOL) requirements for muscle cuts of meat and other foods. The US Department of Agriculture issued a final rule on May 23 (WTR Vol.29 No.19) that, according to the agency, brings the United States into compliance with the WTO rulings. Canada and Mexico disagree, however, and have asked the WTO to decide whether the United States remains out of compliance. If so, the complainants could move forward with retaliatory tariffs. The compliance panel is expected to circulate its report within 90 days.

In related news, the USDA is moving forward with implementing the final rule. The National Farmers Union (NFU) and other groups that support the expanded COOL requirement that the US Department of Agriculture (USDA) has instituted wrote to Agriculture Secretary Tom Vilsack on September 27 to urge him to stick to the six-month phase in for the new, tougher labeling requirements. The letter was sent in response to a letter sent by COOL opponents (WTR Vol.29 No.35) seeking to postpone enforcement

of the updated regulation. The final rule, in effect on May 23, is currently scheduled to be enforced by the department as of November 23.

USDA issued the rule on May 23 in order to meet the deadline set by the WTO's Dispute Settlement Body for US compliance with the findings in complaints filed by Canada (DS384) and Mexico (DS386). In its rule, the USDA actually expanded the COOL detail requirements, mandating that the label must now inform the consumer of the country or countries of birth, raising, and slaughter of the beef and pork product. Proponents of the final rule argue that the USDA's final rule complies with the DSB ruling because it does "not require additional recordkeeping or systems to transfer information from one level of production and marketing channel to the next."

Although the USDA clearly stated that the rule is mandatory as of May 23, 2013, the final rule included language indicating that the department would grant a six-month grace period for full compliance with the rule to take into account factors such as education and outreach efforts, and to allow existing stock of muscle cut covered commodities already in the chain of commerce to clear the system. A precise date for full enforcement is not included in the final rule, but the six-month period would end on November 23.

In addition to the renewed WTO complaint, the issue has gone to US District Court with a lawsuit by Canadian and other opponents of the final rule. A judge rejected a request for a preliminary injunction against enforcement of the rule several weeks ago (WTR Vol.29 No.35) and the USDA is on track to begin full implementation and enforcement as of the end of November.

In Canada the Agriculture Minister for the province of Alberta complained on September 26 that discussions between US and Canadian officials on the COOL requirement are "dragging on … and we are at the point if we cannot get a resolution to this then we have to be considering what the future holds." He pointed to the list of retaliatory tariffs that Canada's Federal government has drawn up, indicating that Canada may soon have to resort to retaliation if the dispute remains unresolved, despite several meetings between US and Canadian officials, including most recently a meeting between Minister of International Trade Ed Fast and US Trade Representative Michael Froman in Washington on September 26 to discuss several bilateral trade issues, including COOL. Minister Verlyn Olson said that the US COOL requirements added costs to US buyers of Canadian beef and pork products. He said that Canadian cattle shipments to the United States were cut in half and by 58% for slaughter hog exports as a result of the labeling requirements which drove up costs. Commenting on the frustrating pace of WTO review of the new complaint over the USDA's final rule, Olson said, "We don't even know for sure how long it will take to get that decision from the WTO. I've asked that question and have been told it could be 18 months, it could be two years. Meanwhile our industry continues to hurt and that's why we would rather see a resolution of this rather than waiting for court decisions."

WTO Agrees to Establish Panel in Honduras-Australia Tobacco Dispute

The World Trade Organization agreed on September 25 to establish a dispute-settlement panel on September 25 in the dispute brought by Honduras against Australia's measures regulating the plain packaging of

tobacco products (DS435). Ukraine also brought a complaint on the matter to the WTO. Australia had requested a single panel to examine the two complaints, but on October 15, 2012 Honduras objected. The Dispute Settlement Body deferred an establishment of a panel. WTO has now agreed to establish a panel to consider the Honduras-Australia dispute.

US Solar Energy Group Seeks End to US-China Solar Panel Disputes

The Solar Energy Industries Association (SEIA) is trying to negotiate a resolution of the US-China solar-energy trade dispute that has resulted in antidumping and countervailing duty orders against each other's solar product exports. SEIA is now pursuing a proposed solution that is gaining support among some senior Senate Democrats.

Under the SEIA proposal,

- Chinese companies would agree to create a fund that would benefit US solar manufacturers directly and help to grow the US market. Money for the fund would come from a percentage of the price premium Chinese companies are currently paying to third-country cell producers to get around US trade sanctions, reducing costs and supply chain distortion for Chinese companies;
- The Chinese government would end its antidumping and countervailing duty investigations on US polysilicon exports to China, and remove the threat of artificial cost increases in a key raw material in the solar value chain;
- US antidumping and countervailing duties orders would be phased out; and
- A safeguard mechanism would be put in place designed to offset any surge of Chinese solar modules into the US market.

The US industry group also recommended that the Federal government should take steps to ensure that Federal procurement opportunities are provided to domestic solar manufacturers.

The proposal has the support of both Washington State senators, Patty Murray and Maria Cantwell, as well as both senators from Montana, Max Baucus and John Tester. All four are Democrats.

Ruling Risks Confidentiality of Some BIS Export License Information

The US District Court for the Northern District of California has rejected one of the arguments presented by the defendant, the Commerce Department's Bureau of Industry and Security (BIS), which is seeking to avoid disclosing information on export license applications. In the case at hand, the Electronic Frontier Foundation (EFF) sued the Commerce Department to compel BIS to release certain records concerning the export of devices, software, or technology primarily used to intercept or block communications. EFF sought the records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Commerce refused to disclose the records.

The plaintiff filed a FOIA request for "records that it believes could shed light on the government's role in facilitating the export of U.S.-made surveillance technology to foreign governments that use the technology to monitor and suppress dissidents and human rights activists." BIS refused to FOIA request. Under FOIA, agencies of the Federal government are required to make all of their records available to the public, with the

exception of nine categories of material, referred to as "exemptions." Commerce invoked Exemption 3, which permits agencies to withhold information that is "specifically exempted from disclosure by statute." The Court boiled down the dispute as follows:

> At this case's heart is a simple question: does Exemption 3 permit Commerce to withhold information that is exempted from disclosure by an expired statute? Having carefully considered the parties' papers and their oral arguments at the June 10, 2013, hearing, the Court answers this question "no".

The statute in question is the Export Administration Act of 1979 (EAA), which expired in 2001. Since that time, the authorities under the EAA have been continued through executive orders and authorities under the International Emergency Economic Powers Act. BIS argued that section 12(c)(1) of the EAA requires, with limited exceptions, the withholding from public disclosure of information obtained for the purpose of consideration of, or concerning, export license applications. The court determined that because the EAA is no longer in force it can no longer serve as the basis for an Exemption 3 claim.

The court still must still rule on other aspects of the case regarding disclosure of confidential records. BIS argued that portions of the records that the complainant is seeking may be withheld under FOIA Exemptions 4 and 5. Those exemptions apply to trade secrets and commercial or financial information obtained from a person, and privileged or confidential and interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency. The court did not yet rule on those questions. The court said it needs more information to determine the validity of these arguments, including information on the market for each type of technology that is the subject of a withheld license application and whether any of the material contained in those applications may have already been disclosed.

President Lists FY2014 Drug-Producing or -Transiting Countries

President Obama signed Presidential Determination No. 2013-14 on September 13 naming major drug transit or major illicit drug producing countries for Fiscal Year 2014. They are: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela. Countries named to this list are potentially eligible for US aid to combat drug production and/or trafficking.

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	Extruded rubber thread	Malaysia	ITA amended final results of administrative review	#185
AD	Silicomanganese	India, Kazakhstan, Venezuela	ITA affirmative final determinations of five-year reviews	#185
AD	Tapered roller bearings	China	ITA notice of Court decision not in harmony with final results of administrative review; amended final results of administrative review weighted average margin is 6.25%	#186
AD	Chlorinated isocyanurates	Japan	ITA initiates investigation	#186
AD	Frozen shrimp	Vietnam	ITA initiates new shipper review	#188
AD	Corrosion-resistant carbon steel flat products	Korea	ITA notice of Court decisions not in harmony with final results of administrative review and notice of amended final results of 2006-2007 administrative review weighted average margin is 7.45%; and of amended final result of 2005-2006 administrative review weighted average margin is 3.59%	#188; #188
AD	Frozen fish fillets	Vietnam	ITA initiates 2012-2013 new shipper review	#189
AD/ CVD	Grain-oriented electrical steel	China, Czech Rep., Germany, Japan, Korea, Poland, Russia	ITC institutes investigations and schedules preliminary phase investigations	#186
AD/ CVD	Carbon-quality steel pipe	China	ITC schedules expedited five-year reviews	#187
AD/ CVD	Drill pipe and drill collars	China	ITC notice of remand proceedings	#189
CVD	Chlorinated isocyanurates	China	ITA initiates investigation	#186
337	Marine sonar imaging devices and products and components	—	ITC receives complaint and solicits comments	#187
337	Vision-based driver assistance system cameras and components	—	ITC receives complaint and solicits comments	#187
337	Multiple mode outdoor grills and parts	—	ITC institutes investigation	#187
337	Navigation products, including GPS devices, *et al.* and related software	—	ITC receives complaint and solicits public comments	#189

Studies & Events

Study Projects TTIP Would Produce Job Growth in All Fifty US States

A group of three organizations issued a study showing the potential economic benefits to each of the fifty US states accruing from a Transatlantic Trade and Investment Partnership (TTIP) agreement between the Untied States and European Union. *TTIP and the Fifty States: Jobs and Growth from Coast to Coast* projects that nearly three-quarters of a million new jobs would be created in the United States as a result of the agreement, and that every state would gain new jobs and increased exports to the European Union. The study was produced by the Atlantic Council, Bertelsmann Foundation, and British Embassy in Washington.

USTR Froman's Talk on TTIP in Belgium Can Be Seen Live at 9 am Today

US Trade Representative Michael Froman is delivering remarks on "Enhancing Transatlantic Trade and Investment" at the German Marshall Fund of the United States (GMF) in Brussels, Belgium at 9:00 a.m. (ET) today, September 30. The remarks will be followed by Q&A with the audience, which will include EU policymakers, civil society and private sector representatives. The event may be viewed live here. Selected clips from the event will be available later at http://stateondemand.state.gov and the entire speech will be posted on YouTube.

Calendar of Events

Date	Type	Event	More Information
October 2	Policy forum	WTO and the Uncertain Future of Multilateralism	Cato Institute
October 9	Open meeting	Information Security and Privacy Advisory Board	National Institute of Standards and Technology
October 16	Partially open meeting	Civil Nuclear Trade Advisory Committee	International Trade Administration
October 18	Public meeting	Preparation for International Civil Aviation Organization's Dangerous Goods panel meeting	Federal Aviation Administration
October 22	Open meeting	Advisory Committee on Private International Law	State Department