



February 2, 2011

## Intensive Efforts Underway to Conclude WTO Doha Trade Negotiations

### *Implications for Companies with International Trade Interests*

Following calls by world leaders at the G20 and APEC meetings in November to conclude the Doha Round of multilateral trade negotiations by the end of 2011, the 153 members of the World Trade Organization (WTO) in mid-January resumed intensive negotiations in all key areas of the talks - including industrial tariffs and non-tariff barriers, trade remedies, services, intellectual property and agriculture. For companies engaged in or directly affected by international trade, the potential stakes are high. Accordingly, such companies are well-advised to review what is under negotiation, how potential outcomes of the negotiations might affect their future international trade interests (both positively and negatively), and what actions they can take at this point in an effort to shape those outcomes in a way most favorable to their interests.

This alert presents a brief summary of the key subjects under negotiation and the potential impact of possible outcomes in these areas from the perspective of affected companies.

#### Industrial Tariffs and Non-Tariff Barriers

The objective of the negotiations is to reduce or eliminate tariffs and non-tariff barriers that impede international trade flows. A number of different techniques are being considered as a basis for making tariff cuts, including the application of a formula that provides flexibilities for developing countries and targeted reductions or elimination in certain sectors.

Companies may wish to identify individual products, sectors, and markets of interest to them and determine whether the likely results from these tariff-cutting techniques would be beneficial. If not, companies should explore what steps might be taken to achieve more desirable outcomes.

For more information, contact:

**Bruce Wilson**  
+1 202 626 5590  
bwilson@kslaw.com

**King & Spalding**  
**Washington, D.C.**  
1700 Pennsylvania Avenue, NW  
Washington, D.C. 20006-4707  
Tel: +1 202 737 0500  
Fax: +1 202 626 3737

[www.kslaw.com](http://www.kslaw.com)



## International Trade Practice Group

As for non-tariff barriers, several specific proposals of a general nature have been put forward. However, if there are specific nontariff barriers in selected countries the elimination of which would be desirable from your company's perspective, now is the time to use these negotiations as an opportunity to seek such elimination.

### Trade Remedies

The negotiations are aimed at "clarifying and improving disciplines" under the current WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Measures. On anti-dumping, a number of countries have offered proposals to ensure that anti-dumping measures remain effective in addressing unfair trade. Other countries have emphasized steps needed to counter what they believe to be abuses in the way some countries investigate charges of anti-dumping and apply anti-dumping measures.

On subsidies and countervailing measures, a wide range of proposals have been submitted regarding prohibited subsidies, actionable subsidies, and export credits. There have also been proposals concerning investigation procedures and injury determinations, some of which are also applicable in the anti-dumping context.

If your company has ever been involved in anti-dumping or countervailing duty proceedings anywhere in the world, either as a complainant or as a respondent, or may be involved in such proceedings in the future, you should be aware that the outcome of these negotiations could have a major impact on how such proceedings are conducted and on the criteria used to guide decisions to grant relief in these areas in the future.

### Services

The WTO General Agreement on Trade in Services sets forth general disciplines on trade in services and also provides a legal framework for WTO Members to exchange legally binding commitments to provide access to their respective markets for foreign services and services providers. The negotiations offer an excellent opportunity for WTO Members to provide on a reciprocal basis new market access commitments and to improve upon the general disciplines of the existing agreement.

If your company is a services provider that currently operates internationally or wishes to do so in the future, this negotiation offers the chance both to achieve better access to foreign markets of interest and to secure more favorable conditions of operation once you have entered those markets. On the other hand, companies that do not welcome the additional competition that may result from the negotiations should express their concerns to government officials in an informed and effective manner.



## International Trade Practice Group

### Intellectual Property

The current WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is the pre-eminent international agreement with respect to the granting and enforcement of intellectual property rights. The Doha negotiation is limited primarily to three TRIPS-related issues: (1) the creation of a multilateral register for geographical indications (GI) for wines and spirits; (2) whether to extend to other products the higher level of GI protection currently given to wines and spirits; and (3) whether to amend TRIPS to require patent applicants to disclose the country of origin of genetic resources and traditional knowledge used in inventions for which patent protection is being sought; to obtain “prior informed consent;” and to provide “fair and equitable” remuneration regarding the use of such genetic resources or traditional knowledge. The last item above relates to the relationship of TRIPS to the Convention on Biological Diversity.

If your company could be affected in any way by any of these three issues, you should carefully monitor these negotiations and make your position known to the relevant authorities.

### Agriculture

The overall objective of negotiations on agriculture is to continue the process to reform global rules for, and to reduce distortions to, agricultural trade by reducing tariffs and other market access barriers, eliminating export subsidies, and further disciplining domestic subsidies. Given the importance of agriculture to virtually all countries, the diversity of agricultural regimes around the world, and the political sensitivities involved, this is a complex and multilayered negotiation. It is possible that the Doha negotiations could result in the most significant and far-reaching outcome ever on agricultural trade and put into place international rules that will govern world agricultural trade for many years to come.

If your company has international trade interests in agriculture, what happens in this negotiation could have a major impact on your business moving forward.

### Other Issues

Additional areas also under negotiation that may be of interest include possible rules governing fisheries subsidies, trade facilitation, and trade and the environment, including trade liberalization for environmental goods and services.

-----

There have been a number of serious but failed attempts in the past to wrap up these long-running negotiations (which began in 2002). Although there is no guarantee that the negotiations will conclude in 2011, the intensive negotiating activity now underway in Geneva suggests that governments will make every effort to wrap up the talks this year. Even if the Round is not concluded, progress will surely be made



## International Trade Practice Group

toward this end and key decisions will be taken that will affect the final outcomes. In light of the above, now is the time to assess how potential outcomes from these negotiations might affect, either positively or negatively, the international trade interests of your company. Now is also the time for your company to engage with the appropriate government authorities to ensure that your company's interests are understood and taken into account to the maximum extent possible as final outcomes are negotiated.

The International Trade Practice of King & Spalding includes a number of former government trade negotiators and WTO officials who have actively participated in prior trade negotiations and have specialized expertise and experience in this area. If you would like further details with respect to the information provided above or require further assistance, please do not hesitate to contact us.

*Celebrating 125 years of service, King & Spalding is an international law firm with more than 800 lawyers in Abu Dhabi, Atlanta, Austin, Charlotte, Dubai, Frankfurt, Geneva, Houston, London, New York, Paris, Riyadh (affiliated office), San Francisco, Silicon Valley, Singapore and Washington, D.C.. The firm represents half of the Fortune 100 and, according to a Corporate Counsel survey in August 2009, ranks fifth in its total number of representations of those companies. For additional information, visit [www.kslaw.com](http://www.kslaw.com).*

*This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.*