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RM6183 Trade Law Panel

Lot 2: International Trade and Negotiations

Supplier prospectus

Step toe International (UK) LLP and Step toe LLP

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RM6183 Trade Law Panel: Lot 2

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Disclaimer: The use of information provided throughout is not commercially sensitive. We have provided client names in most case studies, though in some instances client names have been anonymised due to confidentiality concerns.

Introduction

In this Prospectus we provide a detailed list of relevant experience we stand ready to put in use to advise you, in our capacity as a supplier on the UK Trade Law Panel for Lot 2 (International Trade and Negotiations).

Please note that we also are a supplier for Lot 1 (International Trade and Disputes), and as such are well-placed to advise on any cross-panel issues.

Over the decades, Steptoe has been at the forefront of international trade negotiation and implementation issues. Our lawyers advised on recent Free Trade Agreement negotiations, including the US-Korea (KORUS) negotiations, Canada-EU CETA negotiations, the Japan-EU EPA negotiations, T-TIP negotiations and TPP/CPTPP, among others. We also have advised, with Linklaters, with respect to the UK-US Free Trade Agreement.

Our lawyers have experience in international trade negotiation and implementation, for example the US-Korea (KORUS) negotiations, Canada-EU CETA negotiations, T-TIP negotiations, WTO negotiations, NAFTA, mutual recognition agreement negotiations, and TPP, including from previous government service.

We also regularly advise governmental and private clients on trade policy and market access issues and Jeff Weiss, a partner at Steptoe, has been a key practitioner in this area (jweiss@steptoe.com).

We look forward to developing our relationship with you further, and assisting you in building in-house knowledge. Please contact us to arrange general and specialist training, discuss information and know-how sharing, and discuss any general queries you may have.

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Advice in the context of trade negotiations

Steptoe lawyers are experienced in advising States in connection with international trade and investment treaty negotiations. Several of our lawyers spent significant time in government positions, where they were directly involved both as counsel and as lead negotiators on all aspects of cutting-edge, current generation trade agreements (including the CPTPP, the CETA, and T-TIP, and at the WTO).

Case study

• **Korea-US Free Trade Agreement (KORUS).**

Steptoe advised Korea's Ministry of Commerce, Industry & Energy (MOTIE) in the negotiation of this FTA.

- Prior to each negotiating session, we held telephone conferences with MOTIE negotiators and, before and during several key sessions, travelled to Korea or met with Korean negotiating teams in Washington prior to and during the session.
- We prepared written analyses of important issues, including analyses of US law, of the legal and practical issues relevant to Korean proposals and US positions, of US political issues relating to specific provisions and to negotiating strategy in general, and how those issues had been resolved in previous US FTA negotiations.
- On three occasions late in the negotiations, our lawyers met with Korea's trade minister to discuss end-game strategies.
- Notably, while serving as USTR's lead negotiator for Technical Barriers to Trade (TBT), Steptoe partner Jeff Weiss worked with USTR's Office of Korea to obtain additional commitments from Korea after President Obama re-opened KORUS after taking office. As a result, Korea agreed to additional TBT-related commitments on automotive market access in a side letter.

Our team's prior government experience

- **Canada-EU Comprehensive Economic and Trade Agreement (CETA).** As Senior Counsel to Canada, Steptoe partner Christophe Bondy spent five years advising Government of Canada negotiators in connection with negotiation of multiple chapters of the CETA.

- He was in the room during ongoing negotiations, engaged in intersessional dealings with stakeholders from other levels of government, and regularly liaised with the chief negotiator on legal and strategic issues.

- He helped translate Canadian policy goals into effective text proposals; explained and justified Canada's proposals from a legal perspective in the context of direct negotiations; assessed the risks involved in counter-proposals; devised compromise text to assist the parties in bridging gaps; developed innovative approaches in the face of novel issues; advocated for Canada's position up to the level of the Chief Negotiator of the EU; and generally supported negotiators with sound, practical legal advice, well-grounded in the relevant Canadian trade and investment policy and reflecting domestic legal frameworks.

- **Trans-Pacific Partnership Agreement (TPP).** While working as the lead negotiator for Technical Barriers to Trade (TBT) at USTR, Steptoe partner Jeff Weiss conceptualized, drafted, cleared interagency review, and negotiated the TPP Chapter on TBT. See further details in the section below on page 7.

- **Negotiation of the Japan-EU Economic Partnership Agreement (EPA).** Steptoe lawyer Yumiko Takahashi was a member of the Japan Ministry of Foreign Affairs team negotiating, drafting, and legally verifying the Japan-EU EPA, with specific responsibility for rules of origin and origin procedures, competition policy, subsidies and state-owned enterprises. She also led a team drafting guidelines on the Rules of Origin in the EPA in coordination with DG Trade and DG Tax of the European Commission. To prepare the guidelines, she conducted hearings with companies and business operators engaged in bilateral trade between Japan and the EU.
- **Transatlantic Trade and Investment Partnership (T-TIP).** While working for the US Commerce Secretary, Steptoe partner Jeff Weiss served as the lead Commerce Department official in the negotiation of T-TIP chapters on Technical Barriers to Trade, Regulatory Coherence, and Regulatory Cooperation. Working closely with the National Security Council, he developed strategies for systemic and sectoral regulatory cooperation between the EU and the US.
- **G20 Digital Talks.** While working for the US Commerce Secretary, Steptoe partner Jeff Weiss served as the lead US negotiator in the G20 negotiations on three work streams: Digital Economy (co-chaired with China), Innovation, and the New Industrial Revolution. In that role, he drafted, cleared interagency, and successfully negotiated outcomes (e.g., action plans, principles, ministerial declaration text) on a wide variety of topics, such as: cross-border data flows, cybersecurity, privacy, net neutrality, intellectual property rights, worker skills, infrastructure, SMEs, standards, digital inclusion, and antitrust. In doing so, he worked with the Obama White House National Security Council (the US G20 lead); a large interagency team; US allies (e.g., UK, Canada, Japan); and US stakeholders.
- **Doha Round Negotiations.** While working as Assistant Legal Advisor at the Mission of the US to the WTO from 2002-2004, Steptoe partner Jeff Weiss helped represent the US in negotiations to reform the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).
 - While later working as the lead negotiator for Technical Barriers to Trade (TBT) at USTR, he served as the TBT lead for the US in the Non-Agricultural Market Access negotiations on non-tariff barriers (NTBs). In that role, working closely with USTR and interagency colleagues, he co-drafted a US proposal to strengthen international standards development, as well as proposals to reduce NTBs and better align regulations in textiles, clothing, footwear, and travel goods (jointly with the EU); autos; and information and communications technology products (covering both electrical safety and electromagnetic compatibility). He led discussions on these and other proposals (e.g., the EU chemicals proposal) during formal and informal negotiating sessions and bilateral meetings.

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Advice on the full range of chapters in an FTA

Step toe lawyers have provided advice to governments and private sector clients on all chapters found in modern FTAs, arising out of some of the most cutting-edge current international trade negotiations, including the CPTPP, the CETA, the Japan-EU FTA, KORUS, and USMCA.

Case studies

- **Korea-US Free Trade Agreement (KORUS).** Step toe advised Korea's Ministry of Commerce, Industry & Energy in the negotiation of this FTA. See further details in the section above on page 4.

Our team's prior government experience

- **Negotiation of the Canada-EU Comprehensive Economic and Trade Agreement (CETA).** As Senior Counsel to Canada, Step toe partner Christophe Bondy spent five years providing legal advice to Government of Canada negotiators in connection with multiple chapters of the CETA, including Cross-Border Trade in Services, Investment, Temporary Entry, Financial Services, Mutual Recognition of Professional Qualifications, International Maritime Transport Services, Domestic Regulation, State Enterprises, Monopolies, and Enterprises Granted Special Rights or Privileges, and Intellectual Property, in addition to input into Institutional chapters.

- Beyond the negotiating table, the work involved considering the intersection between the obligations of each chapter and relevant provisions of Canadian domestic law and its prior international commitments, with a view to assessing the consistency of such provisions with the existing network of obligations, as well as the potential need to adopt specific implementing legislation to ensure compliance with the new obligations.
- Work also involved assessing the prospects for evolution in the obligations set out in each chapter in light of institutional provisions (notably specific committees established within CETA framework).
- See further details in the section above on page 4.

- **US-China Phase One Agreement.** Step toe partner Jeff Weiss was engaged by a large custody bank to assist with a market access issue (i.e., unnecessarily high in-country capital requirements) with respect to providing custody banking services in China.

He worked with the client to draft a position paper and proposed trade agreement text and led meetings with:

- the Office of the United States Trade Representative;
- the Departments of Commerce, State, and Treasury; and
- congressional trade committees that were attended by other similarly situated custody banks.

As a result, the Phase One agreement contains a provision that resolved the concern (Article 4.2: Banking Services).

- **Japan-EU Economic Partnership Agreement (EPA).** Step toe lawyer Yumiko Takahashi was a member of the Japan Ministry of Foreign Affairs team negotiating, drafting and legally verifying the Japan-EU EPA. See further details in the section above on page 5.

- **Trans-Pacific Partnership Agreement (TPP).** While working as the lead negotiator for Technical Barriers to Trade (TBT) at USTR, Steptoe partner Jeff Weiss conceptualized, drafted, cleared interagency, and negotiated the TPP Chapter on TBT, including the Sectoral Annexes to align regional regulatory, standards, and conformity assessment approaches to wine and distilled spirits, medical devices, cosmetics, pharmaceuticals, and information and communications technology products that use cryptography. This was the first time such provisions had ever been included in a US trade agreement.
 - To develop the texts, he worked closely with the relevant US regulators and US stakeholders. He also conceptualized, co-drafted, cleared interagency, and helped negotiate a new Chapter on Regulatory Coherence, which created disciplines for central coordination and review of regulation and implementation of good regulatory practices.
 - In his prior role as Assistant General Counsel at USTR, he served as the lead lawyer for the Chapter on TBT in the free trade agreement negotiations with Colombia, Panama, and Peru. He participated in the negotiations and provided legal advice and drafting assistance to the lead USTR negotiator with respect to US and trading partner negotiating proposals and counter-proposals.
- **US-Mexico-Canada Agreement (USMCA).** Steptoe partner Jeff Weiss provided advice and representation to companies and trade associations with respect to the negotiation of several parts of USMCA: the Sectoral Annexes, the Chapter on Customs Administration and Trade Facilitation, the Chapter on Digital Trade, and the Mexico-US Side Letter on Distilled Spirits.
 - Represented a coalition of cybersecurity companies (the Cybersecurity Coalition) before the governments of Canada, Mexico, and the US during the USMCA negotiations. On behalf of the Coalition, he drafted consensus negotiating text on risk-based approaches to cybersecurity reflecting the NIST Cybersecurity Framework for potential inclusion in the Chapter on Digital Trade and discussed the text with the three governments. Much of the text was ultimately included in the agreement (Article 19.15) and is the first time such commitments have ever been included in any US trade agreement.
 - Engaged by a US distilled spirits producer towards the end of the negotiations after the text of a side letter was revealed to contain language that would potentially impact the company's ability to remain in business. Jeff worked with the company to draft a position paper; lobby Congress, USTR and other White House offices, and the relevant agencies; submit technical comments to the key US regulator; and craft a bipartisan letter to the Administration from approximately twenty members of Congress in opposition to the terms of the side letter.
 - As a result, language was inserted in the US House Ways & Means Committee Report indicating the Committee's view that although the US had committed to considering certain actions under the side letter that could be detrimental to the company, the relevant US regulator did not have authority to take such actions under US law and regulations.

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Advice in the context of the implementation of trade agreements

Steptoe attorneys are experienced in the implementation of trade agreements, including at the WTO and with respect to FTAs, through their work in private practice and as government officials. This experience includes work to: ensure domestic measures remain consistent with international trade obligations; push trading partners to keep their measures consistent or bring inconsistent measures into compliance with trade obligations; and administer trade agreements in order to conduct normal business, ensure they are well-functioning, and make improvements as needed.

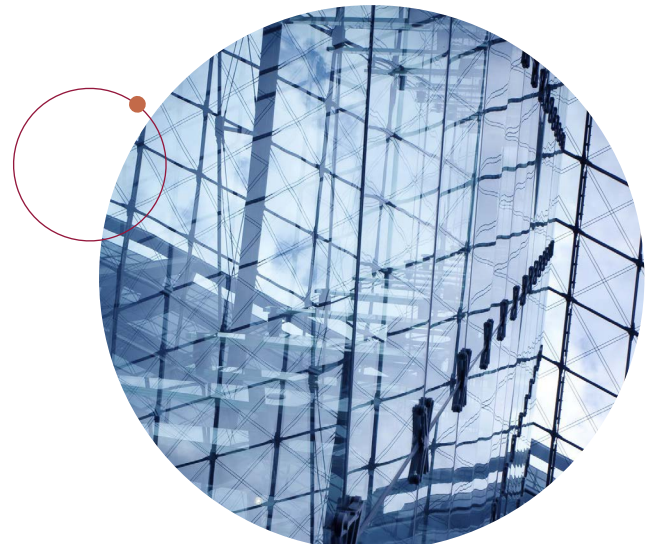
Our team's prior government experience

- **WTO Committee on Technical Barriers to Trade (TBT).** While serving as the lead policymaker and lawyer for TBT at USTR over a combined seven-year period, Steptoe partner Jeff Weiss represented the US at the WTO Committee on TBT.

In working to ensure effective implementation of the TBT Agreement, he focused on:

- ensuring that US trading partners were properly implementing their WTO TBT Agreement commitments. In particular, he raised and worked to resolve dozens of Specific Trade Concerns (STCs) that created market access barriers to US products. Such STCs involved foreign regulation of: chemicals and hazardous substances, medical devices, pharmaceuticals, toys, ICT products, automotive products, nanotechnology, cosmetics, wine and distilled spirits, solar panels, batteries, lawnmowers, appliances, organic products, cheese, piping, snack foods, biotechnology, and other products. In this context, he reviewed the relevant laws, regulations, and other measures in the foreign jurisdiction (e.g., Brazil, Canada, China, EU, France, India, Israel, Korea, Mexico, South Africa, and Thailand) and analysed them for developing potential WTO claims, statements to be delivered at meetings of the WTO Committee on TBT, talking points and questions for use during bilateral meetings, and correspondence from the USTR to foreign counterparts;

- ensuring the US was properly implementing its WTO TBT Agreement obligations. In that context, he analysed proposed US laws and regulations for WTO compatibility and, where necessary, raised concerns with the relevant domestic entities, typically regulatory agencies and the US Congress, and tried to resolve them. In cases where foreign counterparts raised trade concerns with US measures bilaterally or at the TBT Committee, he defended the measures during Committee and bilateral meetings, coordinated the US position internally, and where necessary, sought to address the concerns through the US interagency process or with relevant congressional committee staff; and
- participating in the Committee's systemic work to improve implementation of the TBT Agreement and develop subsequent agreements and interpretations, typically through the Triennial Review process. This included developing US and joint submissions that highlighted examples of how to comply with the TBT Agreement, providing updates to the Committee on relevant US developments as they related to implementation of specific TBT Agreement provisions, and chairing and speaking on panels during Committee workshops on implementation of specific aspects of the agreement.



- **Japan-EU Economic Partnership Agreement (EPA).** Steptoe lawyer Yumiko Takahashi was a member of the Japan Ministry of Foreign Affairs team negotiating, drafting and legally verifying the Japan-EU EPA. See further details in the section above on page 5.
- **The General Agreement on Trade in Services (GATS).** As Deputy Director of the Services and Investment Division of Canada's Trade Law Bureau, Steptoe Partner Christophe Bondy was called upon over the course of eight years to provide advice on the conformity of existing and proposed domestic regulatory and legislative proposals with Canada's GATS obligations.
 - In the context of the CETA negotiations, he also was called upon to review the conformity of proposed EU Member State reservations from cross-border trade in services obligations with the EU and Member States' existing GATS commitments, pointing out where such reservations were inconsistent with GATS.
- **North American Free Trade Agreement (NAFTA).** While serving as Assistant General Counsel at USTR, Steptoe partner Jeff Weiss spent three years as the lead lawyer for NAFTA. During that time, he provided legal advice to the Office of the Western Hemisphere on a host of implementation issues relating to the Agreement and related bilateral issues and helped administer the agreement. In particular, he:
 - reviewed proposed US legislation and regulations to ensure proper US implementation of its NAFTA obligations.
 - worked with the Office of the Western Hemisphere to negotiate and implement successive rounds of liberalizing the NAFTA rules of origin through presidential proclamation.
- administered the NAFTA dispute settlement system from the US side. This included: running a process to select members of the dispute settlement rosters and maintaining those rosters; working with Canada, Mexico, the Commerce Department, and the US NAFTA Secretariat to select panels and Extraordinary Challenge Committees; addressing panel-specific process issues as necessary; and discussing how to improve NAFTA dispute settlement procedures and practices and resolving systemic issues through frequent Committee meetings with Canadian and Mexican counterparts.
- supervised implementation of the Softwood Lumber Agreement and provided interpretations of the Agreement, as necessary, as lead counsel to the Softwood Lumber Committee.
- advised USTR's Office of the Western Hemisphere in the negotiation of a 2006 agreement on trade in tequila with Mexico in a successful effort to stop Mexico from banning the export of bulk tequila to the US in violation of NAFTA.
- participated in numerous meetings of the NAFTA Committee on Standards-Related Measures, as well as the equivalent committees under the US-Chile FTA and the US-Israel FTA. During such meetings, which are a critical part of implementing FTAs, trading partners raised implementation concerns with regard to specific measures that were inhibiting market access for their companies, and also discussed systemic implementation issues and opportunities for greater collaboration.

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International law relating to trade

Step toe's International Trade Group has been involved in numerous trade disputes that have taken place over the past four decades. We have advised governments and commercial clients at every stage of international trade controversies, from the evaluation of potential claims and risks to the litigation of disputes before WTO panels, the WTO Appellate Body, and tribunals convened under other international trade agreements. As such, we routinely provide advice on issues of compliance with WTO and trade agreement obligations. Because much of our work in this area has been for governments, we are highly attuned to the special needs and concerns of government clients. Our work is consistently at the leading edge of how critical issues in public policy interact with international trade rules.

Case studies

- **Advised a WTO Member government in relation to its Digital Services Tax.** We were retained by a WTO Member government to advise in connection with the US' "Section 301" investigation of its Digital Services Tax. Our advice encompassed all aspects of the DST issue, including:
 - potential negotiated solutions;
 - negotiations on a new framework for international taxation under the OECD/G20 Inclusive Framework;
 - consultations with USTR under Section 301;
 - advocacy with the US executive and legislative branches;
 - possible interaction of the DST issue with trade agreement negotiations; and
 - advice on the compatibility of the Member's digital services tax with WTO rules and the terms of the relevant bilateral convention for the avoidance of double taxation.
- **Advised a WTO Member government on the compatibility of certain US tax legislation with WTO rules.** The US Tax Cuts and Jobs Act, enacted in 2017, contains certain provisions that may be incompatible with WTO rules. On behalf of a WTO Member government, we prepared a comprehensive analysis of the WTO consistency of these provisions.
- **Advised a WTO Member government on the compatibility of certain cybersecurity-related laws and regulations with its international trade obligations.** We advised on how to craft cybersecurity-related laws and regulations, in part to avoid potential legal challenges under the WTO covered agreements and under bilateral free trade agreements. The advice included a multi-jurisdictional survey of how other countries have drafted similar types of measures, as well as an examination of how cybersecurity-related topics have been addressed in various bilateral and multilateral trade and investment agreements.
- **Prepared a comprehensive analysis for a WTO Member government on trade-related aspects of climate change measures.** The analysis included an in-depth examination of WTO rules relating to border tax adjustments and how they apply to different forms of carbon taxation.
- **Advising a commercial client concerning its country's accession to the WTO.** Our advice includes an evaluation of the WTO compatibility of existing laws and regulations that affect the operations of the company. We are working closely with the acceding government as part of this representation.
- **Ensuring Consistency with International Environmental Agreements.** In the context of providing counsel and representation to a coalition of battery manufacturers and recyclers, Step toe conducted an analysis of relevant US law and regulations in the context of several international treaties and agreements, in particular: the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal (the US is not a party), the OECD Multilateral Waste Agreement, and US bilateral agreements on waste with Canada and Mexico. Step toe proposed recommendations for the US government that would advance the goals of the coalition while ensuring consistency with these international instruments.

Our team's prior government experience

- **Advised the US on the conformity of a range of proposed legislative and regulatory measures with WTO and other international obligations.** As a member of USTR's Office of General Counsel and Office of WTO and Multilateral Affairs, Steptoe partner Jeff Weiss regularly provided advice over a seven-year period on the conformity of a multitude of proposed US federal legislative and regulatory measures with WTO and other international trade obligations, with a view to eliminating or mitigating trade frictions and dispute settlement risks arising out of such proposed measures. Specific examples included advising on proposals to
 - strengthen consumer product safety rules for children's products;
 - introduce minimum quality requirements on a variety of agricultural products;
 - provide specific authorizations for the production of distilled spirits;
 - require the development of energy efficiency standards for white goods; and
 - augment testing and certification requirements for lithium ion batteries for transport on aircraft.
- **Advised Canada on the conformity of a range of proposed legislative and regulatory measures with NAFTA and WTO obligations.** As Deputy Director of the Services and Investment section of Canada's Trade Law Bureau, Steptoe partner Christophe Bondy regularly provided advice over an eight-year period on the conformity of proposed Canadian federal legislative and regulatory measures with NAFTA, WTO and other international trade and investment obligations with a view to eliminating or mitigating dispute risks arising out of such proposed measures, with particular emphasis on GATS and the investment and services obligations of Free Trade Agreements to which Canada is a party.
- Specific examples included advising on proposals to introduce plain packaging for tobacco products; advising on withdrawal of or amendments to existing subsidy programmes; and advising on national energy policy.
- The work also included considering the potential risks arising from proposed measures of sub-national (provincial) Canadian governments.

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Domestic law of different jurisdictions in the context of international trade and/or negotiations

In connection with representation of governments around the world relating to international trade and investment disputes and negotiations, our lawyers regularly analyse and coordinate the provision of advice on the domestic measures of multiple jurisdictions. We have done so both in reliance on our in-house capacity in the laws of multiple jurisdictions, and in partnership with local counsel. Steptoe lawyers also have performed this work for their respective home countries during their prior careers in government service.

- Steptoe Domestic Law Capabilities: **the UK, the US, Canada, France, Belgium, and Germany.**
- We have worked with State lawyers and local counsel on actual or potential trade disputes regarding measures adopted or proposed under the laws of Argentina, Australia, Brazil, Canada, China, the EU, France, India, Israel, Mexico, South Africa, South Korea, Vietnam, the US, and the UK.

- In international investment disputes, with the support of local counsel, we have provided advice on the conformity of laws and regulations of Armenia, Australia, Barbados, Bosnia and Herzegovina, Colombia, Croatia, Dominican Republic, the EU, Egypt, The Gambia, Germany, Guatemala, Jordan, Mongolia, Montenegro, Nigeria, Russia, Serbia, Switzerland, Tanzania, Venezuela, and Zimbabwe, among others, with international investment treaty obligations.
- In connection with international trade negotiations, we have worked with local counsel to analyse the laws and regulations of countries including all EU Member States, CPTPP Member States, Russia, and Mexico.

Case studies

Advised a WTO Member government in relation to its Digital Services Tax. We were retained by a WTO Member to advise in connection with the US' "Section 301" investigation of its Digital Services Tax. See further details in the section above on page 10.



Our team's prior government experience

- **EU-Canada Comprehensive Economic and Trade (CETA) Agreement Negotiations.** As Deputy Director of the Services and Investment division of Canada's Trade Law Bureau, Steptoe partner Christophe Bondy spent five years as Senior Counsel to Canada on the full range of services and investment chapters of CETA. In connection with this he regularly:
 - analysed the laws and regulations of all 28 EU Member States (as they then were) as well as of the EU itself, notably in connection with analysis of reservations taken by the EU and its Member States to the Services and Investment obligations of the Agreement; and
 - analysed Canadian federal and provincial regulatory and legislative measures both as potential reservations to services and investment provisions of the CETA, and more generally to consider their compatibility with proposed obligations under the Agreement
 - Both for Canada and for the EU and its Member States, this involved analysing laws and regulations adopted in both a Civil Law (e.g. Québec) and Common Law (e.g. England and Wales) context. Mr. Bondy is dual trained in Common and Civil Law, being both an Ontario Barrister and an Avocat au Barreau de Paris.
- **Japan-EU Economic Partnership Agreement (EPA).** Steptoe lawyer Yumiko Takahashi was a member of the Japan Ministry of Foreign Affairs team negotiating, drafting and legally verifying the Japan-EU EPA. Her work involved analysing Japanese competition law, subsidies laws and regulations and rules on State-owned enterprises and determining the compatibility of such regimes with proposed disciplines in the Agreement. See further details in the section above on page 5.
- **Accession of the Russian Federation to the WTO.** As the USTR lead for Technical Barriers to Trade, Jeff Weiss reviewed Russian measures on technical regulations, standards, and conformity assessment procedures, posed questions to the Russian side at the negotiating table and intercessionally, and proposed and negotiated revisions to the measures and relevant text for the accession protocol, with a view to ensuring WTO compatibility.
- **Side Agreements to NAFTA.** While serving as Assistant General Counsel at USTR, Steptoe partner Jeff Weiss spent three years as the lead lawyer for NAFTA. During that time, He advised USTR's Office of the Western Hemisphere in the negotiation of a 2006 agreement on trade in tequila with Mexico in a successful effort to stop Mexico from banning the export of bulk tequila to the US in violation of NAFTA. This involved, among other things, analysing relevant US and Mexican laws and regulations, and devising a framework to address them.
- **Advised the US on the conformity of a range of proposed legislative and regulatory measures with WTO and other international obligations.** As a member of USTR's Office of General Counsel and Office of WTO and Multilateral Affairs, Steptoe partner Jeff Weiss regularly provided advice over a seven-year period on the conformity of a multitude of proposed US federal legislative and regulatory measures with WTO and other international trade obligations, with a view to eliminating or mitigating trade frictions and dispute settlement risks arising out of such proposed measures. See further details in the section above on page 11.

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International investment law

Step toe lawyers have provided legal advice in connection with the negotiation of some of the most innovative and progressive international investment agreements in the world. Step toe lawyers are deeply engaged in related policy discussions and are thought leaders in this regard.

Case studies

- **Korea-US Free Trade Agreement (KORUS).** Step toe advised Korea's Ministry of Commerce, Industry & Energy in the negotiation of this FTA. See full details in the section above on page 4.
- **Other Korean FTAs.** Over a period of six years, Step toe provided advice to Korea's Ministry of Trade, Industry and Energy with respect to trade agreement negotiations on an as-needed basis, including on the provisions of such agreements relating to investment protection. Pursuant to this arrangement, Step toe would provide:
 - telephone discussions (and one in-person meeting in Seoul) to provide advice on negotiating strategy, and
 - written memoranda on how particular issues had been resolved by the other country or by the US in previous FTA negotiations.

This advice included input on international investment provisions, including the Agreement on Investment forming part of the Free Trade Agreement between Korea and Turkey.

- **EU-China Investment Treaty Negotiations.** Step toe was called upon by the PRC to provide advice on issues of legal interpretation arising in connection with the negotiation of this agreement.

• Advisory Experience.

- **Regional:** Step toe lawyers have provided capacity building and policymaking assistance to State lawyers in Africa, in South America, and in the Far East through UNCTAD, APEC, the OECD and other fora to assist State lawyers in their ability to manage the procedural aspects of investment treaty disputes, understand the substantive obligations under such instruments, appreciate the evolution of investment treaty instruments over the past half-century, consider and appreciate the current policy issues arising in the investment treaty context and assess the different options available to address such issues.
- **Multilateral:** Step toe partner Christophe Bondy is one of the private sector counsel currently engaged in the Practitioners Group organised to provide high-level technical input in the UNCITRAL Working Group III reform initiative for investor-State arbitration.

Our team's prior government experience

- **Counsel on participation agreements negotiated by the US.** In his role as Assistant General Counsel at USTR, Steptoe partner Jeff Weiss advised USTR negotiators on the drafting of numerous Trade & Investment Framework Agreements (TIFAs) with developing country trading partners. Such agreements, as described by USTR, “serve as a forum for the US and other governments to meet and discuss issues of mutual interest with the objective of improving cooperation and enhancing opportunities for trade and investment.”
- **Counsel to Canada in connection with the negotiation of the investment chapter of the Canada-EU Comprehensive Economic and Trade Agreement (CETA).** As Senior Counsel to Canada, Steptoe partner Christophe Bondy was directly involved as counsel in the negotiation of the investment chapter of the CETA. See further details in the section above on page 4.
- **Counsel to Canada in connection with the negotiation of multiple international investment agreements.** As Senior Counsel to Canada, Steptoe partner Christophe Bondy was directly involved over a period of eight years in providing primary legal support to negotiations of multiple international investment agreements with counterpart States around the world, including in Asia, Africa, Central America, and the Middle East. This involved ongoing advice at the table about the legal implications of specific proposals, in-depth research back at capital during intersessional phases on specific issues, strategic ongoing advice to the lead negotiator, and advice up to senior levels of government on specific legal and policy issues. Among other activities, he directly advised Canada's Prime Minister in connection with time-sensitive negotiations with a South East Asian country concerning an investment protection agreement.

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Legal barriers to market access in the context of trade negotiations

Step toe brings to bear a broad range of experiences in developing market access strategies tailored to our clients' goals and the special regulatory and cultural environment of the specific markets of interest. We are particularly well-positioned to assist clients in enhancing market access in major markets in Asia, Europe, and Latin America, where we have worked closely with government officials and stakeholders. Step toe has achieved strong results for clients seeking new and expanded access to key markets in Asia (including China, India, Korea, and Japan), the EU, and Brazil.

Our team's prior government experience

- **US-Korea Free Trade Agreement (KORUS).** While serving as USTR's lead negotiator for Technical Barriers to Trade (TBT), Step toe partner Jeff Weiss worked with USTR's Office of Korea to obtain additional market access commitments from Korea after President Obama re-opened the KORUS text after taking office. For instance, Korea agreed to additional TBT-related commitments on automotive market access in a side letter. Korea also made commitments regarding market access-related issues involving food and agriculture products as a result of these discussions.
- **US-Mexico-Canada Agreement (USMCA).** Step toe partner Jeff Weiss was engaged by a US distilled spirits producer during the USMCA negotiations after the text of a side letter was revealed to contain language that would potentially impact the company's ability to sell its product and access the Mexican market.
 - He worked with the company to draft a position paper; lobby Congress, USTR and other White House offices, and the relevant agencies; submit technical comments to the key US regulator; and craft a bipartisan letter to the Administration from approximately twenty members of Congress in opposition to the terms of the side letter.
- As a result, language was inserted in the House Ways & Means Committee Report indicating the Committee's view that, although the US had committed to considering certain actions under the side letter, the relevant US regulator did not have authority to take such actions under US law and regulations.
- **US-China Phase One Agreement.** Step toe partner Jeff Weiss was engaged by a large custody bank to assist with a market access issue (i.e., unnecessarily high in-country capital requirements) with respect to providing custody banking services in China.
 - After reviewing the relevant Chinese measures, he worked with the client to draft a position paper and proposed trade agreement text. He then organized and led meetings with USTR, the Departments of Commerce, State, and Treasury, and congressional trade committees that were attended by other similarly situated custody banks.
 - As a result, the Phase One agreement contains a provision that resolved the concern (Article 4.2: Banking Services).
- **US-Mexico Agreement on Tequila Trade.** In his role as Assistant General Counsel at USTR, Step toe partner Jeff Weiss advised USTR's Office of the Western Hemisphere in the negotiation of a 2006 agreement on trade in tequila with Mexico in a successful effort to stop Mexico from enacting a ban that would have prevented U.S. bottlers from purchasing bulk tequila in Mexico. The agreement prohibited Mexico from restricting exports of bulk tequila, and created a tequila bottlers registry to identify approved tequila bottlers.

- **Trans-Pacific Partnership Agreement (TPP).** While working as the lead negotiator for Technical Barriers to Trade (TBT) at USTR, Steptoe partner Jeff Weiss conceptualized, drafted, cleared interagency, and negotiated the Chapter on TBT, including the sectoral annexes to align regional regulatory, standards, and conformity assessment approaches to wine and distilled spirits, medical devices, cosmetics, pharmaceuticals, and information and communications technology products that use cryptography. This was the first time such provisions had ever been included in a US trade agreement.
- To develop the texts, he worked closely with the relevant US regulators and US stakeholders. The primary purpose of the US proposals was market access. For example, provisions requiring national treatment for conformity assessment bodies, setting parameters on wine and distilled spirits labelling, and creating disciplines on encryption regulation – were meant to compel current and future TPP members to revise domestic laws that were problematic from a market access perspective.
- See further details in the section above on page 7.
- **Legal advice on legal barriers to market access outside the trade negotiation context.** While serving as the lead negotiator and lead lawyer for Technical Barriers to Trade (TBT) at USTR over a combined seven-year period, Steptoe partner Jeff Weiss worked to resolve dozens of market access barriers to US products associated with foreign regulation of: chemicals and hazardous substances, medical devices, pharmaceuticals, toys, ICT products, automotive products, nanotechnology, cosmetics, wine and distilled spirits, solar panels, batteries, lawnmowers, appliances, organic products, cheese, piping, snack foods, biotechnology, and other products.

In this context, he reviewed the relevant laws, regulations, and other measures in the foreign jurisdiction (e.g., Brazil, Canada, China, EU, France, India, Israel, Korea, Mexico, South Africa, and Thailand) and analyzed them for developing potential WTO claims, statements to be delivered at meetings of the WTO Committee on TBT, talking points and questions for use during bilateral meetings, and correspondence from the USTR to foreign counterparts.

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Negotiation and implementation of: recognition agreements and arrangements, participation agreements and wider trading arrangements, relationships or instruments

The Steptoe team is experienced advising on mutual recognition agreements, arrangements, and other alignment mechanisms to facilitate trade. This includes “in the room” negotiating experience and behind the scenes legal drafting and counselling experience in bilateral, regional, and multilateral contexts covering a variety of goods and services.

Our team’s prior government experience

- **Legal analysis of the US conformity assessment system, including with regard to US experience with mutual recognition agreements, for a WTO Member government in 2019.** Steptoe partner Jeff Weiss drew on his experience as the lead USTR negotiator and counsel for Technical Barriers to Trade to provide an analysis of US conformity assessment on a sector-by-sector basis, which covered:
 - government-to-government mutual recognition agreements (MRAs),
 - mutual recognition arrangements (which are private sector agreements), and
 - other initiatives in which US agencies and departments participate with the goal of aligning technical regulations (e.g., UNECE Working Party 29, the International Medical Device Regulators Forum).

Covered sectors included: autos, pharmaceuticals, medical devices, telecommunications equipment, laboratory accreditation, and consumer goods. The report provided advice on the potential negotiation of a mutual recognition agreement with the US.

- **Lead US negotiator for the WTO Non-Agricultural Market Access (NAMA) negotiations with respect to TBT-related sectoral regulatory alignment during the Doha Round.** In his role as the TBT negotiator at USTR, Steptoe partner Jeff Weiss conceptualized, drafted, cleared interagency, and negotiated US text for several sectoral proposals. The US proposal on automotive sectoral regulatory alignment relied on mutual recognition of automotive safety standards through the 1998 Agreement on UN Global Technical Regulations under UNECE Working Party 29.
- **Counsel in the negotiation of the Agreement on Mutual Recognition Between the US and the EEA EFTA States.** In his role as Assistant General Counsel at USTR, Steptoe partner Jeff Weiss advised USTR’s Office for Europe and the Middle East in connection with negotiation of this MRA, which covers telecommunications equipment, electromagnetic compatibility, and recreational craft. In this regard, he familiarized himself with the six-sector MRA that USTR signed with the EU in 1998 and assisted the USTR negotiator in structuring provisions of US negotiating proposals and the final agreement text.
- **Counsel in the negotiation of the Agreement Between the US and the EEA EFTA States on the Mutual Recognition of Certificates of Conformity for Marine Equipment.** In his role as Assistant General Counsel at USTR, Steptoe partner Jeff Weiss advised USTR’s Office for Europe and the Middle East in connection with negotiation of this MRA. In this regard, he familiarized himself with the MRA on marine equipment that USTR signed with the EU in 2004 and assisted the USTR negotiator in structuring provisions of US negotiating proposals and the final text of the agreement.

- **Counsel on participation agreements negotiated by the US.** In his role as Assistant General Counsel at USTR, Steptoe partner Jeff Weiss advised USTR negotiators on the drafting of numerous Trade & Investment Framework Agreements (TIFAs) with developing country trading partners. Such agreements, as described by USTR, “serve as a forum for the US and other governments to meet and discuss issues of mutual interest with the objective of improving cooperation and enhancing opportunities for trade and investment.”
- **Senior Counsel to Canada in the negotiation of the Mutual Recognition Agreement provisions of the Canada-EU Comprehensive Economic and Trade Agreement (CETA).** In his role as Senior Counsel to Canada in the CETA negotiations, Steptoe partner Christophe Bondy advised Canada in connection with negotiation of the chapter on Mutual Recognition of Professional Qualifications.
- He was directly involved in policy discussions regarding the aims and parameters of this aspect of the CETA and related challenges connected to the negotiation of such agreements and their ultimate enforceability.
- He helped structure provisions regarding the role of the Joint Committee charged with overseeing the adopting of MRAs and their incorporation into the CETA text going forward.

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International treaty law

The Steptoe team is experienced in providing legal advice on multilateral and bilateral treaties under international treaty law, as well as non-binding commitments and similar instruments devised between states. Steptoe has advised governments and private parties on the appropriate application of treaty law concepts to aid in domestic implementation of treaty obligations.

In the context of providing counsel to State and private sectors clients concerning the negotiation and interpretation of international trade and investment agreements, as well as in the context of actual or pending disputes, Steptoe counsel regularly are called upon to apply principles of international treaty law to consider how specific treaty provisions or proposed treaty language will be interpreted in light of the principles of the Vienna Convention on the Law of Treaties and customary international law.

Case Studies

- **Treaty Law Advice Regarding the Intersection of Overlapping Treaty Obligations.** We provided legal advice to a Middle Eastern government on how its proposed domestic cybersecurity regulations would impact its obligations under numerous multilateral and bilateral trade and investment treaties, some of which were already completed and others of which were under negotiation, as well as relevant non-binding international frameworks. Steptoe proposed solutions to help ensure that the country could accomplish its cybersecurity goals in a manner that would be defensible under existing treaties and could be accommodated in future treaties.
- **Treaty Law Advice in the Light of Domestic Obligations.** In the context of providing counsel and representation to a coalition of battery manufacturers and recyclers, Steptoe conducted an analysis of relevant US law and regulations in the context of several international treaties and agreements, in particular: the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal, the OECD Multilateral Waste Agreement, and US bilateral agreements on waste with Canada and Mexico. Steptoe proposed recommendations for the US government that would advance the goals of the coalition while taking these international instruments into account.

Our team's prior government experience

- **Treaty Law Advice in the Context of International Trade and Investment Disputes and Treaty Negotiations.** As Deputy Director of the Services and Investment Division of Canada's Trade Law Bureau, Steptoe partner Christophe Bondy spent eight years regularly considering principles of international treaty law in a variety of contentious and non-contentious contexts.
 - As lead counsel in defence of Canada in multiple investment treaty claims under NAFTA Chapter Eleven, devised arguments based upon the Vienna Convention on the Law of Treaties and customary international law of treaties to promote Canada's understanding of the relevant treaty text, and to respond to arguments made by Claimants regarding the proper interpretation of such texts.
 - As lead counsel to Canada in investment treaty claims under NAFTA, considered provisions of international treaty law concerning subsequent agreement of parties to an agreement / subsequent State practice in connection with interpretation of the NAFTA.

- In the context of multiple negotiations for international trade and investment agreements, regularly applied principles of international treaty law to consider the implications of considered or proposed treaty text, including the potential interpretative impact of proposed text on the appreciation of Canada's prior commitments.
- In the context of analysing proposed State measures for conformity with international trade and investment obligations, regularly applied international treaty law to determine the most likely analysis of key treaty provisions, and in light of this, the level of risk associated with specific provisions.

The above type of analysis is regularly undertaken by Mr. Bondy and indeed by all of the Steptoe international trade and investment law team in the context of representing clients in international trade and investment disputes, in negotiation of international instruments, and in assessing the merits and risks of proposed measures in light of international treaty commitments.

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