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International Trade Policy & Negotiations

Steptoe & Johnson LLP has one of the largest international trade practices. We have earned a reputation as a leading firm for assisting companies to develop and execute strategies to improve market access and minimize risk arising from international trade developments. In 2007, Chambers named Steptoe's International Trade group the International Trade Practice of the Year.

Trade policy is not made in one place. Nor can one approach consistently yield favorable trade policy results. For each client, we design a strategy tailored to the client's priorities and budget. This strategy might involve advocating a company's interests at the White House and the Office of the US Trade Representative, or it might require briefings and consultations with Executive Branch officials or members of Congress.

Often, Steptoe attorneys act on behalf of our clients to advise officials of the United States and other governments involved in negotiations and dispute proceedings in the World Trade Organization (WTO), under the North American Free Trade Agreement and in other multinational forums. Where appropriate, we make direct contact—formal and informal—with foreign government decision-makers.

Effective trade policy representation requires a firm that can marshal significant experience in the trade policy process. Ambassador Susan G. Esserman, who most recently served as Deputy US Trade Representative and held high-ranking trade policy positions at the US Commerce Department, leads Steptoe's trade policy team. Other key members of this practice include Richard O. Cunningham, who has participated in US trade policy debates for more than 30 years. Our London office contributes extensive experience with European trade policy-making.

Steptoe delivers substantive knowledge on a wide range of trade issues and policy disciplines in a cost-effective manner. Our attorneys have in-depth knowledge of numerous industries with recurring trade policy concerns, such as steel, aerospace, agriculture, chemicals, and textiles. In addition, Steptoe attorneys are skilled in many cutting-edge industries that are increasingly confronted with trade policy issues, such as information technology, telecommunications, and biotechnology. Several of our attorneys have strong backgrounds in economics, which is often essential in successful trade policy advocacy. Where needed, we call upon a strong network of economic consultants with whom we have worked on past matters.

Steptoe's reputation for designing strategies to solve trade problems is reflected in the broad range of trade policy matters we have handled. We have experience in a diverse array of issues, including antidumping and subsidies rules and regulations, tariff and non-tariff barriers, trade with non-market economies,

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agricultural trade, government procurement standards, and telecommunications.

Representative Matters

- **Multinational Trade Negotiations.** Steptoe advised numerous US and foreign companies and industry groups with regard to the Tokyo, Uruguay and Doha Rounds of Multilateral Trade Negotiations (MTNs). Steptoe lawyers have served on advisory groups to both Congress and the Executive Branch during the various MTNs.
- **Free Trade Agreement Negotiations.** Steptoe has advised a number of governments and businesses on free trade agreement negotiations. Our representations include:
 - Assistance to the Dispute Settlement Division of the Korean Ministry of Foreign Affairs and Trade (“MOFAT”) on various trade policy, trade remedies and WTO issues.
 - Representation of the Korean Ministry of Knowledge Economy (“MKE”) formerly Ministry of Commerce, Industry and Energy (“MOCIE”) on the Korea-United States Free Trade Agreement (“KORUS”), the largest FTA since NAFTA. Steptoe helped MKE formulate positions and draft proposed negotiating text on a wide array of issues, including tariff reductions, textiles, trade remedies, market access, investments, Jones Act, government procurement, autos, and electronic commerce.
 - Representation of MKE on the Korea-EU FTA on nontariff barriers, bilateral investment treaties with EU countries, EC’s zeroing practice, trade remedies, TBT Chapter and REACH, CO2 Emissions, tariff concessions.
 - Advice to the Confederation of Mexican Industries (COECE) in the negotiation of the North American Free Trade Agreement, and provided advice to the Government of Canada in connection with the negotiation of the Canada-United States Free Trade Agreement.

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- **Electronics & Commercial Goods.** Over the last several decades, our firm has assisted a coalition of US manufacturers of commercial products to minimize the economic risk arising from multilateral and bilateral trade negotiations. Steptoe attorneys have developed and implemented a strategy that includes advocacy before the Office of the US Trade Representative, Commerce Department, the International Trade Commission, and Congress to assist the coalition to influence trade policy decisions that directly affect the industry's future.
- **Steel.** In response to the recent US steel safeguard investigation, we worked closely with US and European trade policy officials to seek a balanced approach that minimizes restrictions on trade. In particular, we took the lead in calling attention to the serious unintended consequences that could result from the interaction of safeguard duties with US antidumping duties. The effort ranged from preparing submissions to the Trade Policy Staff Committee to meeting with senior US and EU trade officials, and working closely with key European embassies involved in this effort.
- **Petrochemicals.** On behalf of one of the world's leading petrochemical companies, we are preparing and implementing a global trade and regulatory strategy to minimize the risk of future trade cases and provide practical solutions for trade discriminatory problems that impede exports. Our creative and flexible strategy utilizes the opportunities available in the WTO negotiations and regional trade arrangements to maximize competitive benefits available under these trade regimes.
- **Aerospace.** Over a period of several years, we worked with the leading US manufacturer of large civil aircraft to address the problem of foreign government assistance in this sector, including two successful dispute settlement proceedings before the General Agreement on Tariff and Trade. This multi-faceted activity has involved working with the US Trade Representative's office on GATT and WTO proceedings, briefing senior US government officials in preparation for negotiations with foreign officials, and advising on the current and proposed multilateral rules. Recently, we have worked with another aircraft manufacturer to ensure that the People's Republic of China implements its WTO obligations as they affect this sector.

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- **Textiles.** We develop trade strategies for a major textiles and apparel company to optimize the advantages and minimize the risks of quotas and other restrictions on textiles and apparel. In our strategic advice, we incorporate approaches involving trade remedies, technical regulations, outward processing, and using the WTO and other trade negotiations involving textiles and apparel.
- **Wheat.** We have advocated on behalf of the Canadian wheat industry in the numerous US government investigations of its operations (under Sections 301 and 332), as well as various trade remedy proceedings before the International Trade Commission and Department of Commerce. Working closely with economic consultants, we have demonstrated that the Canadian wheat industry does not engage in any unfair or non-commercial practices. The US government is now seeking to use the WTO dispute resolution process as well as the multilateral trade negotiation forum to alter Canada's policies on its wheat industry, and we are assisting the industry with its response.
- **Lumber.** To resolve long-standing trade litigation over Canadian lumber imports to the United States, the US Commerce Department engaged with the Canadian federal and provincial governments in settlement negotiations. Steptoe attorneys were actively involved in this policy process, which involved complex questions of natural resource regulation and WTO policy issues.
- **Antidumping Policy.** Steptoe has advocated amendments and policy changes relating to the antidumping law for decades. Susan Esserman played a lead role in developing the antidumping and countervailing duty laws and regulations that implemented the Uruguay Round Agreement. Recently, our firm has advocated for effective US implementation of the WTO ruling against the US 1916 Antidumping Act, employing a strategy involving both the US Administration and Congress. We have also conducted a successful multifaceted campaign of Administration contacts, court litigation, WTO proceedings and international negotiation to bring about reform of the United States policy on the “zeroing” of negative antidumping margins, consistent with the WTO Appellate Body’s interpretation of the WTO Antidumping Agreement.

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- **Safeguard Duties.** Steptoe assisted a US agriculture association in successfully challenging an Indian trade association initiative to seek the imposition of safeguard duties. Our firm developed and implemented a comprehensive legal strategy that included submitting briefs and oral testimony to the Indian government, providing advice regarding coalition-building and Indian government trade policy, and coordinating efforts with several South American associations.
- **Subsidies and Countervailing Duty Policy.** Steptoe was deeply involved in the negotiation of the subsidies provisions in the GATT Tokyo Round, and in the negotiation of the WTO Agreement on Subsidies and Countervailing Measures in the Uruguay Round. We advised the European Communities in the ground-breaking WTO dispute settlement proceeding on the effect of the sale or privatization of a subsidized company on continuing countervailability. The current US Commerce Department Countervailing Duty Regulations reflect, in numerous instances, the input of Steptoe trade lawyers.

World Trade Organization

Steptoe & Johnson LLP has been an active player in the growing area of practice relating to the World Trade Organization (WTO). Our attorneys examine all facets of WTO developments, including ongoing trade negotiations and dispute settlement proceedings, to promote our clients' business goals.

We began our involvement during the negotiations of the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT), and assisted clients in connection with various disputes before GATT tribunals. Steptoe has advised major US and foreign companies, as well as foreign governments, on diverse areas of the WTO agreements and ongoing trade negotiations.

We have been involved in numerous ongoing and potential WTO dispute resolution proceedings, as discussed in detail below. Steptoe attorneys have been active participants in the ongoing debates regarding the WTO and related issues, through professional activities, including speaking and writing.

WTO Analysis and Advocacy

The Uruguay Round of trade negotiations resulted in a broad array of new agreements on international trade issues. Some of these agreements involved new rules in existing areas, such as antidumping and countervailing duty law. Others involved entirely new areas of international trade law, such as services and intellectual property. Steptoe regularly advises clients on the interpretation of these new agreements and on using the agreements to protect their commercial interests. Our attorneys, for instance, have analyzed issues under the Agreement on Standards and Phytosanitary Measures, the Government

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Procurement Agreement, the Agreement on Subsidies and Countervailing Measures, and the General Agreement on Trade in Services.

Representative Engagements

Clients have benefited from our advice on a wide range of WTO matters:

- **Definition of a Subsidy** – Steptoe attorneys worked with US clients to monitor and influence numerous aspects of the definition of subsidy adopted in the WTO Subsidies Agreement, including the treatment of subsidies received for research and development programs and the criteria for determining when a subsidy is specific to a company or industry and actionable. Our attorneys also worked to ensure that the WTO definition of subsidy was accurately incorporated into US implementing legislation and regulations.
- **Basic Telecommunications Agreement** – Our firm advised a large US telecommunications company in connection with the negotiation of the Basic Telecommunications Agreement, under the General Agreement on Trade in Services. Since the agreement was concluded in February 1997, we have advised a variety of clients on the implementation and application of the agreement.
- **Government Procurement** – A major US telecommunications manufacturer's proposal was rejected by a Japanese agency, which awarded the contract to a Japanese company. Steptoe worked with the US company and the Office of the US Trade Representative to develop arguments as to why the Japanese agency's actions were inconsistent with the WTO Agreement on Government Procurement. In response to these arguments, the Japanese agency agreed to reopen the contract award.
- **Corn Gluten Feed** – US exports of this product are continually threatened with barriers to selling in the European market. Steptoe was instrumental in developing the US position on market access in the Uruguay Round of Multilateral Trade Negotiations. Steptoe has on several occasions worked with the US government to ensure that the threat of a WTO case was used to protect our client's access to the European market. When the EU retaliated against corn gluten feed in response to a US safeguard measure on wheat gluten, we assisted in resolving the dispute and minimizing the commercial impact on the US corn gluten industry.

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- **Motorcycles** - Large US motorcycles have been shut out of many developing country markets by prohibitive tariffs and non-tariff barriers. One of the most attractive markets is Taiwan. In connection with Taiwan's negotiations for accession to the WTO, Steptoe worked with USTR to obtain significant concessions to liberalize access to Taiwan's motorcycle sector. We also advise on access issues in China and India.
- **Pharmaceuticals** - Steptoe has worked with the European pharmaceuticals industry to provide advice on the application of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). For instance, Steptoe advised on the WTO-consistency of a recent EU proposal to restrict the reimportation of pharmaceuticals exported from the EU to certain developing countries.
- **Distilled Spirits** - Steptoe has worked with leading companies in the distilled spirits industry to ensure WTO members fully implement their WTO commitments. Steptoe has also advocated on behalf of the spirits industry on the important issue of geographical indications under the TRIPs Agreement and under regional trade arrangements. In addition, our attorneys have advised this industry in its three successful challenges to discriminatory excise tax regime.
- **Food Safety Standards** - The US currently bans beef from entering the country if it contains residues of animal drugs not approved by the US Food and Drug Administration (FDA). The fact that a drug has undergone extensive testing abroad and has been approved by foreign authorities does not guarantee market access for beef containing that drug. Steptoe attorneys have advocated, on behalf of a US company, that the FDA recognize the foreign testing in such situations, to ensure consistency with US and WTO obligations under the Agreement on Standards and Phytosanitary Measures.

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- **Advice to Governments** - After the successful conclusion of the Uruguay Round negotiations, Steptoe attorneys were retained by a foreign trade ministry to draft the legislation needed to ensure the country's trade laws conformed to the new WTO obligations. Our attorneys advised another country's trade ministry on numerous WTO-related issues, particularly with respect to two high-profile WTO challenges in the antidumping area and the appropriate interpretation of the WTO Safeguards Agreement. We also have advised on a WTO challenge of US imposition of countervailing duties.

WTO Litigation

Steptoe has long been active in international dispute settlement of trade matters. Our attorneys have advised clients regarding some of the most significant international trade disputes handled by the WTO Dispute Settlement Body, as well as dispute settlement under the General Agreement on Tariffs and Trade.

Throughout our representations, Steptoe attorneys emphasize that such litigation is a means to a commercial end, a mechanism for increasing leverage in government negotiations, and in this regard must be handled differently from other trade litigation.

Representative WTO cases

Some examples of Steptoe's WTO litigation practice are as follows:

- **Corn Syrup** - Steptoe represented the US manufacturers of high fructose corn syrup in a WTO challenge to a Mexican antidumping determination. The WTO panel ruled that Mexico's determination of injury was inconsistent with its WTO obligations, setting an important precedent regarding the proper interpretation of the WTO Antidumping Agreement. In a subsequent phase, a WTO panel ruled that Mexico had failed to implement the initial ruling. Mexico then revoked the antidumping duty order.

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- **Lumber** - On behalf of the British Columbia lumber producers, Steptoe has worked closely with the Canadian government on several WTO challenges relating to the United States' imposition of countervailing and antidumping duties on imports of Canadian lumber in 2002. These cases have included a challenge to the US policy of treating export restraints as countervailable subsidies, a challenge to a US law that could be used to preclude the US Commerce Department from giving full effect to adverse WTO decisions, a successful challenge to the Commerce Department's preliminary countervailing duty determination in the lumber proceeding, and ongoing challenges to the Commerce Department's final countervailing and antidumping duty determinations as well as the US International Trade Commission's final determination.
- **Steel** - A principal European steel producer that acquired production facilities in a market-value privatization was alleged to benefit from the subsidies received by the seller of the facilities. After the US Commerce Department imposed countervailing duties in 1993, we worked with the steel producer and with the European Commission to challenge the case in GATT dispute settlement. The dispute resulted in a panel ruling that required consideration of the purchase price in a privatization transaction. After the panel ruling, the US Commerce Department again imposed duties in this situation, under the 1994 Uruguay Round Agreements Act. The WTO Appellate Body found these duties inconsistent with US WTO obligations. After the US revised its methodology, the WTO Appellate Body has again ruled against the US approach.
- **Aircraft** - Four countries engaged in a joint program to assist a major European aerospace manufacturer. On behalf of the leading US aircraft manufacturer, Steptoe worked with the USTR and the Commerce Department to challenge the European assistance in two GATT proceedings. As a result of US success in one case and the prospect of US success in a second case, a bilateral agreement was reached between the US and the European Community. Later, Steptoe attorneys worked with US negotiators to respond to European initiatives respecting aircraft subsidy disciplines in the Uruguay Round and in subsequent WTO negotiations. Recently, we advised an aircraft manufacturer regarding Canada's WTO challenge to a Brazilian export finance program. The WTO Appellate Body ruled that Brazil's subsidies were inconsistent with its WTO obligations and, in a subsequent phase of the proceeding, that Brazil had not implemented the initial ruling.

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- **Avionics** – The French government provided a significant subsidy to a state-owned company to develop an avionic product for use in aircraft produced by a major European aerospace manufacturer. Steptoe worked with a US company that supplies this avionics product to assess the prospects for a WTO case challenging the French subsidy under the WTO Agreement in Subsidies and Countervailing Measures.

Noteworthy

- Ranked, Chambers Asia 2009-2011, Asia-wide: International Trade
- Ranked, Chambers Global 2008-2011, The World's Leading Lawyers for Business; US: International Trade: Trade Remedies & Trade Policy
- Ranked, Chambers USA 2006-2011, America's Leading Business Lawyers; International Trade: Trade Remedies & Trade Policy (National)
- Named, Chambers USA 2007, International Trade Practice of the Year
- Recommended, Legal 500 US 2007-2009; Litigation: International Trade