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Japan External Trade Organization
WTO and Regional Trade Agreements Monthly Report

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On July 24, 2007, Deputy United States Trade Representative (DUSTR) Karan Bhatia addressed a Washington International Trade Association (WITA) event to discuss issues the United States faces in its trade policy towards Asia. Bhatia focused his remarks on recent economic developments in the Asian region and their effect on the United States relative position as a regional trading power. According to Bhatia, without a commitment to continued active engagement with the region, US market share in Asia will continue to decline. Bhatia called on Congress to enable this engagement through approval of the Korea-US (KORUS) Free Trade Agreement (FTA) and renewal of Presidential Trade Promotion Authority *(TPA)*.

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United States

Center for National Policy Explores US-China Trade Relationship

Summary

On July 11, 2007, the Center for National Policy (CNP) hosted a discussion on the trade relationship between the United States and China. **Director of the Brookings Institution's China Initiative Jeffrey Bader** and **National Foreign Trade Council President William Reinsch** discussed different aspects of US-China trade relations. We review their discussion.

Analysis

On July 11, 2007, the CNP hosted a panel discussion titled "Promise and Perils: The US - PRC Trade Relationship." The panelists focused their discussion on the US-China trade imbalance and the future of bilateral relations between the two countries.

Jeffrey Bader, Director of the Brookings Institution's China Initiative, opined that the most difficult trade issue between the United States and China is the trade imbalance. According to Bader, China is the United States' "largest and longest deficit trading partner." Bader stated that the US-China trade imbalance has grown over the past several years. He noted that China has advanced to the point where it is now the largest Asian supplier of computers and computer components to the United States. According to Bader, Chinese exports of computers and computer parts increased by two thousand percent in the past five years; this increase is partly attributed to Southeast Asian countries that send their unassembled computers and computer parts to China for final assembly. China then ships these assembled high-technology goods to the United States. Bader believes that China's new role as a final assembly point for diverse Asian products partly accounts for the increase in China's exports to the United States over the past several years. Bader noted that another emerging trend with China is its involvement with the developing world: according to Bader, over the past several years, Chinese businesses have actively intervened in developing country markets such as Brazil and India, and increased their market access and share in these countries. Regarding the US-China trade relationship, Bader opined that China's currency is not a key issue in the US-China trade relationship, and instead

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believes that structural issues (*e.g.*, transparency, commercial limitations on foreigners, etc.) are more to blame for the US-China trade imbalance.

William Reinsch, President of the National Foreign Trade Council, discussed the current status and the future of bilateral relations between the United States and China in the context of globalization. Reinsch stated that China is growing fast, and that because it has a huge population (approximately 1.3 billion people), China will become "a true economic rival" for the United States and other global economies. Reinsch opined that globalization is a force for both stability and instability; according to Reinsch, globalization simultaneously "pushes countries to conform to market principles and to Western norms of rule" yet also "rides roughshod over deeply ingrained cultural values, exacerbates growing problems of income inequity, exploitation of workers, women, and children, and contributes to environmental degradation and resource depletion." He opined that globalization accelerates the pace of change, which in turn creates insecurity about the future. He opined that this "insecurity about the future" is evident in the US-China relationship. Reinsch questioned the efficacy of the US Congressional response towards China; according to Reinsch, Congressional proposals on China are weak because they address problems in China when in reality "the problems that need to be addressed are primarily US problems rather than Chinese problems." He noted that "from the standpoint of the bilateral relationship, while the Chinese will no doubt complain vociferously about whatever [the United States does], [Congressional proposals and] bills will not make much difference in the problems they intend to address, which unfortunately means that real solutions will be posted even longer." According to Reinsch, "the only one thing [the United States] knows for sure is that the rest of the world, particularly China and India, will continue to run faster, so it falls to [the United States] to pick up the pace if it wants to retain its goal position."

Outlook

Congress has recently turned its focus to the US-China trade relationship, specifically China's alleged currency manipulation and the increasing US trade deficit with China. The current 110th Congress is no different: over the past several months, legislators have introduced legislation meant to address China's currency, its status as a non-market economy and its trade relationship with the United States. It seems likely that Congress' "China focus" will continue through the remainder of 2007 for several reasons. For one, key members of Congress – such as Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) – are co-sponsors of some of the recently-introduced China legislation; it is likely that these key legislators will keep Congress focused on their China-related

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proposals. Congress is also likely to continue its China focus because the United States is involved with China in several World Trade Organization disputes. As Bader noted, China's new role as an exporter of high-technology products to the United States means that it will remain under close watch from US businesses and legislators. Reinsch's opinion that China will eventually become a "true economic rival" to the United States is likely the sentiment driving members of Congress to address the perceived threat through the various means included their proposed legislation.

United States Highlights

House of Representatives Approves Farm Bill Extension Act of 2007; Senate to Consider Farm Bill in September

On July 27, 2007, the House of Representatives approved the Farm Bill Extension Act of 2007 (H.R. 2419) by a margin of 231 to 191. House Agriculture Chairman Collin Peterson (D-MN) introduced H.R. 2419 on May 22, 2007. The 2002 Farm Bill is scheduled to expire on September 30, 2007, and Congress is currently considering extending or re-writing legislation on US agricultural support. 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.

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), sponsored an amendment to 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 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 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 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 he 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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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. Despite these issues, the current Farm Bill debate makes clear that 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 World Trade Organization (WTO). Because of this fact, it is almost certain that the 2007 Farm Bill will not resolve current WTO dispute settlement cases regarding US farm subsidies and indeed could lead to more WTO disputes over US agricultural support.

Sens. Baucus, Snowe Propose Extension for Trade Adjustment Assistance Program

On July 23, 2007, Senate Finance Committee Chairman Max Baucus (D-MT) and Senator Olympia Snowe (R-ME) introduced the Trade and Globalization Adjustment Assistance Act (S. 1848), which would extend the Trade Adjustment Assistance (TAA) program for an additional five years (i.e., until September 2012). The TAA program is set to expire on September 30, 2007. The TAA program helps trade-impacted workers gain or enhance job-related skills and find new jobs. The program provides eligible workers with career counseling, up to two years of training, income support during training, job search assistance, and relocation allowances.

S. 1848 proposes:

- Covering workers whose firms shift production to non-US Free Trade Agreement (FTA) partner countries (current law covers shifts in production only to FTA partners or preference program countries);
- Extending TAA benefits to service sector workers and firms (current law only covers workers who produce "articles" subject to import competition);
- Allowing industry-wide certification by the US Department of Labor (DOL) and requiring the DOL to open an industry-wide investigation if three or more petitions for benefits are received from an industry within 180 days, or if such an investigation is requested by Congress or the United States Trade Representative;
- Streamlining eligibility criteria for TAA for farmers and fishermen;
- Increasing funding for TAA for affected firms;

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- Increasing funding for TAA training to USD 440 million (current law caps TAA training entitlements at USD 220 million);
- Increasing the current health care tax credit and fixing "enrollment glitches" by removing barriers to obtaining health coverage and improving coverage of spouses and dependents;
- Making wage insurance more accessible and flexible with other benefits;
- Creating a "TAA for Communities" Program that would allow communities hurt by lost jobs to obtain federal assistance, strategic planning grants, and economic development grants; and
- Creating a TAA Ombudsman in order to improve outreach to workers and increase transparency and accountability.

In announcing the bill, Sen. Baucus stated that the proposed legislation "makes TAA flexible enough to respond to workers' needs." Sen. Snowe echoed Sen. Baucus' statements and added that the bill's "TAA for Communities" provision "addresses the unique challenges faced by displaced workers in smaller towns where the local economy has been devastated by the closure or downsizing of its key industry, plant, or company following trade liberalization."

Congressional sources state that TAA renewal enjoys Congressional support in the House and the Senate. They add, however, that it may be difficult for Congress to consider S. 1848 or any other TAA-related bill before the program expires on September 30, 2007. Given the upcoming August recess and Congress' consideration of other matters, such as the Farm Bill (also scheduled to expire on September 30) and appropriations bills, members of Congress are less likely to focus on TAA extension in the short-term. Sen. Baucus' status as a key member of Congress and chairman of a powerful committee, however, could help shift the attention of other legislators to TAA renewal.

Congress Renews Import Restrictions Against Myanmar

On July 23, 2007, the House of Representatives approved by voice vote H. J. Res. 44, which extends restrictions on imports from Myanmar for an additional year. On July 24, the Senate approved H. J. Res 44 by a margin of 93 to 1. The bill next moves to the President for his signature; he is not expected to veto the bill.

The import restrictions were set to expire on July 27, 2007; the one-year extension will continue the sanctions included in the Burmese Freedom and Democracy Act (PL 108-61), a law enacted in 2003 to protest Myanmar's anti-democratic regime, the State Peace and Development Council. H. J. Res. 44 also

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requires reporting of any assets of Myanmar's government officials held by US financial institutions and gives the President the power to freeze those assets. Congressional reaction to the passage of the Myanmar sanctions was positive. House Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI) stated that the import ban should be renewed because of evidence that the Burmese government continues to violate human rights, and he urged other governments, including those of the EU and the Association of Southeast Asian Nations to implement similar import restrictions against Burma. Rep. Levin also stated that Myanmar's "controlling military junta has a total disregard for the human rights of its people." House Foreign Affairs Committee Chairman Tom Lantos (D-CA) remarked that US sanctions could pressure Burma's government to implement reforms, although he criticized "other nations – India and China in particular – [that] continue to prop up the [Myanmar] government through shockingly direct deals, including arms trading . . ." Senate Finance Committee Chairman Max Baucus (D-MT) stated that the sanctions were appropriate because they address the human rights violations in Myanmar. Ranking Member Charles Grassley (R-IA) also noted that Myanmar remains a serious risk to the peace and security of Southeast Asia.

President Signs CFIUS Reform Into Law Following Congressional Passage of Bill

On July 11, 2007, the House of Representatives approved H.R. 556, the Foreign Investment and National Security Act of 2007 ("FINSA") to reform the Committee for Foreign Investment in the United States (CFIUS). The House approved the bill by a margin of 370 to 45. On June 29, 2007, the Senate approved H.R. 556 by unanimous consent. The House had passed the original version of H.R. 556 on February 28, 2007 by a margin of 423-0. The Senate's June 29 approval of the bill included minor changes to the legislation that did not require a conference to reconcile the Senate and the House versions of H.R. 556. President Bush signed H.R. 556 into law on July 26, 2007.

H.R. 556 establishes the CFIUS panel in statute, mandate a second-stage national security investigation of bids by state-owned companies and formalize the role of the Director of National Intelligence (DNI) in these reviews. The bill also requires notification at the close of standard 30-day reviews in addition to reports on cases sent to second-stage investigations. Specific provisions of H.R. 556 include:

- **CFIUS Membership.** The legislation establishes the membership of the CFIUS in statute;
- **Director of National Intelligence.** H.R. 556 makes the DNI an ex-officio member of CFIUS and requires the DNI to analyze a foreign bid for a US company with respect to any national security

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implications, and report the findings to the CFIUS and update with any additional information that becomes available;

- **Lead Agency.** The legislation mandates the designation of a lead agency or agencies for each covered transaction, in addition to the Treasury Department, charged with negotiating any mitigation agreement or other conditions to protect national security, and for follow up compliance;
- **Mandatory 45-day Investigation.** H.R. 556 provides for the 45-day investigation of covered transactions that threaten to impair national security, including transactions involving foreign government-owned companies and control of critical infrastructure, subject to certain exceptions if the Secretary or Deputy Secretary of the Treasury, and the equivalent level official in the Lead Agency, determine after review of the transaction that national security will not be impaired by the transaction;
- **Senior Official Involvement.** The legislation also provides for signoff at the assistant secretary-level (or above) after a 30-day review, and at the Deputy Secretary level after a 45-day investigation.
- **Assessment of Acquiring Country's Multilateral Compliance.** In case of acquisitions by state-owned companies, the legislation requires assessment of a country's compliance with US and multilateral counter-terrorism, non-proliferation and export control regimes for in the investigation stage;
- **Mitigation Agreements.** The FINSA provides authority to CFIUS, or the lead agencies, to negotiate, impose and enforce conditions necessary to mitigate any threat to national security related to a covered transaction;
- **Critical Infrastructure and Technologies; Energy Assets.** The legislation adds to the list of factors that CFIUS should consider the potential impact of a transaction on: (i) critical infrastructure; (ii) energy assets; or (iii) critical technologies; and
- **Reporting to Congress.** Under the legislation, at the conclusion of the CFIUS process for both reviews and investigations, Congress must be provided details about the transaction, including written assurance that the transaction does not threaten to impair national security or that any initial concerns have been mitigated through agreements. H.R. 556 also mandates Treasury and the lead agencies to provide Congress with detailed annual reports on the activities of CFIUS, including information concerning the transactions that have been reviewed or investigated during the previous 12 months. FINSA also provides for an investigation by the Inspector General of the Department of Treasury to determine why Treasury failed to comply with provisions of the Defense Production Act with respect

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to certain reporting requirements related to potential industrial espionage or coordinated strategies by foreign parties with respect to US critical technology by foreign parties.

In 1988, Congress passed the Exon-Florio Amendment to the "Defense Production Act" that authorizes the President to suspend or prohibit foreign acquisitions, mergers, or takeovers of US companies that may harm national security. CFIUS – an interagency committee established in 1975 to monitor and coordinate US policy on foreign investment in the United States – was delegated the investigative authority of Exon-Florio. The Secretary of the Treasury chairs CFIUS. Exon-Florio establishes a four-step process for CFIUS investigations of bids by foreign entities to acquire US companies: (i) a voluntary notice by the companies of the acquisition; (ii) a 30-day CFIUS review to identify whether national security concerns exist; (iii) a 45-day CFIUS review to determine whether those concerns require a recommendation to the President for possible action; and (iv) a presidential decision to permit, suspend, or prohibit the foreign acquisition. The President has 15 days to reach a decision. Companies that have submitted their voluntary filing are free to withdraw that notification at any time prior to the President's decision.

The CFIUS drew criticism from Congress when in February 2006, the panel approved the sale of US port operations to DP World, a company controlled by the United Arab Emirates (UAE). On February 13, 2006, DP World purchased British-based P&O. P&O North America manages commercial operations at the ports of New York, New Jersey, Baltimore, New Orleans, Miami and Philadelphia, as well as several other, smaller U.S. ports. DP World's purchase of P&O would transfer control of commercial operations in these ports to the UAE-owned firm.

Congress' agreement on a CFIUS overhaul indicates that US legislators are focused on foreign acquisitions of US companies, a likely reaction to the hotly-debated 2006 DP World acquisition of control of US ports. Members of Congress likely do not want to see a similar transaction occur that they feel raises questions on secured US borders. House passage of H.R. 556 means that foreign investment transactions will be under more scrutiny in the future and will require further CFIUS investigations, a delay that could affect business transactions associated with the investment under investigation. This in turn could lead to criticism from foreign investors in the United States that US investigative procedures are too time-consuming and onerous.

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Ryan-Hunter Bill Aims to Address "Fundamentally Misaligned" Currencies

On June 28, 2007, Reps. Tim Ryan (D-OH) and Duncan Hunter (R-CA) introduced the Currency Reform Act of 2007 (H.R. 2942). The bill addresses misaligned currency and the steps US agencies should take in addressing policy towards countries with "fundamentally misaligned" currencies. H.R. 2942 was last referred to the House Ways and Means Committee, and in addition to the House Committees on Financial Services and Foreign Affairs.

H.R. 2942 specifically proposes:

- **Identification of "Fundamentally Misaligned" Currencies.** The bill mandates the Department of Treasury to identify if any foreign currency is "fundamentally misaligned." H.R. 2942 defines "fundamentally misaligned" currency as a currency that has been undervalued 5 percent or more on average in the 18 months prior to the calculation. In calculating the extent of misalignment, the Department of Commerce (DOC) will rely on data from the International Monetary Fund, other international organizations and the "the national governments" in question. The bill also stipulates three methods of calculating the exchange rate using inflation-adjusted, trade-weighted exchange rates. If Treasury identifies a "fundamentally misaligned" currency, then it can consider it a countervailable subsidy under US trade remedy law.
- **Priority Action Countries.** The bill mandates the Secretary of Treasury to identify priority countries whose currencies are fundamentally misaligned. According to H.R. 2942, priority action countries must have an undervaluation caused by "protracted, large-scale intervention" in the foreign exchange market, "excessive reserve accumulation," or restrictions on or incentives for the flow of capital "that is inconsistent with the goal of achieving currency convertibility." For these countries, the United States will inform the Managing Director of the International Monetary Fund (IMF) of the failure of a country that issues a currency designated for priority action pursuant and will request that the IMF to consult with such country regarding the observance of the country's obligations under article IV of the IMF Articles of Agreement. The bill also stipulates that the Overseas Private Investment Corporation shall not approve any new financing (including insurance, reinsurance, or guarantee) with respect to a project located within a country that issues a currency designated for priority action. In addition, the Secretary of the Treasury will instruct the United States Executive Director at each multilateral bank to oppose the approval of any new financing (including loans, other credits, insurance, reinsurance, or guarantee) to the government of a country that issues a currency designated for priority action.

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- **Negotiations and Consultations.** H.R. 2942 mandates the Secretary of Treasury to seek bilateral consultations with the country upon designation that that country issues "fundamentally misaligned" currency. The consultations are meant to facilitate the adoption of appropriate policies to address the fundamental misalignment of a currency. The Secretary of Treasury will also designate fundamentally misaligned currencies designated for priority action; for these countries, the Secretary of Treasury, in addition to consultations, will seek the advice of the International Monetary Fund and encourage other governments to join the United States in seeking the adoption of appropriate policies by the country described to eliminate the fundamental misalignment.
- **Antidumping Methodology and Calculations.** H.R. 2942 expands the available remedies to address misaligned currencies by allowing the DOC to offset their impact in antidumping calculations by using an adjusted exchange rate when assessing the export price. Under the bill, the option of changing AD methodology is available for "fundamental and actionable" misalignment.
- **Non-market Economies.** The bill would also establish in US law that countervailing duties can be applied to non-market economies.
- **Advisory Committee on International Exchange Rate Policy.** The bill establishes an Advisory Committee on International Exchange Rate Policy responsible for advising the Secretary of Treasury in the preparation of each report to Congress on international monetary policy and currency exchange rates (see below), and advising Congress and the President with respect to international exchange rates and financial policies and the impact of such policies on the economy of the United States.
- **Report on International Monetary Policy and Currency Exchange Rates.** H.R. 2942 mandates the Secretary of the Treasury to consult with the Chairman of the Board of Governors of the Federal Reserve System and the Advisory Committee on International Exchange Rate Policy and submit to Congress a written report on international monetary policy and currency exchange rates no later than March 15 and September 15 of each calendar year. The reports must provide: (i) an analysis of currency market developments and the relationship between the United States dollar and the currencies of major economies and trading partners of the United States; (ii) a review of the economic and monetary policies of major economies and trading partners of the United States, and an evaluation of how such policies impact currency exchange rates; (iii) a description of any currency intervention by the United States or other major economies or trading partners of the United States, or other actions undertaken to adjust the actual exchange rate relative to the United States dollar; (iv) an evaluation of the domestic and global factors that underlie the conditions in the currency markets

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(e.g., monetary and financial conditions, accumulation of foreign assets, macroeconomic trends, etc.); (v) a list of currencies designated as fundamentally misaligned currencies and a description of any economic models or methodologies used to establish the list; and (vi) a list of currencies designated for priority action.

The Ryan-Hunter bill comes on the heels of other recently-introduced legislation addressing currency misalignment. On June 21, 2007, Senate Banking Committee Chairman Christopher Dodd (D-CT) and Ranking Member Richard Shelby (R-AL) along with five other Senators – including Sens. Debbie Stabenow (D-MI) and Jim Bunning (R-KY) – introduced the Currency Reform and Financial Markets Access Act of 2007 (S. 1677), legislation aimed at foreign exchange rate misalignment, with a particular focus on China. On June 13, Senate Finance Committee Chairman Max Baucus (D-MT), Ranking Member Charles Grassley (R-IA), Sen. Charles Schumer (D-NY), and Sen. Lindsey Graham (R-SC) released the Currency Exchange Rate Oversight Reform Act of 2007 (S. 1607) that would require the Treasury Department to identify countries with "fundamentally misaligned currencies" and to take specific action to correct the misalignment. According to Congressional sources, the Ryan-Hunter bill closely resembles the Baucus-led legislation but expands the available remedies to address misaligned currencies by allowing DOC to offset their impact in antidumping calculations; under the Ryan-Hunter bill, DOC would consider using an adjusted exchange rate when assessing the export price, a key factor in determining dumping margins in antidumping investigations.

The Ryan-Hunter bill, in addition to the other currency-related bills, reflects Congress' increased focus on currency misalignment and more specifically, China. On June 29, House Speaker Nancy Pelosi (D-CA) and Majority Leader Steny Hoyer (D-MD) stated that the House expects to move forward "in the near future with legislation to address the growing imbalance in trade with China, strengthen overall enforcement of US trade agreements and US trade laws, as well as overhaul and improve support to ensure that American workers and firms remain the most competitive in the world." Thus, the Ryan-Hunter bill seems to be part of this increased focus on China. Whether Congress will ultimately approve the bill is another story, however. Congressional insiders have already opined that the Baucus-led legislation has little chance of passage as does the Dodd-led bill. Given the similarity of the Ryan-Hunter bill with these two bills, it seems likely that the legislation will suffer the same fate. The Administration has consistently favored dialogue and diplomacy instead of "tougher" actions such as those proposed in the bills. It is thus likely that the Administration will lobby members of Congress not to approve of this legislation in favor of other Administration-led initiatives that can address China, such as the application of

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countervailing duties on Chinese imports and dispute settlement proceedings at the World Trade Organization.

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Deputy USTR Bhatia Calls on Congress to Pass KORUS, Renew TPA

Summary

On July 24, 2007, Deputy United States Trade Representative (DUSTR) Karan Bhatia addressed a Washington International Trade Association (WITA) event to discuss issues the United States faces in its trade policy towards Asia. Bhatia focused his remarks on recent economic developments in the Asian region and their effect on the United States relative position as a regional trading power. According to Bhatia, without a commitment to continued active engagement with the region, US market share in Asia will continue to decline. Bhatia called on Congress to enable this engagement through approval of the Korea-US (KORUS) Free Trade Agreement (FTA) and renewal of Presidential Trade Promotion Authority (TPA).

Analysis

Bhatia commented that although recent economic developments in Asia increased the region's importance as a driver of global growth, these developments also challenge the United States' relative position as a regional trading power. Bhatia noted that during the last 15 years, Asia's share of global output rose from 26.5 percent to 37.5 percent.[1] He also noted that in 2006 the region's average growth rate of 5.1 percent outpaced the global average of 3.9 percent. Bhatia stated, however, that in relative terms, from 1990 to 2006, US exports fell from 18 to 10 percent of total exports to the region. He attributed this decline to rising intra-regional trade due to regional economic integration and to the growing number of extra-regional players engaging with the region through preferential trading agreements (PTAs).

Given the decline in the United States' relative importance as a regional trading power, Bhatia argued that the United States must remain committed to active engagement with the region through a number of bilateral and multilateral tools. He observed that the Bush Administration had taken such an approach to Asia through its relationship with regional trading partners such as China, India, Japan, Taiwan, and

[1] Measured in terms of purchasing power parity.

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Korea, and through regional fora such as the Association of Southeast Asian Nations (ASEAN) and the Asia Pacific Economic Cooperation (APEC). On

China, Bhatia noted that the Administration's dual-track approach—focusing on dialogue through the Strategic Economic Dialogue (SED) and the US-China Joint Commission on Commerce and Trade (JCCT) and on rules-based dispute settlement where dialogue fails—had been successful in ensuring China's adherence to its World Trade Organization (WTO) commitments. Regarding the recently signed Korea-US (KORUS) Free Trade Agreement (FTA), Bhatia stated that, excluding a successful Doha Round, the agreement's enactment would be the "single most important action" to further the United States' trade objectives in Asia. He emphasized the high quality of the agreement's provisions on investor and intellectual property rights protection and market access for services, and dismissed criticisms that the agreement would not level the playing field in Korea for US automakers. Bhatia also noted that the United States and Taiwan have continued steadily to establish "building blocks for a deeper and stronger trade relationship for the future."

On APEC, Bhatia stated that the United States is cooperating with other member economies to consider possible schemes for an APEC-wide economic integration as envisioned by the Bogor Goals. He opined that whether member economies approach integration gradually through small groups, or whether all 21 economies seek simultaneous integration, a Free Trade Area of the Asia Pacific (FTAAP) would be the "logical end." He also noted that the United States would continue to improve bilateral economic relations with ASEAN through the 2006 US-ASEAN Trade and Investment Framework Agreement (TIFA) and through TIFAs with individual ASEAN members. He added that USTR aimed to conclude FTA negotiations with Malaysia by 2008 and that it would recommence FTA negotiations with Thailand upon "the restoration of democracy" in that country.

According to Bhatia, continued active engagement in the region will depend on the United States' willingness to resist protectionist inclinations and Congress' willingness to take action on pending Asian FTAs such as KORUS and to renew TPA, which expired on June 30. Bhatia stated that Congress' failure to vote on or approve KORUS would have "severe and enduring" repercussions and would deal a "serious blow" to US credibility in the region. He added that it would encourage Korea and other Asian countries to seek FTAs with "more willing" trade partners. Bhatia also stated that without swift Congressional renewal of TPA, the United States will face an increasingly difficult challenge in recapturing market share lost to competitors that complete FTAs with Asian countries.

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Outlook

Bhatia's remarks underscore the importance of the United States' continued economic engagement with Asia. Although the Administration has made progress in improving trade relations with a number of its Asian trading partners, unless the United States continues such efforts, the results of this progress are likely to be gradually eroded as competitors negotiate their own preferential trade and investment agreements. The European Union (EU), for example, has already begun FTA talks with a number of Asian trading partners. In mid-July, the EU concluded a second round of FTA talks with Korea and in late June completed a first round

of talks with India. The EU also plans to negotiate an FTA with ASEAN. Completion of these agreements, with Korea in particular, would likely diminish US exports' prominence in these markets.

Despite these developments, however, it remains unclear whether Congress will heed Bhatia's advice on KORUS and TPA or whether the Administration will prove able to convince it to do so. Congress recently has grown increasingly unwilling to cooperate with the Administration on trade policy, and there is little sign that this will change in the near future. Although Congress is likely to pass pending FTAs with Panama and Peru in the fall, the fate of the Colombia and Korea FTAs remains uncertain. Key lawmakers have concerns that the KORUS FTA fails to remove barriers that severely restrict U.S. exports of automobiles and beef products to Korea. Moreover, given growing tension between the Administration and Congress on a number of non-trade related matters, it seems unlikely that Congress would be willing to renew TPA, which might be seen as a political victory for the Administration. For its part, the Administration faces a number of constraints that limit its ability to pressure Congress to cooperate on trade policy matters. With less than two years remaining in his term, President Bush appears increasingly focused on the war in Iraq and less willing to devote resources to initiatives primarily affecting other regions of the world, including Asia. The President's recent announcement to cancel a planned September meeting with Asian heads of state in Singapore during the 40th ASEAN Ministerial Meeting and Secretary of State Condoleezza Rice's decision to cancel her attendance at the July ASEAN Regional Forum in the Philippines are indicative of this shift in the Administration's attention. With Doha Round negotiations suspended through August and the Round's successful conclusion more unlikely than ever, further US trade liberalization in the next several months appears entirely dependent on Congress' willingness to pass pending FTAs and consider TPA renewal.

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Free Trade Agreements Highlights

United States Meets with Afghanistan and Central Asian Economies Under Their Respective TIFAs

The United States continues to meet with its Trade and Investment Framework Agreement (TIFA) trading partners in an effort to deepen economic ties and strengthen trade linkages in the absence of formal Free Trade Agreement (FTA) negotiations. On July 11, 2007, officials from the United States and Afghanistan met in Washington for the second meeting of the US–Afghanistan TIFA Council. Assistant United States Trade Representative (AUSTR) for South Asia Douglas Hartwick led the US delegation and Islamic Republic of Afghanistan Minister of Commerce and Industry M. Amin Farhang led the Afghan delegation. According to USTR, both sides discussed ways to deepen US–Afghan economic ties and expand bilateral trade and investment between the two countries.

At the meeting, US and Afghan officials focused their discussion on President Bush's proposed US Reconstruction Opportunity Zones (ROZ) initiative. President proposed the ROZ initiative in March 2006 during a visit to Afghanistan. The initiative would allow certain products produced in designated areas of Afghanistan and the border regions of Pakistan to enter duty-free into the United States. President Bush has not yet formally introduced the initiative to the US Congress, but Afghan officials were interested in discussing how the initiative would help the Afghan economy. Officials from both sides also discussed Afghanistan's progress in acceding to the World Trade Organization. Other topics of discussions included Afghanistan's participation in the US Generalized System of Preferences program and the investment needs in Afghanistan's energy, mining, and agriculture sectors.

Deputy USTR Karan Bhatia stated that USTR "believes that Afghanistan's integration into the global trade community is essential for the prosperity of the Afghan people and for enhancing bilateral trade," and he noted that USTR would continue to support Afghanistan in its efforts to further liberalize its markets.

Separately, on July 17, 2007, USTR officials met with trade officials from the five Central Asian economies that form a part of the US-Central Asia TIFA Council. Deputy USTR John Veroneau led the US delegation. Minister of Trade and Economic Development of Tajikistan Gulumon Bobozoda; Minister of Economy and Finance of Turkmenistan Hojamyrat Geldamyradov; Minister of Foreign Economic Relations, Investments and Trade of Uzbekistan Elyor Ganiev; Vice Minister of Industry and Trade of Kazakhstan Zhanar Seidakhmetovana Aitzhanova; and Head of the Economic Cooperation Department, Ministry of Foreign Affairs of Kyrgyz Republic Jeenbek Kulubayev represented the Central Asian countries that are parties to the TIFA. Afghan Ambassador Said Tayeb Jawad participated as an

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observer. The officials discussed trade and non-trade barriers to doing business in Central Asia, trade liberalization, participation in the WTO, and protection of intellectual property rights.

Deputy USTR Veroneau stated that the "talks were very productive and offered all participants new insights into the process of trade liberalization and economic integration in the region, and its significance for regional development."

The US–Central Asia TIFA Council was established pursuant to the US–Central Asia TIFA. The Council provides a forum for both sides to address "regional trade issues that hamper intra-regional trade and economic development and can act as impediments to investment." Under the terms of the TIFA, the Council facilitates ongoing dialogue in an effort to strengthen economic linkages between the United States and Central Asia and in order to increase commercial and investment opportunities by identifying and working to remove impediments to trade and investment flows between the United States and Central Asian states.

TIFAs are limited trade agreements that establish joint councils of trade and economic officials to discuss trade issues. Under US trade policy, TIFAs are usually the first step towards the initiation of formal bilateral or regional FTA negotiations. The next step in the process would be for countries that have a TIFA with the United States to enter into a Bilateral Investment Treaty (BIT), which protects the rights of foreign subsidiaries and investors in the countries' home markets. USTR's meetings with Afghanistan and the Central Asian economies indicate that the United States remains interested in those regions and in further trade linkages with these economies. It is unlikely, however, that the United States will commence in the near future formal BIT or FTA negotiations with Afghanistan or the five Central Asian nations party to the US-Central Asia TIFA. USTR will first seek to address all contentious issues with these parties, such as the investment climate in these countries or their treatment of foreign investors, before it decides to take the TIFAs a step further and initiate BIT negotiations. With pending FTA negotiations with other trading partners formally on hold because of the June 30 expiry of Presidential Trade Promotion Authority (TPA), USTR is also attempting to secure strengthened trade partnerships through other venues, namely its TIFAs and BITs—both of which fall outside the auspices of TPA. The TIFA meetings with Afghanistan and the Central Asian economies are a likely indicator of USTR activities in the short-term; in the absence of TPA, USTR will continue to meet with its trading partners under TIFAs and BITs.

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USTR Continues FTA Talks with UAE and Malaysia in Attempt to Lay Groundwork for Future FTAs

The Office of the United States Trade Representative (USTR) has indicated that it will continue bilateral talks with the United Arab Emirates (UAE) and Malaysia in an effort to lay the groundwork for Free Trade Agreements (FTAs) with both trading partners. US officials met with trade officials from the UAE in Washington on June 29 under the US-UAE Trade and Investment Framework Agreement (TIFA) Plus. USTR Susan Schwab led the US delegation and UAE Minister of Commerce and Planning Shaikha Lubna Al-Qasimi and Minister of State for Finance Mohammed Khalfan bin Khirbash led the UAE delegation. The talks were the first the two sides held since the March 11 announcement that the United States and the UAE would be unable to complete FTA talks in time for the agreement to be considered under Presidential Trade Promotion Authority (TPA). Although TPA expired on June 30, 2007, USTR indicated that it will continue informal discussions with the UAE in an effort to resolve contentious issues and lay the groundwork for a comprehensive US-UAE FTA.

USTR Schwab noted that the June 29 US-UAE TIFA Plus talks were productive, and she added that the two 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." US officials noted that investment remains a contentious issue in the talks, specifically restrictions the UAE places on foreign investment. The United States is pressing the UAE to change its Companies Law to allow 100 percent foreign ownership across the whole country. The United States is also urging UAE labor market reforms and opening of the services sector.

According to USTR, US and UAE officials will continue to meet under the TIFA Plus in order to "build upon the significant progress made in the FTA negotiations and work towards an eventual resumption of negotiations." The United States and the UAE have not yet scheduled their next meeting under the TIFA Plus .

US and Malaysian officials met in Kuala Lumpur on July 16 in an effort to complete FTA negotiations that were also called off in March when both sides determined that they would be unable to complete the negotiations in time for TPA consideration of the FTA. Assistant USTR Barbara Weisel led the US delegation and stated that the informal talks were positive and that both sides had agreed to complete negotiations "as soon as possible." Weisel noted that the United States and Malaysia are attempting to complete the bilateral deal by the second quarter of 2008 because both sides could "lose momentum" if

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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 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.

USTR will likely continue to meet with officials from both countries in order to complete as much of their respective FTAs as possible over the next several months. Without TPA, however, USTR is unlikely to formally complete either agreement and present them to Congress for a vote. Under a TPA vote, neither agreement would be subject to amendments, and Congress would only be able to provide a straight up-or-down vote on the FTAs. A lack of TPA, however, means that if either agreement were presented to Congress, legislators could amend the FTAs or attach additional provisions, moves that would likely require further negotiations with the trading partners and further changes to the FTAs. USTR will thus likely continue its "groundwork laying" strategy and will formally pick up negotiations with the UAE and Malaysia if and when Congress renews TPA. Democratic leaders in Congress have noted, however, that TPA renewal is not a "legislative priority" for the time being, and Congressional sources remain uncertain when Congress will consider TPA extension. This uncertainty over "fast-track" renewal could thus add more time to the UAE and Malaysia FTA negotiations as USTR waits to present both agreements under a renewed TPA.

Bush Administration Urges Congress to Approve Pending FTAs in Light of Increased Democratic Demands

President Bush has urged Congress to approve pending Free Trade Agreements (FTAs) with Peru, Panama, and Colombia. Speaking at a July 9, 2007, White House Conference on the Americas, President Bush also urged Congress to consider the US-Peru FTA before recessing on August 6. President Bush opined that approving the bilateral agreement before the August recess would "send a clear signal to [Latin America] that we want it to be prosperous, that we want to help you realize your potential through trade with the United States of America."

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President Bush's remarks come a week after House Democratic leadership – including Ways and Means Committee Chairman Charles Rangel (D-NY) and Trade Subcommittee Chairman Sander Levin (D-MI) – indicated that the House would only consider the Peru, Panama, and Colombia FTAs after each of those respective governments had implemented changes to their laws reflective of the provisions in each of the FTAs. Reps. Rangel and Levin also indicated that members of the House would likely visit these three governments in August to gauge the success with which each government has changed their law in accordance with the bilateral agreements. House Democratic leaders indicated that Congress would likely vote on the US-Peru and US-Panama agreements in the fall only after the respective governments had changed their law.

The Office of the United States Trade Representative (USTR) has joined the President in pressuring Congress to consider the Latin American FTAs sooner rather than later. In a July 6, 2007, letter to Speaker of the House Nancy Pelosi (D-CA), USTR Susan Schwab stated that the Administration "welcomes the support expressed by Democratic leaders for the Peru and Panama FTAs" but added her concern that "unilaterally requiring another sovereign country to change its domestic laws before the US Congress approves a trade agreement would be a fundamental break with US law, policy, and practice." USTR Schwab added that the United States would not agree to such a procedure if demanded by another nation, and noted that "under longstanding US practice, [the United States] only asks its trading partners to fully implement changes to their domestic laws and regulations when the free trade agreement goes into effect, not before." USTR Schwab opined that the House Democratic leaders' conditions "would be interpreted as an effort to stall the US approval process and add unnecessary and provocative conditions even after [the United States'] Latin American and Asian FTA partners have acted in good faith to meet new US demands" reflecting the May 10 Congress-Administration trade policy agreement. Under this agreement, the governments of Peru, Colombia, Panama, and Korea agreed to amend labor, environmental, and other provisions of their respective agreements to reflect Democratic concerns over labor, the environment, port security, and other issues.

In her letter, USTR Schwab noted that Peru has already approved legislative amendments incorporating the bilateral agreement in the FTA and that Colombia has agreed to incorporate the provisions in its FTA. The Korea and Panama FTAs also incorporate changes reflective of Congress-Administration agreement. USTR Schwab stated that "the Administration has successfully worked with our trading partners to complete the steps agreed to in the May 10 bipartisan agreement; now it is time for Congress to fulfill its side of the deal." She urged "Congress to show its good faith and commitment to the May 10 bipartisan

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trade agreement – and to our allies and trading partners – by acting in July on the Peru Trade Promotion Agreement, and moving forward expeditiously with consideration of the other three agreements."

The National Association of Manufacturers (NAM) backs President Bush and USTR's position on a July consideration of the Peru FTA. In a July 10, 2007, letter to House and Senate leaders, NAM President John Engler criticized House Democrats for refusing to schedule a vote on the Peru FTA for July. He noted that House Democrats have placed "roadblocks" in front of pending FTAs, and opined that Congress' failure to vote on the Peru agreement in July violates the Congressional-Administration agreement on US trade policy. Engler stated that NAM urges Congress to move on all pending FTA and to also renew Presidential Trade Promotion Authority (TPA) for the World Trade Organization (WTO) Doha Round negotiations.

Democratic demands on labor, environmental, and a host of other issues have plagued the four pending FTAs ever since the 110th Congress began its work in January. Of the four agreements, the Peru and Panama FTAs enjoy the most Congressional support; Congress will likely approve both these agreements when it comes time to consider them. The timing of a vote on the Peru agreement, however, is up in the air: USTR is pushing for a July vote but House Democrats insist that they will visit Peru in August to ensure that the Peruvian government has implemented changes to its law to reflect the FTA, thus giving Peru a potential fall timeframe for Congressional consideration. Congress will likely consider the Panama FTA after it votes on the Peru FTA. As for the Colombia FTA, the contentious issues surrounding that agreement mean that Congress will debate it at length. Congressional sources have already opined that the likelihood of Congressional passage for the Colombia agreement is low; increased Congressional scrutiny of the agreement and legislators' demands that Colombia change its laws before voting on the agreement only decrease that likelihood even more.

APEC Ministers Discuss Doha Round, Possible APEC-Wide FTA

On July 5, 2007, Australian Trade Minister Warren Truss hosted the 13th meeting of Ministers Responsible for Trade (MRT) from the 21 Asia Pacific Economic Cooperation (APEC) economies[2] in Cairns, Australia. APEC ministers focused their discussion on the status of the World Trade Organization (WTO) Doha Round negotiations and considered options on how to bring the round to a successful

[2] The APEC is comprised of 21 member states, including: Australia, Brunei Darussalam, Canada, Chile, the People's Republic of China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Chinese Taipei, Thailand, the United States, and Vietnam.

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conclusion. The ministers acknowledged the importance of ensuring the continued strength and openness of a rules-based global trading system and re-affirmed their commitment to a successful conclusion of the Doha Round negotiations in 2007. Ministers also discussed other issues impacting the social and economic well-being of the Asia-Pacific Region, and focused their efforts on five issues: (i) promoting dynamism in the Asia-Pacific Region, "which in turn will promote sustainable growth, improve living conditions, and reduce poverty"; (ii) continuing support for the multilateral trading system; (iii) creating an enabling environment for economic growth through trade and investment liberalization and facilitation in order to promote regional economic integration and greater consistency and coherence among the regional trade agreements (RTAs) and free trade agreements (FTAs) within the region; (iv) securing trade to ensure continued prosperity in the region; and (v) ensuring that APEC is responsive to the changing needs of the Asia-Pacific community.

United States Trade Representative (USTR) Susan Schwab attended the meeting and described APEC member economies as "generally high-growth, high-potential countries that are ambitious about trade." At the meeting, USTR Schwab, along with other trade ministers, discussed the prospects of an Asia-Pacific free trade area (FTA) arrangement. Schwab suggested that the creation of such an agreement would occur as a "pathfinder" initiative: under such an initiative, APEC economies that are ready to implement a cooperative arrangement (such as an FTA arrangement) may do so, while those that are not yet ready to participate may join such an arrangement at a later date. Schwab suggested that an APEC pathfinder approach would enable APEC countries "that are serious about moving ahead" on the FTA to begin exploring the creation of such an agreement. She also suggested that the APEC-wide FTA could adopt elements of existing FTAs to which APEC members are a party. Reaction to Schwab's suggestion of an APEC-wide FTA was generally positive. New Zealand Trade Minister Phil Goff opined that an APEC "pathfinder" could make it easier to achieve an APEC FTA. He also suggested that an APEC FTA could follow the same model as the "P4" Trans-Pacific Strategic Economic Partnership Agreement between New Zealand, Brunei, Chile, and Singapore.

At the APEC meeting, USTR Schwab also criticized House Democrats for their refusal to consider pending FTAs with Peru and Panama until those countries have implemented changes to their law to reflect the provisions of the agreements. House Democratic leaders, along with Ways and Means Committee Chairman Charles Rangel (D-NY) and Trade Subcommittee Chairman Sander Levin (D-MI), announced in late June that they hoped Congress could consider the Peru and Panama agreements in the fall, but only if those countries have fully implemented changes in their law by that time. In response to this, Schwab stated that "there is no precedent nor does it make any sense to expect a country to

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unilaterally implement a trade agreement the United States has not ratified." She added, however, that USTR remains fully committed to working with the Democratic leadership in approving the agreements.

Schwab's early exploration of an APEC-wide FTA indicates that USTR is still keen on strengthening trade linkages with Asian economies. The recently completed US-Korea FTA and the completion of a US-Association of Southeast Asian Nations (ASEAN) Trade and Investment Framework Agreement (TIFA) – along with the APEC FTA suggestion – all point to USTR's continued interest in the region. It seems unlikely, however, that USTR would start APEC FTA negotiations in the short-term; on June 30, Presidential Trade Promotion Authority (TPA) expired, a move that renders USTR almost powerless to negotiate and complete FTAs with prospective trading partners. USTR will likely begin an analysis of an APEC FTA and would likely formally commence negotiations when Congress grants the President TPA again. Congressional consideration of TPA renewal, however, is uncertain in the near future and members of Congress have continuously stated that TPA renewal is not currently a "legislative priority."

House Democratic Leaders Announce Opposition to Korea, Colombia FTAs

House Democratic leaders have announced their opposition to the US-Korea (KORUS) and US-Colombia Free Trade Agreements (FTAs). In a June 29, 2007, press release, Speaker of the House Nancy Pelosi (D-CA), Majority Leader Steny Hoyer (D-MD), Ways and Means Committee Chairman Charles Rangel (D-NY), and Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI) provided their views on several pending US FTAs:

- **US-Peru and US-Panama FTAs.** The House Democratic leaders stated that the US-Peru FTA "has great potential to strengthen the economic ties between [the United States and Peru] and to improve standards of living in both countries." The Representatives also acknowledged that the agreement "reflects long-standing Democratic priorities with the inclusion of enforceable, internationally recognized labor rights and environmental standards," a result of amended provisions to the FTA that reflect the May 2007 Congress-Administration deal on US trade policy. The press release also stated that Chairman Rangel intends to lead a bipartisan delegation of Members of Congress to Peru and Panama in August to meet with representatives of those countries' respective legislatures and executive branches, and to provide them the opportunity to confer with US legislators. The Representative expressed their hope that "this trip will lead to the swift passage this fall in Peru and Panama of the necessary legislation to change laws and implement fully the respective agreements, so these agreements can come into effect promptly thereafter."

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- **US-Korea FTA.** The Representatives stated that "properly negotiated, [a KORUS FTA] would provide key benefits to American workers, farmers, and businesses" but added that the bilateral agreement with Korea as currently negotiated is "a missed opportunity" that does not address "the persistent problem of non-tariff barriers, particularly those blocking access of US manufactured products in South Korea's market." The Representatives cited the automobile sector and stated that in 2006, Korea exported more than 700,000 cars into the United States, while the United States exported fewer than 5,000 to Korea. According to the Democratic legislators, "these numbers illustrate deep-seated and fundamental problems in market access and a heavily one-sided trading relationship that can be expected only to undercut support for the agreement far beyond the automotive sector." Under this reasoning, the Representatives state that they cannot support the KORUS FTA as currently negotiated.
- **US-Colombia FTA.** The Representatives state that they regard Colombia as a crucial ally in Latin America but add that "there is widespread concern in Congress about the level of violence in Colombia, the impunity, the lack of investigations and prosecutions, and the role of the paramilitary." The Representatives believe that these issues cannot be solely resolved through language in the FTA. Thus, the House Democratic leaders state that "there must first be concrete evidence of sustained results on the ground in Colombia, and Members of Congress will continue working with all interested parties to help achieve this end before consideration of any FTA." As a result of these contentious issues, the Representatives stated that they cannot support the Colombia FTA at this time.

Opposition to the KORUS and Colombia FTAs comes a week after the Office of the United States Trade Representative (USTR) successfully amended the labor, environmental, and other provisions of these agreements in order to reflect Democratic concerns raised in the May 2007 Congress-Administration deal on trade policy. Analysts had predicted that the amendments to these agreements – which the legislatures of the respective trading partners have to agree to – would suffice in responding to Democratic concerns on labor, the environment, port security, and other issues. However, the House Democratic leadership's opposition to these bilateral agreements *after* USTR amended them to reflect Democratic concerns indicates that Democrats remain unconvinced that the Administration has addressed their interests. USTR, however, may have its hands tied in this situation: with the agreements amended and signed, USTR no longer has any political capital to re-negotiate these agreements with their respective trading partners to reflect additional Democratic concerns, especially in light of Presidential Trade Promotion Authority's June 30 expiry. Congressional sources had already predicted that Congress would easily approve the Peru and Panama FTAs and debate the KORUS and Colombia

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agreements. With the recently announced opposition from Democratic leaders, the chances that Congress will pass implementing legislation for the KORUS and Colombia FTAs have been reduced.

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Multilateral

Multilateral Highlights

WTO Members Express Mixed Reactions to Agriculture and NAMA Modalities Papers

Members of the World Trade Organization (WTO) have expressed mixed reactions to the agriculture and non-agricultural market access (NAMA) "modalities" papers that call for further cuts in agricultural subsidies and tariffs on non-farm goods. 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 include WTO Member governments' latest positions in the multilateral negotiations. Falconer and Stephenson circulated the agriculture and NAMA papers to WTO Members in an effort to advance the stalled Doha negotiations.

US officials expressed mixed reactions to the agriculture modalities paper. US Special Doha Agricultural Envoy Joseph Glauber stated that he was disappointed with the agriculture draft because the draft text did not compensate proposed US cuts in agricultural subsidies with new market access opportunities – a key US demand. Glauber stated that WTO Members must make deeper cuts in agricultural tariffs and provide tighter disciplines on the treatment of sensitive and special agricultural products. He noted that the United States was prepared to offer deeper cuts in its overall trade-distorting farm subsidies but only if WTO Members make deeper cuts in farm tariffs. Glauber also stated that United States opposed the spending cap included in Falconer's agriculture draft: the modalities paper proposed that US trade-distorting support be capped between USD 13-16.4 billion per year, a significant drop from the current US offer to cap support between USD 17-23 billion per year. Glauber further expressed US opposition to the proposed 82 percent reduction in trade-distorting subsidies for cotton. He noted, however, that WTO Members seemed to be "positively engaged" in the Doha talks.

US officials were critical of the NAMA modalities paper. Deputy United States Trade Representative (DUSTR) Peter Allgeier criticized the NAMA text for not imposing enough cuts in developing countries' industrial tariffs. He stated that the draft text calls for deeper cuts in US textile and clothing tariffs, and that the United States would not accept this proposal if "major developing countries shield their own textile markets from deeper tariff cuts through special flexibilities set out in the text." DUSTR Allgeier also stated that "the paper does not have sufficient ambition, particularly on those 30 or so advanced

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developing countries who will be applying the [Swiss] formula [for tariff] cuts." He expressed US opposition to the modalities' proposed timeframe for developing countries to fully implement tariff reduction commitments, noting that developing countries would have nine years to fully implement tariff cuts, compared to five years for developed economies, such as the United States.

The EU's reaction to the modalities papers was similar to the US reaction. On the agriculture draft, European Trade Commissioner Peter Mandelson stated that the proposed cuts in agricultural tariffs for the EU were "manageable." Mandelson also stated that the draft paper's proposal for tariff cuts (developed countries would have to make tariff cuts ranging from 48-52 percent for products with the lowest tariffs to 66-73 percent cuts for products with the highest tariffs) was "manageable." Mandelson did state, however, that the EU was concerned that the modalities paper did not sufficiently address the treatment of agricultural sensitive products, particularly market access given to sensitive products. Mandelson opined that although the agriculture draft was not as ambitious as he had hoped it would be, "it still has the potential to be [part of] the largest trade deal ever." Chief EU Agriculture Negotiator Jean-Luc Demarty, however, expressed dissatisfaction with the agriculture modalities paper and stated that it had numerous problems, including "excessive expansion of tariff rate quotas for sensitive products as well as rules for the designation of sensitive products." Demarty also noted that although the EU is willing to make cuts in agricultural support, it must first see a similar level of ambition from other WTO Members.

Regarding NAMA, Mandelson stated that the NAMA modalities paper provided some "reasonable" proposals, but that the EU must "continue to push hard on industrial tariffs . . . [because] the landing point will not move further in [the EU's] favor, given the emergence of a more ambitious and vocal group amongst the developing countries." Other EU officials, however, criticized the NAMA draft paper for a lack of uniformity and opined that the proposed coefficients for developed countries would eliminate tariffs altogether in developed countries.

Other WTO Members were more critical of the modalities papers. The Group of 20 (G-20) of developing nations noted that the agriculture modalities paper provides a "good starting point" for more negotiations, but that the group remains concerned that the proposal does not afford developing countries increased market access opportunities. The NAMA-11 – a group comprised of Argentina, Brazil, Egypt, India, Indonesia, Namibia, the Philippines, South Africa, Tunisia, and Venezuela – expressed their opposition to the NAMA modalities paper, and stated that the range of tariff cuts for developing countries included in the proposal was unacceptable. The NAMA-11 proposes a 35 coefficient for developing countries and a 10 coefficient for developed countries. The NAMA modalities paper, however, proposes a coefficient between 19-23 for developing countries a coefficient between 8-9 for developed countries. NAMA-11

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members also declared that the modalities paper should not serve as a basis for any future NAMA negotiations. Brazilian officials stated that the modalities paper should not serve as a basis for continuing NAMA negotiations because the proposed tariff cuts and other flexibilities are likely to affect industrial growth and weaken existing developing countries' customs unions (e.g., Mercosur and the Southern African Customs Union-SACU). The Brazilian government is holding consultations with its private sector to target a potential list of sensitive products. Achieving substantial cuts in agricultural subsidies, however, continues to be the main concern for Brazil.

The mixed reactions from WTO Members with regards to the agriculture and NAMA modalities papers indicates that gaps still exist between Members' negotiating proposals. Agriculture and NAMA continue to be the two most contentious areas in the Doha negotiations, and WTO Members' responses to the papers indicate little movement from their earlier demands. In agriculture, WTO Members seem hesitant to offer further cuts in their agricultural support without seeing similar cuts from other countries. In NAMA, there lies a gap between the level of cuts in industrial tariffs developed and developing economies are willing to make. Each Member believes that it is sacrificing too much, while all others are sacrificing too little. WTO Members will continue to meet informally and discuss these gaps for the remainder of July before negotiations are suspended for the August summer holiday. Doha talks will pick up again in September; WTO Director-General Pascal Lamy is urging WTO Members to review their negotiating offers during August so that they can return to the negotiating table "refreshed" in September. World Bank President Robert Zoellick has echoed Lamy's push for renewed offers and has opined that a comprehensive Doha deal is achievable if Members continued negotiations with the intent to bridging the gaps between offers. He also stated that the remaining gaps in agriculture and NAMA negotiations "can be specified to achieve compromise, even though the topics are contentious," and that "the global community should stay focused on the prize" of a final Doha Development Agenda agreement. It remains to be seen, however, if WTO Members will return to the negotiating table in September with amended negotiating offers or if they will continue to defend their current negotiating positions.

China Blocks United States' and Mexico's WTO Panel Requests in Subsidies Complaint

On July 24, 2007, China blocked the United States' and Mexico's World Trade Organization (WTO) dispute panel requests to determine whether China's subsidies violate WTO rules. The United States and Mexico can renew their panel requests at the next meeting of the WTO Dispute Settlement Body (DSB), scheduled for August 21, 2007. Under WTO rules, China cannot block the second request and

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the DSB must automatically accept the US and Mexican requests and establish a dispute settlement panel to rule on their complaints.

In its decision to block the panel requests, China argued that its new "Enterprise Income Tax Law" addresses some of the concerns raised by the United States and Mexico in their complaints. Chinese officials also argued that several of the programs cited in the US and Mexican dispute panel requests do not exist or are not applicable to the complaints. Chinese officials expressed dissatisfaction at the United States' and Mexico's decisions to move forward with their complaints and request the WTO DSB to create a panel.

The US request for a WTO dispute settlement panel challenges several Chinese subsidy programs that the United States believes violate WTO rules (DS358). The Mexican request for a WTO dispute settlement panel (DS359) echoes the US complaint. According to the United States and Mexico, subsidies conditioned either on a firm's use of domestic over imported products or on exports are prohibited by the WTO Agreement on Subsidies and Countervailing Measures, and are inconsistent with other WTO obligations, including specific commitments undertaken by China as part of its WTO accession agreement before it joined the WTO on December 11, 2001. Both complaints also allege violations of the 1994 General Agreement on Tariffs and Trade (GATT) and the Agreement on Trade-Related Investment Measures (TRIMs). In particular, the US and Mexican panel requests state that China's subsidy programs violate GATT Article III:4 , TRIMs Article 2 and paragraphs 1.2, 7.2-7.3, and 10.3 of China's WTO Accession Protocol.

The United States initiated the dispute over China's allegedly prohibited subsidies by requesting consultations with China on February 2, 2007. Mexico requested consultations with China on the same measures on February 26, 2007. Prior to joint consultations on March 20, 2007, China eliminated one of the subsidy programs challenged by the United States and Mexico. At the same time, China adopted a new income tax law providing additional tax breaks for qualifying firms. The United States and Mexico requested additional consultations with China to clarify whether these new tax breaks constituted new prohibited subsidies; the parties held consultations on this matter on June 22, 2007. On July 12, the United States announced that these consultations had failed and requested WTO panel formation. Also on July 12, Mexico filed its own request for the establishment of a WTO panel against Chinese subsidies. Mexico claims that the subsidies violate China's WTO obligations because they distort trade conditions for Mexican manufacturers and provide an unfair advantage to Chinese exports. Mexico also expects that the DSB will combine both complaints and carry out one investigation.

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The United States and Mexico will likely request panel formation at the August 21 DSB meeting. For the United States, this dispute represents one of four WTO disputes against China (the other three involve automobile parts, market access, and intellectual property). This is the first WTO complaint that Mexico has filed against China. The US and Mexican decision to join forces against China indicate that both countries are no longer following the "quiet diplomacy" route when dealing with China's allegedly WTO-inconsistent trade practices. The move could set a precedent for other WTO Members, which may have questioned the WTO-consistency of China's trade practices but withheld a dispute settlement request due to concern that such a request could upset bilateral economic relations with such a large trading partner as China. In early July, EU Trade Commissioner Peter Mandelson stated that the European Commission would not exclude the possibility of a WTO dispute settlement request if the EU and China failed to make "significant progress" on intellectual property protection through dialogue. The recent rise in the number of WTO cases filed against China suggests that China faces a new era of direct confrontations with WTO Members regarding its trade practices. Although the Chinese government has expressed dismay at such confrontations, most WTO Members accept regular use of WTO's dispute settlement mechanism as common practice. A number of US trade officials have opined that China's growing involvement as a respondent to WTO disputes is indicative of the country's integration as a regular member of the organization.

US Proposes Zeroing as Part of Doha Negotiations

On July 11, 2007, Deputy United States Trade Representative Peter Allgeier informed members of the World Trade Organization (WTO) negotiating group on rules that the United States will not agree to a comprehensive Doha agreement on "tighter antidumping disciplines" unless WTO Members respond to the US proposal to allow its "zeroing" methodology in antidumping investigations. Allgeier stated that the US Department of Commerce's (DOC) use of zeroing in antidumping investigations "is a very important issue" for the United States in the Doha Round talks" and that the United States "cannot envisage an outcome to the negotiations without addressing zeroing." According to Allgeier, the US proposal to allow zeroing is an important issue for any WTO Member that has implemented an antidumping regime.

Zeroing refers to the practice whereby an investigating authority discounts so-called "negative dumping margins" to zero. When the export price of a product is lower than the price in the exporting country, the difference between the two is 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

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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 antidumping duties which may not otherwise apply at all. Reaction to the US proposal was mostly negative although the EU, Egypt, and New Zealand said they were willing to "constructively engage" with the United States and further discuss the issue.

This is not the first time that the United States has requested that zeroing be included in a final Doha agreement. On June 27, 2007, the United States proposed that WTO Members include legal language in the WTO Antidumping Agreement that allows the use of DOC's zeroing methodology, specifically proposing that Article 2.4.3 to the Antidumping Agreement on dumping determinations state: "when aggregating the results of comparisons of normal value and export price to determine any margin of dumping, authorities are not required to offset the results of any comparison in which the export price is greater than the normal value against the results of any comparison in which the normal value is greater than the export price." The United States also proposed that language be included in the agreement that allows authorities to "calculate the margin of dumping on the basis of an individual export transaction or multiple export transactions" and states that authorities "are not required to offset the results of a comparison for any transaction for which the export price is greater than the normal value against the results of a comparison for any transaction for which the export price is less than the normal value." Based on the predominantly negative reaction to US proposals to allow for zeroing within WTO agreements, it seems likely that the United States will continue fighting a hard battle against other WTO Members in an effort to have zeroing approved by the multilateral institution. Analysts opine that US refusal to consider a final Doha agreement that does not address zeroing, however, will only serve to prolong negotiations that are already stalled on other key issues such as agricultural support and non-agricultural market access. The United States has not provided any indication that it is willing to back down from its zeroing requests; thus, Doha negotiations could proceed even slower than usual now that the United States has shifted its focus to zeroing in the rules negotiations.

Brazil Requests Dispute Consultations on US Agricultural Subsidies

On July 11, 2007, Brazil requested World Trade Organization (WTO) dispute consultations with the United States regarding US subsidies for agricultural producers. Under WTO rules, the United States and Brazil will have a mandatory 60-day consultation period. If the parties cannot reach a mutually agreeable solution at the end of the consultation period, Brazil can then request the WTO Dispute Settlement Body (DSB) to establish a panel to rule on the issue.

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Brazil alleges that for the past 10 years, the United States has provided trade-distorting "Amber Box" subsidies to agricultural producers in excess of the current US annual spending limit of USD 19.1 billion. Brazil's complaint also alleges that the United States provides agricultural producers with credit guarantees that subsidize the export of certain agricultural products through certain export credit guarantee programs.

The United States is currently embroiled in another agricultural dispute with Brazil regarding US subsidies to cotton producers (DS267). According to Brazil, the United States "has not fully implemented" earlier WTO rulings finding its cotton subsidy programs illegal. In an earlier ruling, the DSB found that certain US support programs for cotton producers paid out between 1999 and 2002 constituted illegal export subsidies and had caused "serious prejudice to the trade interests of Brazil." In March 2005, the WTO's Appellate Body (AB) upheld the ruling. In October 2005, Brazil requested USD 1.037 billion in annual retaliation, an amount Brazil feels was equivalent to the annual average value of excess US cotton production resulting from the illegal subsidies during 1999 and 2002. The two countries later agreed to suspend the retaliation proceedings pending further implementation measures by the United States. On August 1, 2006, the United States formally repealed the "Step 2" cotton program, a program that compensated US mills and exporters for purchasing higher-priced US cotton ruled as illegal by a final decision of the WTO's AB March 2005 decision. Brazil contends that the US repeal of the "Step 2" cotton program does not fully address the WTO AB's ruling. The WTO compliance panel is due to issue a preliminary ruling on the Brazilian cotton complaint on July 20, 2007.

EU Requests Dispute Consultations on US Zeroing

On July 9, 2007, the EU requested World Trade Organization (WTO) dispute consultations with the United States regarding the US Department of Commerce's (DOC) use of its "zeroing" methodology in antidumping investigations. The EU consultation request alleges that the United States has failed to comply with an earlier WTO ruling regarding the use of the "zeroing" methodology in antidumping investigations. Under WTO rules, the United States and the EU 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 EU can then request the WTO Dispute Settlement Body (DSB) to establish a panel to rule on the issue.

DOC has already addressed its use of average-to-average zeroing in antidumping investigations. In response to an earlier adverse WTO ruling, on January 23, 2007, DOC announced that it would institute a change to its zeroing methodology beginning February 22, 2007. The change was necessary to

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implement the recommendations and rulings of the WTO DSB in connection with the US-EU dispute US – Zeroing (EC) (DS294).[3] According to DOC, when calculating the weighted-average dumping margin in antidumping investigations, effective February 22, 2007, the Department no longer disregards negative dumping margins in antidumping investigations where it uses weighted average to weighted average comparisons. On April 13, 2007, the United States informed WTO Members that in eliminating the use of the zeroing methodology at issue, it was now in compliance with the WTO's findings.

The EU, however, alleges that the United States is not compliant with the earlier WTO ruling. Specifically, the EU alleges that the United States is maintaining the duty orders without determining whether the remaining volumes of dumped imports are causing injury to U.S. domestic industries and whether these volumes of dumped imports were negligible with respect to the fifteen investigations at issue of imported products from the EU. The EU also alleges that DOC has: (i) failed to eliminate zeroing in respect to one duty order on stainless steel sheet and strip in coils from Italy and continues to impose duties on these products based on this zeroing methodology; (ii) imposed "unjustified increases" of the "all others" duty rate in duty orders on stainless steel bar from France, Italy, and the United Kingdom; and (iii) failed to eliminate zeroing in any of the sixteen administrative reviews in question.

Mexico Suspends Complaint on US AD Order on OCTG Imports

On July 11, 2007, Mexico suspended World Trade Organization (WTO) dispute settlement proceedings against a US antidumping order on US imports of Mexican oil country tubular goods (OCTG); the WTO compliance panel examining the complaint agreed to Mexico's suspension request (DS282). According to government sources, Mexico suspended its complaint after the May 31 determination by the US International Trade Commission (ITC) on the revocation of existing antidumping duty orders on imports of OCTG products. Specifically, the ITC determined that the revocation of existing antidumping duty orders on imports of OCTG products from Argentina, Italy, Japan, Korea, and Mexico would not be likely to lead to continuation or recurrence of material injury to US OCTG producers. As a result of the ITC's negative determinations, the existing orders on imports of OCTG products from Argentina, Italy, Japan, Korea, and Mexico will be revoked. Mexico's suspension of its WTO complaint against the United States echoes Argentina's suspension of its own dispute against the United States. On June 26, the United States and

[3] In that complaint, the WTO's Appellate Body (AB) ruled on April 18, 2006 that the United Sates' use of zeroing in the original investigations and subsequent administrative reviews violated WTO rules. The WTO DSB adopted the ruling on May 9 and gave the United States until April 9, 2007 to comply.

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Argentina agreed to suspend dispute settlement proceedings regarding US duties on imports of OCTG products from Argentina (DS346).

WTO Agriculture, NAMA Chairs Release "Modalities" Papers in Effort to Renew Doha Talks

On July 17, 2007, World Trade Organization (WTO) agriculture negotiations chairperson Ambassador Crawford Falconer and non-agricultural market access (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, who will now have an opportunity to react and to further revise the texts.

The agriculture "modalities" paper encourages WTO Members to further open their agricultural markets and reduce agricultural support and subsidies. The agriculture text also calls on the United States to make further cuts in agricultural subsidies and on the EU to further reduce its highest and most sensitive farm tariff lines. The NAMA "modalities" paper also encourages further market opening and calls for a reduction in tariffs of manufactured products. The NAMA text calls on developing countries to further reduce their industrial tariffs.

Falconer's agriculture "modalities" paper proposes:

- Further cuts in agricultural support by developed countries, ranging from 48-52 percent for products with the lowest tariffs to 66-73 percent cuts for products with the highest tariffs;
- Further cuts in agricultural support by developing countries, ranging from 32-34 percent for products with the lowest tariffs to 44-48 percent cuts for products with the highest tariffs;
- A reduction in the current US cap on overall trade-distorting agricultural support to USD 13-16.4 billion per year (the United States' current proposal is to reduce its annual cap to USD 17-23 billion per year);
- A reduction in the current EU cap on overall trade-distorting agricultural support to USD 22.7-27.6 billion per year;

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- A reduction in the current Japan cap on overall trade-distorting agricultural support to USD 12.3-15.6 billion per year;
- A 50-60 percent reduction in the current cap on overall trade-distorting agricultural support from other WTO developed countries;
- A 60 percent reduction in Amber Box payments for the United States and Japan, and a 70 percent reduction for the EU;
- Additional disciplines on Blue Box spending to prevent WTO Members from including additional agricultural support within the Blue Box (specifically, if a WTO Member places more than 40 percent of total trade-distorting domestic support in the Blue Box, that WTO Member must also make an equivalent reduction to its Amber Box);
- Sensitive agricultural tariff lines for developed countries limited to 4-6 percent and for developing countries with 30 percent or more of their tariff lines in the highest tariff band limited to 6-8 percent;
- Elimination of agricultural export subsidies by 2013, with a 50 percent reduction achieved by 2010;
- New disciplines for export credits, credit guarantees, insurance programs, and food aid; and
- Elimination of export monopolies by 2013 from WTO Members with state trading farm export monopolies such as Australia, Canada, and New Zealand.

Stephenson's NAMA "modalities" paper includes the following specific proposals:

- A coefficient between 19-23 in the "Swiss" tariff reduction formula for developing countries, and a coefficient between 8-9 for developed countries (under the Swiss formula, the lower the coefficient, the higher the cuts, with higher tariffs subject to deeper cuts; the coefficient also determines the highest allowed tariff);
- Flexibilities for developing countries allowing them to exempt up to 10 percent of their industrial tariff lines from the agreed cuts or exclude 5 percent of tariff lines from any WTO reduction commitments; and
- An opportunity for developing countries to increase their tariff-cutting coefficient by up to 3 points if they renounce use of the flexibilities.

According to Falconer and Stephenson, the draft texts will serve as the basis for Doha talks held in July. WTO Members will then have August to consider the texts and draft proper reactions; Falconer and

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Stephenson suspended Doha negotiations in August so that WTO Members would have time to consider their current negotiating positions and return to the negotiating table in September "fully prepared to engage in an intensive negotiation."

Reaction to the "modalities" papers was mixed. WTO Director-General Pascal Lamy noted that the papers "reflect the progress that has been achieved so far" and that they "are representative of members' views and constitute a fair and reasonable basis for reaching ambitious, balanced and development-oriented agreements." He added that the texts serve as "negotiating instruments which will be revised and adjusted as governments continue to narrow their differences." The Office of the United States Trade Representative (USTR) issued a statement that the texts were wide-ranging and complex, and "will demand close analysis as we develop a comprehensive US reaction." USTR noted that it will work closely with the US Congress and domestic stakeholders in exploring ways "to take the negotiations forward into the fall." The National Association of Manufacturers welcomed the release draft NAMA negotiating text but noted that "this framework provides a focal point for debate" and that "it is clear that the United States must press hard for substantial cuts in foreign tariffs and a lot of work remains before the trade liberalization we seek is reached." The National Foreign Trade Council also expressed its disappointment with the range of coefficients suggested for developing countries, adding that "a range of 15-19 percent would be more in line with an outcome that leads to new trade flows and real new market access."

The release of the "modalities" papers comes weeks after the late June collapse of Doha talks in Potsdam, Germany. Falconer and Stephenson likely released the paper in order to inject some momentum in the stalled negotiations. Although agriculture and NAMA talks will continue in July, a breakthrough in the talks is unlikely to occur in the next several weeks. Instead, WTO Members will likely use the "break" during August to re-examine their negotiating positions so as to further discuss them in September. The United States and the EU's guarded reactions to the release of the papers, however, indicates that WTO Members are unlikely to radically alter their offers so as to reflect the "modalities" papers' proposals. If this is the case, then Doha talks could remain stalled for some time.

The agriculture "modalities" paper is available at:
http://www.wto.org/english/tratop_e/agric_e/chair_texts07_e.htm.

The NAMA "modalities" paper is available at:
http://www.wto.org/english/tratop_e/markacc_e/markacc_chair_texts07_e.htm.

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WTO Establishes Dispute Panel on US-India Wine and Spirits Dispute

On June 20, 2007, the World Trade Organization's (WTO) Dispute Settlement Body (DSB) established a dispute panel (DS360) to examine the US complaint against India's "additional duties" or "extra additional duties" on certain imports from the United States, including (but not limited to) wines and distilled products. The DSB established the panel after a second request from the United States. The United States alleges that India's additional and extra additional duties are in excess of those listed in India's WTO Tariff Schedule.

According to the United States, India applies an "additional duty" that ranges from 20 to 75 percent ad valorem on wine and from 25 to 150 percent ad valorem on distilled spirits. For some import values, the "additional duty" applies as a specific duty, resulting in ad valorem duties exceeding these ranges. The "extra additional duty" is four percent ad valorem. The "additional duty" is calculated in addition to, and after applying, India's basic customs duties. The "extra additional duty" is calculated in addition to, and after applying, the "additional duty." The United States thus alleges that the "additional duty" and "extra additional duty" appear to subject imports of wine and distilled spirits to duties in excess of India's WTO tariff commitments and appear to subject imported wine and distilled spirits to internal taxes in excess of those applied to domestic products. The United States concludes that India's duties appear to breach its WTO obligations. According to the Office of the United States Trade Representative (USTR), India made WTO commitments that its tariffs on wine and spirits would not exceed 150 percent. USTR notes that US exports of wine and distilled spirits to India under special duty-free rules (such as for airport duty-free and use at luxury hotels)rose by 350 percent and 200 percent, respectively, between 2000 and 2005. Because, however, of "the high duties imposed on the vast majority of American wines and spirits, total exports to India remain low."

On July 4, India removed the additional import tax on liquor, wine, and beer, following the US and EU WTO complaints. In a press release, the Indian Ministry of Finance reported that it has removed the additional duty but that had increased the basic import tax on wine from 100 percent to 150 percent. Indian officials also proposed to empower state governments to levy taxes on imported products equivalent to the excise duty domestic manufacturers pay. Following India's announcement, the United States indicated that it has not yet decided whether to withdraw its complaint filed against India. USTR Susan Schwab stated that USTR is "studying India's recent announcement that it has withdrawn the additional duty on imports of alcoholic beverages" and will shortly decide on whether it will cancel its request for a WTO panel decision.

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United States Requests WTO Panel on EU Banana Import Regime

On June 29, 2007, United States Trade Representative (USTR) Susan Schwab announced that the United States has requested a World Trade Organization (WTO) compliance panel to review whether the EU's banana import regime is in violation of the EU's WTO obligations. The US request stems from the WTO's 1996 ruling (DS27) that the EU's banana regime discriminates against bananas originating in Latin American countries and against banana distributors, including several US companies. Ecuador, Guatemala, Honduras, Mexico, and the United States initiated that dispute.

Under that dispute, the EU was under an obligation to bring its banana regime into compliance with its WTO obligations by January 1999, and it had agreed to implement a tariff-only regime for bananas. The United States, however, alleges that the EU continues to impose a discriminatory tariff rate quota in its current banana regime. Specifically, the United States alleges that the EU banana regime put in place on January 1, 2006, features a zero-duty tariff rate quota that is allocated exclusively to bananas from African, Caribbean, and Pacific (ACP) countries. According to the United States, bananas of Latin American origin do not have access to this duty-free tariff rate quota and are subject to a EUR 176/ton duty. In announcing the compliance panel request, USTR Schwab stated that she is "hopeful that this formal step will facilitate the removal of that discrimination."

On July 2, EU officials stated that the US panel request was "regrettable" and that it came at "an unfortunate time" as EU negotiators continue to work with Latin American trading partners in seeking a solution to the banana dispute. Michael Mann, a spokesman for EU Agriculture Commissioner Mariann Fischer Boel, stated that the US request "disregards the efforts that the EU continues to make to reach a negotiated solution" and noted that at the time the United States presented its request, the EU was meeting with Latin American banana suppliers "in order to explore a potential negotiated solution before the summer break."

The United States is not the only WTO Member to question the EU's banana import regime. On February 23, 2007, Ecuador also requested the formation of a compliance panel to investigate the EU's compliance with the 1996 ruling on its banana import regime; on March 20, the WTO Dispute Settlement Body (DSB) composed a compliance panel to address Ecuador's concerns. On March 21, 2007, Colombia requested consultations with the EU (DS361) concerning its current regime governing the importation of bananas. In its request, Colombia noted that the tariff levied on bananas of most favored nation origin was set at EUR 176/ton, but ACP bananas were imported at zero duty up to an annual quantity of 775,000 tons. On June 22, 2007, Panama made a similar request for consultations with the EU (DS364).

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