WHITE & CASE

February 2007

Japan External Trade Organization
WTO and Regional Trade Agreements
Monthly Reports

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- Treasury Department Names New Special Envoy for China and the SED
- Bush Administration Releases 2007 Farm Bill Proposal
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Free Trade Agreements

U.S. and Malaysia Complete Fifth Round of FTA Negotiations

On February 5, 2007, U.S. and Malaysian officials met in Sabah, Borneo for the fifth round of formal U.S.-Malaysia Free Trade Agreement (FTA) negotiations. Officials from the Office of the United States Trade Representative (USTR) conducted discussions with their Malaysian counterparts in several areas including agriculture, customs, environment and labor, government procurement, intellectual property rights (IPR), sanitary and phytosanitary (SPS) measures, services, telecommunications and trade in goods. Negotiators made little overall progress during the fifth round but will continue informal negotiations on outstanding issues. It remains unclear whether negotiators will convene a sixth round

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and whether they can agree on the FTA's final text before the March 31, 2007 deadline that USTR has imposed due to the expiry of Presidential Trade Promotion Authority (TPA).

U.S. and Korean Negotiators Hold Seventh Round of FTA Talks

On February 11, 2007, U.S. and Korean negotiators held the seventh round of formal negotiations on the U.S.-Korea (KORUS) Free Trade Agreement (FTA). Negotiators met in Washington, DC to discuss trade liberalization in all sectors under the Agreement including agriculture, automobiles, e-commerce, industrial goods, labor and the environment, pharmaceuticals, rules of origin, textiles and trade remedies. Negotiators made progress in a number of areas but did not achieve any breakthroughs on the agreement's more controversial issues.

Free Trade Agreements Highlights

We want to alert you to the following Free Trade Agreements developments:

- United States Signs TIFA with Liberia

Multilateral

United States Files WTO Complaint Against Chinese Subsidies

On February 2, 2007, the United States requested World Trade Organization (WTO) dispute settlement consultations with China regarding Chinese subsidies to domestic and foreign companies. The U.S. request states that these subsidies violate China's WTO obligations because they distort trade conditions for U.S. manufacturers and can inhibit U.S. exports to China, as well as provide an unfair advantage to China's exports in the United States and around the world. Under WTO rules, the United States and China will have a mandatory 60-day consultation period. If the parties cannot reach a mutually agreeable solution at the end of the consultation period, the United States can then request the WTO Dispute Settlement Body (DSB) to create a panel to rule on the issue.

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Reports in Detail

United States

Bush Administration Presents 2007 Trade Agenda at Congressional Hearings

Summary

At two separate Congressional hearings, United States Trade Representative (USTR) Susan Schwab presented the Administration's 2007 trade agenda and discussed those trade issues on which the Administration will focus for the year. USTR Schwab provided her **on-the-record** testimony at a February 14 House Ways and Means Committee hearing and a February 15 Senate Finance Committee hearing. We review below the Administration's trade agenda and the two hearings.

Analysis

USTR Susan Schwab presented the Administration's 2007 trade agenda at a February 14 House Ways and Means Committee hearing and a February 15 Senate Finance Committee hearing.

I. 2007 Administration Trade Agenda

At both hearings, USTR Schwab testified that the U.S. economy was strong and experienced a Real Gross Domestic Product (GDP) growth rate of 3.4 percent in 2006, a growth rate faster than those of the EU and Japan. According to Schwab, trade is spurring U.S. economic growth, and nominal U.S. goods and services exports grew by nearly 13 percent in 2006. Schwab also noted that trade liberalization has accounted for better paying jobs in the United States and increased benefits.

Schwab noted that the Administration's 2007 trade agenda will focus on four issues: (i) the World Trade Organization (WTO) Doha Round negotiations; (ii) Presidential Trade Promotion Authority (TPA); (iii) Free Trade Agreements (FTAs); and (iv) enforcement and dispute resolution.

- **The Doha Round.** Schwab stated that a comprehensive Doha agreement would benefit the U.S. economy and increase the income of the average U.S. family. She added that the elimination of global trade barriers through a final Doha agreement could eliminate a significant portion of the world's poverty and help least-developed countries (LDCs) increase their share of world trade. Schwab reported that WTO Members are making concerted efforts to complete a Doha agreement within a "small window of opportunity." She noted that bilateral engagements have increased among

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WTO Members and added that "much work is still required for a breakthrough" in the most contentious areas of the multilateral talks, namely agriculture and non-agricultural market access (NAMA) talks. Schwab stated that she is "cautiously optimistic" of a breakthrough in the negotiations in the coming months, but that other countries must show greater flexibility to warrant further concessions from the United States. According to Schwab, the United States has urged other WTO Members to improve their agricultural market access offers in exchange for new concessions by the United States in the area of trade-distorting domestic support. She also noted that a comprehensive Doha agreement would address services trade and trade remedies. Schwab stated that USTR was committed to working with WTO Members to reach a final agreement.

- **TPA.** Schwab noted that TPA is set to expire on June 30, 2007, and that the United States must complete and sign all unfinished trade agreements under negotiation by March 31 in order for Congress to consider them under TPA's strictures (*i.e.* limited consideration and a strict up-or-down vote, without amendment). Schwab stated that TPA is needed in order to implement a final Doha agreement and negotiate regional and bilateral agreements. She stated that the Administration has used TPA "to increase U.S. exports and to level the playing field." She urged Congress to renew TPA.
- **FTAs.** Schwab stated that the 13 countries that have an FTA with the United States account for 7.2 percent of global GDP but account for 42 percent of U.S. exports to the world. On the current Korea and Malaysia FTA negotiations, Schwab noted that bilateral agreements with both of the Asian economies would increase U.S. economic linkages to Asia and provide U.S. exporters with increased access to two strong markets. She noted that under TPA, USTR has until April 1 to notify Congress of its intent to sign either FTA and has until June 30 to sign the agreements. On the Peru and Colombia agreements, Schwab stated that both agreements will eliminate tariffs and barriers to U.S. exports and encouraged Congress to quickly approve both agreements once the Administration provides Congress with each agreement's final implementing legislation. Schwab also noted that the United States must still sign the completed FTA with Panama but again urged Congress to approve the agreement, noting that the FTA would open opportunities for the United States to participate in the $5.25 billion expansion plan for the Panama Canal.
- **Enforcement and Dispute Resolution.** Schwab stated that the United States will "employ all tools needed for aggressive enforcement" of its trade laws. She added that "litigation is only the tip of the iceberg" and that USTR will only use litigation in those disputes where it is most effective, namely the Boeing-Airbus dispute (DS347), the China auto parts case (DS340), and the China subsidies case

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(DS358). On China, Schwab stated that USTR will continue to use all tools necessary to ensure that China lives up to its WTO commitments.

II. House Ways and Means Hearing

On February 14, 2007, USTR Schwab presented the 2007 Administration trade agenda to members of the House Ways and Means Committee, including **Chairman Charles Rangel (D-NY)**. In announcing the hearing, Chairman Rangel stated that "Congress must be an active partner with the Administration in setting a new course for U.S. trade policy" and must ensure that U.S. policies and agreements promote U.S. interests and reflect U.S. values. He added that the United States needs a proactive trade policy that "shapes the rules of competition to create new economic opportunities for all Americans, maximizes the benefits of globalization and minimizes the downside, and spreads the benefits broadly in the U.S. and around the world."

After Schwab presented the 2007 trade agenda, Committee members posed several questions. Chairman Rangel and **Trade Subcommittee Chairman Sander Levin (D-MI)** underscored the need for the inclusion of core international labor standards in FTAs. In response, Schwab stated that the Administration is willing to work on a new bipartisan model for labor issues, but that the Administration does not see any reason to re-open pending FTAs with Peru and Colombia to insert specific labor language. Levin countered that neither of those FTAs will move through Congress without the change, and that the text of the agreement must include the five core International Labor Organization (ILO) standards. Chairman Rangel and USTR Schwab agreed to increase meetings between USTR and Committee members to discuss the labor provisions of the Peru, Colombia and Panama FTAs.

Committee members also urged USTR to fight more vigorously to challenge foreign trade barriers and unfair trade practices, to bring unfair trade cases to the WTO without hesitation, and to pursue meaningful trade liberalization opportunities through the Doha Round. Schwab responded that in order for USTR to achieve greater benefits through a successful Doha Round, Congress will need to renew TPA. She noted that failure to renew TPA would signal to the world "that the United States has lost faith in Doha." When asked whether a one-year extension of TPA would suffice for the Administration, Schwab responded that any extension of TPA should accommodate not only a possible Doha deal but also other future trade agreements.

On China, USTR Schwab stated that USTR's 2005 "top-to-bottom" review of trade policy toward China served a "blueprint" for USTR's recent actions against China, including the initiation of WTO proceedings on Chinese subsidies and import tariffs on auto parts. Reps. Wally Herger (R-CA), David Camp (R-MI),

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and Phil English (R-PA) applauded the WTO actions. Rep. Xavier Becerra (D-CA) asked Schwab to explore ways to ensure that U.S. workers are not put at a disadvantage as a result of trade with countries where wages are lower than those in the United States and cited China as one example of a bilateral trade relationship that has harmed U.S. workers.

III. Senate Finance Hearing

On February 15, 2007, USTR Schwab presented the 2007 Administration trade agenda to members of the Senate Finance Committee, including **Chairman Max Baucus (D-MT)** and **Ranking Member Charles Grassley (R-IA)**. In his opening statement, Chairman Baucus urged Congress to renew TPA to ensure that the United States pursue commercially significant agreements. He noted, however, that Congress must rethink "fast-track" authority to ensure that U.S. trade agreements raise labor and environmental standards and improve working conditions around the world. He added that in "rethinking" TPA, "Congress must feel that it is consulted before and during the process."

In his opening statement, Sen. Grassley noted that there are a number of trade issues that Congress must confront in 2007, and that Congress must "produce concrete results for the American people." Grassley supported implementation of the pending trade agreements with Peru, Colombia, and Panama, noting that Congress' approval of these FTAs would counteract "the damaging trend toward statism in Venezuela, Bolivia, and Ecuador." Grassley also urged Congress to reauthorize TPA to ensure market access commitments from U.S. trading partners. He opined that WTO Members are unlikely to achieve a final Doha agreement unless Congress renews TPA. On China, Grassley noted that Congress must re-evaluate the U.S. relationship with China and must examine China's currency practices, WTO obligations and enforcement of intellectual property rights (IPR). Grassley stated that the Finance Committee must also examine U.S. trade relations with Russia and Russia's WTO accession. Specifically, Grassley stated that the United States ensure that Russia's multilateral commitments in its Working Party Report and Protocol of Accession address U.S. IPR concerns.

Following Schwab's presentation of the 2007 trade agenda, Committee members posed several questions. Baucus criticized Schwab's characterization of TPA as "a contract between the executive branch and Congress," stating that TPA is not a contract but rather "the sole prerogative of Congress." Baucus also criticized USTR's enforcement of existing trade agreements as "lax" and opined that the Administration's attempts to curb IP theft in China were "embarrassing." Baucus also noted that concessions from the Administration on FTAs' labor and environmental protections would be a "major factor" in determining whether Congress renews TPA.

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Baucus was also critical of the degree to which the Administration has consulted with Congress on trade agreements under TPA. Under TPA, implementing legislation of completed trade agreements is sent to Congress for a straight up-or-down vote; prior to this, the Senate Finance and House Ways and Means Committees are given a limited timeframe to review the implementing legislation and suggest amendments to the Administration. However, the Administration is not required to implement Congress' suggestions. The issue reached a boiling point in early 2006 when Democrats on the Senate Finance Committee suggested adding a provision to the Oman FTA that would prohibit trade in goods made with slave labor. The Administration did not add the provision to the final implementing legislation of the Oman FTA and in failing to do so, angered many Democrats. Baucus noted that the Administration will have to listen closely to Congressional suggestions and will have to consult closely with the Committee on future trade agreements if it wants to ensure that Congress approves the agreements.

Grassley and Senator Pat Robertson (R-KS) asked USTR Schwab for an update on Russia's WTO accession and Schwab responded that Russia's accession push has faltered since the United States and Russia signed an agreement in November 2006. She noted that multilateral talks on Russia's WTO membership are not proceeding as quickly as Russia had hoped and opined that Russia has not been implementing "internal trade-related reforms that are needed to become a full-fledged Member of the WTO."

Outlook

The Administration's 2007 trade agenda was unsurprising. The four items on which the Administration will focus in 2007 have been USTR's priority items for the past several months. Throughout the Spring, USTR will continue pressing Congress to approve the Peru, Colombia, and Panama FTAs and to renew TPA. Schwab's comments at both hearings show that USTR will work to complete pending trade agreements until the last minute. Her statements also indicate that USTR might be willing to depart from longstanding policy and notify Congress of the President's intent to sign an agreement before that agreement is actually completed and signed. Schwab noted that USTR has until **June 30** to sign the Korea and Malaysia agreements, indicating that USTR could extend its working schedule beyond the March 31 notification deadline and work up until the end of June in completing the FTAs. Such a move would not violate TPA and would still bind Congress to TPA's disciplines (the agreement must only be signed before July 1, 2007 for TPA to apply). However, it would be a significant departure from longstanding agency policy and USTR's earlier statements regarding unfinished FTAs. Given the importance of the Korea FTA to U.S. businesses, it appears possible that USTR would be willing to extend negotiations beyond March 31 if necessary to salvage the agreement. On the other hand, USTR

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might be unwilling or unable to abandon its policy for fear of further offending Congress or disrupting other FTA negotiations.

The Ways and Means Committee hearing provided USTR Schwab with a good opportunity to assure members of Congress – specifically Democrats – that the Administration was ready to work with them labor and environmental demands in exchange for Congressional approval of several Administration-led trade initiatives. Chairman Rangel seemed to recognize USTR's willingness to address Democratic concerns and commended USTR for its attitude towards Democrats in Congress. Chairman Baucus, however, was more adversarial, and the Senate Finance Committee hearing was more contentious than the Ways and Means hearing. Although the hearings' tones were different, their underlying messages were the same: if the Administration wants Congress to renew TPA and approve the Latin American FTAs, it will have to work with Democrats in Congress to strengthen labor and environmental provisions in trade agreements and in TPA and to consult more closely with Congress on future trade initiatives. The Democratic leaders in both Committees are aware of the approaching deadlines and although they urged Congress to renew these important trade measures, their demands on labor/environment and consultation tempered these concerns. Schwab's comments on the TPA timeline.

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United States Highlights

New ITC Commissioners Sworn In

On February 7, 2007, Irving Williamson was sworn in as the 81st commissioner of the U.S. International Trade Commission (ITC). On February 26, 2007, Dean Pinkert was sworn in as the 82nd ITC commissioner. On January 31, 2007, the Senate Finance Committee had unanimously approved the nominations of Pinkert and Williamson to be ITC commissioners. The separate roll call votes were both 21-0 in favor. President Bush sent the nominations to the Senate on January 9, 2007.

Prior to the ITC, Pinkert served as a Senior Attorney at the Department of Commerce (DOC). He has also served as the Trade and Judiciary Counsel for Senator Robert Byrd (D-WV) and worked as a Senior Associate at King & Spalding. Pinkert received his bachelor's degree from Oberlin College, his JD from the University of Texas, and his LLM from the London School of Economics.

Prior to the ITC, Williamson was President of Williamson International Trade Strategies. He has also served as Deputy General Counsel in the Office of the United States Trade Representative (USTR) and as Vice President for Trade, Investment and Economic Development at the African-American Institute. Williamson received his bachelor's degree from Brown University, his master's degree from The Johns Hopkins University, and his JD from George Washington University.

The six-member ITC is an independent federal agency which determines import injury to U.S. industries in antidumping, countervailing duty, and global and China safeguard investigations. Both nominees will serve nine-year terms. Pinkert replaces outgoing Commissioner Jennifer Hillman and Williamson replaces outgoing Commissioner Stephen Koplan.

Treasury Department Names New Special Envoy for China and the SED

On February 13, 2007, U.S. Treasury Secretary Henry Paulson announced that he chose Ambassador Alan F. Holmer to serve as Special Envoy for China and the Strategic Economic Dialogue (SED). Holmer replaces Deborah Lehr, who briefly held the post following its creation in September 2006. Following Lehr's departure, outgoing Treasury Undersecretary for International Affairs Timothy Adams assumed the post's responsibilities. Holmer served as President and Chief Executive Officer (CEO) of the Pharmaceutical Research and Manufacturers of America (PhRMA) from 1996 to 2005 and served as Deputy United States Trade Representative (DUSTR) from 1987 to 1989. Paulson stated that Holmer "brings a wealth of international and leadership experience that will allow him to… lead successful efforts

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to help the Chinese government move toward a balanced, growing economy that is not reliant on large external surpluses."

Paulson's announcement overlapped separate statistical releases by the China General Administration of Customs (GAC) and the U.S. Commerce Department related to U.S.-China trade. According to GAC figures, Chinese exports to the United States grew 33 percent year-on-year in January 2007, while Chinese imports of U.S. products grew at 27.5 percent. Commerce Department data showed a 15.4 percent increase in the United States' 2006 trade deficit with China. Congress has recently increased pressure on the Bush Administration to address these issues, including China's allegedly unfair trade practices such as the undervaluing of its currency, the yuan.

President Bush and Chinese President Hu Jintao established the SED in September 2006 to serve as a high-level forum in which U.S. and Chinese representatives could meet semi-annually to "focus on bilateral and global strategic economic issues of common interest and concern" and to supplement existing bilateral dialogue mechanisms such as the U.S.-China Joint Commission on Commerce and Trade (JCCT). The SED held its first meeting in Beijing in December 2006, during which the United States and China agreed to launch a bilateral investment dialogue, to conduct a joint study on energy and the environment, and to focus cooperative efforts on services sector innovation, improved healthcare and enhanced transparency. The SED will convene its second meeting on May 23 and 24, 2007 in Washington.

Bush Administration Releases 2007 Farm Bill Proposal

On January 31, 2007, the U.S. Department of Agriculture (USDA) released its proposal for the 2007 Farm Bill. The current 2002 Farm Bill is set to expire on September 30, 2007, and U.S. lawmakers have begun exploring re-writing U.S. agricultural policy. Agriculture Secretary Mike Johanns announced that the Administration's five-year proposal would reduce agricultural spending by $10 billion and would limit subsidy payments to wealthy farmers and large agricultural conglomerates. The proposal focuses on new areas such as specialty crops and socially disadvantaged producers. The Administration's proposal would cost $87.3 billion; the 2002 Farm Bill cost $97 billion. Johanns stated that the USDA "listened closely to producers and stakeholders all across the country and took a reform-minded and fiscally responsible approach to making farm policy more equitable, predictable and protected from challenge."

Among the proposal's biggest amendments to the 2002 Farm Bill is a change to the current price-based countercyclical program: the Administration proposes to change the current system to a revenue-based program that will factor in U.S. crop yield when determining crop payments to better target support. The

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proposal would increase direct payments to producers by about 7 percent during the third, fourth, and fifth year of the bill and also would cap marketing loans at 52.92 cents per pound for cotton, $2.58 a bushel for wheat, $1.85 a bushel for corn, and $4.92 a bushel for soybeans; these amounts are lower than current marketing loan rates. The proposal would also limit subsidy payments to wealthy farmers and large agricultural conglomerates: currently, farm operations that bring in less than $2.5 million in adjusted gross income can qualify for payments; the new plan would reduce that cap to $200,000 in adjusted gross income, thus eliminating close to 80,000 farms from receiving subsidy payments. Early reports indicate, however, that overall subsidy levels for sensitive products – such as cotton and wheat – and other agricultural goods are similar to those in the 2002 Farm Bill.

Other changes to the 2002 Farm Bill include:

- **Conservation**. The proposal seeks to increase conservation funding by $7.8 billion and to create a new Environmental Quality Incentives Program and a Regional Water Enhancement Program.
- **Disaster relief**. The proposal establishes a revenue-based counter-cyclical program that provides gap coverage in crop insurance and links crop insurance participation to farm program participation. The Administration would provide $250 million in direct payments to beginning farmers and support socially disadvantaged farmers and ranchers by reserving a percentage of conservation assistance funds and providing more access to loans for down payments.
- **Nutrition and Food Aid.** The proposal would also provide $5 billion in funding to support specialty crop producers by increasing nutrition in food assistance programs through the purchase of fruits and vegetables.
- **Trade efforts.** On the trade front, the Administration's targets $400 million to trade efforts in order to expand exports, fight trade barriers, and increase involvement in world trade standard-setting bodies.
- **Renewable energy**. The proposal would provide $1.6 billion in new funding for renewable energy research, development and production, targeted mainly for cellulosic ethanol.

Domestic response to the Administration's proposal was mixed. In Congress, Sen. Saxby Chambliss (R-GA), ranking member of the Senate Agriculture Committee, lauded the proposal but added that Congress would have the ultimate authority in setting the final spending limits in the Farm Bill. He also asserted that the Administration's proposal is not a revision of the United States' agricultural offer in the World Trade Organization's (WTO) Doha Round of multilateral trade negotiations. Rep. Bob Goodlatte (R-VA), ranking member of the House Agriculture Committee, noted that the process of compiling the next Farm Bill is still in its early stages and added that Congress will consider the Administration's proposal and the

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feedback that it will gather from farmers and ranchers. The American Farm Bureau Federation (AFBF) released a press release in which it supported the proposal and stated that AFBF members "have repeatedly and strongly emphasized the need to keep the 2007 farm bill consistent and very similar to the concepts in the current bill." The National Farmers Union (NFU) also issued a press release in which it "fundamentally" disagrees with some proposal components, such as changes to increase direct payments to farmers. Tom Nuis, NFU President stated that encouraging more reliance on direct payments will result in "payments that are too high when they don't need to be, and so low that they leave farmers out to dry when prices fall. He also criticized the proposal for not including a permanent disaster assistance program. The American Sugar Alliance (ASA) on the other hand, believes the proposal to be positive because it would "retain the basic structure of the existing sugar program and continue to operate at no cost to U.S. taxpayers."

International response, however, was uniformly critical of the Administration's proposal. EU Agricultural Commissioner Michael Mann stated that in order to have a successful outcome to the Doha Round, "the United States will need to propose more ambitious cuts and disciplines in trade-distorting domestic farm subsidies." He noted that under the Administration's proposal, "key trade distorting programs for dairy and sugar remain virtually untouched," and that proposed cuts in loan deficiency payments were extremely modest. Indian Commerce and Industry Minister Kamal Nath also stated that the United States has to "make a commensurate offer in terms of the boldness with which the EU has done in terms of rectifying structural flows in global trade, mostly in subsidies on agriculture."

Members of Congress will likely support some of the Administration's proposed changes, such as proposals to spend more money on research and production of renewable fuels, particularly cellulosic ethanol. Lawmakers will also likely support the proposal to limit subsidy payments to smaller farmers as opposed to wealthier farmers, but the cap could increase as agribusiness interests begin lobbying for Farm Bill funds. Analysts indicate that although the proposal contains several new features, overall subsidy levels – a contentious issue both domestically and abroad – are similar to those of the 2002 Farm Bill. Other WTO Members will likely take views similar those of the EU and India, criticizing the proposal for not reducing U.S. agricultural support levels enough. This reaction could hinder U.S. negotiating efforts in the Doha Round or lead to WTO disputes against U.S. farm subsidy programs, such as the recent corn subsidy case. On January 22, 2007, the EU, Australia, Argentina and Brazil joined Canada in a WTO complaint against the United States over U.S. subsidies to domestic corn producers. Canada initially requested consultations on U.S. corn subsidies on January 8, claiming that the U.S. government pays approximately $9 billion annually in export credit guarantees and other subsidies to U.S. corn

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producers. Canada alleges that this system of support unfairly and illegally deflates international corn prices, thereby injuring Canadian corn producers. The other WTO Members that joined the complaint express similar opinions. The Administration and Congress will have to balance both the needs of U.S. farmers and the demands of international trading partners. The outcome of these deliberations is unclear, but it appears fairly certain that the 2007 Farm Bill will not dramatically lower U.S. farm subsidy levels. Congress is sure to alter the Administration's proposal, but significant cuts are unlikely, given the intense lobbying efforts from the U.S. agriculture community.

The Administration's proposal is available at: http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?contentidonly=true&contentid=view_proposals.xml.

Members of Congress Introduce Several Trade Bills

In recent days, several Members of Congress have introduced bills addressing the enforcement of U.S. trade laws and global trading rules. On January 31, 2007, Senate Finance Committee member Sen. Debbie Stabenow (D-MI) and Sen. Lindsey Graham (R-SC) introduced a bill (S. 445) that would establish a trade enforcement division at USTR charged with fighting unfair foreign trade practices by taking more cases to the World Trade Organization (WTO). The legislation would also create a new USTR office to assist small businesses. Sens. Stabenow and Graham stated that the Bush Administration has focused on negotiating new trade agreements but not on enforcing those agreements. They added that their bill would ensure a "level playing field" for the United States when it comes to global trade. Sen. Stabenow also stated that U.S. failure to enforce its trade agreements has cost the United States millions of jobs over the past 15 years in various sectors of the economy, including auto manufacturing, agriculture, textiles, and furniture.

In the House, Ways and Means Committee member Rep. Phil English (R-PA) introduced legislation (H.R. 708) on January 29, 2007 to alter U.S. trade remedy laws. The bill would make it easier for U.S. companies to file antidumping and countervailing duty (AD/CVD) complaints and apply the U.S. CVD law to imports from countries designated as "non-market economies (NMEs)." According to Rep. English, the bill would improve and clarify the rules that prevent circumvention of AD/CVD orders and would amend the U.S. safeguard law to provide a "more effective mechanism to obtain relief from serious injury caused by increased imports." The bill would also create a commission to review WTO dispute panel decisions adverse to the United States and to advise Congress if "panels exceed their authority." Other provisions included in Rep. English's "Trade Law Reform Act of 2007" include permitting the participation of

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domestic companies or interested parties in WTO panel proceedings and strengthening principal trade negotiating objectives and consultation with Congress.

The new bills indicate that the Members of 110th Congress have begun to address trade issues following the Democratic leadership's first 100 hours. Like Rep. English, Senator John D. Rockefeller IV (D-WV) introduced S. 364 on January 23, 2007 that would apply the U.S. CVD law to imports from NMEs. These measures, however, are not likely to generate immediate Congressional action because other trade issues have priority. At the top of the Congressional trade agenda is the renewal of Presidential Trade Promotion Authority (TPA), which expires on June 30, 2007 and is integral to the Administration's efforts to negotiate bilateral and multilateral trade agreements. Re-writing the Farm Bill is another top item, as the 2002 Farm Bill will expire on September 30, 2007. Congress must also consider the Peru and Colombia Free Trade Agreements (FTAs) upon receipt of the Administration's implementing legislation. These issues will certainly take precedence over the recently-introduced trade bills.

President Bush Calls on Congress to Renew TPA

In his January 31, 2007, "State of the Economy" address in New York, President George Bush called on Congress to extend Presidential Trade Promotion Authority (TPA), which is set to expire on June 30, 2007. President Bush stated that the most promising opportunity to expand fair trade is by concluding World Trade Organization's (WTO) Doha Round, but that TPA provides the only way for the United States to complete a Doha agreement and other free trade agreements (FTAs). President Bush noted that U.S. trading partners consider TPA essential for the success of multilateral and bilateral trade agreements. He urged Congress "to reject protectionism . . . and keep [the U.S.] economy open to the tremendous opportunities that the world has to offer" by extending TPA.

Reaction to the President's TPA request was mixed. House Ways and Means Committee Chairman Charles Rangel (D-NY) criticized the President for "lecturing" Congress on TPA rather than reaching out to Democrats who want to work with him. Chairman Rangel added that the President "missed a golden opportunity to truly work with Congress toward solution," and that "many of the issues he discussed are traditionally partisan issues and will not lead to bipartisan solutions without strong leadership on his part." Senate Finance Committee Chairman Max Baucus (D-MT) voiced his support for TPA renewal but added that the Bush Administration must be prepared to deal with labor and environmental protection, "tougher" trade law enforcement, and assistance for U.S. workers if it expects to Congress to extend TPA. House Ways and Means Committee Ranking Member Jim McCrery (R-LA) noted that FTAs implemented since TPA took effect have reduced the U.S. trade deficit by $5.5 billion, and that TPA renewal could remove

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more trade barriers and further decrease the trade deficit. Senate Agriculture Committee Ranking Member Charles Grassley (R-IA) stated that Democratic leadership in the House of Representatives is considering TPA extension and opined that without TPA extension, U.S. trading partners would abandon the Doha Round negotiations. United States Trade Representative (USTR) Susan Schwab was encouraged by the President's request and by the reaction on Capitol Hill. She opined that extending TPA is necessary to completing the Doha Round.

The business community also backed President Bush's request. National Association of Manufacturers (NAM) President John Engler opined that TPA is key to negotiating international trade agreements" and stated that other nations will not negotiate with the United States without assurances that any agreement will be subject to an up or down vote (*i.e.*, a vote without amendment) in Congress, as TPA dictates. He urged Congress to fulfill President Bush's request to extend TPA. The National Foreign Trade Council (NFTC) issued a press release in which it noted that WTO Members are committed to achieving a breakthrough on the Doha Round, and that TPA renewal is critical to the Round's ultimate success. The U.S. Chamber of Commerce welcomed the President's remarks and stated in a press release that TPA is critical to keeping the benefits of trade flowing. American Federation of Labor- Congress of Industrial Organizations (AFL-CIO) President John Sweeney, however, stated that extending TPA would "hamstring Congress's ability to fix [the United States'] broken trade policy," and that "misguided trade policies have exacerbated stagnant wages and growing job insecurity" in the United States.

A group of Senators have already indicated that they will not support TPA extension. In a January 30, 2007 letter to President Bush, Sens. Byron Dorgan (D-ND), Robert Byrd (D-WV), Barbara Boxer (D-CA), Russ Feingold (D-WI), Debbie Stabenow (D-MI), Sherrod Brown (D-OH), and Bernie Sanders (I-VT) stated that over the last twenty years, TPA "has been used to push through Congress a series of trade agreements lacking strong, enforceable mechanisms to protect [U.S] labor and environmental standards, as well as economic and national security interests." The Senators opined that because of these agreements, the United States has suffered an increased trade deficit and "millions of American jobs lost to unfair global competition." The Senators stated that the Bush Administration has been unwilling to address these problems during the six years it has held the "fast track" authority that TPA mandates, and has instead focused on negotiating "flawed agreements like the Central American Free Trade Agreement (CAFTA)." The Senators called for a "new trade policy that demands fair and reciprocal trade," and they thus will oppose any TPA renewal efforts.

The President's TPA request will remain a top item in Congress' trade agenda. President Bush requested a simple extension of TPA, but Congress is unlikely to grant this request. However, Congress

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could extend TPA to allow for the successful conclusion of the WTO Doha Round or FTA negotiations with South Korea and Malaysia if USTR can prove to Congress that there is significant and tangible progress in those negotiations, and that more time is needed beyond the March 30 deadline to complete the agreements. Thus far, the stalled Doha Round and the slow-moving Korea and Malaysia FTA talks have probably not demonstrated sufficient progress to convince Congress that a limited TPA extension is warranted. Regarding a broader TPA extension, the Bush Administration will have little choice but to work with the Democratic leadership in Congress on labor and environmental additions to TPA in order to have even a chance of such an extension. However, given the broad opposition to any form of TPA and the chance that Democratic demands could eviscerate much of the trade liberalization that current agreements provide, wholesale TPA extension appears unlikely.

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Free Trade Agreements

U.S. and Malaysia Complete Fifth Round of FTA Negotiations

Summary

On February 5, 2007, U.S. and Malaysian officials met in Sabah, Borneo for the fifth round of formal U.S.-Malaysia Free Trade Agreement (FTA) negotiations. Officials from the Office of the United States Trade Representative (USTR) conducted discussions with their Malaysian counterparts in several areas including agriculture, customs, environment and labor, government procurement, intellectual property rights (IPR), sanitary and phytosanitary (SPS) measures, services, telecommunications and trade in goods. Negotiators made little overall progress during the fifth round but will continue informal negotiations on outstanding issues. It remains unclear whether negotiators will convene a sixth round and whether they can agree on the FTA's final text before the March 31, 2007 deadline that USTR has imposed due to the expiry of Presidential Trade Promotion Authority (TPA).

Outlook

Negotiations appear to have suffered a setback as a result of declining political will on both sides. In a January 31, 2007 letter to United States Trade Representative (USTR) Susan Schwab, Chairman of the House Committee on Foreign Affairs Tom Lantos (D-CA) requested that U.S. trade negotiators suspend FTA negotiations with Malaysia until the Malaysian government cancels a liquefied natural gas (LNG) deal with Iran. The Malaysian Ministry of International Trade and Industry (MITI) responded in a February 6 public statement that warned the United States that the negotiations "cannot be held hostage to any political demand" and threatened to suspend negotiations is USTR adopted Rep. Lantos' position on the matter. Although USTR Schwab reassured Malaysia that the United States would not withdraw from negotiations, Rep. Lantos' statement affected the fifth round.

The United States and Malaysia have not indicated whether they plan to convene a sixth and final round of formal negotiations before the March 31 TPA deadline. Following the fifth round's completion, AUSTR Weisel stated that irrespective of the deadline, USTR would like to make as much progress as possible through informal consultations with their Malaysian counterparts. Given the lack of progress through the fifth round and the difficulty and number of outstanding issues, it remains unclear whether a last-minute negotiating round would be enough to reach an agreement on sensitive issues such as agriculture, government procurement and services. Congressional Democrats' statements on TPA indicate an extension seems more possible today than it did before the November 2006 elections, but it remains to

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be seen if U.S. and Malaysian negotiators will be able to complete an agreement even with a TPA extension. The governments' political will might be too small, and the distance between their respective negotiating positions might be too great.

U.S. and Korean Negotiators Hold Seventh Round of FTA Talks

Summary

On February 11, 2007, U.S. and Korean negotiators held the seventh round of formal negotiations on the U.S.-Korea (KORUS) Free Trade Agreement (FTA). Negotiators met in Washington, DC to discuss trade liberalization in all sectors under the Agreement including agriculture, automobiles, e-commerce, industrial goods, labor and the environment, pharmaceuticals, rules of origin, textiles and trade remedies. Negotiators made progress in a number of areas but did not achieve any breakthroughs on the agreement's more controversial issues.

Outlook

Progress during the last several formal negotiating rounds has been gradual, and negotiators appear to have resolved most of the Agreement's non-sensitive issues. However, the same issues that have stalled overall progress - agriculture, automobiles, pharmaceuticals, textiles and trade remedies - continue to cloud the agreement's future. On the U.S. side in particular, unless negotiators can resolve the automobiles and beef issues, the agreement's fate in Congress remains uncertain. Many Members of Congress have made clear that their support for the FTA hinges upon increased market access for U.S. automobiles and on the reopening of the Korean market for U.S. beef imports.

Moreover, little time remains in which both parties can reach an agreement on the remaining contentious issues. Although USTR has established March 31 as the deadline by which it must notify Congress of its intent to sign the agreement with Korea, USTR Schwab indicated during a February 15 Senate Finance Committee hearing that USTR could extend its deadline until June 30. This is the final date by which USTR must sign the agreement under the strictures of U.S. Trade Promotion Authority (TPA), which expires on that day. However, such an extension contradicts longstanding USTR policy and is therefore unlikely. Because political will remains high on both sides and because of the U.S. business community's strong support of the agreement, an agreement is still possible within the deadline if negotiators can overcome their differences in a few key areas.

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Free Trade Agreements Highlights

United States Signs TIFA with Liberia

On February 15, 2007, United States Trade Representative (USTR) Susan Schwab and Liberian Minister of Commerce, Industry and Trade Olubanke King-Akerele signed a Trade and Investment Framework Agreement (TIFA). The TIFA will provide a forum for the United States and Liberia to further discuss trade issues and strengthen investment. USTR Susan Schwab noted that the TIFA will serve as a key component in Liberia's economic recovery following its fourteen-year civil war.

Under the TIFA, the two countries will form a Council on Trade and Investment that will promote trade relations between the United States and Liberia and attempt to eliminate trade barriers. Council members will also discuss trade matters such as the African Growth and Opportunity Act (AGOA), intellectual property, labor and the environment. In December 2006, Liberia became eligible for trade benefits under the AGOA. The Office of the USTR manages the AGOA, a trade preference program aimed at increasing economic development in thirty-seven Sub-Saharan African countries. Under this program, the United States expands preferential trade benefits African countries receive from the Generalized System of Preferences (GSP) by lowering tariffs and allowing greater access to the U.S. market.

The recent signing of the U.S.-Liberia TIFA indicates that the Administration is intent on strengthening trade relations with African economies. In June 2006, the United States signed a TIFA with Rwanda and in September 2006, signed a TIFA with Mauritius. The United States will likely seek to complete more Bilateral Investment Treaties (BITs) and TIFAs with African economies. With Presidential Trade Promotion Authority (TPA) facing expiration in September 2007, however, it is unlikely that the Administration will pursue a formal U.S.-Liberia FTA in the near future.

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Multilateral

Multilateral Highlights

United States Files WTO Complaint Against Chinese Subsidies

On February 2, 2007, the United States requested World Trade Organization (WTO) dispute settlement consultations with China regarding Chinese subsidies to domestic and foreign companies. The U.S. request states that these subsidies violate China's WTO obligations because they distort trade conditions for U.S. manufacturers and can inhibit U.S. exports to China, as well as provide an unfair advantage to China's exports in the United States and around the world. Under WTO rules, the United States and China will have a mandatory 60-day consultation period. If the parties cannot reach a mutually agreeable solution at the end of the consultation period, the United States can then request the WTO Dispute Settlement Body (DSB) to create a panel to rule on the issue.

According to the Office of the United States Trade Representative (USTR), China maintains a number of measures that benefit Chinese companies and companies in China with foreign investment. These measures include: (i) income tax reductions and refunds available to companies that satisfy certain export performance requirements; (ii) value-added tax (VAT) exemptions available to companies that satisfy certain export performance requirements; (iii) tariff exemptions available to companies that satisfy certain export performance requirements; (iv) discounted lending rates available to companies that satisfy certain export performance requirements; (v) exemptions from mandatory worker benefit contributions available to companies that satisfy certain export performance requirements; (vi) income tax refunds available to companies that purchase Chinese-made equipment and accessories rather than imports; and (vii) VAT refunds available to companies that purchase Chinese-made equipment and accessories rather than imports. U.S. trade officials have not disclosed the subsidy programs' details but indicate that four of the subsidies are among the 78 subsidy programs that China notified to the WTO in April 2006. The majority of the notified subsidies were related to agriculture and rural development, but several programs allegedly assisted foreign companies.

According to USTR, the WTO prohibits export subsidies and import substitution subsidies (*i.e.*, financial incentives that encourage firms in a country to purchase domestic goods instead of foreign goods). China committed to eliminate these prohibited subsidies by the time it joined the WTO in December 2001 but has allegedly failed to do so; thus, the United States seeks the elimination of both kinds of prohibited subsidies.

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Congressional reaction to USTR's announcement was positive. Senate Finance Committee Chairman Max Baucus (D-MT) lauded the consultation request and stated that "forcing China to eliminate its illegal subsidies will keep world markets open to U.S. goods." He opined that USTR was "right to file this WTO case" and expressed hope that the request "is a signal that USTR will take more vigorous action in the future when China or any other country fails to abide by trade agreements." Sen. Charles Grassley (R-IA), Ranking Member of the Senate Finance Committee echoed Baucus' statements and stated that China should be held accountable for its actions if it "flouts the rules." He also indicated that the Senate Finance Committee will hold oversight hearings in March regarding U.S. economic relations with China and particularly the WTO dispute. House Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI) stated that he was "glad the Administration recognizes that Chinese subsidies are a widespread problem that has caused major harm to American workers, farmers and businesses" and noted that Congressional Democrats "have long encouraged the Administration to file more cases in the WTO against China's unfair practices." He added that the consultation request is a step in the right direction, but that it must be part of a much more aggressive program to take actions against Chinese violations of WTO obligations.

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

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