August 2007

Japan External Trade Organization
WTO and Regional Trade Agreements Monthly Report

IN THIS ISSUE

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Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

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United States

Special Report: 2007 Farm Bill Proposals and Progress

This report examines Farm Bill proposals introduced in the 110th Congress and the likelihood that Congress will make significant changes to the Farm Security and Rural Investment Act of 2002 in anticipation of the law's September 30, 2007 expiry. The report focuses on the specific proposals introduced by the Bush Administration and members of Congress as well as the views of important domestic stakeholders. This report also examines the continuing effect of the Doha Round of World Trade Organization (WTO) negotiations and WTO obligations on the final structure of the Farm Bill.

US-China Update: Congress Moves on China Currency Legislation, Administration Voices Opposition

Congress and the Bush Administration are increasingly at odds over how to approach trade relations with China. In late June and early August, two key Senate committees held mark-ups and approved two bills that would require the Treasury Department to take action against China and other countries determined to have "misaligned" or "manipulated" currencies. Also in early August, the House Ways and Means Subcommittee on Trade held a hearing on trade with China in which a number of Members and witnesses called for the Committee to pass similar legislation. The Administration has opposed Congress' actions and continues to insist that a combination of dialogue and application of existing trade remedies is the most effective means of encouraging China to appreciate its currency and to address related trade issues.

United States Highlights

- Deputy USTR Karan Bhatia to Leave Administration in October
- DOC Implements USTR Determination in Ecuador Shrimp Order
- Sen. Baucus Requests ITC To Review Beef Trade Between US And Foreign Trading Partners
- United States to Initiate Arbitration Proceedings with Canada Regarding Softwood Lumber Agreement
- Sens. Baucus and Hatch Introduce Trade Enforcement Act of 2007
- House Approves Sanctions Bills Targeting Iran and Sudan

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Free Trade Agreements

Special Report: Pending FTAs Await Congressional Consideration; Other FTAs Must Wait For TPA Renewal

The United States has four pending Free Trade Agreements (FTAs) waiting for Congressional consideration. The United States recently completed FTAs with Peru, Colombia, Panama, and South Korea, but had to amend the agreements to reflect the May 2007 agreement on US trade policy between the Administration and Congressional Democrats. The United States Trade Representative (USTR) successfully completed all amendments to each of these agreements before Presidential Trade Promotion Authority (TPA) expired on June 30, 2007. Thus, Congress will have to consider each of these bilateral agreements under TPA.

USTR also has four FTAs that remain under negotiation: Thailand, Ecuador, the United Arab Emirates (UAE), and Malaysia. However, because of TPA expiry, these FTA negotiations are considered "inactive." For these possible agreements, there remains either a major gap between the two parties' positions or significant shifts in the country's political landscape that have affected FTA negotiations.

This report serves as an update on the status of pending US FTAs and FTA negotiations.

Wilson Center Explores US FTAs and Labor Rights

On July 25, 2007, the Woodrow Wilson Center's Program on Science, Technology, America, and the Global Economy, and the Solidarity Center hosted a panel on US Free Trade Agreements (FTAs) and labor rights. Panelists discussed whether international labor standards should be included in US FTAs and what the implications of such inclusion means for Asian economies. We review herein the panelists' discussion.

Multilateral

WTO Releases 2007 Annual Report: DG Lamy Calls for Further Doha Cooperation

On August 14, 2007, the World Trade Organization (WTO) released its 2007 Annual Report. The report surveys WTO activities and developments in world trade in 2006 and prospects for international trade in 2007. We review below the 2007 Annual Report.

The WTO 2007 Annual Report is available at:
http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep07_e.pdf.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Multilateral Highlights

- United States Requests Dispute Panel Formation in China IPR Challenge
- WTO Dispute Settlement Panel Finds US Still at Fault in Cotton Dispute with Brazil
- Tonga Joins WTO as 151st Member

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Reports in Detail

United States

Special Report: 2007 Farm Bill Proposals and Progress

Summary

This report examines Farm Bill proposals introduced in the 110th Congress and the likelihood that Congress will make significant changes to the Farm Security and Rural Investment Act of 2002 in anticipation of the law's September 30, 2007 expiry. The report focuses on the specific proposals introduced by the Bush Administration and members of Congress as well as the views of important domestic stakeholders. This report also examines the continuing effect of the Doha Round of World Trade Organization (WTO) negotiations and WTO obligations on the final structure of the Farm Bill.

Analysis

I. Background

The Farm Security and Rural Investment Act of 2002 ("the 2002 Farm Bill"), the most recent US omnibus agriculture law, was signed into law by President Bush on May 13, 2002. Many of its provisions expire on September 30, 2007. Lawmakers must choose between renewing the Farm Bill or enacting new legislation. The most significant change in the American political scene has been the return of Democrats to power in both houses of the US Congress in the November 2006 elections. The Republican-led Administration and the Democratic House of Representatives have submitted proposals for a new Farm Bill which are currently under consideration in the Congress. The Senate, also under Democratic control, has not yet submitted a proposal.

The 2002 Farm Bill contains ten separate titles:

- **Title I — Commodity Programs**: specifies direct payment and production marketing loan levels for the 2007 crops of wheat, feed grains, rice, cotton, and oilseeds, including soybeans; ends peanut poundage quotas with compensation to holders, and redesigns support to operate like that for other major row crops; continues import quotas and price support loans for sugar; and supplements milk price support with "income loss" payments.

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- **Title II — Conservation**: expands and reauthorizes through FY2007 several existing conservation and environmental programs and creates several new programs, including incentive payments to farmers who adopt specified conservation practices on working lands.
- **Title III — Trade**: reauthorizes through FY2007 and amends the Department of Agriculture's (USDA) foreign export promotion, credit and subsidy programs, as well as foreign food aid.
- **Title IV — Nutrition Programs**: extends through FY2007 the food stamp program, the emergency food assistance program and commodity supplemental food programs.
- **Title V — Credit**: authorizes funding levels for USDA farm credit programs through FY 2007 and changes the Farm Credit System.
- **Title VI — Rural Development**: authorizes mandatory and discretionary funding for several programs, including value-added agricultural market development grants, rural broadcast and broadband services, rural and regional planning.
- **Title VII — Research and Related Matters**: reauthorizes university research and State cooperative extension programs through FY2007 and reauthorizes the Initiative for Future Agriculture and Food Systems - a competitive grants program on critical emerging issues and high-priority research.
- **Title VIII — Forestry**: creates programs to help private forest landowners adopt sustainable forest management practices and local governments fight wildfires.
- **Title IX — Energy**: extends, with mandatory funding, a bioenergy program and establishes new programs for federal purchases of bio-based products and education, and loans and grants for farmers to purchase renewable energy systems and to improve energy efficiency.
- **Title X — Miscellaneous**: covers different programs and issues, from mandatory country of origin labeling for fresh meats, produce, seafood, and peanuts to increased annual authorizations of appropriations for outreach for socially disadvantaged farmers.

When Congress passed the 2002 Farm Bill, the Congressional Budget Office (CBO) estimated that total direct (mandatory budget authority) spending in the bill would be USD 273.9 billion over six years (FY 2002-2007). Of this total, USD 51.7 billion was new spending, and of the new spending, USD 37.6 billion was for commodity programs and USD 9.2 billion was for conservation. USD 149.6 billion of the bill's USD 273.9 billion in total direct spending was for food stamps and other nutrition-title programs. The nutrition programs received USD 2.8 billion in new spending. The USDA estimates that, if the current Farm Bill is continued for the next 10 years, direct payments would cost USD 52.5 billion, countercyclical

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payments USD 11.2 billion, and marketing loans/loan deficiency payments USD 8.8 billion. According to the 2006 Economic Report of the President, the total cost of farm support programs between 2002 and 2005 was approximately USD 162 billion.

II. Proposals

A. Administration Proposal

On January 31, 2007, Secretary of Agriculture Mike Johanns unveiled the United States Department of Agriculture's (USDA) 2007 Farm Bill proposal. The proposal contains over 65 separate sections that correspond to the 2002 Farm Bill titles, with additional special focus areas, including specialty crops, beginning farmers and ranchers, and socially disadvantaged producers. The proposal was the result of Department research and 52 Farm Bill Forums conducted across the United States. In addition, the Department received more than 4,000 comments prior to issuing its proposal.

The Administration proposal would slash agricultural spending by approximately USD 10 billion per year, from the USD 97 billion under the 2002 bill to approximately USD 87.3 billion. It would cut eligibility to receive agricultural subsidies for up to 80,000 producers. Currently, farmers who receive an adjusted gross income--including wages and other income minus farm expenses and depreciation--of under USD 2.5 million annually are eligible for payments. The Administration proposal reduces the limit to USD 200,000. The proposal also seeks to convert the current price-based countercyclical program to a revenue-based program. According to USDA, farmers who experience crop loss are often under-compensated under a price-based program, while those with high production tend to be over-compensated. The proposed revenue-based approach would factor in US crop yield when determining crop payments. Under the Administration proposal, marketing loans would be capped at USD 1.85 a bushel for corn, USD 4.92 a bushel for soybeans, USD 2.58 a bushel for wheat, and 52.92 cents per pound for cotton, while direct payments to producers would increase by about 7 percent during FY 2010-FY 2012.

The Administration proposal would:

- increase conservation funding by USD 7.8 billion, simplify and consolidate conservation programs, create a new Environmental Quality Incentives Program and a Regional Water Enhancement Program;
- provide USD 1.6 billion in new funding for renewable energy research, development and production, targeted for cellulosic ethanol, which will support USD 2.1 billion in guaranteed loans for cellulosic projects and includes USD 500 million for a bio-energy and bio-based product research initiative;

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701 Thirteenth Street NW, Washington, DC 20005
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- target nearly USD 5 billion in funding to support specialty crop producers by increasing nutrition in food assistance programs, including school meals, through the purchase of fruits and vegetables, funding specialty crop research, fighting trade barriers and expanding export markets;
- provide USD 250 million to increase direct payments for beginning farmers and ranchers, reserve a percentage of conservation funds, and provide more loan flexibility for down payment, land purchasing and farm operating loans;
- support socially disadvantaged farmers and ranchers by reserving a percentage of conservation assistance funds and providing more access to loans for down payments, land purchasing and farm operating;
- strengthen disaster relief by establishing a revenue-based counter-cyclical program, providing gap coverage in crop insurance, linking crop insurance participation to farm program participation, and creating a new emergency landscape restoration program;
- simplify and consolidate rural development programs while providing USD 1.6 billion in loans to rehabilitate all current Rural Critical Access Hospitals and USD 500 million in grants and loans for rural communities to decrease the backlog of rural infrastructure projects;
- dedicate nearly USD 400 million to trade efforts to expand exports, fight trade barriers, and increase involvement in world trade standard-setting bodies. This includes an increase of USD 250 million for the Market Access Program; and
- simplify, modernize, and rename the Food Stamp Program to improve access for the working poor, better meet the needs of recipients and states, and strengthen program integrity.

B. Congressional Proposals

On May 3, 2007, Representatives Rosa DeLauro (D-CT) and Wayne Gilchrest (R-MD) introduced the **Farm, Nutrition, and Community Investment Act of 2007** (H.R. 2144) in the House of Representatives. On May 17, Senator Chuck Schumer (D-NY) introduced identical legislation in the Senate. Neither of these bills has progressed within Congress beyond committee.[1]

The bill that has seen the most movement is the **Farm Bill Extension Act of 2007** (H.R. 2419). On July 27, 2007, the House of Representatives approved H.R. 2419 by a margin of 231 to 191. House

[1] H.R. 2144 was last referred to the House Ways and Means Committee on May 3, 2007. The Senate version of H.R. 2144 – S. 1424 – was last referred to the Senate Finance Committee on May 17, 2007.

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Agriculture Chairman Collin Peterson (D-MN) introduced H.R. 2419 on May 22, 2007. H.R. 2419 would, with few exceptions, extend the 2002 Farm Bill through 2012 by authorizing USD 286 billion for farm subsidies, conservation, nutrition, rural development and energy programs.

Major provisions of H.R. 2419 include:

- An investment of more than USD 1.6 billion in programs meant to strengthen and support the US fruit and vegetable industry, including funding for nutrition, research, pest management, and trade promotion programs;
- Providing farmers participating in commodity programs with a choice between traditional price protection and new market-oriented revenue coverage payments;
- Increased individual payments (a maximum of USD 60,000 a year in direct payments) that qualified agricultural producers can collect;
- Amended payment limits to ensure that agricultural producers making more than **USD 1 million a year** (adjusted gross income) cannot collect conservation and farm program payments;
- Elimination of payments to agricultural producers who earn between USD 500,000 - 1 million a year if less than 67 percent of that income comes from farming;
- Closing loopholes that allow agricultural producers to avoid payment limits by receiving money through multiple business units;
- Rebalanced loan rates and target prices among commodities;
- Reduced federal payment rates to crop insurance companies that are making record profits due to higher crop prices;
- New investments in conservation programs, such as the Conservation Reserve Program, Wetlands Reserve Program, Environmental Quality Incentive Program, and Farm and Ranchland Protection Program, among others;
- An expansion of the US Department of Agriculture's (USDA) Snack Program, which provides schools with healthy snacks to students during after-school activities;
- A strengthened and enhanced food stamp program with amended benefit rules to improve coverage of food costs and additional funding support;
- Economic development programs and access to broadband telecommunication services for rural communities;

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- The establishment of a new National Agriculture Research Program Office to coordinate the programs and activities of USDA's research agencies;
- Additional programs that would make it easier for agricultural producers growing organic crops to enroll in the Conservation Security Program;
- Creation of a one-time incentive program to encourage the market growth of oilseeds, which are lower in trans-fats;
- Barring agricultural producers or companies defrauding the USDA from participating in the agency's programs;
- Additional funding for new water preservation projects;
- Investments in renewable energy research, development and production in rural America; and
- Full implementation of Mandatory Country of Origin Labeling for meat that includes three categories of labeling indicating: (i) where the meat product was born, raised and slaughtered in the United States; (ii) where that product was not exclusively born, raised and slaughtered in the United States; and (iii) products entirely from other countries.

On July 20, 2007, the House Agriculture Committee announced that it had approved and finished marking up H.R. 2419. Chairman Peterson noted that the mark-up was a bipartisan effort and signaled ample support for H.R. 2419 from both Democrats and Republicans. However, bipartisan support for the legislation ended on July 26 after Democrats, led by House Ways and Means Member Lloyd Doggett (D-TX), included language in H.R. 2419 to raise USD 7.8 billion for the US food stamps program over ten years by ending a practice known as "earnings stripping," which lets foreign-owned companies shift income to a country with lower tax rates. Funding the food stamp initiative with the increased revenue from ending earnings stripping conformed with Democratic leadership's "pay-as-you-go" rules that require offsets for new spending. Opponents of the amendment – the majority of them Republican – argued that eliminating "earnings stripping" would discourage foreign companies from operating in the United States and would unfairly affect legitimate transactions not designed to avoid taxes. Minority Whip Roy Blunt (R-MO) opined that Rep. Doggett's amendment eliminated Republican support for H.R. 2419 and House Agriculture Committee Ranking Member Bob Goodlatte (R-VA) stated that the plan puts "American jobs up against American farmers." The Bush Administration also threatened the House with a veto of H.R. 2419.

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During floor debate on H.R. 2419, the House rejected an amendment (H.Amdt. 707) by a margin of 182 to 245 from House Ways and Means Chairman Charles Rangel (D-NY) that would ease regulations on agricultural exports to Cuba and make it easier for US farmers and agribusiness executives to travel to Cuba. The House also rejected 117 to 309 an amendment (H.Amdt. 700) offered by Reps. Ron Kind (D-WI) and Jeff Flake (R-AZ) to cut farm subsidies and invest the money in conservation, nutrition, rural development and deficit reduction. The House also rejected an amendment (H.Amdt. 713) 144 to 282 sponsored by Reps. Danny Davis (D-IL) and Steven Kirk (R-IL) that would have extended the existing sugar program from the 2002 Farm Bill. During debate, the House approved several amendments, including one that would remove a provision allowing Farm Credit System banks to make loans in areas forbidden to them by law, and other amendments related to offshore drilling and energy programs.

Reaction to House passage of H.R. 2419 was mixed along mainly partisan lines. House Speaker Nancy Pelosi (D-CA) approves of the 2007 Farm Bill and stated that H.R. 2419 “is a critical first step toward reform by eliminating payments to millionaires, closing loopholes that permit evasion of payment limits, and promoting our nation's family farmers." The Bush Administration, however, opposes H.R. 2419 and Treasury Department officials criticized the “earnings stripping” provision, noting that it could discourage businesses from establishing base operations in the United States. In response, Chairman Peterson stated that the “earnings stripping” provision is not “the final word” and added that if Republicans can come up with an alternative approach, he would be “happy to swap provisions.”

The Senate will next consider its version of the 2007 Farm Bill. Senate Agriculture Committee Chairman Tom Harkin (D-IA) stated that he hopes to mark up the Senate version of the Farm Bill in the second half of September and take it to the floor for a vote by the end of September. He noted, however, that his proposed timeline could be stretched to October in light of the fact that the new target date for Senate adjournment is November 17.

The contentious debate within the House surrounding the 2007 Farm Bill likely indicates that the Senate will go through a similar process. House Republicans opposed H.R. 2419’s “earnings stripping” provision, and if the Senate version of the Farm Bill legislation contains a similar provision, another party line vote is likely. Although Chairman Peterson succeeded in having the House consider H.R. 2419 before Congress recesses for the month of August, the Senate will only begin consideration of its version of the Farm Bill in September. With the 2002 Farm Bill set to expire on September 30, 2007, Senate consideration of US agricultural support (and the conference needed if the House and Senate versions of the 2007 Farm Bill are different) could last until or beyond the Farm Bill’s expiry. Considering this timeframe, Sen. Harkin’s opinion that the Senate Farm Bill debate could continue into October, and a possible Presidential veto, it

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

is likely that congressional consideration of the 2007 Farm Bill will stretch beyond the September 30 deadline. If so, Congress would have to retroactively apply provisions of the 2007 Farm Bill upon its passage.

III. Prospects for Change

While both Administration and congressional proposals call for new funding for agricultural programs in the United States, the ability to provide this funding is constrained by a tight fiscal picture in the 110th Congress overall. Because of fiscal constraints as well as the close partisan balance in the new Congress, the most likely outcome is that only minor changes will be made to the 2002 Farm Bill, the provisions of which still command broad support in Congress and the agricultural community.

In March, the CBO established a baseline of USD 296.8 billion for Farm Bill spending for the period FY2008-FY2013, which includes USD 225.8 billion for the Food Stamp program. This figure was adopted as the baseline for spending in the budget resolution passed by Congress in May. The resolution also authorized an additional USD 20 billion in reserve spending that may be included in a new Farm Bill. Thus, any new spending, including new spending on the Food Stamp program, must come from reductions in other areas of the Farm Bill or from the USD 20 billion reserve. Even spending from the USD 20 billion reserve must be offset by reductions somewhere in the federal budget, and Congressional Republicans have raised pressure on Chairman Peterson to detail what reductions would be made for new spending included in the congressional proposal.

The biggest sticking point in Farm Bill negotiations is likely to be the issue of the farm program payment cap. Chairman Peterson originally sought to have farm subsidies distributed only to individual farmers instead of to co-operatives, but his proposal was defeated in a subcommittee markup. The issue emerged during House floor debate and is likely to reemerge during Senate floor debate, but it faces strong opposition from major agricultural producers. Some commodity title programs are scheduled to expire in September. Without new legislation, decades-old permanent price support statutes would kick in that are not compatible with current national economic objectives, global trading rules, and federal budgetary or regulatory policies. Therefore, failure to reach resolution on additional spending after September 30, 2007 will likely result in a one-year extension of the provisions of the 2002 Farm Bill, thus delaying the issue until 2008, a presidential election year.

Chairman Peterson also stated that trade agreements have negatively impacted US cotton growers and have encouraged the movement of the US textile industry to China and, even though many of the textile manufacturers in China are American-owned.

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According to the Congressional Research Service, a general consensus exists to increase funding and expand current programs in the areas of conservation, forestry, bioenergy, rural development, agricultural research, farm credit, marketing and export promotion, foreign food aid, and domestic food and nutrition. However, finding the funding to translate this consensus into programs that assist farmers on the ground is the biggest challenge for Congress as it addresses agriculture this year.

The House and Senate are nearly evenly divided between Democrats and Republicans as the result of the 2006 congressional election. In the House, there are 232 Democrats and 203 Republicans, while in the Senate, the partisan balance is 51-49 in favor of the Democrats. Given Republican control of the White House, any new provisions in the Farm Bill will need to be carefully crafted to achieve bipartisan support. The 2002 Farm Bill, for example, was a carefully crafted bipartisan compromise that passed the House 280-141 and the Senate 64-35. Given the scarcity of additional funding and broad divides on issues such as subsidies and payment caps, it is unlikely that, even if a new Farm Bill passes rather than an extension of the 2002 bill, the new bill will include any provisions that are radically different from existing law.

IV. Private Sector Views

The American Farm Bureau Federation (AFBF), the nation's largest agricultural lobby, offered its recommendations for the 2007 Farm Bill on June 11. The AFBF's proposal would maintain the baseline funding levels for the commodity title at USD 7 billion per year and the conservation title at USD 4.4 billion per year. The Farm Bureau supports the Administration's proposal for a revenue-based counter-cyclical safety net program that would protect against both low prices and low yields. In addition, the Farm Bureau recommends the enactment of a standing catastrophic assistance program that would be integrated with a revamped crop insurance program. The catastrophic assistance program would cover 50 percent of losses and thus permit a reduction in crop insurance coverage. In its recommendations, the Farm Bureau reiterated its opposition to a farm program payment cap.

During the hearings that have taken place in both the House and Senate Agriculture Committees on Farm Bill proposals this year, numerous associations representing private producers in the United States have made their views known to Congress. Domestic producers almost without exception support continuation of subsidies such as price supports, marketing loans, and loss contracts. Details of the programs they support and changes they would propose vary, however.

- **Corn.** The National Corn Growers Association (NCGA) has come out in support of a restructuring of the subsidy system that would enhance the targeting of farm support. It proposes a revenue counter

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cyclical program that would compensate growers when a county's realized crop revenues fall below a trigger revenue. Compensation would be based on planted acres. According to the NCGA, natural disasters would be the main triggers for these payments, which would be combined with crop insurance.

- **Soybeans.** Soybean producers support the current system but wish to see an adjustment in target prices for all subsidized commodities to at least 130 percent of their present value. The American Soybean Association's proposal would also adjust marketing loan rates to a minimum of 95 percent of a five-year average price. They believe the USD 20 billion reserve is best utilized to pay for subsidy hikes. They also seek extension of a biodiesel tax incentive to encourage the development of a domestic biodiesel industry.
- **Wheat.** The National Association of Wheat Growers (NAWG) claims that the safety net for wheat producers is inadequate and is recommending increases in the direct payment for wheat to USD 1.19 per bushel and in the target price to USD 5.29 per bushel. They also recommend that the marketing loan program be kept as currently structured. Though they believe the current safety net is inadequate, a representative testified that estimates showed there would only be one year during the bill's life when prices fell low enough for the subsidies to kick in. NAWG opposes means testing for participation in farm programs and supports increased funding for the Market Access program and foreign market development.
- **Peanuts.** Peanut growers report that the price of peanuts is too low for farmers to continue to plant peanuts and that acreage is being taken out of production. The Southern Peanut Farmers Federation supports an increase in the marketing loan rate to USD 450 per ton; an increase in the target price to USD 550 per ton; and an increase in the direct payment to USD 40 per ton.
- **Sugar.** The American Sugar Alliance (ASA) states that operating costs for sugar producers have increased over the past several years and sugar prices have been on the decline. The ASA supports the continuation of the sugar program under the 2002 Farm Bill, and urges Congress to consider additional measures for the sugar program such as a standard commodity program that includes direct payments, countercyclical payments and loan deficiency payments, and revenue assurance for US sugar producers.
- **Cotton.** The National Cotton Council of America (NCCA) supports the continuation of the cotton program under the 2002 Farm Bill and opposes any measures that would reduce the safety net

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701 Thirteenth Street NW, Washington, DC 20005
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provided to cotton producers. The NCCA also opposes the elimination of US subsidies for cotton producers.

V. Implications for Trade

USDA Secretary Mike Johanns has expressed concern that continuation of agricultural subsidies could place the United States at risk of breaching its WTO commitments. Questions regarding US obligations under the WTO continue to influence discussions concerning the design and size of farm subsidies. Prospects for a Doha Round agreement also figure prominently in the ongoing debate.

Progress on the Doha Round stalled in 2006 and continues to remain mired on agriculture and non-agricultural market access negotiations. Some parties to the Farm Bill debate believe a new bill should be written without regard to the status of multilateral subsidy negotiations. AFBF President Bob Stallman stated in a recent newspaper account that the AFBF believes the 2007 Farm Bill "should not be written to comply with what someone assumes will be the outcome" of the Doha Round of World Trade Organization negotiations. . . . We are not far enough along in the negotiations to anticipate a likely WTO outcome and to make fundamental changes to the farm bill. Farmers and ranchers are willing to lower farm program payments via the WTO negotiations if — and only if — we can secure increased opportunities to sell their products overseas." Congress and the Administration also face international pressures to lower subsidies, with European Union officials publicly stating that even the changes to US domestic support programs suggested by the Administration proposal do not go far enough in meeting Doha Round objectives for farm trade policy reform.

House Agriculture Chair Peterson weighed in on the Doha issue in early June, rejecting calls to make concessions: "We're going to write the best bill we can for American agriculture and not for the WTO," Peterson stated. H.R. 2419 reflects this view. The Administration, on the other hand, continues to offer suggestions for reductions in farm program benefits USDA Secretary Johanns says will be necessary to re-start the Doha Round negotiations.

Any change in the Farm Bill to address WTO concerns would probably come in the form of replacement of direct payments to farmers with some kind of safety net such as a disaster relief program that would be utilized in the event of widespread crop losses. The WTO agreements prohibit payments linked to producer or consumer behavior, and decoupling subsidy payments from these causal factors – linking them, instead, to climatic or other events – would eliminate this linkage.

Since 2004, when the Peace Clause of the WTO Agreement on Agriculture expired, challenges to US farm subsidies are more likely to succeed. An April 2007 study by the Congressional Research Service

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concluded that all major US program crops are potentially vulnerable to WTO challenges and that a partial policy reform such as that suggested by the US Doha Round proposal would do little to decrease adverse effects on international markets from US crop subsidies. WTO Members have initiated dispute settlement challenges to the US cotton and corn programs and have threatened to bring complaints against the US rice program.

Outlook

The climate in the US Congress is not conducive to major changes to the American farm program, and H.R. 2419 reflects this fact. Despite the wishes of major producer groups for increased subsidies for program crops, the budgetary environment is severely constrained, and, when combined with the pay-go spending limitations imposed by the new Democratic Congress, it is unlikely that producers will be able to persuade the legislature to make the major offsetting cuts necessary in other programs to provide for the increased subsidies that the US agricultural community is seeking. On the other hand, most in Congress appear impervious to the calls from US trading partners to reduce domestic farm support in order to conform US agriculture spending to current or future WTO rules.

Though control of both Houses of the Congress has switched from the Republican Party to the Democratic Party, both the former Republican majority and the current Democratic majority are quite narrow in scope. In 2002, when the last major revision of US farm programs was enacted, a broad consensus was found for the framework that was passed. Judging by the rather small changes from that consensus position that both the Administration and the Congressional proposals represent, it appears that there is not a consensus to enact major alterations in the basic structure of the 2002 Farm Bill and that the most likely outcome is that the 2007 bill, if one is passed, will closely resemble the current Farm Bill.

It is probable that if a consensus is reached for a new Farm Bill, it will result in minor changes in the trigger prices for subsidies that will take account of changes in the economy, especially inflation. There may be minor changes in eligibility for conservation programs as well. However, the overall environment is likely to remain relatively unchanged. H.R. 2419 reflects this outcome.

The collapse of the Doha Trade Round seems to have emboldened Congressional leaders and the agricultural community with a resistance to consider the international implications of any agricultural program that is enacted. The Administration continues to press for a program that is more likely to pass muster with the WTO, and Chairman Harkin of the Senate Agriculture Committee has also indicated that he favors a shift away from direct subsidies. However, the Congressional leadership is focused on its

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Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

domestic constituencies. Given the strong feeling of producer groups that direct payments, marketing loans, price supports, and other forms of direct subsidies remain necessary to make their businesses viable, combined with the lack of consensus among others in the Congress to switch from traditional means of supporting American agriculture and the presence of consensus around the format of the 2002 Farm Bill make this unlikely.

International agricultural interests should, therefore, not be surprised to see an outcome from the current legislative process that closely resembles the present American agricultural support program. If new provisions are added or current provisions changed, their impact on international producers is likely to be *de minimis*.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

US-China Update: Congress Moves on China Currency Legislation, Administration Voices Opposition

Summary

Congress and the Bush Administration are increasingly at odds over how to approach trade relations with China. In late June and early August, two key Senate committees held mark-ups and approved two bills that would require the Treasury Department to take action against China and other countries determined to have "misaligned" or "manipulated" currencies. Also in early August, the House Ways and Means Subcommittee on Trade held a hearing on trade with China in which a number of Members and witnesses called for the Committee to pass similar legislation. The Administration has opposed Congress' actions and continues to insist that a combination of dialogue and application of existing trade remedies is the most effective means of encouraging China to appreciate its currency and to address related trade issues.

Analysis

I. Introduction

The 110th Congress has introduced a number of bills that would require the United States to take action to address China's currency policy. Many Members of Congress allege that China deliberately undervalues its currency, the renminbi, to grant Chinese exports an unfair competitive advantage in international markets. Critics of this policy also claim that it has caused a surge of cheap Chinese imports that have unfairly priced US manufactures out of the market and have resulted in large numbers of US manufacturing job losses. Such critics fault the Bush Administration for adopting an approach too reliant on dialogue and argue that this approach has produced few concrete results and failed to encourage China to substantially revalue its currency and implement domestic reforms that would balance bilateral trade flows.

Two Senate bills recently approved at the committee level would require the Administration to take action against China or any other country that the Treasury Department determines to have a "misaligned" or "manipulated" currency. Although the House has yet to move any proposed legislation beyond committee, it is considering two bills (H.R. 1229 and H.R. 2942) that would make easier the application of countervailing duties (CVDs) to non-market economies (NMEs) and would require action against countries with "fundamentally misaligned" currencies. Also, the Ways and Means Trade Subcommittee recently held a hearing on China-related trade issues in which Members of Congress criticized China's "cheating" in its currency policy and the Administration's failure to address this matter.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

The Administration has responded to Congress' increasingly active role by insisting on the efficacy of its "dual-track" policy of dialogue—through mechanisms such as the Strategic Economic Dialogue (SED) and the US-China Joint Commission on Commerce and Trade (JCCT)—and use of domestic trade remedies and international dispute settlement mechanisms when dialogue fails. It has repeatedly opposed Congress' attempts to pass legislation revising US trade remedy laws or requiring the Treasury Department to take further action against China for its currency policy.

II. Senate Actions

The Senate's debate on how to address China's currency policy has focused on two bills that outline actions the Treasury Department would be required to take against countries it finds to have "misaligned" or "manipulated" currencies:

- The **Currency Exchange Rate Oversight Reform Act of 2007 (S. 1607)**, would require Treasury to identify countries with "fundamentally misaligned" currencies. Treasury must designate these currencies as requiring "priority action" if the issuing country meets certain requirements such as "protracted large-scale" currency exchange market intervention accompanied by "partial or full sterilization"[2] and "excessive and prolonged" accumulation of foreign exchange for balance of payments purposes. If priority action countries fail to take "identifiable actions"[3] to eliminate their currencies' fundamental misalignment within 90 days[4] of Treasury's designation, the bill requires actions including: (i) reflection of the currency's misalignment in any antidumping (AD) cases against the issuing country's products; (ii) prohibition of federal procurement of the country's goods and services; (iii) a request to the International Monetary Fund (IMF) to take action to correct the misalignment; and (iv) a freeze on the approval of any new Overseas Private Investment Corporation (OPIC) funding to projects in the country or any multilateral bank financing to the country's government for a project located in that country. If the country fails to take identifiable actions within 360 days of Treasury's determination, the bill would require USTR to request World Trade Organization (WTO) consultations and would require Treasury to consult with the Fed to consider

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[2] The bill's amended version revised the criteria for designation of a country for priority action to include "partial or full sterilization" in addition to currency market intervention.

[3] The bill's amended version requires Treasury to focus on "identifiable actions" taken to eliminate a currency's fundamental misalignment. Under the bill's earlier version, Treasury was required to determine only whether the country had "adopted appropriate policies." The amended version also requires Treasury to identify these actions in the contents of its report to Congress.

[4] The bill's amended version shortened the period from 180 days to 90 days.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

"remedial intervention" in international currency exchange markets to eliminate the fundamental misalignment.

On July 26, the Senate Finance Committee held a mark-up of S. 1607 and voted to approve it the 20 to 1.[5] During the mark-up, the Committee also agreed to a number of amendments that narrow the criteria Treasury uses to identify countries with fundamentally misaligned currencies. One such revision specifies consideration of countries with "significant" bilateral trade with the United States and with currencies that are "significant to the operation, stability, or orderly development of regional or global capital markets." The Committee also agreed to an amendment that would limit the President's authority to waive actions determined as harmful to US national security or in the United States "vital economic interest."[6]

- The second Senate bill under consideration, the **Currency Reform and Financial Markets Access Act of 2007 (S. 1677)**, would remove the requirement of "intent" from Treasury's determination of whether a country manipulates its currency to gain an unfair trade advantage, prevent balance of payments adjustments or accumulate "substantial" dollar reserves. It would require the Treasury to take specified action against any country that it determines to be manipulating its currency if that country also has global current account surplus, a "significant" trade surplus with the United States and has conducted "prolonged one-way" intervention in international currency exchange markets. These actions include bilateral negotiations to ensure that the country adjusts its currency to eliminate the unfair advantage. If these countries fail to make such adjustments within 30 days of Treasury's determination, Treasury must request IMF consultations for this purpose. After 300 days, Treasury must initiate WTO action to address the manipulation.

  The Senate Banking, Housing and Urban Affairs Committee held a mark-up of S. 1677 on August 1, 2007, and voted to pass the bill by a 17-4 margin.[7] The Committee approved an amendment to the bill that widened the scope of WTO action that Treasury must initiate to go beyond violations of General Agreement on Tariffs and Trade (GATT) Article XV, as in the bill's original version. A second amendment revised conditions under which the President may issue a waiver of any action the

[5] Sen. Maria Cantwell (D-WA) cast the only opposing vote.

[6] Under the bill's original version, Congress could disapprove of a Presidential waiver through a non-binding concurrent resolution. The revised version allows Congress to disapprove through a joint resolution, which is binding and has the force of law. It also requires the President to include the reasons for his decision in the Federal Register notice publishing his decision to waive actions for economic interest. Previously, the bill required that he publish only his decision.

[7] Committee members opposing the bill included Sens. Wayne Allard (R-CO), Robert Bennett (R-UT), Mike Enzi (R-WY) and Chuck Hagel (R-NE).

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President determines to have a "serious detrimental impact" on domestic economic *or* security interests. The bill's previous version required the President to find such an impact on both economic *and* security interests before issuing a waiver. The Committee also rejected a number of amendments to the bill. One of these amendments would have made a designation of currency manipulation a countervailable subsidy under US trade remedy law and would also have allowed the application of AD duties to countries designated as currency manipulators. A second amendment would have substituted "currency manipulation" with "fundamentally misaligned" to make the bill more similar to its counterpart S. 1607.

III. House Actions

On August 2, 2007, the Ways and Means Subcommittee on Trade convened a hearing on China-related trade and economic issues such as China's foreign exchange management policy and US trade remedies. During the hearing, the Trade Subcommittee heard testimony from witnesses representing both Chambers of Congress, the Administration and the US business community.

Several congressional Members appeared as witnesses and criticized China for "cheating" in the management of its exchange rate and for subsidizing its domestic industry at the expense of US industry. They also criticized the Administration for failing to enforce US trade remedy laws and for relying too heavily on dialogue to address China's currency policy and other issues. Subcommittee Chair **Rep. Sander Levin (D-MI)** stated in his opening remarks that the Administration has no interest in working with Congress to pass WTO-consistent legislation to address the United States' "heavily imbalanced" relationship with China. Levin also stated that the Administration's failure to ensure China's implementation of its international commitments and enforce US trade remedy laws called into question the amount of authority that Congress should grant the executive branch in these areas. **Sen. Debbie Stabenow (D-MI)** also issued a call to "limit the Administration's discretion" on trade remedies and to make currency misalignment a countervailable subsidy. Other Members of Congress, including **Reps. Artur Davis (D-AL)**, **Duncan Hunter (R-CA)**, **Peter J. Visclosky (D-IN)**, **Michael A. Arcuri (D-NY)** and **Bruce Braley (D-IA)** also called on the House to pass bills (H.R. 1229 and H.R. 2942) that would apply CVDs to imports from China and other NMEs and for currency manipulation. **Rep. Tim Ryan (D-OH)**, co-sponsor of H.R. 2492, recognized the Senate's mark-up of its two bills, but criticized S. 1607 for its failure to apply CVDs to undervalued currencies, for granting too much flexibility to Treasury in determining the timing of AD petition filings and for its "vague" definition of fundamental misalignment. Ryan called on the House to pass legislation that "will lead to action."

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In their testimony, Administration witnesses rejected the need for legislation that could violate the United States' WTO obligations and might lead to "unintended consequences." **Assistant Secretary for Commerce for Import Administration David Spooner** stated his "serious concern" that current legislative proposals could spark retaliation in the WTO and encourage US trading partners to adopt similarly protectionist legislation. **Deputy Assistant Treasury Secretary Mark Sobel** stated that "direct, robust" engagement remained the best way to achieve economic reform in China and added that legislation could prove "counterproductive" to this goal. **Assistant USTR for Monitoring and Enforcement Daniel Brinza** highlighted the Administration's recent successes in its relations with China such as China's commitments on IPR protection and enforcement under the JCCT. Brinza also noted that the Administration has relied on WTO dispute settlement in five cases since 2004 to resolve issues when bilateral discussions have failed.

Ranking Member **Rep. Wally Herger (R-CA)** also warned against passage of pending legislation. He opined in his opening statement that the number of existing AD orders and pending AD/CVD orders on Chinese goods and the five WTO cases the Administration has filed against China suggest that the Administration's trade enforcement has been active. Herger added that pending bills in Congress that would impose further duties on Chinese imports "run afoul" of the United States' international obligations and therefore set a poor example for countries such as China, which the United States is encouraging to meet its own international obligations.

IV. Administration Response

On June 30, 2007, three Bush Administration cabinet officials sent letters to key Members of the Senate to state the Administration's opposition to the two Senate bills. In separate letters to Senate Majority and Minority Leaders Harry Reid (D-NV) and Mitch McConnell (R-KY) and the Chairmen and Ranking Members of the Senate Finance and Banking Committees, Treasury Secretary Henry Paulson, Commerce Secretary Carlos Gutierrez and US Trade Representative Susan Schwab stated that bills sponsored by the committees would "substantially weaken" the United States' effort to encourage economic reform in China and would not encourage China to move more quickly toward a "market-determined" exchange rate. The letters label the bills "counter-productive" and warn that if they violate the United States' international obligations, they could invite trading partners to retaliate through the WTO against US goods and services. They add that other countries might also seek "mirror legislation" that could trigger to a wave of global protectionist legislation. The letters alternatively advocate continued dialogue and engagement through bilateral and multilateral mechanisms and a reliance upon WTO trade remedies and WTO-consistent US trade remedies.

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The Administration has also rejected other actions that Congress alleges would address the valuation of China's currency. Most recently, on June 13, the Treasury Department failed to cite China as a "currency manipulator" in its semi-annual "Report to Congress on International Economic and Exchange Rate Policies." Although the report recognized China's "heavy" intervention in the foreign exchange market and the "undervalued" position of the renminbi, it did not determine that China implemented its exchange rate management policy with the intent of gaining an unfair trade advantage.[8]

On the same day, USTR rejected a Section 301[9] request from 42 House Members that the Administration take action to end the Chinese government's alleged undervaluing and manipulation of its currency. The Members' petition also called on the Administration to request WTO consultations with China regarding its exchange rate policy and to file a formal WTO complaint if the consultations fail to address the issues after 60 days. USTR previously rejected two similar Section 301 requests from Congress in September 2004 and April 2005.

Outlook

Recent events highlight the growing divide between the Administration and Congress regarding the most effective approach to US trade and economic relations with China. The Administration has consistently advocated and followed a policy that combines dialogue with action only in cases where dialogue has failed. Congress has grown increasingly critical of this approach, claiming that it has produced little results as China's exports to the United States have continued to grow and the renminbi remains unfairly undervalued. Despite Congress' frustration with the Administration over the matter, it remains unclear what action, if any, Congress might take. Although both Senate bills have cleared committee, the Senate has offered no indication as to which of the two bills the full chamber would take up should it decide to hold a floor vote. The Senate might also consider combining the two bills into a single piece of legislation. Given the differences between the two bill's provisions and the jurisdictional rivalries between the Senate Banking and Finance Committees, however, reaching an agreement on a single bill could prove difficult. Prior to the Senate Finance Committee's mark up of S. 1607, Banking Committee Chairman Christopher Dodd (D-CT) and Ranking Member Richard Shelby (D-AL) stated their opposition to the Finance

[8] Section 304 of the Omnibus Trade and Competitiveness Act of 1988 requires the Treasury Department to determine in its semi-annual report "whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustment or gaining unfair competitive advantage in international trade."

[9] Under the Trade Act of 1974 (19 U.S.C. § 2411), if approved, Section 301 requests would require USTR to take action against any foreign country that denies the United States' rights under any trade agreement or adopts an act, policy or practice that denies these rights or places unjustifiable burdens on or restricts US commerce.

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701 Thirteenth Street NW, Washington, DC 20005
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Committee's action in a letter to Finance Committee Chair Sen. Max Baucus (D-MT) and Ranking Member (R-Charles Grassley), both co-sponsors of the S. 1607. Furthermore, it is unclear whether Senate advocates of the currency legislation actually want the bills to become law, or whether they wish to use the legislation as a tool to garner political support and/or to force the Administration to take a more adversarial approach to US-China trade relations. Members of Congress used previous China currency legislation, such as S. 295, for just such reasons.

Whatever course of action the Senate decides, any bill it approves would still require House approval and a Presidential signature before it could become law. Although the House is also considering legislation, differences remain between these bills and those under consideration in the Senate. Moreover, even if the two Chambers do agree on and approve a single bill in floor votes, President Bush is unlikely to sign into law a bill that the Administration views as potentially harmful to US interests, harmful to US-China bilateral relations, and that could violate the United States' WTO obligations. The Administration made its objection to such a bill clear in its June 30 letter to Members of Congress and during testimony before the House Ways and Means Trade Subcommittee. Moreover, some financial experts have stated that liberalization of the renminbi would not guarantee its appreciation vis-à-vis the dollar.[10]

The United States and China plan to hold the next meeting of the JCCT in Beijing the week of December 10, and progress during this meeting could help ease tensions between the Administration and Congress. However, US government sources have recently cautioned against unrealistic expectations regarding the JCCT's outcomes. Whether weak JCCT outcomes would be enough to motivate Congress to overcome internal differences and pass a single bill remains uncertain (that Congress will be occupied with a full fall 2007 legislative agenda and the November 2008 Presidential elections render a bill's passage less likely during the next year). However, should it send such a bill to the President's desk it would likely force a veto of the measure.

[10] Economist Robert Mundell, for example, has argued that full renminbi convertibility would cause a fall in the currency's price against the dollar. According to Mundell, full convertibility would likely lead to a rapid sale of renminbi by Chinese savers seeking to invest in foreign assets. Fearing that the government might reinstate capital controls to stem these outflows would lead to further outflows as savers seek to invest abroad before the government does indeed do so. See, Hugo Restall, "Robert Mundell and the Yuan Riddle," Wall Street Journal, June 9, 2007.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

United States Highlights

Deputy USTR Karan Bhatia to Leave Administration in October

On August 27, 2007, United States Trade Representative (USTR) Susan Schwab announced that Deputy USTR Karan Bhatia will depart the Office of the USTR in October to return to the private sector. Ambassador Bhatia has served in President Bush's Administration for six years, including two years as Deputy USTR. USTR Schwab did not announce Ambassador Bhatia's replacement although government sources believe that President Bush will select his replacement from within USTR or the Department of Commerce. In announcing Ambassador Bhatia's upcoming departure, USTR Schwab stated that "Karan Bhatia has been a great contributor to the President's international trade agenda during his tenure as Deputy USTR, as well as in his previous positions at the Department of Transportation and Department of Commerce." She added that Ambassador Bhatia "leaves behind a legacy of important contributions, including negotiating the landmark US-Korea Free Trade Agreement, overseeing Vietnam's accession to the World Trade Organization, and launching the US-India Trade Policy Forum."

Ambassador Bhatia assumed his position as Deputy USTR in November 2005, having been nominated by President Bush and confirmed by the Senate. As Deputy USTR, Ambassador Bhatia oversaw US trade relations with East Asia (including China and Japan), South Asia (including India), Southeast Asia, and Africa. His responsibilities also included supervising USTR's functional offices handling trade capacity building, environmental, labor, and pharmaceutical issues, and serving as USTR's designee on the boards of the Overseas Private Investment Corporation and the Millennium Challenge Corporation. Prior to USTR, Ambassador Bhatia served Assistant Secretary for Aviation and International Affairs at the US Department of Transportation from 2003-2005. He also served as Deputy Under Secretary and Chief Counsel for the Bureau of Industry and Security within the Department of Commerce. Prior to joining the Bush Administration in 2001, Ambassador Bhatia was an equity partner at the law firm of Wilmer, Cutler & Pickering, where he was a member of the firm's international and corporate groups.

DOC Implements USTR Determination in Ecuador Shrimp Order

In an August 23, 2007 Federal Register (FR) notice, the Department of Commerce (DOC) announced that it was implementing the Office of the United States Trade Representative's (USTR) determination under section 129 of the Uruguay Round Agreements Act (URAA) regarding the investigation of frozen warmwater shrimp from Ecuador. On July 26, 2007, the DOC issued its determination regarding the offsetting of dumped sales with non–dumped sales when making average–to-average comparisons of

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

export price and normal value in the investigation challenged by Ecuador before the World Trade Organization (WTO) (DS335).

On January 30, 2007, a WTO panel ruled that the United States violated its obligations under the WTO Anti-Dumping Agreement when it used the practice of “zeroing” in an anti-dumping investigation of shrimp from Ecuador. The United States agreed in advance, and in writing, not to contest any of the claims made against it – an unprecedented development in WTO dispute settlement. Zeroing refers to the practice whereby an investigating authority discounts so-called “negative dumping margins” to zero. Where the export price of a product is lower than the price in the exporting country, this creates a positive dumping margin. However, when zeroing is used, investigating authorities do not give any credit for negative dumping margins, i.e., when the export price of the product is higher than the price in the exporting country. The investigating authority does not average positive and negative dumping margins together - instead, it considers all negative dumping margins to be zero. This has the effect of inflating the overall average dumping margin, and can lead to the imposition or maintenance of anti-dumping duties which may not otherwise apply at all.

On March 27, 2007, the United States and Ecuador circulated a memorandum to WTO Members announcing that they had agreed on a deadline for the United States to comply with a WTO ruling on the US use of “zeroing” in the anti-dumping investigation of shrimp from Ecuador. According to the communication, the United States would have until August 20, 2007 to implement the WTO panel's findings. The United States also agreed to carry out a Section 129 determination of the dumping order on shrimp to recalculate the margins of dumping and bring it in line with the WTO ruling.[11] The United States agreed that any new cash deposit rate resulting from the Section 129 determination "will have prospective effect only" and will take effect only after USTR directs the DOC to implement its recalculated dumping margins

On May 21, 2007, DOC announced that it was initiating a proceeding under section 129 of the URAA to issue a determination that would implement the findings of the WTO dispute settlement panel in DS335. On May 31, 2007, DOC issued its preliminary results, in which it recalculated the weighted–average dumping margins from the antidumping investigation of frozen warmwater shrimp from Ecuador. DOC issued its final results for the section 129 determination on July 26, 2007. On August 9, 10 and 13, 2007,

[11] The Section 129 determination will exclude one Ecuadorian exporter, Expordatora de Alimentos SA, because the company was not included in Ecuador's panel request.

Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

USTR held consultations with DOC and the appropriate congressional committees with respect to this determination. On August 15, 2007, USTR instructed the DOC to implement its determination.

In its FR notice, DOC included the recalculated antidumping margins. The recalculated margins, unchanged from the preliminary results, are as follows:

- The margin for Exporklore, S.A., decreases from 2.48 percent to zero;
- The margin for Promarisco, S.A. decreases from 4.42 percent to *de minimis*;
- Expalsa, S.A. was excluded from the order and that does not change as a result of this proceeding; and
- Because there are no above *de minimis* margins remaining, the all– others rate is based on a simple average of the zero and *de minimis* margins; therefore, the all–others rate changes from 3.58 percent to *de minimis*.

As a result of the recalculations, all of the margins are either zero or *de minimis*. Accordingly, the DOC revoked the order effective August 15, 2007. DOC will instruct Customs and Border Protection to liquidate without regard to antidumping duties entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 15, 2007, and to discontinue collection of cash deposits of antidumping duties.

DOC's revocation of the Ecuador shrimp order is another step in the United States' move towards changing its "zeroing" methodology to comply with WTO rulings. Effective February 22, 2007, when calculating the weighted-average dumping margin in anti-dumping investigations, DOC would no longer disregard negative dumping margins (*i.e.*, zero) in anti-dumping investigations where it uses weighted average to weighted average comparisons. The United States seems willing to change its practice in an effort to bring itself into compliance with it WTO obligations: as noted, the US-Ecuador case marked the first time that a defending party in a WTO proceeding agreed with a complainant not to contest any of the issues in dispute. In the Ecuador case, a series of authoritative Appellate Body rulings on the WTO-inconsistency of the zeroing methodology left the United States without any credible arguments to make in response to Ecuador's claims, thus ultimately leading to DOC's revocation of the shrimp order.

Sen. Baucus Requests ITC To Review Beef Trade Between US And Foreign Trading Partners

In an August 7, 2007 letter to US International Trade Commission (ITC) Chairman Daniel Pearson, Senate Finance Committee Chairman Max Baucus (D-MT) requested that the ITC conduct a review on

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

the effects of animal health, sanitary and food safety measures on beef trade between the United States and its trading partners. Chairman Baucus made the request under section 332(g) of the Tariff Act of 1930 (19 U.S.C. § 1332(g)).

According to the request, the report should cover the period 2002-2007 (or the period from 2002 to the latest year for which data are available) and should provide:

- an overview of the US and global markets for beef, including production, consumption, exports, and imports;
- information on animal health, sanitary, and food safety measures facing US and other major beef exporters in major destination markets;
- information on other barriers to US beef exports in major destination markets, including high tariffs, quotas, and import licensing and distribution systems; and
- a qualitative and quantitative analysis of the economic effects of foreign animal health, sanitary, and food safety measures on US beef exports.

Chairman Baucus requested that the ITC provide its completed report no later than ten months from receipt of the request (*i.e.*, by June 2008). Upon the ITC's completion of the report, Chairman Baucus noted that he will make the report available to the public.

Upon announcing his Section 332, request, Chairman Baucus stated that "the future sustainability of the US beef industry is highly dependent on access to global market," and that "currently, restrictions on US beef exports related to concerns over bovine spongiform encephalopathy (BSE), especially by Japan and South Korea, have hurt the domestic industry." He noted that American beef is safe, indicating that in May 2007, the World Animal Health Organization (OIE) formally announced that it had granted the United States "controlled risk" status for BSE, "further demonstrating that the current restrictions facing US beef in key markets are not based on sound science." It is Chairman Baucus' hope that the ITC report will illustrate "the negative economic effects of these unjustified barriers on the US beef trade, and the potential for growth in US beef exports if these unfair barriers are removed. "

Section 332 of Tariff Act of 1930 mandates the ITC to conduct general fact-finding investigations on any matter involving tariffs or international trade, including conditions of competition between US and foreign industries. Section 332 authorizes the President or Chairman of either the Senate Finance Committee or the House Ways and Means Committee to request that the ITC conduct these general investigations (19 U.S.C. § 1332). Under Section 332, the ITC is charged specifically with investigating the administration

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

and fiscal and industrial effects of US customs laws, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of *ad valorem* and specific duties and of compound specific and *ad valorem* duties, and all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law. Section 332 also directs the ITC to investigate the operation of customs laws, including their relation to the Federal revenues, and to submit reports of its investigations. 19 U.S.C. § 1332(a). The provision authorizes the ITC to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production. 19 U.S.C. § 1332(b).

Chairman Baucus has been a long-standing supporter of US beef and has criticized US trading partners that implement trade barriers blocking access to US beef products. His Section 332 request reiterates his earlier statements that Japan and Korea are priority trading partners with barriers to US beef imports. Japan currently allows the import of only boneless beef from cattle under 20 months of age, and Korea allows the import of only boneless beef from cattle under 30 months of age. Chairman Baucus has repeatedly demanded that US trading partners – including Japan and Korea – adopt science-based standards for the inspection of beef products. He has also stated that he will not support the recently concluded US-Korea Free Trade Agreement (KORUS FTA) "unless and until Korea completely lifts its ban on US beef." As head of the Senate Finance Committee, Chairman Baucus filters all FTAs that go through the committee for mark-up before they are sent to the Senate floor for a vote. If Chairman Baucus does not support the FTA, it is likely that many other Senators will follow suit and voice disapproval over the agreement. However, he cannot block a floor vote on KORUS implementing legislation because the agreement will be considered under Presidential Trade Promotion Authority, which expired on June 30, 2007. The Section 332 request may serve as a message to US trading partners that Sen. Baucus and other legislators are focused on the beef issue and will take steps to ensure that US beef producers receive increased market access for beef products overseas. Moreover, with consideration of the KORUS FTA delayed until at least late Fall 2007, Sen. Baucus could aim to use the ITC's finding to garner further opposition to the FTA in the event that Korea fails to remove its restrictions on US beef.

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Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

United States to Initiate Arbitration Proceedings with Canada Regarding Softwood Lumber Agreement

On August 7, 2007, United States Trade Representative (USTR) Susan Schwab announced that the United States will initiate arbitration proceedings with Canada under the 2006 Softwood Lumber Agreement (SLA). USTR Schwab also noted that she is working with the Department of Commerce (DOC) to take additional measures to monitor Canada's compliance with the SLA. Specifically, the United States will formally challenge: (i) Canada's implementation of the SLA for failure to sufficiently control export surges; and (ii) provincial programs in Canada that aid the Canadian forestry sector. The United States claims that these programs provide subsidies to circumvent the SLA. USTR Schwab did not announce when the United States would file the formal request to establish a dispute settlement tribunal, but government sources have opined that USTR will likely do so over the next several weeks.

In announcing the initiation of dispute settlement procedures, USTR Schwab stated that "it is truly regrettable that, just ten months after the Agreement entered into force, the United States has no choice but to initiate arbitration proceedings." She noted that US-Canada consultations on the issues of export volume caps, proper application of the import surge mechanism and anti-circumvention were unsuccessful. USTR Schwab also stated that USTR's work with the DOC to monitor implementation of the SLA and to collect information on compliance will allow the United States to consider "any future steps necessary to ensure that the SLA is fully implemented."

The United States and Canada signed the SLA on July 1, 2006. Under the SLA, the United States revoked the current countervailing duty (CVD) and antidumping (AD) orders and stopped collecting duties. All parties to related litigation also terminated their cases. The United States also returned approximately USD 4 billion of the nearly USD 5 billion in duties that have been collected from Canadian exporters since the 2002 imposition of AD/CVDs on Canadian lumber imports. Half of the remaining USD 1 billion went to members of the Coalition of Fair Lumber Imports – the domestic industry group which originally petitioned for trade relief – with the remainder to "meritorious initiatives in the North American lumber market."

The SLA includes an export measure, a third-country trigger and a surge mechanism. Canadian regions (the British Columbia (BC) interior, the BC Coast and each of the provinces east of BC) must decide between one of two options for applying the export measure: (i) a lumber export charge based on a composite lumber price from the trade periodical *Random Lengths*; or (ii) a lower export charge plus a volume restraint. Under the third-country trigger, Canada will refund any export charges paid in any two consecutive quarters if three conditions existed during those quarters: (i) the third country share of US

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

lumber consumption increased by 20 percent over the same quarter in the previous year (in two consecutive quarters); (ii) Canadian market share decreased in the same two quarters; and (iii) US domestic producers' market share decreased in the same two quarters. The export measure will not apply to any region that has triggered the surge mechanism, which occurs when a region's exports exceed 110 percent of its allocated share in any one period. If a region's exports are between the trigger volume and the trigger volume plus 1 percent, then the trigger volume is reduced by the average in the next period. If a region exports more than the trigger volume plus 1 percent in any one period, then the region will pay 150 percent of the normal export charge for that period.

Under the SLA, Canada agreed to impose export measures on Canadian exports of softwood lumber products to the United States. When the prevailing monthly price of lumber, determined per the Agreement, is above USD 355 per thousand board feet (MBF), Canadian lumber exports are unrestricted. When prices are lower than USD 355 MBF, each Canadian exporting region has chosen to be subject to either an export tax with a soft volume cap or a lower export tax with a hard volume cap or "volume restraint." The measures become more stringent as the market price of lumber declines. Regions with a soft volume cap such as British Columbia ("BC") are subject to a "surge" mechanism. If a region's exports of softwood lumber products to the United States exceed the soft volume cap, known as the "trigger volume," by more than 1 percent in a particular month, Canada must retroactively collect an additional export tax, equal to 50 percent of the primary export tax, on all softwood lumber products from that region that entered the United States during the month in question. The current prevailing monthly price of lumber is USD 309 per MBF.

The SLA entered into force on October 12, 2006. The SLA provides for binding arbitration to resolve disputes between the United States and Canada over the Agreement's interpretation and implementation. Under the SLA, arbitration is conducted under the rules of the London Court of International Arbitration. After a party requests arbitration, there is an approximately two-month process to select arbitrators, and the arbitral tribunal is to issue its award within six months of its appointment.

On March 30, 2007, the United States requested formal consultations with Canada to discuss Canadian compliance with several SLA provisions. The request for consultations covered several federal and provincial programs and Canada's interpretation of the SLA's provisions adjusting export levels, including the level triggering the agreement's mechanism on import surges. Specifically, the United States charged that Quebec and Ontario have implemented several assistance programs that violate the SLA's anti-circumvention provisions, including "grant, loan, loan guarantee, and tax credit programs, as well as 'forest management' programs and programs that promote wood production." If the United States wins its

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slincicome@whitecase.com and jshea@whitecase.com

case after arbitration proceedings, the SLA provides for remedies in the form of added duties or reduced export volumes of lumber within a certain implementation period. In the case of a breach by a province, the tribunal is instructed under the SLA to determine the compensatory adjustment applicable to that region.

The US-based Coalition for Fair Lumber Imports welcomed USTR's announcement and stated that a ruling in the favor of the United States would result in significant export tax liabilities for Canadian softwood lumber exporters and a tightened permissible export quotas to comport with the terms of the SLA. Coalition Chairman Steve Swanson alleged that “Canada's failure to honor its commitments under the agreement continues to severely harm the US lumber industry which is suffering curtailments and layoffs caused by production cutbacks that are occurring at twice the rate in the United States compared to our subsidized Canadian counterparts." The British Columbia Lumber Trade Council, however, believes there is no basis for the US government's request for arbitration. Council President John Allan stated that he has full confidence that the arbitration process will prove that the US claims are without merit and that Canada is in full compliance with the SLA. Government sources believe that the tribunal will issue its decision in about eight months, as it could take two months to select arbitrators and six months to reach a decision.

Sens. Baucus and Hatch Introduce Trade Enforcement Act of 2007

On August 1, 2007, Senate Finance Committee Chairman Max Baucus (D-MT) and Sen. Orrin Hatch (R-UT) introduced the Trade Enforcement Act of 2007 (S. 1919). The bill is similar to a bill Chairman Baucus introduced in 2006 (S. 2317), as then-ranking Senate Finance Committee Member, that was not put to a Senate floor vote. S. 1919 would, among other things, increase the enforcement responsibilities at the Office of the United States Trade Representative (USTR) and lessen Administration flexibility in pursuing retaliatory actions against unfair trade practices abroad while giving Congress a larger role in determining how to address foreign trade abuses.

Specifically, S. 1919 would:

- require USTR to provide an annual report to Congress identifying the most significant market access barriers to US companies abroad and to take enforcement action to resolve them; and allow the Senate Finance Committee or the House Ways and Means Committee to require USTR to identify a specific priority foreign country trade practice in its annual report;
- establish a special commission to review World Trade Organization (WTO) dispute settlement reports to determine whether they add to US WTO obligations or deviat from the standard of review. (Under

the legislation, no change can be made to a federal regulation to comply with an adverse WTO dispute settlement report until Congress receives the commission's report on its review.);

- create a Chief Enforcement Officer at USTR to investigate and prosecute trade enforcement cases;
- establish an interagency trade enforcement working group to advise USTR;
- direct USTR to "carefully consider any advice provided by the interagency trade organization," although "USTR need not and shall not seek approval from the interagency trade organization for any actions USTR takes in performing its functions";
- authorize USD 5 million for USTR enforcement responsibilities;
- require the President to adopt any import relief that the International Trade Commission (ITC) recommends in a China safeguard investigation under Section 421 (Under the legislation, the President can decline to provide such relief only in extraordinary cases and only if he determines that the relief would seriously harm US national security or would have an adverse impact on the economy that clearly and significantly outweighs the benefits.);
- allow Congress to override a Presidential decision to reject a Section 421 recommendation by the ITC through a joint resolution passed by majority vote in the House and the Senate;
- authorize the Department of Commerce to apply countervailing duties to non-market economies like China; and
- override a decision by the Court of Appeals for the Federal Circuit (*Bratsk Aluminum Smelter v. United States* (23 ITR 616, 4/20/06) (28 ITRD 1010)) that limits the ITC's ability to make a finding of material injury, in cases where imposing duties against one country would result in more imports coming in from other countries (The legislation overrides the *Bratsk* decision by "providing that the ITC must make its material injury determination in antidumping and countervailing duty cases without regard to whether other imports will likely replace imports from the country under investigation.").

In announcing the proposed legislation, Chairman Baucus stated that he will focus on S. 1919 and S. 1848, which he introduced in late July to extend the Trade Adjustment Assistance (TAA) Program (scheduled to expire on September 30, 2007). He opined that Congressional passage of both bills would "give Americans more confidence in US trade policy." Chairman Baucus acknowledged, however, that the Senate may not have enough time between now and December 2007 to consider S. 1919, stating that "little time remains" to consider the legislation. Congressional sources stated that the Senate Finance Committee could mark-up S. 1919 when the Senate returns to Congress following the August recess, but

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

noted that that the Finance Committee will likely focus on only Chairman Baucus' proposed bill to extend the TAA program.

With Congress in recess during August, there will be little near-term movement on S. 1919. When the Senate returns in September, they will focus on appropriations bills, the 2007 Farm Bill and pending US Free Trade Agreements (FTAs), as well as Chairman Baucus' bill to extend TAA. Thus, it seems unlikely that the Senate will consider S. 1919 for the remainder of 2007. The proposed legislation, however, is a good indicator of current Congressional sentiment on US trade policy and US legislators' push for a more active Congressional role in US trade policy. Over the past several weeks, Chairman Baucus and other members of Congress have introduced legislation that address currency manipulation (S. 1677 and S. 1607) and countervailing duties on non-market economies like China (H.R. 1229 and H.R. 2942). Although it is unlikely that Congress will devote significant attention to S. 1919 in the short-term, the bill could serve to maintain Congress' focus on China trade and a more interventionist US trade policy.

House Approves Sanctions Bills Targeting Iran and Sudan

On July 31, 2007, the House of Representatives passed three bills that include sanctions targeting Iran and Sudan. The two Iran bills aimed to intensify economic pressure by encouraging companies to divest from Iran. The Sudan bill's provisions are similar to those of the Iran bills.

The House passed the Iran Sanctions Enabling Act of 2007 (H.R. 2347) by a margin of 408 to 6. H.R. 2347 discourages investment in companies doing business with Iran and includes provisions on preventing Iran from acquiring nuclear capability. Under H.R. 2347, the Executive Branch would have to publish in the Federal Register every six months an updated list of companies that have investments in the Iranian energy sector totaling more than USD 20 million. The list would include a description of each investment, its dollar value, intended purpose, and its current status. The Federal Register listing would also have to include companies that are selling munitions to the government of Iran and that extend credit of USD 20 million or more to the government of Iran. H.R. 2347 also authorizes state and local governments to divest the assets of their pension funds and other funds under their control from any company on the list. House Financial Services Committee Chairman Barney Frank (D-MA) introduced H.R. 2347 and Chairman of the House Foreign Affairs Committee Tom Lantos (D-CA) is a co-sponsor.

Passed by a 415 to 11 margin, the second Iran bill, H.R. 957, is meant "to amend the Iran Sanctions Act of 1996 to expand and clarify the entities against which sanctions may be imposed." H.R. 957 would expand the definition of entities that can be sanctioned for making investments that increase Iran's ability to develop its petroleum resources. H.R. 957 adds financial institutions, insurers, underwriters,

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

guarantors, and any other business organizations, including any foreign subsidiaries, to the list of entities already barred from investing in Iran. Ranking Member of the House Foreign Affairs Committee Ileana Ros-Lehtinen (R-FL) introduced the legislation, which has 59 co-sponsors.

The House also passed the Darfur Accountability and Divestment Act (H.R. 180) by a margin of 418 to 1. H.R. 180 would bar federal contracts with companies doing business with the government of Sudan and would authorize states to divest assets from Sudan and protect fund managers from legal action for doing so. H.R. 180 would also require the Department of Treasury to publish a list of companies doing business in Sudan. The legislation is designed to pressure Sudan to halt its military campaign against rebels in its Darfur region. Rep. Barbara Lee (D-CA) introduced the legislation. H.R. 180 has 152 co-sponsors.

House passage of the sanctions bills was met with criticism. National Foreign Trade Council (NFTC) President William Reinsch stated that "allowing states to become more involved in foreign policy would likely complicate the ability of Congress and the President to make foreign policy decisions in the future." He added that "Members of Congress have confused multilateral with extraterritorial and passed counterproductive unilateral legislation." USA*Engage Director Jake Colvin echoed Reinsch's statements and added that the House-approved legislation "tries to penalize companies located in the countries of [US] allies and partners."

Members of Congress have recently turned their focus to Iran and companies that have business links with the Middle Eastern country. Legislators from both houses of Congress have introduced similar legislation regarding US businesses and Iran over the past month. Sen. Barack Obama (D-IL) introduced a similar bill to H.R. 2347 in the Senate (S. 1430). Sen. Gordon Smith (R-OR) introduced S. 970 (the Iran Counter-Proliferation Act of 2007) on March 22, 2007, and Sen. Frank Lautenberg (D-NJ) introduced S. 1234 (the Stop Business with Terrorists Act of 2007) on April 26, 2007. Like H.R. 2347 and H.R. 957, the Senate bills would impose US sanctions on foreign-domiciled companies doing business in Iran. S. 970 has been referred to the Senate Committee on Finance, and S. 1234 has been referred to the Senate Committee on Banking, Housing, and Urban Affairs. Although members of Congress have expressed concern over Iran, US businesses have actively criticized such sanctions. The US Chamber of Commerce, the Business Roundtable, the Coalition for Employment Through Exports, the Emergency Committee for American Trade, the National Association of Manufacturers, the National US-Arab Chamber of Commerce, the Organization for International Investment, and the US Council for International Business, along with the NFTC and USA*Engage, have opposed these sanctions because they believe that such legislation "draw[s] attention away from the core problem: Iran's threatening

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slincicome@whitecase.com and jshea@whitecase.com

behavior in seeking nuclear weapons," and that "it is counterproductive to penalize entities and individuals in the very countries whose cooperation [the United States] need[s] to effectively counteract Iran's dangerous behavior." It seems likely that these US business groups will raise the same arguments if and when the Senate considers the companion bills. Given the large amount of House support for such bills, it seems likely that the pieces of legislation will enjoy similar support in the Senate, much to the consternation of US businesses attempting to strengthen business linkages in the Middle East.

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701 Thirteenth Street NW, Washington, DC 20005
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Free Trade Agreements

Special Report: Pending FTAs Await Congressional Consideration; Other FTAs Must Wait For TPA Renewal

Summary

The United States has four pending Free Trade Agreements (FTAs) waiting for Congressional consideration. The United States recently completed FTAs with Peru, Colombia, Panama, and South Korea, but had to amend the agreements to reflect the May 2007 agreement on US trade policy between the Administration and Congressional Democrats. The United States Trade Representative (USTR) successfully completed all amendments to each of these agreements before Presidential Trade Promotion Authority (TPA) expired on June 30, 2007. Thus, Congress will have to consider each of these bilateral agreements under TPA.

USTR also has four FTAs that remain under negotiation: Thailand, Ecuador, the United Arab Emirates (UAE), and Malaysia. However, because of TPA expiry, these FTA negotiations are considered "inactive." For these possible agreements, there remains either a major gap between the two parties' positions or significant shifts in the country's political landscape that have affected FTA negotiations.

This report serves as an update on the status of pending US FTAs and FTA negotiations.

Analysis

I. FTAs Pending Congressional Ratification: Peru, Colombia, Panama and South Korea

On May 10, 2007, the President and Congress announced that they had reached an agreement on labor, environmental and other provisions of the four pending FTAs. The Administration-Congress deal covers seven areas: (i) labor; (ii) the environment (including global warming); (iii) patents and access to medicines; (iv) government procurement; (v) security; (vi) investment; and (vii) and worker training. Following the May 2007 agreement, USTR officials met with trade officials from Peru, Colombia, Panama, and South Korea and successfully amended the labor, environmental and other provisions of each FTA in order to reflect the Administration-Congress compromise.

A. Peru

On June 25, 2007, USTR announced that the United States and Peru had reached an agreement on legally binding amendments to the US-Peru Trade Promotion Agreement's (PTPA) provisions on labor, the environment and other matters. According to USTR, the amended US-Peru FTA did not require

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Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

another signature by the President, and the bilateral agreement will be considered under TPA. On June 27, 2007, the Peruvian Congress approved the amendments to the bilateral agreement. The US-Peru FTA may compete with Panama to be the first of the four completed FTAs that the US Congress ratifies.

The amendments follow the terms of the Administration-Congress deal. For example, under the new labor provisions, Peru adopts the International Labor Organization’s (ILO) five fundamental principles and rights for workers. The amended environmental provisions in the FTA protect Peruvian forests and protected species living within them from illegal logging. Protective measures regarding port security and procurement were among the amendments, as were measures for intellectual property protection.

Congressional Democratic leaders, in a June 29, 2007 statement, expressed approval for the US-Peru FTA, but also made it clear that final ratification would wait until they were satisfied that Peru could, in fact, implement all of the changes. Speaker of the House Nancy Pelosi (D-CA), Majority Leader Steny Hoyer (D-MD), House Ways and Means Committee Chairman Charles Rangel (D-NY), and Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI) have stated that the US-Peru FTA “reflects long-standing Democratic priorities” such as “enforceable, internationally recognized labor rights and environmental standards.”

On August 6, 2007, Ways and Means Chairman Rangel and Reps. Levin and Allyson Schwartz (D-PA) completed a congressional delegation trip to Peru to discuss the pending approval of the US-Peru FTA. During the trip, Peruvian President Alan Garcia and other high-ranking Peruvian officials expressed their support for the agreement. President Garcia also announced the Peruvian government’s decision to make changes to Peru's legal framework to bring Peruvian laws into alignment with the obligations under the FTA, including enhancements to: (i) laws regarding time-limited contracts; (ii) laws regarding outsourcing and subcontracts; (iii) the right of workers to strike; (iv) provisions relating to anti-union discrimination; and (v) provisions that safeguard workers' right to organize. On August 10, 2007, the Peruvian government submitted a measure to the Peruvian Congress to modify its law regulating outsourcing. Peruvian Bill 01493/2007/PE would reduce the number of jobs outsourced by a company from 20 to 10 percent of the overall workforce. President Garcia also proposed modifications to the Peruvian Labor Ministry's general framework law that would increase the number and competencies of labor inspectors. President Garcia also proposed the creation of a Social Pact that would bring together representatives from the government, private sector and labor unions to discuss the minimum wage and labor-related topics.

Democrats have hinted that Congressional ratification could occur in Fall 2007. Following the visit to Peru and President Garcia’s proposed modifications to Peruvian law, Chairman Rangel stated that the

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

House Ways and Means Committee would make the pending US-Peru FTA a "top priority" for Congress in September and he indicated that the Ways and Means Committee would likely consider the Peru agreement and move it beyond committee for Congress' approval in the fall.

The fate of the US-Peru FTA (and that of the US-Colombia FTA) may become entangled with the Andean Trade Promotion and Drug Eradication Act (ATPDEA). Originally passed in 1991, the ATPDEA was due to expire at the end of June, but was overwhelmingly extended by Congress on June 28 for another eight months (*i.e.*, until February 2008). The compromise of eight months resets the clock, giving US legislators until early 2008 to focus on passing the FTA with Peru before the issue of ATPDEA reemerges.

B. Colombia

On June 28, 2007, USTR Schwab announced that the United States and Colombia had also reached an agreement on legally binding amendments to the US-Colombia FTA, similar to those found in the US-Peru FTA. As with the amended US-Peru FTA, the amended US-Colombia FTA did not require another signature by the President; the bilateral agreement will be considered under TPA. US Democrats, however, appear skeptical of the Colombian government's ability to enforce the additional provisions on labor rights and union protection. A May 10, 2007 letter from Chairman Rangel addressed to USTR and attached to the terms of the Administration-Congress deal stated that "Colombia has special problems and considerations . . . including the systemic, persistent violence against trade unionists . . ." The letter also mentioned that the House Committee on Ways and Means was working on "concrete proposals" to address Democratic concerns. The joint statement on June 29 by Reps. Pelosi, Hoyer, Rangel and Levin made it clear that Congress would only ratify the US-Colombia FTA after Colombia showed "concrete evidence of sustained results on the ground" that respond to Democratic concerns. Until then, Democrats "cannot support the Colombia FTA."

Colombian President Alvaro Uribe's response to the Administration-Congress deal was swift: he stated that Colombia would make any of the changes that were necessary to passing the FTA. On June 14, 2007, Colombia approved the new FTA with the changes during the visit by a group of Congressional Democrats to Bogota. Then, as now, Democrats were adamant that they would wait to see if Colombia could truly deliver on its promises before Congress reciprocated the ratification. Congressional sources are thus unsure when the US Congress could consider the US-Colombia FTA.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), for one, has been strongly pushing the Democrats to reject the Colombia FTA without stronger provisions to address

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

what they state is a high level of murder and terrorism against trade unionists in Colombia. The AFL-CIO counts over 2,000 murders of labor leaders and union members and only 30 related convictions over the past several years.

Like the Peru FTA, the US-Colombia FTA may be entangled with the ATPDEA. Just how the eight-month extension for the ATPDEA will affect the Democrats' resolve to pass the former is unclear, but ATPDEA will return for renewal in early 2008.

C. Panama

The United States signed its FTA with Panama on June 28, 2007. Prior to the signing, the United States had successfully amended the agreement to reflect Democratic labor and environmental concerns; Congress will also consider the FTA under TPA. On December 19, 2006, trade officials had concluded FTA negotiations. Unlike other FTAs, the Panama FTA seems to have been finished with the knowledge that the Democrats' victory in Congress would mean new provisions. The labor and environmental chapters in this FTA intentionally were left open for new language to be inserted. On July 11, 2007, the Panamanian Congress ratified the FTA.

Like the US-Peru FTA, the amendments are in line with the Administration-Congress trade policy deal, and Democrats seem to be pushing to ratify the agreement by Fall 2007. Provisions on labor, the environment, intellectual property, procurement, and security were all included in the FTA.

The US-Panama FTA may be the least controversial of the four FTAs. First, it appears that the majority of goods between the United States and Panama already enjoy duty-free treatment. Second, US businesses have also come out strongly in favor of the FTA's passage, at least in part due to the massive construction contracts arising from the Panama Canal expansion project. Prospects for passage of the US-Panama FTA are thus high and it is likely that the US Congress will consider the US-Panama FTA in the fall after it has considered the US-Peru FTA.

D. South Korea

The United States signed the FTA with Korea on June 30 after successfully amending the agreement's labor and environmental provisions; Congress will also consider the FTA under TPA. House Democratic leadership, however, stated clearly on June 29 that they did not support the renegotiated US-Korea FTA; according to Speaker of the House Pelosi, Majority Leader Hoyer, Ways and Means Chairman Rangel and Trade Subcommittee Chairman Levin, the agreement does not address the "persistent problem of non-tariff barriers, particularly those blocking access of US manufactured products in South Korea's

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

market." They point specifically to automobiles, where in 2006 South Korea exported over 700,000 cars to the United States, but only imported under 5,000.

Unsurprisingly, two of the "Big Three" American automobile companies are the FTA's biggest opponents. Ford and Chrysler have expressed their anger with the fact that the 2.5 percent US tariff on Korean automobiles would be eliminated under the FTA whereas Korea would have no obligation to make it easier or more attractive to buy American automobiles. At the same time, USTR Schwab seems equally unwilling to concede to this criticism and has stated that USTR knows "there are some who believe this agreement must be altered... but this agreement, once signed, will stand on its own, without amendment."

According to Administration trade officials, in exchange for fully accepting additional commitments on labor and environment in the bilateral agreement, the United States accepted Korea's demand for a delay in implementing the obligation for a patent linkage system. USTR officials report that the United States agreed that Korea will not have to implement a patent linkage system until the FTA has been in force for 18 months; during this 18-month period, the United States will only consult with Korea, and refrain from launching dispute settlement, for any patent linkage noncompliance. Under a patent linkage system, the Korean Food and Drug Administration would not grant marketing approval for a drug unless it can certify that it does not infringe on a patent.

Congress is likely to consider the Korea agreement once it has approved the Peru and Panama agreements. Because the US-Korea FTA suffers from Congressional objection and disapproval similar to that for the Colombia FTA, Congress likely will scrutinize the US-Korea agreement and debate it extensively when the bilateral agreement reaches Congress. Trade analysts predict that Congress could consider the FTA as early as the fall, but with Congress' intent to consider the Peru and Panama agreements first, it seems more likely that consideration of the Korea FTA will be pushed to the winter, if not early 2008 altogether. The timing of the agreement's passage will also depend on when the Administration submits the agreement and its implementing legislation to Congress, after which time Congress will have a maximum of 90 legislative days to consider the implementing legislation.

II. Stalled Negotiations: Thailand, UAE, Ecuador, Malaysia

There are four countries with which USTR has delayed FTA negotiations indefinitely. For two of them—Thailand and Ecuador—there is no indication that USTR will restart the talks in the near future. On the other hand, US-UAE FTA negotiations appear likely to continue, despite TPA expiry. US and Malaysian officials have also indicated they are attempting to complete their FTA by mid-2008.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

A. Thailand

USTR suspended negotiations with Thailand on November 6, 2006, following the September 19, 2006 coup against then-Prime Minister Thaksin Shinawatra. Although Thaksin had initiated FTA talks, the United States decided to place negotiations with the military junta that has replaced him on hold until a new government is elected. The FTA talks remain on indefinite hold.

Once the US-Thai talks resume, negotiators will have to tackle the contentious issues of intellectual property and pharmaceuticals. In May 2007, USTR downgraded Thailand's status in its annual "Special 301" report examining US trading partners' intellectual property monitoring and enforcement. Thailand was moved from the "Watch List" to the "Priority Watch List" of countries that the United States will closely monitor. USTR explained that the move was precipitated by Thailand's failure to adequately protect intellectual property rights (IPR), and gave an "action plan" of steps that the Thai government would be required to follow if it wanted to be removed from the "Priority Watch List."

The government of Thailand's issuance of compulsory licenses on pharmaceutical products will also serve as a focal discussion point between negotiators. Between November 2006 and January 2007, the Thai Ministry of Health granted compulsory licenses for patents on two antiretroviral drugs: Efavirenz, sold by Merck as Stocrin, and Lopinavir+Ritonavir, sold by Abbott as Kaletra. The Thai government also issued a compulsory license for clopidogrel, a heart medication sold by Bristol Myers Squibb as Plavix. The licenses were issued for government use. US pharmaceutical companies objected to the Thai government's issuance of compulsory licenses and lobbied USTR to address this issue. Should US-Thai FTA talks resume, IPR and pharmaceutical products will certainly be key points of discussion.

On August 19, 2007, the military junta submitted the new Thai constitution to referendum; Thai voters approved the new constitution and the military junta will hold general elections in December. These moves may help sway the United States to return to the negotiating table. In the meantime, Congressional support for the FTA has perhaps suffered from the recent indictment of Rep. William Jefferson (D-LA) who co-chaired the Friends of Thailand Caucus, a group organized to build support for Thailand in the House of Representatives. The Friends of Thailand Caucus, however, is bipartisan and had built good Congressional support for a US-Thai FTA prior to the negotiations' suspension. Few Members of Congress have spoken out about FTA negotiations since Thailand's coup, although the FTA has had a few outspoken critics, including Rep. Phil English (R-PA), who even before the coup, railed against Thailand for failing to respect "a country's right to police its markets from predatory or illegally traded imports." It should be noted, however, that Rep. English represents a district with a large US steel

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Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

industry presence. Should US-Thai FTA negotiations continue, it is likely that there will be continued Congressional support for an FTA in part due to the Friends of Thailand Caucus Group's lobbying.

B. Ecuador

FTA negotiations between the United States and Ecuador stalled in early 2006 and then unraveled with the victory of Rafael Correa in Ecuador's presidential elections on November 26, 2006. Since then, prospects for concluding any kind of substantive trade agreement have looked grim, even as the United States extended the benefits of ATPDEA to Ecuador (and the other Andean economies) for another eight months.

FTA negotiations were first derailed in April 2006 during the final stages of bilateral talks when a new hydrocarbons law in Ecuador mandated revisions in contract terms with US investors. Then, in May 2006, Ecuador seized assets of Occidental Petroleum, at the time the country's largest US investor. The seizure of Occidental's assets and the new hydrocarbons law soured relations between the two parties, and USTR received strong pressure from US businesses to end FTA negotiations. The United States and Ecuador suspended FTA talks on May 15, 2006.

As it stands, President Correa has announced his opposition to any resumption of FTA talks with the United States, stating that the agreement as drafted would be "tremendously harmful" to Ecuador. Ecuador's foreign minister stated in July that any FTA with the United States would require protection of Ecuador's national production, further underscoring the country's turn against a bilateral agreement with the United States. For its part, USTR has remained quiet on the stalled negotiations with Ecuador. It seems unlikely that USTR will recommence FTA negotiations with Ecuador in the short-term.

C. United Arab Emirates

USTR suspended negotiations with the UAE after recognizing that the two parties would not be able to reach a conclusion by the March 31, 2007 deadline to have an FTA considered under TPA. Unlike with Thailand or Ecuador, USTR did not cut off the negotiations because of political developments. Indeed, the United States and the UAE expressed interest in continuing FTA talks in light of TPA's June 30 expiry. USTR has stated that it will continue talks with the UAE; it is unlikely, however, to formally complete these FTA negotiations without the presence of TPA.

US and UAE negotiators last met in Washington, DC on June 29 and held FTA talks under the US-UAE Trade and Investment Framework Agreement (TIFA) Plus. USTR Schwab stated that the talks were "very productive" and noted that both sides "have laid the groundwork for substantive cooperation in a number of areas including intellectual property, the digital economy and in the area of standards."

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

The two most contentious issues in the negotiations are labor and the services sector. Although FTA negotiations began in August 2005, the issues of labor and services sector liberalization have prevented the two parties from reaching an agreement. USTR would like to see the UAE recognize and implement international labor standards in the FTA. According to then-Under-Secretary for International Trade Frank Lavin, the United States also wants the UAE to change its “Companies Law” to allow US investors to take a 100 percent stake in all companies, and not just those in “free zones.” Another issue is "changing the agent-distributor law to eliminate the requirement for most companies to have a UAE agent to operate here.”

The US-UAE FTA talks likely enjoy stronger Administration support than other FTA negotiations because of President Bush’s proposed US-Middle East Free Trade Area (USMEFTA), an initiative to be completed by 2013. To date, the United States has concluded FTAs in the Middle East with Israel, Morocco, Jordan, Bahrain, and Oman. An FTA with the UAE would serve to further strengthen the USMEFTA initiative and would likely garner strong US business support; the UAE has surged in popularity not only as a trading partner but also as a place for Western companies to locate their regional headquarters. It is the United States’ third-largest trading partner in the region after Israel and Saudi Arabia. As noted, without TPA, however, it is unlikely that USTR will formally complete bilateral negotiations with the UAE in the near future.

D. Malaysia

Negotiators from the United States and Malaysia held five official FTA negotiating rounds over the past year, but USTR suspended negotiations after recognizing that the two parties would not be able to reach a conclusion by the March 31, 2007 deadline under TPA. US and Malaysian officials last met in Kuala Lumpur on July 16, 2007 in an effort to continue FTA negotiations. Assistant USTR Barbara Weisel led the US delegation and stated that the informal talks were positive and that both sides are attempting to complete the bilateral deal by the second quarter of 2008 because both sides could “lose momentum” if negotiations continued well into 2008. US and Malaysian officials have not yet scheduled the next formal FTA negotiating round.

According to US officials, the contentious issues in the US-Malaysia negotiations remain government procurement and services, specifically financial services. US officials note that government procurement is a highly sensitive political issue in Malaysia and will require more discussion time. On financial services, US officials noted that Malaysia remains undecided on fully liberalizing its financial services market. US officials also note that Malaysian officials insist that Malaysia cannot provide a services offer

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

that goes beyond the services concessions included in the ASEAN Free Trade Area or any of Malaysia's other FTAs. Malaysia' alleged business ties to Iran have also proven contentious in the bilateral talks.

Like the US-UAE FTA, without TPA, USTR is unlikely to officially recommence FTA negotiations with Malaysia in the short-term. Further, contentious issues are still prevalent in the talks. Unless either party agrees to the concessions of the other or unless both parties take unilateral action to address the demands of the other party, then it seems likely that any recommenced FTA negotiations would be drawn-out and highly contentious.

Outlook

USTR reached its latest goal of completing and signing all four pending FTAs before the June 30, 2007 expiry of TPA. Thus, US legislators will consider the US FTAs with Peru, Colombia, Panama, and Korea under TPA when the Administration delivers implementing legislation to Congress. It seems likely that Congress will approve the Peru and Panama agreements. These two agreements enjoy strong Congressional backing and Congress is likely to consider both in the fall.

The Colombia and Korea agreements could face tougher battles in Congress. House Democratic leadership has already indicated its opposition to these agreements based on their current provisions. US legislators remain concerned with the violence against labor union leaders in Colombia and will likely bring up this issue once Congress begins debate on the bilateral agreement. The US-Korea FTA will also undergo Congressional scrutiny, especially regarding the agreement's automobile provisions. Unlike the Colombia FTA, however, the Korea agreement enjoys broader US business support; this support may be sufficient for legislators to approve the Korea agreement, predicted to reach the Congressional voting floor sometime in the fall or winter. It remains to be seen how Congress will vote on the Colombia FTA, but all signs indicate that the agreement has a low likelihood of Congressional passage.

As for other FTA negotiations, without TPA, USTR is unlikely to begin any new talks or formally conclude talks with US trading partners such as Thailand, Ecuador, the UAE, and Malaysia. Of these four economies, USTR seems most eager to continue talks with the UAE (if only to further add to President Bush's USMEFTA initiative) and Malaysia. It is unlikely that USTR will continue talks with the other two countries in the near future unless Congress grants the President a renewed TPA, and/or unless these countries address US concerns and demands brought up in negotiations.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Wilson Center Explores US FTAs and Labor Rights

Summary

On July 25, 2007, the Woodrow Wilson Center's Program on Science, Technology, America, and the Global Economy, and the Solidarity Center hosted a panel on US Free Trade Agreements (FTAs) and labor rights. Panelists discussed whether international labor standards should be included in US FTAs and what the implications of such inclusion means for Asian economies. We review herein the panelists' discussion.

Analysis

On July 25, 2007, the Woodrow Wilson Center's Program on Science, Technology, America, and the Global Economy, and the Solidarity Center hosted a panel discussion titled "Should Labor Standards be included in Free Trade Agreements with the United States? Implications for Asia." Panelists discussed US FTAs and the implications for Asian economies if standardized labor rights were included in US trade agreements.

Assistant United States Trade Representative (AUSTR) for Labor Lewis Karesh opined that the United States is now including advanced labor provisions in many of its bilateral trade agreements. According to AUSTR Karesh, the United States is committed to maintaining and enforcing fundamental international labor rights. He noted that US FTAs now back labor provisions with remedies and enforcement similar to those found in the commercial provisions of the agreement. AUSTR Karesh stated that "Asia is increasingly becoming a driver of global trade" and he stated that the United States is interested in working with Asian trading partners on issues such as economic reform, capacity-building, law enforcement, and the promotion of labor rights. AUSTR Karesh stated that US officials are continuing to discuss the inclusion of labor rights in trade agreements as part of the ongoing FTA negotiations that the United States has in the region (i.e., with Malaysia and Thailand). Beside the discussion of labor rights in FTA negotiations, AUSTR Karesh noted that that US Generalized System of Preferences (GSP) program addresses worker rights.[12] He noted that Indonesia, the Philippines,

[12] The Trade Act of 1974 created the GSP program. In 1984, Congress added a requirement to the GSP program that stated that participation from beneficiary developing nations in the GSP is conditional on steps participants take to afford basic labor standards to workers within their borders. Labor requirements that GSP participants must provide include: (i) the right of association; (ii) the right to organize and to bargain collectively; (iii) a prohibition on the use of any form of forced or compulsory labor; (iv) a minimum age for the employment of children and a prohibition on the worst forms of child labor; and (v) acceptable conditions of work respecting minimum wages, hours of work, and occupational safety and health.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Cambodia, and Thailand are all beneficiaries of the GSP program, and he added that the GSP program could provide a good forum for discussion on labor rights and whether participation in the program should be linked to effective monitoring and enforcement of fundamental labor rights. AUSTR Karesh stated that the United States and Asian countries must increase their cooperative efforts in the area of worker rights.

American Federation of Labor and Congress of Industrial Organizations Global Economy Specialist Jeff Vogt stated that labor rights in the context of US trade policy and US FTAs has always been a problematic and contentious issue. He stated that the monitoring and enforcement of worker rights is a legitimate trade issue. Vogt argued that linking labor standards to trade and trade agreements allows the United States and major trading partners to "create a political space" for the discussion and implementation of international labor rights by all countries. Vogt also opined that standardized labor rights could help developing economies increase the productivity level of their workers and could help encourage innovation; Vogt argued that strengthened labor rights afforded workers the opportunity to increase their productivity and efficiency because of the "pro-worker" environment.

Outlook

Labor rights and their inclusion in US FTAs has become a major of focus for Congress over the past several months. Indeed, the May 2007 bipartisan Administration-Congress agreement on US trade policy (that led to the inclusion of labor and environmental amendments to US FTAs with Peru, Colombia, Panama, and Korea) was precipitated by Democratic concerns on international labor rights. Democratic legislators, led by House Ways and Means Committee Chairman Charles Rangel (D-NY), felt that core International Labor Organization standards should be included in these FTAs, and violations of these standards should be enforceable. The Administration's agreement to amend the FTAs – and the trading partners' acquiescence to include the amendments – pushed the labor issue to the forefront of consideration of these FTAs. It seems likely that as long as Democrats retain the majority in Congress, labor rights will continue to be a part of the FTA debate. For the time being, however, labor rights in the context of US bilateral trade agreements has quieted down: Presidential Trade Promotion Authority (TPA) expired on June 30, 2007, and it is unlikely that Congress will consider TPA renewal for the remainder of the year. Without TPA, it is unlikely that the Administration will formally start or complete any new or pending FTAs, thus silencing any further discussion – for the moment – on labor rights and FTAs.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Multilateral

WTO Releases 2007 Annual Report: DG Lamy Calls for Further Doha Cooperation

Summary

On August 14, 2007, the World Trade Organization (WTO) released its 2007 Annual Report. The report surveys WTO activities and developments in world trade in 2006 and prospects for international trade in 2007. We review below the 2007 Annual Report.

The WTO 2007 Annual Report is available at:
http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep07_e.pdf.

Analysis

The WTO's 2007 Annual Report addresses a wide array of trade developments and focuses on the Doha Development Round of multilateral trade negotiations. In announcing the release of the report, **WTO Director-General Pascal Lamy** stated that the most demanding of all of the WTO's tasks in 2007 is the conclusion of the Doha Round; he added that "the challenge for the WTO over the next few months is to deliver a final Doha Development Agenda agreement which better integrates developing countries into the global trading system while expanding trade opportunities for all WTO Members."

I. Progress Report on Doha Negotiations

The report states that in 2007, WTO Members reaffirmed their resolve to complete the Doha Round and to conclude the negotiations successfully. According to the report, WTO Director-General Pascal Lamy believes that Members have the proper amount of political will to conclude the Round and he also believes that there is some level of convergence among Members on how to best move forward with stalled Round, especially in the areas of agriculture and non-agricultural market access (NAMA), the two most contentious topics in the multilateral negotiations. The report states that Lamy will conduct intensive and wide-ranging consultations with the aim of facilitating the urgent establishment of modalities in agriculture and for NAMA. The report states that WTO Members will need to increase the rhythm of trade negotiations upon their return from the August recess in order to "exploit the window of opportunity" that remains in 2007 in bringing the Round to a successful conclusion.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

II. Summary of Trade Developments in 2006-2007

The report states that “risks in financial and property markets and large trade imbalances in goods and services mean increased uncertainty in 2007 and raise the prospect of weaker economic and trade expansion in [2008]”. The report notes, however, that growth in gross domestic product (GDP) was stronger than expected in Europe and Japan in 2006 and the first half of 2007. The report also states that the Chinese and Indian economies continued to record high growth, with China’s trade growth continuing to outstrip other major traders. According to the report, the “overall picture” in 2006 was one of trade expanding in real terms. The report states that price changes affected nominal merchandise trade growth rates of countries and whole regions. The report also notes that the annual average prices for fuels and metals rose sharply in 2006-2007, benefiting the export earnings of fuels and metal exporters, such as the economies in the Middle East, Africa, the Commonwealth of Independent States (CIS), and South and Central America. The report states that the United States recorded its best annual merchandise export growth in more than a decade, but added that the US trade deficit continued to grow in 2006 and the beginning of 2007. The report notes that least-developed countries’ exports also rose sharply in 2006 due to much larger values of fuels exports and stronger exports of other primary products and manufactured goods.

III. The Aid for Trade Initiative

The report states that, as mandated by the Hong Kong Ministerial Declaration, the WTO established an Aid for Trade Task Force in 2006 to provide recommendations on how to operationalize Aid for Trade and ensure its contributions to the development dimension of the Doha Round. The Task Force is currently establishing a system of monitoring at three levels: (i) global monitoring, based on the work carried out by the Organization of Economic Cooperation and Development (OECD); (ii) donor monitoring, based on self-evaluations; and (iii) recipient monitoring, based on in-country assessments. The WTO is also organizing three regional reviews for the fall in cooperation with the World Bank and relevant regional development banks with the purpose of “encouraging recipients, donors and the private sector—collectively—to focus on real-world challenges, to prioritize needs, and to work towards deliverable business plans.” The WTO will also host the first Aid for Trade global monitoring and evaluation event in November 2007 in Geneva.

IV. Closer Cooperation with Other International Organizations

The report states that WTO Members inscribed in the Uruguay Round Agreement the obligation for the organization to work closely with other international organizations to ensure “coherence” in their trade

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

policies. According to the report, the WTO's work with the World Bank and the International Monetary Fund (IMF) "has been particularly close through the ensuing years." The report also states that the International Labor Organization (ILO) is now a key WTO partner in the global discussion on trade and labor. The WTO has also increased its cooperation with the United Nations Conference on Trade and Development (UNCTAD) on capacity building and providing technical assistance to developing and to least-developed countries.

V. Increased Technical Assistance and Training

The report states that the WTO's activities to provide training and technical assistance to developing countries intensified again in 2006, shifting increasingly to work with least-developed countries as mandated by Members in the Doha Declaration. The report notes that in 2006, the majority of training activities took place in Africa (37 percent of all WTO training activities) and Asia and the Pacific (20 percent). In 2006, the WTO provided training to 29,752 government officials through 486 individual training activities in Geneva and in regional and national centers in the developing world. The majority of activities, national and regional combined, specifically addressed WTO agreements and explored topics such as trade in services and assistance in support of Trade Policy Reviews. The report also states that the WTO is an active participant with other international organizations in joint capacity-building programs for developing countries, including the Enhanced Integrated Framework program.

Outlook

Doha Round negotiations were at the center of WTO activities in 2006 and 2007. Over the past year, the Doha Round has suffered from several "fits and starts," although the big picture showed that WTO Members were unwilling to move beyond their original negotiating offers in order to move the round forward. Most recently, the late June collapse of Doha talks in Potsdam, Germany,[13] and Members' tepid

[13] On June 21, 2007, the Group of Four (G-4) talks in Potsdam, Germany abruptly ended, further stalling the conclusion of Doha Round. Attending Ministers – including United States Trade Representative (USTR) Susan Schwab, EU Trade Commissioner Peter Mandelson, Indian Commerce Minister Kamal Nath, and Brazilian Foreign Minister Celso Amorim – ended the talks after little progress was achieved in reaching a breakthrough on agriculture and NAMA. The G-4 countries blamed one another for the impasse. US officials stated that they made significant progress with the EU, and the two parties blamed India and Brazil for the failure, stating that India and Brazil were unwilling to agree to open further their markets to manufactured goods. India and Brazil, meanwhile, blamed the talks' collapse on US and EU unwillingness to cut farm subsidies. USTR Schwab and US Agriculture Secretary Mike Johanns issued a statement in which they noted that "the United States is not giving up on the Doha Round" and suggested that Indian and Brazilian officials had walked out of the G-4 talks. Commissioner Mandelson stated that "it emerged from the discussion on NAMA that we would not be able to point to any substantive or commercially meaningful changes in the tariffs of the emerging economies, as a reasonable return on what [the EU is] paying into the round." Minister Amorim stated that "it was useless to continue the discussions based on the numbers that were on the table."

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

reactions to the mid-July release of agriculture and NAMA modalities papers[14] show that WTO Members are still resistant to altering their negotiating positions and successfully conclude the Doha Round by the end of 2007. WTO Members are using the August recess to re-examine their negotiating positions so as to further discuss them in September, at which point Director-General Lamy hopes to move the Doha Round forward. It is unlikely, however, that WTO Members will radically alter their negotiating offers come September, thus stalling the Doha Round even further. Further stalling of the round could affect other WTO activities, such as initiatives under the Aid for Trade program; without a convergence from WTO Members on a final Doha Agreement, the WTO may be limited in the Aid for Trade activities in which it can engage, especially those linked to a successful conclusion of the Round. Regardless, it is likely that the Doha negotiations will remain at the forefront of WTO activities for the remainder of 2007 and into 2008.

[14] On July 17, 2007, WTO agriculture negotiations chairperson Ambassador Crawford Falconer and NAMA negotiations chairperson Ambassador Don Stephenson circulated revised draft "modalities" as part of the Doha Round negotiations. The drafts are based on WTO Member governments' latest positions in the multilateral negotiations and provide an assessment of what might be agreed upon for (i) the formulas for cutting tariffs and trade-distorting agricultural subsidies, and (ii) provisions related to these formulas. Falconer and Stephenson circulated the agriculture and NAMA papers to WTO Members in an effort to induce discussion among WTO Member and move the Doha Round forward.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

Multilateral Highlights

United States Requests Dispute Panel Formation in China IPR Challenge

On August 13, 2007, the Office of the United States Trade Representative (USTR) announced that the United States has requested the formation of a World Trade Organization (WTO) dispute settlement panel to rule on a US challenge regarding deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks on a wide range of products. The WTO Dispute Settlement Body (DSB) will consider the US panel request at its August 31 meeting. Under WTO rules, China will have the opportunity to block the panel's formation, but if the United States files a second panel request, the WTO's dispute settlement body (DSB) must automatically establish a panel to rule on the matter.

In announcing the US panel request, USTR spokesman Sean Spicer noted that the United States and China held formal consultations over the last three months to resolve differences arising from US concerns about inadequate protection of intellectual property rights (IPR) in China. He stated, however, that the dialogue "has not generated solutions to the issues [the United States has] raised, so [the United States is] asking the WTO to form a panel to settle this dispute." He added that over the past several years, China has taken tangible steps to improve IPR protection and enforcement, but the United States still sees "important gaps that need to be addressed."

On April 9, 2007, USTR announced that the United States would request the initiation of WTO dispute settlement consultations with China on alleged deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks. According to USTR, piracy and counterfeiting levels in China remain high, and although China has strengthened its 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 seeks to "eliminate significant structural barriers that give pirates and counterfeiters in China a safe harbor to avoid criminal liability" and to reduce the volume of counterfeit goods crossing the border into China. The US request focuses on the following categories:

- Quantitative thresholds in China's criminal law that must be met in order to initiate criminal prosecutions or obtain criminal convictions for copyright piracy and trademark counterfeiting. According to USTR, wholesalers and distributors are able to operate below these thresholds without fear of criminal liability, thus effectively permitting piracy and counterfeiting on a commercial scale.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

- Rules for the disposal of IPR-infringing goods seized by Chinese customs authorities. According to USTR, these rules appear to permit goods to be released into commerce following the removal of fake labels or other infringing features.
- Chinese copyright law that allegedly denies copyright protection for works poised to enter the market but awaiting Chinese censorship approval.

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).

The US IPR challenge is the latest of five WTO dispute settlement complaints that the United States has brought against China and the third case against China for which the United States has requested the establishment of a WTO dispute settlement panel.[15] The United States also just completed supplemental consultations with China regarding Chinese market access barriers affecting copyright intensive industries. The IPR panel request indicates that USTR will continue its more stringent and direct stance against China, a change from the United States' former policy of "quiet diplomacy." The panel request likely will please many Members of Congress who have pressured USTR to address Chinese trade practices. The US panel request could also help the Administration garner support for several pending bilateral Free Trade Agreements from certain Congressional Members who have grown increasingly hostile to China trade.

The US case is also one of first impression at the WTO. If the DSB establishes a panel to adjudicate the challenge, it will be the first WTO dispute settlement panel to examine a Member's obligations under the TRIPs Agreement. Considering the case's novelty and the difficult evidentiary burden that the agreement places upon those Members, like the United States, seeking to challenge another member's IPR commitments, it is likely that the United States has built a strong case against China's IPR enforcement because a loss here could harm key US interests that demand strong international IPR standards and protection. Considering the stakes and the probable strength of the United States' case, settlement before a final panel decision is possible.

[15] The United States requested a panel in September 2006 to examine China's regulations imposing local content requirements in the auto sector through discriminatory charges on imported auto parts; panel proceedings in that dispute are underway. In July 2007, the United States requested a panel regarding several Chinese subsidy programs the United States believes are prohibited under WTO rules; the panel request in that dispute is pending before the DSB.

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701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

WTO Dispute Settlement Panel Finds US Still at Fault in Cotton Dispute with Brazil

On July 27, 2007, a World Trade Organization (WTO) dispute settlement panel issued a preliminary decision in the dispute between Brazil and the United States regarding US subsidies for cotton producers (DS267). In a confidential report, the WTO Panel determined that the United States has failed to comply with an earlier WTO ruling against US cotton subsidies.

In its WTO complaint, Brazil alleged that the United States had not complied with a 2004 WTO panel ruling which found that US subsidies to domestic cotton producers violated the WTO's Agreement on Subsidies and Countervailing Measures (SCM) and prejudiced the trade interests of competing Brazilian producers by depressing global prices for cotton. Brazil initiated the compliance dispute in October 2005 and stated that it would seek WTO authorization to impose annual sanctions on the United States should the Compliance Panel rule in Brazil's favor. The 2004 WTO panel decision found that price-contingent US support programs for cotton producers paid out between 1999-2002 had caused "significant" price suppression in the world market for cotton within the meaning of Article 6.3(c) of the SCM Agreement, and that these payments caused "serious prejudice" to the Brazil's trade interests. The WTO Appellate Body (AB) upheld the ruling in March 2005. The WTO gave the United States until July 1, 2005, to withdraw the support programs deemed to constitute WTO-inconsistent subsidies. These programs included the US "Step 2 program" which compensates US mills and exporters that purchase higher-priced US cotton, and US export credit guarantee programs such as the GSM-102, GSM-103, and Supplier Credit Guarantee Program. The WTO also gave the United States until September 21, 2005 to remove the "prejudicial effects" of countercyclical payments, market loss payments, market loan assistance, and "Step 2" payments for cotton producers, which were found to be depressing cotton prices on the world market.

On August 1, 2006, the United States eliminated its "Step 2" program. US officials have argued that the AB's March 21, 2005 ruling did not call for the outright repeal of all cotton subsidy programs, nor did it specify reducing the subsidy amounts, claiming that the WTO's instructions were only to "remedy them." Hence, US officials justified their stance that the United States has complied with the AB ruling because the outright repeal of the Step 2 program is sufficient to "remedy" the "serious prejudice" that the cotton subsidy program inflicted upon Brazil. Brazil, however, argued that the elimination of the Step 2 did not eliminate the serious prejudice to Brazilian cotton producers arising from other support programs, such as marketing loans and countercyclical and export credit guarantee programs. The WTO compliance panel's preliminary findings upheld Brazil's allegations.

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Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

The WTO compliance Panel is scheduled to issue its final ruling in October. If the Panel maintains its preliminary findings, Brazil could impose trade sanctions on the United States for failing to comply with the earlier WTO ruling. According to Brazil´s Under-Secretary General for Economic and Technological Issues at the Ministry of Foreign Affairs (MFA), Roberto Azevedo, the Brazilian government has "received with satisfaction (or welcomed)" the panel's preliminary findings, and Brazil will ask the WTO for authorization to impose USD 4 billion in annual sanctions on US imports. Brazilian officials argue that their requested amount equals the amount of damage to Brazilian cotton producers stemming from the United States' failure to comply with the previous WTO ruling. Specifically, Brazil has proposed imposing sanctions on the United States in the form of suspended market access concessions for US service providers in construction and related engineering services, business and communications services, financial services, distribution services, tourism services, and transport services, as well as "sanctions in the form of suspended intellectual property rights for US rights holders in the area of copyright, trademarks, industrial designs, patents, and the protection of undisclosed information." Analysts note that the United States will likely appeal the Panel's preliminary findings.

US officials did not comment on the compliance Panel's preliminary findings. Officials from the Office of the United States Trade Representative confirmed that the Panel "found that the changes made by the United States were insufficient to bring the challenged measures... into conformity with US WTO obligations," and that they were disappointed with the Panel's findings. US legislators provided mixed reactions to the preliminary findings. Ranking Member of the Senate Agriculture Committee Saxby Chambliss (R-GA) stated that "it is troubling that the WTO ignored the changes Congress made last year to the cotton program and the current state of the cotton market." He added that the "to say the US cotton program is causing harm to Brazil or any other country, ignores the simple facts and will further enforce doubts farmers and ranchers have in the dispute settlement process in the WTO." He also noted that changes to the cotton program will be made consistent with US WTO obligations but not at the expense of US cotton producers. Chairman of the Senate Agriculture Committee Tom Harkin (D-IA), however, sounded more conciliatory and stated that "while the United States needs to defend its programs in the WTO, [it] also must recognize reality, solve the problems in [its[]r programs and move on . . . [because] it is far more important to prepare for the future so American agriculture can succeed in this new century than to continue fighting losing cases before the WTO."

The Panel's preliminary findings could affect the US Congress' debate on the 2007 Farm Bill. The 2002 Farm Bill is scheduled to expire on September 30, 2007, and Congress is currently debating whether to extend the 2002 Farm Bill or re-write a new bill. On July 27, 2007, the House of Representatives

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Contact: Scott Lincicome, Esq. and James Shea
701 Thirteenth Street NW, Washington, DC 20005
slincicome@whitecase.com and jshea@whitecase.com

approved the Farm Bill Extension Act of 2007 (H.R. 2419) by a margin of 231 to 191. H.R. 2419 would, with few exceptions, extend the 2002 Farm Bill through 2012 by authorizing USD 286 billion for farm subsidies, conservation, nutrition, rural development and energy programs. The Senate will consider its version of the 2007 Farm Bill in September or October. Agricultural support for US cotton producers makes up part of the 2007 Farm Bill, and the WTO's findings on subsidy programs for US cotton producers could spur members of Congress to re-examine the 2007 Farm Bill and re-write cotton provisions to ensure US compliance with its WTO obligations. The current Farm Bill's House debate, however, makes clear that very few Members of Congress oppose the blanket extension of the 2002 Farm Bill's massive agricultural subsidy programs, despite vocal opposition from US trading partners at the WTO. With the current Farm Bill now aimed towards extending the same levels of agricultural support found in the 2002 Farm Bill, US legislators might be unaffected by the WTO's latest findings regarding US cotton support.

The Brazilian government believes that the dispute settlement panel's preliminary findings could open a window of opportunity for Brazil to question US subsidies on other products. According to Azevedo, the ruling has greater implications because it could allow Brazil to challenge US programs that benefit other agricultural products in addition to cotton, such as rice, corn and soy. Although Brazil wants to secure its "retaliation rights" against the United States, it is unlikely that it will retaliate because of the damage such retaliation could had on US-Brazil trade flows in sectors unrelated to the dispute. Instead, Brazil has been using its "victory" in the cotton dispute (as well as the sugar dispute with the EU) to leverage its position in the WTO Doha Round agriculture negotiations. Should the WTO Members fail to reach an ambitious Doha agreement in agriculture, it is likely that Brazil will use the WTO dispute settlement mechanism as a second best alternative to reduce the level of subsidies developed countries grant their farmers.

Tonga Joins WTO as 151st Member

On July 27, 2007, the Kingdom of Tonga ratified its World Trade Organization (WTO) accession package. Under WTO rules, Tonga will become a full WTO Member 30 days after national ratification of its accession package (i.e., August 27). Tonga's accession makes it the WTO's 151st Member. WTO Director General Pascal Lamy stated that Tonga's accession to the WTO showed how "important [it is] for the WTO to continue facilitating fuller integration into the world economy of small developing countries."

Tonga applied for accession to the WTO in June 1995, but accession negotiations effectively started in April 2001. Tonga's terms of membership include the Report of the Working Party for the Accession of Tonga, the Protocol of Accession, and the Schedules of Tonga's Commitments on Market Access for

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Goods and Services; the WTO adopted these terms of membership at the WTO Hong Kong Ministerial Conference in December 2005. As part of its entry package, Tonga agreed to make several commitments to liberalize its trade regime, including lowering all import tariff lines to 15 or 20 percent within one year. Tonga also agreed to eliminate all industrial subsidy schemes prohibited by the WTO by its final date of full accession.

According to the WTO, Tonga is one of the world's smallest economies with a population of approximately 116,000. Trade accounts for 54 percent of Tonga’s GDP, and its annual growth reached 1.9 percent in 2006. Tonga’s major industries are agriculture and fisheries, and its main trading partners are Japan, the United States, New Zealand and Australia.

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