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WTO and Regional Trade Agreements Monthly Report

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Summary of Reports

United States

USTR 2007 NTE on Foreign Trade Barriers: Latin American Economies

On April 2, 2007, the Office of the United States Trade Representative (USTR) published the National Trade Estimate Report (NTE) on Foreign Trade Barriers, which surveys significant trade barriers to U.S. exports. We highlight the NTE report's comments on the trade practices of the United States' major Latin American trading partners -- Argentina, Brazil, Chile, and Mexico.

USTR 2007 NTE on Foreign Trade Barriers: Asian Economies

On April 2, 2007, the Office of the United States Trade Representative (USTR) published the National Trade Estimate Report (NTE) on Foreign Trade Barriers, which surveys significant trade barriers to U.S. exports. We highlight the NTE report's comments on the trade practices of the United States' major Asian trading partners—China, Hong Kong, Indonesia, Japan, Korea, Malaysia, the Philippines, Singapore, Taiwan, Thailand and Vietnam.

USTR 2007 NTE on Foreign Trade Barriers: Middle Eastern Economies

On April 2, 2007, the Office of the United States Trade Representative (USTR) published the National Trade Estimate Report (NTE) on Foreign Trade Barriers, which surveys significant foreign trade barriers to U.S. exports. The report addresses a wide array of issues and U.S. government actions to combat foreign trade barriers.

We highlight here the NTE report's analysis of the trade practices of major Middle Eastern trading partners Bahrain, Egypt, Jordan, Kuwait, Morocco, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE).

USTR Releases Results of 2007 Section 1377 Review of Telecommunications Trade Agreements

On April 10, 2007, the Office of the United States Trade Representative (USTR) released its annual Section 1377 Review of Telecommunications Trade Agreements. The review focused on five areas: (i) barriers to the provision of satellite capacity; (ii) barriers to the provision of Voice over Internet Protocol (VoIP) services; (iii) limitations on access to and use of public telecommunications services (including

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leased lines); (iv) issues related to regulatory independence, transparency; and (v) excessive market entry requirements. USTR discussed problems with each of these issues for several U.S. trading partners. We review below USTR's findings.

The full report is available at USTR's website at: http://www.ustr.gov.

United States Highlights

We would like to alert you to the following United States developments:

- Bush Administration Proposes Export Enforcement Act of 2007
- DOC Announces Preliminary Determination to Apply CVDs on Paper Imports from China, Indonesia and Korea
- Reps. Rangel and Levin Introduce Measure to Extend ATPDEA

Free Trade Agreements

AUSTR Cutler Discusses KORUS FTA Outcomes

On April 5, 2007, Assistant United States Trade Representative Wendy Cutler discussed outcomes of the recently concluded negotiations for the Korea-U.S. (KORUS) free trade agreement (FTA). Cutler acknowledged that although neither the United States nor Korea left the negotiations with everything they had sought, the final agreement was strong, comprehensive and balanced. Cutler also discussed a number of the agreement's specific chapters such as agriculture, automobiles, textiles and trade remedies. The United States and Korea completed the KORUS FTA on April 1 after eight rounds of formal negotiations and two rounds of last-minute, high-level meetings. Before each country can implement the agreement, it must receive approval from their respective legislatures. Given a number of politically sensitive issues contained in the agreement, passage of the agreement through either country's legislative body remains uncertain. This report summarizes Cutler's April 5 remarks and provides details on the FTA's treatment of key sectors and issues.

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Free Trade Agreements Highlights

We would like to alert you to the following Free Trade Agreements developments:

- Peruvian President Urges U.S. Congress to Pass U.S.-Peru FTA
- President Bush Notifies Congress of Intent to Sign Panama FTA
- U.S. and Korea Conclude FTA in Last Minute High-level Talks

Multilateral

WTO Compliance Panel Rules on Internet Gambling

On March 30, 2007, a World Trade Organization (WTO) "compliance" Panel ruled that U.S. federal law prohibiting internet gambling continued to violate the obligations of the United States under the WTO General Agreement on Trade in Services (GATS). The Panel released its Report in *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services: Recourse to Article 21.5 of the DSU by Antigua and Barbuda* (DS285) on March 30, 2007. We review below the Panel's decision.

Multilateral Highlights

We would like to alert you to the following Multilateral developments:

- Doha Meetings to Continue Over Coming Weeks; Lamy Calls on WTO Members to Make First Move
- USTR Requests WTO Consultations with China Over IPR, Market Access

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Reports in Detail

United States

USTR 2007 NTE on Foreign Trade Barriers: Latin American Economies

Summary

On April 2, 2007, the Office of the United States Trade Representative (USTR) published the National Trade Estimate Report (NTE) on Foreign Trade Barriers, which surveys significant trade barriers to U.S. exports. We highlight the NTE report's comments on the trade practices of the United States' major Latin American trading partners -- Argentina, Brazil, Chile, and Mexico.

Analysis

On April 2, 2007, USTR published the 2007 NTE Report on Foreign Trade Barriers. The annual report, which is required by the Omnibus Trade and Competitiveness Act of 1988, is an inventory of the most significant foreign barriers to U.S. exports of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights (IPR).

The 2007 NTE report classifies foreign trade barriers into ten different categories, covering all government measures and policies, whether consistent or inconsistent with international trading rules, that restrict, prevent or impede the international exchange of goods and services. These categories include: (i) import policies; (ii) standards, testing, labeling and certification; (iii) government procurement; (iv) export subsidies; (v) lack of intellectual property protection; (vi) services barriers; (vii) investment barriers; (viii) anticompetitive practices with trade effects tolerated by foreign governments; (ix) trade restrictions affecting electronic commerce; and (x) other barriers

The report examines the trade practices of 63 major trading partners[1], which are the largest export markets for the United States. We review here the NTE's assessment of four Latin American countries.

[1] The 63 major trading partners are comprised of 58 countries, the Arab League, the European Union (EU), the South African Customs Union (SACU), Hong Kong, and Taiwan.

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Argentina

In 2006, the United States held a trade surplus in the goods sector with Argentina of US$801 million. In 2005, U.S. foreign direct investment (FDI) in Argentina amounted to US13.2 billion, an increase of US$11.5 billion over 2004. U.S. FDI is largely concentrated in manufacturing, finance, and information sectors.

The NTE report cites the following trade-related problems:

- Argentina restricts or prohibits imports of a variety of used products, including clothing, re-treated tires, medical equipment, auto parts, and a long list of capital goods. According to the NTE report, several imports of capital goods are totally banned. Machinery imports are allowed, but only after the machinery has been rebuilt. In 2006, Argentina extended the authorization to import: (i) 10-year old used self-propelled road machinery (*e.g.,* tractors, power shovels); and (ii) used or re-manufactured auto parts for road machinery.
- In June 2006, Brazil and Argentina concluded a new two-year bilateral auto agreement. The new agreement reduced the flex coefficient from 2.6 to 1.95 but it did not establish a timeframe to establish free trade. The agreement also postponed the establishment of a bilateral regime continuing the 40 percent discount on import duties paid on imported auto parts originating from non-Mercosur countries, applied by Brazil to its domestic companies since 2001.
- In February 2006, Brazil and Argentina concluded an agreement establishing a bilateral safeguard mechanism (the “Mechanism for Competitive Adaptation” or “MCA”). Argentina has long sought such a mechanism as a way to respond to surging imports from Brazil. Domestic producers that demonstrate that imports from the other country cause distortions in their domestic market are eligible to apply for imposition of the safeguard mechanism. The bilateral safeguard mechanism applies to trade between Brazil and Argentina and does not over imports from Paraguay or Uruguay.
- The full implementation of Mercosur’s common external tariff (CET) may be further delayed in 2007. CET’s range from 0 to 20 percent ad valorem, with some exceptions. Individual Mercosur country exceptions to the CET are allowed until the end of 2008. Argentina continues to maintain exceptions on 1,899 product lines in its Harmonized Tariff Schedule (HTS).
- Customs procedures can be cumbersome, costly, and lengthy, especially for the capital goods, steel, and textile sectors. Moreover, in 2005 Argentina modified regulations for couriers, lengthening the customs clearance process threefold and increasing the cost and time for couriers.

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- Testing and safety standards for a variety of products including low-voltage electrical appliances, toys, gas products, elevators, personal protection equipment, and construction steel are often inconsistent, redundant and non-transparent. Although Argentina has taken steps towards establishing a more open market for beef and other bovine products, it continues to require special sanitary certificates for beef and poultry products from the United States.
- Argentina's laws provide inadequate and ineffective intellectual property rights (IPR) protection. IPR enforcement of copyrights and trademarks remains of enormous concern to the United States, which has placed Argentina on the Special 301 Priority Watch List. The report cites inadequate border controls, in particular along the border near Paraguay and Brazil, as a major cause of regional circulation of pirated goods. Widespread end-user piracy of software, movies, and books continue to generate losses for U.S. companies. Widespread offering of "home delivery" for pirated goods has also become a matter of increasing concern for U.S. copyright industries.

Brazil

In 2006, the United States held a trade deficit with Brazil in the goods sector of US$7.2 billion, a decrease of $1.9 billion over 2005. In 2006, U.S. FDI in Brazil amounted to US$32.4 billion, up from US30.2 billion in 2004. The NTE report notes tariffs, non-tariff barriers, and obstacles in the services sector as the main concerns of the United States.

- The full implementation of Mercosur's common external tariff (CET) may be further delayed in 2007. CET's range from 0 to 35 percent ad valorem, with a number of exceptions. Brazil maintains 100 exceptions to the CET. Elevated CET's impede increased U.S. imports of agricultural goods, distilled spirits, and computer and telecommunications equipment. Brazil also applies additional import taxes that can double the actual cost of importing goods into the country. Brazil applies a 60 percent flat import tax on most manufactured retail goods that are individually imported through the simplified tax regime (RTS).
- Non-tariff barriers such as cumbersome documentation requirements required before certain types of goods can enter Brazil (even on a temporary basis) remains an ongoing concern for many U.S. companies. Registration under the Secretariat of Foreign Trade computerized trade documentation system (SECEX) is onerous and often times lacks transparency. Most imports into Brazil can enter the country through an "automatic import license regime." Nevertheless, some imports require previous authorization by certain Brazilian Ministries (*i.e.,* non-automatic import licensing regime)

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- Regarding Brazil's services sector, barriers to entry in telecommunications, limitations on foreign ownership of cable and media companies, and ceilings on foreign capital and voting rights in insurance companies are all serious concerns for U.S. service providers. According to USTR, transparency in Brazil's government procurement process "is at times lacking."
- In 2006, USTR placed Brazil on the Priority Watch List. The United States remains very concerned about Brazil's IPR protection and enforcement regimes. The report also cites piracy as a "serious problem."

Chile

The United States held a trade deficit with Chile in the goods sector of US$2.8 billion in 2006, an increase of US$1.3 billion over 2005. The United States – Chile Free Trade Agreement (FTA) entered into force on January 1, 2004, eliminating tariffs on 87 percent of bilateral trade.

According to the NTE report, Chile has an open trade and investment regime. Although some tariffs remain in place, these will be phased out by 2016. Approximately 75 percent of U.S. agricultural exports will enter Chile duty-free within four years. Protection and enforcement of intellectual property rights (IPR) remains the most significant concern of the United States. The NTE report cites the following problems:

- Chile's trade regime allows for the free importation of goods, except those that are forbidden under domestic legislation. There are almost no restrictions in the types or amounts of goods that can be imported into Chile, nor any restrictions to use the official foreign exchange market.
- Chile maintains certain non-tariff barriers, such as the country's price band system for wheat, wheat flour, and sugar, that will be phased out under the U.S.-Chile FTA for imports from the United States by 2016.
- Under the U.S.-Chile FTA, a 50 percent surcharge on used goods has been eliminated for goods originating in the United States. The importation of used passenger and cargo transport vehicles is prohibited with a few exceptions. Also, several computer products and books enter Chile duty-free.
- In January 2007, the United States Representative (USTR) elevated Chile from its "Watch List" to its "Priority Watch List" as a result of its "Out-of-Cycle Review" (OCR) carried out in 2006. USTR noted that the decision to place Chile on its 2007 Priority Watch List was due to Chile's failure to protect IPR effectively. USTR has urged Chile to increase its efforts to meet the standards established under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), the U.S.-Chile FTA, and other international trade agreements. USTR also noted that Chile has not fully

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implemented legislation to comply with FTA obligations regarding patent term adjustment and recommended modifications to its IPR legislation to conform with its bilateral commitments. The U.S.-Chile FTA provisions on IPR require Chile to bring its IP laws and enforcement practices in full compliance with international standards regarding U.S. patent protection, trademarks, and undisclosed information.

- On January 1, 2007, Chile eliminated its luxury tax on automobiles. Chile will continue to apply a 15 percent tax to other imported “luxury goods,” such as beer, cider, wine and champagne; gold, platinum, and white ivory articles; jewelry and natural or synthetic precious stones; fine furs; mobile home trailers; caviar conserves and their derivatives.

Mexico

In 2006, the United States held a trade deficit with Mexico in the goods sector of US$64.1 billion, an increase of US$14.3 billion over 2005. In 2004, U.S. FDI in Mexico amounted to US$71.4 billion and was mainly oriented to the manufacturing, banking, and finance sectors. The NTE report highlights the following issues related to Mexico’s import policies and investment barriers:

- Under the North American Free Trade Agreement (NAFTA), Mexico eliminated tariffs on most industrial and agricultural goods from the United States. Trade growth in agricultural products has been balanced since NAFTA entered into force. However, this has not been the case for non-agricultural trade.

- Several U.S. agricultural and non-agricultural exports are subject to antidumping duties that limit entry to the Mexican market. Goods subject to these duties include beef, apples, bond paper, and carbon steel pipe and tube. In 2006, Mexico terminated antidumping duties on U.S. long-grain white rice.

- In December 2006, the Mexican Congress eliminated a controversial 20 percent tax on High Fructose Corn Syrup (HFCS). The repeal of the 20 percent tax on HFCS follows the United States and Mexico’s agreement to a deadline for Mexico to comply with a World Trade Organization (WTO) ruling (DS308, *Mexico–Tax Measures on Soft Drinks and Other Beverages*) that a Mexican tax on soft drinks and other beverages with non-sugar sweeteners was inconsistent with WTO rules. In July 2006, Mexico and the United States agreed to the terms of an agreement to end the 12-year-old dispute over U.S.-Mexico sugar trade. Among other things, Mexico agreed not to impose duties on U.S. HFCS effective January 1, 2008.

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- Mexican sanitary and phytosanitary standards create barriers to certain U.S. agricultural goods, including grains, seed products, pork, beef, poultry, apples, dry beans, and avocados.
- Mexican customs administrative procedures are inconsistent, burdensome, unevenly enforced, and often change without sufficient prior notification. Mexico also requires import licenses or registration for imports of sensitive products, often delaying importation or imposing additional costs to the importer.
- Since 2003, Mexico has remained in the Special 301 Watch List. According to USTR, the extent of IPR violations in Mexico “remains dramatic” despite a fairly extensive set of IPR laws and an increase in the number of arrests and seizures.
- Mexico’s telecommunications market remains uncompetitive and regulatory agencies are unresponsive to complaints of market discrimination.

Outlook

The NTE reports points out a number of tariff and non-tariff barriers that are burdensome for U.S. companies in Latin American countries. The NTE also identifies progress made in recent FTAs, such as the gains for U.S. companies through the U.S.-Chile FTA and the removal of tariff barriers under NAFTA. The report highlights the successful of resolution of trade disputes with Mexico (*e.g.,* HFCS, Byrd Amendment) and raises serious concerns regarding IPR enforcement by most Latin American countries, notably Chile and Mexico. The report also calls for: (i) an improvement in customs administrative procedures, which are often burdensome and unevenly enforced; and (ii) a gradual elimination of barriers to competition in the provision of telecommunication and media services in several of these countries.

The United States will consider issues identified in the NTE report as it continues to negotiate FTAs and in regional and multilateral negotiations.

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USTR 2007 NTE on Foreign Trade Barriers: Asian Economies

Summary

On April 2, 2007, the Office of the United States Trade Representative (USTR) published the National Trade Estimate Report (NTE) on Foreign Trade Barriers, which surveys significant trade barriers to U.S. exports. We highlight the NTE report's comments on the trade practices of the United States' major Asian trading partners—China, Hong Kong, Indonesia, Japan, Korea, Malaysia, the Philippines, Singapore, Taiwan, Thailand and Vietnam.

Analysis

The 2007 NTE report examines the trade practices of 63 major trading partners,[2] which are the largest export markets for the United States. We highlight below the report's comments on the trade practices of China, Hong Kong, Indonesia, Japan, Korea, Malaysia, the Philippines, Singapore, Taiwan, Thailand, and Vietnam.

China

The NTE report notes China's mixed progress in implementing its World Trade Organization (WTO) commitments and cites its continued use of trade-distorting industrial policies including local content requirements, import and export restrictions, discriminatory regulations and prohibited subsidies. The report also notes that although USTR has made some progress in addressing U.S. concerns through bilateral dialogue with China, it will not hesitate to exercise its WTO rights through a request for dispute settlement in cases where dialogue fails.

Specific issues raised in the NTE report include:

- ***Import substitution policies*** such as corporate tax deductions for foreign-invested enterprises (FIEs), local content requirements for automobiles and telecommunications equipment, and preferential tax and other policies to encourage the development of the domestic steel, semiconductor and fertilizer industries.
- ***High tariffs*** on products that compete with sensitive domestic products such as large motorcycles, video, digital video and audio recorders, and certain agricultural products.

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[2] The 63 major trading partners within the 2007 NTE report are comprise of: (i) 58 countries; (ii) the Arab League; (iii) the European Union (EU); (iv) Hong Kong; (v) Taiwan; and (vi) the Southern African Customs Union (SACU).

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- ***Inadequate IPR protection*** continues to be a problem for U.S. businesses in China. USTR notes that although China made a number of commitments to strengthen its IPR protection regime, it has been slow to implement these commitments. The report also cites China's weak enforcement of existing laws and regulations.
- ***Services barriers*** for sectors including insurance; banking; securities; financial information; credit card; wholesale; retail; franchise; express delivery; construction, engineering, architecture and contracting; transportation and logistics; telecommunications; audio-visual; tourism; education; legal; accounting and management consulting; advertising; and movement of professionals.
- ***Investment barriers*** including lack of transparency; inconsistently enforced laws and regulations; weak IPR protection; corruption; and a weak and unreliable legal enforcement of contracts and judgments.

Hong Kong, Special Administrative Region

The NTE report provides a favorable report on most of Hong Kong's trade policies. However, it cites a number of areas in which U.S. companies continue to face impediments to investment and trade including:

- ***Restrictions on U.S. beef imports*** that discourage exporters from shipping beef products to the Hong Kong market.
- ***IPR infringement*** such as piracy and counterfeiting of optical discs, software and audio and video media files. The report also notes that the Hong Kong government's failure in July 2006 to establish a copyright register increases the burden of rights holders to prove infringement.
- ***Financial sector restrictions*** that continue to prohibit U.S. banks licensed in Hong Kong from making RMB denominated loans.
- ***Long approval procedures for new pharmaceutical products*** that reduce new pharmaceutical products' patent life by as much as six months. The U.S. pharmaceutical industry has also expressed concern over a growth in the sales of ***counterfeit pharmaceutical products***.

Indonesia

Since taking office in October 2004, Indonesia's President Yudhoyono has followed through on pledges to improve Indonesia's business environment, attract greater investment, and create new jobs. The NTE notes that these measures have improved many long-standing problems that U.S. industry has

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encountered in Indonesia, including a lack of enforcement, legal and regulatory non-transparency, and inadequate protection of IPR. Nevertheless, the report states that corruption, non-transparency and lack of IPR protection and enforcement remain significant concerns of the United States.

The report lists several trade issues of concern to U.S. industries:

- The 2004 imposition of bans on imports of rice, sugar and salt, and the 2005 increase in import duties on corn and soybeans.
- The continuation of ***bans or de facto quantitative restrictions*** on various imported meat and poultry products.
- The ***uneven or ineffective enforcement of patent rights and copyrights***. Despite regulations in place to protect IPR, piracy remains rampant; patent rights remain unprotected; and violators largely go unpunished.
- ***Barriers to services trade*** remain high in some sectors, notably distribution, legal, financial and accounting services and telecommunications. Investment in Indonesia's broadcast and media services is prohibited.
- ***Continued high tariffs*** on agricultural commodities and other sensitive goods such as alcohol and automotive products.

Japan

In June 2001, President Bush and Prime Minister Koizumi established the Regulatory Reform and Competition Policy Initiative, which works to facilitate regulatory reforms related to trade. Through this mechanism, the United States has been able to make recommendations to open further the Japanese market for U.S. exports. In December 2006, the United States presented its most recent detailed recommendations to the Japanese government for consideration.

Regarding Japan's import barriers, USTR expressed several concerns:

- In telecommunications, the United States continues to seek regulatory changes that address ***telecommunications market access impediments*****,** including high interconnection pricing schemes, dominant carrier regulation in favor of Japanese telecommunications firms, high access and entrance rates, and charges for new entrants to the Japanese telecommunications market.
- ***Restrictions on U.S. agricultural products*** remain in the form of tariff rate quotas (TRQs), domestic use requirements for corn and potatoes, and sanitary and phytosanitary (SPS) measures on beef and

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pork. Japan imposed a ban on U.S. beef imports after the discovery of a single case of BSE in Washington State. Japan lifted the ban in December 2005, re-imposed it in January 2006 and then in partially lifted the ban in July to allow imports of U.S. beef from cattle aged 20 months or younger.

- ***Government procurement*** practices in Japan continue to deny effective entry of U.S. computer equipment, as well as construction, architecture and engineering services. The United States has pushed Japan to confront problems of rigged bidding in major public works projects. In 2006, Japan passed revisions to the Anti-Monopoly Act that encourage Japanese companies to report cartels and bid-rigging activities.
- Despite a strong IPR protection regime, Japan's ***patent administration system is slow to render final judgment*** in patent litigation. However, in 2006, the U.S. and Japanese patent offices implemented a "Patent Prosecution Highway" that would speed the examination of patent applications filed in one country by a company from the other country. Japan also needs to take steps to tighten use of copyrighted materials via the Internet and address problems with counterfeiting, piracy and digital trademarks.
- ***Legal and regulatory barriers in the services sector***—including insurance, accounting, legal and medical services—prevent U.S. firms' effective entry into the Japanese market. The insurance sector is the most heavily regulated, with domestic firms enjoying regulatory and tax advantages over foreign competitors.

Beyond general regulatory concerns, the 2007 NTE reviewed sector specific obstacles. The report cited the aerospace, auto and auto parts, civil and business aviation, electric utilities, paper, and sea transport sectors as maintaining barriers to U.S. exports.

South Korea

On April 1, 2007, U.S. and Korean negotiators completed negotiations for a bilateral free trade agreement (FTA). The FTA's conclusion and eventual implementation will produce significant gains in trade and investment through lowered tariff and non-tariff barriers. The NTE report reflects USTR's concerns prior to the implementation of the FTA. These include:

- ***High tariffs and quantitative restrictions*** to shelter domestic producers and to limit imports of several agricultural, fishery, food and meat products. Korea continues to maintain ***restrictions on U.S. beef imports***, despite a January 13, 2006 agreement to allow "de-boned" beef imports from U.S. cattle under 30 months of age.

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- The December 2006 implementation of a ***new pharmaceutical pricing and reimbursement system*** that could discriminate against new U.S. pharmaceutical products.

- Incomplete ***IPR protection and enforcement.*** USTR encourages the Korean government to consider strengthening existing laws to include protection of temporary copies, technological protection measures, Internet Service Provider (ISP) liability, and copyright term extension. Digital and print media piracy also remain serious concerns, and the United States has urged South Korea to pursue stronger enforcement efforts.

- ***Services sector barriers*** that continue to limit or prohibit foreign participation in a number of areas, notably advertising, broadcast media, legal services, insurance, banking and telecommunications.

- Domestic ***auto tax laws and non-tariff barriers*** continue to impede U.S. automakers' access to the Korean market.

Malaysia

In March 2006, USTR announced that it would be unable to complete an FTA with Malaysia prior to the expiry of Presidential Trade Promotion Authority (TPA). U.S. and Malaysian negotiators will continue to meet and discuss the agreement's chapters that they are close to concluding, but the failure to complete a final agreement left in place a number of trade and investment barriers.

The NTE report cites the following areas of concern:

- ***High tariffs*** remain Malaysia's preferred mechanism to prevent the entry of foreign goods, especially for industries or products with significant local production. In particular, the domestic automotive sector benefits from tariff and non-tariff barriers and tax rebates.

- ***Piracy of optical media*** such as CDs and DVDs remains a concern. Optical media pirated in Malaysia is exported globally, finding markets in the Asia-Pacific, North and South America, Europe and Africa. The government has made efforts to reduce this trade and to arrest and prosecute manufacturers and vendors; however, the United States encourages legislation to ensure better protection.

- Counterfeit pharmaceuticals and consumer products also remain issues of U.S. concern.

- Malaysia's large ***services sector remains highly protected***. Equity restrictions limit foreign participation in the telecommunications and banking sectors, and requirements to partner with domestic firms restrict the actions of foreign firms for legal, architectural and engineering services.

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Most affiliate agreements require government licenses, and foreign investment in the Malaysian service sector is restricted.

- ***Transparency*** of government decision-making and procedures for government software procurement and procurement projects remains an issue. Although Malaysia has not signed the WTO Government Procurement Agreement (GPA), its public policy objectives encourage greater participation of ethnic Malays in the economy, keeping out foreign competition.

The Philippines

USTR reports that corruption and a lack of regulatory transparency continue to undermine trade with the Philippines. The NTE report also raises concerns with backsliding on tariff reduction and IPR enforcement commitments. The report also criticizes the Philippines for trade deterring policies:

- In 2004 the Philippine Tariff Commission ***increased tariffs*** for several sensitive sectors and ***slowed tariff reductions*** in other sectors. Although the increased tariffs remain within the Philippines' bound tariff commitments under the WTO, the protectionist sentiment concerns U.S. businesses. In April 2005, Philippine President Arroyo raised tariffs on certain types of automobile imports.
- According to USTR, the Philippine ***customs department remains corrupt****,* as periodic procedural irregularities occur. Contrary to a 2001 Philippine law, the private sector remains involved in import-valuation, and Customs still applies rules inconsistently.
- Improvement in the Philippines' IPR protection regime resulted in its move in February 2006 from the United States' Special 301 "Priority Watch List," to the "Watch List." Nevertheless, ***IPR protection*** remains a serious U.S. concern. Legal ambiguity and inconsistent, ineffective IPR enforcement contribute to widespread piracy and counterfeiting.
- ***Services sector restrictions*** are pervasive. Limitations on foreign ownership, minimum capitalization requirements and a variety of other regulations restrict or prohibit foreign participation in telecommunications, insurance, banking, financial services and advertising. Compounding these barriers are investment restrictions in the services and manufacturing sectors.

Singapore

The NTE report notes that Singapore's market access is good, reflecting the benefits of the U.S.-Singapore FTA. Nevertheless, some problems remain including:

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- ***Service sector barriers*** remain the chief obstacle for U.S. business in Singapore. Foreign law firms face various restrictions limiting their activities, and equity limitations or citizenship requirements for directors effectively preclude foreign broadcast, cable, and news firms from the market. USTR also remains concerned about non-transparent aspects of telecommunication regulations and rule-making.
- Despite having one of the strongest IPR regimes in the region, Singapore remains a major ***transshipment*** point for counterfeit or pirated goods. A lack of information collection and a loophole in the Copyright Act inhibit enforcement and seizure of such goods.

Taiwan

The United States and Taiwan continue to cooperate through their bilateral trade and investment framework agreement (TIFA) and held the fifth TIFA Joint Council Meeting May 25-26, 2006 in Taipei. The NTE report recognized Taiwan's July 1, 2006 comprehensive revision to its tariff schedule and its continued progress in liberalizing its financial services market. However, the report cites a number of other issues that continue to concern USTR:

- Taiwan maintains ***high tariffs*** on products such as large motorcycles and a number of agricultural and food products. Taiwan also continues to impose ***TRQs*** on small passenger cars and certain agricultural and aquacultural products.
- Taiwan's ***complex and time-consuming registration and approval process*** for medical devices and pharmaceutical products constitute regulatory barriers for U.S. companies.
- Although Taiwan increased raids against manufacturers and retailers of pirated and counterfeit goods in 2006, ***inadequate IPR protection*** remains a U.S. concern. In particular, USTR cites weak enforcement of internet-related piracy, delays in processing technical court cases involving IPR violations, and transshipment and sales of counterfeit goods.
- Taiwan ***restricts or prohibits foreign investment*** in a number of sectors including agriculture, public utilities and postal services.

Thailand

The United States and Thailand indefinitely suspended negotiations on a bilateral FTA in September 2006 following Thailand's military coup. USTR hopes to resume FTA negotiations once Thailand returns to a democratic government. The 2007 NTE report cites a number of trade barriers of concern to USTR:

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- Although Thailand removed tariffs on 768 electronic and electrical appliances and on 105 printing industry-related products, ***high tariffs*** remain a significant barrier to foreign imports of agricultural products, automobiles, alcohol, fabrics, paper products and restaurant equipment. Thailand also maintains a ***complicated and non-transparent tax system*** that levies high excise taxes on some products.
- A costly, lengthy and complex system of ***standards, testing, labeling and certification*** for food and pharmaceutical imports concerns U.S. companies which fear that such regulations will result in the disclosure of proprietary information or trade secrets.
- Because Thailand lacks adequate legal regulations to protect IPR, and because the government's IPR enforcement efforts have been inconsistent, ***counterfeiting and piracy*** of broadcast, print, and optical media remain serious problems.
- ***Service sector barriers*** continue to discriminate against foreign firms in the telecommunications, legal, financial, construction, engineering, accounting, express delivery and health care services sectors.
- The NTE report cites ***corruption and a lack of transparency and efficiency in the Thai Customs Department*** a serious problem. The department also has incentives for revenue maximization versus compliance with legal requirements.

Vietnam

USTR notes that as a result of Vietnam's 2006 WTO accession and its bilateral market access agreement with the United States prior to accession, tariffs on U.S. exports to Vietnam will fall significantly and Vietnam will gradually remove a number of non-tariff barriers and liberalize its domestic services market. The report details Vietnam's various WTO accession commitments and notes that the United States will closely monitor Vietnam's implementation of these commitments. However, the NTE report cites issues of concern including:

- Vietnam's imposition of ***non-tariff barriers*** such as import prohibitions and quantitative restrictions on certain products.
- ***Weak IPR enforcement*** that results in widespread use of pirated software and infringement of trademarks, patents and copyrights.
- ***Corruption in all phases of business operations***, which remains a significant problem for U.S. companies that operate in Vietnam.

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- ***Services and investment barriers*** such as foreign ownership limitations in a number of services sectors such as audiovisual services, telecommunications and financial services.

Outlook

The 2007 NTE report continues the 2006 report's emphasis on weak IPR protection among the United States' Asian trading partners. The Asia-Pacific region serves as an important production base, transshipment route, and market for counterfeit and pirated goods that cost the U.S. economy billions of dollars and thousands of jobs annually according to the Asia Pacific Council of American Chambers of Commerce. USTR has recently focused attention on China's IPR policies in particular and has repeatedly threatened to seek WTO dispute settlement consultations on the issue unless China demonstrates strengthened protection and enforcement. IPR protection is likely to be one of the main discussion topics at both the Strategic Economic Dialogue (SED) in May 2007 and the Joint Commission on Commerce and Trade (JCCT) later in the year.

Partial or complete bans on U.S. beef exports also remains a concern in the 2007 report. The report notes that China, Korea, Malaysia, the Philippines, Singapore and Vietnam all restrict imports to boneless beef from cattle under 30 months of age; Japan restricts imports to boneless beef from cattle under 20 months of age; and Hong Kong also maintains a partial ban on U.S. beef imports. The United States continues to push all of these trading partners to fully reopen their markets to U.S. beef. In May 2007, the World Organization for Animal Health (OIE) is expected to formally grant the United States "controlled risk status," which should strengthen USTR's claims that U.S. beef is scientifically safe and increase pressure on trading partners to reopen their markets.

Regarding the 2007 report's coverage of Korea's trade barriers, the implementation of the Korea-U.S. (KORUS) FTA, which the two countries completed on April 1, will significantly reduce the number of tariff and non-tariff barriers cited. The two countries are expected to sign and submit the agreement to their respective legislatures in mid to late-2007.

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USTR 2007 NTE on Foreign Trade Barriers: Middle Eastern Economies

Summary

On April 2, 2007, the Office of the United States Trade Representative (USTR) published the National Trade Estimate Report (NTE) on Foreign Trade Barriers, which surveys significant foreign trade barriers to U.S. exports. The report addresses a wide array of issues and U.S. government actions to combat foreign trade barriers.

We highlight here the NTE report's analysis of the trade practices of major Middle Eastern trading partners Bahrain, Egypt, Jordan, Kuwait, Morocco, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE).

Analysis

In May 2003, President George W. Bush proposed the creation of a U.S. – Middle East Free Trade Area (USMEFTA) with eighteen Middle Eastern countries "to increase trade and investment with the United States and others in the world economy." The United States views USMEFTA as a step-by-step plan to increase Middle Eastern countries' integration into the global economy and to promote economic growth in the region. To join USMEFTA, the United States requires each Middle Eastern country: (i) to join the WTO; (ii) to consider participation in the Generalized System of Preferences (GSP), which provides duty-free treatment for products of eligible developing countries imported into the United States; (iii) to enter into Trade and Investment Framework Agreements (TIFAs) that create a framework for trade and investment dispute resolution; (iv) to enter into Bilateral Investment Treaties (BITs) that require governments to offer foreign investors the same legal protections as domestic investors; (v) to enter into comprehensive Free Trade Agreements (FTAs) with the United States; and (vi) to participate in trade capacity-building projects whereby the United States government provides funding to spur government-private partnerships related to international trade in the Middle East. The following countries are all major components of the Bush Administration's USMEFTA initiative.

Bahrain

The NTE review of Bahrain is favorable. The report notes that upon the August 2006 implementation of the U.S. – Bahrain FTA, 100 percent of bilateral trade in consumer and industrial products became duty-free immediately and that Bahrain will phase out tariffs on the remaining agricultural product lines within ten years. USTR believes that the FTA will promote transparency within Bahrain and strengthen economic ties with the United States. USTR commends Bahrain for its passage and implementation of

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several IPR-related laws meant to improve protections and criminalize various IPR violations, including copyright, trademark and patent infringement. The report also commends Bahrain's removal of investment barriers and its implementation of 100 percent foreign ownership laws and streamlined business licensing and approval procedures.

Egypt

The NTE notes that the Egyptian Government has made notable improvements in tariff reduction, IPR protection, and opening its services sectors to foreign investment. However, a number of concerns remain, including:

- ***High tariff rates*** on imports of certain agricultural products, poultry, alcohol, apparel, and certain passenger vehicles;
- ***Import restrictions*** on passenger vehicles and ***import bans*** on natural products, vitamins, food supplements, used and refurbished medical equipment, and poultry products;
- ***Onerous customs procedures*** with different valuation systems depending on the type of imports;
- ***Inadequate IPR protection*** in pharmaceuticals, trademarks, and textile and industrial designs and ***high levels of piracy*** in copyright industries, including sound recordings, books and other printed matter, and computer software;
- ***Restrictions in services sectors*** that prevent entry or discriminate against foreign investors in a number of areas. Such barriers include limits on foreign investment and equity in construction and transportation services, limitations on foreign management in computer-and-related services, restrictions on land acquisition by foreigners in certain cases, screen quotas on foreign motion pictures, and additional postal fees for private express mail operators; and
- A ***government controlled, non-transparent pricing mechanism for pharmaceutical products*** that continues to frustrate foreign firms. The lack of a clear compensation mechanism to allow for price flexibility based on exchange rate variation also hurts foreign firms' profitability.

Jordan

The NTE report provides a positive assessment of Jordan. According to the report, under the terms of the U.S. – Jordan FTA, which entered into force on December 17, 2001, the United States and Jordan agreed to phased tariff reductions culminating in the complete elimination of duties on all products by 2010. The report notes that certain non-tariff barriers impact U.S. exports to Jordan such as Jordan's

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exclusion of certain imports from the FTA's direct customs tariff relief, including poultry, dairy products and apples. USTR also alleges that Jordan selectively imposes sanitary and phytosanitary measures on fruits, vegetables and beef that thus create non-tariff barriers on imports of these products. According to USTR, in 2006, Jordan banned the importation of U.S. beef and live bovine animals; Jordan has partially lifted the ban but accompanied it with strict conditions that have proven difficult for U.S exporters and Jordanian importers, particularly for non-boneless meat. The report also states that Jordan's record on IPR enforcement has improved but that enforcement mechanisms and legal procedures are still not fully effective and are in need of further refinement: video and software piracy remains problematic and enforcement action and prosecution of piracy cases remains inconsistent. On investment, the report notes that Jordanian law sets limitations on foreign ownership in certain sectors but also allows for the government to grant exceptions to these limitations where it deems appropriate; several U.S. investors, however, feel that the exception policy is too selective.

Kuwait

The NTE review of Kuwait lists certain problems in the areas of import policies and standards. According to the report, the United States and Kuwait signed a TIFA in February 2004, providing a forum to address U.S. concerns and needed economic reforms. USTR notes that Kuwait prohibits the entry of certain imports, including alcohol and pork products, used medical equipment and automobiles over five years old, books, periodicals, or movies that insult religion and public morals, and all materials that promote political ideology. Kuwait also requires a special import license for firearms. The report notes that the import clearing process in Kuwait is onerous and time-consuming; the Customs Department, however, is undergoing privatization and has contracted a private company to provide customs support services. According to the report, Kuwait also maintains restrictive standards that impede the marketing of certain products such as certain food products, and medical, telecommunications and computer equipment. The report also notes that Kuwait maintains several restrictions on FDI and applies discriminatory taxation policies.

Morocco

The NTE report's overall assessment of Morocco is good. The U.S. – Morocco FTA entered into force on January 1, 2006, and USTR notes that the bilateral agreement will improve the competitiveness of U.S. exporters' goods and services in the Moroccan market as well as ensure high standard obligations within Morocco. Under the FTA, close to 95 percent of bilateral trade in consumer and industrial products has become duty-free and all remaining tariffs will be eliminated within nine years. The report notes, however,

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that Moroccan IPR laws and enforcement of those laws are insufficient to combat intellectual property theft and that enforcement resources have been inadequate, and civil and criminal penalties have not been stiff enough to provide sufficient deterrence. USTR hopes that the recently implemented FTA will address the United States' IPR concerns.

Oman

The NTE review of Oman is positive and USTR notes that the President signed the U.S. – Oman FTA implementing legislation on September 26, 2006. The FTA will be brought into force once the governments of both the United States and Oman certify that respective regulations are in compliance with the provisions of the Agreement and upon implementation of the U.S.-Oman FTA, the Government of Oman will immediately remove or gradually reduce during the next decade tariffs on most industrial and consumer products, as well as on all agricultural products. Similarly, Oman will implement fair, transparent and non-discriminatory government procurement tenders. USTR also commends Oman for its efforts in combating software piracy and its response to local satellite television representatives complaints on unlicensed distributors of pirated satellite signals.

Qatar

USTR's overall assessment of Qatar is good. According to the NTE report, the United States and Qatar signed a TIFA in March 2004, providing a forum to address U.S. concerns. The report notes, however, that Qatar still imposes a ban on imports of U.S. beef in response to the 2003 discovery of Bovine Spongiform Encephalopathy (BSE) in a single dairy cow in the United States. Omani officials indicate that they have agreed to lift the BSE ban in principle, but are still working out the details of what their requirements will be. The report also notes that in February 2004, Qatar banned imports of all U.S. poultry due to the discovery of low pathogenic avian influenza in some U.S. poultry products. In May 2004, however, Qatar modified its policy to only ban fresh poultry from Delaware and Texas (locations where poultry products with avian influenza were found). USTR commends Qatar's efforts to enforce IPR laws and regulations.

Saudi Arabia

According to the NTE report, a number of barriers to trade and investment remain in Saudi Arabia, including:

- ***High tariff rates*** on a number of items, including certain textiles, certain agricultural products, furniture, mineral water, plastic pipes, dates, and cigarettes and other tobacco products;

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- ***Import restrictions*** on agriculture seeds, live animals, fresh and frozen meat, books, periodicals, movies, tapes, religious books and materials, chemicals and harmful materials, pharmaceutical products, wireless equipment, horses, radio-controlled model airplanes, products containing alcohol, natural asphalt, and archaeological artifacts. Saudi Arabia also ***prohibits importation*** of alcohol, firearms, pork products, and used clothing.
- ***Weak IPR protection*** in software and trademarked products. USTR notes, however, that as of the end of 2006, Saudi Arabia has enacted laws that cover a range of IPR issues, including patents, trademarks, copyright, trade names, commercial data, border protection of IPR, and protection of undisclosed information relating to pharmaceuticals. According to USTR, these laws increased penalties for IPR violators and strengthened copyright enforcement;
- ***Restrictions*** on foreign participation in government procurement contracts;
- ***Services barriers*** including foreign ownership limitations in financial services, preferential treatment of national shipping carriers for government related cargo, citizenship requirements for distributor registration, and real estate ownership limitations; and
- ***Investment barriers***, including delays in licensing approval and ownership limitations on financial intermediaries.

United Arab Emirates

In March 2005 the United States began FTA negotiations with the United Arab Emirates (UAE). The agreement aims to remove barriers to U.S. goods and service providers – an ongoing concern for the United States; however, in early 2007, the two sides announced that they would not be able to complete FTA negotiations under the existing timeframe for Trade Promotion Authority (TPA) although both sides remain committed to completing FTA negotiations at some later date. The report notes that remaining trade barriers in the UAE include:

- ***High duties*** on alcohol, tobacco, and some food and agricultural items, although the UAE maintains the Gulf Cooperation Council's (GCC) five percent external tariff for most other products;
- ***Ownership restrictions*** that prohibit foreign nationals from owning businesses outside economic free zones. The UAE ***does not grant national treatment*** to foreign investors; and
- ***Barriers to new foreign entrants*** in the insurance and banking sectors.

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Outlook

The 2007 NTE Report differed in certain aspects from USTR's 2006 report. The 2006 report focused more on IPR enforcement issues whereas the 2007 report focuses more on achievements that U.S. trading partners have accomplished with regard to the removal of trade barriers. On Bahrain, the 2007 commends Bahrain for its strengthened IPR enforcement and monitoring, indicating that USTR officials believe that Bahrain has taken steps to address IPR issues.

On Saudi Arabia, the report notes that the Kingdom's recent accession to the World Trade Organization (WTO) has made it more responsive to U.S. concerns, but IPR and services barriers remain contentious issues. USTR tempered this assessment, however, with a commendation on Saudi Arabia's recently enacted laws that strengthen the Kingdom's IPR enforcement capabilities.

On Oman, the report notes that the U.S.-Oman FTA will likely address any U.S. trade concerns. The report also notes that Oman has taken significant steps since 2005 in establishing a predictable legal investment framework.

On the UAE, the 2006 report notes that although the U.S.-UAE FTA has become more of a long-term objective, the United States and the UAE remain committed to completing a comprehensive agreement.

USTR's heavy involvement in this region indicates that the Administration is dedicated to achieving President Bush's USMEFTA initiative, which focuses on the region's geopolitical importance.

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USTR Releases Results of 2007 Section 1377 Review of Telecommunications Trade Agreements

Summary

On April 10, 2007, the Office of the United States Trade Representative (USTR) released its annual Section 1377 Review of Telecommunications Trade Agreements. The review focused on five areas: (i) barriers to the provision of satellite capacity; (ii) barriers to the provision of Voice over Internet Protocol (VoIP) services; (iii) limitations on access to and use of public telecommunications services (including leased lines); (iv) issues related to regulatory independence, transparency; and (v) excessive market entry requirements. USTR discussed problems with each of these issues for several U.S. trading partners. We review below USTR's findings.

The full report is available at USTR's website at: http://www.ustr.gov.

Analysis

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, USTR conducts an annual review of the operation and effectiveness of U.S. telecommunications trade agreements. USTR released its latest Section 1377 Review of Telecommunications Trade Agreements on April 10, 2007. The report is based on public comments filed by interested parties and on information developed in ongoing contacts with industry and private sector representatives in various countries. The review focused on five areas: (i) barriers to the provision of satellite capacity; (ii) barriers to the provision of Voice over Internet Protocol (VoIP) services; (iii) limitations on access to and use of public telecommunications services (including leased lines); (iv) issues related to regulatory independence, transparency; and (v) excessive market entry requirements. The review also highlights country-specific issues for Egypt, Thailand, Jamaica, Mexico, and Guatemala. The report also commends Australia and India for improvements to their telecommunications sector.

I. General Issues

The report focuses on several general issues and trade-related barriers impeding U.S. telecommunication provider access to certain foreign markets:

A. Barriers to the Provision of Satellite Capacity.

USTR reports that certain U.S. trading partners place restrictions on access to foreign satellites, thus impeding U.S. market entry to these countries. USTR also alleges that certain trading partners favor the

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use of domestic satellites or require that all satellite capacity be sold through a monopoly telecommunications operator.

- **China.** According to USTR, China requires foreign satellite operators to obtain government approval or enter into a contract with "qualified domestic entities" in order to sell satellite capacity to Chinese telecommunications companies. China does not allow foreign satellite operators to sign direct contracts with Chinese telecommunications companies.
- **India.** According to USTR, India requires foreign satellite operators to sell their satellite capacity to the India Space Research Organization (ISRO) – run by the Indian Department of Space – which in turn resells the capacity to Indian clients. U.S. satellite providers allege that the practice provides ISRO with valuable customer information because it serves as the "middleman" to the sales and that selling through ISRO decreases efficiencies of being able to sell to Indian customers directly.

B. Barriers to the Provision of VoIP services.

USTR reports that it is concerned that several U.S. trading partners are "stifling technologies that help promote innovative services" such as VoIP. VoIP service providers allege that they encounter market barriers that have the potential to stifle full utilization of the broadband infrastructure being deployed around the world, including barriers such as voice services licenses and blocked access to websites which enable VoIP services. USTR also notes that the ability to provide VoIP services in countries such as Panama, Mexico and the United Arab Emirates (UAE) "often depends on the willingness of the regulator to address particular practices of their incumbent operators."

C. Access to and Use of Public Telecommunications Services.

USTR reports that commenters often cite problems related to reasonable and non - discriminatory access to and use of the public telecommunications network, including leased lines, and notes that issues associated with reasonable network access must still be monitored.

- **Germany.** USTR notes commenters complain that delays in obtaining acceptable terms and conditions for access to both the wholesale broadband and local leased line markets in Germany have negatively affected their business opportunities in the country and that Germany has not yet issued rules regarding access to local leased lines.
- **Singapore.** The report states that "lack of reasonable access to leased lines continues to plague competitive carriers in the Singapore market" and that in 2006, Singapore permitted SingTel to deny competitors access to leased lines at economically efficient points of

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aggregation; commenters allege that because SingTel has announced plans to close a number of these exchanges, competitors are in the position of being forced to invest in facilities that may soon be rendered unusable.

- **China.** USTR alleges that China charges high prices for leased lines relative to other countries in Asia and that commenters believe that the price for a common transmission unit from China to the United States is four times greater than that which is charged for the same transmission from Taiwan, Japan or Korea to the United States.

D. Regulatory Independence and Transparency.

According to USTR, commenters for the 2007 Section 1377 report opine that there is a lack of strength of regulatory agencies as well as a lack of transparent rulemaking process within international markets. Commenters also note that certain foreign regulators demonstrated a preference for telecommunications companies in which the government maintains a financial interest harms U.S. telecommunication providers. USTR notes that, if foreign trading partners do not have a more independent regulator, "it will be difficult to address broad concerns such as ensuring fair and equal treatment of foreign - based telecommunications operators, and transparent policy - making, licensing, and terms of operation."

E. Excessive Market Entry Requirements.

According to the report, China possesses high registered capital and joint venture requirements that prevent U.S. providers from entering the Chinese market. Commenters have also complained about the $150 million dollar fee for a long distance telecommunications license in Colombia. Commenters note that the fee for International and Domestic Long Distance licenses in India remains unreasonably high which in turn discourages small companies from entering the Indian market. In Mexico, commenters note that U.S. companies often encounter long delays in obtaining a license to access satellite capacity on a foreign - registered satellite or to establish a public telecommunications networks which utilizes foreign satellites.

II. Specific Issues

The 2007 report also focuses on specific U.S. trading partners and barriers to U.S. telecommunication providers in those markets:

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A. Egypt.

The report notes that Telecom Egypt's monopoly ended on December 31, 2005, but adds that the Egyptian government has not established clear rules regarding the granting of additional licenses nor has it issued any new licenses. Egyptian officials have indicated that they are working on establishing licensing criteria for additional licenses although USTR remains concerned that Egypt has not already established the criteria. USTR will consider what further action may be appropriate if Egypt does not undertake prompt efforts to resolve these issues.

B. Jamaica.

USTR is concerned that a surcharge levied beginning in May 2005 on incoming international calls to fund Jamaica's universal service fund is burdensome for U.S. carriers and is also concerned whether the objectives of the universal service fund and the disbursement of funds for the projects were sufficiently transparent. USTR has a particular interest in seeing an accounting of the funds that have been collected, whether they are appropriate to the needs identified, and how they have been used. As an interim measure, USTR recommends that the surcharge collection be suspended until Jamaica is able to provide answers to the questions raised in the 2007 review.

C. Mexico.

According to the report, USTR is concerned about Mexico's failure to resolve a dispute involving mobile termination rates charged by its incumbent carrier, Telcel, which could seriously affect U.S. suppliers and their Mexican affiliates operating in both local and long distance markets in Mexico. USTR also notes that fixed and mobile carriers in Mexico have under the guise of commercial negotiations set very high long distance telephone rates that could harm U.S. long distance carriers. USTR also notes that in 2005, Mexico began requiring testing of all telecommunications equipment which connects to a public telecommunications network, but adds that it has not established rules that permit such testing to be performed in the United States, thus making the U.S. telecom equipment manufacturing industry "shoulder the unnecessary costs by having to send equipment to Mexico for testing prior to export." USTR notes that implementing a Mutual Recognition Agreement (MRA) would avoid such burdens and urges Mexico to take the necessary steps to implement an MRA as soon as possible.

D. Thailand.

USTR notes that in its 1997 General Agreement on Trade in Services (GATS) schedule, Thailand committed to revise its schedule of commitments for basic telecommunications in 2006. USTR is

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concerned that Thailand has not yet bound through to its World Trade Organization (WTO) commitments the improvements that it had made to its domestic regime between 1997 and 2006 and urges Thailand to follow through on its 1997 commitments so as to strengthen regulatory certainty in the Thai telecommunications market. USTR will closely monitor this issue and consider additional action if Thailand fails to submit updated commitments by July 2007.

E. Guatemala.

USTR alleges that Telecomunicaciones de Guatemla S.A. ("Telgua"), the incumbent operator in Guatemala, preemptively cut off 20 percent of the interconnection capacity circuits of another Guatemalan telecommunications operator on October 7, 2006 due to a dispute between that company and Telgua; the dispute is currently in arbitration proceedings. USTR encourages the Guatemalan authorities to address the issue of the circuit suspensions in a manner consistent with Guatemala's obligations under the Dominican Republic – Central American Free Trade Agreement (CAFTA - DR) and WTO Agreement, as well as introduce measures to prevent the recurrence of such disputes, including ensuring that Telgua's interconnection agreements are predicated on cost-based rates.

III. Areas of Progress

The 2007 report also lists areas of progress in India, Australia and Mexico:

A. India.

According to the report, India has increased the foreign direct investment (FDI) limit in the telecommunications sector from 49 percent to 74 percent and that this action has the potential to promote investment and competition in the Indian telecommunications market. The report also states that the Telecom Regulatory Authority of India (TRAI) has also reduced its access deficit charge (ADC), which cross - subsidizes local service with revenue generated by long distance calls, and made a further commitment to phase it out by 2008 and merge the program with a revenue - share - based ADC.

B. Australia.

According to the report, in 2006 Australia completed the process of privatizing the dominant carrier Telstra, although USTR will continue to monitor Telstra's new efforts to gain regulatory advantages.

C. Mexico.

According to the report, in 2006 Mexico amended its Radio and Television Law to include a procedure for granting new licenses for television and radio through a public bidding process, a positive move that

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USTR feels will increase competition into Mexico's broadcast market. USTR also lauds the Mexican Secretary of Communications and Transportation's (SCT) recent regulations that allow telecommunications and cable operators to offer integrated packages of voice, video and data services, and feels that the ability of U.S. firms to participate in this market will help strengthen competition in both the programming and transmission segments.

Outlook

According to USTR Susan Schwab, "ensuring that [U.S.] trading partners comply with their telecommunications trade commitments is fundamental to helping U.S. telecommunications operators and equipment manufacturers compete effectively abroad" and that "market barriers impede [U.S.] efforts to promote vibrant competitive telecommunications markets around the world." With the release of the 1377 Review for 2007, USTR has managed to identify those practices that it deems interfere with U.S. telecommunications operators' ability to work in foreign markets. As such, USTR will focus on modifying or eliminating these barriers over the next year.

Similar to last year's Section 1377 Review, the breadth of issues highlighted for 2007 is still narrow in scope and the number of countries singled out for specific attention has not diminished. Areas of concern that remain persistent include excessive regulatory requirements and licensing fees, burdensome testing and certification requirements, and government mandate on technical standards. Another similarity between last year's report and the 2007 review is the increased attention on China and its various practices, a move that corresponds with USTR's more aggressive and direct stance against China. The 2007 report, however, includes a discussion on foreign barriers to the provision of satellite capacity, a sector that was not featured prominently in the 2006 report.

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United States Highlights

Bush Administration Proposes Export Enforcement Act of 2007

On April 24, 2007, the Bush Administration proposed the Export Enforcement Act of 2007 aimed at "providing U.S. law enforcement with enhanced tools in the fight against terrorism and the creation of weapons of mass destruction." Secretary of Commerce Carlos Gutierrez made the announcement and stated that the proposed federal legislation would "provide U.S. law enforcement officers important tools necessary to keep the most sensitive items out of dangerous hands." The Export Enforcement Act of 2007 would revise and renew the export enforcement and violation provisions of the Export Administration Act (EAA) of 1979 and would also enhance enforcement authorities to combat illicit exports of "dual use" items that have predominantly civilian uses but can also have military, proliferation, and terrorism-related applications.

Key features of the proposed Export Enforcement Act of 2007 include:

- A five-year renewal of the EAA of 1979 after the date of enactment;
- Statutory overseas investigative authority and expanded undercover authorities for Department of Commerce (DOC) Special Agents;
- Increased civil and criminal penalties for violators of export control laws above those presently authorized by the International Emergency Economic Powers Act (IEEPA), including maximum corporate penalties for criminal violations that would increase from $50,000, as provided for in IEEPA, to the greater of $5 million or ten times the value of the exports involved;
- Increased protection of confidential business information; and
- An expanded list of criminal violations upon which a denial of export privileges may be based.

In DOC's fact sheet on the proposed legislation, DOC officials stated that the Administration's bill "underscores the fact that export control laws are essential components of our national security" and federal law enforcement with additional tools necessary to combat terrorism and the proliferation of weapons of mass destruction.

The EAA of 1979, as amended, lapsed on August 21, 2001. In the absence of an EAA, the U.S. dual-use export control system continues to be dependent on the President's invocation of emergency powers under the IEEPA. The Administration notes that enforcement authorities and penalties proscribed under IEEPA are not as strong as those afforded in the EAA, and, as a consequence, export enforcement

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investigations conducted by DOC's Bureau of Industry and Security (BIS) are "severely hampered and prosecutors are sometimes reluctant to bring criminal indictments for export control violations, given the complex web of authorities for current export control regulations."

Response to the Administration's proposal has been guarded. President of the National Foreign Trade Council William Reinsch forecast that the U.S. business community would not oppose the actual provisions of the proposal but added that U.S. businesses may be concerned that the five-year bill could attract amendments that would make it more difficult for companies to export certain dual-use goods. He opined that U.S. businesses already feel that current dual-use regulations are too restrictive for U.S. businesses, and that the Administration's proposal may be in danger of having "people [come in] and say 'we need an amendment on China, we need Iran sanctions, we need to tighten up the rules this way or that way,' until we become engaged in a long defensive struggle not of our making." Thus far there has been no Congressional response.

DOC's fact sheet on the proposed legislation is available on DOC's website: http://www.commerce.gov/

DOC Announces Preliminary Determination to Apply CVDs on Paper Imports from China, Indonesia and Korea

On March 30, 2007, the U.S. Department of Commerce (DOC) announced its preliminary decision to apply the U.S. countervailing duty (CVD) law to imports from China. The preliminary decision determined that Chinese producers and exporters of coated free sheet (CFS) paper received countervailable subsidies ranging from 10.90 to 20.35 percent. The announcement marks the first time that the United States will impose countervailing duties on imports from a non-market economy (NME). Prior to the decision, the United States adhered to a longstanding rule that it would not apply the CVD law to imports from China or other NME countries.

In delivering the announcement, DOC Secretary Carlos Gutierrez stated that the Bush Administration "has aggressively enforced our anti-dumping laws to combat unfair Chinese trade," and that "China's economy has developed to the point that [the United States] can add another trade remedy tool, such as the countervailing duty law." According to DOC, imports of CFS paper products from China increased approximately by 177 percent in volume from 2005 to 2006 and were valued at an estimated $224 million in 2006.

According to a DOC press release, the Department has the legal authority to apply the CVD law to NMEs. In 1984, DOC adopted a rule of not applying the U.S. CVD law to NMEs because it reasoned that

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subsidies had no measurable economic impact for NMEs at that time. The Court of Appeals for the Federal Circuit upheld this policy in the 1986 *Georgetown Steel* case. In October 2006, however, a U.S. manufacturer of CFS paper, NewPage Corporation, requested the DOC to reconsider its longstanding rule of not applying the anti-subsidy law to China. In its petition, NewPage alleged that several Chinese companies were recipients of subsidies such as tax breaks, debt forgiveness and preferential loans.

DOC will soon publish its preliminary decision in the China CFS investigation in the Federal Register and upon publication, U.S. Customs and Border Protection (CBP) will collect a cash deposit or bond from CFS importers subject to the investigations. Along with the preliminary CVD determination for CFS paper from China, DOC also announced its preliminary results of the CVD investigations of CFS paper imports from Indonesia and South Korea. DOC is scheduled to announce its final determinations in all three CVD investigations by mid-June, although the law allows postponement until mid-October, which is likely.

Reps. Rangel and Levin Introduce Measure to Extend ATPDEA

On March 29, 2007, House Ways and Means Committee Chairman Charles Rangel (D-NY) and Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI) introduced legislation (H.R. 1830) to extend the Andean Trade Preference Act (ATPA), as amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA), until 2009. The ATPA provides duty-free benefits to Bolivia, Colombia, Ecuador, and Peru, and will expire on June 30, 2007. In announcing the bill, Chairman Rangel stated that the United States risks losing the economic progress it has achieved in the Andean region if Congress does not extend the preferences program. Chairman Levin added that Congress should extend the ATPA because the program has stimulated economic growth and helped combat the illegal narcotics trade in the Andean region. Chairman of the House Foreign Affairs Western Hemisphere Subcommittee Eliot Engel (D-NY) and Subcommittee Ranking Member Dan Burton (R-IN) also served as co-sponsors to H.R. 1830. The United States enacted the ATPA in 1991 as a measure to combat drug production and trafficking in Bolivia, Colombia, Ecuador and Peru. The program offers trade benefits to help these countries develop and strengthen legitimate industries. Congress expanded the ATPA when it passed the Trade Act of 2002, and the programs is now referred to as the ATPDEA. The preference program provides duty-free access to U.S. markets for close to 5,600 products. There is unlikely to be any further movement on this bill in the short-run; the Bush Administration and House Democratic leadership are still engaged in discussions over the labor and environmental provisions of the Peru and Colombia Free Trade Agreements (FTAs). Until the two sides resolve issues related to those two FTAs, ATPA renewal will have to wait.

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Free Trade Agreements

AUSTR Cutler Discusses KORUS FTA Outcomes

Summary

On April 5, 2007, Assistant United States Trade Representative Wendy Cutler discussed outcomes of the recently concluded negotiations for the Korea-U.S. (KORUS) free trade agreement (FTA). Cutler acknowledged that although neither the United States nor Korea left the negotiations with everything they had sought, the final agreement was strong, comprehensive and balanced. Cutler also discussed a number of the agreement's specific chapters such as agriculture, automobiles, textiles and trade remedies. The United States and Korea completed the KORUS FTA on April 1 after eight rounds of formal negotiations and two rounds of last-minute, high-level meetings. Before each country can implement the agreement, it must receive approval from their respective legislatures. Given a number of politically sensitive issues contained in the agreement, passage of the agreement through either country's legislative body remains uncertain. This report summarizes Cutler's April 5 remarks and provides details on the FTA's treatment of key sectors and issues.

Analysis

Speaking at a Korea Economic Institute (KEI) sponsored event on April 5, Assistant USTR Wendy Cutler described the agreement as a strong, comprehensive and balanced deal that would create enormous benefits for U.S. businesses in the Korean market. She stated that the agreement went well beyond eliminating tariff barriers and addressed non-tariff barriers "in an unprecedented way, across the board." Cutler noted that two-way trade between the United States and Korea totaled $78 billion in 2006, and that economic studies predict that the FTA will generate a $17 to $44 billion increase in U.S. income. Cutler stated that the agreement would provide American businesses an important foothold in the region at a time when other countries are seeking significantly weaker FTAs that could hurt U.S. economic interest in Asia. She added that the FTA could stimulate other countries to pursue similarly comprehensive trade liberalization agreements and possibly serve as a high-standard for future U.S. FTAs in the region. Cutler stated that the agreement's exclusion of rice is an exception and not a new precedent for U.S. FTAs, which must achieve high-quality, comprehensive liberalization. She also opined that the agreement could further domestic economic reform in Korea by empowering reformers and would add an important economic aspect to a U.S.-Korea bilateral relationship with a past emphasis on security matters. Regarding compromises on key issues to complete the agreement within the TPA-imposed deadline,

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Cutler stated that the KORUS FTA was not unique in this respect and that in any trade deal neither side gets everything it wants.

The United States and Korea completed the FTA during a second round of last-minute, high-level discussions in Seoul on April 1. After officially starting negotiations in June 2006, the parties held eight rounds of formal negotiating rounds, and two rounds of eleventh-hour discussions in Washington and Seoul to address outstanding issues including agriculture, automobiles, textiles, trade remedies and pharmaceuticals.

We highlight below the agreement's coverage of key sectors:

- **Agriculture.** Under the agreement, two-thirds of U.S. agricultural exports to Korea will become duty free immediately upon implementation. Other tariffs will be phased out over a two or a five year period or will become subject to a tariff rate quota (TRQ). Regarding specific agricultural products, the agreement will eliminate over a 15-year period Korea's 40 percent tariff on U.S. beef and eliminate over a 10-year period Korea's 22.5 percent tariff on U.S. pork imports. However, despite USTR's insistence that the agreement not exclude specific products, it does exclude rice, an extremely sensitive product for Korea. The agreement will gradually liberalize trade in citrus products, another sensitive area for Korea. According to USTR, the agreement contains provisions that will vary Korean tariffs on citrus imports based on in-season and off-season periods in Korea. The agreement will gradually phase out this tariff over a seven-year period.

- **Automobiles.** The agreement eliminates automobile tariff barriers on both sides and addresses a number of Korean regulatory and non-tariff barriers. The United States agreed to eliminate immediately a 2.5 percent tariff on small-sized[3] Korean passenger vehicles, eliminate within three years tariffs on larger-sized[4] passenger vehicles, and to phase out over 10 years a 25 percent tariff on Korean truck imports. Korea agreed to eliminate immediately the 8 percent import tariff on small-sized passenger vehicles and to revise a domestic automobile tax based on engine displacement. Under the agreement, Korea will collapse the number of brackets within the tax within three years, effectively lowering the tax on U.S. and other foreign automobiles with larger engine sizes. Korea will also lower it special consumption tax on automobiles from 10 percent to 5 percent within three years of the agreement's implementation. The agreement also addresses Korea's non-tariff and regulatory

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[3] With engine capacities under three cubic centimeters.

[4] With engine capacities over three cubic centimeters.

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barriers through the creation of an "enhanced" dispute settlement mechanism that will process complaints in half the time required for a normal mechanism and will allow for the temporary re-imposition of pre-FTA tariff rates if either party violates the agreement's provisions. The agreement requires Korea to eliminate a number of specific regulatory barriers and agree not to implement new regulations that would create new barriers. The United States and Korea will establish a special Auto Working Group to review any such new measures.

- **Government Procurement.** The agreement extends the range of contracts on which either party may bid than is provided for under the World Trade Organization (WTO) Agreement on Government Procurement (GPA). Under the FTA, Korea will add nine government entities to the list of contracts on which U.S. firms may bid, and the United States will add one additional government entity.

- **Industrial Goods.** The agreement will eliminate tariffs on 94 percent of industrial goods within three years of implementation and will phase out most remaining tariffs within ten years. The agreement will also include trade in remanufactured goods such as medical equipment, machinery and auto parts.

- **Labor and the Environment.** Under the agreement, both parties agreed to effectively enforce their own respective labor laws and environmental laws, subject to challenge under the agreement's dispute settlement mechanism. The parties also agreed to work to ensure that domestic labor laws are consistent with International Labor Organization (ILO) standards and that environmental laws are not weakened to create a more attractive investment environment.

- **Pharmaceuticals.** The agreement locks in a patent protection period for pharmaceutical products that will lengthen the time that Korean pharmaceutical manufacturers must wait before being allowed to produce generic versions of patented pharmaceutical products. The agreement ensures protection from unfair commercial use for five years for pharmaceutical products and 10 years for agricultural chemicals. On Korea's pharmaceutical pricing and reimbursement policy, the parties agreed to the creation of an independent review mechanism that will review decision making and transparency. The parties will also establish a special working group on medicines and medical devices that will provide a forum for the United States and Korea to discuss future health care policy issues.

- **Services and Investment.** On financial services, Korea agreed to allow U.S. financial institutions to establish bank, insurance and asset management branches in Korea. They may also establish or

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acquire Korean financial institutions and supply an number of cross-border services such as portfolio management. According to USTR, the agreement will permit U.S. firms to own up to 100 percent of telecommunications operations in Korea. On investment, the agreement contains investor protection provisions for all forms of U.S. investment in Korea. According to USTR, these provisions are supported by an international arbitration mechanism that will allow U.S. investors to file claims against the Korean government for alleged violation of the agreement's provisions.

- **Textiles.** Under the agreement, the United States and Korea will eliminate tariffs on most textile and apparel products immediately. The agreement contains a "yarn forward" rule of origin that will grant preferential treatment to textile products produced using U.S. or Korean yarn. The agreement also contains provisions that will allow the United States to implement a special safeguard if it determines that an import surge in Korean textile products has injured the U.S. domestic textile industry.
- **Trade Remedies.** According to AUSTR Cutler, the agreement's trade remedy provisions will not require any changes to U.S. statute, as per USTR's position that Congress retains the authority to make any decision that would require such changes. Cutler stated that the agreement would establish a committee on trade remedies to discuss and share information on respective trade remedy practices. Trade remedy provisions are not subject to formal dispute settlement under the agreement's dispute settlement mechanism.

Outlook

President Bush notified Congress of his intent to sign the KORUS FTA on April 1, following negotiators conclusion of the agreement in Seoul. According to Cutler, the text will now undergo a "legal scrub" prior to the two countries' Presidents signing the agreement, likely by the end of June. USTR will then coordinate with their Korean counterparts and Congress regarding a date for submission to the two countries' respective legislatures for approval. A number of Members of Congress have already publicly criticized the FTA and stated that they would either not support the its passage unless USTR agreed to certain changes in the agreement's text, or not support the agreement at all. Senate Finance Committee Chair Max Baucus (D-MT) stated that he would block the agreement's passage through the Senate until or unless Korea agreed to completely lift its ban on U.S. beef imports. Sen. Debbie Stabenow (D-MI) criticized the agreement's failure to ensure provide fair market access for U.S. automobile manufacturers and stated that she would work to defeat the agreement. House Ways and Means Trade Subcommittee Chair Sander Levin (D-MI) also stated his opposition to the agreement unless USTR uses the 90 day review period with Congress to "provide real assured market access to American products."

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Despite such vocal opposition from Democratic Members of Congress, and despite the compromises USTR made to complete the agreement before the expiration of Trade Promotion Authority (TPA), the agreement continues to enjoy strong support from the U.S. business community. The United States and Korea are likely to resolve the beef issue in May, when the World Organization for Animal Health (OIE) is expected to formally announce its decision to grant the United States "controlled risk" status for bovine spongiform encephalopathy (BSE). With the removal of this main obstacle to the agreement's passage, Congress is unlikely to risk angering the business community by opposing the most economically significant FTA that the United States has signed since the North American Free Trade Agreement (NAFTA). On the Korean side, depending on the timing of the agreement's submission to the National Assembly, it could become a political issue in the Korean Presidential election scheduled for December 2007. However, many Members of Korea's two largest parties—the Grand National Party and the Uri Party—appear to support the agreement's passage.

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Free Trade Agreements Highlights

Peruvian President Urges U.S. Congress to Pass U.S.-Peru FTA

On April 23, 2007, President Bush met with Peruvian President Alan Garcia to discuss, among other things, the pending U.S.-Peru Free Trade Agreement (FTA). The U.S.- Peru FTA, the U.S.-Colombia FTA and the U.S.-Panama FTAs are awaiting Congressional consideration and are the subject of discussions between Democratic House leadership and the Administration on U.S. trade policy. House Democrats, led by Ways and Means Committee Chairman Charles Rangel (D-NY), are negotiating the labor and environmental provisions of those FTAs with the Administration. President Garcia's visit to Washington focused on persuading Congress to pass the Peru FTA, a sentiment which President Bush echoed.

President Garcia noted that the agreement was vital for Peru because it would promote continued growth and social redistribution. He opined that the FTA will also help Peru maintain a strong democracy and encourage further investments into Peru. The United States and Peru successfully concluded FTA negotiations in December 2005 and the agreement was signed in April 2006. The Peruvian Congress ratified the FTA in June 2006.

Chairman Rangel has expressed hope that Democrats and Republicans will reach an agreement on bipartisan congressional trade policy, including the labor and environmental provisions of the pending Peru, Colombia and Panama FTAs, by the end of the week of April 23, 2007. Rangel indicated that Congress would not formally consider these FTAs until Democrats and Republicans had achieved a bipartisan trade policy, but he added that he would be willing to extend Presidential Trade Promotion Authority (TPA) – set to expire on June 30 – if the two sides were able to work out agreement on the bipartisan trade policy. Rangel's statements indicate that some movement may have occurred in the labor negotiations with the Administration, a change from Rangel's opinion earlier this week that the Administration had lost its momentum to continue the negotiations. Should Democrats and Republicans achieve a bilateral trade policy by the end of this week or next, then Congress can finally consider the pending Peru, Colombia and Panama FTAs. Rangel's statements on the FTAs are more rhetoric than reality because U.S. law mandates that TPA's strictures will apply to all FTAs signed while TPA is in effect. Thus, regardless of when Congress considers these FTAs (either before or after TPA's expiry), Congressional consideration of them must follow TPA's rules because they were signed in 2006.

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President Bush Notifies Congress of Intent to Sign Panama FTA

On March 30, 2007, President Bush notified Congress of his intent to sign the U.S.- Panama Free Trade Agreement (FTA). The notification signifies that Congress will consider the FTA under Presidential Trade Promotion Authority (TPA), which mandates that the Bush Administration notify Congress of the President's intent to sign any pending FTAs by March 31, 2007, 90 days before TPA expires on June 30. In his notification letter to Congress, President Bush stated that the U.S.-Panama FTA will generate export opportunities for U.S. farmers, ranchers, and companies and help create U.S. jobs. He also noted that the bilateral trade agreement will strengthen economic opportunities and democracy in Panama.

The notification comes in light of continuing talks between the Administration and Democratic members of Congress regarding labor and environmental provisions in the Peru, Colombia and Panama FTAs. The Office of the United States Trade Representative (USTR) left the Panama FTA's labor and environment chapters open at the conclusion of the U.S.-Panama bilateral talks in order for the Administration and Congress to reach an agreement on how to address those issues in bilateral trade deals. Members of Congress and the Administration are still engaged in closed-session discussions on the labor and environmental provisions. Congressional sources opine, however, that the two sides could reach an agreement very soon. Given the Administration's desire to see its FTAs receive Congressional approval, it seems likely that the Administration will cede to some Congressional demands on the FTAs' labor and environmental provisions.

U.S. and Korea Conclude FTA in Last Minute High-level Talks

On April 2, 2007, the Office of the United States Trade Representative (USTR) announced that it had concluded negotiations for the Korea-U.S. (KORUS) Free Trade Agreement (FTA). The United States and Korea traded some $72 billion in goods in 2006, and the KORUS FTA is the largest trade agreement the United States has concluded since the North American Free Trade Agreement (NAFTA). It is the largest trade agreement that Korea has ever completed. U.S. and Korean negotiators arrived at the deal after eight formal negotiating rounds and two rounds of high-level talks in Washington and Seoul to address remaining issues in the agreement's sensitive chapters such as agriculture, automobiles, textiles, trade remedies and pharmaceuticals. USTR had set a internal deadline of March 31, 2007 to complete negotiations and announce to Congress the President's intent to sign the FTA, as required by Presidential Trade Promotion Authority (TPA).

According to USTR, the final agreement will eliminate over $1 billion in tariffs on U.S. agricultural exports to Korea and will phase out most remaining tariffs over a 10 year period. Although the agreement

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excludes rice, one of the agreement's most sensitive issues for the Korean side, Korea agreed to phase out a 40 percent tariff on beef over a fifteen year period and a 22.5 percent tariff on pork over 10 years. According to Korean press reports, the Korean government will also hold bilateral talks with the United States after the World Organization for Animal Health (OIE) grants the United States "controlled risk" status for Bovine Spongiform Encephalopathy (BSE), expected in May. On automobiles, the agreement will eliminate immediately an 8 percent Korean tariff on imports of U.S. automobiles and revise a tax based on engine displacement that USTR claims discriminates against larger U.S. and other foreign automobiles. The United States agreed to eliminate immediately a 2.5 percent tariff on imports of small-sized Korean passenger vehicles, eliminate within three years tariffs on larger-sized passenger vehicles, and to phase out over 10 years a 25 percent tariff on Korean truck imports. According to USTR, the agreement will also establish an automobiles working group that will review new Korean automobile regulations to ensure fair treatment and market access for U.S. automobiles. The agreement will also contain a dispute settlement mechanism for automobiles and will contain "strong remedies" to address actions that violate the agreement's provisions. USTR has not released specific details regarding these remedies.

On goods, the agreement will eliminate tariffs on 95 percent of consumer and industrial products within 3 years and will phase out most remaining tariffs within 10 years. On services, USTR stated that the agreement will expand market access and investment in sectors such as telecommunications and electronic commerce and expand market opportunities for U.S. audio-visual products but did not provide further details. Although USTR sought elimination of a 49 percent foreign ownership cap on telecommunications services providers, Korean sources report that the agreement will allow Korea to maintain this limit. However, Korea will remove within two years of the agreement's implementation a 15 percent indirect foreign investment cap on investments in local telecommunications operators. On textiles, USTR stated that the agreement would include a "yarn forward" rule of origin provision that would allow preferential market access to Korean textile products for which all inputs from the yarn forward were processed in Korea. USTR also stated that both parties would enforce their respective labor and environmental laws and would cooperate to safeguard labor rights and environmental protections.

The agreement's final text remains subject to approval by both countries' legislative bodies. Prior to the FTA's conclusion, many Members of Congress stated that they would not support an agreement that did not guarantee market access for U.S. exports of agricultural products, especially beef, and automobiles. Senate Finance Committee Chair Sen. Max Baucus (D-MT) stated on April 2 that the FTA's outcome is "unacceptable," and that he would oppose the agreement and delay its passage through the Senate

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"unless and until Korea completely lifts its ban on U.S. beef." Sen. Debbie Stabenow (D-MI) criticized the agreement's provisions on automobiles as unfair and pledged to do "everything in [her] power to defeat [the FTA]." Korea will hold Presidential elections in December 2007, and the agreement's passage could become a sensitive political issue in the campaign.

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Multilateral

WTO Compliance Panel Rules on Internet Gambling

Summary

On March 30, 2007, a World Trade Organization (WTO) "compliance" Panel ruled that U.S. federal law prohibiting internet gambling continued to violate the obligations of the United States under the WTO General Agreement on Trade in Services (GATS). The Panel released its Report in *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services: Recourse to Article 21.5 of the DSU by Antigua and Barbuda* (DS285) on March 30, 2007. We review below the Panel's decision.

Analysis

U.S. "measures taken to comply" did not "exist"

Article 21.5 of the Dispute Settlement Understanding (DSU) provides a special procedure for the original Panel to resolve disagreements as to the "existence" or "consistency with a covered agreement" of "measures taken to comply" with the recommendations and rulings of the WTO Dispute Settlement Body (DSB).

In the present case, the parties agreed that the United States had not taken any new measures, but disagreed as to the existence of "measures taken to comply" for the purposes of DSU Article 21.5. Antigua argued that "the United States has done nothing", and therefore there were no "measures taken to comply." However, the United States took the position that the same measures that were at issue in the original proceeding could be considered as "measures taken to comply." The Panel rejected the U.S. position on this issue.

The Panel acknowledged that depending on the nature of a particular dispute, compliance could be achieved without a change to the text of the measure itself. For example, it surmised that compliance could be achieved if a WTO-consistent measure simply lapsed. Similarly, if a measure were found to be WTO-inconsistent due to the way it had been applied, the Panel said that compliance could be achieved by a change in its application, without a change to the text of the measure.

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Panel rejects "novel" U.S. argument that its measures were WTO-consistent "all along"

The Panel then turned to the three federal statutes that the United States argued were "measures taken to comply", *i.e.*, the Wire Act, the Travel Act and the Illegal Gambling Business Act. The Panel noted that since the original proceedings, there had been no change to any of these measures, or to their application or interpretation. There were similarly no changes in the factual or legal background bearing on these measures, or their effects. In the view of the Panel, this indicated that "they remain inconsistent" with U.S. obligations under the GATS.

The Panel pointed to what it called the "novel element" relied upon by the United States, that "all along, both during and since the original proceeding, its measures have been consistent with its obligations under the GATS by virtue of the general exception provision in Article XIV, and that it is entitled to another opportunity to demonstrate before this compliance Panel that the measures in fact *do* meet the requirements of the chapeau of Article XIV [original emphasis]." The Panel rejected this argument, reasoning that in the original proceeding there was a finding that the U.S. measures at issue were inconsistent with the GATS, and were not justified under the exception provided for by GATS Article XIV.

The Panel acknowledged that the Appellate Body had found that the U.S. measures were provisionally justified under GATS Article XIV(a) as "necessary to protect public morals or to maintain public order." However, as noted above, the U.S. laws failed to meet the requirement of the "chapeau" of Article XIV. The impugned statutes were not consistent with Article XIV "in its entirety." Therefore, the Panel rejected the U.S. position that the same measures at issue in the original proceeding could be considered as "measures taken to comply."

The Panel also stated that the U.S. position was "at odds" with the earlier U.S. decision to seek a reasonable period of time to comply with the DSB rulings. The Panel noted that the DSU permits responding parties a reasonable period of time to implement the DSB rulings where it is "impracticable to comply immediately." The Panel stated that if the U.S. measures were already in compliance, then it would not have been "impracticable" for the United States to comply immediately.

The Panel then turned to the specific findings and conclusions in the original proceedings. It recalled the finding of the Appellate Body that in light of the existence of the IHA, the United States had not demonstrated that the three challenged U.S. statutes were applied consistently with the requirements of the chapeau of GATS Article XIV.

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Use of "new and allegedly better arguments" not consistent with "unconditional acceptance" of the Appellate Body decision

The Panel referred to DSU Article 17.14, which provides in part that an Appellate Body report shall be "unconditionally accepted by the parties to the dispute." The Panel then admonished that:

> In the present compliance proceeding, the United States seeks an assessment of the consistency of its measures with its obligations under the GATS in relation to an issue on which the Appellate Body ruled in its report on the same dispute in relation to the same measure in the same factual and legal context. The express purpose of such a reassessment would be to reach a new conclusion – that the United States has established that these measures satisfy the requirements of the chapeau of Article XIV of the GATS – without any "measures taken to comply" but only the presentation of new and allegedly better arguments. Such a conclusion would mean that the original conclusion…was not final. Yet, in the Panel's view, Article 17.14 of the DSU applies to all conclusions in an Appellate Body report. The United States' position can be characterized as an acceptance of the original ruling on condition that it retains the right to seek a more favorable conclusion in a further proceeding. That type of acceptance is not unconditional. Therefore, in the circumstances, in accordance with Article 17.14, the Panel cannot accede to the United States' request to reach a conclusion different from that reached by the original Panel as upheld by the Appellate Body and adopted by the DSB, without any change relevant to the measures at issue.

The Panel also found that the findings of the Appellate Body that the United States did not "show", "demonstrate" or "establish" that it met the conditions set out in the chapeau meant that the United States "failed to discharge its burden of proof" on this issue.

Source of the ambiguity was the "plain language" of the statute, not "poor briefing"

The Panel said that "the key to the conclusion that the United States did not establish that the measures at issue satisfied the requirements of the chapeau of Article XIV" in the original proceedings was that the relationship between the IHA and the measures at issue was "ambiguous." The Panel observed that for the purposes of the compliance Panel proceedings, "[t]he United States' argument also depends on the view that the finding in the original proceeding was due to poor briefing on its own part as if, in allegedly confused circumstances in the original proceeding, it had failed to gather and present otherwise available

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information that would have been sufficient for the original Panel or the Appellate Body to conclude that the measures at issue were actually consistent with the United States' obligations."

However, according to the Panel, the source of the ambiguity was, as the Appellate Body found, the "the plain language of the IHA." Thus, the Panel concluded that ambiguity pertaining to the relationship between the IHA and the other statutes "was not a matter of poor briefing; rather, it was merely a reflection of the ambiguous state of US domestic law. This ambiguity in US domestic law prevented the United States from demonstrating in the original proceeding that its measures satisfy the requirements of the chapeau of Article XIV of the GATS." It added that "[a]s long as this ambiguity remains, the measures at issue are not in compliance with the United States' obligations under the GATS."

Thus, the Panel affirmed that the United States had not complied with the recommendations and rulings of the DSB.

WTO-inconsistency of U.S. measures taken to comply: "the United States Congress has provided confirmation that…the original Panel's finding was correct"

The Panel began its analysis under this section by noting that it did not need to assess the WTO-consistency of the U.S. "measures taken to comply" because it had already found that "no such measures exist." However, the Panel said it would be appropriate for it to "make certain factual findings beyond those that are strictly necessary to resolve the dispute" in case of an appeal of its decision.

The Panel examined both the evidence presented in the original case, as well as what it called the "supplementary" evidence in the compliance panel proceedings. It found that it was "indisputable that this evidence, presented in the original proceeding (and re-presented in this compliance proceeding), failed to demonstrate that the measures at issue satisfy the requirements of the chapeau of Article XIV of the GATS." It also found that none of the supplementary evidence "alters or addresses the essential point" that the IHA, "on its face…appears to authorize something that the Wire Act prohibits." The Panel concluded that the U.S. submissions in the compliance Panel proceeding "do not provide any facts and arguments concerning the relationship between the IHA, on the one hand, and the Wire Act, on the other, that would justify a different finding from that made by the original Panel on this issue."

The Panel considered it "striking" that the U.S. Department of Justice had never initiated a criminal prosecution under the measures at issue where the activities in question appeared to be authorized by the IHA. The Panel said that this evidence was "at least consistent with the view that remote wagering services supplied in accordance with the IHA are tolerated, even if not authorized under federal law."

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Finally, the Panel referred to the Unlawful Internet Gambling Enforcement Act, which was enacted by the U.S. Congress in October 2006, during the compliance Panel proceedings. The "Sense of Congress" provision of this legislation stated that the new law was "not intended to resolve any existing disagreements over how to interpret the relationship between the IHA and other Federal statutes." The compliance Panel stated that "the United States Congress has provided confirmation that, under US domestic law, the original Panel's finding was correct", *i.e*, that there is "ambiguity as to the relationship between, on the one hand, the amendment to the IHA and, on the other, the Wire Act, the Travel Act and the Illegal Gambling Business Act."

The Panel concluded that this provision of the Unlawful Internet Gambling Enforcement Act showed that "since the original proceeding the United States had an opportunity to remove the ambiguity and thereby comply with the recommendations and rulings of the DSB. Instead, rather than take that opportunity, the United States enacted legislation that confirmed that the ambiguity at the heart of this dispute remains and, therefore, that the United States has not complied."

Accordingly, the Panel ruled that the United States had failed to comply with the recommendations and rulings of the DSB in this dispute.

Outlook

This is the third proceeding in which the WTO has ruled against the U.S. prohibition of internet gambling. Yet Antigua's victory rests on extremely narrow legal grounds, and the United States can implement the WTO rulings without changing any of the statutes that have been found to be WTO-inconsistent, or permitting the cross-border supply of gambling services. It need only remedy what the Appellate Body found to be the alleged discriminatory application of these laws.

At issue in this dispute were three federal statutes, two of which date back to the Kennedy Administration: the Wire Act (enacted in 1961), the Travel Act (also enacted in 1961), and the Illegal Gambling Business Act (1970). The Wire Act prohibits the use of wire communications (including the internet) in interstate foreign bets or wagers. The Travel Act prohibits the use any facility (including the internet) in interstate or foreign commerce with the intent of carrying on any unlawful activity, including gambling. The Illegal Gambling Business Act prohibits anyone from conducting, financing, managing or supervising an "illegal gambling business."

In the original proceedings, Antigua successful argued that these statutes breached U.S. market access commitments related to the cross-border supply of gambling services (i.e., under the so-called "mode 1" of GATS). The United States vigorously contested the notion that it had made any such commitments.

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Although the Panel acknowledged that the United States "may well have inadvertently undertaken specific commitments on gambling", it found the United States to be in violation of such commitments, and this ruling was upheld on appeal.

The United States also argued that its measures could be justified as one of the exceptions permitted by Article XIV(a) of the GATS, which permits WTO Members to take measures "necessary to protect public morals or to maintain public order." Any Member invoking this provision needs to satisfy three tests. The challenged measure must:

- relate to "public morals" or the maintenance of "public order", which in turn requires what the Appellate Body described as a "sufficient nexus between the measure and the interest protected";
- be "necessary", in that there is no reasonably-available, WTO-consistent alternative; and
- meet the conditions of the so-called "chapeau", or opening paragraph of Article XIV, i.e., the measure must not be "applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services."

The Appellate Body found that the U.S. prohibition on internet gambling met the first two parts of the test, but failed the third condition, relating to arbitrary application. The Appellate Body pointed to a federal statute, the Interstate Horseracing Act (IHA), which appeared to permit wagering for horse racing over the telephone and the internet for domestic service suppliers. It said that the United States had not demonstrated that the prohibitions in the three challenged statutes were applied to both foreign and domestic service suppliers of remote betting for horse racing. For this reason, the Appellate Body concluded that the United States had not established that its measures met the conditions of the chapeau. Therefore, the U.S. invocation of the Article XIV defence was rejected, and its measures were found to be WTO-inconsistent.

The United States did not amend the three statutes found to be WTO-inconsistent, or adopt any other implementing measures. However, it argued before the compliance Panel that its original measures should be considered as the "measures taken to comply." It argued that it could demonstrate compliance through evidence and argument that the IHA did not permit internet gambling for domestic services suppliers, and that the application of this law was therefore not discriminatory.

The compliance Panel gave short shrift to this defense, ruling that measures previously found to be WTO-inconsistent, and unchanged since the original proceedings, could not be considered as "measures taken to comply." It noted that the Dispute Settlement Understanding (DSU) requires WTO Members to

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accept Appellate Body decisions "unconditionally", which does not permit the implementing party simply to invoke "new and allegedly better arguments" that "all along, both during and since the original proceeding, its measures have been consistent."

The U.S. position in the compliance proceedings – that although it had not adopted any implementing measures, it should be considered to have implemented – was untenable. The compliance panel rightly found that no "measures taken to comply" existed, and therefore the United States failed to implement the WTO rulings.

At the same time, the Appellate Body rulings in the original dispute still provide critical flexibility to the United States with respect to implementation, even after yesterday's decision. The single most important finding in the three WTO proceedings to date was the Appellate Body's ruling that the U.S. measures could be provisionally justified as "necessary" to protect public morals. Had this U.S. defence been rejected, the United States would have had very few options on implementation, as the Article XIV exemption would have been completely inapplicable.

However, given the Appellate Body's acceptance that the U.S. measures could be provisionally justified on grounds of "public morals", the United States need only remedy the discriminatory application of these laws. If the United States ensures that its laws apply equally to domestic and foreign service suppliers, then the U.S. prohibition against internet gambling will be WTO-consistent.

The United States needs only to clarify the alleged "ambiguity" between the IHA and the three statutes challenged by Antigua. The U.S. Congress could pass a law clarifying that the IHA does not authorize domestic service suppliers to engage in conduct prohibited by the other statutes, assuming there is the political will to do this. (Internet gambling legislation passed by Congress in late 2006 left this issue open, which seriously harmed the U.S. defense before the compliance Panel.) Measures short of statutory amendment, such as prosecutions, might arguably be sufficient.

The compliance Panel stressed that the United States needed to "remove the ambiguity" regarding the application of U.S. law. Once it has done so, the United States will be in compliance with the WTO rulings, without permitting the cross-border supply of gambling services. Thus Antigua's WTO victory may prove to be very short-lived.

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Multilateral Highlights

Doha Meetings to Continue Over Coming Weeks; Lamy Calls on WTO Members to Make First Move

On April 23, 2007, World Trade Organization (WTO) Director-General Pascal Lamy stated that several WTO Members, including G-4 members the United States, the EU, India, and Brazil, were holding Doha Round negotiations "hostage." Lamy noted that he had received no indication from these countries that they were willing to offer a new proposal to advance the stalled talks beyond the contentious issues of agriculture and non-agricultural market access (NAMA). Lamy stated that the Doha negotiations will not be concluded until these WTO Members offer their leadership and "table additional contributions to the collective success of this multilateral enterprise." Lamy made his remarks at a U.S. Chamber of Commerce event as part of his United States visit, during which he met with United States Trade Representative (USTR) Susan Schwab, U.S. Agriculture Secretary Mike Johanns, members of Congress, and representatives from the private sector.

Lamy also noted that renewal of Presidential Trade Promotion Authority (TPA) remains a concern for WTO Members because they believe that a failure to renew TPA could indicate that the United States has lost its desire to conclude a comprehensive Doha agreement. Lamy also pointed out that TPA's June 30 expiry and its uncertainty for renewal means that WTO Members have a "window of opportunity which will close unless there is clear progress over the coming weeks."

WTO Members have continued their efforts to advance the Doha talks. Chairman of the Doha negotiating group on agriculture Crawford Falconer plans to shortly issue a "provocation" paper to identify elements that WTO Members can and cannot accept as part of a final agriculture deal. Falconer expressed hope that the paper will encourage further discussions and will ultimately become negotiating text. Trade ministers and senior officials last met in New Delhi, India April 11-13 in an effort to settle their differences on outstanding issues in the negotiations, particularly agriculture, and agreed to increase their efforts to conclude the Doha talks by the end of the year. They also agreed to meet three more times by mid-June; the first such meeting will occur at the same time as the Organization for Economic Cooperation and Development (OECD) annual ministerial meeting in Paris on May 15-16. Prior to the May meetings, senior officials from the G-4 countries will meet in London on May 1 so as to prepare for the Paris ministerial.

Lamy's Washington visit comes at a crucial time for the Doha Round, but it could prove fruitless. Congress will consider TPA renewal in the next three months, and Lamy expressed hope that his visit will

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shine a spotlight on the importance of TPA for the Doha Round's success. Unfortunately, many in Congress have stated that TPA renewal of any sort depends on tangible progress in the Doha Round. Although a successful round of May ministerial meetings could produce tangible results in the Round and thus break the TPA-Doha paradox, it remains to be seen why Members would suddenly disregard their 18 months of recalcitrance and reach a Doha agreement. Indeed, other "critical" Doha deadlines have come and gone with no results.

USTR Requests WTO Consultations with China Over IPR, Market Access

On April 9, 2007, United States Trade Representative Susan Schwab announced that the United States would request the initiation of separate World Trade Organization (WTO) dispute settlement consultations with China on two issues: (i) alleged deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks; and (ii) China's alleged barriers to trade in books, music, videos and movies. Under WTO rules, the United States and China will have a mandatory 60-day consultation period on each issue. If the parties cannot reach a mutually agreeable solution at the end of either consultation period, the United States can then request the WTO Dispute Settlement Body (DSB) to establish a panel to rule on the issue.

IPR Consultations

According to USTR, piracy and counterfeiting levels in China remain high, and although China has strengthened its intellectual property rights (IPR) enforcement capabilities, the United States and China cannot agree on changes to China's legal regime that the United States alleges are required by China's WTO commitments. According to USTR, the United States' consultation request on IPR protection and enforcement seeks to "eliminate significant structural barriers that give pirates and counterfeiters in China a safe harbor to avoid criminal liability" and reduce the volume of counterfeit goods crossing the border into China. Specifically, the IPR request focuses on:

- Provisions of Chinese law that allegedly create a substantial "safe harbor" for wholesalers and retailers who distribute or sell pirated and counterfeit products in China;
- Rules for disposal of IPR infringing goods seized by Chinese customs authorities;
- Chinese copyright law that allegedly denies copyright protection for works poised to enter the market but awaiting Chinese censorship approval; and
- The scope of China's criminal law with respect to copyright piracy.

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USTR alleges that these measures are inconsistent with China's obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement).

Market Access Consultations

USTR also alleges that China limits imports of U.S. books, journals, movies, videos, and music, and implements laws and regulations that limit the distribution of foreign home entertainment products and publications within China. USTR notes that U.S. books, journals, movies, videos, and music are "favorite targets" for IPR violators and that "the legal obstacles standing between these legitimate products and the consumers in China give IPR pirates the upper hand in the Chinese market." According to USTR, the U.S. consultation request on market access seeks to eliminate Chinese import and internal distribution barriers that hamper the ability of U.S. publishers and producers of printed and audiovisual products to export products to China under normal market conditions. Specifically, the market access consultation request focuses on:

- The Chinese legal structure that allegedly denies U.S. companies the right to import books, journals, movies, music, and videos, and imposes requirements that all imports be channeled through specially authorized state-approved or state-run companies; and
- Chinese rules that allegedly impede or prohibit the distribution of publications and home entertainment video products within China.

USTR alleges that these measures are inconsistent with China's obligations under its WTO Accession Protocol and under the WTO General Agreement on Trade in Services (GATS).

Congressional reactions to USTR's announcement were mixed. Senate Finance Committee Chairman Max Baucus (D-MT) and House Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI) noted that the WTO action was overdue. Ranking Member of the Senate Finance Committee Charles Grassley (R-IA) opined that strong action was necessary "when China continues to refuse to play by the rules." Sen. Sherrod Brown (D-OH), however, opined that the Administration had initiated the WTO dispute settlement proceedings only to gather more Congressional support for the renewal of Presidential Trade Promotion Authority (TPA), scheduled to expire on June 30.

The response from the U.S. business community was also mixed. The Recording Industry Association of America (RIAA) and the Motion Picture Association of America (MPAA) lauded USTR's actions as a "logical next step in efforts to spur progress in China" and to increase market access and strengthen IPR.

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On the other hand, the Business Software Alliance (BSA), encouraged the United States and China to remain in "constructive dialogue" rather than to resort to WTO dispute settlement proceedings.

The disputes represent the fourth and fifth WTO complaints that the United States has ever issued against China, but four of the complaints have come within the last 13 months. The United States' first complaint centered on semiconductors. In March 2004, the United States requested consultations with China concerning China's preferential VAT for domestically-produced or designed integrated circuits. However, in October 2005, China and the United States informed the WTO that they had reached a mutually satisfactory solution during consultations. The second WTO complaint against China (DS340) came in March 2006 over China's use of a tax system that allegedly blocked imports of U.S. and other foreign-made auto parts into China. That dispute has progressed to the Panel phase, and the Panel is compiling data and examining the complaint in detail. USTR initiated its third complaint against China in February 2007 regarding Chinese subsidies to domestic and foreign companies. The recent WTO disputes represent a policy change for USTR regarding U.S. bilateral economic relations with China. Over the last several years, the United States has pursued "quiet diplomacy" with China but recently has taken a more direct and aggressive approach – including WTO dispute settlement. The move to initiate these disputes will likely please many Members of Congress that have been pressuring USTR to address Chinese trade practices, a positive development for an Administration that is working to renew TPA in the coming months.

Since Amb. Robert Zoellick's days as USTR from 2001-2005, the Administration has threatened to bring a case against Chinese IPR infractions. Most experts believe that USTR held off on bringing the case due to a lack of concrete evidence and the deferential standard that the TRIPs agreement grants WTO Members. The case is the first formal dispute against any WTO Member under the TRIPs agreement, and the United States needs a reasonable assurance of victory in order to prevent establishing a precedent that could be adverse to its many IPR interests. Thus, USTR's consultations request could indicate that the United States believes that it finally has the evidence necessary to win a WTO case against Chinese IPR. On the other hand, the consultations request could very well be a political ploy by the Administration to garner support for TPA and the several pending bilateral Free Trade Agreements from a Congress that has grown increasingly hostile to China trade.

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